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SUMMARY

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Christopher A. Casey
Analyst in International Trade and Finance

Imports and the Section 321 (De Minimis) Exemption: Origins, Evolution, and Use

In 1938, Congress enacted Section 321(a)(2)(C) of the Tariff Act of 1930, (codified as amended at 19 U.S.C. §1321(a)(2)(C)) to authorize the Secretary of the Treasury to waive or reduce certain duties, fees, and other taxes "in order to avoid expense and inconvenience to the Government disproportionate to the amount of revenue that would otherwise be collected" on certain imported goods with a fair retail value in the country of shipment of $1 or less. Congress amended Section 321 several times to raise the threshold, ultimately increasing it to $800 in 2015. This provision is commonly known as the "de minimis" exemption. Although this report discusses the entirety of Section 321, it uses the phrases "de minimis" and "de minimis exemption" exclusively to refer to the exemption provided in Section 321(a)(2)(C).

Congress initially enacted Section 321 in 1938 to improve administrative efficiency and to avoid expense and inconvenience to the government. Beginning in the 1990s, Congress expanded its policy rationale and recast Section 321 as a tool of trade facilitation aimed at reducing transaction costs for businesses and consumers. Two developments were central to this change: First, Congress increased the threshold to a level well in excess of inflation; second, Congress transformed the threshold from a ceiling to a floor. De minimis exemptions also increasingly became the subject of international negotiations, as Congress and successive presidential administrations encouraged trading partners to adopt provisions similar to de minimis in an effort to reduce trade barriers facing U.S. exports.

The number of de minimis entries has increased from 153 million in 2015 to more than 1 billion in 2023. The increased volume of de minimis entries has, according to some Customs and Border Protection (CBP) officials, led to challenges in screening entries for imports that violate U.S. laws and prompted some Members of Congress to introduce bills amending Section 321 in order to, among other things, reduce the volume of small value entries. Some of those who favor Section 321 as currently written, however, have argued that the provision benefits small and medium-sized businesses and U.S. consumers by decreasing the cost of imported goods and reducing the cost to the government of formally processing imported merchandise.

This report provides a history of Section 321, tracing its evolution from a measure to increase administrative efficiency to a tool for trade liberalization. It discusses the various amendments and policy changes to the de minimis exemption over the decades, reflecting shifts in U.S. trade policy and economic priorities. Finally, it highlights emerging concerns and legislative proposals aimed at addressing the challenges posed by the current de minimis framework, including potential reforms to improve import data collection, target high-risk shipments, and balance the benefits of trade facilitation with the effective enforcement of trade laws.

Contents

Figures

Tables

Appendixes

Contacts

Introduction

Millions of foreign packages enter the United States every day.[1] The Department of the Treasury and U.S. Customs and Border Protection (CBP), the agencies primarily charged with administering U.S. tariff policy and regulating imports into the United States, make choices about how to allocate resources to collect tariffs and fees on imports and to screen entries to ensure compliance with U.S. laws and regulations. Section 321(a)(2)(C) of the Tariff Act of 1930, as amended, includes a subsection commonly known as the "de minimis" exemption, which authorizes the Secretary of the Treasury to waive certain duties, fees, and other taxes on certain low-value imports.[2]

Congress enacted Section 321 in 1938 "in order to avoid expense and inconvenience to the Government disproportionate to the amount of revenue that would otherwise be collected."[3] As applied, the provision provides an exemption from certain duties and fees for imports valued below a set threshold. While initially a mechanism designed for the benefit of the government,[4] beginning in the 1990s, many U.S. policymakers proposed using this provision to liberalize trade by expanding the scope of goods eligible for the exemption[5] and encouraging trading partners to adopt similar policies.[6]

In 2015, finding that "[h]igher 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," Congress directed the Secretary of the Treasury to raise the threshold for eligibility under the provision from a minimum of $200 to a minimum of $800.[7] However, by the late 2010s, policymakers, including some Members of Congress, began expressing concerns about the impact of raising the de minimis threshold on the foreign policy, national security, and economy of the United States.[8]

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[1] CBP, E-Commerce, available at https://www.cbp.gov/trade/basic-import-export/e-commerce.

[2] Tariff Act of 1930, P.L. 71-361, 46 Stat. 590 (1930) as added by P.L. 75-721 §7, 52 Stat. 1081 (1938) and subsequently amended, codified as amended at 19 U.S.C. §1321 (2018). Further footnote citations to Section 321, unless used in historical context, will cite to the *U.S. Code*.

[3] Tariff Act of 1930, §321.

[4] Ibid.

[5] For example, Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA), P.L. 114-125 §901, 130 Stat. 122, 223 (2015).

[6] For example, Protocol of Amendment to the International Convention on the Simplification and Harmonization of Customs Procedures, chap. 4.13, June 26, 1999, 2370 U.N.T.S. 27, 56; David Schweikert et al. (59 Members) to United States Trade Representative (USTR) Robert Lighthizer, April 10, 2018: "In 2015, when Congress passed the Trade Facilitation and Trade Enforcement Act, we raised our de minimis level to $800 because we knew that it would provide tremendous benefits to our companies - particularly small business - and their employees. Therefore, we were willing to raise our rate unilaterally, even though others were not doing so at the time. At the same time, we expressed our view that USTR must secure commitments from our trading partners to end these trade barriers and establish commercially meaningful de minimis levels. We welcome USTR's [North American Free Trade Agreement (NAFTA)] negotiating objective to seek de minimis thresholds comparable to the U.S. level. It is critical that USTR and the Administration follow through on this objective during the modernization of NAFTA." See also Megan Cassella, "Lawmakers to USTR: Press NAFTA Countries to Raise De Minimis Standards," *Politico*, April 13, 2018.

[7] TFTEA §901.

[8] For example, Center for Strategic and International Studies, "New Frontiers in UFLPA Enforcement: A Fireside Chat with DHS Secretary Alejandro Mayorkas," July 9, 2024: "[the De Minimis exemption is] built on a false premise that low value means low risk. If anyone here would join us at a facility at one of the airports or one of the mail facilities and watch the assembly line of packages in our screening and see what we discover, it's stunning;" Letter from (continued...)

These changes to the de minimis exemption, along with large increases in the volumes of small packages entering the United States, have renewed debate on the purpose of the de minimis exemption. Some Members of Congress have raised a variety of issues related to the application of the exemption including

- that the de minimis exemption is being applied to imports that would otherwise be subject to additional duties for national security reasons or as the result of a trade dispute;
- that increased volumes of direct-to-consumer shipments made possible, in part, through the de minimis exemption undermine CBP's ability to enforce U.S. customs laws, such as prohibitions on importing narcotics or goods made with forced labor; and
- that the exemption undermines the protection provided by tariffs to certain domestic industries.

This report provides an overview of Section 321's authorities, a legislative history of the provision and its amendments, an analysis of its enforcement, and a survey of related issues that Congress may face.

Overview of Authorities Provided by Section 321

Section 321 provides three separate authorities to disregard or waive certain duties, taxes, or fees. The first authority, Section 321(a)(1), authorizes the Secretary of the Treasury to disregard minor differences between estimated duties and the actual duties assessed.[9] The second authority, Section 321(a)(2), authorizes the Secretary to admit certain goods duty-free.[10] Those goods include gifts sent from abroad (up to $100);[11] goods accompanying persons arriving in the United States (up to $200);[12] and all other kinds of goods (up to $800).[13] This "all others" provision in Section 321(a)(2)(C) is commonly referred to as the "de minimis exemption"[14] and has been the

Representative Christopher Smith, Representative James. P. McGovern, Senator Jeffrey A. Merkley, Senator Marco Rubio to Under Secretary Robert P. Silvers, April 11, 2023: "Finally, we acknowledge that the 'de minimis' importation channel presents a further concern for U.S. ability to enforce the UFLPA….We know that de minimis shipping allows vendors to send materials without having to report basic data, such as country-of-origin and manufacturer, if they claim that the value is under $800, using Section 321 of the Tariff Act of 1930;" Congressional-Executive Commission on China, "Bipartisan Group of Lawmakers Seeks Answers from Administration About Enforcement of Forced Labor Legislation," press release, April 11, 2023; Representative Blumenauer, "Reps. Blumenauer, Dunn, Sens. Brown, Rubio Introduce Legislation to Strengthen American Competitiveness, Close Import Loophole," press release, June 15, 2023: "The de minimis loophole is a threat to American competitiveness, consumer safety, and basic human rights." Legislation has been introduced amending Section 321, for example, H.R. 4148, Import Security and Fairness Act (Blumenauer), June 15, 2023; S. 1969, De Minimis Reciprocity Act of 2023 (Cassidy), June 14, 2023.

[9] 19 U.S.C. §1321(a)(1).

[10] 19 U.S.C. §1321(a)(2).

[11] 19 U.S.C. §1321(a)(2)(A). The threshold is $200 in the case of gifts from persons in the Virgin Islands, Guam, and American Samoa.

[12] 19 U.S.C. §1321(a)(2)(B).

[13] 19 U.S.C. §1321(a)(2)(C).

[14] CBP, "De Minimis Value Increases to $800," press release, March 11, 2016.

subject of increasing public and congressional interest.[15] The third authority, Section 321(a)(3), authorizes the Secretary to waive duties, fees, taxes, and interest up to $20.[16]

Although this report discusses (in varying levels of detail) the entirety of Section 321, it uses the phrases "de minimis" and "de minimis exemption" to refer to the exemption provided in Section 321(a)(2)(C) ("The Secretary of the Treasury….is hereby authorized…to admit articles free of duty…but the aggregate fair retail value … shall not exceed an amount specified by the Secretary by regulation, but not less than … $800."). This report focuses primarily on that subsection. Below is the full text of the current *U.S. Code* entry for Section 321.

SEC. 321
19 U.S.C. 1321 ADMINISTRATIVE EXEMPTIONS

(a) The Secretary of the Treasury, in order to avoid expense and inconvenience to the Government disproportionate to the amount of revenue that would otherwise be collected, is hereby authorized, under such regulations as he shall prescribe, to—

(1) disregard a difference of an amount specified by the Secretary by regulation, but not less than $20, between the total estimated duties, fees, and taxes deposited, or the total duties fees, and taxes tentatively assessed, with respect to any entry of merchandise and the total amount of duties, fees, taxes, and interest actually accruing thereon;

(2) admit articles free of duty and of any tax imposed on or by reason of importation, but the aggregate fair retail value in the country of shipment of articles imported by one person on one day and exempted from the payment of duty shall not exceed an amount specified by the Secretary by regulation, but not less than—

(A) $100 in the case of articles sent as bona fide gifts from persons in foreign countries to persons in the United States ($200, in the case of articles sent as bona fide gifts from persons in the Virgin Islands, Guam, and America Samoa), or

(B) $200 in the case of articles accompanying, and for the personal or household use of, persons arriving in the United States who are not entitled to any exemption from duty under subheading 9804.00.30, 9804.00.65, or 9804.00.70 of this Act, or

(C) $800 in any other case.

The privilege of this subdivision (2) shall not be granted in any case in which merchandise covered by a single order or contract is forwarded in separate lots to secure the benefit of this subdivision (2); and

(3) waive the collection of duties, fees, taxes, and interest due on entered merchandise when such duties, fees, taxes, or interest are less than $20 or such greater amount as may be specified by the Secretary by regulation.

(b) The Secretary of the Treasury is authorized by regulations to prescribe exceptions to any exemption provided for in subsection (a) whenever he finds that such action is consistent with the purpose of subsection (a) or is necessary for any reason to protect the revenue or to prevent unlawful importations.

Administering the U.S. De Minimis Exemption

Section 321 requires the Secretary of the Treasury to provide for de minimis exemptions.[17] The Secretary of the Treasury administers the de minimis exemption through CBP.[18] Customs regulations categorize entries into the United States as "formal" or "informal," with more

[15] See, for example, S. 1969, H.R. 4148; Josh Zumbrun, "The $67 Billion Tariff Dodge That's Undermining U.S. Trade Policy," *Wall Street Journal*, April 25, 2022; Kenneth Rapoza, "How A U.S. Trade Loophole Called 'De Minimis' Is China's 'Free Trade Deal,'" *Forbes*, February 19, 2023; Kevin Freking, "Packages from China are Surging Into the United States. Some Say $800 duty-free Limit Was a Mistake," *Associated Press*, June 24, 2023.

[16] 19 U.S.C. §1321(a)(3).

[17] 19 U.S.C. §1321.

[18] 19 C.F.R. §§10.151-10.153.

procedures, fees, and information required for the former than the latter.[19] De minimis exemptions are a subcategory of informal entry.[20] Whereas goods entering informally may be generally subject to various user fees,[21] goods entering informally under Section 321 are exempt from those fees.[22] Furthermore, de minimis entries require significantly less import documentation than entries that do not claim the de minimis exemption. Importers of qualifying de minimis entries must only present "the bill of lading or a manifest listing each bill of lading."[23] In addition, qualifying goods sent via mail may be released without the submission of any entry form.[24]

The number of de minimis entries processed by CBP increased substantially during the 2010s and early 2020s. From FY2013 to FY2022, the number of de minimis entries processed by CBP increased from approximately 120 million to 685 million, a 470% increase (**Figure 1**). Over that same period, the customs value of all imports (including those over $800) into the United States increased from approximately $2.8 trillion in 2013 to $3.2 trillion in 2022 (in constant 2022 USD), a 14% increase.[25] According to one CBP official, in FY2023, CBP processed more than 1 billion de minimis shipments and was on track to exceed that in FY2024.[26] According to CBP, the

[19] Regulations on the informational requirements for formal entry are codified 19 C.F.R. §142. Informal entry is part of the congressional authorization for CBP to prescribe rules and regulations for the declaration and entry of merchandise valued at less than $2,500. 19 U.S.C. §1498. Informational requirements for informal entry are codified at 19 C.F.R. §143.23(k):

> (k) The following information is required to be filed as a part of [an informal entry] entry made under paragraph (j) of this section:
>
> (1) Country of origin of the merchandise;
>
> (2) Shipper name, address and country;
>
> (3) Ultimate consignee name and address;
>
> (4) Specific description of the merchandise;
>
> (5) Quantity;
>
> (6) Shipping weight; and
>
> (7) Value.

[20] 19 C.F.R. §143.21(l): "The following types of merchandise are among those which may be entered under informal entry: … (l) Shipments of merchandise qualifying for the administrative exemptions under 19 U.S.C. 1321(a)(2)."

[21] 19. U.S.C. §58c; 19 C.F.R. §24.23; CBP, "COBRA Fees to be Adjusted for Inflation in Fiscal Year 2024 CBP Dec. 23-08," 88 *Federal Register* 48900, July 28, 2023.

[22] 19 C.F.R 24.23(c)(1)(v).

[23] 19 C.F.R. §143.23(j): "Except for mail importations…a shipment of merchandise that qualifies for informal entry … may be entered, including the information listed in paragraph (k) of this section, by presenting the bill of lading or a manifest listing each bill of lading when: (3) The value of the shipment does not exceed $800;" 19 C.F.R. §143.23(j):

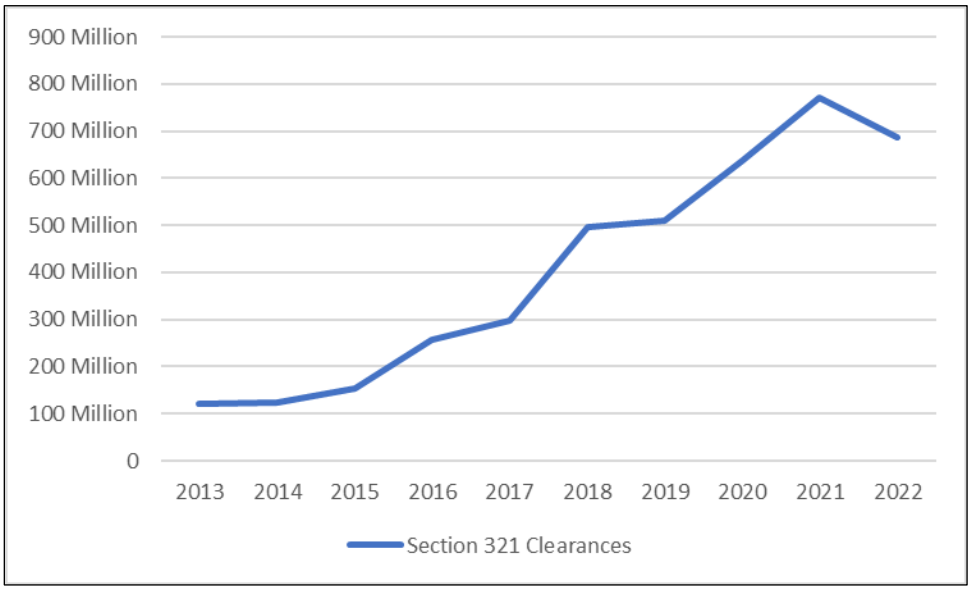
[24] 19 C.F.R. §145.12(d): "Release without entry. Certain types of merchandise may be passed free of duty without issuing an entry;" 19 C.F.R. §145.31: "The port director will pass free of duty and tax, without preparing an entry as provided for in § 145.12, packages containing merchandise having an aggregate fair retail value in the country of shipment of not over $800."

[25] U.S. Census Bureau, Imports for Consumption, Customs Value, 2013-2022; Adjusted using Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers (CPI-U), all items in U.S. city average, all urban consumers, not seasonally adjusted, annual calculation based on average of monthly rates.

[26] CBP, E-Commerce, available at https://www.cbp.gov/trade/basic-import-export/e-commerce; Testimony of Brandon Lord, Executive Director of Trade Policy and Programs, Office of Trade, CBP for a hearing before the House Committee on the Judiciary, Subcommittee on Courts, Intellectual Property, and the Internet, May 7, 2024, p. 2, available at https://docs.house.gov/meetings/JU/JU03/20240507/117252/HHRG-118-JU03-Wstate-LordB-20240507-U6.pdf; See also Center for Strategic and International Studies, "New Frontiers in UFLPA Enforcement: A Fireside Chat with DHS Secretary Alejandro Mayorkas," July 9, 2024: "I think it is – I think we receive 4 million packages a day under the de minimis exception – 4 million packages a day."

average (mean) value of a de minimis shipment in FY2023 was $54, well below the $800 threshold.[27]

Figure 1. Section 321 Entries per Fiscal Year



Source: Customs and Border Protection (CBP).

History of Section 321

Until the first few decades of the twentieth century, U.S. import policy was primarily concerned with generating revenue and protecting certain domestic industries.[28] Until 1913, customs duties were usually the largest source of federal revenue.[29] Because of the importance of customs duties for revenue generation, the Treasury Department was especially concerned about ensuring the cost of assessing and collecting a tariff did not exceed the revenue generated from the tariff. Because of such concerns, the customs service established the practice of waiving duties when, in the opinion of local customs officials, collecting the duty would be an inefficient use of government resources.[30] In 1938, Congress added Section 321 to the Tariff Act of 1930 to authorize that practice.[31] For the next 77 years, the express purpose of Section 321 was to protect

[27] Testimony of Brandon Lord, Executive Director of Trade Policy and Programs, Office of Trade, CBP for a hearing before the House Committee on the Judiciary, Subcommittee on Courts, Intellectual Property, and the Internet, May 7, 2024, p. 2, available at https://docs.house.gov/meetings/JU/JU03/20240507/117252/HHRG-118-JU03-Wstate-LordB-20240507-U6.pdf.

[28] Douglas A. Irwin, *Clashing Over Commerce: A History of U.S. Trade Policy* (Chicago: University of Chicago Press, 2017), p. 2: "US trade policy can be divided into three eras …. In the first era, from the establishment of the federal government until the Civil War, revenue was the key objective of trade policy. In the second era, from the Civil War until the Great Depression, the restriction of imports to protect domestic producers was the primary goal of trade policy. In the third era, from the Great Depression to the present, reciprocal trade agreements to reduce tariff and non-tariff barriers to trade have been the main priority."

[29] Ibid.

[30] U.S. Congress, House Committee on Ways and Means, *Amending Certain Provisions of the Tariff Act of 1930*, report to accompany H.R. 8099, 75th Cong., 1st sess., H.Rept. 75-1429 (Washington, DC: GPO, 1937), p. 3: "This section authorizes existing practices…."

