

November 21, 2018

The Honorable Kirstjen M. Nielsen
Secretary
Department of Homeland Security
Washington, D.C. 20528

The Honorable Steven Mnuchin
Secretary
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

The Honorable Robert Lighthizer
United States Trade Representative
Executive Office of the President
600 17th Street, N.W.
Washington, D.C. 20508

The Honorable Kevin K. McAleenan
Commissioner
U.S. Customs and Border Protection
1300 Pennsylvania Ave., NW
Washington, D.C. 20229

Re: World Customs Organization Action Threatens World Trade Organization Customs Duty Moratorium on Electronic Transmissions

Dear Secretary Nielsen, Secretary Mnuchin, Ambassador Lighthizer, and Commissioner McAleenan:

The undersigned associations urge you to block a potentially damaging action at the World Customs Organization (WCO) related to the application of taxes, Customs duties, and other Customs formalities on electronic transmissions at its December 3rd Policy Commission (Commission) meeting. This action is contrary to the long-standing agreement by World Trade Organization (WTO) members not to apply customs duties to cross-border electronic transmissions and prejudices ongoing discussions at the WTO and the Organization for Economic Cooperation and Development (OECD). This action will harm U.S. goods and services exporters of all sizes in nearly every sector and threaten American jobs.

The Commission's meeting agenda includes a dedicated item for the "Role of Customs in taxation of intangible goods". During its discussion, the Commission is invited to: "1) discuss the issue of the imposition of Customs duties on intangible goods and provide policy orientation, given the ongoing WTO moratorium on the imposition of duties on electronic transmissions; 2) consider possible approaches and associated legislative and operational requirements for the collection of Customs duties on intangible goods; 3) examine Customs' role in non-fiscal areas such as security, admissibility, IPR and illicit trade in the context of growing digital trade; and 4) provide guidance on the way forward and, if appropriate, mandate the PTC (Permanent Technical Committee) to carry out further work in this area, in cooperation with other relevant working bodies."

This agenda item and related discussion is inappropriate and undermines the WTO's decision last year to renew the WTO Moratorium. Action and engagement are being taken without clear guidance from the WTO, and without clarity as to the applicable legal framework. The WTO

Moratorium is already under attack from a number of countries, including Indonesia, India, and South Africa. The proponents are of the view that they have full-right to plan for the collection on import value-added-tax (VAT) (i.e., import taxes). The WCO's aggressive action promises to give these countries support as they seek new ways to raise revenue on U.S. goods and services exports, while protecting their domestic industries.

The WCO is a standards-setting organization for Customs and does not and should not set trade, income tax, or VAT policy. By taking on the issue in relation to electronic transmissions, the WCO would be acting counter to its stated goal of facilitating trade and well beyond their stated scope and jurisdiction. For these reasons, we ask that you act to stop the WCO from moving forward and allow the appropriate international bodies (i.e., WTO and OECD) to do their work first. We also believe that if the WCO moves forward with this work, there will be severe negative impacts not only on U.S. exports and jobs, but also on U.S. interests with respect to ongoing discussions at the WTO regarding the WTO Moratorium and the Joint Statement Initiative on E-commerce.

It is our view that the U.S. government needs to express a clear, unified position on this matter. The focus of discussion at the December Commission meeting is broad and has implications well beyond Customs. We also recommend that you coordinate in reaching out to like-minded countries that are members of the Commission, including as applicable, those economies that are part of the Asia Pacific Economic Cooperation (APEC) Pathfinder Proposal for a Permanent Customs Duty Moratorium on Electronic Transmissions, Including Content Transmitted Electronically¹ to garner additional support in preparation for the December Policy Commission meeting. It is vital that the WCO action is stopped and that no recommendations are advanced to the Council, and/or mandates for further work in given to the PTC or other WCO relevant working bodies.

Sincerely,

American Apparel & Footwear Association
Business Software Alliance
Coalition of Services Industries
Computer & Communications Industry Association
Entertainment Software Association
Internet Association
Information Technology Industry Council
Motion Picture Association of America
National Foreign Trade Council
Semiconductor Industry Association
Software & Information Industry Association
Telecommunications Industry Association
ACT | The App Association
The Border Trade Alliance
U.S. Chamber of Commerce
United States Council for International Business
U.S. Fashion Industry Association

¹ This proposal is without prejudice to how the World Trade Organization addresses the moratorium on customs duties on electronic transmissions.

Cc:

DHS: Michael Dougherty; Christa Brzozowski; Mark McKenzie

CBP: Brenda Brockman Smith; Ian Saunders; David Dolan; Alice Kipel

USTR: Dawn Shackleford; Daniel Bahar; Stewart Young

Treasury: Tim Skud