

U.S. Customs De Minimis Changes Announced for Section 321 - Duty-Free Treatment to Be Restricted

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Duty-free imports of low-value goods under the Section 321 program will soon face significant restrictions under action signaled by the Biden Administration. An Executive fact sheet published by the White House on September 13, 2024 (the “fact sheet”), outlined an intended Notice of Proposed Rulemaking (“NPRM”) to limit the availability of de minimis imports under U.S. Customs and Border Protection (“CBP”) jurisdiction. The objective of these changes is to combat a number of threats to U.S. national security and domestic industry, including the flow of illegal drugs into the country and apparent evasion of strategic programs, including Section 301 duties levied on goods from China.

Duty-Free Availability Today

Low-value imports are allowed duty-free under Section 321 of the Tariff Act. Today the duty-free value is USD 800 of aggregate dutiable value, per importer, per day. The use of the program has increased dramatically in recent years particularly in online purchases of consumer goods such as fast-fashion clothing. Today, over 1 billion duty-free entries are made across the country according to the fact sheet, and CBP and other interested federal agencies have low visibility into the details of these entries due. De minimis imports are increasingly viewed as a weakness for national security threats such as the rise of fentanyl deaths, commercial threats to domestic textile and apparel manufacturers, and undermining U.S. trade policy including by circumventing additional duties on consumer goods from China.

Proposed De Minimis Restrictions

The fact sheet states that the forthcoming NPRM will eliminate de minimis availability for all shipments that contain products covered by tariffs under Sections 201 or 301 of the Trade Act of 1974 or Section 232 of the Trade Expansion Act of 1962. For example, the additional Section 301 duties on imports from China today account for an astonishing 40% of U.S. Imports and of those 70% are textile and apparel imports. When those items are imported by individual consumers and the dutiable value is less than USD 800 per day, then no duties are paid - despite the fact that significant duties would have been paid if the value exceeded de minimis amounts. The NPRM will address this and other perceived end-runs challenging the efficacy of U.S. policy.

Proposed Consumer Protection Restrictions

The fact sheet also states that the NPRM and a forthcoming Final Rule out of the Consumer Product Safety Commission (“CPSC”) will increase consumer protections for foreign imports. The White House believes there is a risk of imports that do not meet U.S. regulatory health and safety

standards, that do not yield sufficient data on entry for government oversight, and that collectively harm domestic U.S. industry. One such proposed change will involve requiring full 10-digit Harmonized Tariff Schedule classification codes on de minimis shipments. Another proposed change for consumer products will require electronically filing of Certificates of Compliance with CBP and CPSC at the time of entry on de minimis imports. These efforts are expected to have the additional benefit of increasing transparency and giving CBP better tools to detect and seize illicit drugs and raw materials used to make them.

Proposed Domestic Industry Protections

A theme throughout these proposed changes is protection of domestic U.S. industry. In the fact sheet, the White House committed to explore ways to increase procurement of textile and apparel products across agencies to ensure that U.S. taxpayer dollars support U.S. taxpayer jobs in the sector. Additionally, the White House announced it will continue to prioritize enforcement against the import of unlawful textile shipments through intensified targeting of small package shipments, joint trade operations, customs audits, and expansion of the Uyghur Forced Labor Prevention Act.

Next Steps for Importer Supply Chains

Business and legal risk-appropriate planning is always best practice. This moment represents an important opportunity for awareness across companies and their supply chains since the net effect of these rules may have a significant impact on the way import business is conducted today especially in the consumer e-commerce retail space. Other knock-on risks will follow including the expectation that attempts at duty evasion through friendly countries, including Mexico, will only increase. For now, no immediate change to Section 321 or other programs under review is achieved by the fact sheet. The detailed features of these proposals, their implementation, and the impact on day-to-day trade will develop upon issuance of the NPRM and the CPSC Final Rule.

The Benesch team is always available to help develop and grow inbound supply chain operations, compliance practices, and day-to-day enforcement challenges.

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