

Client Alert

International Trade

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U.S. Customs Has Proposed Broad Regulatory Changes to Low-Value Shipment (*De Minimis*) Regulations

The proposals would codify features of the existing low-value entry processes (with new enhancements) but would not allow merchandise subject to certain trade or national security ad valorem tariffs to continue to use the programs.

In the last week of former President Biden's Administration, U.S. Customs and Border Protection ("CBP") announced two Notices of Proposed Rulemaking ("NPRM") addressing low value shipments. The first proposal was published on January 14, 2025, intending to modify the entry process for merchandise entered under the *de minimis* exemption ("Entry of Low-Value Shipments NPRM"). CBP proposed to create an "enhanced entry process" with respect to "low-value shipments" (*i.e.*, *de minimis* shipments) that, among other things, would require participants to submit additional data to CBP prior to the arrival of the shipment in the United States. Interested parties may submit comments with respect to the Entry of Low-Value Shipments NPRM by **March 17, 2025**.

The second proposal was formally published on January 21, 2025 (after being released in draft form on President Biden's last full day in office). The proposal would disallow imports that are subject to certain additional tariffs from using the *de minimis* duty-free exemption that has been available for imports by "one person on one day having a fair retail value" in the United States of \$800 or less ("Trade and National Security Actions and Low-Value Shipments NPRM"). While the *de minimis* program is not available for merchandise subject to antidumping or countervailing duties, or to imports subject to absolute quotas, currently the *de minimis* provision can be used for products otherwise subject to

special tariff provisions under Section 201 of the Trade Act of 1974 (“Section 201”); Section 232 of the Trade Expansion Act of 1962, as amended (“Section 232”); and Section 301 of the Trade Act of 1974 (“Section 301”). The proposal would codify that merchandise otherwise subject to Section 201, Section 232, and Section 301 duties and restrictions is ineligible for the *de minimis* exemption. Parties may submit comments with respect to the Trade and National Security Actions and Low-Value Shipments NPRM by **March 24, 2025**.

In issuing the proposed rulemakings, CBP stated that regulatory changes are required to strengthen the agency’s ability to identify and to interdict shipments of fentanyl, precursor drugs, and other illicit merchandise violating intellectual property rights. In addition to preventing unlawful importations, CBP stated that the proposed changes would enhance the agency’s ability to “protect the revenue” so that “merchandise subject to additional tariffs imposed pursuant to a specified trade or national security action is not accorded duty-free entry.” The rulemaking proposals explain that 19 U.S.C. § 1321(b) authorizes the Secretary of the Treasury to limit the availability of the *de minimis* exemption when “necessary for any reason to protect the revenue or to prevent unlawful importations.” CBP’s corresponding regulation (19 C.F.R. § 143.22) provides that CBP may require a formal entry “if deemed necessary for import admissibility enforcement purposes; revenue protection; or the efficient conduct of customs business.” Thus, CBP’s proposals cite ongoing public health emergencies (*i.e.*, the fentanyl crisis) and the agency’s current statutory and regulatory framework in support of the proposed actions. Importantly, in announcing the proposal, CBP stated that the agency “will continue to innovate within our current authorities” but that “[t]o achieve comprehensive *de minimis* reform and trade modernization, we urgently need statutory updates.” Therefore, it is possible that proponents of *de minimis* reform will seek additional legislative changes in Congress.

In addition to improving CBP’s enforcement and revenue protection posture, the proposals published in January recognize the complexities of e-commerce supply chains. Notably, CBP stated that “the U.S. Postal Service (“USPS”) has committed to provide comments as part of the rulemaking record” so that the agency may determine whether “postal shipments can and should be treated differently[.]” If the answer to that question is “yes,” CBP likely would pursue “additional rulemaking tailored to the unique operational and legal characteristics of the international mail environment.” Whether and how CBP and USPS intend to address these potentially overlapping considerations in separate rulemakings remains unclear at this time.

As alluded to above, the proposed rules were published in the closing days of the Biden Administration. On January 20, 2025, President Trump released his “America First Trade Policy,” which directed relevant cabinet members to “assess the loss of tariff revenues and the risks from importing counterfeit products and contraband drugs, *e.g.*, fentanyl, that each result from the current implementation” of the *de minimis* exemption and to “recommend modifications as warranted.” Thus, it is possible that the Trump Administration could take different approaches to *de minimis* reform as a result of the forthcoming trade policy assessments. President Trump also issued a Regulatory Freeze Pending Review on January 20, 2025, and this could impact CBP’s rulemaking process and timeline. Nevertheless, President Trump’s earliest statements on trade policy in his second term indicate that *de minimis* reform is a top priority.

CBP intends to create a new “enhanced entry process” and to impose greater reporting requirements for entering low-value shipments

The Entry of Low-Value Shipments NPRM primarily concerns *de minimis* shipments covered by the administrative exemption under 19 U.S.C. § 1321(a)(2)(C). This NPRM would strengthen CBP’s ability to enforce import admissibility requirements, to enhance revenue protection, and to introduce new data reporting requirements.