[31] Ibid.

the revenue of the United States by, in the words of Assistant Secretary of the Treasury Chapman Rose, ensuring that customs officials were not "spending a dollar to collect 50 cents."[32] Although some stakeholders always saw Section 321 as a trade liberalizing measure,[33] until 2015 Congress had never explicitly treated it as such.

Although tariffs became a smaller share of revenue over the course of the twentieth century, and the Treasury Department frequently recommended expanding the exemption, Congress did not act on bills expanding the exemption until the early 1990s apparently in part out of concern that doing so could reduce the protection provided by tariffs to domestic producers.[34] But as U.S. policy turned away from using tariffs as protective measures and toward trade liberalization in the closing decades of the twentieth century, Congress responded by increasing the threshold for de minimis exemptions from $5 in 1990, to $200 in 1993, and to $800 in 2015 (**Table 1**). Importantly, in 1993, Congress changed the threshold from a ceiling to a floor, effectively requiring that the Secretary of the Treasury to have a de minimis level of *at least* $200 rather than providing the Secretary discretion to have a de minimis exemption of up to $200. Moreover, in 2015 Congress explicitly expanded the rationale of Section 321, recasting it for the first time as a trade liberalizing measure, stating that it would "provide significant economic benefits to businesses and consumers in the United States and the economy of the United States."[35]

Since its enactment in 1938, Congress has amended Section 321 10 times (**Table 1**). Some of those amendments made minor technical changes;[36] others expanded Section 321's scope or increased the thresholds for certain provisions.[37] The following subsections provide a history of Section 321 as it evolved from a measure intended primarily to promote fiscal efficiency for the benefit and convenience of the U.S. Government to one that was also intended to promote trade for the benefit and convenience of businesses, consumers, and the U.S. economy.

[32] U.S. Congress, House Committee on Ways and Means, Customs Simplification, hearing on H.R. 5106, 83rd Cong., 1st sess., May 27, 28, and 29, 1953 (Washington, DC: GPO, 1953), pp. 46-47.

[33] Frederick J. Kraemer, who appeared before the Committee on Ways and Means on behalf of the Customs Brokers' Association of New York in 1937 described Section 321 as "a new provision, which will abolish the nuisance of paying small duties on values from $1 to $5 and should be very acceptable *to the importing public*." U.S. Congress, House Committee on Ways and Means, Customs Administrative Bill, hearing on H.R. 6738, 75th Cong., 1st sess., May and June 1937 (Washington, DC: GPO, 1937), p. 222, emphasis added.

[34] For example, see U.S. Congress, House Committee on Ways and Means, *Simplification of Customs Administration*, hearing on H.R. 1535, 82nd Cong., 1st sess., August and September 1951 (Washington, DC: GPO, 1951); U.S. Congress, House Committee on Ways and Means, *Customs Simplification Act of 1953*, report to accompany H.R. 5877, 83rd Cong., 1st sess., H.Rept. 83-760 (Washington, DC: GPO, 1953), p. 13.

[35] TFTEA, Title IX, §901(c).

[36] For example, the Omnibus Trade and Competitiveness Act of 1988, P.L. 100-418, Title I, §1214(h)(2), 102 Stat. 1107, 1157 (1988), changed two Tariff Schedules of the United States (TSUS) codes to Harmonized Tariff Schedule of the United States (HTSUS) codes without making any additional changes.

[37] For example, the Customs Simplification Act of 1953, P.L. 83-243, §13, 67 Stat. 507, 515 provided additional authority to admit certain gifts free of duty and modernized the structure of the statute to bring it in line with modern statutory drafting standards.

Table 1. Values for Provisions in Section 321 of the Tariff Act of 1930

Year	Para. (a)(1) (Estimated v. Actual Duties)	Para. (a)(2)(A) (Gifts)	Para. (a)(2)(B) (Arrivals)	Para. (a)(2)(C) (All Others – "de minimis")	Para. 3 (Waiver)	Statute
1938	$1	NA	$5	$1	NA	Customs Administrative Act of 1938, P.L. 75-721, §7.
1953	$3	$10	$10	$1	NA	Customs Simplification Act of 1953, P.L. 83-243, §13.
1961	$3	$10	$10	$1	NA	Act of September 21, 1961, P.L. 87-261, §2(c).
1965	$3	$10	$10	$1	NA	Act of June 30, 1965, P.L. 89-62, §2.
1975	$3	$10 and $20	$10	$1	NA	Trade Act of 1974, P.L. 93-618, §610.
1978	$10	$25 and $40	$25	$5	NA	Customs Procedural Reform and Simplification Act of 1978, P.L. 95-410, §205.
1983	$10	$50 and $100	$25	$5	NA	Act of January 12, 1983, P.L. 97-446, §115.
1988	$10	$50 and $100	$25	$5	NA	Omnibus Trade and Competitiveness Act of 1988, P.L. 100-418, Title I, §1214(h)(2).
1993	$20	$100 and $200	$200	$200	$20	NAFTA Implementation Act, P.L. 103-182, §651.
1996	$20	$100 and $200	$200	$200	$20	Miscellaneous Trade and Tariff Corrections Act of 1996, P.L. 104-295, §3(a)(8), (12).
2015	$20	$100 and $200	$200	$800	$20	Trade Facilitation and Trade Enforcement Act of 2015, P.L. 114-125, Title IX, §901(c).

Source: CRS.

Notes: Table organized by paragraphs as currently codified at 19 U.S.C. §1321. The gifts paragraph provides a higher threshold for goods from the insular territories. Not applicable (NA) in the greyed boxes signify that column provision did not yet exist. The NAFTA Implementation Act added a new paragraph authorizing the Secretary to "waive the collection of duties, fees, taxes, and interest due on entered merchandise when such duties, fees, taxes, or interest are less than $20 or such greater amount as may be specified by the Secretary by regulation."

The Customs Administrative Act of 1938 and the "Efficient and Economical Administration of the Tariff Laws"

Section 321 was not part of the original Tariff Act of 1930.[38] Congress added Section 321 at the request of the Treasury Department[39] to authorize the already existing practice ("which may [have been] of doubtful validity"[40]) of customs officials waiving certain duties, fees, and other taxes when, in their judgment, collecting them would be an inefficient use of government resources.[41] As originally enacted, Section 321 provided the Secretary of the Treasury two specific authorities. First, Section 321 authorized the Secretary to disregard differences of $1 between deposits on estimated duties and duties actually assessed. Second, Section 321 authorized the Secretary "to admit articles free of duty when the expense and inconvenience of collecting the duty…would be disproportionate to the amount of such duty."[42] Congress placed upper limits on the value of the articles eligible for duty-free admission at $5 per person per day for travelers bringing goods into the United States for personal use and $1 per person per day for all other cases.[43] These limits were recommended by the Treasury Department under the Franklin D. Roosevelt Administration as having "been proven by experience to be those which are necessary for efficient and economical administration of the tariff laws."[44]

At the time, these authorities were exercised at the discretion of each customs collection officer based on their assessment of the particular context of an entry.[45] During a hearing on the bill, a Member of Congress asked, "Let us suppose that an individual, residing in the United States,

[38] Tariff Act of 1930, P.L. 71-367, 46 Stat. 590.

[39] U.S. Congress, House Committee on Ways and Means, *Customs Administrative Bill*, hearing on H.R. 6738, 75th Cong., 1st sess., May and June 1937 (Washington, DC: GPO, 1937), p. 1: "The meeting this morning is for the purpose of considering H.R. 6738, introduced by me at the request of the Treasury Department."

[40] This was the assessment of Clinton M. Hester, the Treasury Department's General Counsel:

> This section merely crystallizes into law an existing administrative practice which may be of doubtful validity. This provision will permit collectors of customs to disregard differences of less than $1 between the total duties of taxes deposited or tentatively assessed and the total amounts actually accruing.

U.S. Congress, *Customs Administrative Bill*, hearing on H.R. 6738, p. 64.

[41] Customs Administrative Act of 1938, P.L. 75-721, §7, 52 Stat. 1077, 1081 (1938); U.S. Congress, House Committee on Ways and Means, *Amending Certain Provisions of the Tariff Act of 1930*, report to accompany H.R. 8099, 75th Cong., 1st sess., H.Rept. 75-1429 (Washington, DC: GPO, 1937), p. 3:

> This section authorizes existing practices under which collectors of customs disregard differences of less than $1 between the total duties or taxes deposited or tentatively assessed and the amount of duties actually accruing. It also gives collectors discretionary authority to admit articles free when the expense and inconvenience of collecting duty would be disproportionate to the amount of such-duty, but not exceeding $5 worth of goods in any one day in the case of articles accompanying, and for the personal or household use of, persons arriving in the United States or $1 in any other case. This is in accord with the present practice.

U.S. Congress, *Customs Administrative Bill*, hearing on H.R. 6738, p. 64.

Frederick J. Kraemer, who appeared before the Committee on Ways and Means on behalf of the Customs Brokers' Association of New York stated that Section 321 was "a new provision, which will abolish the nuisance of paying small duties on values from $1 to $5 and should be very acceptable to the importing public." U.S. Congress, *Customs Administrative Bill*, hearing on H.R. 6738, U.S. Congress, *Customs Administrative Bill*, hearing on H.R. 6738, p. 222.

[42] Tariff Act of 1930 as amended by the Customs Administrative Act of 1938 §7.

[43] Ibid.

[44] U.S. Congress, *Customs Administrative Bill*, hearing on H.R. 6738, pp. 132-133.

[45] Ibid., p. 65.

crosses the Canadian line, and returning from Canada brings in let us say $4.75 worth of English china. Would that apply here?"[46] The Treasury Department's General Counsel replied, "That would depend on the discretion of the collector as to whether or not it should be admitted free […]. If he felt that this man was going back and forth daily and bringing this in, and selling it, [the collector] would prohibit [the entry …]. The collectors keep card indexes to guide them in the exercise of their discretion."[47] Put another way, Section 321 was not implemented as a tool to assist importers or promote trade, but as a tool of administrative efficiency for the benefit of the government.[48] If a flood of entries under the provision risked the revenue of the United States, customs officers were free to subject any entry to duty at their discretion.

The Customs Simplification Act of 1953 and Concerns About Mail-Order Business

In the early 1950s, Congress considered several proposals to raise the de minimis exemption as part of broader customs simplification efforts. However, due to concerns about the expansion of direct-to-consumer mail-order business, Congress ultimately decided not to raise the exemption. Many of the same concerns raised during the hearings and debates over increasing the exemption would ultimately arise again in the early 2020s.

In 1948, the management research consulting firm McKinsey and Company completed a comprehensive management survey of the Customs Bureau undertaken at the request of the Treasury Department.[49] The massive survey, which spanned nine volumes, would be referenced for decades during debates over customs modernization.[50] Following the survey, the Treasury Department under the Harry S Truman Administration implemented many of McKinsey's recommendations through regulation, but some required statutory modifications—including the proposed increase of the de minimis exemption.

In its report, McKinsey observed that, just as before the enactment of Section 321, practices had again developed in certain ports of entry and post offices to handle the ever-increasing number of packages arriving by mail that were of dubious legality.[51] For example, one post office in New York allowed packages valued at less than approximately $5 that had duties assessed of less than approximately $1 to enter duty-free.[52] As the McKinsey report noted, there was no law or regulation that authorized this practice but that "to do otherwise would be completely impractical."[53] Specifically, the report claimed that if the more than a million foreign packages passing through post offices annually were entered formally, "the Customs Service would have to

[46] Ibid.

[47] Ibid.

[48] Tariff Act of 1930 as amended by the Customs Administrative Act of 1938 §7: "[The Secretary of the Treasury may] admit articles free of duty when the expense and inconvenience of collecting the duty accruing thereon would be disproportionate to the amount of such duty."

[49] Management Survey of the Bureau of Customs, Department of the Treasury, January 1948, McKinsey and Company, Bureau of Customs Organization and Management Study, 1963–1968, General Records of the Department of the Treasury, Record Group 56, Entry Number A1/887, National Archives and Records Administration, College Park, MD, NAID: 624901 (Stack 450, Row 60, Compartment 2-3, Shelf 1, Boxes 7-9) [hereinafter McKinsey Study].

[50] McKinsey Study. The study from 1948 was archived as part of records from 1963-1968, where it was referred to in later efforts to reform the administration of customs. See also, for example, U.S. Congress, House Committee on Government Operations, *Law Enforcement on the Southwest Border*, hearing, 93rd Cong., 1st sess., July and August 1974 (Washington, DC: GPO, 1974), p. 31.

[51] McKinsey Study, pp. III-44-45.

[52] Ibid.

[53] Ibid.

multiply by several times the number of persons currently assigned to this work [and] the facilities available for handling the job would not be adequate."[54] Because the estimated cost of handling each mail transaction was $1.59, McKinsey recommended that the de minimis exemption be raised from $1 to $10, provided that duties and taxes on that item did not exceed $3, noting that this would "only recognize and extend [existing practices]."[55]

In 1951, the Chairman of the House Committee on Ways and Means, at the request of the Secretary of the Treasury, introduced a bill to provide statutory authorization for some of the McKinsey report's recommendations.[56] The proposed changes in the bill included increasing the de minimis exemption to a more "realistic level"[57] of $10 "if the articles are intended for the personal or household use of such individual and not for sale, or $5 in any other case."[58] In its analysis, the United States Tariff Commission[59] estimated that although the change might result in some loss of revenue, "most of these losses would probably be counter balanced by the reduction in the cost of collecting the duties on the articles covered by the exemptions."[60] In addition, the Commission noted:

> [T]he purpose of the exemption is declared to be to avoid expense and inconvenience to the Government disproportionate to the amount of revenue that would otherwise be collected and that the Secretary of the Treasury is authorized to reduce the amounts specified in the section and to make exceptions from any exemption provided for in the section whenever he finds that such reductions or exceptions are necessary to protect the revenue or to prevent unlawful importations. This would appear to be a necessary control mechanism to prevent, for example, the development of large mail-order business in articles of small value but which would (if permitted free entry) involve a substantial diminution in the protective incidence of the tariff.[61]

During a September 1951 hearing on the bill before the Committee on Ways and Means, U.S. Representative John W. Byrnes asked Philip Nichols, Jr., Assistant General Counsel for the Treasury Department, whether the expanded Section 321 would "lead to a mail-order business on items that run under ten dollars?"[62] Nichols replied that the Treasury Department believed "there might be a mail-order business that will spring up on some items," particularly for items "dutiable at a fairly high rate that are produced in Europe that are in demand by our citizens here, such as woolens ... "[63] But, Nichols asserted, Section 321 authorized the Secretary to change the de minimis thresholds if necessary to protect the revenue, "if the revenue is being depleted, by the springing up of mail-order business on items that are ordinarily dutiable, it would be the Secretary's duty to act under this section and diminish the exemptions or provide exceptions."[64] When pushed further by Representative Byrnes, Nichols argued that the amendment sought to accomplish three goals:

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[54] Ibid.

[55] Ibid., p. III-45.

[56] U.S. Congress, *Simplification of Customs Administration*, hearing on H.R. 1535, p. 1.

[57] Ibid., p. 15.

[58] Ibid., p. 228, 19-20: "The object of the amendment is the same as that of the original section. It is based on a recommendation of the McKinsey survey (Management Survey of the Bureau of Customs, vol. III, pp- 40-44). It is necessary in order to minimize the cost of administering the customs service."

[59] Now known as the U.S. International Trade Commission.

[60] U.S. Congress, *Simplification of Customs Administration*, hearing on H.R. 1535, p. 228.

[61] Ibid., pp. 228-229.

[62] Ibid., p. 122.

[63] Ibid., p. 122.

[64] Ibid., p. 123.

> You have got to minimize the waste of Customs time and effort on small-value shipments; you have got to protect the revenue; and you have some incidental benefit to some of the dollar-short countries from their being able to open up some new lines of business that result from this section. Certainly, it would be consistent with our international monetary policy and maybe help those countries again to get on their feet financially. This thing would probably be very small in its effect along those lines, however.[65]

Despite the statute's explicit focus on revenue, Nichols admitted that the Truman Administration saw the proposed amendment to Section 321 as useful (at least incidentally) to U.S. monetary policy by encouraging U.S. imports of products from dollar-short European countries to remedy a balance of trade problem that threatened U.S. exports to the region.[66] That is, the Administration did not see the expansion of mail-order business in Europe as necessarily opposed to the interests of the United States.

The Committee on Ways and Means did not agree with the Truman Administration's policy. In its report on a revised bill, the Committee stated its desire "that the Secretary of the Treasury shall exercise his authority [to adjust the de minimis threshold…] in such a manner that the section will not be subjected to abuses by mail-order businesses engaging in the direct shipment of dutiable articles to purchasers in the United States."[67] The House passed the bill shortly after it was reported out of committee.[68]

When the Senate Finance Committee held its hearing on customs modernization in April 1952, discussion of the de minimis provision proved to be particularly contentious. Entered into the record were dozens of letters from U.S. manufacturers and retailers objecting in particular to the proposed increase to the administrative exemption and the potential for the establishment of direct-to-consumer mail order business.[69] Several witnesses also expressed their concern about the impact of the proposed changes to Section 321. P. Irving Grinberg, executive vice chairman of the Jewelers Vigilance Committee, directed almost all of his remarks to opposing the changes to the de minimis exemption.[70] In his testimony, Grinberg brought in advertisements from the *New*

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[65] Ibid., p. 124.

[66] Ibid., p. 124. The Harry S. Truman Administration expressed concern over the "dollar gap" with European countries. In February 1950, then-Secretary of State Dean Acheson advised the President that if the dollar gap were not addressed, "United States exports, including the key commodities on which our most efficient agricultural and manufacturing industries are heavily dependent, will be sharply reduced, with serious repercussions on our domestic economy." He went on to state, "[the dollar gap] is of such importance and size that I believe the whole machinery of government must be brought into play if we are to achieve success in solving it." "Memorandum by the Secretary of State to the President," February 16, 1950, *Foreign Relations of the United States*, 1950, National Security Affairs; Foreign Economic Policy, Volume I, eds. Neal H. Petersen, et al. (Washington, DC, Government Printing Office, 1977), Document 299, p. 834.

[67] U.S. Congress, House Committee on Ways and Means, Report to Accompany H.R. 5505, 82nd Cong., 1st sess., October 1, 1951, H.Rpt. 82-1089 (Washington, DC: GPO, 1951), p. 13.

[68] House debate, *Congressional Record*, vol. 97, part 9 (October 1, 1951), p. 12441 (reported); House debate, *Congressional Record*, vol. 97, part 10 (October 15, 1951), pp. 13174-13185 (passed); U.S. Congress, Senate Committee on Finance, *Customs Simplification Act*, hearings on H.R. 5505, 82nd Cong., 2nd sess., April 1952 (Washington, DC: GPO, 1952), p. 203: "The Jewelers Vigilance Committee did not learn of the proposal to raise the level from $1 to $10 on duty-free mail shipments until January 1952, after H. R. 5505 had been passed by the House. Otherwise, protests certainly would have been filed with the House Ways and Means Committee along the lines now presented to you."

[69] U.S. Congress, *Customs Simplification Act*, hearings on H.R. 5505, pp. 34-35. For a list of witnesses expressing concern about mail-order business, see Table A-1.

[70] Ibid., pp. 203. At the start of his remarks, Grinberg noted, "The Jewelers Vigilance Committee did not learn of the proposal to raise the level from $1 to $10 on duty-free mail shipments until January 1952, after H. R. 5505 had been passed by the House. Otherwise, protests certainly would have been filed with the House Ways and Means Committee along the lines now presented to you."

York Times and *Life Magazine* from British companies advertising goods for sale directly to American consumers, taking note of the high cost of placing these advertisements, Grinberg observed:

> From a business standpoint, it would seem that foreign concerns spending large sums for advertising expect a considerable volume of business, notwithstanding the fact that in each instance the duties to be paid are mentioned. Undoubtedly, this type of business would be multiplied many times were firms enabled to use the slogan 'Duty free on shipments up to $10.'[71]

Of the witnesses and statements for the record, one expressed support for the provision; the Air Transport Association of America claimed the amendment would "relieve both the Customs and members of the public from red tape which is more expensive than the revenue which it secures."[72]

One witness, John G. Lerch, previously employed in the Office of the Assistant Attorney General in Charge of Customs, was particularly critical of the Treasury Department's proposed increases to exemption in Section 321:

> [The representative from the Treasury Department] said the only reason why he wanted [the increase in the administrative exemption] was that the cost of administering it was far greater than the amount of revenue. Well, that seems a rather inane reason to me, because revenue from customs has long since ceased to be any material part of the budget.[73]

In response, Senator Robert S. Kerr, somewhat rhetorically, asked Lerch, "Is it not the fact that the cost of enforcing laws against petty larceny often exceeds the amount of the stolen article… But it would hardly be an argument to favor repeal of the laws against petty larceny, would it?"[74]

In addition to concerns about mail-order business, witnesses raised other concerns. For example, a representative of the American Association of Nurserymen, for example, claimed that partner government agencies (PGAs) would be unable to properly inspect packages that fell under their jurisdiction:

> The practical effect of the [increased] exemption […] would be to permit large quantities of shipments of plant materials from foreign countries direct to the consumer in this country via international parcel post and by both air and ship. The result would be that the United States Department of Agriculture would fail to intercept large numbers of these very small shipments, and if they did intercept them all, the personnel would not be adequate to take care of the task involved in inspection and fumigation at the ports of entry. This would result, we feel, in reducing the effectiveness of our international plant-quarantine procedure and would eventually result in the introduction and establishment of plant pests, both insects and diseases, not now known to exist or not widely distributed in the United States.[75]

No Senator spoke in favor of the exemption during the hearing, and the bill ultimately stalled in the Senate. Many of the aforementioned concerns raised in the course of the debate would arise again in the years around 2020 ("Emergent Concerns").

[71] Ibid., p. 205.

[72] Ibid., p. 103.

[73] Ibid., p. 166.

[74] Ibid.

[75] Ibid., p. 192.

The next year, in 1953, the Treasury Department under the Eisenhower Administration tried again, and changed its recommended modifications to Section 321 substantially.[76] Instead of $10, Treasury asked that the de minimis exemption be set at $3. In addition, Treasury requested the creation of a new distinct category for gifts sent from abroad to persons in the United States, "in order to alleviate the great administrative burden experienced by customs at Christmas time."[77]

Then-Assistant Secretary of the Treasury Chapman Rose, when asked about the provision, stated specifically that the increase to $3 was intended as a ceiling. Rose further noted that the Treasury Department intended to impose additional regulations should there be a surge in commercial use of the de minimis exemption[78] as the proposed provision, he added, "is not intended as a commercial provision to foster types of business growing up based on this $3 exemption."[79] Emphasizing that de minimis was in place for the convenience of the government,[80] Rose noted as well that regulations could vary by port of entry and situation, with discretion vested in individual customs collectors and the Secretary of the Treasury.[81] One Senator asked, "This section…does not mean that a person can be certain that if he brings in an article not exceeding $10 in value that no duty will be levied?" to which Secretary Rose replied, "That is correct."[82]

Despite such assurances, several witnesses expressed their concern that $3 was still too high[83] and "the increase in the exemption would result in tremendous growth of foreign mail-order business, offering substantial savings to customers on a myriad of important products that would be duty free, excise tax free, and sales tax free."[84] As another witness put it, "I can assure you that this provision will annually make simple the free importation of millions of dollars' worth of

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[76] U.S. Congress, House Committee on Ways and Means, *Customs Simplification*, hearings on H.R. 5106, 83rd Cong., 1st sess., May 27, 28, and 29, 1953 (Washington, DC: GPO, 1953), p. 7.

[77] Ibid., p. 32.

[78] Ibid., p. 38:

> I think we contemplate the $3 exemption as one for the purpose of taking care of the sporadic spot transaction, rather than one under which we would look forward to having a mail-order business founded based on that $3 exemption. We would want to explore the possibility, if any developments of that kind occurred with large commercial aspects to them, of preventing that kind of thing by regulation. That is the purpose of not making it a flat exemption, but providing for regulatory authority below the $3 limit in the Secretary of the Treasury.

[79] Ibid., p. 45.

[80] Ibid., p. 47:

> There was concern about the commercial effect of the exemptions, and it was thought that concern might be somewhat allayed by a clear statement of the philosophy of this, which is, as I put it, not spending a dollar to collect 50 cents, and not a blanket 10-10-3 exemption, but simply a means given to the Treasury to avoid unduly expensive procedures which were not compensated for by the revenue collected.

[81] Ibid., p. 46:

> Mr. Rose: … The two ways in which this discretion would be exercised, and I think this is true now, would be first by broad regulations published by the Secretary of the Treasury in usual form, which would put people on notice as such regulations now do, and the other is local determinations to take into account the variety of local conditions that I understand exist in various border situations. That is true now. I do not believe that it is causing uncertainty or hardship. Collectors at different parts of the border by reason of different local commercial situations have adopted and are enforcing different sets of rules regarding the $5 and $1 exemptions which now exist. So I do not think we are running into any new area of uncertainty or capriciousness here.

[82] Ibid., p. 46.

[83] Ibid., pp. 56, 64, 94, 97.

[84] Ibid., p. 56.

merchandise to the displacement of many times that value of American made merchandise."[85] Such an increase in volumes, another witness argued, would make it impossible for partner government agencies (PGA), like the U.S. Department of Agriculture, to properly inspect shipments of goods that fell into their jurisdiction.[86]

Later that year, Congress passed the Customs Simplification Act of 1953.[87] The act modernized Section 321's statutory structure (providing lettered and numbered paragraphs and subparagraphs). In addition to raising the ceiling for the exemption on goods brought by travelers for personal use, Congress created a new distinct category for gifts sent from abroad to persons in the United States.[88] Congress opted not to raise the ceiling on the "all others" de minimis provision (**Table 1**).[89] Congress also declared that duty-free treatment was not available in cases where a single order was broken up into multiple shipments.[90] The stated purpose of the statute remained avoiding "expense and inconvenience to the government disproportionate to the amount of revenue that would otherwise be collected."[91] In its report on the amendment, the Ways and Means Committee again noted that Section 321 was "intended to avoid dissipating customs manpower in assessing and collecting duties in trivial amounts." However, the Committee added that this was to be done, "without reducing the protection afforded to domestic producers."[92]

Customs Procedural Reform and Simplification Act of 1978 and Adapting to Inflation in the 1970s

The 1970s were a period of rapid inflation (**Table 2**);[93] and by the late 1970s, that inflation had rendered much of Section 321, but particularly the de minimis exemption, ineffective, leading Congress to increase the de minimis exemption for the first time. During the Carter Administration, then-Commissioner of Customs stated in testimony before the House Committee on Ways and Means:

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[85] Ibid., p. 65.

[86] Ibid., p. 95:

> It is our judgment that a large percentage of these duty-free packages containing plant materials would never be intercepted by the port-of-entry inspectors for inspection and fumigation. The result would be inevitably the virtual revocation of the international nursery stock, seed, and plant quarantine to the eventual disadvantage of American agriculture, horticulture and forestry… Instead of saving money, [the increase in de minimis] might well result in permanent losses to our natural resources.

[87] Customs Simplification Act of 1953, P.L. 83-243, 67 Stat. 507 (1953).

[88] U.S. Congress, *Customs Simplification*, hearing on H.R. 5106, p. 32: This provision, according to the Assistant Secretary of the Treasury, would "alleviate the great administrative burden experienced by customs at Christmas time."

[89] Customs Simplification Act of 1953, §13.

[90] Ibid.: "The privilege of this subdivision shall not be granted in any case in which merchandise covered by a single order or contract is forwarded in separate lots to secure the benefit of this subdivision." This provision was included despite Assistant General Counsel Philip Nichols, Jr.'s warning that such a provision was effectively unenforceable. U.S. Congress, *Simplification of Customs Administration*, hearing on H.R. 1535, p. 124: When asked "How often could an individual use these $10 exemptions?" Nichols replied, "As to mail entries, there is no provision in the bill for any specified number of times. You could not enforce such a provision if there were one."

[91] Tariff Act of 1930 as amended by the Customs Simplification Act of 1953.

[92] U.S. Congress, *Customs Simplification Act of 1953*, report to accompany H.R. 5877, p. 13.

[93] Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers (CPI-U), all items in U.S. city average, all urban consumers, not seasonally adjusted; Robert J. Samuelson, *The Great Inflation and its Aftermath* (New York: Random House, 2008); Allan H. Meltzer, *A History of the Federal Reserve*, vol. 2, book 2 (Chicago: University of Chicago Press, 2003) chap. 7.

> The inflation which has occurred over the past few years has made the dollar limitations imposed by section 321 of the Tariff Act of 1930, as amended, unrealistic. Since the express purpose of section 321 is to create a balance between administrative costs and revenue collected, it is imperative that the dollar limitations be raised to accomplish this purpose.[94]

The equivalent of $1 in 1938, when the de minimis ceiling had last been set, had inflated to $4.63 by 1978 (**Table 2**). In 1977, the Commissioner recommended raising all the thresholds in Section 321 and increasing the de minimis threshold to $5.[95] Doing so would benefit the Government, in the opinion of the Commissioner, because "the cost of collecting the duty exceeds the amount collected; hence available resources could be put to more effective use." It was estimated that raising the ceilings on all Section 321 exemptions would result in a loss of an estimated $4 million in revenue, which would be offset by an estimated savings of $7 million in collection costs.[96]

Unlike in the early 1950s, when proposals to raise the de minimis ceiling were met with protests from various domestic interests, in the late 1970s, the proposal seemed relatively uncontroversial. There is little record of substantial stakeholder or congressional engagement with the issue. Following Treasury's suggestion, Congress legislatively raised the de minimis ceiling for the first time in nearly four decades. By raising the ceiling to $5, Congress returned the exemption, in adjusted terms, to approximately the level it had been in 1938 (**Table 2**).

The Customs Modernization Act, the Trade Facilitation and Trade Enforcement Act (TFTEA), and the Changing Purposes of Section 321

Globalization is a term that denotes processes associated with global social, cultural, economic, and political integration. These processes of integration are shaped significantly by policy choices and are neither even nor unidirectional.[97] The period between 1914 and the late 1960s was one often described as a period of deglobalization.[98] The period following the 1970s, has conversely

[94] U.S. Congress, House Committee on Ways and Means, Subcommittee on Trade, *Customs Procedural Reform Act of 1977*, hearings on H.R. 8149 and 8222, 95th Cong., 1st sess., July 19, 20, 21, and 22, 1977 (Washington, DC: GPO, 1977), p. 54.

[95] Ibid.

[96] U.S. Congress, Senate Committee on Finance, *Customs Procedural Reform and Simplification Act of 1978*, report to accompany H.R. 8149, 95th Cong., 2nd sess., H.Rept. 95-778 (Washington, DC: GPO, 1978), p. 29.

[97] Kevin H. O'Rourke and Jeffrey G. Williamson, *Globalization and History: The Evolution of a Nineteenth Century Atlantic Economy* (Cambridge, MA: MIT Press, 1999), pp. 1-2: "[I]t was all policy alone … that accounted for the segmentation of world commodity and factor markets at the end of World War II."

[98] With the outbreak of the First World War in 1914, the world sank into decades of conflict and depression. International trade, migration, and investment collapsed as policy changes increasingly favored economic independence over interdependence. See Harold James, *The End of Globalization: Lessons from the Great Depression* (Cambridge, MA: Harvard University Press, 2009), p. 1; O'Rourke and Williamson, *Globalization and History*, pp. 1-2; Tara Zahra, *Against the World: Antiglobalism and Mass Politics Between World Wars* (New York: Norton, 2023).

often been described as a period of globalization;[99] and by the 1990s, global trade reached levels not seen since 1914.[100]

This expansion of trade was driven by policies aimed at liberalizing trade. Since 1947, the United States and many of its major trading partners in Europe had held a series of multilateral trade negotiations under the General Agreement on Tariffs and Trade (GATT).[101] Over the next several decades, tariffs amongst GATT contracting parties fell,[102] and the number of contracting parties to the GATT increased, reaching 128 by 1994.[103] As tariffs fell globally, the focus of trade negotiations turned toward reducing non-tariff barriers to trade—such as government procurement regulations and customs formalities.[104]

Around the turn of the millennium, policymakers began recasting the de minimis exemption as a trade liberalization tool. Two developments were central to this change: First, Congress increased the threshold to a level well in excess of inflation; second, Congress transformed the threshold from a ceiling to a floor.

In 1993, Congress enacted Title VI of the North American Free Trade Agreement (NAFTA) Implementation Act, commonly known as the Customs Modernization Act (Mod Act).[105] As part of the Mod Act, Congress increased the value of goods that could qualify for de minimis treatment from $5 to $200 (**Table 1**).[106] Since its enactment in 1938, Section 321's "all others" de minimis provision consistently had the lowest threshold for goods to qualify for the exemption (**Table 1**). But in 1993, Congress gave the "all others" the same threshold as goods accompanying persons entering the United States and gifts sent from U.S. territories.[107] In its report, the House Ways and Means Committee stated that the increased thresholds were "necessitated by inflation and the substantial increases in passenger arrivals and low-value entries," noting that "[t]he current amounts are not sufficiently high for the statutorily stated goal of limiting expense to the

[99] Daniel Sargent, "The United States and Globalization in the 1970s," in Charles Maier et al., eds., *The Shock of the Global: The 1970s in Perspective* (Cambridge, MA: Harvard University Press, 2011), p. 52: "the [1970s] brought a resurgence of long-term globalizing patterns among the nations of the advanced capitalist world. This came after a forty-year hiatus, from the late 1920s to the late 1960s, during which nation-states had appeared, especially in their political-economic lives, to be moving toward increasingly autonomous and self-determining futures. The birth pangs of a new era of globalization in the 1970s bequeathed a new order of challenge for the United States;" Judith Stein, *Pivotal Decade: How the United States Traded Factories for Finance in the 1970s* (New Haven, CT: Yale University Press, 2010).

[100] Stephen Broadberry and Kevin H. O'Rourke, *The Cambridge Economic History of Modern Europe*, vol. 2 (Cambridge: Cambridge University Press, 2010), p. 100; Richard Baldwin and Philippe Martin, "Two Waves of Globalization," NBER Working Paper No. 6904 (1999), p. 1: "[…] in some ways, the world of 1914 was more tightly integrated than ours is today."

[101] General Agreement on Tariffs and Trade (GATT), October 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194.

[102] Chad P. Bown and Douglas A. Irwin, "The GATT's Starting Point: Tariff Levels Circa 1947," NBER Working Paper 21782, December 2015, p. 21.

[103] John H. Barton *et al*., *The Evolution of the Trade Regime: Politics, Law and Economics of the GATT and the WTO* (Princeton: Princeton University Press, 2006), pp. 153, 160-161; WTO, "The 128 countries that had signed GATT by 1994," available at https://www.wto.org/english/thewto_e/gattmem_e.htm.

[104] For example, the (Tokyo Round) Agreement on Technical Barriers to Trade, April 12, 1979, GATT, BISD, 26/S 8, 18 I.L.M. 1079 (1979); Agreement on Import Licensing Procedures, April 12, 1979, GATT, BISD, 26/S 8 (1979); Agreement on Government Procurement, April 11, 1979, GATT, BISD, 26/S 8, 18 I.L.M. 1052 (1979). John H. Barton *et al*., *The Evolution of the Trade Regime*, p. 56: "While the early years were dominated by the need to reduce tariff schedules, since the 1970s the key issues undermining trade liberalization have been regulatory."

[105] Customs Modernization Act (Mod Act), Title VI of the North American Free Trade Agreement (NAFTA) Implementation Act, P.L. 103-182, §651, 107 Stat. 2057, 2209 (1993).

[106] Mod Act, §651.

[107] Ibid.

Government disproportionate to the revenue that is collected."[108] However, unlike in 1978, when the increase was closely aligned with inflation, the increases to de minimis and Section 321's other provisions in 1993 were well in excess of inflation. An adjustment for inflation at the time would have placed the level closer to $10 (**Table 2**).

Table 2. Inflation-Adjusted Values for Thresholds Specified for Section 321(a)(2)(C), "De Minimis"

Year	$1 in 1938	$5 in 1978	$200 in 1993	$800 in 2015
1938	$1.00			
1953	$1.90			
1961	$2.12			
1965	$2.23			
1975	$3.82			
1978	$4.63	$5.00		
1983	$7.07	$7.63		
1988	$8.39	$9.06		
1993	$10.25	$11.07	$200.00	
1996	$11.13	$12.02	$217.16	
2015	$16.81	$18.17	$328.15	$800.00
2023	$21.62	$23.35	$421.85	$1028.46

Source: CRS, based on *U.S. Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, by expenditure category.* The data include all urban consumers, not seasonally adjusted, annual calculation based on average of monthly rates.

Notes: The table is organized around the original value specified for the "all others" category in Section 321 of the Tariff Act of 1930, as amended in 1938, and subsequent amendments to that value in 1978, 1993, and 2015.

In addition to raising the thresholds, Congress fundamentally changed the language of the statute to further make it a tool useful for trade liberalization by essentially requiring that the Secretary provide de minimis treatment. Prior to 1993, Section 321(a)(2) authorized the Secretary of the Treasury to "admit articles free of duty" but provided that the "aggregate value of articles imported by one person on one day and exempted from the payment of duty *shall not exceed*" the set value for each provision.[109] The Mod Act struck out "shall not exceed" and inserted "shall not exceed an amount specified by the secretary by Regulation, *but not less than*" the set value for each provision.[110] The language change made the values established in Section 321 into floors rather than ceilings.[111] Prior to 1993, Congress had authorized the Secretary of the Treasury to provide duty-free treatment for certain goods with values up to $5 with discretion to go lower. In the Mod Act of 1993, Congress reversed its prior delegation, requiring the Secretary to provide

[108] U.S. Congress, House Committee on Ways and Means, *North American Free Trade Agreement Implementation Act*, report to accompany H.R. 3450, 103rd Cong., 1st sess., H.Rept. 103-361 Part I (Washington, DC: GPO, 1993), pp. 144-145.

[109] Section 321 of the Tariff Act of 1930, as amended prior to the Mod Act (all amendments through the Omnibus Trade and Competitiveness Act of 1988, P.L. 100-418, Title I, §1214(h)(2), 102 Stat. 1107, 1157 (1988)) (emphasis added); 19 U.S.C. §1321 (1992) (emphasis added).

[110] Mod Act, §651.

[111] Ibid.

duty-free treatment for certain goods valued up to $200 with discretion to go higher.[112] Congress left unchanged Section 321(b), which authorized the Secretary to reduce or modify the exemption if such a modification was either "consistent with the purpose of [Section 321(a)]" or "necessary for any reason to protect the revenue or to prevent unlawful importations."[113]

In the decades following the Mod Act, U.S. policymakers continued recasting the de minimis exemption as a tool of trade liberalization. Whereas the Mod Act's amendments to de minimis implicitly altered the nature of Section 321, in 2015, Congress made that alteration explicit in the Trade Facilitation and Trade Enforcement Act (TFTEA).[114] Although Section 321 still indicated that authority in Section 321 was provided to "avoid expense and inconvenience to the *Government*," Congress explicitly expressed in TFTEA that Section 321 was from then on intended to benefit businesses, U.S. consumers, and the U.S. economy. The law increased the de minimis threshold from $200 to $800, indicating that "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*" and that "[h]igher 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."[115] The impact of that new emphasis could be seen, for example, in the Congressional Budget Office (COB)'s estimate of the cost of the measure (also referred to as 'scoring'). Whereas previous scoring estimates outlined potential savings, in 2015, CBO projected the cost of the provision for the first time, estimating that increasing the de minimis threshold to $800 would *cost*, rather than *save*, $153 million over 10 years.[116]

As in 1993, the increase in the de minimis threshold was greater than an inflation adjustment. Adjusting for inflation, the $1 ceiling first established in 1938 would have been approximately $16.82 in 2015. Similarly, the $200 threshold established in 1993, adjusted for inflation, would have been approximately $328.15 in 2015 (**Table 2**).

In addition to reconceiving the beneficiaries of Section 321 to include consumers, businesses, and the U.S. economy, Congress also explicitly reconceived de minimis in terms of market access. In TFTEA Congress expressed its sense that the de minimis exemption should become a topic of trade negotiation and liberalization. Specifically, TFTEA provided 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."[117] Although the North American Free Trade Agreement (NAFTA), which entered into force in 1994, contained no references to de minimis exemptions,[118] Mexico and Canada increased their de minimis exemptions as part of NAFTA's successor, the United States-Mexico-Canada Agreement (USMCA).[119]

[112] Ibid.

