



ALAN WILSON
ATTORNEY GENERAL

January 18, 2024

President Joseph R. Biden, Jr.
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear President Biden,

As Attorneys General of our respective States, we write to express our concerns about Section 321 of the Tariff Act of 1930, known as the de minimis trade provision. While the provision provides real benefits to American consumers, the present operation of the provision also harms our States. In particular, we are concerned that the provision currently facilitates an illegal narcotics trade that exacerbates our national drug crisis.

We ask that your administration act now to address this problem. Meaningful action is sorely needed.

The De Minimis Trade Provision and its Critics

The de minimis trade provision dates back to 1938 and was originally intended to exempt souvenirs and low-value gifts mailed from abroad from duties and taxes.¹ Since 1938, the de minimis threshold has been raised—most recently to \$800 in 2016.²

Since the threshold was raised, the volume of de minimis entries has increased exponentially.³ Today, nearly 3 million de minimis shipments enter the United States every day.⁴

¹ Katherine Masters, "Focus: Key trade loophole keeps cheap Chinese products flowing to US," REUTERS (Aug. 4, 2023), <https://tinyurl.com/2s9sdj7>.

² "De Minimis Value Increases to \$800," U.S. CUSTOMS AND BORDER PROTECTION (Mar. 3, 2016), <https://tinyurl.com/2mpfes62>.

³ Office of Trade, "Section 321 De Minimis Shipments Fiscal Year 2018 to 2021 Statistics," U.S. CUSTOMS AND BORDER PROTECTION, <https://tinyurl.com/33a88p79>.

⁴ Jordyn Holman, "U.S. Retailers Say an Old Trade Law Puts Them at a Disadvantage," THE NEW YORK TIMES (Nov. 6, 2023), <https://tinyurl.com/y6af5whp>.

And while millions of Americans enjoy the benefits of the de minimis provision, criticism of the provision has also emerged. This criticism comes from a variety of parties adversely affected by the provision, including American retailers and manufacturers.⁵

But criticism of the provision is not limited to economic concerns alone. In recent years, a variety of voices have expressed concern that the provision facilitates the shipment of goods made using forced labor. Critics are particularly concerned that the provision provides a loophole around existing federal laws, including the Uyghur Forced Labor Prevention Act.⁶

Congress is starting to take notice of these problems. Bipartisan bills have been introduced to reform the provision to address many of these concerns.⁷

The Provision and Our National Drug Crisis

As the chief legal officers of our States, we write to highlight another problem associated with the de minimis provision. In particular, we are concerned that the provision is fueling our national drug crisis by facilitating the trafficking of fentanyl and other illegal narcotics.

Customs and Border Protection has already recognized this problem, acknowledging that its ability to “identify and interdict high-risk shipments that may contain narcotics, merchandise that poses a risk to public safety, counterfeits, or other contraband” is limited in part by the “overwhelming volume of small packages” shipped under the provision.⁸ And while Customs and Border Protection currently does not inspect every shipment, its limited inspection efforts reveal a significant number of narcotic seizures every year.⁹

With respect to fentanyl specifically, a Customs and Border Protection official recently acknowledged that a “common pathway for fentanyl, precursor chemicals, and pill presses to get into the hands of criminals is through small package shipments”¹⁰ That same official acknowledged that fentanyl has contributed to more than 100,000 overdose deaths over the last two years alone.¹¹

⁵ *Id.*

⁶ Josh Zumbrun, “How a Trade Loophole May Be Letting in Chinese Imports Made With Forced Labor,” *THE WALL STREET JOURNAL* (May 26, 2023), <https://tinyurl.com/43387xk6>.

⁷ “Cassidy, Baldwin Introduce Bill to Stop China From Taking Advantage of Lax U.S. Trade Laws,” *BILL CASSIDY, M.D., U.S. SENATOR FOR LOUISIANA* (June 14, 2023), <https://tinyurl.com/4fdaf74c>.

⁸ “Commercial Customs Operations Advisory Committee Government Issue paper Next Generation Facilitation Subcommittee E-Commerce Task Force,” *U.S. CUSTOMS AND BORDER PROTECTION* (June 2023), <https://tinyurl.com/43387xk6>.

⁹ Office of Trade, “Section 321 De Minimis Shipments Fiscal Year 2018 to 2021 Statistics.”

¹⁰ Marcy Mason, “CBP Trade Advisory Committee Convenes for Fiscal Year-End Public Meeting,” *U.S. CUSTOMS AND BORDER PROTECTION* (Sept. 27, 2023), <https://tinyurl.com/t7cxa6wm>.

¹¹ *Id.*

As you are doubtlessly aware, according to reports from the DEA, China is the main source for all fentanyl-related substances trafficked into the United States.¹²

In short, we all know that we have a fentanyl problem in this country. It is becoming increasingly clear that the current operation of the de minimis trade provision is part of this problem.

Call to Action

In recent weeks, your administration has repeatedly touted its efforts to curtail the flow of fentanyl into the United States.¹³ And while we applaud any efforts to prevent further fentanyl trafficking, we are concerned that your administration is overlooking an important aspect of the fentanyl problem—namely, the current operation of the de minimis provision.

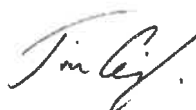
We strongly urge your administration to act now to address shortcomings in the existing de minimis trade provision regime. Among other possible solutions, your administration should prioritize increased screening and enforcement measures to disrupt this illegal drug trade. We also encourage you to work with Congress to reform the provision in the long term.

The fentanyl crisis is a modern American tragedy. We all must do our part to combat it.

Sincerely,



Alan Wilson
South Carolina Attorney General



Tim Griffin
Arkansas Attorney General



Treg Taylor
Alaska Attorney General



Ashley Moody
Florida Attorney General

¹² DEA Intelligence Report, “Fentanyl Flow to the United States,” DRUG ENFORCEMENT ADMINISTRATION (January 2020), <https://tinyurl.com/3pdmhm4a>.

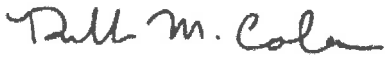
¹³ Geoff Mulvihill, “China’s agreement expected to slow flow of fentanyl into US, but not solve overdose epidemic,” AP (Nov. 16, 2023), <https://tinyurl.com/2uenr76b>.



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