THE ENHANCED *DE MINIMIS* ENTRY PROCESS PROPOSAL

The Entry of Low-Value Shipments NPRM proposes a new electronic entry process for *de minimis* shipments. Currently, low-value shipments may enter under the legacy “release from manifest” process or under one of CBP’s more recent voluntary pilot programs—the Section 321 Data Pilot or the Entry Type 86 Test. Under the “release from manifest” process, filers only are required to provide minimal data and CBP contends that this historic approach has limited its ability to identify and interdict high-risk shipments containing contraband, counterfeit goods, or merchandise that raises forced labor concerns.

Through this proposal, CBP intends to revise the “release from manifest” process (renamed as the “basic entry process”) to require additional data elements, such as the name and address of the person who is claiming the exemption and the name and address of the final deliver-to-party (if different from the person that is claiming the exemption).

REQUIREMENTS UNDER THE NEW PROPOSED “ENHANCED ENTRY PROCESS”

CBP’s proposal also would “combine the successful aspects of the Section 321 Data Pilot and Entry Type 86 Test” by creating a new, alternative process for entering low-value shipments, which CBP refers to as the new “enhanced entry process.” CBP intends to leverage automated systems to process low-value shipments, enabling importers to submit all data electronically. The proposed revisions to CBP’s regulations for the new “enhanced entry process” would be set out in a new regulation. Under this new provision, parties would be required to transmit electronically the individual bill of lading (*i.e.*, the “house bill” or equivalent). In addition, parties would need to submit new mandatory data elements, which are set out in two categories: (1) data that must be transmitted for all shipments, regardless of the type of shipment, and (2) data that must be transmitted if it exists for the type of shipment.

PROPOSED MANDATORY DATA ELEMENTS FOR ALL SHIPMENTS:

1. Clearance Tracing Identification Number (*e.g.*, bill of lading or equivalent)
2. Country of shipment
3. 10-digit Harmonized Tariff Schedule of the United States (“HTSUS”) classification number(s)
 - This includes the secondary Chapters 98 and 99 HTSUS codes, where applicable; and
4. At least one of the following:
 - Product URL (Uniform Resource Locator) website address
 - Product picture
 - Product identifier (*e.g.*, Stock Keeping Unit (“SKU”) or part number)
 - Shipment x-ray or foreign security screening report number

PROPOSED ADDITIONAL DATA ELEMENTS REQUIRED FOR CERTAIN TYPES OF SHIPMENTS (AS APPLICABLE):

1. Seller and purchaser names and addresses
2. Advertised retail product description
3. Marketplace name, website, or phone number
4. Partner Government Agency (“PGA”) documents or data, if required

The Entry of Low-Value Shipments NPRM also would require data to be transmitted to CBP in advance of arrival of the shipment, with specific deadlines based on the mode of transportation. In general, the proposals track time frames that currently apply under the advance electronic data (“AED”) regulations. Therefore, CBP notes, “all required information and documentation must be transmitted to CBP through a CBP-authorized EDI system on or before the deadline for receipt of advance cargo information.” Below are the associated deadlines, by mode of transportation:

- **Vessel cargo:** 24 hours before loading at the foreign port.
- **Air cargo:** By aircraft departure or four hours before U.S. arrival (depending on origin).
- **Rail cargo:** Two hours before arrival at the first U.S. port.
- **Truck cargo:** 30-60 minutes before arrival (or less in certain cases).

HTSUS WAIVER PRIVILEGE PROPOSAL

CBP’s proposal also contemplates the availability of a waiver of the requirement to report the 10-digit tariff classification “if the party has documented internal controls that ensure certain compliance measures.” The proposed “waiver is intended for filers with demonstrated capabilities and histories of segmenting out goods subject to [other agency] requirements.” The waiver would only be applicable to the “enhanced entry process” and for goods not subject to other agency import requirements. We anticipate that CBP would release additional guidance on this privilege if it remains in any final rule.

Merchandise subject to Sections 201, 232, and 301 duties would be ineligible for the *de minimis* exemption

The Trade and National Security Actions and Low-Value Shipments NPRM proposes that *de minimis* may not be used for shipments that contain products that otherwise would be subject to additional duties or tariffs under Sections 201, 232, or 301.

This aspect of the proposal would, therefore, treat Trade and National Security tariffs more like antidumping and countervailing duties (for which *de minimis* historically has not been available).

CBP projects the total amount of additional revenue to be collected on merchandise subject to these trade or national security actions ranges between \$5.9 and \$7.8 billion in 2025 and that “failing to collect these duties represents a substantial loss of revenue to the U.S. government.”

OPPORTUNITY TO COMMENT

As noted above, CBP has requested comments from the public. The deadline for comments on the Entry of Low-Value Shipments NPRM is **March 17, 2025**, and the deadline for comments on the Trade and National Security Actions and Low-Value Shipments NPRM is **March 24, 2025**. We anticipate that thousands of comments will be filed by diverse stakeholders.

As referenced above, President Trump’s Regulatory Freeze Pending Review may impact this timetable and other aspects of CBP’s rulemaking process.

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