



March 6, 2024

The Honorable Jacob J. Sullivan
Assistant to the President for National
Security Affairs
Executive Office of the President
Washington, DC 20500

The Honorable Lael Brainard
Director, National Economic Council
Executive Office of the President
Washington, DC 20500

Dear National Security Advisor Sullivan and Director Brainard:

On behalf of U.S.-based businesses large and small, we are writing to urge you to protect an essential component of America's economic health and supply chain efficiency: de minimis treatment of low-value goods entering the U.S. The de minimis tax exemption permits shipments valued under \$800 (per person, per day) to enter the United States free of duty and taxes. These shipments are subject to U.S. laws and information requirements that enable effective enforcement at the border.

De minimis has benefitted thousands of American small businesses across all sectors. For example, de minimis allows businesses to obtain inputs for domestically manufactured products into the United States more efficiently and with fewer unnecessary administrative requirements. It has also made purchasing goods online more affordable and accessible for consumers at a time of inflation and supply chain challenges.¹

Further, many countries around the world have adopted de minimis thresholds to reduce costs for their consumers, promote competitiveness of small business, and avoid overburdening border officials who would otherwise be tasked with collecting small amounts of revenue. Products

¹ Horowitz, Gabe (2022) Reducing the Red Tape Around Supply Chains. Third Way
<https://www.thirdway.org/report/reducing-the-red-tape-around-supply-chains>

exported from the U.S. are subject to less red tape and enjoy duty free access to other countries when American exporters can utilize de minimis treatment abroad.

Recently, discussion around de minimis in Washington has included significant misinformation about the impact of de minimis on challenges we face in the United States. This letter is intended to ensure that the Biden-Harris Administration is equipped with the necessary data and facts that balance this important policy discussion.

Impact on the American Consumer and Inflation

Eliminating de minimis is the equivalent of a tax hike that would disproportionately impact small business owners and low-income consumers² who purchase affordable goods online. The average value of a de minimis package is roughly \$50. If de minimis were to be eliminated or significantly degraded, that average \$50 package could double in price, without enhancing law enforcement at our borders, after seeing a processing fee of \$31.67³ and a brokerage fee of \$20 upon entering the United States. The typical package, therefore, could see cost increase of over \$50 in addition to the duties owed. As a result, a \$50 delivery could become a more than \$100 delivery. This added cost would feed inflation in the form of a massive, regressive tax hike on American consumers, the overwhelming majority of whom have a household income under \$400,000.

Export Competitiveness

De minimis treatment of low-value shipments by international trading partners improves the competitiveness of American businesses by reducing transaction costs, giving American exports duty free access to those markets, and expediting speed to access other markets. Congress recognized this benefit when it encouraged federal agencies to pursue increased de minimis levels in other countries as an objective of U.S. trade policy.⁴ Restricting the use of de minimis treatment in the U.S. would likely trigger changes in the 88 other countries with de minimis policies, increasing costs for American exporters.⁵ For example, the European Union is expected to consider legislation that proposes to end duty free treatment for de minimis entry if adopted. Degrading de minimis in the U.S. is likely to encourage our trading partners to follow suit, resulting in American exporters paying more to sell their products in other countries.

Textile products, in particular, would be significantly impacted by such a potential race to the bottom related to de minimis. According to the U.S. Department of Commerce and the U.S. International Trade Commission, U.S. exports of fiber, textiles, and apparel totaled \$34 billion.⁶

² <https://thehill.com/opinion/congress-blog/4325456-proposals-to-eliminate-duty-free-imports-are-akin-to-levying-new-taxes-on-americans/>

³ https://help.cbp.gov/s/article/Article-334?language=en_US

⁴ Trade Facilitation and Trade Enforcement Act of 2015, Pub. L. No. 114-125, 130 STAT. 223 (2016)
<https://www.congress.gov/114/plaws/publ125/PLAW-114publ125.pdf>

⁵ <https://www.trade.gov/de-minimis-value>

⁶ <http://www.ncto.org/wp-content/uploads/2023/03/2022-Exports.jpg>

Forced Labor

Some have argued that de minimis provides a path for items made using forced labor to enter the U.S. There is no evidence that illegal products are more prevalent in de minimis shipments. As one CBP executive said last year: "*There's a misconception that we don't target or screen de minimis -- it's not true. People throw around the phrase 'loophole.' It's not a loophole. De minimis is not a loophole.*"⁷

The administration, Congress, and industry must work together to rid forced labor from global supply chains. To do so we need to prioritize facts. As U.S. Customs and Border Protection (CBP) has pointed out⁸ on several occasions, de minimis shipments undergo targeting and screening⁹ that enforce the provisions of the Uyghur Forced Labor Prevention Act *regardless* of the value of the goods. The plain truth is the same risks for the importation of products made with forced labor exist across all import methods.

Fentanyl

Some have blamed the fentanyl crisis on de minimis. As government enforcement statistics make clear¹⁰, the overwhelming majority of fentanyl enters the United States in large shipments from Mexico. These shipments are smuggled in passenger vehicles, by pedestrians, and concealed in truck shipments. De minimis packages, on the other hand, arrive in the United States overwhelmingly by air transportation throughout the country.

