

Trade Alert: The Biden Administration announces plans to exclude certain low value shipments from the *De Minimis* exemption

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The Biden Administration plans to issue regulations that (i) would deny application of the \$800 *De Minimis* exemption for shipments containing products subject to Section 301, 201, and 232 trade actions and (ii) enhance data collection for better visibility into all *De Minimis* shipments.

On September 13, 2024, President Biden announced plans to issue a Notice of Proposed Rulemaking (“NPRM”) that would reduce the use of *De Minimis* shipment exemptions for many low-value imports, while also urging Congress to expedite parallel track legislative actions by year’s end (“**Fact Sheet**”).¹ The NPRM’s timing remains uncertain, but in light of significant bipartisan agreement concerning the necessity of *De Minimis* reforms (that in practice, affect disproportionately low value shipments from China) reforms on the rules for *De Minimis* shipments are likely, regardless of the outcome of the upcoming Presidential election.

The Current *De Minimis* Rule:

- What Are *De Minimis* Shipments? 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. The rule was originally established in the Tariff Act of 1930, with amendments increasing the exemption to \$800 as part of the Trade Facilitation and Enforcement Act of 2015, to minimize formal documentation for the clearance of imported gifts, small parcels and personal luggage.
- What is the Volume of *De Minimis* Shipments? E-commerce growth spurred exponential increase in the *De Minimis* shipments—from 140 million per year a decade ago to over one billion packages per year today—with nearly 4 million *De Minimis* shipments entering the U.S. every day.

¹ Available at <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/>

- Are *De Minimis* Shipments Currently Exempt from Duties? *De Minimis* shipments are currently exempt from the Section 301 China tariffs, Section 232 tariffs primarily imposed on certain steel and aluminum products and Section 201 safeguards (washing machines and solar panels). Anti-dumping and countervailing duties are already not exempt under the current *De Minimis* rule.
- What Are the Entry Procedures for *De Minimis* Shipments? *De Minimis* shipments bypass formal entry procedures, reducing scrutiny and allowing clearance directly from the manifest.

The Biden Administration's Reasons for Acting:

As of July 30, 2024, 89% of all seizures 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.² The existing informal entry procedures do not allow adequate enforcement by the U.S. Customs and Border Protection (“**CBP**”) despite CBP’s recent attempts to target forwarders who fail to provide adequate cargo descriptions under *De Minimis* Entry Type 86, and penalties imposed for repeated non-compliance. While these efforts aim to improve CBP’s ability to identify problematic shipments and fraudulent activities, CBP currently lacks the regulatory authority to fully intercept and enforce actions against illegitimate *De Minimis* shipments.

Fact Sheet Overview:

The Biden Administration’s NPRM is designed to combat the significant increase of shipments in recent years that claim the *De Minimis* exemption, particularly from Chinese e-commerce platforms, by strengthening information collection requirements focused on improving accountability and enforcement. The NPRM aims to prevent the misuse of the exemption pursuant to which high-volume shipments of *De Minimis* packages enter the United States every day and shippers dodge safety standards.³ The Fact Sheet outlines the Administration’s plan to propose new tariffs and restrictions, enhance visibility in *De Minimis* reporting and clearance, and introduce Consumer Product Safety Commission’s (“**CPSC**”) rulemaking for Certificate of Compliance (“**CoC**”) electronic filing for all commercial shipments, including *De Minimis* shipments.

The NPRM also signals an appetite to pursue potential legislation to exclude textile products from *De Minimis* entry in order to protect the U.S. textile and apparel industry from unfair trade practices by increasing “procurement of certain textile and apparel products across agencies, as a way of ensuring that U.S. taxpayer dollars are supporting U.S. taxpayer jobs in the textile and apparel sector.” Such protective measures also include strengthening enforcement efforts against illicit textile and apparel imports through *De Minimis* examinations, joint trade special operations, increased CBP audit and oversea audit verification and the expansion and enforcement of the Uyghur Forced Labor Prevention Act (UFLPA) Entity List.

The Proposed *De Minimis* Rule – Key Points:

The Biden Administration called on the U.S. Congress to pass legislation this year to comprehensively reform the *De Minimis* exemption as follows:

- *De Minimis* shipments will no longer be eligible for exemption from Section 301, Section 232 and Section 201 duties;

² Available at <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

³ Available at <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

- Import-sensitive products such as textile and apparel products will no longer be eligible for the *De Minimis* exemptions;
- *De Minimis* Shipments will require increased visibility requiring the declaration of a 10-digit HTS classification and identification of person claiming exemption;
- Identification of manufacturers/suppliers within the supply chain to ensure compliance with UFLPA forced labor and other regulatory requirements;
- Proposed CPSC Certificates of Compliance (CoC) electronic filing for *De Minimis* shipments;
- A user fee for *De Minimis* packages to fund CBP operations;

Additionally, the Administration seeks the passage of previously proposed *De Minimis* reforms in the "Detect and Defeat Counter-Fentanyl" proposal.

Trade and Importer Proactive Strategy Plans:

The NPRM's timing remains uncertain, with ongoing Congressional action, including the Senate's Fighting Illicit Goods, Helping Trustworthy Importers, and Netting Gains for America (“**FIGHTING**”) Act. While NPRMs typically require 30-60 days for public comment, for complex issues, this can be extended to 180 days or beyond. Even if fast-tracked, the regulatory process will likely stretch beyond the November election. Both parties are expected to support the NPRM regardless of any changes in the administration. Congressional legislation, as encouraged in the Fact Sheet, could move faster and result in more immediate regulatory changes. The NPRM is expected to impose stricter documentation, additional duties, and disqualifications for imports tied to intellectual property infringement, forced labor, and UFLPA enforcement, increasing administrative costs and shipping delays for non-compliant shipments.

Proactive Strategies for Logistics, E-Commerce and Textile Industry Participants:

Whether in support or opposition to the proposed *De Minimis* actions, interested parties should carefully consider pursuing lobbying efforts for anticipated Congressional action. Furthermore, the following actions are recommended:

- Review all aspects of your company/organization supply chain and distribution measures for compliance with all applicable laws;
 - Targeted enforcement will focus on Chinese country of origin goods, forced labor and UFLPA documentation/support, intellectual copyright infringement, and consumer safety compliance.
- Once the comment period is announced, submit NPRM comments;
- Continue to strategize to move supply chain from China to other countries;
- Coordinate with Customs brokers and forwarders for coordination of import paperwork and requirements;
 - Review HTS classifications, invoicing descriptions and all CBP and shipping documentation requirements.

This alert is a brief summary. We continue to monitor the Administration's NPRM announcements closely and recommend consulting the DCG International Trade Group for detailed advice tailored to your supply chain. If you have questions concerning this Alert or need further information or assistance, we invite you to contact a member of the DCG International Trade Group for assistance.

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