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The $67 Billion Tariff Dodge That's Undermining U.S. Trade Policy

The de minimis rule, which exempts American tourists from duties on small purchases made abroad, has turned into a lucrative strategy for big retailers

WASHINGTON—The rule that allows American tourists to bring back souvenirs from overseas duty-free is now being used by companies to avoid billions of dollars in tariffs—and it's perfectly legal.

Known as the de minimis rule, the exemption has been around for decades, deriving its name from the Latin term for something too small to fuss with.

For many years, it was just that—accounting for such a sliver of imports that U.S. Customs and Border Protection didn't even bother to keep track of them.

It's a sliver no more. The known value of de minimis imports soared to over $67 billion in 2020 from an estimated $40 million in 2012 , according to previously unreported U.S. Customs data reviewed by The Wall Street Journal.

The rise of e-commerce in recent years accustomed shoppers to order just a few items at a time—which easily falls under the de minimis rules—and led to steady growth in such shipments. Then a sharp jump came in the wake of higher tariffs imposed by the Trump administration on Chinese imports, according to the Customs data and logistics industry executives, who say the new levies led importers to devise ways to dodge paying them.

As a result, more than a tenth of Chinese imports by value now arrive as de minimis shipments, the Customs data indicate, up from well under 1% a decade ago. The increase was also fueled by a 2016 decision by Congress to raise the maximum value of de minimis imports to $800, up from $200.

The law allows U.S. retailers who sell Chinese imports—along with Chinese companies that sell directly to U.S. consumers—to avoid tariffs on goods as long as they are packaged and addressed to individual buyers and fall below the $800 cap.

Groups including the Coalition for a Prosperous America, which includes U.S. manufacturers and labor groups, are urging Congress to eliminate the de minimis exemption for Chinese imports, saying the law is being used to make a blatant end-run around tariffs.

"This is a calamity putting U.S. producers and traditional retailers out of business and destroying jobs," said Charles Benoit, the trade-policy counsel for the coalition.

That view is countered by those who say the de minimis rule has boosted e-commerce and kept costs lower for consumers.

"I wouldn't characterize it as, 'People are taking advantage of the system'—it's just a law that's been in place and people have a right to use it," said Lenny Feldman, counsel to the National Customs Brokers and Forwarders Association of America.

Terez Universe LLC, a New York-based women's apparel brand, is among the U.S. companies that has overhauled how it imports Chinese goods.

An assortment of rainbow leggings, part of Terez Universe's made-to-order program, hang on a rack at the retailer's New York office.

In years past, Terez would place factory orders for leggings, joggers and tank tops based on estimates of consumer demand for certain styles and colors, said Suzanne Farid, the company's head of supply chain.

To use the de minimis rule, Terez has shifted to a made-to-order strategy for its online, direct-to-consumer business—setting production runs based on actual customer orders. The goods, which are packaged and addressed to individual customers, are then shipped directly from Chinese factories by Long Island-based freight forwarder Alba Wheels Up International.

"We're saving more on duties than we're paying on shipping," Ms. Farid said. "It saves us time because once it arrives in the U.S. it's already ready to go directly to the consumer," she added.

Terez also sells its apparel at retailers including stores of Neiman Marcus Group Inc. and Nordstrom Inc.; those larger shipments are still subject to tariffs.

Avoiding tariffs is particularly attractive for U.S. retailers who sell price-sensitive consumer goods such as apparel, handbags, kitchen gadgets and the like, many of which were already subject to tariffs even before the trade war.

"If you had a 7% tariff, and then there's an additional 25% added on top of it? If de minimis was a business choice before, now it's almost an imperative," said Salvatore Stile II, president of Alba Wheels Up.

The U.S. Customs data show a sharp increase in the number of de minimis shipments in the wake of President Donald Trump's tariffs on China—climbing from 299 million in 2017 to 495 million in 2018, the first full year the tariffs took effect.

By 2021, the number had jumped to 771 million shipments, the data show.

The data obtained by the Journal was generated from a Customs and Border Protection database of known de minimis shipments and their declared value. For many packages, especially those that enter the country via the postal service, Customs knows only the items' weight, not the declared value, meaning the actual value of de minimis could be significantly higher.

A Customs spokesman said the data reviewed for this article shouldn't be considered final or endorsed by the agency. He added that Customs is working toward publishing an official set of de minimis statistics.

Former Customs officials say the agency's focus—rightfully in their view—is screening the packages for illicit goods, such as illegal pharmaceuticals, weapons or counterfeit items. Validating the value of millions of tiny packages a day, or estimating values for packages that only have been weighed, is neither a priority, nor something the agency has resources for, they say.

