

United States Senate

WASHINGTON, DC 20510

October 28, 2024

The Honorable Janet Yellen
Secretary
United States Department of the Treasury
1500 Pennsylvania Ave NW
Washington, D.C. 20220

The Honorable Alejandro Mayorkas
Secretary of Homeland Security
U.S. Department of Homeland Security
245 Murray Lane, SW
Washington, D.C. 20528

Dear Secretary Yellen and Secretary Mayorkas:

We write regarding our concern about use of the *de minimis* trade provision to facilitate the illegal drug trade and ship billions of dollars' worth of imports into the United States, bypassing inspections, tariffs, and trade enforcement that protect American consumers and businesses from criminal behavior and illegal trade. The administration's recent announcement of proposed rulemaking¹ represented a first step towards addressing abuses of the *de minimis* provision, but additional actions are necessary. We ask that you fully address these serious concerns by using your statutory authority to eliminate the *de minimis* exemption for e-commerce shipments.

We are particularly concerned by reports that drug traffickers are abusing the *de minimis* exemption to smuggle illicit fentanyl and its precursor chemicals into the United States,² turning an exemption into a loophole. On October 1, Reuters released a report detailing how one single smuggler was able to receive over 15,000 pounds of fentanyl precursors in small packages shipped to his home in Tucson.³ In July, the Department of Justice (DOJ) announced that it

¹ The 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," September 13, 2024, <https://www.whitehouse.gov/briefing-room/statements-releases/2024/09/13/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/>.

² Written testimony of ICE Homeland Security Investigations Office of Illicit Trade, Travel, and Finance Deputy Assistant Director Greg Nevano to the U.S. Senate Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations, January 25, 2018, <https://www.dhs.gov/news/2018/01/25/written-testimony-ice-senate-homeland-security-and-governmental-affairs-permanent>.

³ Reuters, "Fentanyl Express: How Fentanyl Traffickers are Exploiting a U.S. Trade Law to Kill Americans," Drazen Jorgic, Laura Gottesdiener, Kristina Cooke, and Stephen Eisenhammer, October 1, 2024, <https://www.reuters.com/investigates/special-report/drugs-fentanyl-shipping/>.

uncovered a conspiracy in Texas to take advantage of the loophole to import and distribute enough fentanyl precursor chemicals from China to make millions of fatal doses of fentanyl.⁴

The opioid epidemic is a serious threat in the United States that has killed hundreds of thousands of Americans.⁵ We must use every tool to combat it and protect American families — including the statutory authority Congress provided to the Department of the Treasury and the Department of Homeland Security (DHS) to limit abuse of the *de minimis* provision.

On September 13, the Administration announced a forthcoming new rulemaking to stop the use of the *de minimis* exemption to evade tariffs imposed under Section 301 and two other U.S. laws⁶ used to enforce against trade cheating, as well as requiring each *de minimis* shipment to list the ten-digit tariff codes identifying the products in the shipment.⁷ Further action is needed to fully address the flood of uninspected packages entering into the United States, especially in the e-commerce sector. These two examples of schemes to traffic fentanyl components via e-commerce would not be thwarted by the proposed regulation and underscore the need for more scrutiny on e-commerce shipments. DHS should reconsider whether e-commerce shipments should be categorically excluded from *de minimis* eligibility, and take action immediately.

The History of the De Minimis Trade Exemption and Its Abuse by E-Commerce Companies

De minimis dates back to the 1930s, when an individual could import goods totaling \$1 in value per day without paying tariffs or taxes and with minimal customs formalities. Over time the *de minimis* exemption threshold was increased; most recently, Congress raised the threshold to \$800 as of 2016.⁸ As a result, today an individual may import goods worth less than \$800 each day without paying tariffs or taxes and bypassing Customs and Border Protection (CBP)'s standard information reporting forms, with limited inspections. Additionally, in the 1990s, the U.S. Customs Service issued regulations allowing not just sellers of goods but buyers or any consignee to bring *de minimis* shipments into the United States via “Informal Entry” customs procedures so that detailed information about goods and their sources was not required.⁹ The

⁴ U.S. Department of Justice, “Chinese National Indicted for Importation of Enough Chemicals to Make Millions of Fatal Doses of Fentanyl,” press release, July 22, 2024, <https://www.justice.gov/opa/pr/chinese-national-indicted-importation-enough-chemicals-make-millions-fatal-doses-fentanyl>.

