

**Testimony of Kimberly Glas, President & CEO  
National Council of Textile Organizations**

**House Committee on Homeland Security  
Subcommittee on Oversight, Investigations, and Accountability  
Hearing on Exploitation and Enforcement: Evaluating the Department of Homeland Security's Efforts  
to Counter Uyghur Forced Labor**

**October 19, 2023**

Chairman Bishop and Ranking Member Ivey, thank you for the opportunity to testify on this subject that is so important to our nation and to the U.S. textile industry and our workers.

My name is Kimberly Glas, and I am president and CEO of the National Council of Textile Organizations (NCTO), a not-for-profit trade association established to represent the entire spectrum of the United States textile production chain, from base fibers to finished sewn products, as well as supplier sectors that have a stake in the prosperity and survival of the U.S. textile industry. We serve as the voice of the U.S. textile industry and represent over 150 member companies. I also have the honor of serving as an appointed commissioner to the bipartisan U.S.-China Economic and Security Review Commission, although I am not appearing before you today on behalf of the Commission.

The U.S. textile sector is an extremely diverse, technically advanced, and highly capital-intensive industry that involves a multi-stage production chain. This domestic production chain is comprised of the following: suppliers in the cotton, wool, and man-made fiber sectors; yarn and fabric manufacturers; textile home furnishings producers; dyers, printers, and finishers; and our customers in the U.S. apparel, home furnishings, automotive, aerospace, construction materials, energy exploration, and other end-use industries.

This vital domestic textile industry is an important component of the U.S. economy with production found in every region of the country. The industry provides much-needed jobs in rural areas and has functioned as a springboard for workers out of poverty into good-paying jobs for generations. The breadth, scope and manufacturing capabilities of the industry are unparalleled — the industry has invested \$21 billion over the past 10 years in the latest innovations on sustainability and production capabilities. This focus on innovation enables the industry to create hundreds of thousands of products including apparel, industrial textiles, military uniforms, and other defense applications. The U.S. textile industry is a strategic supply chain, as exemplified by its heroic efforts to convert machinery overnight to manufacture life-saving PPE as supply chains broke down abruptly at the outset of the pandemic.

The U.S. textile sector further bolsters the national economy as a consumer of billions of dollars of inputs and support services, such as machinery, telecommunications, technology services, and numerous other products needed to manufacture textiles. According to the U.S. Department of Commerce, every job directly supplied by the U.S. textile sector provides three additional jobs throughout the economy. As such, direct and indirect employment supplied by the U.S. textile industry is responsible for nearly 2.4 million jobs nationwide. Additional details related to the U.S. textile industry are provided below:

### U.S. Textile Industry Key Facts

- The U.S. textile industry supply chain — from fibers to apparel and other sewn products — employed 538,000 workers in 2022. One textile job supports three other jobs in the U.S.
- The U.S. industry is the third largest exporter of textile-related products in the world. Fiber, textile, and apparel exports combined were \$34.0 billion in 2021.
- The U.S. textile industry invested \$20.9 billion in new plants and equipment from 2012 to 2021.
- The domestic textile industry is critical to our national security in that it supplies more than 8,000 different products to the U.S. military.
- The United States is the world leader in textile research and development, with the U.S. textile complex developing next generation textile materials such as conductive fabric with anti-static properties, electronic textiles that can monitor heart rate and other vital signs, antimicrobial fibers, lifesaving body armor, and new fabrics that adapt to the climate to make the wearer warmer or cooler.

According to a recent study by North Carolina State University’s Wilson College of Textiles, the national economic impact of textile investment is substantial. Thirteen jobs are created for every \$1 million increase in U.S. textile production. That means if only 5 percent of textile imports were converted to onshore production (\$6.5 billion), 84,500 new U.S. jobs would be created.

The vital domestic supply chain is seeing demand destruction due to several factors. These issues have been compounded by insufficient customs enforcement. There are a multitude of predatory trade practices hurting the industry, including a loophole in U.S. trade law known as “de minimis” shipments, the rampant undervaluation of goods, import fraud and forced labor in supply chains.

### **Introduction: Enforcement is Key**

I am honored to join a panel of respected experts to review how a lack of focused, aggressive enforcement of our trade laws is failing to combat forced labor practices that the Uyghur Forced Labor Prevention Act (UFLPA), which passed overwhelmingly in the House and Senate with broad bipartisan support, was designed to address. This substantial lack of enforcement is profound, allowing forced labor products to stream into the United States directly from China and other locations virtually undetected and without recourse.

My testimony will focus on current supply chains, the lack of customs enforcement of UFLPA for our sector and its implications to domestic manufacturers and U.S. workers, and what Congress and the administration can immediately do to stem this disastrous economic tide while also addressing the profound human rights abuses impacting China’s Uyghur population. I will also underscore that the de minimis trade loophole makes UFLPA enforcement virtually impossible and in fact rewards goods made with slave labor with preferential duty-free status. It is hurting our industries and undermining all manner of trade enforcement efforts. We greatly appreciate the committee holding this hearing today, and we want to be an active partner with you on immediate follow-up steps from this hearing.

I will also provide an overview of global textile and apparel supply chains so that the subcommittee can better understand how China undermines them by producing and exporting tainted products and discuss at length how a failure to enforce our trade laws fuels forced labor practices and U.S. manufacturing job losses.

### China's Rise to Dominance in Global Textile and Apparel Production

To infiltrate global supply chains with forced labor products at scale, China first had to achieve dominance in this sector. Starting in the mid-1990s, China emerged as a large-scale predatory force benefiting from virtually limitless government programs intended to ensure that China's textile industry captured world markets and displaced foreign competitors and workers. China leveraged the Asian financial crisis of the late 1990s to steeply devalue its currency and slash prices for textile and apparel exports by 30-80 percent virtually overnight. China paired its persistent currency devaluation with heavy industrial subsidies to its state-owned factories, which has shrouded market forces, undervalued the true cost of its products, and displaced virtually all competitors.

These economic factors were compounded by a series of U.S. policy decisions that devastated U.S. textile and apparel manufacturing and our trade partners' operations in the Western Hemisphere. These trade liberalization policies included allowing China's non-market economy to join the World Trade Organization (WTO) and enter into permanent normal trade relations with the non-market economy of Vietnam. Arrangements at the WTO that limited overproduction and dumping of textiles and apparel were also phased out, creating an opportunity to fill rising global demand for apparel with cheap, government-subsidized product from China and its Asian supply chain partners.

China's rise came at the direct expense of the United States, as these gains led to a sharp decline in U.S. textile and apparel output and employment, with far reaching implications for our trade and preference program partners in the Western Hemisphere. Despite an unprecedented increase in global apparel consumption from 1997-2009, U.S. textile and apparel production declined by 61 percent, employment decreased by a staggering 69 percent, exports fell by 15 percent, and the U.S. trade deficit for textile and apparel products increased by 82 percent. At the same time, Chinese textile and apparel exports have exploded, making China the dominant player in the global market. From 1992-2016, Chinese textile and apparel exports to the world grew by a staggering 910 percent, skyrocketing from \$26.4 billion to \$266.3 billion.<sup>1</sup> In fact, China's share of the world's textile and apparel trade quadrupled, growing from 9.5 percent in 1992 to 38.3 percent in 2016.

Further fueling China's dominant global position in the textile and apparel sector is the fact that many key competitors in China are state-owned enterprises, including companies owned by the People's Liberation Army. Moreover, China is the world's leading purveyor of illegal trade practices designed to unfairly bolster a blatantly export-oriented economy. These predatory practices take many forms, from macroeconomic policies that grant across-the-board advantages to their manufacturers to industry specific programs intended to monopolize global markets in targeted areas.

It has also come to light that China's abuses include the exploitation and genocide of an estimated 800,000 to 1.8 million Uyghur Muslims in China's Xinjiang Uyghur Autonomous Region (XUAR) and beyond, where forced labor camps are an integral part of cotton, textile, and apparel production. The country also actively ignores its duty to maintain any basic labor or environmental standards in manufacturing, resulting in rampant pollution and workplace safety hazards throughout its textile production chain.<sup>2</sup> China also continues to massively undervalue its products to maintain its leading position in the market, slashing prices on its apparel exports by an inexplicable 17.3 percent between

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<sup>1</sup> World Integrated Trade Solution (WITS)

<sup>2</sup> See: [News Article](#)

2020 and 2021, despite the imposition of 301 tariffs, at a time when consumer prices across-the-board rose by 4.2 percent.<sup>3</sup>

### Impact on U.S. Trade Partners in the Western Hemisphere

Of course, China's predatory trade practices have had a massive adverse impact not only on U.S. manufacturers and workers, but also directly on our valued political and economic allies in the Western Hemisphere, contributing to economic instability and outward migration. Despite promises of preferred access to our consumer market through free trade agreements (FTAs), our trading partners find themselves at a distinct disadvantage to China's aggressive trade tactics.

As the U.S. was poised to finalize the Dominican Republic-Central America Free Trade Agreement (CAFTA-DR) and enable the region to compete for the U.S. consumer apparel market against a rising China, the major developments noted above—China's adoption of deplorable trade and economic tactics and the liberalization of U.S. trade policy—served to directly counteract that opportunity. These events negatively impacted investment, sourcing, and production decisions in the CAFTA-DR region, which was not equipped to compete with the aggressive, predatory policies and practices employed by the Chinese Communist Party.