The law allows Chinese companies to export goods directly to the U.S. market from Chinese factories—without the need for any U.S.-based importer or warehouse—as long as shipments are addressed to individual customers and fall below the $800 limit.

Chinese clothing giant Shein, which specializes in fast-fashion—rapidly bringing trendy, low-cost apparel for teens and 20-somethings to market—is among the companies that make use of the exemption. Earnest Research, a data analytics firm for consumer brands, estimated Shein had 30% of the fast-fashion market in the U.S. last year—without selling through their own U.S. storefronts or those of other brands.

Companies can also take advantage of the de minimis rule using ocean shipping, which is cheaper than airfreight. That method, which requires some additional steps, has spawned a cottage industry in and around Tijuana, Mexico.

Air freight is the most direct and most common way for de minimis shipments to enter the U.S., followed by trucks bringing such goods across the border, in many cases after items were warehoused in Mexico.

The goods are then taken to one of Mr. Armijo's three bonded warehouses, avoiding any Mexican tariffs because they don't technically enter that country's economy either.

The items remain in the warehouses until U.S. customers place an online order. At that point the item is individually packaged, loaded onto trucks and driven back across the border to San Diego.

Mr. Armijo's firm sends the manifest electronically ahead of time so that when his trucks reach the U.S. border, they clear Customs quickly—no duty required—and can immediately be shipped via the postal service or a courier.

He declined to provide exact numbers but says his warehouses fulfill tens of thousands of direct-to-consumer orders a week.

The Mexican detour can yield big savings. A $75,000 shipment of women's tops would normally be charged just over $29,000 in tariffs, as well as additional harbor maintenance fees and merchandise-processing fees.

"In some cases, this helps companies survive," said Mr. Armijo, referring to the savings on import duties.

The increasing use of the de minimis rule can be seen in the contents of seaborne cargo containers, said Spencer Strader, director of imports at ECU Worldwide, a cargo and freight logistics firm.

In the past, those containers tended to all be filled with the same product.

"Now, you'll open up a container and there's a thousand individual shipments to a thousand different people in that one 40-foot container, all pre-labeled, possibly USPS, UPS, FedEx or any other final mile provider," Mr. Strader said.

"It really is the least-cost way to move consumer products from Asia, where they predominantly come from," he said.

Logistics firms say that the tariff-dodging strategy has also been given momentum by the rise in online shopping, which accelerated during the Covid-19 pandemic as people did more buying from home.

People placing orders on Amazon.com Inc.'s Marketplace, or the online sites operated by eBay Inc. or Wayfair Inc., generally have no way of knowing if a product from China is being imported as a de minimis shipment.

Still, with nearly 800 million shipments entering the U.S. annually as de minimis imports, it's likely that major U.S. retail brands are using the strategy for online fulfillment from factories in China, said Kim Glas, president of the National Council of Textile Organizations, which represents U.S. apparel makers and supports protective tariffs for American producers.

Amazon, eBay and Wayfair declined to comment on the extent to which they or their third-party sellers use de minimis. Amazon's website, however, contains information on how third-party sellers can comply with the rules.

A number of other importers contacted by the Journal declined to comment on their use of de minimis shipping, reflecting the political sensitivity around tariffs on Chinese imports.

The precise nature of goods being imported isn't known—the paperwork for de minimis shipments doesn't require importers to use the tariff codes required for other imports—but freight companies say that given the $800 cap on value, most of these goods are consumer items.

In fiscal year 2020, the U.S. imported $618 billion of consumer goods, meaning de minimis shipments were over 10% of that value.

The use of de minimis has put a dent in tariff revenues, which go to the U.S. Treasury. The Federal Reserve Bank of New York in 2021 estimated that Treasury loses as much as $10 billion a year in tariffs through tariff strategies like de minimis.

New York Fed analysts came up with that estimate by comparing China's report of how much it exported to the U.S. against U.S. records of how much it imports from China, and found a $55 billion gap that they calculated would be explained by tariff avoidance.

A measure to bar imports from China receiving the de minimis exemption is in the House version of legislation aimed at helping the U.S. address economic and technological challenges from China, dubbed the America Competes Act, but not in the Senate's companion bill.

"As long as foreign companies that sell their goods in America are splitting up their shipments to evade tariffs and oversight, American businesses will continue to be put at a competitive disadvantage cost-wise," said Rep. Earl Blumenauer, (D., Ore.), chairman of the House Ways and Means Trade Subcommittee, who is pushing the measure.

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