

United States Congress

WASHINGTON, DC

February 23, 2024

President Joseph R. Biden
The White House
1600 Pennsylvania Ave., NW
Washington, DC 20500

Dear President Biden:

We write to reiterate our urgent request that the administration utilize the broad executive authorities to end duty-free treatment for Section 321 de minimis e-commerce shipments that are facilitating the import of illegal products, goods produced with forced labor, and other contraband to the detriment of U.S. manufacturers, workers, and communities. De minimis is the trade policy that allows shipments to enter the U.S. duty-free and with minimal to zero inspections so long as the package is under \$800. The lack of U.S. Customs and Border Protection (CBP) inspection of small packages entering our country is causing a disproportionate application of tariffs on American businesses and is a contributing factor to the fentanyl crisis that is killing Americans and tearing families apart. Americans deserve better policy that closes this glaring and dangerous loophole and reestablishes basic customs principles for an overwhelming quantity of packages and goods entering the country.

Existing law provides the executive authorities necessary to end duty-free treatment for de minimis shipments, under Section 498 and Section 321 of the Tariff Act of 1930. Chinese goods made with forced labor appear to be the heaviest users of de minimis, undermining enforcement of the Uyghur Forced Labor Prevention Act (UFLPA). De minimis shipments, now numbering 3 million a day, are at an elevated risk of violating UFLPA, containing counterfeit goods, exacerbating the fentanyl crisis, or posing a serious health danger to consumers. They also legally escape the Section 301 penalty tariffs on Chinese imports and regular import duties designed to safeguard import-sensitive sectors. As a result, the Chinese Communist Party (CCP) — one of the worst trade and human rights abusers — directly benefits from duty-free access to the U.S. market for shipments valued under \$800. This generous gift comes with no rule of origin requirements, reciprocal market access, or labor or environmental standards. Simply put, the CCP and others utilizing de minimis can get rich while getting away with a host of trade infractions that undermine U.S. manufacturing, harm American workers, and expedite the flow of fentanyl and other harmful goods into our communities.

Every day, hardworking Americans who have made the great choice to support U.S. jobs and make products here in the United States are finding themselves with less of a competitive advantage over foreign manufacturers and suppliers that are gaming U.S. laws to avoid duties meant to protect U.S. companies and jobs. This must be immediately addressed. It is impossible for U.S. manufacturers, especially those in the textile industry, to compete with the low costs of competitors in China which are currently flooding U.S. markets with products made with slave

and forced labor, bolstered by state subsidies to key sectors and unfairly avoiding U.S. trade laws.

The existence of this U.S. policy loophole also unfairly benefits foreign companies and overseas e-commerce platforms such as Temu, SHEIN, and AliExpress, allowing them to evade tariffs, duties, taxes, and compliance with other U.S. customs laws and regulations that U.S. companies and brick and mortar stores must comply with. There are no consequences for these actions because they are currently legal under the outdated and convoluted “de minimis” loophole.

The surge in de minimis shipments from China to the United States drives problems for U.S. businesses across industries from big box stores and retailers to U.S. manufacturers. As a direct result, 2023 saw an 80 percent surge in U.S. retail store closures compared to the year before.¹ This out-of-control problem impacts the safety and livelihoods of Americans, outsourcing not only our manufacturing, but also our retail sectors to China, which — as you know — systematically utilizes slave labor among other unconscionable practices to undermine our economy.

In addition to benefiting foreign textile companies and e-commerce giants, the de minimis exception benefits illicit foreign fentanyl manufacturers. Fentanyl precursor chemicals traffickers often declare their international shipments as relatively low-value consumer goods and send them to mail centers or other addresses not associated with the criminal organization.² This trade loophole is also exploited by counterfeiters and others seeking to get fraudulent or harmful goods into American markets.

In Fiscal Year (FY) 2023 alone, enough fentanyl was seized by CBP to kill every American (331.9 million people) eighteen times over.³ In FY21, CBP seized over 11,000 pounds of fentanyl and in FY23, over 27,000 pounds — enough to kill 6.1 billion people according to the Drug Enforcement Administration (DEA).⁴ The numbers are trending up and this is only the fentanyl that has been seized — not the fentanyl that slipped through undetected and uninspected or through the mail. Virtually zero packages shipped into the U.S. under the de minimis threshold are inspected. Stopping harmful imports and collecting duties are two core functions of the CBP that must be restored immediately for all packages entering our country.

We continue to press the administration to act with urgency and address this abuse of Section 321 utilizing its clear statutory authority. As you take steps to address this serious issue, we urge you to ensure any action(s) include the following three priorities:

1. **End the Abuse of the De Minimis Loophole** by ensuring the application of the same Importer of Record and Entry Summary requirements for Section 321 shipments that already exist for other Informal Entry imports,
2. **Ensure Accurate Shipment Reporting** by directing the U.S. Treasury, per Section 321(b), to ensure de minimis is not being used by commercial operators to avoid paying duties, and

¹ <https://www.cbsnews.com/news/retailers-closed-4600-stores-chains-with-the-most-closures/>

² <https://www.state.gov/wp-content/uploads/2020/02/Fentanyl-Advisory-Movement-Tab-C-508.pdf>

³ <https://www.cbp.gov/newsroom/stats/drug-seizure-statistics>

⁴ <https://www.dea.gov/resources/facts-about-fentanyl>

- 3. Protect Domestic Industries and Ensure the Proper Application of the Law** by excluding from de minimis goods that are subject to Partner Government Agencies import notification requirements, Sec. 301 and Sec. 232 penalty tariffs, and UFLPA import restrictions, as well as products in sectors designated as Priority Trade Issues by Congress.

Executive action through an executive order or rulemaking on the de minimis exception can be issued in conformance with existing laws and regulations. An executive order can also be drafted in a manner that is consistent with existing customs regulations, which already allow CBP to deny de minimis treatment and require a formal entry for enforcement or revenue protection purposes.

The situation has reached a tipping point where vast sections of American manufacturing and retail are at stake if de minimis is not immediately addressed — including a large portion of U.S. textile production and employment, as well as the broader Western Hemisphere textile and apparel co-production chain. The European Union (EU) understands the seriousness of exploitation of de minimis and the European Commission issued its own EU customs reform proposal in May of 2023 in which it dissolves its current de minimis threshold of 150 euro.⁵ The seriousness and urgency of this problem is exacerbated by the fact that this exception is also worsening the fentanyl crisis in our communities and facilitating the deaths of over seventy thousand Americans annually.⁶ Swift, effective executive action is necessary to safeguard U.S. jobs and communities against the economic sabotage of the CCP.

We stand ready to further engage with the administration on this issue to make sure that critical American industries and innocent families no longer suffer at the hands of unfair competition and exploitation.

Sincerely,



Sherrod Brown
United States Senator



Rick Scott
United States Senator

⁵ https://taxation-customs.ec.europa.eu/customs-4/eu-customs-reform_en

⁶ <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm>