

What is De Minimis and Why Should You Care

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If you are a manufacturer, distributor or in the logistics business, you need to know about *de minimis* shipments and how they are reshaping cross-border trade patterns.

What is *de minimis*?

De minimis is a provision under U.S. customs law that allows the importation of low value shipments duty-free with simplified process (e.g., using the manifest data) where the article has:

- an aggregate fair retail value in the country of shipment
- imported by one person on one day
- where the value does not exceed \$800

See 19 U.S.C. § 1321(a)(2)(C).

Title 19 U.S.C. § 1321 on Administrative Exemptions has been part of the customs statute since the Tariff Act of 1930. Specifically, the *de minimis* threshold under 19 U.S.C. § 1321(a)(2)(C) for articles free of duty “in any other case” was initially set at \$1 and periodically raised by Congress – first, to \$5 in 1978, and \$200 in 1993 as part of the Customs Modernization Act, Title IV of NAFTA.¹ Certain articles (e.g., items subject to antidumping and countervailing duties, quota, IRS taxes such as alcohol and tobacco) are not eligible for *de minimis* importation.

Congress has raised the *de minimis* every few decades taking into account the erosion of purchasing power as a result of inflation. Most recently, Congress increased the *de minimis* to \$800 in the Trade Facilitation and Trade Enforcement Act of 2015, P.L. 114-125, 130 Stat. 223.

Rather than a “tariff loophole,” raising the *de minimis* was a deliberate policy choice by Congress which specifically set out its findings for raising the *de minimis* to \$800 in TFTEA:

SEC. 901. *DE MINIMIS* VALUE.

(a) FINDINGS.—Congress makes the following findings:

(1) Modernizing international customs is critical for United States businesses of all sizes, consumers in the United States, and the economic growth of the United States.

(2) Higher thresholds for the value of articles that may be entered informally and free of duty provide significant economic benefits to businesses and consumers in the United States and the economy of the United States through costs savings and reductions in trade transaction costs.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the United States Trade Representative should encourage other countries, through bilateral, regional, and multilateral fora, to establish commercially meaningful *de minimis* values for express and postal shipments that are exempt from customs duties and taxes and from certain entry documentation requirements, as appropriate.

¹ See list of legislative amendments for 19 U.S.C. § 1321 at <https://uscode.house.gov/view.xhtml?path=/prelim@title19/chapter4&edition=prelim>.

H.R. Conf. Rep. No. 376, 114th Cong, 1st Sess. 103 (2015).

Shortly thereafter, Congress reaffirmed its commitment to *de minimis* by ensuring that it was enshrined in the U.S.-Mexico-Canada Agreement (USMCA). During the negotiation of the USMCA in 2019, the Administration negotiated to raise the *de minimis* threshold for imports to Mexico (to \$117) and Canada (to \$150), but included a footnote:

Notwithstanding the amounts set out under this subparagraph, a Party may impose a reciprocal amount that is lower for shipments from another Party if the amount provided for under that other Party's law is lower than that of the Party.

USMCA Ch. 7 Customs Administration and Trade Facilitation, Article 7.8.1(f) Express Shipments, footnote 3 at 7-7.² As a result of the trade community's advocacy efforts, Congress wrote a letter to the U.S. Trade Representative stating:

We strongly oppose any effort by the Executive Branch to lower the current \$800 *de minimis* threshold through USMCA implementing bill, including any amendment to 19 U.S.C. 1321 that would grant the Executive Branch additional authority to decrease or eliminate the threshold.

The U.S. *de minimis* threshold is a policy recently set by Congress, which raised the threshold from \$200 in 2016. The current *de minimis* threshold still enjoys wide bipartisan support in Congress and throughout the manufacturing, retail, logistics, and e-commerce landscapes. In our view, it is neither necessary, appropriate, nor desirable to change this policy in U.S. law as part of the implementation of USMCA's requirements. In fact, we consider that such an effort would amount to an override of Congressional authority by the Executive Branch, and thus would be entirely appropriate.

Letter from the Congress of the United States to Ambassador Robert E. Lighthizer, U.S. Trade Representative dated October 18, 2019.³

How does *de minimis* work?

