Prospects and Impact of *De Minimis* Policy Reform

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Key Takeaways

- The Biden administration on September 13 issued two Notices of Proposed Rulemaking (NPRM) that once implemented will restrict access to *de minimis* exemptions to U.S. customs examinations and duties. The White House stepped in after Congress showed itself unable to quickly act on the matter.

- The "*de minimis*" exemption under Section 321 of the Tariff Act of 1930 allows goods valued at less than USD 800 to enter the United States under expedited customs review processes and free of duties and taxes. The White House will issue two rules to 1) remove *de minimis* exemptions for shipments containing products (mostly from China) that are subject to special Section 201, 301, and 232 tariffs, and 2) increase reporting requirements for goods claiming a *de minimis* exemption.

- If implemented as proposed, the rules will restrain the booming "fast-fashion" business, particularly Chinese companies Shein and Temu, and perhaps increase U.S. retailers' and apparel-makers' competitiveness over the long-term.

- But changing *de minimis* measures may also decrease revenue for U.S. e-commerce platforms that host *de minimis* import resellers and could impact revenue for internet platforms that sell ads to Chinese e-commerce companies.

- The White House hopes the new rules will also help block small-lot shipments of illegal drugs, and reinforce U.S. laws trying to block the use of cotton from the Xinjiang region in China, as a reaction to China's use of forced labor among minority populations there.

- Moving forward, the White House's approach to *de minimis* may be substantially adjusted, due to public comments, private sector lobbying, the arrival of a new president, and the impact of continued Congressional debate and lawmaking on the topic.

Motivation for *De Minimis* Reform

The White House and Congress are increasingly concerned about the growing number of Chinese goods that bypass import duties. In 2016, Congress raised the

import value threshold under de minimis from USD 200 to USD 800, but by 2021, Congress reopened debate on the threshold given the explosion of China's fast-fashion retailers and the growing fentanyl crisis in the United States.
Both Congress and the White House are specifically concerned that goods imported from China that fall below the USD 800 de minimis threshold benefit from the theft of intellectual property and forced labor, as well as facilitate the shipment of illicit synthetic drugs like fentanyl to the United States. Over the last decade, the number of duty-free low value goods entering the United States has exploded, increasing from roughly 140 million shipments below USD 800 to over one billion per year. A House Select Committee on the Chinese Communist Party (Select Committee on the CCP) investigative report found that 30 percent of daily shipments under the de minimis provision likely came from Chinese fast-fashion online retailers Shein and Temu, which face widespread concerns about intellectual property theft and use of forced labor in their supply chains.

In the face of these challenges, the Biden administration recently issuedtwo Notices of Proposed Rulemaking (NPRM) calling for:

- ***Closing loopholes on textiles, apparel, and other goods:*** The NPRM will remove de minimis exemptions for shipments containing products currently subject to Section 201, 301, and 232 tariffs. The White House estimates that Section 301 tariffs currently cover about 40 percent of U.S. imports from China, including 70 percent of textile and apparel imports from the country. The administration's two NPRMs would increase import duties and documentation requirements for these goods, along with low-cost goods in other sectors including medical supplies.

- ***Increasing reporting and certification requirements:*** The Biden administration has proposed new documentation requirements for de minimis shipments, including requiring a ten-digit tariff classification number and personal information regarding the entity claiming the de minimis exemption. A classification code system will allow regulators to better track shipments and ensure compliance, with U.S. Customs and Border Patrol serving as primary enforcers. The final rule will likely include carve-outs, allowing certain importers to operate under previous de minimis rules, giving industry stakeholders room to shape these exceptions.

- ***Congress to act on de minimis reform:*** Acknowledging that the White House may have limited statutory authority in this area, the Biden administration has called on Congress to pass legislation to codify de minimis reforms in law. Specifically, the White House asked that any de minimis reforms 1) address "import-sensitive" products that are particularly vulnerable to unfair international competition, and 2) apply to any goods covered Section 301, 201, or 232 trade enforcement actions. The White House also called on Congress to pass de minimis reforms proposed in U.S. Customs and Border

Patrol's (CBP) Detect and Defeat Counter-Fentanyl Proposal. Many of the reporting processes - a tariff classification number system, more data notifications from shippers, and authorization for CBP to request additional documentation from businesses – is reflected in the NPRM to increase CBP's ability to detect and seize illicit drugs imported under the de minimis threshold.

Legislative Landscape

Despite bipartisan interest in legislating on de minimis, divisions between the Senate and House – and between Congress and the White House – have stymied action. In April, a bill proposed by Representative Greg Murphy (R-NC) passed the House Ways and Means Committee along party lines despite many of the elements being reflected in the White House's proposed rules. Democrats opposed the bill in committee, arguing that it did not go far enough to eliminate exemptions for a broader range of goods. Notably, Murphy's bill was not included in the suite of bills the House debated during "China Week," but a version of it may be considered later this fall.