Despite those enormous challenges, the CAFTA-DR agreement has been a strong and critical co-production chain for our collective industry sectors. As an example, CAFTA-DR is the top destination for U.S. textile exports, accounting for 80 percent of all U.S. spun yarn and 94 percent of U.S. cotton yarn exports last year. This is a critical co-production chain, along with the United States-Mexico-Canada (USMCA) Agreement, because we have strong trade agreements that have rules to incentivize the use of U.S. and regional components to gain duty-free access and thereby promote critical investments. If we didn't have these rules, we would provide a backdoor to China and others non-signatories that compete unfairly—and we would see this strategic industry evaporate virtually overnight.

### The Biden-Harris Administration's Call to Action

In 2021, to combat China's threat to the vibrant textile and apparel co-production chain in the Western Hemisphere and this trade predator's adverse impact on our output and employment, the administration announced a public-private effort to drive investment and create economic opportunities in Central America through a "Call to Action" initiative.

Our industry was immediately supportive, and since the start of the effort, the CAFTA-DR supply chain has attracted \$2 billion in investment, including significant investments in both Central America and the U.S. by American textile companies. Our hemispheric trade platform requires a dependable business environment and stable workforce throughout the production chain. Sufficient economic and employment opportunities must exist for workers both at home and abroad, for which our industrial sector plays a critical role. The damage that China inflicts on the U.S. textile industry and our Central American and USMCA co-production partners is one of the root causes of outward migration that absolutely must be addressed.

We regret that what was once excitement and optimism in our industry for the promise of increased production, cooperation, and growth in this hemisphere just a few short months ago has taken a substantial turn. A lack of adequate customs and trade enforcement has compounded the effects of

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<sup>3</sup> BLS CPI Summary; September 14, 2021

China's ongoing predation to lead to a historic level of demand destruction for textiles and apparel in this hemisphere that threatens the industry's vitality. The situation has reached a tipping point where a large portion of U.S. textile production and employment, as well as the broader Western Hemisphere textile and apparel co-production chain, is threatened if enforcement activity is not ramped up immediately.

As our industry has made massive capital investment to support export and production opportunities in our free trade agreements, those dollars become worthless if the integrity of our FTAs is not aggressively protected by our customs enforcement and investigative bodies. With your immediate help and the Administration's support, we believe we can help stem this tide.

### **Part I: Supply Chains**

Today, China is the global leader in cotton production and apparel manufacturing, as well as Asia's central sourcing hub for raw cotton fibers and other cotton and synthetic textile inputs such as yarns and fabrics. Powerhouse apparel producers in Asia, like Vietnam, Cambodia, Bangladesh, and others, source massive quantities of their textile inputs from China or through a Chinese supply chain. As previously mentioned, China's supply chains are mostly devoid of labor and environmental standards and rife with non-market practices like state-owned enterprises, government subsidies, and forced labor.

By contrast, Western Hemisphere supply chains feature the U.S. as the central hub for textile inputs, supported by FTAs that demand adherence to strong rules of origin and high labor and environmental standards, reciprocal market access, customs inspections, and other key requirements. In return, regional producers enjoy duty-free access to the lucrative U.S. consumer market.

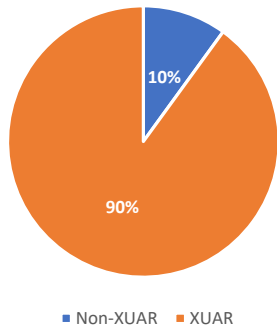
#### **China's Forced Labor Textile and Apparel Supply Chains**

Unfortunately, China's supply chains are inextricably linked to the country's use of Uyghur forced labor in Xinjiang. China's XUAR region is a major cotton, textile, and apparel production center, accounting for 90 percent of China's total annual cotton crop and 20 percent of the entire world's cotton production, according to USDA.<sup>4</sup> Further, roughly 20 percent of the cotton fiber that China's textile industry consumes is imported; that means around 72 percent of cotton products produced in China contain Xinjiang cotton. This cotton further taints finished textile and apparel products produced by countries throughout China's Asian supply chain.

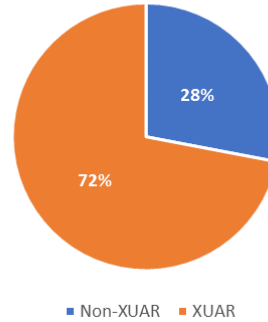
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<sup>4</sup> See: <https://www.ers.usda.gov/amber-waves/2022/december/shift-in-geography-of-china-s-cotton-production-reshapes-global-market/>

Chinese Cotton Production  
Linked to XUAR



Source of Cotton in China's  
Supply Chains



Furthermore, Xinjiang cotton production has **increased** since the passage of the UFLPA — meaning these forced labor supply chains are unknowingly hanging in our closets and delivered to our doorsteps and undermining domestic manufacturers.

At the same time, China is also a major purchaser of U.S.-grown cotton. As a result, it is commonplace for fibers, yarns, and fabrics from various countries of origin to be indiscriminately mixed at all stages of the production process, concealing and diluting the source and proportion of forced labor inputs found in a final garment. These harms are not limited only to cotton products but extend to cotton-synthetic blends and other synthetic textiles as well. Due to the amount of cotton produced in the XUAR, and China's dominant position as a fiber, yarn, and fabric supplier for its own apparel production and apparel production throughout Asia, we can logically deduce the sheer impact China's forced labor practices have on Asian apparel production overall.

To combat China's systematized use of forced labor in cotton, textile, and apparel production, Congress passed the UFLPA, which bans the importation of any product linked to Xinjiang and forced labor practices. Because the XUAR region provides the overwhelming majority of China's cotton and also supplies processed textile components, China's entire cotton textile and apparel supply chain is not only linked to forced labor but is dependent on these abhorrent practices. Since so much of China's textile and apparel industry is directly reliant on XUAR forced labor, we expected to see immediate impacts on this sector as a result of UFLPA's implementation last June.

But what are we seeing instead? Since XUAR cotton production has increased, we should be asking where this massive quantity of cotton is going. Similarly, XUAR textile and apparel production has not abated. Where are those inputs and finished garments going? These products are banned from entering the U.S., which remains the single largest export market in the world for Chinese-made textile and apparel products. Despite the heightened level of scrutiny, UFLPA enforcement reports show that these products are not being stopped in significant numbers at our borders—at least not in proportion to the expected volume of tainted trade. Undoubtedly, a very large portion of the billions of dollars of Chinese textile and apparel exports that enter the U.S. each year through direct shipment via “de

de minimis” entry, are still accessing our market even though they are in violation of UFLPA. For other portions of this trade, Chinese importers employ a myriad of ways to creatively disguise and obfuscate supply chains, reducing supply chain transparency and integrity.

U.S. Customs and Border Protection (CBP) enforcement for UFLPA within our sector has been anemic and clearly not a priority. CBP has detained a mere \$14 million in goods so far this year based on the data available through August—that is a decrease from last year. These statistics are published on the CBP website—advertising to those who want to skirt the rules that the United States government is inspecting this trade at such a minimal level that you can import these products with virtually zero risk of detection.

Several readily available avenues currently exist to disguise a product’s supply chain, allowing for easy circumvention of UFLPA, our FTAs, and other U.S. trade laws. Among these are the dilution or mixing of forced labor products with clean products, transshipping banned products through a third-party country, exploiting de minimis access, undervaluation/dumping, misclassification, and money laundering. These and other tactics are heavily exploited by producers in China and other Asian markets, and I will review a few of these in more detail below.

In any case, with the massive quantities of banned goods produced in China, coupled with UFLPA’s rebuttable presumption that any products linked to Xinjiang are the product of forced labor, we should see massive amounts of Chinese products, both shipped directly and through secondary markets, regularly stopped at our borders. As I will discuss in greater detail, the sheer volume of China’s access to our market, combined with a miniscule level of UFLPA seizures in the textile and apparel sector leads to the conclusion that CBP efforts in this area are completely indefensible to date.

## **Part II: Enforcement**

The large amount of duties collected on textiles and apparel (typically around 40 percent of regular duties collected by CBP) provides a hefty incentive for bad actors domestically and around the world to cheat the system and circumvent our trade laws. The situation has had a devastating impact on U.S. textile production and employment, as well as the broader Western Hemisphere textile and apparel co-production chain. This widespread damage will persist if enforcement activity is not ramped up immediately to address China’s use of forced labor and other banned practices.

Included below are some examples of alarming trade data trends and declining enforcement statistics that help paint the picture of what industry is currently facing.

