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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

KOLAN DAVIS, STAFF DIRECTOR AND CHIEF COUNSEL
JOSHUA SHEINKMAN, DEMOCRATIC STAFF DIRECTOR

December 23, 2020

Director Russell Vought
Office of Management and Budget
Executive Office of the President
725 17th Street NW
Washington, DC 20503

Dear Director Vought,

In 2016, Congress overwhelmingly decided to raise the United States' threshold for *de minimis* shipments from \$200 to \$800 as part of the Trade Enforcement and Trade Facilitation Act of 2015. Notably, Congress did not include any exception for merchandise that was subject to action under Section 301 of the Trade Act of 1974. The position of the Senate Finance Committee has not changed since – even with the increased use of tariffs pursuant to Section 301. Just recently in the Committee's Report on the USMCA Implementation Act, the Committee noted the "U.S. *de minimis* level continues to enjoy broad support and any changes to this level would need to be enacted by Congress." S. Rept. 116-283. Accordingly, we are surprised that the Treasury Department is considering creating a carve out from the *de minimis* thresholds for certain shipments through a proposed rule: *Excepting Merchandise Subject to Section 301 Duties from the Customs de minimis Exemption* (RIN: 1515-AE57 or "the *de minimis* rule"). The Office of Information and Regulatory Affairs' (OIRA) must ensure that the proposed rule receive a thorough and complete review – as is required by law and long-standing policy.

As a legal matter, the Regulatory Flexibility Act requires preparation of a regulatory flexibility analysis for any rule that would impact a substantial number of small entities. U.S. Trade Representative Robert Lighthizer has told this committee that in FY2018 and FY2019, there were a combined 1.2 billion *de minimis* shipments. According to testimony in our committee, we have every reason to believe that many of these shipments go to small businesses or microenterprises that employ thousands of Americans.¹ If this proposed rule went forward, it would require the submission of customs entries for millions of additional shipments and increase taxes on numerous small businesses. As such, we think there can be no debate that a regulatory flexibility analysis is required for this proposed rule.

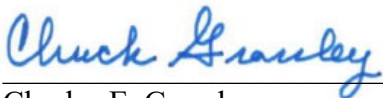
¹ See e.g., Testimony of P. Barnett on the "The United States-Mexico-Canada Agreement" (July 30, 2019).

Long standing policy over four administrations also requires a thorough vetting of this rule. Specifically, Executive Order 12866 (“EO 12866”) requires that with respect to any “significant regulatory action,” the issuing agency prepare, *inter alia*, a cost-benefit assessment, an assessment of feasible alternatives, including an explanation for why the proposed rule is preferable to those alternatives, or an explanation for why no alternative exists. EO 12866 defines a “significant regulatory action” as any action that “raises novel legal or policy issues arising out of legal mandates ...” or is likely to result in a rule that may have an annual effect on the economy of \$100 million, or more. Again, there can be no reasonable debate that the proposed *de minimis* rule triggers these criteria. It involves two complex trade statutes, international treaty obligations, 1.2 billion shipments, and thousands of businesses. Additionally, significant regulatory actions under EO 12866 must be open for public comment for 60 days.² It is important to provide this time to the American people to allow them to evaluate the rule and its accompanying analyses – and provide their experiences and views.³

We see no reason why a rule with such a significantly large impact on both government and the private sector should not allow the necessary period to analyze the economic impact, carefully consider the benefits and costs, and provide all stakeholders an opportunity to comment in accordance with normal administrative procedures. We urge you to designate this rule as economically significant to correct that problem and ensure robust analysis of its effects.

Thank you for your consideration in this matter.

Sincerely,



Charles E. Grassley
United States Senator



John Thune
United States Senator



Patrick J. Toomey
United States Senator



Tim Scott
United States Senator

² We also note that USMCA Article 28.9 provides that if a draft regulation will have a significant impact on trade, the party must provide 60 days for notice and comment.

³ We note it would be wholly inappropriate to provide less than 60 days or to proceed with an interim-final regulation. This Committee has not been made aware of any good cause that would warrant.

Bill Cassidy, M.D.

Bill Cassidy
United States Senator

Todd Young

Todd Young
United States Senator

/s/ Thomas R. Carper

Thomas R. Carper
United States Senator

Maggie Hassan

Margaret Wood Hassan
United States Senator

Cc:
Administrator, Office of Information & Regulatory Affairs
Secretary of the Treasury
United States Trade Representative
Director, National Economic Council
Administrator, Small Business Administration
Commissioner, U.S. Customs and Border Protection