[113] 19 U.S.C. §1321(b).

[114] TFTEA §901.T

[115] Ibid., emphasis added.

[116] U.S. Congressional Budget Office, Estimated Changes in Direct Spending and Revenues for the Conference Report to Accompany H.R. 644, the Trade Facilitation and Trade Enforcement Act of 2015 (H.Rept. 114-376), December 10, 2015.

[117] TFTEA §901, emphasis added.

[118] North American Free Trade Agreement, Can.-Mex.-U.S., December 17, 1992, 32 I.L.M. 289 (1993).

[119] United States-Mexico-Canada Agreement, art. 7.8.1(f), Can.-Mex.-U.S., November 30, 2018 (entered into force July 1, 2020).

In the course of more than seven decades, Section 321 evolved from a provision for administrative convenience for the government to a provision intended to benefit consumers and businesses and to facilitate trade as part of a broader program of trade liberalization. From the 1990s to the 2010s, de minimis provisions, often at the urging of the United States, became a global phenomenon. (See "Section 321 in Global Context" section.)

Section 321 in Global Context

The shift toward treating de minimis exemptions as trade liberalizing measures rather than as tools of administrative convenience is now a global phenomenon. Since the 1990s, the United States has been a leading proponent of making de minimis exemptions a routine part of trade negotiations, encouraging trading partners to adopt de minimis exemptions during trade agreement negotiations and encouraging the adoption of de minimis exemptions in plurilateral and multilateral instruments.[120] Congress explicitly supported many of these efforts. In 2016, when adjusting the U.S. de minimis exemption upward from $200 to $800, Congress expressed its desire 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.[121]

Over the next several years, some Members of Congress and congressional committees repeatedly urged the United States Trade Representative (USTR) to maintain the U.S. de minimis exemption threshold and negotiate with U.S. trading partners to raise their thresholds as part of bilateral, plurilateral, and multilateral trade negotiations.[122]

[120] See, for example, WTO, Negotiating Group on Trade Facilitation, Communication from the United States, February 4, 2005, TN/TF/W/15.

[121] TFTEA §901.

[122] For example, U.S. Congress, House, Joint Economic Committee, *The 2018 Joint Economic Report: Report of the Joint Economic Committee on the 2018 Economic Report of the President*, 115th Cong., 2nd sess., March 13, 2018, H.Rept. 115-596 (Washington, DC: GPO, 2018), pp. 165, 167: The Joint Economic Committee noted that "raising the de minimis threshold for duty-free goods around the world would accommodate many more opportunities for cross-border sales by small- and medium-sized businesses" and recommended the United States seek to "raise de minimis thresholds for duty free trade of low-value goods;" U.S. Congress, Senate Committee on Finance, *Presidents 2020 Trade Policy Agenda*, hearing, 116th Cong., 2nd sess., June 17, 2020 (Washington, DC: GPO, 2020): "[Senator Thune:] I would suggest another option you have to strengthen de minimis is to negotiate agreements that increase our negotiating partners' de minimis thresholds. And based on your testimony, it appears that you will have some upcoming opportunities to pursue this other option. And I will add, Congress will be very likely to support you in that effort;" U.S. Congress, Senate Committee on Finance, *United States-Mexico-Canada Agreement Implementation Act*, report to accompany H.R. 5430, 116th Cong., 2nd sess., October 21, 2020, S.Rept. 116-283 (Washington, DC: GPO, 2020) p. 14; U.S. Congress, House Committee on Appropriations, *Consolidated Appropriations Act, 2020, H.R. 1158 /* P.L. 116-93*, Legislative Text and Explanatory Statement*, committee print, 116th Cong., 2nd sess., January 2020 (Washington, DC: GPO, 2020), p. 538: "The Committees recognize the importance of securing commercially meaningful de minimis or "duty-free" thresholds in other countries;" U.S. Congress, House Committee on Appropriations, *Consolidated Appropriations Act, 2021, H.R. 133 /* P.L. 116-260, *Legislative Text and Explanatory Statement*, committee print, 117th Cong., 1st sess., March 2021 (Washington, DC: GPO, 2021), p. 293; U.S. Congress, House Committee on Appropriations, *Consolidated Appropriations Act, 2022, H.R. 2471 /* P.L. 117-103, *Legislative Text and Explanatory Statement*, committee print, 117th Cong., 1st sess., April 2022 (Washington, DC: GPO, 2022), p. 308.

U.S. Free Trade Agreements

Free trade agreements (FTAs) are generally defined as agreements that eliminate tariffs on "substantially all the trade" between two or more countries.[123] Since 2006, the United States has included de minimis provisions in all of its bilateral and plurilateral free trade agreements (**Table 3**). These provisions generally required that parties "provide, under normal circumstances, that no customs duties or taxes will be assessed on, nor will formal entry documents be required for, express shipments valued at [200 USD] or less," (200 USD was the U.S. threshold during the period of most of these negotiations). However, there has been some variation in the threshold commitments. The United States-Panama Free Trade Agreement, for example, sets the level at 100 USD. Similarly, in the United States-Mexico-Canada Agreement (USMCA), the parties committed to individualized de minimis exemption thresholds, including 800 USD for goods entering the United States, 117 USD for goods entering Mexico, and 150 Canadian Dollars (CAD) for goods entering Canada.[124] In its report on the USMCA Implementation Act, the Senate Committee on Finance noted that it "expects USTR to continue pushing our trading partners to match the U.S. de minimis level in future negotiations."[125]

Table 3. U.S. Free Trade Agreements and De Minimis

Year Agreement Signed	Agreement Name	Express Shipment Section	De Minimis Value Defined
1985	U.S.-Israel Free Trade Agreement	None	No
1988	U.S.-Canada Free Trade Agreement	None	No
1992	North American Free Trade Agreement (NAFTA) (Canada and Mexico)	None	No
2000	U.S.-Jordan Free Trade Agreement	None	No
2003	U.S.-Chile Free Trade Agreement	Article 5.7	No
2003	U.S.-Singapore Free Trade Agreement	Article 4.10	No
2004	U.S.-Australia Free Trade Agreement	Article 6.9	No
2004	U.S.-Bahrain Free Trade Agreement	Article 5.7	No
2004	Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR) (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Dominican Republic)	Article 5.7	No
2004	U.S.-Morocco Free Trade Agreement	Article 6.7	No

[123] See, for example, GATT 1947, art. 24, para. 8(b). In 2023, USTR began using the phrase "comprehensive free trade agreements" to distinguish between agreements that eliminate substantially all trade and agreements "focusing on free trade" in a particular sector, such as critical minerals. USTR, Free Trade Agreements, https://ustr.gov/trade-agreements/free-trade-agreements (last visited October 30, 2024). See CRS Report R47679, *Congressional and Executive Authority Over Foreign Trade Agreements*, by Christopher T. Zirpoli.

[124] United States-Mexico-Canada Agreement (USMCA) art. 7.8, January 20, 2020 (entered into force July 1, 2020). The Canadian commitment is 150 CAD for customs duties and 40 CAD for taxes. The agreement also includes a provision "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."

[125] U.S. Congress, Senate Committee on Finance, *United States-Mexico-Canada Agreement Implementation Act*, report to accompany H.R. 5430, 116th Cong., 2nd sess., October 21, 2020, S.Rept. 116-283 (Washington, DC: GPO, 2020) p. 14.

Year Agreement Signed	Agreement Name	Express Shipment Section	De Minimis Value Defined
2006	U.S.-Colombia Trade Promotion Agreement	Article 5.7	200 USD
2006	U.S.-Oman Free Trade Agreement	Article 5.7	200 USD
2006	U.S.-Peru Trade Promotion Agreement	Article 5.7	200 USD
2007	U.S.-Korea Free Trade Agreement (KORUS)	Article 7.7	200 USD
2007	U.S.-Panama Trade Promotion Agreement	Article 5.7	100 USD
2018	U.S.-Mexico-Canada Agreement (USMCA)	Article 7.8	United States: 800 USD Mexico: 117 USD for customs duties and 50 USD for taxes. Canada: 150 CAD for Customs Duties, 40 CAD for taxes.

Source: CRS, compiled from USTR's list of "Comprehensive" Free Trade Agreements. USTR, Free Trade Agreements, https://ustr.gov/trade-agreements/free-trade-agreements (last visited October 30, 2024).

Notes: In U.S. dollars (USD) except for USMCA in which Canadian commitments are expressed in Canadian Dollars (CAD). Greyed lines indicate agreements are no longer in force. Agreements listed include only those defined as "comprehensive free trade agreements" by USTR and do not include trade executive agreements (TEAs) such as those related to critical minerals. See USTR, Free Trade Agreements, available at https://ustr.gov/trade-agreements/free-trade-agreements; On whether agreements related to critical minerals should be considered an FTA, see CRS Report R47679, *Congressional and Executive Authority Over Foreign Trade Agreements*, by Christopher T. Zirpoli; On TEAs see Kathleen Claussen, "Trade's Mini Deals," *Virginia Journal of International Law* 62 (2022).

Multilateral and Plurilateral Agreements

In the 1990s, de minimis exemptions became the subject of increasing numbers of multilateral and plurilateral negotiations. In 1999, following several years of discussion, members of the World Customs Organization (WCO) amended the International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention).[126] The amendment included, among other provisions, a transitional standard that "National legislation shall specify a minimum value and/or a minimum amount of duties and taxes below which no duties and taxes will be collected."[127] The provision was seemingly consistent with legislative changes to Section 321 in 1993, which transformed the thresholds into floors rather than ceilings.[128]As of January 1, 2024, the Revised Kyoto Convention has 136 contracting parties.[129]

Alongside efforts at the WCO, the World Trade Organization (WTO) opened negotiations on a proposed agreement related to trade facilitation in the 2000s.[130] In a 2005 communication to the

[126] International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Protocol), May. 18, 1973, 950 U.N.T.S. 269 (1973); Protocol of Amendment to the International Convention on the Simplification and Harmonization of Customs Procedures, chap. 4.13, June 26, 1999, 2370 U.N.T.S. 27, 56 (Revised Kyoto Protocol).

[127] Revised Kyoto Protocol, ch. 4.13.

[128] Mod Act, §651.

[129] World Customs Organization, List of the Contracting Parties to the Revised Kyoto Convention, available at https://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv/instruments.aspx.

[130] Nora Neufield, The Long and Winding Road: How WTO Members Finally Reached a Trade Facilitation Agreement, WTO, Economic Research and Statistics Division, Staff Working Paper ERSD-2014-06, April 7, 2014.

WTO's Negotiating Group on Trade Facilitation, the United States proposed including de minimis provisions in any resulting agreement on expedited procedures for express shipments.[131] Noting that "The silence of Article VIII of GATT 1994 regarding the treatment of express shipments reflects a major difference between the trading world of 1947 and 2005," the United States proposed the negotiation of expedited procedures that would include, among other things, "the availability of 'de minimis' procedures for low value shipments."[132] 12 years later, the WTO Agreement on Trade Facilitation (TFA) entered into force in 2017.[133] Article 7.8.2(d) of the TFA requires signatories to "provide, to the extent possible, for a *de minimis* shipment value or dutiable amount for which customs duties and taxes will not be collected, aside from certain prescribed goods."[134] As of 2024, 130 countries and customs territories , including the United States, had signed the agreement.[135]

Global Rates

Thresholds and regulations for low-value shipment programs vary widely between countries.[136] Like the United States, many countries have multiple programs for duty-free entry on low-value goods that may vary, depending on various conditions, making comparisons across countries difficult. For example, Zambia, which has the highest duty-free rate documented by the Global Express Association, has thresholds varying from $50 to $1,000 depending on the kind of item and whether the importation is for commercial or personal purposes.[137] Similarly, the People's Republic of China authorizes duty-free treatment for qualifying goods valued at up to 50 RMB (approximately 7 USD), but also has an e-commerce program that authorizes duty-free treatment for goods purchased from qualifying e-commerce vendors valued at up to 5,000 RMB (approximately 700 USD).[138] As such, any global quantitative assessment of the United States' de

[131] WTO, Negotiating Group on Trade Facilitation, Communication from the United States, February 4, 2005, TN/TF/W/15. For more on the U.S. role, see Héctor Hugo Juárez Allende, *The World Customs Organization: Past, Present and Future* (Springer, 2022), pp. 217-218: "This proposal (remarkably similar to the rule established by the US in all its Free Trade Agreements, e.g., with Chile, Ecuador, Peru, etc.) was slightly amended by the rest of the WTO member states and later approved."

[132] WTO, Negotiating Group on Trade Facilitation, Communication from the United States, February 4, 2005, TN/TF/W/15.

[133] Protocol amending the Marrakesh Agreement establishing the World Trade Organization (WTO Agreement on Trade Facilitation), *opened for signature* November 27, 2014, U.N. Registration No. 31874 (entered into force February 22, 2017). Nora Neufield, The Long and Winding Road: How WTO Members Finally Reached a Trade Facilitation Agreement, WTO, Economic Research and Statistics Division, Staff Working Paper ERSD-2014-06, April 7, 2014, p. 4, 8: "Concluding the Trade Facilitation Agreement – the first multilateral trade agreement successfully negotiated in 18 years and the first such accord concluded by the WTO – marked a decisive turning point in several ways;" "Targeted efforts to launch Trade Facilitation discussions began in the mid-1990s. The 1996 Singapore Ministerial Conference gave the WTO an initial and modest mandate under a separate conceptual heading;" "More than three years after the Doha Round had been launched, it made Trade Facilitation an additional – and, as it turns out, the last – issue to be added to the agenda."

[134] WTO Agreement on Trade Facilitation art. 7.8.2(d).

[135] WTO, Members accepting the Protocol of Amendment to insert the WTO Trade Facilitation Agreement into Annex 1A of the WTO Agreement, available at https://www.wto.org/english/tratop_e/tradfa_e/tradfa_agreeacc_e.htm. The count includes jurisdictions like Hong Kong and Macao separately.

[136] The Global Express Association has compiled crowd-sourced lists. Global Express Association, De Minimis Thresholds, available at https://global-express.org/index.php?id=271&act=101&profile_id=-1&countries%5B%5D=-2&search_terms=&question-filter=&qid_34=1&qid_34_optid=1&qid_35=1&qid_36=1&qid_92=1.

[137] Global Express Association, De Minimis Thresholds; Control of Goods Act, 23 Cap. 421 (Zam.); Zambia Revenue Auth., Importation of Goods, https://www.zra.org.zm/importation-of-goods/ (last visited May 21, 2024).

[138] Global Express Association, De Minimis Thresholds; Hao Wu and Robert Ireland, "Cross-border e-commerce in (continued...)

minimis exemption as compared to other countries may have significant gaps, inaccuracies, or other limitations. However, the United States at a rough level of comparison has a higher general threshold than many of the major export destinations for U.S. exports (**Table 4**).

Table 4. Top Destinations for U.S. Exports

Territories Receiving More than $50 Billion in U.S. Exports in 2023

Country	U.S. Exports to Country in 2023 (billions of USD)	De Minimis Exemption (or comparable policy) Threshold	
		Local Currency	USD Equivalent
European Union	368.8 USD	150 EUR	163 USD
Mexico*	252.7 USD	980 MXN	59 USD *117 USD for shipments from the United States as per USMCA
China	125.6 USD	50 RMB 5,000 RMB for certain e-commerce	7 USD 700 USD for certain e-commerce
Japan	67.7 USD	10,000 JPY	66 USD
United Kingdom	62.1 USD	135 GBP	171 USD
South Korea*	60.5 USD	150,000 KRW	112 USD *200 USD for shipments from the United States as per KORUS

Source: CRS; U.S. Census Bureau; Global Express Association, De Minimis Thresholds. * indicates an FTA partner.

Notes: Dollar equivalencies as of April 1, 2024, and rounded to the nearest dollar.

From the 1990s through the 2010s, de minimis exemptions proliferated around the world and de minimis value thresholds in many cases increased. However, by the 2020s, policymakers in many countries began to reevaluate de minimis policies. In 2023, for example, the European Commission, citing "systematic abuse," proposed removing its 150 EUR exemption for low-

China" *WCO News*, October 13, 2017, available at https://mag.wcoomd.org/magazine/wco-news-84/cross-border-e-commerce-in-china/; National People's Congress of the People's Republic of China, Customs Law of the People's Republic of China, Article 45, effective January 1, 2003, available at http://english.mofcom.gov.cn/aarticle/policyrelease/internationalpolicy/200705/20070504715851.html; National People's Congress of the People's Republic of China, 中华人民共和国关税法 (Tariff Law of the People's Republic of China), Article 5, adopted April 26, 2023 (effective Dec. 1, 2024), available at https://www.gov.cn/yaowen/liebiao/202404/content_6947843.htm; Ministry of Finance of the People's Republic of China, 关于完善跨境电子商务零售进口税收政策的通知 (Notice on the Improvement of Cross-Border E-Commerce Retail Imports Taxation Policies), November 29, 2018, available at https://www.chinatax.gov.cn/n810341/n810755/c3929562/content.html. , Sources identified by Michael Sutherland, CRS Analyst in International Trade and Finance. Based on an exchange rate set on April 1, 2024.

value goods.[139] Similarly, U.S. Members of Congress introduced several bills to modify the de minimis exemption (See "Congressional Proposals for Reform" section).

The European Union (EU) and De Minimis

In 2021, the EU Commissioner for Economy established a Wise Persons Group on Challenges facing the Customs Union. The group comprised 12 members who interviewed various public and private stakeholders. The group found that the root cause of the challenges to modern customs enforcement was "an exponential and unmanageable flow of millions of small individual consignments," the declared value of which was "frequently incomplete or inaccurate, often intentionally, with many falling below the 'de minimis' value threshold of €150 for customs duties." The Wise Persons Group also noted that "the probability that small consignments will contain non-compliant or dangerous goods is very high" and "checking all those that are identified as presenting a risk is unmanageable." Moreover, the proliferation of low-value shipments made it difficult to enforce the increasingly common import regulations related to "sustainability, safety, security, human rights, peace and security, health, etc." The Group concluded that the EU's de minimis exemption created "an incentive for exporters to the EU to break consignments down into smaller packages so that they can effectively trade free of customs duties," which they also noted created a problematic incentive in terms of "environmental sustainability."

For these reasons, the Group recommended that the EU "[r]emove the customs duty exemption threshold of EUR 150 for e-commerce and provide some simplification for the application of Customs duties rates for low value shipments." In response to the report of the Wise Persons Group, the European Commission proposed a regulation eliminating the EU's de minimis exemption as part of a variety of customs reforms.

Source: Wise Persons Group on the Reform of the EU Customs Union, Putting More Union in the European Customs: Ten Proposals to Make the EU Customs Union fit for a Geopolitical Europe, Brussels, March 2022; European Commission, Proposal for a Council Regulation Amending Regulation (EEC) No 2658/87 as Regards the Introduction of a Simplified Tariff Treatment for the Distance Sales of Goods and Regulation (EC) No 1186/2009 as Regards the Elimination of the Customs Duty Relief Threshold, COM(2023) 259 final, 2023/0157 (NLE), May 17, 2023.

Emergent Concerns

In the years following TFTEA's enactment and implementation, certain executive branch officials and Members of Congress expressed concern with Section 321 and its administration. The earliest objections emerged during discussions about countering the growing trend of using the U.S. mail to import opioids. In 2017 and 2018, versions of the STOP Act and the Opioid Emergency Response Act proposed amendments to Section 321 as part of an effort to collect more information on merchandise arriving by U.S. mail.[140] However, the enacted version of the STOP Act of 2018 left Section 321 unchanged.[141]

Despite claims that the de minimis exemption was being exploited to import opioids, until the early 2020s, the de minimis exemption generally enjoyed broad support in Congress, including from Members of the House Ways and Means and Senate Finance Committees, which have traditionally exercised jurisdiction over Section 321.[142] In 2019, for example, as part of

[139] European Commission, Proposal for a Council Regulation Amending Regulation (EEC) No 2658/87 as Regards the Introduction of a Simplified Tariff Treatment for the Distance Sales of Goods and Regulation (EC) No 1186/2009 as Regards the Elimination of the Customs Duty Relief Threshold, COM(2023) 259 final, 2023/0157 (NLE), May 17, 2023.

