



The Honorable Nancy Pelosi  
Speaker of the House  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Chuck Schumer  
Majority Leader  
U.S. Senate  
Washington, D.C. 20510

May 10, 2022

Dear Speaker Pelosi and Leader Schumer:

We are writing today to urge you to include a fix for the “de minimis” loophole that is now flooding the U.S. with uninspected imported goods purchased online in any final China competitiveness bill and exclude any terms that could limit Big Tech anti-monopoly and digital governance initiatives being developed here and worldwide. As President Biden encourages Congress to conference the legislation each chamber has passed, we seek your help in ensuring that final legislation reflects the growing bipartisan congressional and public focus on ending Big Tech giants’ abuses of consumers, workers and smaller businesses.

The House-passed bill, [America Creating Opportunities for Manufacturing, Pre-Eminence in Technology, and Economic Strength Act of 2022](#) (COMPETES) includes House Ways and Means Trade Subcommittee Chair Earl Blumenauer’s Import Security and Fairness Act. Chairman Blumenauer’s legislation starts to fix the de minimis problem by ending the use of the “Amazon Loophole” with respect to imports from China.

If Congress’ competitiveness legislation is to succeed in its mission vis-a-vis China, inclusion of a de minimis fix is critical given the current policy greatly disadvantages U.S. producers relative to those in China. Today, more than one million packages are arriving from China daily by air express alone to fulfill online order purchases. Thanks to the de minimis program, these goods entirely evade U.S. safety, environmental and other inspection protocols and thus standards enforcement, as well as all taxes and tariffs. U.S. brick and mortar retailers must pay both tariffs and taxes and are liable for dangerous products they may sell. U.S. manufacturers must pay taxes and meet the domestic environmental, safety and other standards the de minimis goods skirt.

The evasion of normal U.S. customs procedures via de minimis also poses significant risks beyond biasing the terms of commerce in favor of Big Tech giants and Chinese imports: De minimis provides a means to evade the ban on entry of Uighur forced-labor products, endangered species products, and counterfeit and dangerous medicines and other goods. The Department of

Homeland Security has documented how the number of de minimis shipments skyrocketed after the United States started allowing imports valued up to \$800 to evade normal Customs rules. (This occurred after a 2015 Customs bill amendment raised from \$200 to \$800 the value of imports given de minimis treatment that thus can enter the United States “informally” without meeting normal customs rules.) The U.S. de minimis level is much higher than the rest of the world, with Europe under \$200 and Canada at \$150.

Inclusion of the House COMPETES Act’s de minimis fix in any final legislation is a critical first step to fixing this serious problem.

The [Senate United States Innovation and Competition Act](#) (USICA) does not include the de minimis fix. However, USICA’s trade title provides Big Tech interests with dangerous new tools to undermine governments’ efforts to counter their abuses. USICA Section 71011 would newly require the Office of the U.S. Trade Representative (USTR) to monitor the digital governance policies and anti-monopoly enforcement of countries around the world and target for elimination pro-consumer, pro-worker, pro-privacy and pro-competition policies and proposals. Nations that maintain such policies would be subject to U.S. government investigations and sanctions. A final bill must not include these terms, which extend a program known as “Special 301” to promote Big Tech interests.

Congressional Democrats have long sought such enhanced enforcement for labor rights around the world using the process referenced in Section 71011. Special 301 involves continual USTR monitoring of other nations’ policies, publication of an annual list of leading “offenders” and ultimately sanctions. Big Pharma interests have used Special 301 to undermine access to medicines policies worldwide. USICA’s language establishing a new Special 301 regime for Big Tech provisions is confusing, as it is framed as countering online censorship by China. However, the actual provisions apply to the whole world and European policies would be hardest hit. Plus, the concept of censorship is not defined in the legislation, which is critical: Big Tech firms claim that they are communications platforms, not retail, transportation, hotel or other service providers and that they have been subject to censorship if they are shut down by a government as a penalty for failing to meet domestic regulatory standards that apply to domestic and foreign firms alike. USICA Section 71011 does not define “censorship” at all, much less limit it to curtailment of targeted forms of speech. Rather, the undefined term censorship is equated to policies that deny “market access to digital service providers that are United States persons” or “disrupt digital trade.” Such domestic policies, which clearly could include denial of operating authority for violations of domestic labor, consumer protection or other laws, are deemed to be illegal trade barriers subject to the Special 301 search-and-destroy process.

Establishing Special 301 powers for Big Tech not only contradicts the administration’s Executive Order on Promoting Competition in the American Economy, it also snubs efforts by scores of Senate and House Democrats and GOP and Biden administration agencies to fight Big Tech abuses of workers, consumers and smaller firms. Instead of promoting labor rights and consumer protections in the digital sphere, which USTR Katherine Tai has spotlighted as Biden administration goals, this provision could undermine the best public interest protections globally just as Congress and agencies are trying to catch up on digital governance.

We also urge you to remove the new digital conditionality from any final Generalized System of Preferences reauthorization. It is not in the U.S. interest or that of our trade partners to condition

developing countries' access to our market on their willingness to forego the regulation of Big Tech.

Our organizations know that the two bills are lengthy and contain many other provisions that affect many other policies. The specific aspects of these massive bills about which we are writing today would have extremely broad affects, for good and for bad, respectively. We urge you to ensure that COMPETES' de minimis fix is included in the final bill and USICA's Special 301 for Big Tech is excluded.

Sincerely,

Accountable Tech  
Center for Digital Democracy  
Consumer Action  
Demand Progress  
Institute for Local Self-Reliance  
Public Citizen  
Small Business Majority

American Family Voices  
Citizens Trade Campaign  
Communications Workers of America  
Indivisible  
Main Street Alliance  
Rethink Trade