In the past, low-value shipments were typically "one off" shipments sent through express air couriers and the postal service. Over the last several years, companies have switched their logistics model from bulk shipping through full containers to direct-to-consumer shipping through all modes of transport. Often these products are manufactured in third countries, shipped in bulk to a fulfillment center warehouses in Canada or Mexico and then imported under *de minimis* into the United States when an American consumer orders the item.

² See

https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/07_Customs_Administration_and_Trade_Facilitation.pdf

³ See letter at: <https://schweikert.house.gov/sites/schweikert.house.gov/files/2019-10-18%20de%20minimis%20threshold%20letter.%20Schweikert.%20Kind.pdf>

When a shipment arrives for clearance under the administrative exemption provision as *de minimis*, the carrier submits the cargo manifest data to clear the shipment through CBP's informal entry procedures:

- shipper name and address
- the consignee name and address
- a description of the cargo, including the cargo's quantity and weight
- information regarding the cargo's trip, such as trip/flight number, carrier code, point of arrival and point of origin

If the article is regulated by another federal agency (*i.e.*, Partner Government Agencies), a Licensed Customs Brokers must file a Type 86 Entry in the Automated Commerce Environment (ACE) system.

Why does it matter?

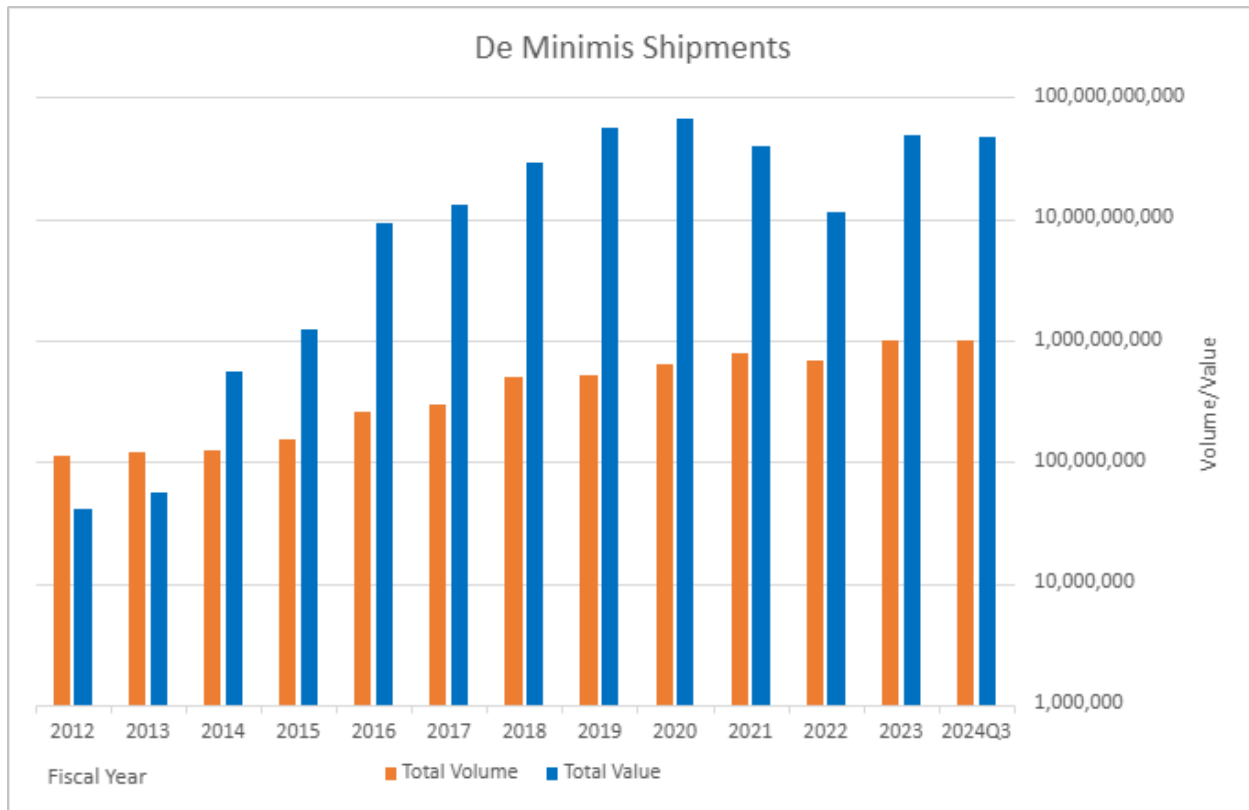
Many people confuse *de minimis* shipments with e-commerce shipments – they are not synonymous. Whether an imported article is ordered online is irrelevant to its treatment by U.S. Customs when presented at the border. Anyone looking at a package may not know whether the item was online unless the box shows information that it was fulfilled by a third-party marketplace platform.

