

ALERT

Biden Administration Announces Changes to De Minimis Trade Exemptions to Address Unfair and Unsafe Imports into the United States

September 25, 2024

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On September 13, 2024, the White House announced that it will take several steps to crack down on use of the “de minimis exemption” for imports of unsafe and unfairly traded goods. The de minimis exemption currently allows goods with an aggregate value of \$800 or less to be imported duty and tariff-free with weaker disclosure requirements. This exemption has come under scrutiny by Congress, U.S. policymakers, and industry experts who have highlighted the exploitation of this exemption by foreign producers, especially from China, as well as health and safety risks posed by reduced reporting standards. While there is no current proposed timing for when these steps will be taken, many will be open to public comment.

Overview

The announcement states that the Administration intends to undertake the following by the end of 2024:

- Issue a proposed rule denying use of the de minimis exception for any shipment containing products covered by tariffs imposed under Section 201 or 301 of the Trade Act of 1974 or Section 232 of the Trade Expansion Act of 1962 (note that items covered under antidumping or countervailing duty (AD/CVD) orders are already ineligible for de minimis);

Authors

Hon. Nazak Nikakhtar
Partner
202.719.3380
nnikakhtar@wiley.law

Nova J. Daly
Senior Public Policy Advisor
202.719.3282
ndaly@wiley.law

Maureen E. Thorson
Partner
202.719.7272
mthorson@wiley.law

Matt Lapin
Of Counsel
202.719.3435
mlapin@wiley.law

Practice Areas

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- Issue a proposed rule that would require specific, additional data for shipments that do qualify for the de minimis exception, including the 10-digit HTSUS number and the identity of the person on whose behalf the exemption is claimed; and
- Issue a final rule requiring importers of consumer products to file electronic certificates of compliance with U.S. Customs and Border Protection (CBP) and the Consumer Product Safety Commission (CPSC) at the time of entry, including for de minimis shipments.

The announcement also calls on Congress to codify the proposed reforms, particularly in regard to certain textiles and apparel. In addition, the White House announced that it would explore increased procurement of U.S. origin textile and apparel products and continue to prioritize enforcement efforts against illicit textile and apparel imports through increased monitoring, auditing, and expansion of the Uyghur Forced Labor Prevention Act (UFLPA) Entity List.

Policy Rationale

There has been a substantial increase in the number of imports entering the United States that use the de minimis exemption, increasing from 140 million shipments in 2013 to over 1 billion a year in 2023 (almost 4 million shipments a day). The de minimis exemption has fueled the rise of China-based e-commerce firms that use the exemption to ship small-value shipments of consumer goods to the United States, circumventing the various trade measures applicable to nearly 40% of imports from China. “Fast fashion” firms Temu and SHEIN, in particular, have used the exemption to avoid potential tariffs under Section 301 measures. This dramatic rise in shipments, and lack of associated reporting, has also overwhelmed CBP’s enforcement efforts against narcotics (including fentanyl), dangerous merchandise, counterfeits, and products made with forced labor.

Announced Proposed Rulemakings on Use of De Minimis Exception

The Administration will issue a proposed rule that would eliminate the de minimis exemption for imports of items subject to Section 201, 301 or 232 tariffs. The Administration will also issue a proposed rule requiring additional data from shippers utilizing the de minimis exemption. Under the proposed rule, shipments claiming use of the de minimis exemption, would require submission of additional information, including the 10-digit tariff classification number of items in the shipment, and the identities of both the party claiming the exemption and the identity of any party on whose behalf they are claiming the exemption.

Announced Proposed Final Rule on Use of Certificates of Compliance

The press release also announced a planned proposed final rule (the initial proposed noted here) requiring importers of consumer products to file Certificates of Compliance (CoC) with CBP and CPSC at the time of entry, including de minimis shipments. The Administration believes additional reporting will assist CBP in (1) identifying and detaining products that fail to meet health, safety, and consumer protection standards; (2) preventing evasion of Section 201 301, 232, and AD/CVD tariffs and duties through the de minimis exemption; and (3) detaining shipments by individuals and entities that are known abusers of de minimis rule.

Additional Administration Efforts to Protect Domestic Textile and Apparel Manufacturers

Finally, the announcement signaled potential next steps the Administration may take to address the impact of the de minimis rule on the textile industry, stating that the Administration will explore ways to increase agency procurement of products from the domestic textile and apparel sector. The announcement also states that the Administration will continue to combat illicit textile and apparel imports through stronger targeting of small package shipments, joint trade special operations, increased customs audits and foreign verifications, and expansion of the UFLPA Entity List. These statements are consistent with the issues and efforts the Administration has highlighted in its *2024 Priority Trade Issue: Textiles* publication.

Additional Legislative Actions

In addition to proposed new rulemaking, the Administration has also called on Congress to pass several reforms to the de minimis system, including codifying the reforms described in the proposed rules and passing the reforms found in the Detect and Defeat Counter-Fentanyl Proposal, including increased data requirements for shippers and providing CBP with additional tools to track and target nefarious de minimis shipments. There are also other legislative efforts underway that address the de minimis exemption, including the proposed reforms noted above and efforts to increase penalties for fraudulent or negligent use of the de minimis exception.

Takeaways

If implemented as described, the proposed rules and enforcement policies aim to significantly reduce the shipments eligible for de minimis exemption and increase the risks and complexity associated with such shipments. Importers should be aware of the potential new restrictions, increased risk of detention and rejection of de minimis shipments, and enforcement against efforts to circumvent these requirements. Importers should also be aware of the possibility of future legislative and executive action on de minimis imports, as described above.

Wiley has robust International Trade, Trade Policy, and Customs practices with extensive experience helping clients navigate de minimis rules and broader trade issues. For more information about the implications of new de minimis rulemaking, please contact one of the listed attorneys.