[140] STOP Act of 2017, S. 372, 115th Cong., §4 (2017); STOP Act of 2017, H.R. 1057, 115th Cong., §4 (2017); Opioid Emergency Response Act, H.R. 5531, 115th Cong., §7 (2018).

[141] STOP Act of 2018, Subtitle A of Title VIII of the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act, P.L. 115-271, 132 Stat. 3894, 3967 (2018). The Opioid Emergency Response Act was not enacted.

[142] See, for example, U.S. Congress, House, *Rules of the House of Representatives*, 118th Cong., 1st sess., H.Doc. 117-161(Washington, DC: GPO, 2023), p. 507; U.S. Congress, Senate Committee on Rules and Administration, *Authority* (continued...)

consultations with Congress over the implementation of the USMCA, then-USTR Robert Lighthizer sought to revisit TFTEA's increase of the de minimis threshold.[143] He was rebuffed by 130 Representatives, 22 of whom were Members of the House Ways and Means Committee, in a letter stating

> We strongly oppose any effort by the Executive Branch to lower the current $800 de minimis threshold through the 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. […] We wish to be unequivocal about our view on this matter: The threshold set by Congress in 2016 continues to represent our position on de minimis.[144]

Similarly, the then-Chairman of the Senate Finance Committee, expressed his concern about "rumors that the administration is seeking the ability to reduce our own de minimis threshold, which has been a great boon to American small businesses, manufacturers, and ecommerce companies."[145] He continued, stating, "There is no appetite for that in Congress,"[146] before asking Lighthizer if he would "commit that the administration will not seek to reduce our de minimis threshold as part of the USMCA ratification process, or through any other vehicle?"[147] Later in 2019, the explanatory statement accompanying the Consolidated Appropriations Act, 2020 expressed support of both the Senate and House appropriations committees for maintaining the threshold, noting:

> The Committees recognize the importance of securing commercially meaningful de minimis or "duty-free" thresholds in other countries, and strongly support the $800 de minimis level established in the Trade Facilitation and Trade Enforcement Act (TFTEA)

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and Rules of the Senate Committees, 2023-2024, 118th Cong., 1st sess., S.Doc. 118-4 (Washington, DC: GPO, 2023), p. 107.

[143] Draft Statement on Administrative Action, EC 1499, 116th Cong. (2019), p. 22, "Between the submission of this draft SAA and the submission of the final implementation package, USTR intends to continue consultations with Congress on potential changes to section 901 of the Trade Facilitation and Trade Enforcement Act (19 U.S.C. 1321) to implement Article 7.8.1 (Express Shipments)." A member of the Senate Finance Committee responded:

> While I appreciate your continued willingness to consult Congress on any potential changes to the current U.S. de minimis threshold, I believe Congress has already spoken conclusively on this matter. Beyond the unilateral de minimis threshold increase set forth in TFTEA, which Ranking Member Wyden and I helped spearhead, in the past year, you have received numerous letters from Congress urging you not to deviate from Congress's well-established position on de minimis. In fact, since November 2018, you have explicitly heard from more than 10 Republican and Democrat members of this committee, including the chairman and ranking member, all of whom have asked you not to derogate from the current threshold.

U.S. Congress, Senate Committee on Finance, *The President's Trade Policy Agenda and the United States-Mexico-Canada Agreement*, hearing, June 18, 2019, 116th Cong., 1st sess., S. Hrg 116-436 (Washington, DC: GPO, 2021), p. 62.

[144] Earl Blumenauer *et al*., letter to Robert E. Lighthizer, U.S. Trade Representative, October 18, 2019. See also, New Democrat Coalition, "New Democrat Coalition Lays Out NAFTA 2.0 Priorities," press release, June 5, 2019; New Democrat Coalition, NAFTA 2.0 Priorities, ¶2(d): "Reject any efforts, including in the implementing legislation, to lower the current U.S. de minimis threshold."

[145] U.S. Senate, Committee on Finance, *The President's 2019 Trade Policy Agenda and the United States-Mexico-Canada Agreement*, 116th Cong., 1st sess., June 18, 2019 (Washington: U.S. Government Publishing Office, 2021), p. 42.

[146] Ibid.

[147] Ibid. See also U.S. Congress, Senate Committee on Finance, "Finance Leaders Urge Lighthizer to Maintain 'De Minimis' Threshold for U.S. Imports," press release, February 28, 2019; Sens. Chuck Grassley and Ron Wyden, letter to Robert E. Lighthizer, U.S. Trade Representative, February 27, 2019.

> and the higher de minimis levels in Canada and Mexico secured by USTR through the negotiation of the United States-Mexico-Canada Agreement (USMCA).[148]

Despite the explanatory statement, the next year in 2020, then-USTR Lighthizer, in a prepared statement for the Senate Finance Committee, again indicated that the Trump Administration was investigating the option of "tighten[ing] de minimis thresholds for American imports, including those subject to section 301 tariffs."[149] Lighthizer noted, "At $800, the U.S. de minimis threshold far exceeds that of our major trade partners" and expressed concern about the volume of shipments coming from China that qualified for the de minimis exemption.[150] The Appropriations Committees maintained their view to maintain the de minimis threshold in explanatory statements accompanying the Consolidated Appropriations Acts of 2021 and 2022.[151] However, no such statements were included alongside the Consolidated Appropriations Act of 2023.[152]

The years of 2022 and 2023 marked a shift in the public and congressional debate over de minimis. In January 2022, the then-Chair of the House Committee on Ways and Means, introduced the Import Security and Fairness Act, the lengthiest proposed amendment to Section 321 since 1954.[153] Shortly thereafter, American newspapers began covering the de minimis

[148] U.S. Congress, House Committee on Appropriations, *Consolidated Appropriations Act, 2020, H.R. 1158* / P.L. 116-93, *Legislative Text and Explanatory Statement [Legislative Text and Explanatory Statement]*, committee print, 116th Cong., 2nd sess., January 2020 (Washington, DC: GPO, 2020), p. 538.

[149] U.S. Congress, Senate Committee on Finance, Presidents 2020 Trade Policy Agenda, hearing, 116th Cong., 2nd sess., June 17, 2020 (Washington, DC: GPO, 2020), p. 56.

[150] Ibid.:

> In FY2018 and FY2019, there were a combined 1.2 billion de minimis shipments, with 719 million (or roughly 60 percent) coming from China. In contrast, the U.S. received only 68 million formal entries during this period, with only 7.3 million (or less than 11 percent) coming from China. The disproportionately high volume of these shipments indicates China and others are likely exploiting the high U.S. de minimis threshold to avoid paying duties.

[151] U.S. Congress, House Committee on Appropriations, *Consolidated Appropriations Act, 2021, H.R. 133* / P.L. 116-260, *Legislative Text and Explanatory Statement*, committee print, 117th Cong., 1st sess., March 2021 (Washington, DC: GPO, 2021), p. 293: directing USTR "to follow prior year report language regarding ''De Minimis Thresholds'' included in the explanatory statement accompanying P.L. 116-93;" U.S. Congress, House Committee on Appropriations, *Consolidated Appropriations Act, 2022, H.R. 2471* / P.L. 117-103, *Legislative Text and Explanatory Statement*, committee print, 117th Cong., 1st sess., April 2022 (Washington, DC: GPO, 2022), p. 308: directing USTR "to follow prior year report language regarding 'De Minimis Thresholds' included in the explanatory statement accompanying P.L. 116-93."

[152] U.S. Congress, House Committee on Appropriations, *Consolidated Appropriations Act, 2023, H.R. 2617* / P.L. 117-328 *[Legislative Text and Explanatory Statement]*, committee print, 117th Cong., 2nd sess. (Washington, DC: GPO, 2023), p. 351.

[153] Import Security and Fairness Act, H.R. 6412, 117th Cong., §2 (2022)

exemption in varying degrees of detail,[154] and in April 2022, the *Wall Street Journal* described de minimis as the "$67 Billion Tariff Dodge That's Undermining U.S. Trade Policy."[155]

Congressional activity and public debate further increased in 2023 with the start of the 118th Congress. Members introduced bills amending Section 321,[156] congressional committees held hearings,[157] sent letters,[158] and released reports expressing concern with the de minimis

[154] For example, "Marianna Sotomayor and Jeanne Whalen, Democrats Look for Bipartisan Deal on China Economic Bill as Rest of Agenda Founders," *Washington Post*, January 27, 2022:

> One provision would make it harder for U.S. retailers and others to import low-cost goods from China without paying import duties or other taxes. The measure prohibits goods originating in China and certain other nonmarket economies from entering the country under the "de minimis rule" of the 1930 Tariff Act, which allows for duty-free import of goods under $800 in value.

Ana Swanson, "The U.S. adds WeChat and AliExpress to a List of Notorious Piracy Markets," *New York Times*, February 17, 2022:

> Congress is mulling some actions that could clamp down on Chinese e-commerce sales, including counterfeit goods, to the United States as part of a major legislative effort at promoting U.S. economic competitiveness with China. One provision, proposed by Representative Earl Blumenauer, Democrat of Oregon, would raise the threshold for the dollar value of a good that could come into the United States duty free from certain countries, namely China. That level, called de minimis, is set at $800 in the United States. That's far above the level in many other countries, a policy that critics say has led to an explosion of imported e-commerce packages, including some unsafe and illicit goods.

Josh Zumbrun, "The $67 Billion Tariff Dodge That's Undermining U.S. Trade Policy," *Wall Street Journal*, April 25, 2022; Josh Zumbrun, "The Tiny Loophole That Understates the Trade Deficit With China," *Wall Street Journal*, June 17, 2022.

[155] Zumbrun, "The $67 Billion Tariff Dodge That's Undermining U.S. Trade Policy."

[156] For example, Import Security and Fairness Act, S. 2004, 118th Cong., §2 (2023); Import Security and Fairness Act, H.R. 4148, 118th Cong., §2 (2023); De Minimis Reciprocity Act of 2023, S. 1969, 118th Cong., §2 (2023); America's Act, S. 3878, 118th Cong., §302 (2024); America's Act, H.R. 7571, 118th Cong., §302 (2024).

[157] For example, U.S. Congress, Senate Committee on Finance, *Ending Trade that Cheats American Workers By Modernizing Trade Laws and Enforcement, Fighting Forced Labor, Eliminating Counterfeits, and Leveling the Playing Field*, hearing, 118th Cong., 1st sess., February 16, 2023.

[158] For example, U.S. Congress, House Select Committee on the Chinese Communist Party, letter to Yangtian (Chris) Yu, Chief Executive Office, SHEIN, May 2, 2023: "We received expert testimony which revealed that Section 321 may allow perpetrators of forced labor to circumvent U.S. laws—including the Uyghur Forced Labor Prevention Act (UFLPA)—prohibiting the importation of products produced in the XUAR;" Representatives Mike Gallagher and James Comer, letter to Louis DeJoy, Postmaster General, June 28, 2023:

> Other federal agencies—including U.S. Customs and Border Protection (CBP)—publish or have otherwise made available certain data on PRC-origin shipments that might use de minimis entry. However, the information provided by CBP does not include data from the USPS. These data are insufficient without properly accounting for the USPS channel, which includes information regarding the specific volume of shipments from the PRC into the United States.

exemption.[159] Coverage of the issue in the press increased, particularly regarding the policy's impact on textile imports.[160]

The Biden Administration continued the Trump Administration's push to reform the de minimis exemption. During 2023, CBP's E-Commerce Task Force found, "The overwhelming volume of small packages and lack of actionable data limit CBP's ability to identify and interdict high-risk shipments that may contain narcotics, merchandise that poses a risk to public safety, counterfeits, or other contraband."[161] In July 2024, then-Homeland Security Secretary Alejandro Mayorkas asserted that "we can't screen all 4 million [packages] a day" that enter the United States under the de minimis exception.[162] Secretary Mayorkas further argued that de minimis was "built on a false premise that low value means low risk,"[163] and added that CBP was "working towards and hoping to receive a legislative fix to give us greater authorities to address [exploitation of the de minimis exemption]."[164]

Although numerous proposals to amend Section 321 were introduced in the 118th Congress (see "Congressional Proposals for Reform" section), by September 2024, some Members began expressing concern with the pace of the legislative process given the "urgency" of the situation with respect to de minimis imports.[165] More than 100 Members wrote a letter asking President Biden "to use the full range of [his] authorities to disqualify commercial shipments from de minimis treatment, so that packages entering the United States no longer evade inspection, information disclosure requirements, or the requisite tariffs and taxes."[166] This would help

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[159] For example, U.S. Congress, House Select Committee on the Strategic Competition Between the United States and the Chinese Communist Party, *Fast Fashion and the Uyghur Genocide: Interim Findings*, pp. 2-8, 11; U.S. Congress, House Select Committee on the Strategic Competition Between the United States and the Chinese Communist Party, *Reset, Prevent, Build: A Strategy to Win America's Economic Competition with the Chinese Communist Party*, pp. 14-15:

> Congress should… Pass legislation amending the Tariff Act of 1930 to reduce the de minimis threshold for duty-free shipments into the United States with particular focus on foreign adversaries including the PRC. Congress should also direct CBP to strengthen its enforcement against transshipments from the PRC into the U.S. market using the de minimis rule, as it cannot adequately scrutinize goods sent to the United States from the PRC for concerns about forced labor under current de minimis rules.

[160] For example, Alexandra Wexler, "Fast-Fashion Giant Shein Faces South Africa Probe Over Import Practices," *Wall Street Journal*, March 13, 2023; Josh Zumbrun, "How a Trade Loophole May Be Letting in Chinese Imports Made With Forced Labor," *Wall Street Journal*, May 26, 2023; Arriana McLymore, "Shein Plans to Bolster Compliance and Logistics Execs Ahead of US Marketplace," *Reuters*, May 31, 2023; Jordyn Holman, "Bipartisan Proposals Would Hit E-Commerce Like Fast Fashion," *New York Times*, June 15, 2023; Rachel Tashjian, "Shein, the Fast-Fashion Giant, Hits Roadblocks," *Washington Post*, June 28, 2023; Katherine Masters, "Focus: Key Trade Loophole Keeps Cheap Chinese Products Flowing to US," *Reuters*, August 4, 2023; Yuka Hayashi, "U.S. Trade Loophole Fuels Rise of China's New E-Commerce Firms," *Wall Street Journal*, October 26, 2023; Jordyn Holman, "U.S. Retailers Say an Old Trade Law Puts Them at a Disadvantage," *New York Times*, November 4, 2023; Esther Fung and Shen Lu, "The China-Backed Retailers Shipping Millions of U.S. Packages a Day," *New York Times*, December 22, 2023; Jordyn Holman, Audra Melton, "Where Textile Mills Thrived, Remnants Battle for Survival," *New York Times*, January 21, 2024.

[161] CBP, Office of Trade/Trade Policy and Programs, Next Generation Facilitation Subcommittee, E-Commerce Task Force, Commercial Customs Operations Advisory Committee Issue Paper, Pub. 3228-0623 (June 2023), p. 1.

[162] Center for Strategic and International Studies, "New Frontiers in UFLPA Enforcement: A Fireside Chat with DHS Secretary Alejandro Mayorkas," transcription available at https://csis-website-prod.s3.amazonaws.com/s3fs-public/2024-07/240709_Mayorkas_New_Frontiers.pdf?VersionId=suWx2fSFrrEGkY2f9eTd.ULp42kxnP3j.

[163] Ibid.

[164] Ibid.; see also Mara Lee, "DHS Secretary Says Congress Should Restrict De Minimis," *International Trade Today*, July 9, 2024.

[165] Earl Blumenauer et al., letter to Joseph R. Biden, President of the United States, September 11, 2024.

[166] Ibid.

manage some of the problems, the Members argued, while they "continue[d their] efforts toward a legislative solution."[167]

Later in September 2024, the Biden Administration announced that it would be taking several actions with respect to its handling of de minimis shipments.[168] In January 2025, the Biden Administration published two notices of proposed rulemaking.[169] Drawing from two long-running pilot programs (see "Section 321 and Import Information" below), CBP proposed requiring additional data be submitted with Section 321 entries, including the HTSUS number.[170] In addition, CBP proposed requiring importers to pay tariffs on all goods subject to tariffs imposed under Section 232 of the Trade Expansion Act of 1962, and Sections 201 and 301 of the Trade Act of 1974.[171] In announcing these rules, the Administration warned that "further comprehensive de minimis reforms are needed, and these reforms require congressional action."[172]

Issues for Congress

Congressional Proposals for Reform

During the 118th Congress, Members introduced several bills to amend Section 321. Those bills generally sought to do one or more of the following:

- limit or eliminate the Secretary of the Treasury's authority to apply the de minimis exemption to goods from China;[173]
- limit or eliminate the Secretary of the Treasury's authority to apply the de minimis exemption to goods subject to additional duties by another statute;[174]
- limit or eliminate the Secretary of the Treasury's authority to apply the de minimis exemption to goods from specific entities;[175]

[167] Ibid.

[168] White House, "FACT SHEET: Biden-Harris Administration Announces New Actions to Protect American Consumers, Workers, and Businesses by Cracking Down on De Minimis Shipments with Unsafe, Unfairly Traded Products," press release, September 13, 2024.

[169] CBP, "Entry of Low-Value Shipments," 90 *Federal Register* 3048, January 14, 2025; CBP, "Trade and National Security Actions and Low-Value Shipments," 90 *Federal Register* 6852, January 21, 2025.

[170] CBP, "Entry of Low-Value Shipments," 90 *Federal Register* 3048, January 14, 2025.

[171] CBP, "Trade and National Security Actions and Low-Value Shipments," 90 *Federal Register* 6852, January 21, 2025.

[172] White House, "FACT SHEET: Biden-Harris Administration Announces New Actions to Protect American Consumers, Workers, and Businesses by Cracking Down on De Minimis Shipments with Unsafe, Unfairly Traded Products," press release, September 13, 2024.

[173] For example, Import Security and Fairness Act, S. 2004, 118th Cong., §2 (2023); Import Security and Fairness Act, H.R. 4148, 118th Cong., §2 (2023); De Minimis Reciprocity Act of 2023, S. 1969, 118th Cong., §2 (2023); America's Act, S. 3878, 118th Cong., §302 (2024); America's Act, H.R. 7571, 118th Cong., §302 (2024); In general, trade legislation targeting China often does so by applying the contemplated restriction to both nonmarket economies and countries included on the priority watch list as defined in section 182(g)(3) of the Trade Act of 1974. The only country to meet both those criteria as of 2024 is China. See also, for example, Restoring Trade Fairness Act, H.R. 10127, 118th Cong., §7 (2024).

[174] For example, End China's De Minimis Abuse Act, H.R. 7979, 118th Cong., §2 (2024); FIGHTING for America Act of 2024, S. 5329, 118th Cong., §5 (2024).

[175] For example, DENIED Act, , 118th Cong., §2 (2024).

- require the submission of additional data, such as a Harmonized Tariff Schedule (HTSUS) code, for a go S. 5435od to qualify for the de minimis exemption;[176]
- modify penalties for fraud, gross negligence, and negligence with respect to entries claiming the de minimis exemption;[177]
- make the de minimis exemption available only to goods shipped with a contract carrier (e.g., UPS, FedEx, DHL) and not via postal services;[178] and
- allow merchandise entering the customs territory of the United States from U.S. Foreign Trade Zones to qualify for the de minimis exemption.[179]

Additionally, some Members of Congress have suggested reducing the threshold for the de minimis exemption.[180] The following sections highlight many of the issues that have been raised by various Members of Congress, congressional committees, Administration officials, and experts with respect to Section 321's de minimis exemption, some of which the above bills have sought to address.

Section 321 and Import Information

Under current CBP regulations, less information is required for de minimis entries than for other types, particularly for entries entering via postal facilities.[181] Some experts and officials have argued that this lack of information makes it more difficult to target imports that violate U.S. import laws, such as the prohibition on imports produced by forced labor.[182] Several congressional proposals for reforming the de minimis exemption seek to increase the information collected on de minimis entries (see "Congressional Proposals for Reform" section).