⁵ National Institute on Drug Abuse, “Drug Overdose Death Rates,” <https://nida.nih.gov/research-topics/trends-statistics/overdose-death-rates>.

⁶ The 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,” September 13, 2024, <https://www.whitehouse.gov/briefing-room/statements-releases/2024/09/13/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/>.

⁷ *Id.*

⁸ U.S. Customs and Border Protection, “CBP and the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA),” <https://www.cbp.gov/trade/trade-enforcement/tftea>.

⁹ Written testimony of Michael Stumo to the U.S. House of Representatives Committee on Homeland Security, October 19, 2023, p. 6, <https://prosperousamerica.org/wp-content/uploads/2023/10/231019-written-testimony-Stumo-Homeland-Security-FINAL.pdf>.

regulations also allowed the buyer, seller, or consignee related to the goods to be considered the importer of record.

With the rise of e-commerce, the *de minimis* exemption is now easily abused by online, direct-to-consumer businesses. Major online platforms list the customer – not the seller – as the importer of record, meaning they never reach the *de minimis* threshold and sell billions in goods imported into the United States while skirting tariffs, inspections, and law enforcement scrutiny faced by their brick-and-mortar competitors who play by the rules.¹⁰ Others abuse the loophole by breaking up shipments into lower-valued packages and/or mislabeling or misvaluing the shipment, knowing there is little chance of being caught given the lack of inspection.

In 2023, more than one billion *de minimis* shipments entered the United States, making up 92 percent of all shipments entering the country.¹¹ Imports from China account for about 70 percent of *de minimis* shipments entering the United States and \$37 billion in trade deficit that is not tracked in official statistics.¹² This vast unchecked trade is inconsistent with the original intent of the exemption, which was to facilitate the import of souvenirs, small gifts, and small purchases from abroad.¹³ While *de minimis* shipments are supposed to be screened, CBP admits that the overwhelming volume of small packages hampers their ability to inspect shipments, and they have cleared millions of *de minimis* shipments “with insufficient data to determine risk.”¹⁴ In their recent report, Reuters investigators describe ordering a fentanyl precursor from China through an online seller.¹⁵ When the shipment arrived, it was accompanied by an invoice declaring the contents of the package to be \$10 of pigment ink.¹⁶

The De Minimis Exemption Facilitates Fentanyl Trafficking and Other Trade Law Evasions

Illicit fentanyl is the leading killer of Americans aged 18 to 49,¹⁷ and the recent DOJ indictment is only the latest evidence of the role *de minimis* plays in these tragic deaths. A Reuters investigation uncovered “a three-nation trading system, with the United States, Mexico

¹⁰ *Id.*, p. 11.

¹¹ U.S. Customs and Border Protection, “Buyer Beware: Bad Actors Exploit De Minimis Shipments,” Marcy Mason, October 23, 2024, https://www.cbp.gov/frontline/buyer-beware-bad-actors-exploit-de-minimis-shipments?utm_source=hp_slideshow&utm_medium=referral&utm_title=buyer_beware_bad_actors_exploit_de_minimus_shipments.

¹² The Economist, “How Chinese goods dodge American tariffs,” Corbin Duncan, June 27, 2024, <https://www.economist.com/finance-and-economics/2024/06/27/how-chinese-goods-dodge-american-tariffs?giftId=a37140a7-af32-40d3-913a-cf282d315387>.

¹³ *Id.*

¹⁴ U.S. Customs and Border Protection, “Commercial Customs Operations Advisory Committee Government Issue Paper,” Next Generation Facilitation Subcommittee E-Commerce Task Force, June 2023, <https://www.cbp.gov/sites/default/files/assets/documents/2023-Jun/NGFE-C~1.PDF>.

¹⁵ Reuters, “Fentanyl Express: How Fentanyl Traffickers are Exploiting a U.S. Trade Law to Kill Americans,” Drazen Jorgic, Laura Gottesdiener, Kristina Cooke, and Stephen Eisenhammer, October 1, 2024, <https://www.reuters.com/investigates/special-report/drugs-fentanyl-shipping/>.

