A Look At How De Minimis Import Rules May Soon Change

By **Robert Friedman, Andrew McAllister and Sophie Jin** (September 27, 2024)

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Under the current de minimis rule, shipments with an aggregate value of $800 or less per day, per person, can be imported free of duties and taxes, except for antidumping and countervailing duties and taxes collected by other agencies on goods such as alcohol and cigars, and enter the U.S. with less information than other imports.

A number of e-commerce businesses have been utilizing this rule to ship products free of duties from overseas directly to consumers.

Every day, U.S. Customs and Border Protection processes nearly 4 million de minimis shipments entering the U.S. As of July 30, 89% of all seizures[1] in the cargo environment since Oct. 1, 2023, originated as de minimis shipments, including 97% of narcotics seizures and 72% of health and safety seizures of prohibited items.

In order to block shipments that violate U.S. laws — including laws prohibiting imports of products made with forced labor, products infringing intellectual property rights, products failing to conform with safety and health standards, or illegal substances — and protect U.S. businesses from unfair competition, the U.S. government announced on Sept. 13 that it plans[2] to take the following administration actions as a first step after Congress has contemplated issues associated with the de minimis rule for several years.

New Administrative Rules

The Biden administration intends to issue a notice of proposed rulemaking that would exclude from the de minimis exemption all shipments containing products covered by Section 301, Section 201 or Section 232 trade enforcement actions.

Some products covered by antidumping or countervailing duty orders and quota are already excluded from de minimis exemption eligibility, including cheroots, cigarillos, cigarettes containing tobacco, cigarette tubes, cigarette papers, smoking tobacco — including water pipe tobacco, pipe tobacco and roll-your-own tobacco — and snuff or chewing tobacco that are subject to taxes imposed under the Internal Revenue Code that are collected by other agencies.

Additionally, the administration aims to strengthen information collection requirements to promote greater visibility into de minimis shipments and clarify who is eligible for the de minimis exemption.

Specific, additional data for de minimis shipments, including the 10-digit tariff classification number and the person claiming the de minimis exemption, will be required under the proposed rules to improve targeting of de minimis shipments and facilitate expedited clearance of lawful de minimis shipments.

Further, Consumer Product Safety Commission staff intend to propose a final rule requiring importers of consumer products to electronically file certificates of compliance with the CBP and CPSC at the time of entry.

This would enhance the ability of the CBP and CPSC to identify and block unsafe products while also preventing foreign companies from exploiting the de minimis exemption to bypass consumer protection testing and certification requirements.

This rule will likely apply to all shipments of consumer products, not just the de minimis shipments.

New Legislation

The Biden administration also calls on the U.S. Congress in a White House statement to pass legislation this year to comprehensively reform the de minimis exemption.

Key aspects of the legislation include the exclusion from de minimis eligibility of import-sensitive products such as textile and apparel products, and the exclusion from the de minimis exemption of shipments containing products that are covered by Section 301, Section 201 or Section 232 trade enforcement actions.

Additionally, the administration seeks the passage of previously proposed de minimis reforms in the "Detect and Defeat Counter-Fentanyl" proposal.

This proposed legislative reform would, among other actions, increase transparency and accountability under the de minimis program by requiring more data from shippers, including the product tariff number; grant the CBP the authority to demand additional documentation and other information about de minimis packages; and give border officials the tools they need to better track, analyze and take enforcement actions against such packages.

A user fee for de minimis packages would be added to fund CBP operations.

Additional Actions to Protect American Textile and Apparel Manufacturers

The Biden administration recognizes the critical role of U.S. textile and apparel producers and is exploring additional actions to support U.S. textile and apparel manufacturers.

The U.S. government will explore ways to increase procurement of certain textile and apparel products across agencies, as well as maintain its focus on enforcing measures against illicit textile and apparel imports by intensifying the targeting of small package shipments, conducting joint trade special operations, increasing customs audits and foreign verifications and expanding the Uyghur Forced Labor Prevention Act entity list.

The CBP has been enforcing U.S. textile and apparel trade laws to support U.S. textile manufacturers. From Oct. 1, 2023, through Sept. 1, the CBP has launched 18 trade special operations that focus on the physical inspection of small shipments and cargo containing textile and apparel products.

These operations also include postrelease reviews to determine eligibility for preferential treatment under free trade agreements and to verify classification, valuation and the right to make entry.

Additionally, during this period, the CBP has initiated over 553 full United States-Mexico-

Canada Agreement and Central America-Dominican Republic Free Trade Agreement classification, valuation and right-to-make-entry summary verifications on more than $150.8 million in textile and wearing apparel trade. They have also initiated trade audits on more than $22.6 billion in textile imports.

Furthermore, during this period, the CBP has doubled the number of Textile Production Verification Team visits compared to fiscal year 2023, reaching 109 factories and six raw material providers.

In July, the interagency Forced Labor Enforcement Task Force added 26 entities in the high-priority textile sector to the UFLPA entity list, thereby restricting imports of goods from these entities into the U.S.

Looking Forward

The volume of de minimis shipments is expected to decrease because products subject to U.S. trade enforcement actions — such as Section 301, Section 201 or Section 232 duties — would not be eligible for the de minimis exemption.

Shipments of products valued at $800 or less that are subject to U.S. trade enforcement actions would no longer enter the U.S. market duty-free. On a separate but related note, on Sept. 13, the Biden administration also announced[3] increased Section 301 duties on certain products from China. As a result, companies and consumers should expect to see increased pricing for certain Chinese-origin products and inputs.

It will take weeks or months for these executive actions to be implemented through the federal regulatory process. Companies currently utilizing the de minimis rule should be prepared to file comments when the proposed rules are published.

During this interval, companies should evaluate the potential applicability and impact of Section 301, Section 201 or Section 232 duties on their products, conduct supply chain mapping and due diligence to ensure compliance with U.S. forced labor laws, work with suppliers to test products for compliance with U.S. consumer protection laws, and collaborate with intellectual property professionals to protect their own IP rights and ensure noninfringement of others' rights.

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[1] https://www.dhs.gov/news/2024/09/13/dhs-workforce-frontlines-biden-harris-

administrations-new-executive-actions-address, U.S. Department of Homeland Security, Sept. 13, 2024.

[2] https://www.whitehouse.gov/briefing-room/statements-releases/2024/09/13/fact-sheet-biden-harris-administration-announces-new-actions-to-protect-american-consumers-workers-and-businesses-by-cracking-down-on-de-minimis-shipments-with-unsafe-unfairly-traded-products/, The White House Fact Sheet, Sept. 13, 2024.

[3] https://www.hklaw.com/en/insights/publications/2024/09/ustr-finalizes-action-on-new-and-increased-section-301-tariffs, Holland & Knight Alert, Sept. 16, 2024.