

The Honorable Janet Yellen
Secretary
U.S. Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

September 24, 2024

Dear Secretary Yellen,

The undersigned associations are writing to urge you not to delegate any of the remaining Customs revenue authorities to the Secretary of Homeland Security (DHS) that were not already delegated under Treasury Order 100-016.

Our members are concerned that the Department of Treasury (Treasury) is considering further transfer and diminishment of its Customs revenue related oversight role that it has held for over 230 years. This action while it may appear logical and practical, would have a significantly negative impact on American importers and exporters. Treasury possesses historic experience and deep expertise overseeing the remaining non-delegated revenue functions, and this provides it a key role to influence Customs revenue related issues that the trade anticipates will grow in importance in the coming years. It is critical that Treasury leadership as well as Congress, including current Committees of jurisdiction and other interested Committees, seriously consider the potential impacts of this delegation.

Historically, Treasury representatives, including Treasury's Deputy Assistant Secretary for Tax, Trade and Tariff Policy, have provided important oversight to US Customs and Border Protection (CBP) and consultation related to regulations where it has had "sole authority to approve regulations concerning a wide range of functions involving revenue or regulating trade for economic purposes including, import quotas, trade bans, user fees, origin, copyright and trademark enforcement, duty assessment, classification, valuation, preferential trade programs, and recordkeeping."¹ We are deeply concerned to learn that the Treasury Department intends to in effect, to eliminate this function, including the role of Deputy Assistant Secretary for Tax, Trade, and Tariff Policy that has remained vacant since the retirement of Mr. Timothy Skud, who served in this position for over 20 years. Our members view this regulatory role and oversight as a vital function related to Treasury's revenue collection authority and responsibility. This critical regulatory oversight role is in addition to Treasury's review of rulings, revocations, or modifications involving Customs revenue related topics. In addition, Treasury has maintained the co-chair role of the Customs Commercial Operational Advisory Committee (COAC).

Moreover, as highlighted in the August 28, 2024, Treasury Office of Inspector General (OIG) report², Treasury has engaged in a wide range of issues, which are critically important to the trade community, specifically, "working groups to discuss CBP shipments, work on international trade agreements, technical assistance for Congressional staff requests on several pieces of legislation related to Customs revenue, review of exclusion orders when the President had been asked to block United States International Trade Commission orders, and guidance on Customs modernization efforts since 2019." In addition, this office has worked on the USMCA (US – Mexico - Canada Free Trade Agreement) Interagency Committee for

¹ MEMORANDUM FOR AVIVA ARON-DINE, ACTING ASSISTANT SECRETARY FOR TAX POLICY, DEPARTMENT OF THE TREASURY. "U.S. Treasury's Role with Customs Revenue Function - Trade Facilitation and Trade Enforcement Act of 2015, Section 112 (OIG-CA-24-025). August 28, 2024, accessed September 11, 2024.

² MEMORANDUM FOR AVIVA ARON-DINE, ACTING ASSISTANT SECRETARY FOR TAX POLICY, DEPARTMENT OF THE TREASURY. "U.S. Treasury's Role with Customs Revenue Function - Trade Facilitation and Trade Enforcement Act of 2015, Section 112 (OIG-CA-24-025). August 28, 2024, accessed September 11, 2024.

Trade in Automotive Goods, and implementation on the Uyghur Forced Labor Prevention Act. These are topics which many of our associations have been involved in at various levels, including as part of COAC Working Groups.

By contrast, the DHS is primarily a law enforcement agency focused on the nation's security. It does not have the resources and/or subject matter expertise to provide the necessary support and oversight needed on many of the complex trade related topics currently being considered for delegation. In addition, we anticipate that any DHS delegated authorities would be further delegated in whole or in part to CBP, also an enforcement agency. While CBP has a trade facilitation as well as a trade enforcement mandate, in recent times the enforcement mandate has taken priority, despite industry's calls for a better balance between these two key missions. In our view, Treasury has a unique perspective on the complex trade related topics currently proposed for delegation that would ensure a more balanced approach.

We do not believe the critical oversight function that resides within Treasury is best suited for a law enforcement agency (i.e., DHS or CBP). The Treasury Department has a long history of working on CBP's revenue matters. This vital role of the Treasury mission was recognized in Sec. 412 of The Homeland Security Act (HSA), which authorized the Treasury Department to appoint up to 20 new personnel to work with personnel of the DHS (and CBP) to carry out oversight of Customs revenue functions. The new staff contemplated were not intended to be law enforcement officers, but rather customs subject matter experts, customs attorneys, and economists able to adequately support this role as originally intended.

In addition to maintaining current roles and oversight over Customs revenue, we recommend that Treasury take prompt action to adequately fund and resource the function with necessary staff, including a Deputy Assistant Secretary for Tax, Trade and Tariff Policy. At the time the HSA was signed into law, senior officials worked to ensure Treasury maintained its Customs revenue role. This was in addition to concentrated efforts in Congress to maintain jurisdiction for oversight and determining funding. With staff changes and retirements, we are concerned that this objective has been lost as well as a commitment to the role that Treasury has held for over 230 years. The envisioned delegation of authorities could have a negative impact on these functions.

Furthermore, the timing and scope of this decision is both unclear and concerning. Per the OIG report, Congressional Committee notification and specific industry outreach needs to be conducted. We have started to engage with our members and are working on broader trade community outreach, but more time is needed to get full industry input. At minimum, we recommend this effort be subject to broad, open, and transparent consultation with importers and exporters, as well as any other interested stakeholders through the existing Federal Register Notice (FRN) process with adequate time for public comment. This would afford all interested stakeholders the opportunity to review the proposed delegation and provide input before action is taken. An FRN notification would also afford greater clarity to the trade on the scope of the possible delegation to DHS, and the intended impact and purpose of the delegation, as well as what responsibilities and roles are expected to remain with Treasury whether or not stipulated in the OIG report.

We continue to be strong advocates for Treasury providing crucial oversight to CBP. We look forward to working with you on these matters going forward.

Sincerely,

American Apparel & Footwear Association
American Association of Exporters and Importers (AAEI)
E-Merchants Trade Council (EMTC)
Express Association of America (EAA)

International Trade Surety Association
National Association of Manufacturers
National Foreign Trade Council (NFTC)
National Retail Federation (NRF)
Retail Industry Leaders Association (RILA)
United States Council for International Business (USCIB)
U.S. Business Alliance for Customs Modernization (BACM)
U.S. Fashion Industry Association

cc: Dan Paisley, Senior Counsel for Tax, Trade and Tariff Policy, U.S. Department of Treasury
Aviva R. Aron-Dine, Acting Assistant Secretary, Tax Policy, U.S. Department of Treasury