While many critics of *de minimis* focus on the duty-free benefit, they don't realize that the simplified processes (e.g., submission of a smaller data set, no customs broker fee in some cases) for customs clearance can be just as valuable for companies whose primary goal is speed.

If you are a company that sources items in foreign countries, sell goods online or have direct-to-consumer shipments to customers in another country, then you should consider using *de minimis* in every country where your goods cross a border.

What is the future of *de minimis*?

The sheer volume of *de minimis* shipments since the COVID-19 pandemic which comprise a growing share of cross-border shipments have surprised and alarmed policymakers – both in Congress and at CBP. Over the last twelve (12) years, the total volume of *de minimis* shipments increased from 112,377,709 in FY2012 with a value of \$40 million to 1 billion valued at \$47 Billion (through Q3 of FY2024).



The growth of *de minimis* shipments in the United States has prompted Congress to reassess the current Administrative Exemption provision in 19 U.S.C. § 1321. Here is a summary of pending bills:

- **Import Security and Fairness Act** (H.R. 4148) introduced by Rep. Blumenauer (D-OR) in both the 117th and 118th Congress blocks shipments from China (*i.e.*, countries that are non-market and economy and appear on USTR’s Special 301 Priority Watch list for IPR violations).
- **“End China's De Minimis Abuse Act”** (H.R. 7979) introduced by HWM Chair Jason Smith (R-MO) passed the House of Representatives as part of a larger package of trade legislation. This bill restricts articles eligible for *de minimis* blocking goods subject to additional duties under sections 201 (safeguard actions), 232 (national security), and 301 (unfair trade practices). It also requires submission of the 10-digit HTSUS number to classify the article beyond just a product description.
- **Fighting Illicit Goods, Helping Trustworthy Importers, and Netting Gains for America Act of 2024” (FIGHTING for America Act of 2024)** (S.____) was just announced by Senate Finance Chairman Wyden (D-OR) which is similar to H.R. 7979 as it restricts the types of articles (*e.g.*, import-sensitive goods, items subject to ADD/CVD, subject to special tariff investigations under section 201, 232 and 301). The bill requires additional data (*e.g.*, 10-digit HTSUS number), and the country of origin as well. A unique feature of the bill is that CBP would collect a fee of \$2 per shipment fee, which increases the cost and profitability of using *de minimis*.

- **De Minimis Reciprocity Act** (S. 1969) is co-sponsored by Senators Cassidy (R-LA), Baldwin (D-WI), and Vance (R-OH) and directs the Secretary of Treasury to establish *de minimis* threshold for each country based on: 1) the *de minimis* threshold of that country; and 2) any related threshold (VAT). It also directs Secretary to establish a “Re-shoring and Near-shoring Account” and transfer amount equivalent to *de minimis* to that fund. Moreover, the Secretary would publish a list of countries not eligible for *de minimis* including China, Russia and others (e.g., violators of UFLPA, transshippers, counterfeiters, human trafficking, illegal drugs and terrorism, etc.). Similar to the other bills noted above, the legislation requires certain data requirements:
 - HTSUS heading or subheading
 - Country of origin
 - Country of manufacture
 - Shipper of record
 - Importer of record
 - Description
 - Fair market value in the U.S.

Under S. 1969, the carrier would be responsible for collecting the duties and taxes to be remitted to CBP.

Finally, CBP has a Proposed Rule on Low-Value Shipments that is in the final stages of interagency review at the Office of Management and Budget (OMB). No one knows what is contained in the Proposed Rule except that CBP will provide the results of its two pilot programs: 1) Section 321 Data Pilot program; and 2) ACE Type 86 Entry of *de minimis* shipments.⁴

There will probably be changes to the Administrative Exemption provision governing *de minimis* shipments, but the restrictions imposed by new legislation are difficult to predict.

⁴ See CBP’s Fact Sheet on Section 321 Programs at: https://www.cbp.gov/sites/default/files/assets/documents/2020-Aug/Section-321-Data-Pilot-vs-Entry-Type-86-Test_v1-1.pdf.