Much of the congressional debate over data has centered on whether to require the submission of HTSUS codes during the entry process.[183] HTSUS codes serve as the standardized numerical and

[176] For example, End China's De Minimis Abuse Act, H.R. 7979, 118th Cong., §2 (2024); Import Security and Fairness Act, S. 2004, 118th Cong., §3 (2023); Import Security and Fairness Act, H.R. 4148, 118th Cong., §2 (2023); Customs Modernization Act of 2023, S. 3431, 118th Cong., § 401 (2023); Ensure Accountability in De Minimis Act of 2024, S. 4082, 118th Cong., §5 (2024); De Minimis Reciprocity Act of 2023, S. 1969, 118th Cong., §2 (2023); America's Act, S. 3878, 118th Cong., §302 (2024); America's Act, H.R. 7571, 118th Cong., §302 (2024); FIGHTING for America Act of 2024, S. 5329, 118th Cong., §4 (2024).

[177] For example, Ensure Accountability in De Minimis Act of 2024, S. 4082, 118th Cong., §3 (2024); Import Security and Fairness Act, S. 2004, 118th Cong., §3 (2023); Import Security and Fairness Act, H.R. 4148, 118th Cong., §3; (2023).

[178] For example, De Minimis Reciprocity Act of 2023, S. 1969, 118th Cong., §2 (2023): "An article is eligible for entry under subsection (a)(2)(C) only if the article is transported to the United States by a contract carrier;" America's Act, S. 3878, 118th Cong., §302 (2024); America's Act, H.R. 7571, 118th Cong., §302 (2024).

[179] For example, U.S. Foreign Trade Zone Parity Act of 2024, H.R. 8059, 118th Cong., §2 (2024).

[180] U.S. Congress, House Select Committee on the Strategic Competition Between the United States and the Chinese Communist Party, *Reset, Prevent, Build: A Strategy to Win America's Economic Competition with the Chinese Communist Party* (2023), p. 15.

[181] See, for example, 19 C.F.R. §128.24(e); 19 C.F.R. §145.31.

[182] Center for Strategic and International Studies, "New Frontiers in UFLPA Enforcement: A Fireside Chat with DHS Secretary Alejandro Mayorkas," July 9, 2024, transcription available at https://csis-website-prod.s3.amazonaws.com/s3fs-public/2024-07/240709_Mayorkas_New_Frontiers.pdf?VersionId=suWx2fSFrrEGkY2f9eTd.ULp42kxnP3j; CBP, "Test Concerning Entry of Section 321 Low-Value Shipments Through Automated Commercial Environment (ACE)," 84 *Federal Register* 40079, August 13, 2019; CBP, Office of Trade/Trade Policy and Programs, Next Generation Facilitation Subcommittee, E-Commerce Task Force, Commercial Customs Operations Advisory Committee Issue Paper, Pub. 3228-0623 (June 2023), p. 1.

[183] For example, End China's De Minimis Abuse Act, H.R. 7979, 118th Cong., §2 (2024); Import Security and Fairness (continued...)

statistical classification for internationally traded products.[184] They are primarily used to determine the applicable tariffs and duties on imported goods. Because de minimis entries are not subject to duties (and determining the applicable HTSUS code for a given product may be a technical or costly exercise for some individuals shipping small parcels) current CBP regulations do not require the submission of HTSUS codes for Section 321 entries.[185]

The lack of an HTSUS number means that such shipments may not be included in commodity-level statistical information, which could affect the accuracy of trade statistics.[186] It also makes determining the cost of the de minimis entry program difficult, as HTSUS codes cannot be used as a comprehensive way to determine the amount of duty foregone. Some commentators and Members of Congress have suggested that CBP should require the submission of an HTSUS code as part of the de minimis entry process.[187] The HTSUS code, they argue, is necessary to improve enforcement of U.S. customs laws.[188] Other commenters have argued that requiring HTSUS codes places a substantial burden on importers, particularly on small and medium-sized businesses, without providing much added benefit beyond the "specific description of the

Act, S. 2004, 118th Cong., §3 (2023); Import Security and Fairness Act, H.R. 4148, 118th Cong., §2 (2023); Customs Modernization Act of 2023, S. 3431, 118th Cong., § 401 (2023); Ensure Accountability in De Minimis Act of 2024, S. 4082, 118th Cong., §5 (2024); De Minimis Reciprocity Act of 2023, S. 1969, 118th Cong., §2 (2023); America's Act, S. 3878, 118th Cong., §302 (2024); America's Act, H.R. 7571, 118th Cong., §302 (2024).

[184] See Walter Goode, *Dictionary of Trade Policy Terms*, 6th ed. (Cambridge: Cambridge University Press, 2020), s.v. "Harmonized Commodity Description and Coding System."

[185] 19 C.F.R. §128.24(e):

> Shipments valued at $800 or less meeting the requirements of § 10.151 of this chapter will be passed free of duty and tax. Such shipments must be segregated on the manifest from shipments valued at more than $800 if an advance manifest is used as the entry document, as provided for in § 128.21. If such an advance manifest is used as the entry document, *the following are not required to be provided for shipments qualifying under this paragraph […] (1) The Harmonized Tariff Schedule of the United States (HTSUS) subheading number* (see § 128.21(a)(4)) […]. (emphasis added).

19 C.F.R. §145.31:

> The port director will pass free of duty and tax, *without preparing an entry* as provided for in § 145.12, [mailed] packages containing merchandise having an aggregate fair retail value in the country of shipment of not over $800, subject to the requirements set forth in §§ 10.151 and 10.153 of this chapter. (emphasis added).

[186] U.S. Census Bureau, Guide to the U.S. International Trade Statistical Program, available at https://www.census.gov/foreign-trade/guide/sec2.html; U.S. Census Bureau, U.S. Merchandise Trade Statistics: A Quality Profile, October 3, 2014, p. 9, available at https://www.census.gov/foreign-trade/aip/quality_profile10032014.pdf.

[187] See, for example, End China's De Minimis Abuse Act, H.R. 7979, 118th Cong., §2 (2024); Import Security and Fairness Act, S. 2004, 118th Cong., §3 (2023); Import Security and Fairness Act, H.R. 4148, 118th Cong., §2 (2023); Customs Modernization Act of 2023, S. 3431, 118th Cong., § 401 (2023); Ensure Accountability in De Minimis Act of 2024, S. 4082, 118th Cong., §5 (2024); De Minimis Reciprocity Act of 2023, S. 1969, 118th Cong., §2 (2023); America's Act, S. 3878, 118th Cong., §302 (2024); America's Act, H.R. 7571, 118th Cong., §302 (2024).

[188] This has been a long-standing complaint. For example, Nat'l Customs Brokers & Forwarders Ass'n of Am. v. United States, 18 Ct. Int'l Trade 754, 761, 861 F. Supp. 121 (1994):

> Specifically, plaintiff [the National Customs Brokers and Forwarders Association of America] points out that … proposed regulations allow entry of shipments valued at amounts up to $ 200 through summary manifest information, that is, without any requirement of a Harmonized Tariff Schedule of the United States (HTSUS) subheading number, and exempt these shipments from the requirement of filing an entry summary. Plaintiff contends that this lax entry procedure will create difficulties for Customs relative to the enforcement of visa requirements for apparel, intellectual property rights for patents and copyrights, and antidumping and countervailing duty orders. Plaintiff contends that the proposed changes will hinder the Food and Drug Administration's enforcement capabilities as well.

merchandise" already required for de minimis entries.[189] Critics argue that CBP should instead focus on improving the quality of that data that it already collects.[190]

Additionally, de minimis entries are not required to be entered into the Automated Customs Environment (ACE), the primary source used by the U.S. Census Bureau when compiling import statistics and by CBP for targeting imports for additional screening.[191]

In response to such concerns, CBP launched two pilot programs in 2019 to collect additional data on Section 321 entries: The Entry Type 86 Test and the Section 321 Data Pilot. As of July 2024, most non-postal de minimis entries use one of these two programs.

Entry Type 86 Test

CBP uses ACE to collect and process import documentation electronically.[192] Before 2019, import documentation for goods claiming the de minimis exemption was not entered into ACE.[193] That fact presented several problems for both importers and CBP. Because ACE is central to cooperation with partner government agencies (PGAs), importers wishing to enter goods subject to PGA regulations [such as Food and Drug Administration (FDA) or United States Department of Agriculture (USDA) regulations] could not use the de minimis exemption.[194] CBP, in turn, lacked actionable electronic information necessary to target de minimis imports for additional screening.[195] The "growing volume of Section 321 low-value shipments resulting from the global shift in trade to an e-commerce platform," has made manual targeting difficult and further exacerbated data collection challenges.[196]

In 2019, CBP initiated a test to allow certain low-value goods to be entered into ACE.[197] In its notice, CBP expressed its belief that this "Entry Type 86 Test" (named for the new entry type

[189] See, for example, Nana Ama Sarfo, "The Tax Man Comes For Fast Fashion, Part 2," *Forbes*, May 20, 2024; For the current information requirements, see 19 C.F.R. §143.23(k).

[190] Ibid.

[191] For U.S. Census Bureau import regulations, see 15 C.F.R. §30.50. For information on the Census Bureau's International Trade Statistical Program, see U.S. Census Bureau, Guide to the U.S. International Trade Statistical Program, available at https://www.census.gov/foreign-trade/guide/sec2.html.

[192] Mod Act §631, codified as amended at 19 U.S.C. §1411; Security and Accountability for Every Port Act of 2006 (SAFE Port Act), P.L. 109-347, §405, 120 Stat. 1884, 1929 (October 13, 2006), codified at 19 U.S.C. §1411(d); CBP, "ACE and Automated Systems," available at https://www.cbp.gov/trade/automated.

[193] CBP, "Test Concerning Entry of Section 321 Low-Value shipments Through Automated Commercial Environment (ACE)," 84 *Federal Register* 40079, August 13, 2019.

[194] CBP, "Test Concerning Entry of Section 321 Low-Value Shipments Through Automated Commercial Environment (ACE)," 84 *Federal Register* 40079, August 13, 2019: "One commenter pointed out that unless Section 321 low-value shipments subject to PGA requirements could be cleared under a Section 321 de minimis entry process, the de minimis exemption would be of little use to the greater public because a large percentage of these imported shipments are regulated by PGAs."

[195] CBP, "Test Concerning Entry of Section 321 Low-Value Shipments Through Automated Commercial Environment (ACE)," 84 *Federal Register* 40079, August 13, 2019: "These commenters pointed out that automating Section 321 clearance through ACE will increase CBP's ability to provide risk-based targeting of inbound shipments, assure supply chain security, enforce trade laws, and protect intellectual property rights."

[196] CBP, "Test Concerning Entry of Section 321 Low-Value Shipments Through Automated Commercial Environment (ACE)," 84 *Federal Register* 40079, August 13, 2019; CBP, Office of Trade/Trade Policy and Programs, Next Generation Facilitation Subcommittee, E-Commerce Task Force, Commercial Customs Operations Advisory Committee Issue Paper, Pub. 3228-0623 (June 2023), p. 1.

[197] CBP, "Test Concerning Entry of Section 321 Low-Value Shipments Through Automated Commercial Environment (ACE)," 84 *Federal Register* 40079, August 13, 2019.

created in ACE) effectively addresses several concerns related to de minimis imports. [198] According to CBP, the test:

> facilitates legitimate trade while also allowing CBP to enhance its targeting capabilities; ensures that PGAs can identify potential violative products for reporting or enforcement targeting purposes while allowing filers to utilize a less complex entry process; and decreases the challenges faced by CBP in targeting, locating and examining Section 321 low-value shipments by collecting necessary data. [199]

In contrast to standard de minimis entries, additional data is required for goods entered under the Entry Type 86 Test. Whereas de minimis entries do not require submitting a HTSUS code,[200] entries made as part of the Entry Type 86 Test do.[201] Merchandise subject to antidumping and countervailing (AD/CV) duties, quotas, certain tobacco and alcohol products, and goods taxed under the Internal Revenue Code are not eligible for the Type 86 Test because they are administered by other agencies.[202] The test is also not available for entries arriving by mail.[203]

Type 86 entries have several features to improve visibility and allow for additional avenues of enforcement. With additional data, some commentators argue, CBP agents could better target imports that may violate U.S. trade laws.[204] Moreover, whereas a standard Section 321 shipment can be entered by the owner, purchaser, or consignee, including a foreign importer of record, Type 86 entries are considered "customs business" and often require that a customs broker serve as the importer of record.[205] Because a licensed broker is often involved, the Entry Type 86 Test

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[198] Ibid.

[199] Ibid.

[200] 19 C.F.R. §143.23(k); 19 C.F.R. §128.24(e).

[201] CBP, "Test Concerning Entry of Section 321 Low-Value Shipments Through Automated Commercial Environment (ACE)," 84 *Federal Register* 40079, August 13, 2019: "No Harmonized Tariff Schedule of the United States (HTSUS) subheading or entry summary is required on an advance manifest for Section 321 low-value shipments." In contrast, "[a]n entry type '86' requires the owner, purchaser, or customs broker appointed by the owner, purchaser, or consignee to file the following data elements with CBP at any time prior to, or upon arrival, or up to 15 days after arrival of the cargo: … (9) 10-digit HTSUS number."

[202] Ibid:

> [A]lcoholic beverages and cigars (including cheroots and cigarillos) and cigarettes containing tobacco, cigarette tubes, cigarette papers, smoking tobacco (including water pipe tobacco, pipe tobacco, and roll-your-own tobacco), snuff, or chewing tobacco are not exempt; any merchandise subject to antidumping and countervailing duties is not exempt; any merchandise of a class or kind provided for in any absolute or tariff- rate quota, whether the quota is open or closed, is not exempt; and, there is no exemption from any tax imposed under the Internal Revenue Code that is collected by other agencies on imported goods.

CBP, Entry Type 86 Frequently Asked Questions, available at https://www.cbp.gov/trade/trade-enforcement/tftea/section-321-programs/entry-type-86-frequently-asked-questions.

[203] "Test Concerning Entry of Section 321 Low-Value Shipments Through Automated Commercial Environment (ACE)," 84 *Federal Register* 40079, August 13, 2019.

[204] Ibid.: "Five of the commenters encouraged CBP to automate Section 321 clearance using ACE. These commenters pointed out that automating Section 321 clearance through ACE will increase CBP's ability to provide risk-based targeting of inbound shipments, assure supply chain security, enforce trade laws, and protect intellectual property rights."

[205] Ibid.: "The filing of entry type '86' is considered 'customs business' under 19 U.S.C. 1641…For purposes of the ACE Entry Type 86 Test, CBP is requiring that consignees intending to file an entry type '86' appoint a customs broker to act as the importer of record (IOR) for the shipment." 19 U.S.C. 1641(b)(1): "No person may conduct customs business (other than solely on behalf of that person) unless that person holds a valid customs broker's license issued by the Secretary." However, certain self-filers may be able to participate. See CBP, *Section 321 Programs*, CBP Publication: 0941-0919: "Creation of the new informal entry type 86 allows for customs brokers and *self-filers* to electronically submit entries with a limited data set that is exempt from duty, taxes and fees" (emphasis added).

provides CBP an additional means of encouraging compliance with U.S. import laws by restricting participation in the pilot. In 2024, CBP clarified that test participants may be subject to civil, criminal, and administrative penalties, including suspension from the program, for

> (1) Failure to follow the rules, requirements, terms, and conditions of this test;
>
> (2) Failure to exercise reasonable care in the execution of participant obligations; or
>
> (3) Failure to abide by applicable laws and regulations that have not been waived.[206]

In May 2024, CBP announced that it had "suspended multiple customs brokers from participating in the Entry Type 86 Test after determining that their entries posed an unacceptable compliance risk."[207]

Section 321 Data Pilot

CBP's capacity to enforce U.S. trade laws with respect to de minimis packages has been hindered by the lack of information about the entity that caused a package to move (for example, the seller of merchandise), the ultimate recipient (for example, the purchaser of the merchandise), and the detailed contents of the package.[208] This is because, as CBP notes, "traditionally regulated parties, such as carriers, are unlikely to possess all of the information relating to a shipment's supply chain."[209]

As part of an effort to improve its targeting efforts, CBP began its Section 321 Data Pilot in 2019. The Section 321 Data Pilot is "a voluntary test to collect certain advance data related to shipments eligible for release under Section 321."[210] CBP initiated the Data Pilot "to determine the feasibility of requiring advance data from different types of parties and requiring additional data that is generally not required under current regulations in order to effectively identify and target high-risk shipments in the e-commerce environment."[211]

Pilot participants include carriers, brokers, freight forwarders, and online marketplaces.[212] Participants are required to transmit additional data, including the shipment originator's name and address, the final recipient's name and address, and an "enhanced" product description that "reflect[s] the advertised retail description of the product as listed on an online marketplace."[213] The Data Pilot, unlike the Entry Type 86 Test, does not require an HTSUS code.

Use of Entry Type 86 Test and the Section 321 Data Pilot

Since the Entry Type 86 Test and the Section 321 Data Pilot were initiated, an increasing percentage of entries claiming the de minimis exemption have used the programs (**Table 5**). In

[206] CBP, "Test Concerning Entry of Section 321 Low-Value Shipments Through the Automated Commercial Environment (ACE) (Also Known as Entry Type 86); Republication With Modifications," 89 *Federal Register* 2630, 2634, January 16, 2024.

[207] CBP, "Statement from CBP Acting Commissioner Troy Miller on New Efforts to Enhance Enforcement and Prevent Exploitation in the De Minimis Environment," press release, May 31, 2024.

[208] CBP, "Section 321 Data Pilot," 84 *Federal Register* 35405, 35406-35407, July 23, 2019: "While CBP receives some advance electronic data for Section 321 shipments from air, rail, and truck carriers (and certain other parties in limited circumstances) … transmitted data often does not adequately identify the entity causing the shipment to cross the border, the final recipient, or the contents of the package."

[209] Ibid.

[210] Ibid.

[211] Ibid.

[212] Ibid.

[213] Ibid.

2020, 29% of de minimis entries entered using the Entry Type 86 Test and the Section 321 Data Pilot. By 2023, approximately 79% of de minimis entries had entered the United States under the Entry Type 86 Test and the Section 321 Data Pilot providing additional data, including HTSUS codes on de minimis entries.[214]

Table 5. Section 321 Entries (Bills of Lading, in Millions)

	2020	2021	2022	2023	2024 mid-year
Total De Minimis Entries	636.7	771.5	685.4	1,000	705.1
Entry Type 86 Test	122.1	344.8	333.7	623.1	474.7
Section 321 Data Pilot	60.1	169.5	161.6	162.5	82.1
Percentage of Entries Covered by Test/Pilot Programs	29%	67%	72%	79%	79%

Source: CBP, E-Commerce, available at https://www.cbp.gov/trade/basic-import-export/e-commerce. Data current to July 1, 2024.

These programs are pilots and tests. If Congress finds the additional information useful, it could encourage or require that CBP continue the programs. Congress could also suggest or require changes to, or the termination of, the programs.

In January 2025, CBP proposed formally creating a new entry process that "incorporates a selection of the most useful data elements tested in the Section 321 Data Pilot and uses an electronic entry process similar to what was tested in the Entry Type 86 Test."[215] In addition, CBP has proposed amendments to the current entry process that would require the submission of the name of the person claiming the de minimis exemption and the final deliver-to party as well as the ten-digit HTSUS code.[216]

U.S. Tariffs Rates, Fees, and De Minimis Impact on Protected Industries

As discussed above, the de minimis exemption authorizes the Secretary of the Treasury to "admit articles free of duty and of any tax imposed on or by reason of importation [which] shall not exceed an amount specified by the Secretary by regulation, but not less than [$800]"[217] CBP's implementing regulations require a Port Director to pass qualifying entries under Section 321 "free of duty or tax."[218] Under CBP regulations, duties are "Customs duties and any internal revenue taxes which attach upon importation."[219] In addition to being exempt from generally applicable duties and taxes, CBP has determined that goods eligible for entry under Section 321

[214] CBP, E-Commerce, available at https://www.cbp.gov/trade/basic-import-export/e-commerce.

[215] CBP, "Entry of Low-Value Shipments," 90 *Federal Register* 3048, January 14, 2025.

[216] Ibid.; CBP, "Trade and National Security Actions and Low-Value Shipments," 90 *Federal Register* 6852, January 21, 2025.

