**E-COMMERCE’S UGLY UNDERSIDE**

**The Dangers of De Minimis**

E-Commerce is currently moving to change global distribution as we know it due to the recent change in the *de minimis* law.[[1]](#footnote-1) This change quadrupled the value of goods allowed into our country duty free and with minimal information. Huge e-commerce companies now see an opportunity to reshape distributions centers around the world to take advantage of a black hole in our customs, security, safety and health laws. And they are indeed building in China and on our borders right now. Within the next few years, up to 30% of imports into the U.S. will enter our country as a *de minimis* shipment.

There are very few items in the household of middle income American valued over $800. Now with a few clicks on a website and a credit card, these products can be delivered direct to consumers. The huge eCommerce companies do have benefits of scale, and consumers like cheaper goods, and they like them delivered overnight to their door.

What the US consumer does not understand is that this new distribution change evades most laws our government, including US Customs & Border Protection (CBP) and many agencies, like the FDA, the Consumer Product Safety Commission (CPSC), and the EPA, to name only a few, have set up to protect the security, health and safety of American citizens and consumers.

We are worried about harmful cosmetics, toxic toys, bad food, unsafe appliances all being delivered direct to consumers without any oversight by our federal agencies. This will harm many consumers who were completely unaware that our agencies were not on top of this new threat. This also is terrible for American manufacturing. There is no oversight of trade remedy laws (anti-dumping) or copyright protection.

So, what is the black hole? Normally, commercial and sample shipments must be cleared through Customs. Importers, often using a Customs broker, provide huge sets of data per consignment to CBP’s new $4 billion operating system, the Automated Commercial Environment (ACE), which analyses that data for security risks. ACE acts as a “single window” that grants access to that information electronically to over 40 federal agencies, such as EPA, FDA, the Fish & Wildlife Service etc., so they can crosscheck the data, using their own targeting criteria. The entry data CBP collects is a vital element to CBP’s antiterrorism and law enforcement mission. When the partnering government agencies and CBP agree that a shipment looks legitimate, the goods can enter the commerce of the U.S.

The loophole works like this. Express air and land border shipments under the new de minimis rule *are not subject to all these requirements*. These two modes of transportation create and present to CBP manifests lacking crucial details that are part of the normal entry process. These carriers are only required to provide six data items. A basic and crucial piece of information – what exactly is being shipped – is shown only as a simple description, which CBP and other agencies are unable to analyze in ACE. More importantly, these manifests are then *manually* released by CBP en masse without referral of information to the federal agencies in charge of protecting US citizens’ health and safety.

E-Commerce already has distribution centers in Canada from which they truck vast amounts of foreign made products right through this black hole into the U.S. and bypass our nation’s safeguards.

How does this make us secure? Many US consumers in this economy are cash-strapped and perhaps willing to believe that wonderful things can be bought for a few dollars. But they do not know that their federal agencies have no way of protecting them from this new scheme that is basically an end run around our security, safety and health laws.

In real world terms, what does this mean to Americans? Consider these questions: Can your teenager now order Marlboro cigarettes that will ship not from Virginia but from the Philippines, directly to your doorstep with no taxes or duty? Can the unethical airplane parts supplier get counterfeit parts from Eastern Europe for the Boeing 737 that your family will take to your vacation? Can you be sure that the toy truck going to your 3-year-old grandson won’t have lead paint on it? Can you can get a great cotton dress shirt for under $20.00 and be sure that no child labor or forced labor was involved in its production? Can you be sure that groovy guitar on sale for $795.00 is not made of endangered wood species? Can you be sure that all these concerns are moot because the $4 billion ACE system is doing risk assessments? The answer: Afraid not.

Congress should instruct CBP to resist the pressures put forth by the eCommerce and express consignment industries and require CBP to re-commit itself to the protection of the security, health and safety of U.S. citizens. **CBP must stop allowing en masse clearance of goods via manifest, and CBP should use its authority to reduce the threshold back to $200.00**. Meanwhile, CBP and the other partnering government agencies should conduct thorough studies of the risks associated with the higher de minimis threshold and if *and* how those risks can be effectively assessed.

1. Per TFTEA (Trade Facilitation and Trade Enforcement Act of 2015), the US now allows goods valued at or under $800 to enter the US duty free. Public Law 114-125 Sec. 901. [↑](#footnote-ref-1)