### **Enforcement of UFLPA**

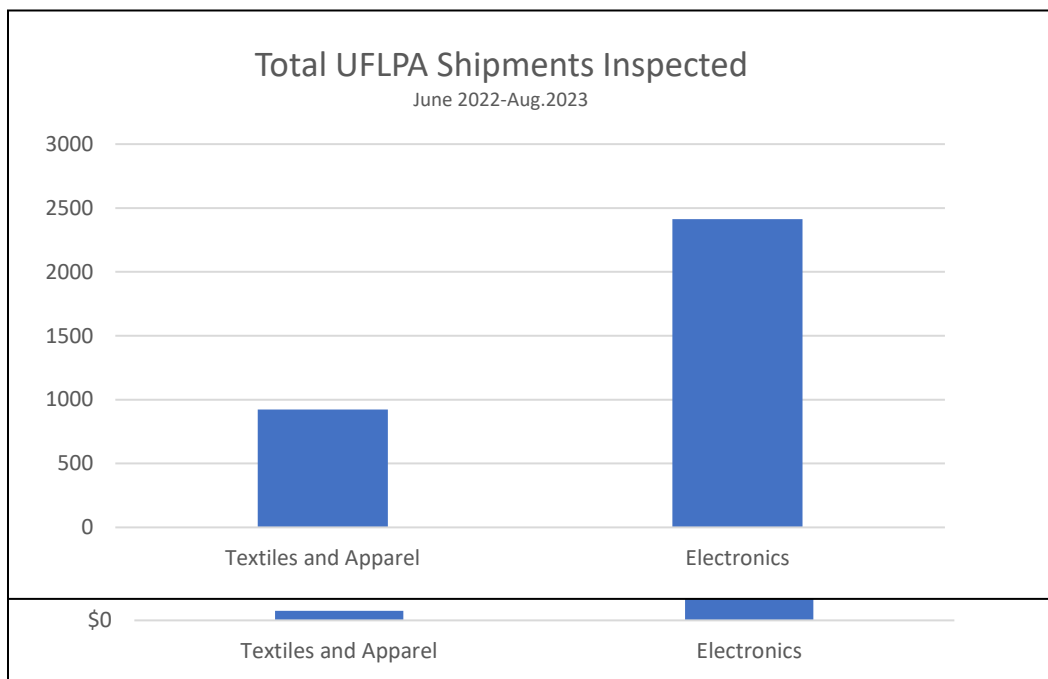
UFLPA enforcement in the textile and apparel sector has been declining despite this sector being at the forefront of the problem. As noted earlier, with 20 percent of global cotton being produced in the XUAR and 72 percent of cotton products made in China containing Xinjiang cotton, we should be seeing stopped shipments at a much higher rate than is occurring.

- For scale, total U.S. imports of textile, apparel, and footwear totaled **\$184 billion** in 2022, and only **\$39 million** in shipments were detained for possible UFLPA violations over the last 15 months — representing a mere two-tenths of a single percentage point of apparel imports.

- When reviewing CBP’s reported UFLPA activity in the textile and apparel sector, we find the average number of UFLPA reviews per month is down 50 percent by value (\$1.7 million vs \$3.5 million) and 24 percent by shipment count (53.8 vs 70.4) in 2023 compared to 2022.
- Although UFLPA specifically identifies cotton as a high-priority sector, other sectors have seen much greater levels of scrutiny by CBP. From June 2022 through August 2023, CBP has subjected 2,412 shipments of electronics equating to \$1.5 billion to UFLPA reviews. By contrast, only 923 shipments of textiles, apparel and footwear equating to a mere \$39 million were reviewed for UFLPA. In July, CBP detained six shipments of apparel from Nicaragua for suspected UFLPA violations—a first for a Western Hemisphere FTA country. This highlights the importance of taking a closer look at CAFTA-DR shipments for FTA compliance.

Current CBP Testing Statistics and Findings

From December 2022 to May 2023, CBP tested a total of 86 samples of apparel and footwear with 15 percent coming back testing positive for Xinjiang cotton. Reportedly, CBP has an exclusive contract with Oritain to conduct this testing and has paid the company \$1.3 million dollars for UFLPA cotton testing to date.<sup>5</sup> CBP was allocated \$101 million to enforce bans on forced labor products. This raises questions as to why more testing is not being conducted to ensure compliance with UFLPA since the resources have already been allocated, and why CBP has not requested more resources from Congress to employ isotopic testing more broadly and more aggressively. Further, the fact that Oritain is the sole supplier of isotopic testing to the U.S. government points to a potential conflict of interest, given that the company reportedly has a client relationship with Shein, the multi-billion dollar Chinese e-commerce company well-documented for its poor labor and environmental practices and ties to Xinjiang cotton. At the very least, CBP should be utilizing more companies who can ramp up isotopic testing and other technology platforms to better enforce this trade.



<sup>5</sup> See: <https://www.reuters.com/markets/commodities/us-customs-finds-garments-made-with-banned-chinese-cotton-documents-2023-09-01/>



### Section 321 De Minimis Tariff Waivers

These tainted forced labor products are coming directly to our doorsteps through de minimis shipments. Nearly 3 million de minimis shipments are coming into the United States each day, largely uninspected and tariff free because of an unintended loophole in our trade law. These shipments are at high risk of not only violating UFLPA but also containing counterfeits or dangerous fentanyl or posing other dangers to consumers. By definition, these packages are deemed to represent an amount of trade that is too minimal for CBP to review or collect any tariffs on, including China 301 penalties. The U.S. received more than 1 billion individual packages claiming de minimis preferences in FY 2023, an increase of nearly 700 percent from the 150 million packages that entered via de minimis in 2016. This is no longer “minimal trade,” and de minimis should be renamed “de maximus” trade given the overwhelming volume. De minimis makes it impossible to enforce UFLPA and rewards China and others with a de facto free trade agreement with no strings attached.

This exponential growth in de minimis imports is the direct consequence of faulty CBP rulings that have allowed mass distributors, such as Shein, Temu, Amazon, and others, to facilitate millions of direct duty-free, and virtually uninspected de minimis shipments each day. Last year, Bloomberg published a report by Sheridan Prasso who had isotopic testing performed on two batches of cotton products from Shein, whose entire multi-billion-dollar business was created by de minimis. Bloomberg reported that “first batch of Shein garments, which included pants and a blouse, matched both Xinjiang samples with only slight variations,” while the second batch showed higher variations of isotopes, but well “within the range that indicates a very likely Xinjiang origin.” Another item was determined to contain XUAR cotton mixed with other materials, while content for another was misclassified entirely.<sup>6</sup>

It defies basic common sense to pretend that the billions of dollars in these duty-free shipments transacted each day are actually “de minimis.” They are not de minimis to U.S. manufacturers who are seeing a substantial erosion of market share; U.S. workers who are losing their jobs; small Main Street brick-and-mortar retailers who can no longer compete with cheap forced labor products; and FTA partners who are being displaced from the U.S. market.

As a result, under the U.S. de minimis tariff waiver system China and everyone else effectively has FTA access to the U.S. for products under \$800. This access is a pure gift and comes with no rule of origin requirements, reciprocal market access, or labor or environmental standards. To put this another way, under our de minimis program, the U.S. provides duty-free, direct-to-consumer FTA access for all Chinese products, including those made with forced labor, that are priced under \$800. China does not offer other countries the same generous program, maintaining its own de minimis level at a mere \$7.

To be clear, this arrangement is directly benefiting the Chinese government’s forced labor regime in the XUAR. CBP reports that China and Hong Kong are the top two sources for de minimis shipments and estimates that half of all de minimis packages entering the U.S. contain textiles and apparel, the production of which has pervasive linkages to Xinjiang. The de minimis forced labor loophole is severely undermining businesses, our FTAs, and our ability to enforce our laws regarding forced labor products entering the U.S. marketplace.

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<sup>6</sup> See: <https://www.bloomberg.com/news/features/2022-11-21/shein-s-cotton-clothes-tied-to-xinjiang-china-region-accused-of-forced-labor>

Last time I checked, UFLPA did not have an exemption for forced labor products that are routed to the U.S. via de minimis rather than through a formal customs entry. We may well ask why CBP is not doing more to enforce UFLPA regarding de minimis shipments.

#### Free Trade Agreement False Origin Claims

Beyond UFLPA evasion and out of control de minimis shipments, we are also confronting a lack of customs enforcement of our FTA rules. The United States has an elaborate system of FTAs that provide certain trading partners with lucrative duty-free benefits. In the textile sector, these benefits are tied to a yarn-forward rule of origin, mandating for most textile and apparel items that production steps from the yarn stage forward must be conducted in the FTA region.

The FTA system is defrauded when importers claim FTA tariff-free treatment even though the finished item is comprised of yarn or fabric sourced from China or another non-FTA country. This is often accomplished by falsifying documents showing that textile inputs were sourced from a legitimate textile manufacturer in the United States.

Trade statistics reveal that the CAFTA-DR region is importing billions of dollars of textile inputs (yarns and fabrics) from sources outside of the trade bloc, namely Asia. Major textile exporters in Asia including China report sending 875 million kilograms of yarns and fabrics valued at \$6.3 billion to the CAFTA-DR countries and Mexico in 2022. That is a 33 percent increase by value and a 111 percent increase by quantity from 2018's pre-pandemic levels. Unit values also dropped 38 percent over this timeframe. As the CAFTA-DR region is largely oriented around producing duty-free apparel destined for the U.S. market, logically these imported textiles are likely finding a backdoor entry point to the U.S. through this FTA region, and similar concerns exist with USMCA.

For example, the renegotiated USMCA free trade agreement included an updated provision that requires all pocketing fabric used in apparel to originate in the FTA region, produced by either the U.S., Mexico, or Canada. This rule went into effect in two stages, with a partial implementation beginning January 1, 2022 and all remaining products requiring regional, yarn-forward compliant pocketing as of January 1, 2023. Previously, pocketing fabric was permitted to originate from any global supplier. Despite U.S. pocketing fabric manufacturers having a clear understanding of the market and ramping up production in anticipation of this new requirement, to date there has been a dearth of orders for pocketing fabric or pocketing yarn for the nearly \$3.2 billion<sup>7</sup> worth of apparel entering the U.S. from Mexico annually. CBP has been unable or unwilling to aggressively address this issue and as a result workers are being laid off.