The CBP data tool released in August 2023¹¹ to track fentanyl seizures shows that 99% of fentanyl seizures were on the southern land border, which is not a significant channel for de minimis shipments. Further, in FY 2024, CBP is projected to seize roughly 1.2 billion doses of fentanyl. Only 3% of those doses will come via air cargo.¹² As the Peterson Institute recently noted: "*the logic of banning de minimis parcels as a solution for the fentanyl crisis is on par with the logic of banning automobiles in Michigan (population 10 million) as a solution for national auto deaths (some 43,000 in 2022 in a population of 334 million).*"¹³

As the administration works to stop the flow of fentanyl and other illicit drugs, we need serious policy solutions addressing the actual methods by which illicit narcotics are coming into the country. Fentanyl is a devastating crisis that must be met with real solutions.

⁷ <https://internationaltradetoday.com/news/2023/04/24/CBP-Trade-Policy-Director-de-Minimis-Is-No-Loophole-2304240038>

⁸ <https://internationaltradetoday.com/news/2023/04/24/CBP-Trade-Policy-Director-de-Minimis-Is-No-Loophole-2304240038>

⁹⁹ <https://www.cbp.gov/trade/basic-import-export/e-commerce/faqs>

¹⁰ <https://www.cbp.gov/newsroom/stats/drug-seizure-statistics>

¹¹ <https://www.cbp.gov/newsroom/stats/cbp-drugs-dosage-value-and-weight>

¹² <https://www.cbp.gov/newsroom/stats/cbp-drugs-dosage-value-and-weight>

¹³ <https://www.piiie.com/blogs/realtime-economics/proposal-get-rid-duty-free-imports-would-punish-american-consumers-and>

Burdening Our Supply Chain and Border Enforcement Capabilities

Some have suggested that the increase of de minimis shipments has strained enforcement capabilities. However, degrading de minimis and routing one billion shipments into more resource intensive processing streams would require tens of thousands of CBP personnel to process information that is not related to enforcement and collect duty, rather than spending that time on activities that would actually interdict illicit items.

Degrading de minimis would not “shrink the haystack” of illicit shipments. It would simply “squeeze the balloon”, moving one billion de minimis packages to more cumbersome entry processes or the postal environment which includes less data than other means of de minimis entry. This would do nothing to address fentanyl enforcement while significantly increasing the cost of the average de minimis shipment for American small businesses and consumers and slow movement of supply chains.

Furthermore, the influx of volume into these other entry processes would slow the movement of supply chains while border officers scramble to process shipments and collect duty, instead of increasing the effectiveness of enforcement operations.

Improving Administration of De Minimis

CBP currently receives manifest data (such as the sender, recipient, value, and description of the goods) on de minimis shipments before they arrive at ports and already has clear statutory authority to require additional information to base enforcement decisions. In fact, CBP has just announced it will use its authority to require information related to de minimis shipments in the context of the entry type 86 test referenced below to require data before goods arrive to receive facilitative release of cargo. According to CBP, approximately 55% of de minimis entries in 2023 came in through the type 86 process. The Administration could take concrete steps, described below, to build on existing enforcement of U.S. trade laws at the border by separating the vast universe of compliant shipments from the few illicit packages.

First, CBP has been working toward the publication of a Notice of Proposed Rulemaking that would ultimately formalize ongoing tests that require additional information on many low-value shipments. This rulemaking should proceed to clearly articulate the findings of the long-running tests, link information to well-defined government needs, and provide ample opportunity for comment from the broad universe of interested stakeholders.

Second, CBP should identify and close information sharing gaps in providing trade data to federal agencies with regulatory responsibilities related to the broader entry process, including de minimis.

Third, government processes must employ a more “future-proof” approach to accommodate constantly shifting supply chains and business models. CBP and other government agencies should identify ways to use publicly available information and emerging technology (e.g., artificial intelligence, distributed ledgers, advanced label readers, etc.) to validate data received across cargo environments, including de minimis, and more efficiently focus constricted enforcement resources.

Finally, we represent responsible members of industry and trade community who partner regularly with government entities to promote compliance with U.S. trade laws, security requirements, and the promotion of resilient supply chains. We remain eager to work with the Administration and Congress in developing legal authorities to better address non-compliance by a small number of bad actors who jeopardize our economic security, whether in the de minimis environment or other entry points.

Improving de minimis offers a practical way to grow e-commerce, while keeping prices affordable and strengthening enforcement. Eliminating this tax exemption will undoubtedly create new inflationary pressure, strain the same agency charged with protecting our borders and ports, slow supply chains, and deliver a massive tax hike on the American people.

We urge the Administration to consider practical, innovative ways to improve de minimis without increasing costs for consumers and small business. Particularly at a time when President Biden has made clear that he is doing everything in his power to lower everyday costs for hard-working Americans, the administration should reject efforts to roll back a provision that Congress expressly enacted to facilitate trade and support consumers and businesses.

Sincerely,

Consumer Technology Association

Express Association of America (EAA)

National Association of Manufacturers

National Foreign Trade Council

TechNet

U.S. Chamber of Commerce