

### Bipartisan, Bicameral Bill Would End Chinese Eligibility for de Minimis

The top Democrat on the House Ways and Means Committee has reintroduced a bill eliminating Chinese shippers' eligibility for de minimis, keeping the ban on China, and adding a requirement that remaining de minimis shipments include at a minimum: a description; an HTS code; a country of origin, shipper, importer; and a U.S. value. The new version also dropped language around sections 232 and 301 tariffs in the previous version.

This time, Rep. Earl Blumenauer, D-Ore., has won bipartisan and bicameral support, with Rep. Neal Dunn, R-Fla., as a co-sponsor, and a companion bill also introduced June 15 by Sens. Sherrod Brown, D-Ohio, and Marco Rubio, R-Fla.

“The de minimis loophole is a threat to American competitiveness, consumer safety, and basic human rights,” Blumenauer said in a [news release](#) announcing the reintroduction. “It is used by primarily Chinese companies to ship over two million packages a day into the United States. It puts American businesses at a competitive disadvantage while flooding American consumers with undoubtedly harmful products. There is virtually no way to tell whether packages that come in under the de minimis limit contain products made with forced labor, intellectual property theft, or are otherwise dangerous. It is time to close this loophole once and for all.”

The [bill](#) provides for a civil penalty of \$5,000 for the first offense and \$10,000 for subsequent offenses if the data submissions are false. According to CBP, about 25% of packages sent by companies participating in a data pilot had violations, often the wrong Harmonized Tariff Schedule code, or only providing a code for one of several items in a package (see [ITT 04/17/2023](#)).

It would take effect 180 days after enactment.

Blumenauer said CBP already has begun work on data submissions for de minimis packages, and this provides statutory support for those efforts.

About 2 million packages a day enter the U.S. under the \$800 de minimis threshold.

“China exploits our capital markets and uses slave labor to undercut American businesses,” Rubio said in the news release. “It is bad for our country to let China flood our country with duty-free packages using the de minimis exception. The Import Security and Fairness Act will close this loophole and take another critical step to stop China from cheating on trade.”

The bill has support from numerous unions and trade groups representing domestic manufacturers, as well as left-of-center trade skeptics such as ReThink Trade and Public Citizen.

National Council of Textile Organizations CEO Kim Glas said in the press release, “This gaping loophole allows more than 2 million shipments a day to enter the U.S. market duty-free and largely uninspected, which in turn severely undermines the competitiveness of U.S. textile manufacturers and workers, as well as our Western Hemisphere trade partners. It also endangers American consumers by allowing tainted products like those made with forced labor and counterfeits to land on our doorsteps.”

Alliance for American Manufacturing President Scott Paul issued a statement on the introduction of the bills that said: “We strongly encourage Congress to adopt these reforms while also ensuring that additional steps are taken to monitor transshipments and increases in de minimis volume from other countries. Moving forward, it is our hope that Congress takes steps to lower the current \$800 threshold, which is excessive, wildly misaligned with many of our trading partners, and invites wrongdoing.”

— *Mara Lee*

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## Chamber, Express Shippers Oppose de Minimis Bills

The ability to import low-value packages without paying duties is a benefit to consumers and businesses, the U.S. Chamber of Commerce and other trade groups that use de minimis are arguing, as they lobby against bipartisan efforts to curtail de minimis eligibility.

Rep. Earl Blumenauer, D-Ore., simplified his bill (see [ITT 06/15/2023](#)), added a Republican co-sponsor and found bipartisan sponsors for a Senate companion bill. But the thrust remains the same—shipments from China would have to pay all duties, no matter how inexpensive the item entering the U.S.

Sen. Bill Cassidy, R-La., along with a fellow Republican and a Democrat in the Senate, have a more complex proposal that would bar China, Vietnam, Cambodia, Malaysia and others, and would lower the dollar threshold to match trading partners' levels (see [ITT 06/14/2023](#)).

John Drake, Chamber vice president for infrastructure and supply chain policy, said the Chamber still dislikes the revised Blumenauer bill.