¹⁶ *Id.*

¹⁷ Washington Post, “Why is Fentanyl So Dangerous?,” Julie Hoban and Courtney Kan, November 3, 2022, <https://www.washingtonpost.com/nation/2022/11/03/fentanyl-opioid-epidemic/>.

and China linked in a toxic triangle as the illicit drug’s biggest consumer, manufacturer and raw-materials supplier”¹⁸ by which fentanyl precursors are sold online. In the second report from that investigation, Reuters journalists made the sobering assessment that “a regulatory tweak fueling America’s online shopping habit is also enabling the country’s crippling addiction to synthetic opioids.”¹⁹

In 2018, the Permanent Subcommittee on Investigations of the Senate Committee on Homeland Security and Governmental Affairs found “just how easy it is to find fentanyl advertised online, pay for it using digital currency or other means, and have it shipped to the United States through international mail,” and that Americans were indeed doing so, sometimes with fatal consequences.²⁰ Sellers easily import shipments into the United States — claiming that they are under the \$800 *de minimis* threshold — although many appear to be doing so under false pretenses, with “an improbably high 16% of parcels claim[ing] to be valued at \$1 or less,” and an unusually high share of shipments from China in particular with reported values just below \$800.²¹ According to the Drug Enforcement Administration (DEA), China is the largest supplier of fentanyl and its components to the United States.²²

The *de minimis* loophole also enables evasion of other key trade laws. Shipments falling under the *de minimis* threshold bypass enforcement of the Uyghur Forced Labor Act and are exempt from Section 301 tariffs imposed on Chinese imports due to unfair trade practices.²³ This undermines efforts to combat forced labor and unfair trade practices and disadvantages domestic manufacturers and other companies who play by the rules.

CBP’s and the White House’s Efforts to Address the De Minimis Exemption

In 2019, CBP launched two pilot programs to address the high volume of unregulated *de minimis* shipments.²⁴ These programs allow shippers to provide additional information about the

¹⁸ Reuters, “Fentanyl Express: the Supply Chain,” Maurice Tamman, Laura Gottesdiener, and Stephen Eisenhammer, July 25, 2024, <https://www.reuters.com/investigates/special-report/drugs-fentanyl-supplychain/>. U.S. Senate Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations, “Combating the Opioid Crisis: Exploiting Vulnerabilities in International Mail,” staff report, 2018, p. 1, <https://lrl.texas.gov/scanned/archive/2018/38282.pdf>.

¹⁹ Reuters, “Fentanyl Express: How Fentanyl Traffickers are Exploiting a U.S. Trade Law to Kill Americans,” Drazen Jorgic, Laura Gottesdiener, Kristina Cooke, and Stephen Eisenhammer, October 1, 2024, <https://www.reuters.com/investigates/special-report/drugs-fentanyl-shipping/>.

²⁰ U.S. Senate Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations, “Combating the Opioid Crisis: Exploiting Vulnerabilities in International Mail,” 2018, p. 1, <https://lrl.texas.gov/scanned/archive/2018/38282.pdf>.

²¹ The Economist, “How Chinese goods dodge American tariffs,” Corbin Duncan, June 27, 2024, <https://www.economist.com/finance-and-economics/2024/06/27/how-chinese-goods-dodge-american-tariffs?giftId=a37140a7-af32-40d3-913a-cf282d315387>.

²² Drug Enforcement Administration, “Fentanyl Flow to the United States,” January 2020, p. 2, https://www.dea.gov/sites/default/files/2020-03/DEA_GOV_DIR-008-20%20Fentanyl%20Flow%20in%20the%20United%20States_0.pdf.

²³ U.S. Customs and Border Protection, “E-Commerce Frequently Asked Questions,” <https://www.cbp.gov/trade/basic-import-export/e-commerce/faqs>.

shipment's contents and origin to CBP. However, they are optional for vendors, and the agency has not yet indicated how or whether these programs have helped them to assess risk.

