

New Updates to Customs De Minimis Exemption

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On January 13 and 17, 2025, U.S. Customs and Border Protection (“Customs”) issued two notices of proposed rulemakings that would impose new requirements on “de minimis” imports, including gifts, valued at \$800 or less. These low-value or de minimis shipments are eligible for an exemption to enter the U.S. market duty free and with less information than other imports.

As we noted in our [prior post](#), the Biden administration announced in September 2024 that it would take action to enhance supply chain visibility into the low-value shipment exemption. Over the past decade, the number of low-value shipments has increased significantly, with Customs processing, on average, over 4 million low-value shipments per day. The volume, combined with the minimal information requirements, has made it difficult for Customs to identify and interdict shipments that may conceal dangerous and illicit products, like fentanyl, counterfeit goods, and goods produced with forced labor.

The first rulemaking, entitled “[Entry of Low-Value Shipments](#)” (ELVS NPRM), if codified, would establish a dual-track entry process for de minimis shipments, revising the existing “basic” entry process (i.e., release from manifest process) and creating an “enhanced” entry process. Importers would be free to choose which track to use and both would permit claims of tax- and duty-free treatment, but only merchandise entered through the enhanced process would receive expedited clearance. In addition, the rulemaking would codify Customs’ existing practice to deny the de minimis exemption to merchandise subject to antidumping and countervailing duties.

The second rulemaking, entitled “[Trade and National Security Actions and Low Value Shipments](#)” (TNSA NPRM), would make merchandise subject to trade or national security actions (namely Section 201, 232, or 301 tariffs) ineligible for the de minimis exemption, unless that merchandise is excluded from the tariffs. The rule is intended to address tariff circumvention, where importers deconsolidate merchandise into multiple, low-value shipments to avoid Customs’ scrutiny. In addition, the rule would require providing the 10-digit HTSUS classification for merchandise entered under the basic entry process to enable Customs to confirm whether the merchandise is subject to Section 201, 232, or 301 tariffs.

Basic Entry Process

Taken together, the two rulemakings would amend Customs’ regulations to slightly modify current rules governing the basic entry process. As before, merchandise entered under the basic entry process will be released with an individual bill of lading, but the rulemakings would require importers to provide additional data elements. Presently, importers must provide the country of origin of the merchandise; shipper name, address and country; ultimate consignee name and address; specific description of the merchandise; quantity; shipping weight; and value. The ELVS NPRM would also

require name and address of the person claiming the exemption and the name and address of the final deliver-to party, meaning the final party in the United States to whom the merchandise is delivered, if distinct from the person claiming the exemption. The TNSA NPRM would also require provision of the 10-digit HTSUS classification of the merchandise claiming basic entry to enable Customs to determine whether the merchandise is subject to Section 201, 232, or 301 duties. Finally, the rulemakings would make gifts eligible only for basic entry, not enhanced entry.

Enhanced Entry Process

Customs' proposed enhanced entry process combines aspects of two successful voluntary pilot programs, the Section 321 Data Pilot and Entry Type 86 Test, pertaining to low-value shipments. The Section 321 Data Pilot tested the feasibility of Customs accepting advance data for low-value shipments from parties other than carriers, which were unlikely to possess all information regarding shipments, such as e-commerce platforms. The Entry Type 86 Test allowed entry of low-value shipments under a new, informal entry type 86 for shipments subject to other U.S. agencies' regulatory requirements, rather than going through formal entry. Type 86 entries were also eligible for expedited clearance through electronic release.

Like the Section 321 Data Pilot, the enhanced entry process would require submission of advance data about the content, origin, and destination of the items. And, like the Entry Type 86 Test, compliant shipments would receive expedited clearance of shipments and duty- and tax-free treatment. Merchandise entered under the basic process would not be eligible for expedited clearance.

The following data elements would be required for all entries made under the enhanced process: the Clearance Tracing Identification Number (or the individual bill of lading number or other unique identification number to associate the merchandise on the bill of lading with the merchandise); country of shipment of the merchandise; 10-digit HTSUS classification, including indication of applicability of Section 201, 232, or 301 tariffs; and, at least one of the following: URL to the marketplace's product listing for the merchandise in the entry, product picture, product identifier, and/or shipment x-ray or other security screening report number. Additional required elements to be provided, when available, include the seller name and address, purchaser name and address, any data or documents required by other government agencies, advertised retail product description, and marketplace name and website or phone number. Notably, a party eligible to make enhanced entry may seek a waiver of submission of a 10-digit HTSUS classification when the filing party has documented internal controls to ensure compliance and the merchandise is not subject to other U.S. agency import requirements (e.g., health and safety requirements).

Importers filing entries made under the enhanced process would have prescribed deadlines for submitting the required information in advance, depending on the mode of transportation. For example, for vessel cargo, the filing must be received at least 24 hours before the cargo is brought aboard at the foreign port. The timing requirements are the same as provided for Advance Electronic Data filings. Further, the entry can only be filed by one of the parties eligible to make entry.

Entries Not Eligible for the De Minimis Exemption

Merchandise covered by an antidumping or countervailing duty order is not eligible for low-value entry under Customs' existing practice. The ELVS NPRM would make this practice explicit in the regulations.

Further, the TNSA NPRM would make goods subject to Section 201, 232, or 301 tariffs ineligible for the de minimis exemption. Importers cannot use the basic or enhanced entry processes and must make entry through an alternative method. Further, importers would be required to pay both standard duties and any additional Section 201, 232, or 301 duties, even when the entry value is less than \$800.

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Both rulemakings invite members of the public to comment on the proposed rulemaking within 60 days (i.e., March 17, 2024 for the ELVS NPRM, and March 21, 2024 for the TNSA NPRM). Specifically, regarding the ELVS NPRM, Customs seeks feedback on aspects of the enhanced entry process, namely the “product identifier” and “security screening report number” data elements and the proposed HTSUS waiver process. In the TNSA NPRM, Customs requests comments on whether international mail should be within the scope of that rulemaking or warrant a different approach.

Please contact [Kelley Drye’s International Trade](#) team with any questions on how this proposed rule may affect your company or for assistance with preparing comments on either NPRM, and watch for updates on potential additional changes to the de minimis exemption.