Roughly \$250 billion worth of Chinese imports annually are subject to an additional 25% tariff under Section 301; another \$112 billion worth of imports are subject to an additional 7.5% tariff. None of those tariffs is collected when packages enter under de minimis. However, Blumenauer doesn't focus on the forgone revenue as much as the difficulty for CBP examining such a huge volume of packages to determine if counterfeit goods or goods made with forced labor are among them.

"CBP is on the record saying there's a fallacy that de minimis is a big loophole. De minimis shipments, they are screened," Drake said in a telephone interview. "There's simply a lot of misunderstanding about de minimis, how it works."

Mike Mullen, Express Association of America executive director, said, "CBP has a long history of interdicting illicit goods, and we should let them do their job. I spent four years at CBP, and I saw it from the inside, and I reject any argument that's based on CBP incompetence. They are not incompetent, they are very good at what they do."

Drake agreed, saying CBP has "the tools to screen out bad actors" already. "Proponents of this legislation really have not made convincing arguments about the scope of the problem."

Despite de minimis advocates' skepticism, they're not sure their arguments will win the day. A trade group source who did not want to be quoted by name due to the sensitivity of the issue was anxious about whether a proposal eliminating Chinese exporters' eligibility for de minimis could pass. "I think the momentum behind making some sort of change to de minimis is growing rapidly," he said. "For a very long time, a lot of proponents of de minimis felt like de minimis sold itself."

Mullen, who spoke to *International Trade Today* while at the recent American Association of Exporters and Importers annual conference, said: "Congress recognized that [de minimis] was a significant benefit for the United States. And we shouldn't be taking any steps to reduce it. If there are problems with shipments coming in illicitly, let's address those problems. Let's not allow counterfeits. Let's make sure we're keeping the drugs out of those shipments. There are all kinds of ways to do that without just trying to turn the spigot off for one country or a group of countries.

"And trying just to turn off that spigot is totally impractical for the American economy. And I also believe it's going to get us into trouble with the WTO because I think it's a violation of the WTO's most favored nation principle."

Drake said de minimis has a higher profile in Congress these days than it really warrants, given its share of Chinese imports. There were \$536 billion in imports from China last year, and de minimis entries were "a drop in the bucket," he said.

According to CBP [data](#), 58% of the 2.3 billion in de minimis entries came from China in fiscal year 2021; the total value of all de minimis shipments that year was \$39.9 billion. CBP did not report value by country, but if Chinese packages account for \$23 billion, that's still only 4% of total imports from China.

"There's a lot of eyes in Congress looking" at de minimis, Drake said. "It's increasingly becoming a proxy for a lot of anxieties about our relationship with China."

Mullen said it's just misguided to think that Chinese de minimis packages are all illegitimate. "We all work very

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hard to provide all the data that's required to show that those shipments are legitimate," he said. He complained that the data elements Blumenauer calls for in his bill are either already included in the manifest, or, in the case of a 10-digit HTS code, are less precise than a link to the online sales listing or a detailed description.

"The [Section] 321 data pilot, in particular, is giving CBP the opportunity to gather data from other parties in the supply chain, not just the carrier submitted manifest, and through that, CBP is attempting to make this effort to get data all the way back to the origin of the goods, sometimes the origin of the raw materials. And CBP does have the capability to do that. And if they get these regulations passed, they'll be able to task these other parties in the supply chain to provide the data that they uniquely owned, and then they can get a great deal of transparency into where these goods come from," Mullen said. "The key thing is that CBP has to develop the ability to consolidate this data that they're getting from various different parties into one risk assessment package."

Both Drake and Mullen questioned the administrability of setting a different de minimis threshold for each country, to match that country's de minimis level (or level at which the value added tax is collected).

Matching the de minimis threshold for each country that exports to the U.S. would be a "huge burden" for CBP, Drake said.

Mullen said, "It would be very complicated to enforce. And we just don't think, fundamentally, that we should be allowing other countries to determine what the de minimis level is in the United States."

If CBP has to process each \$40 entry like it does a container full of goods or a semitruck full of goods, that would be costly for the government, they say.

"How many additional customs officers do we need to process these 700 million entries a year? I mean, that's really going to be expensive. And, again, I come back to this point that it's much better to use your real resources to target it against what the problem is," Mullen said. "The problem is in insufficient data on the vast majority of shipments that are compliant. The problem is trying to identify those anomalies in the data that would give you a clue that hey, maybe something's wrong here."

