U.S. LAW INCENTIVIZES OFFSHORING JOBS
&
HINDERS CBP'S ABILITY TO STOP ILLICIT GOODS

America's $800 *de minimis* import allowance has been hijacked:

- duty-free, direct to consumer shipments with limited U.S. Customs and Border Protection ("CBP") oversight have caused e-commerce fulfillment operations to move off-shore, resulting in USA job loss; and,
- bad actors are legally able to skirt Section 301 tariffs, anti-dumping and countervailing duties, bans on products made from forced labor, and regulatory compliance standards issued by partner government agencies (*e.g.* FDA, CPSC, CPSA, USDA, NHTSA, etc.).

Curbing this problem is critical; the Ship Safe Coalition's proposed solution can help!

What is *de minimis* entry?

- An informal customs entry procedure codified under 19 U.S. Code § 1321(a)(2)(C) allowing **duty-free** importation for certain low-value shipments requiring importers provide only minimal information to CBP.

  To be eligible for *de minimis* entry, shipments, must:
  - be valued at **$800 or less;** and,
  - be **directly shipped** to **one buyer, on one day.**
- Eligibility is assessed when the good is **imported** into (physically arrives in) the United States, opposed to **entered** into the U.S. customs territory for consumption.

What are U.S. Foreign Trade Zones ?

- Created by Congress in 1934 to encourage U.S. companies to maintain and expand domestic operations.
- Designated geographical areas in which commercial merchandise is treated as outside the customs territory of the United States.
- FTZ benefits include streamlining logistics, improving compliance controls, increased competitiveness for U.S. manufacturing, reducing certain CBP fees, and quota management, etc.
- In 2020, there were 195 active FTZs in the U.S., encompassing 3,400 companies and employing about 470,000 Americans.

Problem

- Existing law provides economic and administrative advantages to companies who fulfill e-commerce orders from outside of the United States.
- Products shipped from U.S. FTZs are not eligible for *de minimis* entry simply because the word "imported" rather than "entered or withdrawn for consumption" is used in 19 U.S. Code § 1321(a)(2)(C).
- Offshore third-Party Logistics Providers (3PLs) are aggressively advertising *de minimis* benefits to companies engaged in e-commerce, especially those selling products with high duty rates.
- Most foreign warehouses are not regulated or inspected by U.S. CBP.
- *De minimis* shipments go straight to the consumer without any oversight of the contents or its chain of custody.
- Pending legislation to curb sales of counterfeit goods does not address this issue.

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Unintended Consequences

U.S. companies are actively moving and/or expanding e-commerce distribution operations off-shore, primarily just a few miles across the border into Canada or Mexico to take advantage of the duty and time savings advantages offered by *de minimis* entry.

- Foreign job creation at the expense of American jobs is not advertised, but is indeed happening.
- Economic disadvantage continues to widen, as the market continues to shift to e-commerce, creating an existential threat to future e-commerce distribution operations in the United States.

The lack of direct oversight and regulation on offshore e-commerce fulfillment operations hinders CBP's ability to identify counterfeit or illicit goods that pose grave health or safety risks to American consumers.

- CBP estimates in FY2019-FY2020 it processed an estimated **2.3 million** express consignment and international mail shipments **a day**, a **28%** increase from the previous fiscal year, and a 168% increase since FY2013. **90%** of CBP seizures of illegal or fraudulent products were found in express and international mail shipments.

Proposed Solution

The two-tiered solution is simple**.**

1) Make a technical revision to 19 U.S. Code § 1321(a)(2)(C) to **provide *de minimis* eligibility for products shipped from a U.S. based FTZ.**

This will create an equitable landscape for U.S. companies, against duty-advantaged foreign competitors, and eliminate the incentive to move facilities and jobs out of the U.S. Simultaneously, it will help reduce the risk of counterfeit, infringing, and illicit goods from entering U.S. commerce due to CBP's supervision of U.S. FTZs, verses their negligible visibility over goods shipping directly to consumers from warehouses outside the U.S.

Before FTZ operations can commence, companies must submit an application to the Department of Commerce's Foreign Trade Zones Board and demonstrate contribution to the U.S. economy. Once activated, CBP imposes strict regulations and regularly inspects FTZ operations, giving CBP significantly improved ability to identify and monitor products admitted into and withdrawn from U.S.-based FTZs, unlike international distribution facilities with little or no CBP oversight.

2) Require CBP to work with relevant stakeholders to **develop and implement a process to promote *de minimis* entry eligibility for trusted importers**. This concept is already under consideration by CBP based on recommendations from the COAC E-Commerce Committee.

Answers to FAQs

- Proposed change will not increase the volume of *de minimis* shipments, and instead will change where *de minimis* shipments originate.
- Proposed solution requires Congressional action; CBP cannot make the change.
- Detailed data on the volume of *de minimis* shipments is not publicly available, and may not be fully known by CBP.
- Retail trade has changed over the past decade from in-store purchasing to online shopping. In 2020 online retail increased 33% from the previous year, accounting for 14% of total U.S. retail sales. Thus, these problems **do not stem from the increased dollar amount of the *de minimis* threshold.**