Sadly, this is in keeping with trends our industry has been monitoring that show FTA enforcement for textiles has declined substantially in recent years. In FY 2022, CBP's illegal transshipment verifications, which incredibly can now be conducted "online," resulted in a total of 38 semi-virtual and onsite inspection visits. This compares to a total of 139 onsite visits CBP conducted in FY 2018, which reflects CBP activity in a pre-pandemic year. In addition, commercial fraud penalties levied were just \$2.5 million for FY 2022 compared to \$19 million in FY 2018. When CBP does pull product for lab testing, they report a 50 percent discrepancy rate in the samples, indicating that misrepresentations are prevalent.

Noting the adverse impacts that subpar or non-existent enforcement has on a U.S. business that invests in American manufacturing with the promise of increased production and export markets, it would be better to have no FTA than to have an FTA that is not enforced.

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<sup>7</sup> U.S. Department of Commerce; OTEXA Major Shippers Report

## Recommendations

As an innovative and dynamic domestic industry, American textile manufacturers can compete against the best in the world when we can do so on a level playing field and under the right economic conditions, which are currently fueling a manufacturing slowdown in the U.S. textile sector that I represent. Unfortunately, despite the fact that the U.S. has strong rules of origin in our FTAs, a robust ban on forced labor products, and an entire agency tasked with customs enforcement, the playing field today is so unbalanced. This is compounding the economic challenges the industry is facing, and creating a serious threat for U.S. textile manufacturers, unlike anything many have weathered before. We urge Congress to take immediate action to address the roots of this severe problem and we need the Committee's direct intervention.

### Congress Must Get Aggressive on Oversight of Customs Enforcement

Over the past 20 years or so, the focus at CBP has become increasingly oriented toward trade facilitation—in other words, ensuring that trade is frictionless and enforcement is minimal. This is a major shift from previous years, when customs enforcement was housed under the jurisdiction of Treasury, prior to the formation of the Department of Homeland Security (DHS). As DHS's founding was predicated on the need for increased border security, it is not a surprise that enforcement of trade laws seems to have shifted much lower on the list of CBP's priorities.

However, as I have demonstrated above, CBP's inability to conduct adequate enforcement has real consequences here in the U.S.—with communities devastated by manufacturing facilities closing—and throughout this hemisphere where apparel production is a top employment sector. If current trends are allowed to continue, manufacturing and job destruction in the U.S. caused by insufficient enforcement will in turn put 2 million Western Hemisphere apparel jobs in jeopardy. When workers in our FTA partner countries lack employment opportunities, they will seek those opportunities elsewhere, resulting in increased outward migration and pressure on our border.

We strongly recommend the congressional committees undertake an aggressive posture toward oversight of enforcement of UFLPA and our customs laws. Congress can play a key role in lighting a fire under customs enforcement officials and demanding results—and should require CBP officials to testify regularly to the committee on its activities and outcomes. The industry and recent letters from congressional leaders have requested the White House publicly announce an aggressive plan for stepped up UFLPA enforcement and FTA enforcement and use its statutory authority to close the de minimis loophole. We need the committee to amplify this urgency and hold CBP accountable because of the implications to our domestic supply chains that are under direct, urgent threat now.

### Congress Must Aid American Lives and Human Rights by Closing the De Minimis Forced Labor Loophole

Today's hearing has highlighted that fentanyl entering the U.S. via de minimis is killing our communities. This is an economic fire, a health fire, and human rights fire—and we need it extinguished immediately. In a similar vein, Chinese forced labor products are killing jobs in our rural communities where many textile facilities operate; to say nothing of the deplorable conditions under which oppressed Uyghurs are forced to slave to produce clothes for pennies and wealth for China. Congress must ensure that UFLPA is enforced to the greatest extent possible—and this means shutting down "China's FTA" through de minimis. There have been many bipartisan voices who have underscored the severity of this loophole including:

**“This is a free trade agreement with China.”** —Ways and Means Chairman Jason Smith

**“It puts American businesses at a competitive disadvantage while flooding American consumers with undoubtedly harmful products.”** —Ways and Means Trade Subcommittee Ranking Member Earl Blumenauer

Due to a lack of UFLPA enforcement on de minimis shipments, China’s forced labor products enjoy better access to the U.S. market than products from any of our FTA partners. Think of that: billions of dollars’ worth of Chinese apparel, tainted by forced labor, getting VIP treatment on its way straight to our front doors at the expense of workers and manufacturing in the U.S. and our critical regional supply chains. We must stop China’s forced labor regime and support American companies and workers who are being exploited as a result.

Congress must do everything it can to close this gaping loophole, including holding high-profile hearings, advancing robust legislation, pressing the administration to initiate rulemaking, and utilizing every other tool at its disposal. Further, Congress needs to push the administration to use its authorities to close the de minimis loophole given how wildly out of control the situation has become. The administration has such authority under existing executive authorities and rulemaking processes, but has not utilized them to date. We urge the committee to weigh in aggressively with the administration on this matter. We can’t emphasize this point enough.

We strongly encourage the committee to hold U.S. Customs and Border Protection accountable and call CBP before the committee:

- **Utilize the UFLPA Entity List More Robustly as a Deterrent:** The [UFLPA Entity List](#) is designed to stop market access to the United States for facilities utilizing forced labor products. Yet, only 27 entities have been identified overall, and for our sector—only a handful of entities have been added to the list from the world’s largest textile and apparel producing nation utilizing XUAR cotton in 72 percent of its output. As a result, this is not a significant deterrent if the administration is not naming more entities who are in non-compliance. Why has the administration underutilized this resource?
- **Make Withhold Release Orders Substantially More Effective:** Our Withhold Release Order process is broken and ineffective to deter problematic trade. It simply names a company/entity utilizing forced labor and banning that entity from market access to the United States. Given the pervasiveness of the cotton supply chain — to make a WRO substantially more effective, we must ban expand the WRO tool substantially.
- **CAFTA-DR/USMCA/FTA Compliance:** Given the massive influx of yarns and fabrics from Asia that have been imported into CAFTA-DR and USMCA countries, likely falsifying origin, why has CBP inspections for these items declined so substantially over the past 5 years?
- **Isotopic Testing:** Congress allocated \$101 million for UFLPA enforcement. To date, based on a Reuters report, CBP has only utilized \$1.3 million in funding. Why is CBP not utilizing this resource more and other tools to mitigate this trade? How is CBP ensuring that there is not a conflict of interest in utilizing only one isotopic testing company that has specific client relationships outside of the government contract? Furthermore, why is CBP not utilizing more companies that can provide DNA analysis on cotton and other methodologies that could help

with more effective enforcement? In addition, why is CBP not utilizing isotopic testing on garments at U.S. retail to determine origin? What statute prohibits CBP from conducting that kind of testing?

- **Stepping-up Inspections and Penalties, and Providing a Strategic Roadmap to Industry on Aggressive, Proactive Efforts Moving Ahead:** We will continue to experience substantial demand destruction due to the current lack of an effective, public, stepped-up enforcement strategy for textiles and apparel under UFLPA on shipments from China and other secondary Asian suppliers, and also in our FTAs. We simply don't have time to waste and would encourage the committee to ensure CBP is publishing an accountability plan on enforcement activities with metrics, and ensure it is leveraging all its authorities to step up penalties in this sector.

Furthermore, we strongly support the recent Senator Tillis-Senator Brown-led letter<sup>8</sup> asking the administration to immediately convene a top level interagency working group to develop and announce an aggressive action plan for textiles and apparel enforcement, given the economic consequences facing both our industry and our trade partners in the Western Hemisphere. This plan must include substantially increased enforcement for UFLPA and FTA inspection/verification, plus using executive authorities on de minimis to stop this harmful trade. We would strongly appreciate the committee weighing in with the administration on this high priority request.

Simply put, we need your help in amplifying this urgent need. We think this hearing is an important step and we look forward to being an active partner with you in any way possible to advance your efforts.

### Conclusion

For far too long we have permitted China to set the global agenda, undermining U.S. values and ideals and harming our workers and trading partners in the Western Hemisphere. With Congress' help, we can shut down express U.S. access for forced labor products, hold China accountable for its unfair trade practices that undermine U.S. and regional competitiveness, and end the exploitation of the Uyghur people through a systematic slave labor regime.

Not only are we failing to stop forced labor trade that Congress explicitly acted to address through UFLPA, but it is being rewarded with duty-free access under the de minimis provision of our trade law. What was once an obscure administrative tool afforded by Congress to CBP to improve efficiency for travelers, de minimis has become a superhighway for illicit goods as a result of ineffective rulemaking and a lack of adequate congressional oversight.

I thank you for the opportunity to testify today and for the committee's attention to these critical issues. I look forward to answering your questions and working with you in the weeks and months ahead to ensure better enforcement of UFLPA and other trade laws.

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<sup>8</sup> See: [Senator Brown-Tillis Letter](#)

**Written Testimony for the Hearing Record by  
Michael Stumo, CEO of The Coalition for a Prosperous America**

**Before The U.S. House Homeland Security Committee**

**Hearing On:**

**Exploitation and Enforcement: Evaluating the Department of Homeland Security's Efforts  
to Counter Uyghur Forced Labor**

**October 19, 2023**

**Introduction**

The rise of Shein and Temu have laid bare the limitations of U.S. Department of Homeland Security (“DHS”) forced labor enforcement actions to date.

