

March 24, 2022

The Honorable Charles Schumer
Senate Majority Leader
United States Senate
S-221 U.S. Capitol
Washington, D.C. 20515

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-232 U.S. Capitol
Washington, D.C. 20515

The H Honorable Mitch McConnell
Senate Republican Leader
United States Senate
S-230 U.S. Capitol
Washington, D.C. 20515

The Honorable Kevin McCarthy
House Republican Leader
U.S. House of Representatives
H-204 U.S. Capitol
Washington, D.C. 20515

Re: Urgent request to prioritize the COMPETES Act's Division K, Title III, the "*Import Security and Fairness Act*."

Dear Majority Leader Schumer, Republican Leader McConnell, Speaker Pelosi, and Republican Leader McCarthy:

We are writing on behalf of independent retail store operators and the communities they serve across the United States to urgently request that you prioritize the COMPETES Act's Division K, Title III, the "*Import Security and Fairness Act*."

These locally owned, independent small businesses play an essential role in creating, even defining, the communities in which they are located. Thriving, vibrant, main streets contribute to community health; when the stores start being boarded up, restaurants follow, and a vicious circle of economic and social ills begins.

The industry already is under severe pressure due to effects of the Covid-19 pandemic. **However, the independent retail store industry and the communities it serves are under another, growing existential threat.**

With the 1994 and 2014 amendments to the so-called "de minimis" exemption for import shipments in Section 321 of the Customs Act, Congress effectively repealed all duties and any meaningful inspections for purchases of up to \$800, so long as the order is fulfilled from outside the customs territory of the United States.

Some companies, like the Chinese direct-to-consumer fashion brand Shein, are selling on their own websites. Many companies are selling on online marketplaces. Since 2013, Amazon has conducted a program of aggressively recruiting Chinese manufacturers and merchants to sell their products directly as third-party merchants on Amazon's marketplace.¹ Walmart now appears to be following Amazon's lead, recruiting thousands more international sellers to its site, especially from China.

In all these cases, the sellers are fulfilling online orders by air express from warehouses in China, or by truck from warehouses in Mexico or Canada, eligible for “de minimis” treatment. Even some U.S. chain store operators are doing so.

By fulfilling orders in this manner, de minimis shippers hold a substantial advantage over sellers who sell products imported in bulk with duties paid; tariff savings have been quoted from 20% to 40%.²

The result has been an explosion of these shipments into the United States, and the problem is getting worse: Customs and Border Protection reported that they cleared 636 million de minimis shipments in Fiscal Year 2020 and 771.5 million in FY 2021, more than two million a day.³ The value of de minimis shipments in 2021 has been conservatively estimated at between \$77 billion and \$196 billion.⁴

This onslaught poses an existential threat to independent retail stores’ survival, and to the economic and social health of the communities these locally owned small businesses serve.

Each day as another two million shipments enter our country without paying applicable tariffs and without scrutiny, our economy and communities are further hollowed out. Consumers also suffer from the sale of counterfeit and unsafe products facilitated by China’s aggressive exploitation of the de minimis provision.⁵

Urgent Action is Needed Now

Fortunately, there is an opportunity to respond. Ideally, the section 321 threshold will be returned to a truly “de minimis” amount: \$10 in today’s dollars, equivalent to the \$1.00 amount in 1952, when Congress correctly declined to increase it. Meanwhile, the COMPETES Act’s Division K, Title III, the “*Import Security and Fairness Act*” — legislation sponsored by Representative Earl Blumenauer (D-OR) — provides the means to combat China’s aggressive exploitation of the “de minimis” provisions of Section 321. As the House and Senate prepare to move to a conference committee on the America COMPETES Act and the American Innovation and Competition Act, we strongly urge you to prioritize this provision and include it in the final version of the bill.

Sincerely,

[Coalition for a Prosperous America](#)
[American Booksellers Association](#)
[American Independent Business Alliance](#)
[American Specialty Toy Retailing Association](#)
[Independent Office Products and Furniture Dealers Association](#)

[Independent We Stand](#)
[Institute for Local Self Reliance](#)
[Main Street Alliance](#)
[North American Hardware and Paint Association](#)
[Running Industry Association](#)
[Small Business Majority](#)

ENDNOTES:

¹ Amazon's Heavy Recruitment of Chinese Sellers Puts Consumers at Risk. By Jon Emont, Wall Street Journal, November 11, 2019.

<https://www.wsj.com/articles/amazons-heavy-recruitment-of-chinese-sellers-puts-consumers-at-risk-11573489075>

² The flood of de minimis imports also hampers the ability of in-store retailers to offer American-made brands, which may be competitive at the tariffed price-point, but not at the de minimis price.

³ Trade Statistics, U.S. Customs and Border Protection.

https://www.cbp.gov/newsroom/stats/trade?_ga=2.117840713.1590711767.1643150890-336629967.1643150890

⁴ The Trade Deficit is Worse Than We Thought: De Minimis Hides \$128 Billion of U.S. Imports. By Jeff Ferry, Coalition for a Prosperous America, January 25, 2022.

<https://prosperousamerica.org/the-trade-deficit-is-worse-than-we-thought-de-minimis-hides-128-billion-of-u-s-imports/>

⁵ Ill effects on consumers from China's aggressive exploitation of the de minimis provision have been well documented:

Counterfeit Products, Mostly from China

E-Commerce facilitated by de minimis is a major source of counterfeit products: most imported counterfeits arrive in the U.S. via Express Consignment and International Mail, mostly from China. U.S. Customs and Border Protection reports:

Over 90 percent of all intellectual property seizures occur in the international mail and express environments. . . The People's Republic of China (mainland China and Hong Kong) remained the primary source economy for seized counterfeit and pirated goods, accounting for 83 percent of all [Intellectual Property Rights] seizures and 92 percent of the estimated MSRP value of all IPR seizures.

[\$115K of Counterfeit Items Seized by CBP Officers in Louisville. U.S. Customs and Border Patrol, Press Release, August 19, 2020.

<https://www.cbp.gov/newsroom/local-media-release/115k-counterfeit-items-seized-cbp-officers-louisville>]

Unsafe Products, Mostly from China

Imports facilitated by e-Commerce and the de minimis exception also are a significant source of unsafe or deceptive products. In an investigation between May and August 2019, the Wall Street Journal uncovered over 10,000 items for sale "that have been declared unsafe by federal agencies, are deceptively labeled, lacked federally-required warnings, or are banned by federal regulators." Of the sellers whose addresses could be determined, 54% were based in China. The Journal researchers concluded: "Amazon's China recruiting is one reason why its platform increasingly resembles an unruly online flea market."

[Amazon's Heavy Recruitment of Chinese Sellers Puts Consumers at Risk. By Jon Emont, Wall Street Journal, November 11, 2019.

<https://www.wsj.com/articles/amazons-heavy-recruitment-of-chinese-sellers-puts-consumers-at-risk-11573489075>

Amazon Has Ceded Control of Its Site. The Result: Thousands of Banned, Unsafe or Mislabeled Products. By Alexandra Berzon, Shane Shifflett and Justin Scheck, Wall Street Journal, August 23, 2019.

https://www.wsj.com/articles/amazon-has-ceded-control-of-its-site-the-result-thousands-of-banned-unsafe-or-mislabeled-products-11566564990?mod=article_inline]