



Congress Must Allow 321/*De Minimis* Entry for U.S. Foreign-Trade Zones to Prevent Offshoring of American Distribution Jobs and Protect Consumers from Illicit Trade

Under U.S. law (19 USC §1321 – aka “Sec. 321”), shipments with a “*de minimis*” retail value may enter the United States duty free if imported by one person on one day. In 2016, the Trade Facilitation and Trade Enforcement Act (TFTEA) increased the *de minimis* threshold from \$200 to \$800. With the surge in e-commerce, companies with distribution operations outside the United States quickly began expanding their use of the Sec. 321 customs-entry process to export qualifying shipments duty-free to the U.S. market.

However, U.S. foreign-trade zones (FTZs), geographically located in all 50 States and Puerto Rico but considered by law to be outside U.S. Customs territory, are precluded from using the provision when entering imported goods for U.S. consumption that otherwise meet *de minimis* entry requirements because: (1) duty-free treatment under Sec. 321 is triggered by an “importation,” which is deemed to occur when goods physically land in the territory of the United States before they are sent to a U.S. FTZ; and (2) withdrawal and Customs entry of goods from an FTZ into the U.S. market are not considered to be an importation.

This discriminatory tariff treatment has had several unintended but very harmful consequences:

- Foreign distributors now have a sizable cost advantage over U.S.-based FTZ distributors;
- This significant cost imbalance directly incentivizes offshoring e-commerce distribution operations to Canada, Mexico, or other foreign locations, thus jeopardizing American jobs and the future viability of distribution for the U.S. market from U.S. FTZs;
- Offshoring distribution operations significantly diminishes the ability of the United States to be a leader in the critical and rapidly expanding e-commerce market; and
- A wholesale shift of e-commerce distribution from the United States to other countries increases the risk of illicit trade entering the U.S. market.

NAFTZ is a leading participant in the “321 Coalition”, an industry coalition seeking legislative changes to address these adverse consequences by:

1. Allowing Sec. 321 to include goods meeting the *de minimis* threshold withdrawn and entered from a U.S. FTZ on one invoice or order, per ultimate consignee, on one day, thereby maintaining the integrity of the *de minimis* concept;
2. Clarify that the prohibition in the FTZ Act against conducting retail trade in an FTZ does not apply to goods meeting the *de minimis* threshold that are withdrawn from an FTZ for distribution to U.S. customers as part of an e-commerce transaction; and

3. Directs U.S. Customs and Border Protection (CBP) to establish a process to ensure *de minimis* importations and entries comply with all U.S. laws and regulations.

Importantly, these changes will not affect the number of *de minimis* shipments imported into the United States; rather, they will change where these shipments originate by shifting more of this trade from foreign distributors to U.S.-based distributors in FTZs.

As explosive growth in e-commerce pushes small-package *de minimis* shipments beyond the current estimate of 1.8 million a day, the Commercial Customs Operations Advisory Committee (COAC) has recommended to CBP that amending Sec. 321 to allow more of that trade to funnel through the highly compliant U.S. FTZ system, which is under CBP's direct control and oversight, will lower the risk of illicit trade entering the U.S. market.

This proposal also advances a central objective of the U.S. FTZ program – to encourage business to create and maintain manufacturing and distribution operations in the United States employing American workers.

NAFTZ and the 321 Coalition remain neutral on where the *de minimis* value threshold should be set. Rather, we seek only to ensure that whatever that value is, the *de minimis* entry option is also available to U.S. FTZs and not just foreign exporters, creating a level playing field for all.