



March 25, 2024

The Honorable Adrian Smith
Chair, Trade Subcommittee
House Ways and Means Committee
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

The Honorable Earl Blumenauer
Ranking Member, Trade Subcommittee
House Ways and Means Committee
U.S. House of Representatives
1139E Longworth House Office Building
Washington, DC 20515

Re: Impact of Eliminating De Minimis for Low Value Shipments

Dear Chairman Smith and Ranking Member Blumenauer:

E-Merchants Trade Council, Inc. (EMTC) understands that the Subcommittee on Trade of the House Ways and Means Committee will be considering trade legislation, including modification of *de minimis* for low value shipments imported under 19 U.S.C. § 1321.¹ EMTC submits this letter to the Subcommittee on Trade with our estimate concerning the impact of eliminating *de minimis* under the Import Security and Fairness Act (H.R. 4148), would have on e-sellers, most of which are small and medium size businesses, and individuals that ship goods under 19 U.S.C. § 1321.

EMTC was formed in July 2021 to represent the interests of the e-commerce industry by creating a global community of micro, small and medium size enterprise (MSMEs) e-sellers, marketplace platforms, and service providers to resolve trade, tax and transportation challenges. EMTC's advocacy mission is to support national and international policies that simplify cross-border transactions of physical and digital goods. EMTC facilitates dialogue among the E-Merchant worldwide community and global regulators.

Based on CBP's trade data for FY2023², EMTC estimates that eliminating *de minimis* for shipments from China would:

- Significantly increase the total cost of the item with the addition of customs duties, section 301 duties, Merchandise Processing Fee (MPF) and customs brokerage fees to file a customs entry.

¹ At the outset, we note that not all shipments imported under 19 U.S.C. § 1321 are "e-commerce" (*i.e.*, goods ordered online) and vice versa (*i.e.*, not all e-commerce shipments are imported under § 1321 and may be declared as a formal entry and subject to customs duties). Moreover, shipments cleared under § 1321 include returned goods, which by some industry estimates could be as high as 30%.

² Since CBP did not release value information to EMTC for the top 5 countries *de minimis* shipments, EMTC extrapolated the value of *de minimis* shipments from China to be \$31.6 billion based on Chinese shipments comprising 64% of the total volume of *de minimis* shipments. However, EMTC acknowledges that there is usually not a one-to-one (1:1) ratio between value and volume.

- Example: If an e-seller imports an item at \$50 declared value, the e-seller will incur an additional \$61.25 in costs resulting in a total cost of \$111.25 for the item. These additional costs are as follows:
 - \$1.00 in customs duties (based on 2% average *ad valorem* duty rate)
 - \$27.75 in MPF (which is the minimum fee per shipment)
 - \$20.00 in customs brokerage fees to file a formal customs entry
 - The \$50 item may retail for \$75 resulting in a loss for the e-seller.
- Impose an additional cost of **\$111 billion** on e-sellers, calculated based on CBP's FY2023 total declared volume of *de minimis* shipments (*i.e.*, for 1 billion total shipments imported under section 1321). Based on EMTC's value estimate for the 64% of *de minimis* shipments from China, the additional cost would be approximately **\$7.3 billion** for those e-sellers sourcing and consumers purchasing goods from China. This represents over 222% increase in cost of goods sold. Customs duties and fees constitute approximately half (55%) of this amount to cover processing of entries by CBP personnel.

EMTC believes that the estimates listed above are conservative based on the methodology that EMTC has used to extrapolate CBP trade data and the use of minimum costs for duties, fees and customs brokerage fees. Therefore, the actual additional costs if *de minimis* is eliminated for shipments from China or other modifications to 19 U.S.C. § 1321 could be higher than EMTC's estimate above.

Based on U.S. Census Bureau data, EMTC estimates that there are approximately 16.9 million e-sellers in the United States with eight (8) million e-sellers that would qualify as small businesses (with less than 500 employees), and 4.4 million would be considered MSMEs because they have one (1) to four (4) employees. The MSME e-sellers operate on a low profit margin and are extremely cost sensitive to increases in costs regardless of where that cost increases along the supply chain (e.g., customs duties and fees, transportation costs, third-party e-commerce marketplace platform fees, etc.). Therefore, a change in the cost structure for sourcing, importing and shipping either a component or finished product will make it cost prohibitive for MSME e-sellers to offer their products online, engage in global trade or even stay in business due to their lack of pricing power to charge customers more for their goods.

Additionally, since Member States encountered difficulty extending the Moratorium on Customs Duties on Electronic Transmissions during WTO's 13th Ministerial Conference until March 2026, MSME e-sellers face the prospect of paying customs duties on many online business services (*e.g.*, accounting, marketing, etc.) which will increase the overall cost of running their business.

EMTC believes it is imperative for the United States to develop its trade policy (e.g., customs modernization) with simplified international standards as the complexity of import and export processes is the primary trade barrier for MSMEs cross-border shipments. EMTC has proposed simplified trade processes which we would be pleased to discuss. Some of our work is contained in our 21CCF proposal.³

EMTC understands that Congress is very concerned about several issues related to goods imported from China – including fentanyl, goods made with forced labor, and intellectual property rights violations, etc. However, we caution Congress from conflating these issues as synonymous with *de minimis* shipments as

³ See EMTC 21st Century Customs Framework Proposal (Redline Version 2) which can be found at: [https://www.emtc.org/resources/Documents/EMTC%20Proposal%20for%2021st%20Century%20Customs%20Framework%20Version%202020\(06-08-23\).pdf](https://www.emtc.org/resources/Documents/EMTC%20Proposal%20for%2021st%20Century%20Customs%20Framework%20Version%202020(06-08-23).pdf).

they pose challenges to sophisticated multi-national corporations that import goods from China as well. Moreover, we remain concerned that:

- Passage of the Import Security and Fairness Act could conflict with section 101(a)(2) of the Normal Trade Relations for the People's Republic of China legislation providing nondiscriminatory treatment of Chinese products under the extension of normal trade relations. See P.L. 106-285, 114 Stat. 880, 881 (October 10, 2000).
- Elimination of *de minimis* for imports from a specific country would invite similar reciprocal action by foreign countries against U.S. exports. E-commerce is an export platform for MSME e-sellers to offer their products to the 95% of the consumers that reside outside the United States. The European Union plans to eliminate the 150€ *de minimis* for customs duties in its Customs Code Reform Package which will negatively impact U.S. exporters and our balance of trade with the EU.
- Any changes to 19 U.S.C. § 1321 restricting low value imports could have a detrimental impact on MSMEs importing components and tools that are incorporated into a finished product made in the United States and exported for sale to a customer in a foreign country.
- The existing CBP system may not be able to handle 1 billion more entries through the Automated commercial Environment (ACE) since it will several data elements for every shipment which will converted to an entry, which requires a unique identifier (*e.g.*, entry number).

Therefore, we respectfully ask that you carefully weigh the potential impact of modifying 19 U.S.C. § 1321 that EMTC has presented in this letter during your consideration of upcoming trade legislation.

Sincerely,



Marianne Rowden
Chief Executive Officer

cc: House Ways and Means Chair Jason Smith
House Ways and Means Ranking Member Richard Neal
Senate Finance Committee Chair Ron Wyden
Senate Finance Committee Ranking Member Mike Crapo
Senate Finance Subcommittee on International Trade, Customs, and Global Competitiveness
Chair Tom Carper
Senate Finance Subcommittee on International Trade, Customs, and Global Competitiveness
Ranking Member John Cornyn