[217] 19 U.S.C. §1321(a)(2).

[218] 19 C.F.R. §10.151.

[219] 19 C.F.R. §101.1 "Duties."

are not subject to duties imposed by several other U.S. statutes. (See "Trade Remedies, Tariff Actions, and De Minimis Imports" section). Section 321 entries are also not subject to fees assessed on other types of entries.[220] For example, goods that are valued under $2,500 and informally entered, but that are ineligible for the de minimis exemption, are subject to the Merchandise Processing Fee, which ranges from $1.27 to $11.40 in FY2024.[221]

Some policymakers have argued that the de minimis exemption increases imports of low-value goods and privileges direct-to-consumer commerce over certain domestic retailers and manufacturers.[222] Implicit in some of these claims is an argument that a principal aim of U.S. tariff policy should be to insulate domestic industries from foreign competition. According to the most recent available World Bank data, U.S. rates of duty for most types of goods were lower than the global median in 2021 and the global average in 2017.[223] The average weighted applied tariff rate across products subject to duty in 2023 was 3.94%,[224] while the average weighted applied tariff rate across all products in 2023 was 1.29%.[225] Approximately one-third of the categories of goods listed in the HTSUS enter the United States duty-free regardless of whether they qualify for de minimis treatment.[226]

While U.S. tariff rates have been low relative to global averages, several categories of goods, most of which are related to textiles or apparel, have had relatively high duty rates.[227] Of the 10 HTSUS chapters with the highest rate of applied duties, seven apply to textiles or apparel (**Table**

[220] 19 C.F.R. 24.23(c)(1)(v): "The ad valorem fee, surcharge, and specific fees provided for under paragraphs (b)(1) and (b)(2) of this section will not apply to: … (v)… merchandise released under 19 U.S.C. 1321, and merchandise imported by mail." For the fees, see 19 U.S.C. §58c; 19 C.F.R. §24.23(b)(1)-(2); CBP, "COBRA Fees to be Adjusted for Inflation in Fiscal Year 2024 CBP Dec. 23-08," 88 *Federal Register* 48900, July 28, 2023, Table 2; See also CBP, E-Commerce Frequently Asked Questions, available at https://www.cbp.gov/trade/basic-import-export/e-commerce/faqs: "Shipments qualifying for Entry Type 86 are not subject to duties, taxes and fees. If the shipment requires fee collection (e.g. agricultural fees), filers must file a Type 01 Consumption or Type 11 Informal entry."

[221] 19 U.S.C. §58c; 19 C.F.R. §24.23(b)(2); CBP, "COBRA Fees to be Adjusted for Inflation in Fiscal Year 2024 CBP Dec. 23-08," 88 *Federal Register* 48900, July 28, 2023, Table 2.

[222] For example, TFTEA §901: "Congress [finds that] 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….;" Sen. Brown, "Brown, Scott Demand Administration Close "De Minimis" Trade Loophole That Undermines American Manufacturers," press release, February 24, 2024, available at https://www.brown.senate.gov/newsroom/press/release/sherrod-brown-scott-demand-administration-close-de-minimis-trade-loophole-undermines-american-manufacturers: "The existence of this U.S. policy loophole also unfairly benefits foreign companies and overseas e-commerce platforms such as Temu, SHEIN, and AliExpress, allowing them to evade tariffs, duties, taxes, and compliance with other U.S. customs laws and regulations that U.S. companies and brick and mortar stores must comply with."

[223] According to World Bank data on "Tariff Rate, Applied, Simple Mean, All Products," the United States had a rate of 1.57%, which placed it 50th of 164 jurisdictions for which data were available in 2021 when sorted from lowest rate to highest. Similarly, in 2017, the last year for which the World Bank computed a "World" average, the United States had a rate of 1.66% compared with a "World" rate of 2.59%. Data available at https://data.worldbank.org/.

[224] U.S. Census Bureau. Derived using 2023 data for calculated duties and customs value of goods entered under rate provision code 61, "Dutiable HS Chapters 1-97." Rate does not include duties collected under other programs including Section 301 of the Trade Act of 1974.

[225] U.S. Census Bureau. Derived using 2023 data for calculated duties and customs value of goods entered under rate provision code 61, "Dutiable HS Chapters 1-97" and 10, "Free under HS Chapters 1-98." Rate does not include duties collected under other programs including Section 301 of the Trade Act of 1974.

[226] USITC, Harmonized Tariff Schedule of the United States, April 2024. As of April 2024, there were approximately twenty-five thousand HTSUS codes, of which approximately nine thousand carry a general rate of duty of "free."

[227] U.S. Census Bureau. Derived using 2023 data for calculated duties and customs value of goods entered under rate provision code 61, "Dutiable HS Chapters 1-97" and 10, "Free under HS Chapters 1-98." Rate does not include duties collected under other programs including Section 301 of the Trade Act of 1974.

6).[228] Because of the relatively higher benefit of tariff free treatment for such items, textiles and apparel have featured in many policy and public discussions surrounding de minimis. In the 1950s, textile and clothing manufacturers were some of the most vocal opponents of the proposal to raise the de minimis threshold. (See "The Customs Simplification Act of 1953 and Concerns About Mail-Order Business" section.) Likewise, in the 2020s, concern around textiles has been central to the debate and critical attention has centered on overseas direct-to-consumer retailers that sell clothing, such as SHEIN and Temu.[229] The Biden Administration has stated that "Congress should act to exclude import-sensitive products, including textile and apparel products, from the de minimis exemption."[230] Prior to 1992, the Treasury had the discretion to exclude certain products from the de minimis exemption. Since Congress changed the threshold from a ceiling to a floor, the executive branch has had less discretion to make such determinations, except insofar as it may deem necessary to protect the revenue of the United States or prevent unlawful importations.[231] As such, if Congress were to seek to exclude certain products from the de minimis exemption, it may be necessary to amend Section 321.

Table 6. 10 Highest Rates of Duty by HTSUS Chapter in 2023

HTSUS Chap.	Description	Calculated Duties	Customs Value	Average Applied Rate
61	Articles of Apparel and Clothing Accessories, Knitted or Crocheted	$4,471,048,079	$24,939,867,269	17.93%
62	Articles of Apparel and Clothing Accessories, Not Knitted or Crocheted	$3,654,780,924	$23,344,061,755	15.66%
45	Cork and Articles of Cork	$114,404	$817,154	14.00%
64	Footwear, Gaiters and the Like; Parts of Such Articles	$2,350,926,762	$20,441,560,397	11.50%
60	Knitted or Crocheted Fabrics	$39,709,262	$355,116,537	11.18%
51	Wool and Fine or Coarse Animal Hair, Including Yarns and Woven Fabrics Thereof; Horsehair Yarn and Woven Fabric	$12,720,632	$123,071,992	10.34%

[228] U.S. Census Bureau. Derived using 2023 data for calculated duties and customs value of goods entered under rate provision code 61, "Dutiable HS Chapters 1-97."

[229] Arriana McLymore, "Shein Plans to Bolster Compliance and Logistics Execs Ahead of US Marketplace," *Reuters*, May 31, 2023; Jordyn Holman, "Bipartisan Proposals Would Hit E-Commerce Like Fast Fashion," *New York Times*, June 15, 2023; Rachel Tashjian, "Shein, the Fast-Fashion Giant, Hits Roadblocks," *Washington Post*, June 28, 2023; Rachel Tashjian, "The Scandals of Shein's Fast-Fashion Empire," *Post Reports*, Washington Post, July 20, 2023, https://www.washingtonpost.com/podcasts/post-reports/the-scandals-of-sheins-fastfashion-empire/; Jordyn Holman, "U.S. Retailers Say an Old Trade Law Puts Them at a Disadvantage," *New York Times*, November 4, 2023; Jordyn Holman, Audra Melton, "Where Textile Mills Thrived, Remnants Battle for Survival," *New York Times*, January 21, 2024.

[230] White House, "FACT SHEET: Biden-Harris Administration Announces New Actions to Protect American Consumers, Workers, and Businesses by Cracking Down on De Minimis Shipments with Unsafe, Unfairly Traded Products," press release, September 13, 2024.

[231] 19 U.S.C. §1321(b).

HTSUS Chap.	Description	Calculated Duties	Customs Value	Average Applied Rate
53	Vegetable Textile Fibers Nesoi; Yarns and Woven Fabrics of Vegetable Textile Fibers Nesoi and Paper	$564,358	$5,525,405	10.21%
42	Articles of Leather; Saddlery and Harness; Travel Goods, Handbags and Similar Containers; Articles of Gut (Other Than Silkworm Gut)	$668,138,197	$6,702,466,973	9.97%
54	Manmade Filaments, Including Yarns and Woven Fabrics Thereof	$77,633,660	$796,046,855	9.75%
20	Preparations of Vegetables, Fruit, Nuts, or Other Parts of Plants	$375,418,222	$4,402,026,619	8.53%

Source: CRS; U.S. Census Bureau.

Notes: Data were Derived using 2023 data for calculated duties and customs value of goods entered under rate provision code 61, "Dutiable HS Chapters 1-97."

Trade Remedies, Tariff Actions, and De Minimis Imports

In addition to generally applicable tariffs, several U.S. laws authorize the executive branch to impose additional duties or import quotas on certain goods, as described below. Imported goods subject to these other additional duties or imports quotas, in certain circumstances may still qualify for the de minimis exemption.

- Antidumping (AD) and countervailing (CV) duties are trade remedies imposed to counteract foreign imports that are priced below market value or subsidized by a foreign government, respectively, in order to protect U.S. industries from unfair competitive disadvantages.[232]
- Safeguard Measures imposed under Section 201 of the Trade Act of 1974 are restrictions on certain imports to protect U.S. industries injured (or threatened with injury) by an unexpected and significant surge in imports.[233]
- Section 232 of the Trade Expansion Act of 1962 authorizes the President to impose additional duties on imports that threaten the national security of the United States.[234]
- Section 301 of the Trade Act of 1974 authorizes the President to impose additional duties in response to a breach of a trading partner's obligations.[235]

[232] 19 U.S.C. §§1673 *et seq.*; 19 U.S.C. §§1677 *et seq.*; CRS Report R46296, *Trade Remedies: Antidumping*, by Christopher A. Casey; CRS Report R46882, *Trade Remedies: Countervailing Duties*, by Christopher A. Casey and Liana Wong.

[233] Trade Act of 1974, P.L. 93-618, Title II, 88 Stat. 1978, 2011, codified as amended at 19 U.S.C. §2251 *et seq.;* CRS In Focus IF10786, *Safeguards: Section 201 of the Trade Act of 1974*, by Liana Wong.

[234] Trade Expansion Act of 1962, P.L. 87-794, §232, 75 Stat. 872, 877, codified as amended at 19 U.S.C. §1862 *et seq.*; CRS Report R45249, *Section 232 Investigations: Overview and Issues for Congress*, coordinated by Rachel F. Fefer.

[235] Trade Act of 1974, P.L. 93-618, Title III, 88 Stat. 1978, 2041, codified as amended at 19 U.S.C. §§2411 *et seq.*; CRS Report R46604, *Section 301 of the Trade Act of 1974: Origin, Evolution, and Use*, by Andres B. Schwarzenberg.

Under current CBP guidance, goods subject to AD/CV duties are ineligible for informal entry and thus ineligible for entry under Section 321 (**Table 7**).[236] De minimis treatment is also not generally available for goods subject to partner government agency (PGA) regulations, except in the context of the Entry Type 86 Pilot (see "Entry Type 86 Test" section).

In contrast, merchandise subject to Safeguard Measures (Section 201),[237] Section 232,[238] and Section 301[239] are eligible for de minimis treatment unless subject to an import quota.[240] Additional authorities empower the President to impose duties on imports in certain situations; however, as there are no such duties currently in place, CBP has not issued guidance on how de minimis might apply in such circumstances.[241]

Some Members of Congress have moved to prevent certain imports from China from being eligible for the de minimis exemption.[242] For example, the End China's De Minimis Abuse Act, introduced in the 118th Congress, and the Import Security and Fairness Act, introduced in the 117th Congress, would have prohibited goods subject to duties under certain tariff laws from receiving the de minimis treatment.[243]

Other Members have countered attempts to subject de minimis entries to such tariffs. For example, in 2020 when the Treasury Department considered subjecting low-value shipments to Section 301 duties,[244] several Members of the Senate Committee on Finance wrote in opposition to the rule, claiming, "Congress did not include any exception for merchandise that was subject to

[236] CBP, E-Commerce Frequently Asked Questions, available at https://www.cbp.gov/trade/basic-import-export/e-commerce/faqs. AD/CVD are imposed by the Commerce Department and not by Treasury, which is why CBP has determined they cannot waive AD/CVDs under De Minimis.

[237] 19 U.S.C. §2251 *et seq.*; CBP, Entry Type 86 Frequently Asked Questions, available at https://www.cbp.gov/node/352695/printable/print: "Yes, an entry that is subject to Section 201 may be filed as an Entry Type 86."

[238] 19 U.S.C. §1862 *et seq.*; CBP, Section 232 Tariffs on Aluminum Frequently Asked Questions, available at https://www.cbp.gov/trade/programs-administration/entry-summary/232-tariffs-aluminum-and-steel/faqs: "No, in general, goods properly entered under Section 321 are not subject to Section 232 duties. However, any good subject to 232 measures that include quota restrictions may not enter under Section 321 and requires a formal entry."

[239] 19 U.S.C. §§2411 *et seq.*; CBP, Section 301 Trade Remedies Frequently Asked Questions, available at https://www.cbp.gov/trade/programs-administration/entry-summary/section-301-trade-remedies/faqs: "No, goods properly entered under Section 321 are not subject to Section 301 duties. Any good subject to 301 measures that include quota restrictions may not enter under Section 321 and requires a formal entry."

[240] CBP, Section 301 Trade Remedies Frequently Asked Questions; CBP, Section 232 Tariffs on Aluminum Frequently Asked Questions; CBP, Entry Type 86 Frequently Asked Questions.

[241] For example, the President is authorized to regulate imports under the International Emergency Economic Powers Act (IEEPA). 50 U.S.C. §1702. Previous Presidents have used similar authorities, or threatened to use IEEPA, to impose additional tariffs or duties. See, for example, Proclamation 4074 of August 15, 1971, 85 Stat. 926; In 2019, President Trump threatened to use IEEPA to impose a tariff. U.S. President (Trump), "Statement on Emergency Measures To Address Illegal Migration at the Mexico-United States Border," *Daily Compilation of Presidential Documents*, DCPD-201900354, May 30, 2019: "To address the emergency at the southern border, I am invoking the authorities granted to me by the International Emergency Economic Powers Act. Accordingly, starting on June 10, 2019, the United States will impose a 5-percent tariff on all goods imported from Mexico." The President is also authorized to impose tariffs in certain circumstances under Section 122 of the Trade Act of 197., P.L. 93-618, §122, codified as amended at 19 U.S.C. §2132.

[242] For example, Sherrod Brown and Rick Scott, letter to Joseph R. Biden, President of the United States, February 23, 2024: "Protect Domestic Industries and Ensure the Proper Application of the Law by excluding from de minimis goods that are subject to Partner Government Agencies import notification requirements, Sec. 301 and Sec. 232 penalty tariffs, and UFLPA import restrictions, as well as products in sectors designated as Priority Trade Issues by Congress."

[243] End China's De Minimis Abuse Act, H.R. 7979, 118th Cong., §2 (2024); Import Security and Fairness Act, H.R. 6412, 117th Cong., §2 (2022).

[244] U.S. Treasury, "Excepting Merchandise Subject to Section 301 Duties From the Customs De Minimis Exemption," RIN: 1515-AE57, Fall 2020.

action under Section 301 of the Trade Act of 1974," and asserting, "[t]he position of the Senate Finance Committee has not changed […] even with the increased use of tariffs pursuant to Section 301."[245]

In January 2025, CBP proposed new rules that would exclude from the de minimis exemption all shipments containing products covered by tariffs imposed under Sections 201 or 301 of the Trade Act of 1974, or Section 232 of the Trade Expansion Act of 1962.[246] Members of Congress opposed to this proposed rule change could express their concerns during the rulemaking process or act legislatively to codify or remove the exclusions.

Table 7. De Minimis Exception Applicability to Trade Remedies and other Tariff Actions

Special Duty	Eligible for De Minimis Exception
Antidumping Duties	No
Countervailing Duties	No
Section 201 of the Trade Act of 1974 Duties	Yes, unless subject to an import quota
Section 232 of the Trade Expansion Act of 1962 Duties	Yes, unless subject to an import quota
Section 301 of the Trade Act of 1974 Duties	Yes, unless subject to an import quota
International Emergency Economic Powers Act Duties	*No Prior Use/No Guidance*
Section 122 of the Trade Act of 1974 Duties	*No Prior Use/No Guidance*

Source: CBP, Entry Type 86 Frequently Asked Questions, available at https://www.cbp.gov/trade/trade-enforcement/tftea/section-321-programs/entry-type-86-frequently-asked-questions; CBP, Section 232 Trade Remedies Frequently Asked Questions, available at https://www.cbp.gov/trade/programs-administration/entry-summary/232-tariffs-aluminum-and-steel/faqs; CBP, Section 301 Trade Remedies Frequently Asked Questions, available at https://www.cbp.gov/trade/programs-administration/entry-summary/section-301-trade-remedies/faqs.

Inflation and its Impact on the De Minimis Threshold

During the first 40 years after Section 321's enactment in 1938, Congress declined to increase the de minimis ceiling in line with inflation despite repeated requests from the Treasury Department. In contrast, since the 1990s, Congress has increased the de minimis floor at a rate in excess of inflation (**Table 2**).

Once Congress establishes a threshold in Section 321, the purchasing power of the rate begins to decline. Over time, the decline in the purchasing power of the rate potentially undermines the stated purpose of the statute. As fewer imports qualify for the exemption over time, the resources expended by CBP to enter merchandise may increase. Conversely, statutorily setting a rate in excess of inflation may modify the character of the underlying statute by emphasizing the exemption's role in liberalizing trade by allowing more goods to enter the United States free of duty, taxes, and fees. Congress arguably made such a choice in 1994 and 2015 when it raised the de minimis floor at a rate greater than inflation (**Table 2**). In 2015, Members introduced bills to

[245] Sens. Grassley, *et al*. to Director Russell Vought, Office of Management and Budget, December 23, 2020.

[246] White House, "FACT SHEET: Biden-Harris Administration Announces New Actions to Protect American Consumers, Workers, and Businesses by Cracking Down on De Minimis Shipments with Unsafe, Unfairly Traded Products," press release, September 13, 2024; CBP, "Entry of Low-Value Shipments," 90 *Federal Register* 3048, January 14, 2025; CBP, "Trade and National Security Actions and Low-Value Shipments," 90 *Federal Register* 6852, January 21, 2025.

raise the de minimis threshold from $200 to $800; at least one bill included a provision that would have increased the threshold annually in line with the consumer price index (CPI).[247] While the threshold increase was enacted as part of TFTEA, the increase indexed to CPI was not.[248] Treasury has the authority to adjust for inflation since the threshold was transformed from a ceiling to a floor; it has never done so.

Setting dollar amounts in legislation often presents a challenge due to changes in the purchasing power of a dollar over time. To address such issues, Congress authorizes the executive branch to adjust dollar amounts with inflation in certain cases.[249] Congress has not previously authorized such adjustments for Section 321; it could consider doing so as one potential means to adjust the de minimis threshold for inflation. The increases in 1993 and 2016 were in excess of inflation and, based on historical inflation rates, would take decades or longer to reach the point where $800 is worth approximately $1 in 1938.

De Minimis and its Impact on Domestic Prices

Although many economists argue tariffs increase the cost of imported goods and may contribute to an increase in domestic prices, the extent of an increase depends on several factors.[250] Because changing de minimis would implicate a wide variety of industries and countries, it is difficult to estimate with precision the potential impact of such a change. CRS has identified one substantial study that has attempted to estimate the economic impact of eliminating the de minimis exemption: In 2024 two economists using datasets provided by three major contract carriers estimated that eliminating the de minimis exemption so "would reduce aggregate welfare by $10.9-$13.0 billion and disproportionately hurt lower-income and minority consumers."[251]

[247] Compare the Low Value Shipment Regulatory Modernization Act of 2015, H.R. 978, 114th Cong., §3(a)(2) (2015), which included the CPI provision, with the Low Value Shipment Regulatory Modernization Act of 2015, S. 489, 114th Cong., §3(a) (2015), which did not, and TFTEA §901, which did not.