On January 13, 2021, U.S. Customs and Border Protection (“CBP”) issued a Withhold Release Order (“WRO”)<sup>1</sup> against all cotton products produced in China’s Xinjiang Uyghur Autonomous Region.<sup>2</sup> This WRO included apparel and all other cotton-downstream products “produced outside the Xinjiang region that incorporate these inputs.”<sup>3</sup> Acting DHS Secretary Ken Cuccinelli said “DHS will not tolerate forced labor of any kind in U.S. supply chains.” And on December 8, 2021, 427 members of the United States House of Representatives passed a resolution condemning the ongoing genocide and crimes against humanity being committed against Uyghurs and members of other religious and ethnic minority groups by the People’s Republic of China.<sup>4</sup> Finally, on June 21, 2022, the Uyghur Forced Labor Prevention Act (UFLPA) went into effect.

Nonetheless, during this same time period, fast-fashion giant Shein’s market valuation rose over tenfold to \$66 billion as of May 2023.<sup>5</sup> In the first half of 2022, Shein “eclipsed Amazon in the

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<sup>1</sup> WROs are the legal instrument CBP uses to stop the importation of goods made in-whole or in-part with forced labor, which were prohibited by Section 307 of the Smoot Hawley Tariff Act of 1930 (19 U.S.C. §1307).

<sup>2</sup> CBP Issues Region-Wide Withhold Release Order on Products Made by Slave Labor in Xinjiang (Jan. 13, 2021), *available at* <https://www.cbp.gov/newsroom/national-media-release/cbp-issues-region-wide-withhold-release-order-products-made-slave>

<sup>3</sup> *Id.*

<sup>4</sup> H.Res.317 - Condemning the ongoing genocide and crimes against humanity being committed against Uyghurs and members of other religious and ethnic minority groups by the People’s Republic of China. 117th Congress (2021-2022)

<sup>5</sup> Vanessa Romo, “Shein invited influencers on an all-expenses-paid trip”, NPR, June 30, 2023, *available at* <https://www.npr.org/2023/06/30/1184974003/shein-influencers-china-factory-trip-backlash>

U.S.—with 22.4 million Shein downloads versus 22 million for Amazon”.<sup>6</sup> Earlier this year, Temu, a new ecommerce platform linked to one of China’s top retailers, aired repeat ads during the Super Bowl and became “the most downloaded app in the United States, surpassing Amazon and Walmart.”<sup>7</sup> Temu’s valuation is now estimated at \$100 billion.<sup>8</sup>

Shein and Temu’s tremendous success comes in spite of widespread acknowledgement of their flouting of CBP’s WRO and the UFLPA.<sup>9</sup>

Simply put, the credibility of the United States is on the line.

### **Forced Labor Enforcement Actions against Merchandise from China Need to be Country-Wide, Not Entity Specific.**

In 2015, Congress repealed the “consumptive demand” clause of the long-standing ban on forced labor imports. This clause provided an exception to the ban if comparable U.S. products were unavailable or domestic production failed to meet demand.<sup>10</sup> Repealing this clause was good, as it removed the only material statutory barrier to enforcing the prohibition of forced labor imports.

In 2018, CBP issued two WROs. The first, on March 5, 2018, was against products from a specific Chinese corporate entity: Huizhou Mink Industrial Co. Ltd.<sup>11</sup> However CBP’s second WRO, issued on May 5, 2018, applied to “All Turkmenistan Cotton or products produced in whole or in part with Turkmenistan cotton.”<sup>12</sup> As Shawn MacDonald, head of Verite, a non-

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<sup>6</sup> Emily Dreibelbis, “Shein Unseats Amazon as Most Downloaded US Shopping App”, PC Mag, July 19, 2022, available at <https://www.pcmag.com/news/shein-unseats-amazon-as-most-downloaded-us-shopping-app>

<sup>7</sup> Michelle Toh, “New online superstore surpasses Amazon and Walmart to become most downloaded app in US”, CNN, February 19, 2023, available at <https://www.cnn.com/2023/02/16/tech/temu-shopping-app-us-popularity-intl-hnk/index.html>

<sup>8</sup> Chelsey Cox, “Retailers Shein and Temu violate U.S. tariff law and evade human rights reviews on imports, House report says”, CNBC, June 22, 2023, available at <https://www.cnbc.com/2023/06/22/shein-temu-evade-us-tariff-and-human-rights-law-on-imports-house-report.html>

<sup>9</sup> See, e.g., U.S.-China Economic and Security Review Commission, Issue Brief: Shein, Temu, and Chinese e-Commerce: Data Risks, Sourcing Violations, and Trade Loopholes, April 14, 2023 (“Shein cotton apparel sourcing practices appear to be in direct violation of the Uyghur Forced Labor Prevention Act.”), available at [https://www.uscc.gov/sites/default/files/2023-04/Issue\\_Brief-Shein\\_Temu\\_and\\_Chinese\\_E-Commerce.pdf](https://www.uscc.gov/sites/default/files/2023-04/Issue_Brief-Shein_Temu_and_Chinese_E-Commerce.pdf). See also U.S. House Select Committee on the Chinese Communist Party, Fast Fashion and the Uyghur Genocide: Interim Findings, June 22, 2023, available at <https://selectcommitteeontheccp.house.gov/media/reports/fast-fashion-and-uyghur-genocide-interim-findings> (“Key Finding 2: Temu’s business model, which relies on the de minimis provision, is to avoid bearing responsibility for compliance with the UFLPA and other prohibitions on forced labor while relying on tens of thousands of Chinese suppliers to ship goods direct to U.S. consumers.”)

<sup>10</sup> See CBP, “Repeal of the Consumptive Demand Clause”, CBP Publication 2130-0316, available at <https://www.cbp.gov/sites/default/files/assets/documents/2016-Oct/Fact%20Sheet%20-%20Repeal%20of%20the%20Consumptive%20Demand%20Clause.pdf>

<sup>11</sup> CBP Withhold Release Orders and Findings, available at <https://www.cbp.gov/trade/forced-labor/withhold-release-orders-and-findings>

<sup>12</sup> *Id.*

profit focused on labor and human rights abuses, told *Reuters* at the time, “This signals an important change in how CBP is approaching their authority.”<sup>13</sup>

The difference between these two WROs is night and day. The first WRO merely punishes a specific corporate entity, while the second WRO properly holds the sovereign – in this case, Turkmenistan – accountable for forced labor operations within its territory.

And from an execution perspective for CBP, the two WROs are also worlds apart. Concealing the involvement of a specific corporate actor early in the supply chain is trivial, but concealing the entire country of origin of a product or input is an order of magnitude more difficult.

In DHS’ lead up to the implementation of the UFLPA, the Coalition for a Prosperous America (CPA) stressed these points. In our March 10, 2022 comment to DHS’ Forced Labor Enforcement Task Force (FLETF),<sup>14</sup> CPA pointed to statements from Chinese authorities that China would not allow the policing of its supply chains, rendering entity-specific investigations futile. When a foreign government actively obstructs forced labor investigations, CPA believes that at a minimum, WROs should apply against the entire relevant product class from that country, not just specific corporate entities. CPA pointed to the Turkmenistan WRO as the appropriate model.

Unfortunately, CPA’s recommendations were rejected by DHS when they released their Report to Congress, “Strategy for the Uyghur Forced Labor Prevention Act.” Upon publication of the FLETF Report, CPA issued a press release stating:

“The Report acknowledges that the “PRC government engages in genocide and crimes against humanity” more than once, but everything that follows in the strategy report **ensures that the PRC government is undisturbed and that importers can continue to source from China with confidence, regardless of actions by the regime there.**”<sup>15</sup> (Emphasis added)

CPA was right. DHS’ forced labor approach was guaranteed to fail, and it has.

If CBP had issued the same WRO for Chinese forced-labor cotton that it had for Turkmenistan – i.e., country-wide instead of confined to a specific region or set of corporate entities – then Shein and likely Temu would not exist in the United States today, or at best would be trivial actors. For

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<sup>13</sup> Sebastian Malo, “U.S. bans imports of slave-picked cotton from Turkmenistan”, *Reuters*, May 24, 2018, available at <https://www.reuters.com/article/us-usa-trafficking-turkmenistan-idUSKCN1IP3UB>

<sup>14</sup> CPA Public Comment Letter Regarding Implementation Of The Uyghur Forced Labor Prevention Act, March 14, 2022, available at <https://prosperousamerica.org/cpa-public-comment-letter-regarding-implementation-of-the-uyghur-forced-labor-prevention-act/>

<sup>15</sup> CPA Statement On Implementation Of Uyghur Forced Labor Prevention Act, June 24, 2022, available at <https://prosperousamerica.org/cpa-statement-on-implementation-of-uyghur-forced-labor-prevention-act/>



CBP, denying entry of cotton apparel products shipped from China can be nearly-automatic. But forcing CBP to link the shipment's merchandise to a specific corporate entity or direct shipment from a specific region within China doomed enforcement from the start. This point will be expanded upon below.

Finally, it should be noted that the UFLPA's rebuttable presumption is entirely consistent with country-wide WROs. Indeed, CBP has already done so using the underlying forced labor authority in Section 307 of the Tariff Act of 1930. On November 1, 2019, CBP issued a WRO for "Tobacco produced in Malawi and products containing tobacco produced in Malawi", but subsequently excluded three corporate entities who demonstrated that their Malawi tobacco products were not made in part with forced labor.

