



The Bottom Line

SEPTEMBER 2020 | VOL. 55

U.S. CUSTOMS TO ELIMINATE LOW-VALUE DUTY EXEMPTION FOR IMPORTS

Summary

U.S. Customs and Border Protection (CBP) is preparing a regulatory change that would eliminate the \$800 de minimis exemption for imports subject to Section 301 tariffs, according to a proposed rule submitted by CBP to the Office of Management and Budget (OMB) on September 2, 2020.

- includes any merchandise whose import is limited by absolute or tariff rate quota.
- includes any merchandise subject to other agency (FDA, FCC, USDA, EPA, DOS, DOD, etc.) regulation or reporting requirements.

Todd E. Owen, CBP's executive assistant commissioner for the Office of Field Operations, noted in 2017 that the agency had observed a preponderance of ocean containers arriving from China at Canadian ports, being deconsolidated and then their products being shipped to the United States in truck trailers containing hundreds of small packages designed to qualify for U.S. de minimis. These truckloads had started to overwhelm CBP officers' interdiction efforts at the northern border ports, he said.

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. Shipments are cleared when carriers present their manifest to CBP.

The exponential growth of eCommerce has put pressure on Customs in the last 10 years. Signed February 24, 2016, the Trade Facilitation and Trade Enforcement Act of 2015 served as the first comprehensive authorization of U.S. Customs and Border Protection since the creation of the Department of Homeland Security in 2003. The legislation was an endorsement of CBP's programs including investigation of antidumping duty evasions, funding for the Automated Commercial Environment (ACE), enforcement of Intellectual Property Rights, prohibitions on products made with forced labor, and an increase in the de minimis value from \$200 to \$800. The increase was business (eCommerce) friendly, and also was intended 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.

This type of entry is not available, however, if the shipment:

- is one of several lots covered by a single order or contract and that it was sent separately for the express purpose of securing free entry therefor or of avoiding compliance with any pertinent law or regulation.
- contains alcohol or tobacco products subject to any tax imposed under the Internal Revenue Code.

Current Status

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 (EU) are subject to them. This proposal would eliminate the duty-free entry for any product subject to these punitive tariffs. 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, the exemption under Section 321 is most commonly applied to 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.

RESOURCES:

[De Minimis Value Increases to \\$800](#) (CBP)

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

[CBP Proposes to Eliminate Import Exemptions](#) (Husch Blackwell)