On September 13, 2024 the White House announced several additional actions on *de minimis*. The announcement stated that the administration would soon propose rules to except from *de minimis* treatment products subject to trade enforcement tariffs under three specific statutes,²⁵ as well as requiring each *de minimis* shipment to list the ten-digit tariff codes identifying the products in the shipment.²⁶ These announcements represent a first step towards addressing abuses of the *de minimis* provision, but additional actions are necessary. First, they only cover a subset of products that receive minimis exemptions, those covered under Section 301, Section 201, or Section 232 trade enforcement actions. Second, while the 10-digit Harmonized Tariff Schedule information required to be listed is helpful information, they may contain errors, and traffickers and other bad actors can simply lie about packages' tariff classifications without subjecting themselves to risk because they are not under U.S. jurisdiction. In fact, by urging legislative action on *de minimis* in the factsheet announcing its future regulatory action, the White House acknowledges that more must be done to close the loophole that allows illicit drugs and other dangerous items to cross the U.S. border.

Treasury and DHS Have Authority to Eliminate the De Minimis Exemption for E-Commerce – And Should Use It

Treasury and DHS have clear authority to eliminate the *de minimis* exemption for whatever categories of good they believe are necessary to enforce U.S. law. Section 321 of the Tariff Act authorizes CBP to give special treatment to imports under the *de minimis* threshold,²⁷ and does not entitle any importer to *de minimis* eligibility.²⁸ In fact, the statute also explicitly states that CBP may deny *de minimis* treatment when it is “necessary for any reason to protect the revenue or to prevent unlawful importations.”²⁹ In this case, given the myriad threats posed by e-commerce shipments, the administration has a clear and simple rationale to act: since e-commerce shipments have been identified as an area of high risk, they should be excluded from *de minimis* eligibility.

Conclusion and Questions

²⁴ U.S. Customs and Border Protection, “Section 321 Programs,” <https://www.cbp.gov/trade/trade-enforcement/tftea/section-321-programs>.

²⁵ The 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,” September 13, 2024, <https://www.whitehouse.gov/briefing-room/statements-releases/2024/09/13/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/>.

²⁶ *Id.*

²⁷ Rethink Trade, “POTUS Has Authority to Fix the De Minimis Trade Loophole Now Facilitating Entry of Deadly Fentanyl from China and a Flood of Unfair Imports that Crush Domestic Firms,” June 17, 2024, <https://rethinktrade.org/reports/memo-potus-has-authority-to-fix-the-de-minimis-trade-loophole-now-facilitating-entry-of-deadly-fentanyl-from-china-and-a-flood-of-unfair-imports-that-crush-domestic-firms/>.

²⁸ 19 U.S.C. §1321(a).

²⁹ 19 U.S.C. §1321(b).

We urge you to act quickly and use your authority to protect Americans from drug dealers and predatory online vendors who use this loophole to send dangerous substances over the United States border. We also ask that you provide answers to the following questions no later than November 12, 2024.

- (1) How many shipments under the *de minimis* exemption are processed by DHS daily? Please provide the information for each DHS processing facility.
- (2) What is DHS's current estimate of the total amount of illicit trade that enters the country annually via the *de minimis* loophole? How does that estimate account for current data challenges and limitations on inspections?
- (3) What is DHS's current estimate of the total amount of fentanyl that enters the country annually via the *de minimis* loophole? How does that estimate account for current data challenges and limitations on inspections?
- (4) If the *de minimis* exemption is closed and no longer available to e-commerce shipments, how many e-commerce shipments will DHS process daily under the updated customs regulations? Please detail the additional staffing necessary to process this new amount of packages.
- (5) Under the White House's proposed rulemaking, how many shipments under the *de minimis* exemption would DHS expect to process daily?
 - a. What changes in quantifiable metrics with respect to inspections of *de minimis* shipments does DHS expect to occur after these rules take effect?
- (6) What actions beyond the currently proposed regulations will Treasury and DHS take to reduce abuses under the *de minimis* exemption?

Thank you for your attention to this important matter.

Sincerely,



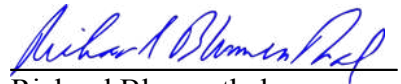
Elizabeth Warren
United States Senator



Sherrod Brown
United States Senator



Sheldon Whitehouse
United States Senator



Richard Blumenthal
United States Senator