



ISSUE ALERT:

Import Security and Fairness Act (revised as Introduced)

January 18, 2021

WHAT IS IT?

This is a bill (H.R. 6412) that would bar the import of goods duty-free under de minimis (\$800 or less as provided in 19 U.S.C. § 1321) if the article's country of origin is a non-market economy and on the Special 301 Priority Watch List for denying adequate protection or market access for intellectual property rights. While there are a number of countries currently designated as non-market economies by the U.S. Department of Commerce (i.e., Armenia, Azerbaijan, Belarus, China, Georgia, Kyrgyz Republic, Moldova, Tajikistan, Turkmenistan, Republic of Uzbekistan, and), only **China** meets both criteria. See section 771(18) of the Tariff Act of 1930 (the Act) (19 U.S.C. 1677(18) and section 701(f) of the Act (19 U.S.C. 1671(f) and listed 19 U.S.C. 2242(e)). The bill also prohibits use of de minimis where items are "forwarded through a distribution or processing facility located in a foreign country."

WHY IS IT IMPORTANT?

The bill would block a large segment of products from duty-free (under \$800) importation. This would subject the goods to applicable duty rates plus section 301 duties (up to 25% additional on goods from China), and require filing a formal entry which costs \$50-\$150 per entry. Many e-sellers have built a business on importing parts or finished items from China. Moreover, the bill would disrupt the supply chains organized around distribution centers outside the United States (e.g., Canada, Mexico), in part, because U.S. Customs and Border Protection (CBP) issued rulings that goods entered in bulk above \$800 into a Foreign Trade Zone could not be withdrawn for delivery to U.S. customers under the de minimis provision in 19 U.S.C. 1321. See, HRL H275567 (May 8, 2018) and HRL H282601 (September 18, 2018). This change significantly increases the cost and the in-transit time to receive their goods.

HOW WILL IT AFFECT MY BUSINESS?

IF YOU ARE AN E-SELLER

- Bars duty-free imports from China under de minimis and requires understanding of the HTS system to determine cost to acquire item
- All products must pay applicable duties and section 301 duties (25% on goods from China)
- Each shipment requires an entry which typically costs \$50-\$150 per entry
- CBP limits product eligibility for de minimis, which would apply goods from all origins (not just China)
- Any data submitted to an e-commerce platform can be used for a security, enforcement or other lawful purpose

IF YOU ARE AN MARKETPLACE PLATFORM

- CBP may request documentation or information regarding the offer for sale or purchase, or the subsequent sale, purchase, transportation, importation or warehousing of such articles, including such documentation or information relating to the offering of such articles for sale or purchase in the United States through a commercial or marketing platform, including an electronic commercial or marketing platform
- Such documentation is true and correct to the best knowledge and believe of the party submitting, transmitting, or otherwise making available such documentation or information
- Prohibits use of de minimis for goods forwarded through a distribution or processing facility (i.e., storage) located in a foreign country

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IF YOU ARE AN E-SELLER

- 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 business with the federal government cannot be the importer of record or use de minimis

IF YOU ARE AN MARKETPLACE PLATFORM

- Penalties apply to any person subject to regulations requiring “submission, transmission, or otherwise making available of such documentation or information” to CBP to determine eligibility for de minimis. If the regulations require marketplace platforms to file or make data available to CBP, then they will be subject to penalties under this section.

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 filed a statement for the record concerning the December 2, 2021 hearing that prompted this discussion draft bill
- EMTC is actively discussing this bill with Chairman Blumenauer’s staff
- 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>