RETAIL INDUSTRY LEADERS ASSOCIATION

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<u>Via Online Submission</u>

Mark Morgan
Acting Commissioner
U.S. Customs and Border Protection
1300 Pennsylvania Avenue N.W.
Washington, DC 20229

Timothy E. Skud
Deputy Assistant Secretary for Tax, Trade, and Tariff Policy
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Re: Temporary Postponement of the Time To Deposit Certain Estimated Duties, Taxes, and Fees During the National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak (Docket No. USCBP-2020-0017-0001)

Dear Acting Commissioner Morgan and Deputy Assistant Secretary Skud,

The Retail Industry Leaders Association (RILA) appreciates the opportunity to comment on the temporary postponement of the time to deposit Most Favored Nation (MFN) duties, as well as taxes and fees, (collectively, "duty deferral") during the COVID-19 pandemic issued by U.S. Customs and Border Protection (CBP) and the Department of Treasury (Treasury) on April 20, 2020. We write in support of the duty deferral and urge CBP and Treasury to delay the payment of all duties for merchandise entered into the United States in May and June 2020.

RILA is the trade association of the world's largest, most innovative, and recognizable retail companies and brands. We convene decision-makers, advocate for the industry, and promote operational excellence and innovation. Our aim is to elevate a dynamic industry by transforming the environment in which retailers operate. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than $1.5 trillion in annual sales, millions of American jobs, and more than 100,000 stores, manufacturing facilities, and distribution centers domestically and abroad. RILA's membership includes some of the largest importers in the U.S.

RILA, and our members, appreciate Treasury, in consultation with CBP, exercising its emergency authority under section 318(a) of the Tariff Act of 1930 to provide much needed liquidity to struggling American businesses by deferring the payments of MFN duties for merchandise entered in March and April 2020. However, in practice, the measure was limited given the late notice, the narrow application to MFN duties, and the limited period for which duty deferral is available. For all of these reasons, we urge additional action to help struggling U.S. companies, to preserve American jobs, and to ensure the U.S. economy can reopen safely and responsibly.

First, the criteria to qualify for duty deferral is very narrow. It includes a "significant financial hardship" test that many retailers – including those who were required to close their storefronts in order to protect our communities and stop the spread of COVID-19 – were not able to meet. Meanwhile, companies continue to experience urgent liquidity issues and difficult decisions about whether to reopen stores, bring back furloughed employees, and make the needed investments in health and safety equipment to keep workers and customers safe. **Accordingly, we recommend CBP and Treasury consider modifying the hardship test under 19 C.F.R. 24.1(a)(2) to allow more companies facing liquidity challenges to qualify for duty deferral.**

Second, even those retailers who could meet the hardship test and were eligible to defer duties were unable to because of the timing of the duty deferral announcement. More specifically, many retailers had duty payments due less than 36 hours after the duty deferral action was announced on the evening of April 19, 2020. As a result, they were unable to take the necessary steps to remove products subject to trade remedies from their statements before payment was due. **Therefore, we recommend any additional modifications made to 19 C.F.R. 24.1a be done with ample notice to the trade community to allow businesses to receive the intended relief.**

Third, while duty deferral was available for merchandise entered in March and April 2020, the action did not provide for a refund of duties already paid. This meant retailers who would have qualified for duty deferral but rightfully paid their duties, taxes, and fees on time were unable to receive the intended relief. In addition, the COVID-19 pandemic has forced store closures and limited operations and procedures for many retailers. Consequently, many retailers have received "diminished . . . revenue during this time while still incurring costs, including the duties, taxes, and fees associated with imported merchandise for their clients and supply chains."[1] For many retailers, stores remain closed due to state and local orders. For others, stores may be reopening, but revenues will continue to be diminished until the U.S. economy fully reopens. Consequently, the liquidity issues retailers faced in March and April have not yet abated. **For all of these reasons, we recommend CBP and Treasury modify 19 C.F.R. 24.1a(1) to permit both duty deferral for merchandise entered in May and June 2020 and the refund of any deposits of estimated duties, taxes, and/or fees that have been paid on merchandise entered in March, April, May and June 2020.**

Finally, America's retailers are playing a significant role in creating, transporting, supplying, and selling essential products for America's COVD-19 response. With a focus on the health and wellness of both employees and customers, the retail sector is now preparing to safely reopen. To do this, retailers will need critical medical equipment, personal protective equipment, and other

[1] 85 Fed. Reg. 22349, 22350 (April 22, 2020).

health and safety products that are in high global demand. Additional tariffs – such as those imposed under Section 301 of the Trade Act of 1974 – make these essential products more expensive and more difficult to source. According to the U.S. International Trade Commission (USITC) report that identified imported products that are vital to the COVID-19 response, 55 tariff headings are subject to Section 301 tariffs, including many that have not already received temporary tariff exclusions. We expect this number to increase as the USITC updates its investigation to consider comments from stakeholders. Further, tariffs force cash-strapped companies to pay the federal government billions of dollars that could instead be going towards preserving jobs, paying suppliers and fixed costs, as well as investing in critical health and safety equipment for their workers and customers so that the U.S. economy can reopen responsibly. **For these reasons and more, we recommend that CBP and Treasury modify 19 C.F.R. 24.1a(4) and permit duty deferral for *all* duties.**

In conclusion, we urge CBP and Treasury to consider the above recommendations for further duty relief to help retailers put workers back on the payroll, pay critical bills, invest in needed health and safety equipment to protect workers and customers, and continue supplying the essential products needed during the COVID-19 response. Millions of jobs and the safety of our communities are on the line but extending and expanding duty deferral can make a significant difference for those facing liquidity issues. We thank CBP and Treasury for giving us the opportunity to provide insight on behalf of our membership.

Sincerely,

Blake Harden

Blake Harden
Vice President, International Trade
Retail Industry Leaders Association