There is nothing stopping DHS from taking the same approach for China as it has for Turkmenistan and Malawi. DHS should do so, issuing country-wide WROs for the relevant product class where there is a forced labor finding.

### **DHS Enforcement Strategies Are Meaningless Thanks To De Minimis**

Regular Imports versus De Minimis: It is imperative to understand the distinction in customs law between formal and informal entry on the one hand (aka, 'normal imports' – anything import not arriving with de minimis treatment), and de minimis entry on the other (aka, lawless imports). De minimis imports are lawless because they allow vendors completely beyond our jurisdiction to ship directly to American households.

Strategies that have merit for formal and informal entry are inevitably completely undermined by de minimis. Country-wide WROs will be extremely effective for regular imports, but more easily avoided if entered via de minimis.

### **Background: Where did de minimis come from?**

In Fiscal Year 2022, U.S. Customs and Border Protection (CBP) processed more than \$3.35 trillion worth of imported goods, an astonishing increase of 19.5% over the prior year. However, \$3.35 trillion is an undercounting of imports. Unfortunately, not even CBP knows the total value. That's due entirely to de minimis. De minimis is one of the three types of "consumption entry", a term CBP uses for imported merchandise for use in United States commerce. The other two types of consumption entry are "formal entry" (required for merchandise \$2,500 and over) and

“informal entry” (available for most merchandise valued at less than \$2,500). Our \$3.35 trillion tally includes formal and informal entry, but not merchandise imported via de minimis.<sup>16</sup>

This is because de minimis is an ungovernable break in our customs controls, where over two million shipments per day enter the United States with little to no scrutiny. Most arrive without digital data, offering only a word or two written on the package to give a hint as to what’s inside. It would take an army of investigators to even attempt to inspect these shipments.

CBP is flagging the problem in their own muted manner, warning in March 2023: “The overwhelming volume of small packages and lack of actionable data impacts CBP’s ability to identify and interdict high-risk shipments that may contain narcotics, merchandise that poses a risk to public safety, counterfeits, or other contraband.”<sup>17</sup>

We know that the majority of de minimis shipments are shipped directly from China and Hong Kong, but after that, it gets murky. The next largest origin country is Canada, but due to the lack of data on de minimis shipments, we do not know the merchandise country of origin for most of those shipments from Canada.

Examining the development of the de minimis fiasco offers a foundation for understanding other negative customs policies that frustrate Congressional expectations in issues such as product safety, narcotics laws, and forced labor laws.

### **Why Congress created ‘de minimis’**

When goods are brought into the country, the law says the customs officers must record merchandise’s value, catalog its importation by way of an ‘Entry’ form and ‘Entry Summary’, and collect any applicable tariffs and taxes. If customs law did not make an exception to this requirement for trivial items, however, customs officers would be forced to do the assessment for every little souvenir or knick-knack brought in from abroad. Imagine being asked for copies of receipts for the snow-globe and t-shirt you brought back from Paris while standing in the customs line at the airport. Nobody wants that.

This is why, in 1938, Congress created the “De Minimis” rule. “De Minimis” is Latin for “too trivial or minor to merit consideration”. It was added as Section 321 to the Tariff Act of 1930, codified in the U.S. Code at 19 U.S.C. §1321. The law’s opening line states its purpose: “to avoid expense and inconvenience to the Government disproportionate to the amount of revenue that would otherwise be collected.”

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<sup>16</sup> Josh Zumbrun, “The Tiny Loophole That Understates the Trade Deficit With China”, WSJ, June 17, 2022, available at <https://www.wsj.com/articles/the-tiny-loophole-that-understates-the-trade-deficit-with-china-11655458201>

<sup>17</sup> <https://www.cbp.gov/sites/default/files/assets/documents/2023-Mar/NGF%20E-Commerce%20Task%20Issue%20Paper%20March%202023.pdf>

*Crucially, this is the reason merchandise imported via de minimis is admitted “free of duty and of any tax” – because no entry was assessed to begin with. The assumption was that any revenue gained would not be worth the officer’s time at performing the assessment. This clearly no longer holds true.*

To this day, 19 U.S.C. §1321 is titled “Administrative exemptions”. This is yet another clear indicator that Congress never intended de minimis to be a channel for import commerce consisting of millions of packages per day. And it is why it is appropriately called a “loophole”, one that was enabled not by Congress but by regulatory rule-making, as will be discussed below.

### **The Three Different Types of De Minimis Entry**

Congress created three separate types of de minimis entry covering two different scenarios, and a catch all. They are still enumerated in the law today:

1. 19 U.S.C. §1321(a)(2)(A): **“Bona fide gifts”** shipped from abroad;
2. 19 U.S.C. §1321(a)(2)(B): **“articles accompanying”** travelers for “household use”; and
3. 19 U.S.C. §1321(a)(2)(C): **“any other case”**.

Originally, in 1938, Congress assigned a \$5 threshold for bona fide gifts and personal effects travelers brought with them, and a \$1 de minimis for “any other case”. “Any other case”, (a)(2)(C), was never meant to be a channel of any meaningful volume of goods. Yet today, the “anything else” category is what is being used to waive through millions of shipments per day! Having been lightly touched since its 1938 inception, as of 1994, the de minimis thresholds stood at \$50 for bona fide gifts from abroad, \$25 for souvenirs brought back, and just \$5 for anything else.

### **1994: Birth of the De Minimis Loophole via Customs Rule-making**

NAFTA went into effect on January 1, 1994, and was a high-profile legislative event. It thus largely overshadowed another monumental piece of legislation that was passed alongside NAFTA: the Customs Modernization Act, or “Mod Act.” The Mod Act increased the bona fide gift threshold from \$50 to \$100; “accompanying articles” from \$25 to \$200 for; and a tremendous increase from \$5 to \$200 for de minimis. In the legislative record, however, Congress focused on the first two categories, but not the “in any other case” increase to \$200 alongside the “accompanying articles” increase.

Besides the raise from \$5 to \$200, the other transformative change happened not from the 1994 Mod Act, but when U.S. Customs service drafted their subsequent implementing regulations that allowed any “consignee” to import merchandise, without even the use of a customs broker. The National Customs Brokers and Forwarders Association of America (“NCBFAA”), founded in

1897, is the trade association representing the customs brokers' profession and was very involved in the development of the Mod Act. It is telling that an organization so involved in the legislative process was stunned by the subsequent interim regulations.<sup>18</sup>

**Customs brokers were alarmed because the norm around the world was that only owners, purchasers, or a customs broker hired by the owner or purchaser could do an importation. This is the norm because importers are expected to be knowledgeable about the merchandise they are importing. They are expected to be able to answer customs officers' questions. This norm is U.S. law, 19 U.S.C. §1484, except for de minimis. Allowing "consignees" to perform import entries meant that parcel carriers (e.g. mail carriers and express couriers) could perform imports despite having no knowledge of the merchandise beyond what is written on the declaration.**

The NCBFAA filed an emergency lawsuit, claiming that the U.S. Customs Service was violating statute with these regulations. Multiple reasons were cited, but importantly from a policy perspective was the fact that the law (19 U.S.C. §1484) mandated that "only an owner, purchase, or licensed broker may make entry of merchandise."<sup>19</sup> Doing away with this requirement for de minimis shipments would lead to a host of grave issues.

NCBFAA cautioned that "Customs is abrogating its responsibility to enforce certain laws and is providing opportunities for their violation."<sup>20</sup> While NCBFAA's lawsuit was against the U.S. Customs Service, the express shippers joined as defendant-intervenors. The federal court that heard the challenge understood the consequential nature of the case, writing "With regard to [the express shippers], resolution of this matter will define their frontier in this industry."<sup>21</sup>

NCBFAA warned the court and the country as follows:

Specifically, plaintiff points out ... the proposed regulations allow entry of shipments valued at amounts up to \$200 through summary manifest information, that is, without any requirement of a Harmonized Tariff Schedule of the United States (HTSUS) subheading number, and exempt these shipments from the requirement of filing an entry summary. Plaintiff contends that this lax entry procedure will create difficulties for Customs relative to the enforcement of visa requirements for apparel, intellectual property rights for patents and copyrights, and antidumping and counter-vailing duty orders. Plaintiff contends that the proposed changes will hinder the Food and Drug Administration's enforcement capabilities as well.<sup>22</sup>

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<sup>18</sup> National Customs Brokers & Forwarders Ass'n of America, Inc. v. United States, 861 F.Supp. 121, 125 (1994)

<sup>19</sup> *Id.*, 128.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*, 126.

<sup>22</sup> *Id.*, 129.

Unfortunately, the court found that the Secretary of the Treasury had broad rule-making authority governing de minimis shipments, and thus ruled against the NCBFAA. The above prediction is precisely what has transpired.

### **The Final Rule Docket Also Accurately Predicted the Many Calamities of De Minimis**

Following the lawsuit, on April 14, 1995, the Customs Service published its Final Rule (60 FR 18983) in the Federal Register, and here too, the docket was filled with commentators who accurately predicted the myriad of problems.<sup>23</sup>

### **FDA Abandons Oversight Role for Food, Cosmetics, and More**

Just as the NCBFAA predicted, FDA concluded that it should simply abandon oversight for various imports it is supposed to monitor, including room-temperature food stored in air-tight containers and cosmetics.<sup>24</sup> The FDA's dereliction of duty continues to this day for millions of shipments from around the world, most of which originate from China.