[248] TFTEA §901.

[249] For example, Federal Civil Penalties Inflation Adjustment Act as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Title VII of P.L. 114-74 §701, 129 Stat. 584, 599, codified as amended at 28 U.S.C. §2461 note: "not later than January 15 of every year […] the head of each agency shall […] adjust each civil monetary penalty provided by law within the jurisdiction of the Federal agency […] by the inflation adjustment described under section 5 of this Act;" Consolidated Omnibus Budget Reconciliation Act of 1985 as amended by the Fixing America's Surface Transportation Act, P.L. 114-94 §32201, 129 Stat. 1312, 1738 (2015), codified as amended at 19 U.S.C. §58c(I)(l): " The Secretary of the Treasury shall adjust the fees established under subsection (a), and the limitations on such fees under paragraphs (2), (3), (5), (6), (8), and (9) of subsection (b), on April 1, 2016, and at the beginning of each fiscal year thereafter, to reflect the percentage (if any) of the increase in the average of the Consumer Price Index for the preceding 12-month period compared to the Consumer Price Index for fiscal year 2014."

[250] Robert E. Baldwin, "The Effects of Tariffs on International and Domestic Prices," *Quarterly Journal of Economics* 74, no. 1 (1960); Michael Bruno, "Import Prices and Stagflation in the Industrial Countries: A Cross-Section Analysis," *Economic Journal* 90, no. 359 (1980); Robert C. Feenstra, "Symmetric Pass-Through of Tariffs and Exchange Rates under Imperfect Competition: An Empirical Test," *Journal of International Economics* 27, no. 1-2 (1989); Mary Amiti, Stephen J. Redding and David E. Weinstein, "The Impact of the 2018 Tariffs on Prices and Welfare," *Journal of Economic Perspectives* 33, no. 4 (2019); Pablo D. Fajgelbaum, Pinelopi K. Goldberg, Patrick J. Kennedy, and Amit K. Khandelwal, "The Return to Protectionism," *Quarterly Journal of Economics* 135, no. 1 (2020); Aaron Flaaen, Ali Hortaçsu, and Felix Tintelnot, "The Production Relocation and Price Effects of U.S. Trade Policy: The Case of Washing Machines," *American Economic Review* 110, no. 7 (2020); Alberto Cavallo, Gita Gopinath, Brent Neiman, and Jenny Tang, "Tariff Pass-Through at the Border and at the Store: Evidence from US Trade Policy," *American Economic Review: Insights* 3, no. 1 (2021); Liliana Winkelmann and Rainer Winkelmann, "Tariffs, quotas and terms-of-trade: The case of New Zealand," *Journal of International Economics* 46 (1998).

[251] Pablo D. Fajgelbaum and Amit Khandelwal, "The Value of De Minimis Imports," NBER Working Paper No. 32607 (2024), p. 1.

Scrutiny of Packages Entered Under De Minimis

Since at least the 1950s, certain industry groups have expressed concern that increasing the de minimis threshold would increase both the total value of imports and the number of individual entries, stressing the resources of CBP and its predecessor agencies in their efforts to scrutinize entries.

The increase of the de minimis threshold in 2015 came at a time when CBP was simultaneously tasked with increasing the scrutiny of imports that may violate U.S. customs law. For example, TFTEA increased the de minimis threshold from $200 to $800 while simultaneously strengthening the prohibition on imports of goods mined, produced, or manufactured using forced labor.[252] It also came at a time of heightened concerns about imported goods that violate intellectual property protections and U.S. drug laws.[253]

The lack of information submitted with de minimis entries has challenged CBP enforcement by limiting CBP's capacity to use modern targeting methods. As one CBP employee put it, "de minimis brought us back to the 1990s in terms of enforcement."[254] As a result of the limited data in some de minimis entries, automated targeting becomes less reliable and makes scrutinizing entries of goods into the United States more resource-intensive.[255]

Congress may assess whether some of these limitations have been mitigated by the Entry Type 86 Pilot and the Section 321 Data Pilot and whether to permanently authorize the pilot programs.[256] As of 2023, approximately 79% of de minimis entries came in under one of the pilot programs (see "Section 321 and Import Information" section). Some U.S. Government officials have continued to express concern with CBP's capacity to screen packages given the volumes of entries.[257]

Customs Regulations, Trade Agreements, and International Commitments

The U.S. Constitution authorizes Congress to regulate trade with foreign nations.[258] Periodically, Congress delegates authority to the President to negotiate trade agreements.[259] Several Presidents have entered into agreements that create international obligations without congressional authorization, citing implied and express constitutional and statutory powers concerning foreign

[252] TFTEA §§901, 910.

[253] For example, USTR, "Notice of Determination and Request for Public Comment Concerning Proposed Determination of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation," 83 *Federal Register* 13099, March 27, 2018; STOP Act of 2017, S. 372, 115th Cong., §4 (2017); STOP Act of 2017, H.R. 1057, 115th Cong., §4 (2017); Opioid Emergency Response Act, H.R. 5531, 115th Cong., §7 (2018).

[254] Quoted verbatim from a conversation between the officer and the author.

[255] CBP, "Section 321 Data Pilot," 84 *Federal Register* 35405, 35407, July 23, 2019: "CBP is less able to effectively target or identify high-risk shipments in the e-commerce environment and CBP Officers must use additional time and resources to inspect Section 321 shipments upon arrival."

[256] CBP, E-Commerce, available at https://www.cbp.gov/trade/basic-import-export/e-commerce.

[257] See, for example, Center for Strategic and International Studies, "New Frontiers in UFLPA Enforcement: A Fireside Chat with DHS Secretary Alejandro Mayorkas," transcription available at https://csis-website-prod.s3.amazonaws.com/s3fs-public/2024-07/240709_Mayorkas_New_Frontiers.pdf?VersionId=suWx2fSFrrEGkY2f9eTd.ULp42kxnP3j.

[258] U.S. Constitution, art I, §8, cl. 3.

[259] For example, Act of June 12, 1934 (Reciprocal Trade Agreements Act of 1934), P.L. 73-316, 48 Stat. 943; Trade Act of 1974, P.L. 93-618 §101, 88 Stat. 1978, 1982 (1935).

affairs.[260] Such agreements, which one scholar has labeled "Trade Executive Agreements" (TEAs),[261] became increasingly common in the twenty-first century and have been subject to criticism[262] and related legislative actions[263] from some Members of Congress.

In some of these TEAs, the President committed the United States to certain customs regulations related to the entry of goods. Such agreements may create international obligations that commit the United States to maintaining certain features of its existing domestic law, limiting the ability of Congress to modify existing U.S. law without potentially placing the United States in breach of such trade agreements.[264] For example, the 2023 U.S.-Taiwan trade agreement requires both parties to "adopt or maintain procedures that apply fewer customs formalities than are required for formal entry procedures [for shipments valued less than $2,500]."[265] The provision matches the U.S. statutory maximum for goods eligible for "entry under regulations"[266] and the regulatory

[260] CRS Report R47679, *Congressional and Executive Authority Over Foreign Trade Agreements*, by Christopher T. Zirpoli; Restatement 3d of the Foreign Relations Law of the U.S., § 303; United States v. Belmont, 301 U.S. 324 (1937); United States v. Pink, 315 U.S. 203 (1942); Peter J. Spiro, "Treaties, Executive Agreements, and Constitutional Method," *Texas Law Review* 79 (2001) p. 964-1009; Harold H. Koh, "Remarks: Twenty-First- Century International Lawmaking," *Georgetown Law Journal* 101 (2013), p. 726:

> […] the United States can make law through international cooperation via one of three domestic law devices: (1) an Article II treaty, advised and consented to by two-thirds of the Senate; (2) a congressional-executive agreement, which involves passage of a statute by a majority of both houses and signature by the President; and (3) under certain circumstances, by sole executive agreement, concluded within the scope of the President's independent constitutional authority […]. [But] we are now moving to a whole host of less crystalline, more nuanced forms of international legal engagement and cooperation that do not fall neatly within any of these three pigeonholes.

[261] Kathleen Claussen, "Trade's Mini-Deals," *Virginia Journal of International Law* 62, no. 2 (2022), p. 320.

[262] For example, U.S. Congress, House Committee on Ways and Means, "Neal, Wyden Statement on Biden Administration's Go-It-Alone Trade Action," press release, March 28, 2023, available at https://democrats-waysandmeans.house.gov/media-center/press-releases/neal-wyden-statement-biden-administration-go-it-alone-trade-action; Ron Wyden et al., letter to Joseph R. Biden, President of the United States, December 1, 2022:

> We recognize that over time and across administrations of both parties, there has been an uptick in the use of "sole executive agreements" to bind the United States without congressional authorization or approval. But, as we have discussed with prior administrations, the use of sole executive agreements to reshape trade relations confuses the implementation of an agreement—which may not require congressional action because no domestic laws need to be altered—and the ability to enter into a binding agreement with other sovereign nations without congressional approval.

[263] See, for example, United States-Taiwan Initiative on 21st Century Trade First Agreement Implementation Act, P.L. 118-13, §7, 137 Stat. 63, 66, codified at 19 U.S.C. §2112 note: "any Further Agreements should be … subject to robust requirements on public transparency and congressional consultation;" U.S. President (Biden) Statement on Signing the United States-Taiwan Initiative on 21st-Century Trade First Implementation Act, *Daily Compilation of Presidential Documents*, DCPD-202300676, August 7, 2023: "In cases where the requirements of section 7 of the Act would impermissibly infringe upon my constitutional authority to negotiate with a foreign partner, my Administration will treat them as non-binding."

[264] CRS Report R47679, *Congressional and Executive Authority Over Foreign Trade Agreements*, by Christopher T. Zirpoli.

[265] Agreement between the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office in the United States Regarding Trade Between the United States and Taiwan art. 2.14.2, June 2023: "For express shipments valued at less than US$2500, each Party, through its Designated Representative, shall adopt or maintain procedures that apply fewer customs formalities than are required for formal entry procedures."

[266] 19 U.S.C. §1498(a)(1)(A): "The Secretary of the Treasury is authorized to prescribe rules and regulations for the declaration and entry of—(1) Merchandise, when—(A) the aggregate value of the shipment does not exceed an amount specified by the Secretary by regulation, but not more than $2,500."

maximum for goods eligible for informal entry.[267] That is, the provision matches current U.S. law, but binds the United States to its current regulatory rate.

Congress may consider whether and, if so, how to address the use of TEAs in the context of international agreements that potentially limit Congress's ability to change U.S. law without violating international obligations. For example, Congress may consider whether to treat such agreements as binding on the United States when deciding whether to modify U.S. laws, like the threshold for informal entries.

Logistics and De Minimis Alternatives

Congress enacted and amended Section 321 to codify practices adopted by customs officials to address the outpaced growth of import volumes compared to the resources available to assess duties on them. In 2023, CBP's E-Commerce Task Force described the volumes of small packages entering the United States as "overwhelming."[268] Meanwhile, the number of packages entering annually has continued to increase (**Figure 1**). Absent a substantial increase in CBP personnel, CBP will likely need to continue to use some process to decide which items ought to be exempted from additional scrutiny, including a more formal entry process.

In the early twentieth century, when tariffs accounted for a more significant portion of national revenue and trade policy and played a more central role in revenue generation,[269] customs officials and legislators chose to determine whether a good could enter duty-free under Section 321 based on its value.[270] The primacy of the House Committee on Ways and Means and the Senate Committee on Finance over import policy likely added to the focus on revenue.[271] During the twentieth century, the role of tariffs as a source of federal revenue diminished, and by the late-twentieth and early-twenty-first centuries, tariffs rarely accounted for more than 2% of national revenue.[272]

Congress might consider alternative standards for determining the eligibility of goods for an administrative exemption besides exempting goods solely based on their value, as de minimis currently does. Congress could consider, for example, whether to exempt goods based on an assessment of the likelihood that the import will violate U.S. customs laws or on whether the importer voluntarily participates in programs that aid CBP enforcement. The Customs-Trade Partnership Against Terrorism (C–TPAT) program[273] provides benefits, including reduced

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[267] 19 C.F.R. § 143.21(a): "The following types of merchandise are among those which may be entered under informal entry [...]: (a) Shipments of merchandise not exceeding $2,500 in value."

[268] CBP, Office of Trade/Trade Policy and Programs, Next Generation Facilitation Subcommittee, E-Commerce Task Force, Commercial Customs Operations Advisory Committee Issue Paper, Pub. 3228-0623 (June 2023), p. 1.

[269] See, for example, the language of the Tariff Act of 1930 as amended by the Customs Administrative Act of 1938 §7: Section 321 authorized the Secretary of the Treasury "to admit articles free of duty when the expense and inconvenience collecting the duty…would be disproportionate to the amount of such duty."

[270] Ibid.

[271] Donald R. Kennon and Rebecca M. Rogers, *United States House of Representatives, The Committee on Ways and Means: A Bicentennial History*, 100th Cong., 1st sess., H.Doc. 100-244 (Washington, DC: GPO, 1989), pp. 450-468; U.S. Congress, Senate Committee on Finance, *History of the Committee on Finance*, 97th Cong., 1st sess., S.Doc. 97-5 (Washington, DC: GPO, 1981), pp. 39-41, 65-76.

[272] For example, in FY2023, the United States collected approximately $80 billion in customs duties, representing 1.8% of total revenue. Congressional Budget Office, *The Budget and Economic Outlook, 2024 to 2034*, February 2024, pp. 32, 36.

[273] The Customs-Trade Partnership Against Terrorism (C–TPAT) program was first established by CBP in November 2001. Congress later legislatively authorized the program through the Security and Accountability for Every Port Act (continued...)

customs examination and expedited release of cargo, to importers who voluntarily participate in additional security procedures.[274]

(SAFE Act) of 2006, P.L. 109-347, Title II, Subtitle B, 120 Stat. 1884, 1909, codified as amended at 6 U.S.C. Part B; CBP, Customs Trade and Partnership Against Terrorism Trade and Compliance Handbook, October 2022, Version 2, p. 6, available at https://www.cbp.gov/sites/default/files/assets/documents/2022-Nov/CTPAT%20Trade%20Compliance%20Handbook%202.0%20_508.pdf.

[274] SAFE Act §§214-216, codified as amended at 6 U.S.C. §§964-966.

Appendix.

Table A-1. Witnesses at the April 1952 Senate Hearing that Express Concerns with Mail-Order Business and Raising the De Minimis Threshold

Organization	Select Quote	Page Number
American Retail Federation	"It constitutes an open invitation for the establishment of foreign mail-order businesses, not only in European and Asiatic countries, but also substantially from Canada and Mexico […]. To open our imports into this country duty-free on valuations up to $10 would give a tremendous incentive to American citizens to order all of these categories of goods from foreign mail-order companies which are certain would spring up immediately."	60-62
American Tariff League	"Fears have been expressed by retail groups and some domestic producers that the exemption of $10 shipments from tariff duties, allowed under section 11, may foster foreign mail-order business to the detriment of domestic trade channels. The provision for permissive action by the Secretary of the Treasury to prevent abuses does not quiet these fears."	128
Ladies' Handbag Industry	"Raising the exemption to $10 will place the domestically produced handbag at a decided disadvantage as compared with the foreign-made handbag sold through mail order."	217-218
National Handbag and Accessories Salesmen Association	"I brought along an English leather-goods journal, and a French leather-goods journal. You will find in both of these books that the machinery is set, pictures and all—it is just a matter of taking these bags and putting them down in American language, state the price, and set the business up."	220-221
National Association of Retail Clothiers and Furnishers	"Already there is considerable mail-order competition of a legitimate sort. Esquire magazine, this issue, has some 15 ads of a mail-order nature, advertising imported items."	222
Pocketbook Workers' Union	"The proposed amendment will encourage this group of citizens to purchase their handbags abroad or from foreign mail-order companies."	224-225

Organization	Select Quote	Page Number
American Knit Handwear Association	"It takes little imagination to foresee the number of items selling at less than $10 per unit, foreign value, which can be sold in this country through a mail-order catalog, to realize the flood of import competition which this exemption could let loose, and I do not believe there is any more that need to be said on the subject."	247-248
National Association of Leather Glove Manufacturers	"[W]ith all the talk there has been about allowing merchandise to come into the country duty free up to $10, we are quite concerned with that, because I think, as you know, in this country there is a great tendency now to merchandising directly to the consumers that is away from the retail level."	249-250
Candle Manufacturers Association, Twisted Jute Packing and Oakum Institute, Industrial Wire Cloth Institute, National Building Granite Quarries Association, Rubber Footwear Division of the Rubber Manufacturer's Association, United States Potters Association, and the Collapsible Tube Manufacturer's Association (All represented by John G. Lerch)	"While it is true that the present law requires the collection duty on trivial amounts, yet that might prove a good investment over the injury that may be done by the free entry of merchandise up to $10."	150-152
Fountain Pen and Mechanical Pencil Manufacturers' Association	"There are numerous mail-order houses in the United States, both large and small, which deal in items generally under $10 in value. They would be directly affected by foreign competition as foreign-made goods can be produced in the same standards of quality at lower productions costs... The raising of the limitation on duty-free mail to $10 is an invitation to foreign sellers and United States importers to import into the United States quantities of identical or similar articles in a series of mail shipments. The value of the merchandise shown in the documentation of the shipments will be fictitious and only part of the actual value. This is a practice being used throughout the world today to circumvent a variety of regulations governing the importation and exportation of merchandise."	300-301

Organization	Select Quote	Page Number
American Association of Nurserymen	"The practical effect of the exemption proposed in section 11 of H. R. 5505 would be to permit large quantities of shipments of plant materials from foreign countries direct to the consumer in this country via international parcel post and by both air and ship. The result would be that the United States Department of Agriculture would fail to intercept large numbers of these very small shipments, and if they did intercept them all, the personnel would not be adequate to take care of the task involved in inspection and fumigation at the ports of entry."	302
Book Manufacturers' Institute	"This exemption would enable a foreign or an American publisher to establish a book publishing mail order business whereby books could be manufactured abroad in low-wage printing and binding plants and imported duty free in competition with American printers."	303
Underwear Institute	"According to section 321 of H. R. 5505, a foreign operator, no doubt from a country that has been the recipient of billions in aid, partially paid by the taxes upon American manufacturers, wholesalers, and retailers, can advertise and sell in this country goods selling for $10 a shipment and mail them to our customers duty-free. The irony of this situation is that we would find some of the tax dollars we have paid being used to damage us."	306
Toilet Goods Association	"An increase of the permitted valuation to $10 would be a terrific stimulus to these mail order houses and accordingly damaging to legitimate American companies engaged in the import business."	51

Organization	Select Quote	Page Number
Purcell Company	"I have just read an article on the Customs Simplification Act, H. R. 5505, which I understand is before the Senate Finance Committee at this time, and I hope you feel that this bill should be opposed, as I believe it would be a terrific blow to the American retailer, as the majority of our items in our store, or any retail store, sells for less than $10, and if we are to have the additional competition of all foreign countries of their low-priced merchandise, that our business would be affected seriously."	54
American Watch Association	"It is obvious that what we have stated concerning the direct purchase of watches by consumers from foreign suppliers applies with equal force to thousands of other items which could be imported under subdivision (b) (2) free of duty and excise tax, and of the other obligations above mentioned, if this proposed amendment is enacted into law."	56
National Retail Dry Goods Association	"According to section 321 of H .R.5505, a foreign operator, no doubt from a country that has been the recipient of billions in aid, partially paid by the taxes upon American retailers, can advertise and sell in this country goods selling for $10 a shipment and mail them to our customers duty-free. The irony of this situation is that we would find some of the tax dollars we have paid being used to damage us."	**110**

Source: U.S. Congress, Senate Committee on Finance, *Customs Simplification Act*, hearings on H.R. 5505, 82nd Cong., 2nd sess., April 1952 (Washington, DC: GPO, 1952).

Notes: Note similarity of the statement of the National Retail Dry Goods Association to the statement of the Underwear Association.

Author Information

Christopher A. Casey
Analyst in International Trade and Finance

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