"They can X-ray it, they can open it up and inspect it. And they do that routinely. They do that with thousands of shipments a night in the express industry. And we catch the bad ones."

One of the opponents' arguments against restricting the use of de minimis is that it would be a tax increase on companies and individuals who import goods this way.

But for an individual importation from China, the taxes could be so burdensome that it would not make sense to buy directly from China. For apparel, a frequent example cited by de minimis opponents, the Section 301 tariffs are just 7.5%, though that doesn't include the most-favored-nation duty rate, which averages in the mid to high teens, depending on the garment. So, a \$50 shipment of a couple of garments might have \$11 in duties, \$25 for a merchandise processing fee, and \$25 to pay a customs broker. Shoppers won't pay more than twice as much for the items, so the business model would have to change. Either companies like Shein would send goods in bulk to U.S.-based warehouses and then individual orders to U.S. customers from that hub (Shein is already beginning to do this), or, Mullen said, firms would move "production facilities to other countries, moving them to Vietnam or Bangladesh or someplace else, and producing the goods there."

Mullen expressed confidence that these sorts of bills will not become law as Congress works on a customs modernization package. "There's enough reasonable people in Congress that they're going to look at this and say: What kind of action would really be effective in helping CBP deal with the challenges of e-commerce? And there are challenges associated with e-commerce. But the key to solving those challenges, I think, is to work more closely with the private sector parties that are involved in e-commerce shipments, and figure out a way to ensure we're targeting all those shipments in the most effective way." — *Mara Lee*

### CBP Official Expects More Activity on UFLPA Entity List 'on the Horizon'

"Activity" is "on the horizon" related to the Uyghur Forced Labor Prevention Act Entity List, Leslyanne Kessler, CBP's deputy associate chief counsel, said at an [event](#) on June 13. Following the recent addition of new companies to the list for the first time since the list was released in June 2022 (see [ITT 06/09/2023](#)), Kessler said she expects

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the process for an interagency task force to add companies or remove them from the list “will be moving ahead in the coming year.”

Speaking during the Georgetown Law International Trade Update, Kessler noted the rebuttable presumption that applies to both merchandise related to China’s Xinjiang province and UFLPA Entity List companies. She said that while companies can seek customs rulings that their supply chains are free from UFLPA, the ruling won’t act as a get out of jail free card “If you get a ruling that says your supply chain is free of UFLPA or is free of forced labor, you still have to show on importation that those goods match” the ruling that was provided, Kessler said.

Kessler was also asked about the lack of a de minimis exception, saying that the reason for that, she thinks, is that Congress “meant for this to be a very heavy-handed law that forces compliance in every aspect of the supply chain.” If you are unhappy with the law or the lack of a de minimis exception “you should talk to your congressman,” Kessler said.

Despite the lack of de minimis, customs lawyer Sarah Wyss noted that there seems to be a “willingness” at CBP to not require “every tiny bit of documentation for every last thread.”

Kessler responded that CBP enforces “all of the laws that we’re charged with enforcing and administering with a risk-based approach” and CBP has no desire to have every shipment of “textiles or any other shipment sitting on the docks for months and months and months.” She said “the agency tries to be extremely reasonable in working with importers” so that it “can make a good decision based on the information that’s been submitted.”

Wyss also discussed model contract clauses released by the American Bar Association, and how they can help companies trying to be compliant with UFLPA. If clients or companies are looking to “cut and paste contract clauses, to incorporate UFLPA compliance or other forced labor compliance into their existing contracts,” the model contract clauses are “a really good place to start,” she said. The model contract clauses are “really a modular approach that can be used across sectors, and it’s really a high level resource for company-wide policies,” Wyss said. — *Noah Garfinkel*

## New SHU Brief Discusses Researching Strategies for Identifying Uyghur Forced Labor

It is incumbent upon “all companies to conduct more rigorous due diligence,” to make sure they are in compliance with laws prohibiting forced labor, a new [brief](#) from Sheffield Hallam University said on June 19. “Know Your Supply Chains: Desk-Based Research Strategies to Identify Uyghur Region Exposure,” part of a series of briefs, focuses on strategies companies can employ to discover whether or not they are using suppliers from the Uyghur region of China.