### **2015: De Minimis Rises from \$200 to \$800 without debate**

Express shippers and e-commerce platforms were able to accomplish a legislative coup in 2015, when they successfully raised the de minimis threshold from \$200 to \$800. This was a provision tucked into the Trade Facilitation and Trade Enforcement Act of 2015 ("TFTEA"). TFTEA did include a number of improvements to our anti-dumping and countervailing duty laws, and thus earned support from businesses and groups who typically favor strong trade enforcement. Unfortunately, as in 1994, this change from \$200 to \$800 did not face Congressional scrutiny, and was obscured by other customs issues. Congress cannot let this happen again as it takes up customs policy.

### **A note about de minimis monetary thresholds**

Because de minimis is now associated with e-commerce, it is often erroneously assumed that the \$800 limit refers to a U.S. retail price. But because de minimis was never meant to be an avenue of commerce, the U.S. retail price is actually irrelevant in determining whether the \$800 threshold has been met. Instead, per 19 U.S.C. § 1321(a)(2), the \$800 is the "fair retail value in the country of shipment" – not of America.

### **"Consignee Entry" Combined with an \$800 De Minimis threshold transformed the nature of international trade and e-commerce in America.**

Under the traditional trade paradigm, importers were typically wholesalers or large retailers, importing particular products by the container-load and then distributing those products domestically. Essentially, merchandise was almost always shipped in bulk. This made regulating

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<sup>23</sup> 60 FR 18983, <https://www.federalregister.gov/documents/1994/06/13/94-14255/express-consignments-formal-and-informal-entries-of-merchandise-administrative-exemptions>

<sup>24</sup> FDA CSMS #94-001260, "FDA Low Value Shipments")

and policing import commerce fairly straight forward. **Conversely, with de minimis' consignee entry, that same shipping container may now have as many as 5,000 individual shipments, all small packages going to individual Americans.**

China's SHEIN and Temu are now the most downloaded e-commerce apps in the United States, and their operations are almost entirely outside the country. Mailbox sized shipments are sent directly from abroad, and imported via de minimis entry with little documentation. SHEIN is now larger than The Gap, and the United States misses out not only on revenue from duties, but also the over twenty-percent corporate income tax rate The Gap is subject to as they are displaced by SHEIN. This is extremely problematic for CBP, because they face a comparable work load whether a bill of lading represents an entire shipping container or one individual package.

This is how Laurie Dempsey, CBP's Director of Intellectual Property Rights, described the situation in 2019:

TFTEA's change to the de minimis value, however, caused a dramatic increase in the volume of shipments making use of de minimis entry procedures. These procedures provide fewer data elements for CBP to use to effectively identify and target high-risk shipments, including for narcotics, counter-proliferation, and health and safety risks. The dramatic increase in shipments has left CBP with less information about a greater number of shipments.

The increasing use of new and changing industry business models, particularly in the e-commerce environment, further exacerbates this information gap. **Entities receiving goods in the United States, which CBP previously believed to have limited financial interest in a shipment, are now critical players with increasing influence in how low-value goods move around the world.**

This shift in the roles of parties to the transaction has not been accompanied by a change in responsibilities from a regulatory or policy perspective. Moreover, the advent of just-in-time delivery, along with contract manufacturing and online payment processing, has given merchants more flexibility and greater access to markets once limited by location. Free trade agreements have also allowed new routes for goods from all over the world to cross borders more easily.

**CBP is concerned that the proliferation of new and changing business models, particularly in the e-commerce environment, and the increase in small packages, is permitting bad actors to operate with relative impunity.**<sup>25</sup> (Emphasis added)

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<sup>25</sup> U.S. Department of Homeland Security, "Privacy Impact Assessment for the E-Commerce "Section 321" Data Pilot", DHS/CBP/PIA-059 (September 26, 2019), page 2, *available at* <https://www.dhs.gov/sites/default/files/publications/privacy-pia-cbp-section321-059-september2019.pdf>

CBP's Trade Director on De minimis: "Zero incentive ... to learn the requirements": In April 2023, at CBP's Trade Facilitation and Cargo Security Summit, CBP's executive director of the trade policy and programs directorate, Brandon Lord, stated this truth about de minimis plainly: "it's so easy to sell directly to U.S. consumers from overseas and mail the merchandise to them. And there's zero incentive as that foreign shipper, or foreign seller, to learn the requirements to enter the United States."<sup>26</sup>

#### De Minimis is destroying lawful retailers and gutting U.S. communities

Zero incentive flows from zero liability due to zero U.S. presence.<sup>27</sup> Zero U.S. presence means zero U.S. income tax. Why should any retailer have a presence in the United States? Thanks to de minimis, all brands are incentivized to move off-shore to a tax haven, face zero liability for what they sell, and pay zero duties or income taxes. De minimis is authorized anarchy destroying our society. It harms every part of American society: producers, distributors, retailers.

De minimis guts municipal and county governments of jobs and income as their retailers, big and small, close. So far in 2023, "[a]t least twenty major retailers have said they will close U.S. stores in 2023, a combined total of 3,193 locations."<sup>28</sup> Even the National Retail Federation, which has a severe bias against any friction at the border for imported merchandise, agrees there's a problem. In July, NRF Vice President & Deputy General Counsel Ceara Flake wrote:

Criticism of the UFLPA frequently arises from the fact that de minimis shipments, which are often smaller scale direct-to-consumer shipments of goods purchased online, are not subject to import duty and may enter without the filing of a formal entry. **This trade rule gives an unfair advantage to foreign ecommerce companies, including those that might employ forced labor.**<sup>29</sup>  
(Emphasis added)

The U.S. House Select Committee on the CCP found that "Temu and Shein alone are likely responsible for more than 30 percent of all packages shipped to the United States daily under the

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<sup>26</sup> Mara Lee, "Type 86 Test Revealing Compliance Weaknesses in Small Packages", *International Trade Today*, April 17, 2023, available at <https://internationaltradetoday.com/article/2023/04/17/type-86-test-revealing-compliance-weaknesses-in-small-packages-2304170052>

<sup>27</sup> De minimis supporters will protest the assertion of zero liability, and it is correct that for countries with U.S. extradition agreements, there is technically a legal path to liability. To understand what that looks like, and why it should be dismissed as an assurance, consider how it took over five years for the United States to arrange extradition of a single, notorious high-profile e-commerce marijuana seed dealer selling into the United States from Canada. See Jeremy Hainsworth, "Canada's 'Prince of Pot' ordered extradited to US", NBC NEWS (May 10, 2010), available at <https://www.nbcnews.com/id/wbna37067430>

<sup>28</sup> Dominick Reuter, "Nearly 3,200 stores are closing across the US in 2023. Here's the full list." INSIDER. (Sept. 26, 2023), available at <https://www.businessinsider.com/stores-closing-in-2023-list>

<sup>29</sup> Ceara Flake, "NRF General Counsels Forum enabled peer-to-peer discussions on pressing retail topics", NRF.com, July 13, 2023, archived at [https://web.archive.org/web/20230000000000\\*/https://nrf.com/blog/nrf-general-counsels-forum-enabled-peer-peer-discussions-pressing-retail-topics](https://web.archive.org/web/20230000000000*/https://nrf.com/blog/nrf-general-counsels-forum-enabled-peer-peer-discussions-pressing-retail-topics)

de minimis provision, and likely nearly half of all de minimis shipments to the U.S. from China.”<sup>30</sup> Sometimes, Temu and Shein are spoken of as “exploiting” de minimis. But the fact is, the platforms are using de minimis entirely in the manner conceived of by its supporters.

U.S.-based e-commerce platforms may have been temporary beneficiaries of de minimis, as it allowed their platforms to retail merchandise consequence and duty-free in a manner unavailable to brick and mortar retailers. But Shein and Temu’s success has caused even NRF to belatedly acknowledge how de minimis undermines the rule of law.

Leading U.S. retailers may be tempted to believe that they can continue their transition from a mostly brick and mortar based business to an e-commerce based ‘platform’ while convincing Congress to exclude their foreign website competition, but this too is folly.

Close one, and another website or app will take its place. Last month, TikTok officially launched its U.S. e-commerce service with over 200,000 vendors enrolled, and sales available from within its app, which already has 150 million users in the United States.<sup>31</sup> A review by *Bloomberg* found that almost all the vendors were from China and that counterfeits were rampant.<sup>32</sup>

The sole U.S.-based winner from de minimis anarchy is express shippers, who have enjoyed record profits by displacing traditional importer-wholesalers. Simply put, their businesses will continue to be profitable even after de minimis is repealed, as will U.S.-based ecommerce platforms, and the short-term marginal extra profits of de minimis supporters is not worth sacrificing our morals and society.

#### De Minimis entries provide no useful data

For all entries *other than de minimis*, the importer of record must be U.S.-based or hire a licensed U.S. customs broker (who must be a U.S. citizen). The importer must file an “Entry Summary” on CBP Form 7501 for the shipment. The Entry Summary provides the critical information CBP needs to enforce the over 500 laws for which it has enforcement responsibilities.

