



The Bottom Line

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DE MINIMIS AND CHINESE E-COMMERCE IN THE SPOTLIGHT

Summary

The House Ways and Means Trade Subcommittee on December 2 held a hearing on China trade policy, when Trade Subcommittee Chair Earl Blumenauer (D-OR) suggested Chinese companies are using de minimis to evade U.S. trade laws.

Background

The de minimis rule, according to U.S. Customs regulation (19 CFR § 10.151), allows for the duty- and tax-free entry of shipments valued at less than \$800. Under this provision, Customs requires no formal entry. Instead, shipments are cleared when carriers present their manifest to CBP.

The exponential growth of eCommerce has put pressure on Customs in the last ten years. Signed February 24, 2016, the Trade Facilitation and Trade Enforcement Act (TFTEA) of 2015 served as the first comprehensive authorization of U.S. Customs and Border Protection since the Department of Homeland Security was created in 2003. The legislation was an endorsement of CBP's programs, providing funding for the investigation of antidumping duty evasions, the Automated Commercial Environment (ACE), enforcement of Intellectual Property Rights, prohibitions on products made with forced labor, and facilitated an increase in the de minimis value from \$200 to \$800. In addition, the increase was business (eCommerce) friendly. TFTEA was designed to free up CBP personnel from having to scrutinize thousands of low-value, low-risk shipments each day so they could concentrate on inspecting high-risk shipments.

Last year, Amazon AMZN earned a staggering \$21 billion. And much of that profit came directly from Amazon's position as China's online marketing machine. China now accounts for roughly 40% of all Amazon sales, and an estimated 75% of all new sellers on Amazon are Chinese companies.

Ironically, China has its own de minimis threshold—a mere 50 yuan, or roughly \$7.82—less than 1% of America's \$800 threshold. That means China readily imposes import duties on even the smallest items sent from the U.S.—a far cry from the generous \$800 the U.S. extends in return through the current de minimis level.

Current Status

The change in the de minimis threshold has shattered traditional business relationships—and eliminated much of the longstanding vetting of products imported into the country each day. Amazon's mass import of small packages means that goods are shipped directly to U.S. consumers from obscure overseas vendors. That makes regulatory oversight impossible and bypasses the current 25% tariff on Chinese goods. In fact, as long as a foreign vendor

claims its merchandise is valued at less than \$800, its goods face no U.S. taxes or tariffs at all.

Blumenauer asked National Council of Textile Organizations (NCTO) Executive Director Kim Glas, who testified before the committee, what the organization believes Congress should do to address these issues. Glas suggested Congress should consider several options, including:

- Reducing the de minimis level from \$800 to \$7 to be in alignment with China's de minimis level;
- Designating e-commerce shippers as the importer of record;
- Denying Section 321 entry for any products subject to Section 301 duties or other trade actions; and/or
- Barring the use of Section 321 entry for e-commerce shipments.

Section 301 duties are applied when the United States investigates and determines a case of unfair trade practices. Currently, thousands of products from China and hundreds from the European Union (E.U.) are subject. This proposal would eliminate the duty-free entry for any product subject to these punitive tariffs. Instead, the entry would not only be subject to the Section 301 duty but the standard duty as well.

Impact

Since the de minimis exemption applies only to low-value shipments of not more than \$800, Section 321 entry is most commonly used in e-commerce scenarios where the seller ships directly to the buyer from a foreign country. It is unclear at this stage if this move is another attempt to influence China or one aimed at eCommerce directly. What is clear is that many U.S. consumers will face increased costs should the de minimis rules change.

RESOURCES

[De Minimis Value Increases to \\$800](#) (U.S. Customs and Border Protection)

[CBP Working to Curb Illicit eCommerce Traffic](#) (American Shipper)

[CBP Proposes Rule to Eliminate Section 321 Exemption for Imports Subject to Section 301 Tariffs](#) (Husch Blackwell)

[Why is U.S. Customs Law Helping Amazon and China, and Not U.S. Manufacturers and Retailers?](#) (MarketWatch)