Led by Sheffield Hallam professor Laura Murphy, the brief’s advice on improving due diligence strategies focuses on four main ways to identify forced labor. The first is to get to know suppliers better. This includes the suppliers’ registered names in their local languages and their subsidiaries and parent companies, the brief said. Secondly, sub-suppliers in the supply chain should be identified, or it should be determined where suppliers are sourcing from.

“Use customs records, corporate websites and annual reports, and other desk-based research to identify who your suppliers are sourcing from, all the way down the value chain,” the brief said. This is important because even if suppliers are not based in the Uyghur region or using Uyghur forced labor, the production of the raw materials of the products could be from forced labor, the brief said.

Thirdly, identify any exposure to the Uyghur region through suppliers, including sub-suppliers. And fourthly, archive everything, saving all work for future reference in knowing which companies not to work with.

“While the process of tracing supply chains may be challenging, it is not impossible,” the brief said. “Most companies are not currently including even the simplest of desk-based research strategies in their procurement, contracting, or due diligence processes. The steps outlined here will help companies and other researchers begin to gauge their supply chain exposure to the Uyghur Region.” — *Noah Garfinkel*

## Canada’s Proposed Customs Valuation Changes Could Be Illegal, Law Firm Says

Canada’s proposal to alter its customs valuation policy to value imports according to the price of their “last sale” or “sale

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for export” not only would be bad for business, it “could also be illegal,” lawyers at Sandler Travis said in a June [client alert](#). The firm said the proposal is contrary to Canadian court precedent and the World Trade Organization’s Customs Valuation Code that identifies the sale for export as the one in which “title is passed to the importer of the goods.”

“The changes could also effectively increase import duties above the levels at which Canada has agreed to be bound under WTO rules,” the post said. “Moreover, the regulations could violate the U.S.-Mexico-Canada Agreement, and Washington’s activist approach to addressing violations could open Canadian exports to the threat of retaliatory duties.”

The Canada Border Services Agency’s proposed amendment would add a definition of “sold for export to Canada,” which would make the relevant sale for customs valuation purposes the last sale. The changes also would repeal the current definition of “purchaser in Canada,” changing it to read “the person who purchases or will purchase the goods in the relevant sale for export to Canada” (see [ITT 06/06/2023](#)). Two weeks remain for the comment period on the proposed changes.

### NCBFAA Questions FDA Entry Filing Time Estimate

FDA’s estimate of the work required to file an entry “does not begin to account for the work required to file an FDA import entry,” the National Customs Brokers & Forwarders Association of America said in [comments](#) on an FDA notice that sought input on the burden of its import entry process.

“Missing from the equation” from FDA’s estimate of 2.68 minutes per unique entry line “is the time and effort to get to the point of data entry: gathering and validating the data elements on the product, the importer and entities in the supply chain; educating the importer on what supply chain information is required; training staff on how to submit compliant entries for FDA-regulated products; and developing/maintaining databases to support this work,” NCBFAA said in the letter.

NCBFAA did their own study and found that it takes 5:19.8 minutes to file an FDA line on an entry, nearly double the time the FDA estimated, according to the letter. NCBFAA added that their estimate “only considers the transactional aspect” and does not include other aspects of the process, including “the effort leading up to or following submission of an FDA entry line, including tracking the Automated

Broker Interface (ABI) results,” they wrote in the letter. “We urge the agency to recalculate this cost estimate, using a more accurate basis for measuring the cost and providing greater transparency on its methodology and assumptions.”

NCBFAA also expressed their disappointment with the Import Trade Data Auxiliary System (ITACS) and stressed the importance of a true Single Window, the promise of which has “not been matched by reality,” the trade group said in the letter. “The ‘Single’ Window has instead become a multi-paned window with many duplicate and repetitive entry requirements,” including ITACS. Data must be reuploaded from CBP’s Document Image System (DIS) into ITACS, and ITACS does not always receive arrival information from CBP, and only allows search by entry number, according to the letter.

“We encourage FDA to step up efforts to align its own systems and processes with ACE and CBP, as well as other PGAs,” NCBFAA said. “The development of ACE 2.0 provides the opportunity to achieve a true Single Window and we hope FDA will be an enthusiastic participant to that end.”