Because Entry Summaries are not provided for de minimis shipments, CBP has no visibility into the parties to the transaction and very little useful data. A shipping manifest is all that is needed, and the shipping manifest merely declares from where a shipment (*not* the merchandise inside

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<sup>30</sup> U.S. House Select Committee on the Chinese Communist Party, Fast Fashion and the Uyghur Genocide: Interim Findings, June 22, 2023, available at <https://selectcommitteeontheccp.house.gov/media/reports/fast-fashion-and-uyghur-genocide-interim-findings>

<sup>31</sup> Sapna Maheshwari, TikTok Popularizes Products. Can It Sell Them, Too? NY Times. Sept. 12, 2023, available at <https://www.nytimes.com/2023/09/12/business/tiktok-shop-e-commerce.html>

<sup>32</sup> Alex Barinka, TikTok’s New Amazon Copycat Is Full of Cheap Chinese Goods, BLOOMBERG, Sept. 7, 2023, available at <https://www.bloomberg.com/news/articles/2023-09-07/tiktok-shop-full-of-cheap-goods-is-live-for-some-us-app-users>



the shipment) originated and where it is being delivered, and a short, plain-language description of the merchandise (e.g., “bag”).

CBP stated in June 2023 that:

- The **overwhelming volume of small packages and lack of actionable data limit CBP’s ability to identify and interdict high-risk shipments** that may contain narcotics, merchandise that poses a risk to public safety, counterfeits, or other contraband.
- In FY 2022, CBP cleared over **685 million de minimis shipments with insufficient data to properly determine risk.**<sup>33</sup>

### CBP’s “Enhanced Data” Pilots are Failures

For four years now, CBP has offered two voluntary ‘enhanced data’ pilot projects for de minimis shipments. One, known as the Section 321 data pilot, gave ‘fast lane’ de minimis privileges to the big three express shippers (FedEx, UPS, DHL), three big U.S. e-commerce platforms (Amazon, eBay, and Zulily), and three large logistics providers. While CBP recently began soliciting additional participants, the ongoing extension of this pilot is inherently anti-competitive. The other data pilot, which is indefinite, is known as “Type 86 Entry”. Type 86 Entry is entirely voluntary, but it does allow shippers – including foreign vendors – to provide the data elements that would normally be required on an Entry Summary, including country of origin.

Predictably, the data is junk. As reported by *International Trade Today* this April:

Almost half of de minimis shipments last year were covered either by the Type 86 entry test or the Section 321 data pilot program, CBP said, but that doesn’t mean that the government has a good grasp on what merchandise is entering in small packages.

Sal Ingrassia, whose time as port director at the JFK Airport had him overseeing about one-third of the de minimis entries to the U.S., told an audience at CBP’s Trade Facilitation and Cargo Security Summit April 17 that while the agency is glad brokers are providing Harmonized Tariff Schedule [HTS] codes in the Type 86 test, “we still have a lot of concerns,” because they’re finding the data is often not correct.

Ingrassia said ports identified de minimis shipments to examine, and reported to the de minimis working group what they learned. “One quarter of what we looked at had some type of violation,” he said. “It was alarming to see we had so many

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<sup>33</sup> CBP Commercial Customs Operations Advisory Committee, Government Issue Paper, E-Commerce Task Force. June 2023. Available at <https://www.cbp.gov/sites/default/files/assets/documents/2023-Jun/NGFE-C~1.PDF>

violations.” He said a large number of the violations were either an HTS misclassification “or unmanifested merchandise in the shipment, meaning that we had an e-commerce package or shipment with three items in it. Only one item was declared. That’s a real problem for us when we’re talking about entry Type 86.”

Also, for another 25% of the packages, CBP asked the company to hold the package so CBP could inspect it, and when CBP got there, the package had already been released. Ingrassia said that may not have always been deliberate, since Type 86 shipments are released immediately unless CBP puts a hold on any, and some of the releases may have happened before the company knew there was a request to present the package. But a non-presentation rate of 25% is problematic for the agency.

Ingrassia asked rhetorically: “How can we run a system like entry Type 86 without having correct information?”<sup>34</sup>

De minimis has bred such routine lawlessness at our ports that even fentanyl shippers are opting to voluntarily enroll in Type 86 de minimis entry:

[CBP Trade Director] Lord said that members of his team, along with CBP broker management officials, recently visited nearly a dozen different brokers who had filed more than one Type 86 entry for a package that CBP discovered contained fentanyl.

“Our attitude is: Type 86 still requires reasonable care,” he said. He told brokers they will be seeing more times when CBP tells brokers that what they filed as a Type 86 will need to be a formal entry, “because we’re seeing fentanyl like I mentioned, or because we’re seeing other issues of noncompliance.”

### **De Minimis and Fentanyl**

This Committee has received, and continues to receive, ample testimony on the devastation of the fentanyl epidemic. Last week, Majority Members of this Committee issued their Phase 3 Interim Report on the crisis at the southern border. Section 1 of this Report studied trends in seizures along the southern border, finding that the increase of surveillance technology at official land-border ports was driving smuggling areas between ports. The Report made this important observation:

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<sup>34</sup> Mara Lee, “Type 86 Test Revealing Compliance Weaknesses in Small Packages”, INTERNATIONAL TRADE TODAY, April 17, 2023, *available at* <https://internationaltradetoday.com/article/2023/04/17/type-86-test-revealing-compliance-weaknesses-in-small-packages-2304170052>

While it is true that most of the fentanyl seized by CBP is intercepted at official ports of entry, this is because those facilities are equipped for that very purpose. Naturally, seizures will be higher in locations designed to seize drugs.<sup>35</sup>

The same is true for our commercial shipment ports. By far the most secure are our ocean vessel ports, where shipments arrive virtually entirely by way of ‘formal entry’. Formal entry shipments are the least likely to contain contraband or counterfeits. And for ocean vessels, CBP receives detailed shipping manifests far in advance of the cargo’s arrival. Indeed, ocean shipping vessel manifests are even made freely available online – something that is long overdue to be replicated via other modes of transport.

De minimis shipments arranged via e-commerce tend to arrive by express courier or mail or by logistics companies via air cargo or truck. A high volume of small packages with little-to-no advance manifest information. In CBP’s *Strategy to Combat Opioids*, the agency stated as follows:

The advent of e-commerce has added another layer of complexity to this problem. Illicit opioids can now be purchased online from the comfort of one’s home. Opioids entering the country through express consignment or international mail have a substantially higher purity level than the opioids entering along the Southwest Border.<sup>36</sup>

The fact that fentanyl is even entering through CBP’s enhanced de minimis data pilots should serve as an alarm. Shut it all down. As stated earlier, de minimis offers zero societal benefit. Shutting down smuggling over the southern border, both through and between ports, is an imperative that we are making progress on through investments. Shutting down de minimis now, either by way of regulation from the Administration or by statute from Congress.

### **How to Repeal De Minimis**

Much attention is paid to the increase of the de minimis threshold from \$200 to \$800 in 2016, but the truth is the vast majority of shipments declare a value far below \$200. Furthermore, the monetary limit is unthread to the U.S. transaction price, and instead is tied to the “fair value” *in the country of shipment*. This goes back to how de minimis was never intended to be an avenue

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<sup>35</sup> House Committee on Homeland Security majority, [Interim Report on the third phase of the Committee’s comprehensive oversight investigation into the crisis at the Southwest border](https://homeland.house.gov/wp-content/uploads/2023/10/Phase-3-Report.pdf), pg. 16. October 10, 2023, available at <https://homeland.house.gov/wp-content/uploads/2023/10/Phase-3-Report.pdf>

<sup>36</sup> CBP, [Strategy to Combat Opioids](https://www.cbp.gov/sites/default/files/assets/documents/2021-May/CBP-Opioid-Strategy.pdf), May 2021, available at <https://www.cbp.gov/sites/default/files/assets/documents/2021-May/CBP-Opioid-Strategy.pdf>

of commerce. CPA discussed the details of how de minimis came to be, and how to repeal it, in a submission to the U.S. Senate Committee on Finance in July.<sup>37</sup> This submission also discusses de minimis' total undermining of consumer safety laws, from children's toys to cosmetics.

### **False Assertions from De Minimis Supporters, and even CBP's Office of Trade**

Express shippers, primarily by way of certain trade associations, have invested heavily in distorting the truth about de minimis shipments. Their assertions routinely are baseless, provided without citation. In August, CBP published a "Falsehoods & Facts" webpage directly rebutting these assertions, with supporting citations. To the extent the Committee has questions about assertions they have heard in support of de minimis, we encourage the Committee to visit this webpage: <https://prosperousamerica.org/falsehoods-facts-the-truth-about-de-minimis/>.

Finally, it should be noted that in October, 2022, CBP's Office of Trade published a slide presentation stating that the "Total Value" of de minimis shipments in the agency's fiscal year 2021 was \$39,876,651,152. This is incorrect, and the true number is unknowable. This figure represents only the value of de minimis shipments for which electronic information was provided, which is a minority of total shipments. While CBP confirmed this error to CPA in an email, the Office of Trade has declined our public calls to correct the document. This incorrect figure has become an important part of the advocacy from de minimis supporters, suggesting that the value of de minimis shipments is going down or negligible. This is addressed in more detail at the CPA Falsehoods & Facts webpage above.

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<sup>37</sup> CPA Submission to the U.S. Senate Committee on Finance, July 11, 2023, *available at* <https://prosperousamerica.org/wp-content/uploads/2023/08/230711-CPA-ltr-Customs-Reform.pdf>