



ISSUE ALERT:

Customs Modernization Act of 2021 (Cassidy “Discussion Draft”)

November 8, 2021

WHAT IS IT?

This draft is a proposed bill that updates customs procedures and regulatory responsibilities of importers, e-commerce marketplace platforms, logistics providers and freight forwarders who import goods duty-free under de minimis (\$800 or less) as allowed by U.S. customs laws (19 U.S.C. § 1321). De Minimis allows for duty free importation with certain restrictions.

WHY IS IT IMPORTANT?

As currently drafted, this bill may limit your ability to import product duty free (under \$800) without pre-clearance from U.S. Customs and Border Protection (CBP) that your product is eligible for duty-free entry. The impact is you pay the duties owed and delays are introduced through the pre-clearance procedure.

HOW WILL IT AFFECT MY BUSINESS?

IF YOU ARE AN E-SELLER

- CBP determines product eligibility for de minimis
- Any data submitted to an e-commerce platform can be used for a security, enforcement or other lawful purpose
- Penalties are \$5,000 for first offense and \$10,000 for each subsequent offense. Other penalties may apply.
- CBP can share “nonpublic information” in the supply chain for enforcement of intellectual property rights
- CBP can use any information from a marketplace platform, express air courier, freight forwarder etc. for compliance with customs laws
- Persons suspended or debarred from doing with the federal government cannot be the importer of record or use de minimis
- CBP will seize and take title to any merchandise with a counterfeit trademark or infringing on copyright
- Goods imported under de minimis that violate the Food, Drugs and Cosmetics Act are forfeited
- Violations are either “fraud” or “negligence”

IF YOU ARE AN MARKETPLACE PLATFORM

- Filing of data must be done electronically
- Allows party who could be importer of record or its agent submit advance data before entry of merchandise
- You will now become an “agent” for e-sellers subject to the recordkeeping requirements
- CBP may use “adverse inference” (detrimental view) for failure to comply with recordkeeping request
- CBP can demand records from any person who “participated in, facilitated, or was otherwise connected or related to the importation of merchandise”
- Violations are either “fraud” or “negligence”

HOW CAN EMTC HELP YOU ON THIS ISSUE?

- EMTC has a “redline” version of the legislation so that you can see exactly the changes that the draft bill would make to current law.
- EMTC has prepared a technical analysis concerning the impact of the proposed changes in this discussion draft bill
- EMTC is actively discussing this bill with Senator Cassidy’s staff and CBP
- EMTC is participating in CBP’s 21st Century Customs Framework Task Force that will be working on this bill

WHAT CAN I DO ABOUT THIS ISSUE?

- Contact EMTC (mrowden@emtc.org) about the impact this bill will have on your business
- Join EMTC at <https://www.emtc.org/join-us>

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