NCBFAA also made some additional suggestions on how to simplify the current process. The suggestions included eliminating duplicate or redundant data elements, allowing data submissions to be amended, “clear and consistent definitions” for terms and parties, and allowing for change in the port of arrival, NCBFAA said. NCBFAA also said FDA should “consistently allow inspections to occur at destination” and create an advisory board to “provide greater certainty and accuracy for complex products where the product code cannot be readily determined.” — *Noah Garfinkel*

### Paper Shopping Bags: New AD/CVD Investigations

The Commerce Department issued notices in the *Federal Register* on its recently initiated [antidumping](#) duty investigations on paper shopping bags from Cambodia, China, Colombia, India, Malaysia, Portugal, Taiwan, Turkey and Vietnam (A-555-002, A-570-152, A-301-805, A-533-917, A-557-825, A-471-808, A-583-872, A-489-849, A-552-836), and its [countervailing](#) duty investigations on paper shopping bags from China and India (C-570-153, C-533-918). The CVD investigation covers entries for the calendar year 2022. The AD investigations for Cambodia, Colombia, India, Malaysia, Portugal, Taiwan and Turkey cover entries April 1, 2022, through March 31, 2023, and for China and Vietnam they cover entries Oct. 1, 2022, through March 31, 2023.

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The International Trade Commission will conduct a concurrent investigation to determine whether imports of dumped and illegally subsidized paper shopping bags are injuring U.S. industry. If the ITC finds no injury in its preliminary injury determinations, due July 17, the investigations will immediately end. If Commerce finds dumping or illegal subsidization in the preliminary determinations of these investigations, due in August for CVD and November for AD, it will set AD and/or CVD cash deposit requirements for imports of merchandise subject to the investigation. If both Commerce and the ITC reach affirmative final determinations, Commerce will issue an AD and/or CVD order making duties permanent and beginning a process of annual administrative reviews to set final assessments of AD/CVD on importers and potentially change AD/CVD cash deposit rates.

**AD/CVD Respondent Selection**

Commerce will send quantity and value questionnaires to each potential respondent, and will base respondent selection on the responses it receives. Exporters that don't get a quantity and value questionnaire can submit one using the forms available on Commerce's [website](#). Responses are due by July 5.

**Scope of the AD/CVD Investigations**

"The products within the scope of these investigations are paper shopping bags with handles of any type, regardless of whether there is any printing, regardless of how the top edges are finished ( e.g., folded, serrated, or otherwise finished), regardless of color, and regardless of whether the top edges contain adhesive or other material for sealing closed. Subject paper shopping bags have a width of at least 4.5 inches and depth of at least 2.5 inches.

"Paper shopping bags typically are made of kraft paper but can be made from any type of cellulose fiber, paperboard, or pressboard with a basis weight less than 300 grams per square meter (GSM).

"A non-exhaustive illustrative list of the types of handles on shopping bags covered by the scope include handles made from any materials such as twisted paper, flat paper, yarn, ribbon, rope, string, or plastic, as well as die-cut handles (whether the punchout is fully removed or partially attached as a flap).

"Excluded from the scope are:

- Paper sacks or bags that are of a 1/6 or 1/7 barrel size ( i.e., 11.5–12.5 inches in width, 6.5–7.5 inches in depth, and 13.5–17.5 inches in height) with flat paper handles or die-cut handles;
- Paper sacks or bags with die-cut handles, a grams per square meter paper weight of less than 86 GSM, and a height of less than 11.5 inches; and
- Shopping bags (i) with non-paper handles made wholly of woven ribbon or other similar woven fabric and (ii) that are finished with folded tops or for which tied knots or t-bar aglets (made of wood, metal, or plastic) are used to secure the handles to the bags.

"The above-referenced dimensions are provided for paper bags in the opened position. The height of the bag is the distance from the bottom fold edge to the top edge ( i.e., excluding the height of handles that extend above the top edge). The depth of the bag is the distance from the front of the bag edge to the back of the bag edge (typically measured at the bottom of the bag). The width of the bag is measured from the left to the right edges of the front and back panels (upon which the handles typically are located).

"The merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 4819.30.0040 and 4819.40.0040. The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope is dispositive."

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