In the Senate, Finance Committee Chairman Ron Wyden (D-OR) recently proposed the Fighting Illicit Goods, Helping Trustworthy Importers, and Netting Gains (FIGHTING) for America Act in August 2024 to reform de minimis processes. While this bill has bipartisan support and Wyden reportedly heavily vetted text with the Biden administration, it has not gained support from the Senate Finance Committee Ranking Member Senator Mike Crapo (R-ID), who opposed previous efforts to reform de minimis during major China legislative debates in 2021 and 2022.

In absence of a legislative compromise, Senate and House Democrats have pressured the Biden administration to act on de minimis in recent weeks. In a September 11 letter to the Biden administration, Representative Rosa DeLauro (D-CT) and Earl Blumenauer (D-OR) issued a letter alongside 126 Democratic members of Congress urging the Executive Branch to disqualify commercial shipments from de minimis treatment. In the Senate, Senator Sherrod Brown (D-OH) led a similar letter that gained Republican support. This approach may reflect a political interest among Democrats to message on the issue in advance of November elections but reserve political capital to find a legislative compromise on de minimis reform until after the political landscape in Congress and the White House in 2025 is decided.

Outlook

At the earliest, the Biden administration's proposed rule will not be implemented until well into 2025, due to the multistep rulemaking process of consultation and revision, the impact of the U.S. elections, and limited time remaining on the

Congressional calendar. Regardless of whether Trump or Harris takes office in January, both administrations will want to review and tailor *de minimis* rulemaking process to meet their new administration's respective priorities.

Action on *de minimis* in Congress is also unlikely in 2024 for several reasons. House lawmakers failed to include a *de minimis* bill during September's "House China Week." This likely signals that further bipartisan compromise is needed in both chambers of Congress, which House Select Committee on China Chairman Representative John Moolenaar (R-MI) has **reinforced** in recent comments. Practical considerations also make progress unlikely. Congress has very few days remaining in the calendar year and will likely prioritize other items over passage of new legislation. This laundry list of other priorities includes passage of U.S. government budgets, the National Defense Authorization Act, confirmation of new district and appeals court judges, and other must-pass legislation. In addition to this sizeable legislative to-do list, members of Congress will also want to signal their priorities for 2025, which may or may not align with passing new *de minimis* rules. Still, electoral outcomes in November may incentivize another legislative push before the end of the Congress.

Seemingly in response to *de minimis* action, China's Ministry of Commerce **announced** on September 24 that it is opening a probe into PVH Group – which owns brands such as Calvin Klein and Tommy Hilfiger – to investigate whether the company should be placed on China's "Unreliable Entities List" (UEL). The basis for the probe is whether PVH boycotts Chinese cotton products from Xinjiang in its supply chains—products which, under U.S. law, the company is prohibited from sourcing. The move serves as an escalatory use of the UEL into a new sector, likely intended by Beijing to demonstrate resilience to any future *de minimis* legislation. Should *de minimis* related legislation move forward, China will likely retaliate in a similar fashion against individual U.S. companies or with its own import duty changes.

Implications for Business

If implemented as currently proposed, de minimis changes could result in diverse consequences for businesses, with direct impact on China-based exporters to the United States, as well as U.S. e-commerce platforms, retailers, and advertisers.

For U.S. domestic retailers, the Biden administration hopes that de minimis reform will help level the playing field with Chinese e-commerce platforms regarding operating costs. Import duties cost U.S. retailers hundreds of millions of dollars annually, particularly for U.S. fast fashion companies that pay tariffs on their wholesale imported goods from China. These compliance costs translate to higher prices as businesses pass some of these operational expenses to consumers. Current de minimis rules allow Temu and Shein to avoid these costs and inspections related to possible forced labor in their supply chains. U.S. retailers Gap and H&M paid an estimated USD 700 million and USD 205 million in import duties in 2022, respectively. Reforms would seek to force Chinese e-commerce platforms to shoulder similar costs, narrowing the gap between Chinese and American businesses in this sector.

For Chinese e-commerce platforms, new certification and reporting requirements for exports to the United States would increase compliance burdens and create more explicit liability for individual exporters. This could become relevant in the event of a CBP inspection that detects Xinjiang cotton content in goods sold by Shein or Temu.

For logistics and shipping companies, revoking de minimis will increase costs. Businesses in this sector will incur costs related to CBP processing fees and increased duties, compliance with CBP filing requirements, and customer due diligence. These firms may be able to pass these costs onto their customers, namely Chinese exporters whose goods will be subject to the new compliance rules.

For U.S. advertisers, rolling back de minimis could affect revenue, but the impact will depend on how much demand for Temu and Shein products in the United States and other markets is disrupted. Temu's and Shein's low prices have driven rising U.S. demand, which has been compounded by widespread U.S. advertising campaigns on major internet platforms. If Temu and Shein's prices increase as a result of revoking de minimis, they may adjust their advertising strategy in the U.S. market, with the potential to impact record advertising spending levels seen in recent years. However, Chinese e-commerce platforms may shift their marketing focus to other geographies following the U.S. de minimis reform, which could mitigate the ultimate impact on revenue for global platforms.