

COMPLIANCE 360

By ERIC KULISCH

Pump the brakes on de minimus

The Trade Facilitation and Trade Enforcement Act of 2015, also known as the Customs reauthorization bill, which went into effect in March, raised the de minimus level to $800 from $200. De minimus refers to low-value shipments listed on a freight carrier's manifest that are admitted without taxes, tariffs or formal customs procedures. The reduced paperwork burden is expected to support e-commerce, which typically involves small packages going directly to consumers, and help small businesses in particular.

Customs brokers are urging U.S. Customs and Border Protection and other agencies to explain exactly what, if anything, they are going to require in terms of electronic transmissions in the new ACE automated cargo processing system to cover goods under their jurisdiction.

While the law facilitates the release process and reduces some data filing, it didn't change any reporting requirements to agencies. Whether any agencies will accept reduced scrutiny of those shipments is an open question.

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Growth in de minimus shipments also faces the reality that CBP doesn't have the systems to handle them in the ocean and air environment. Normally, express carriers moved most shipments under $200. And because they control the planes, they controlled the manifest and cleared the shipments without an entry, simply with a CBP officer's signature on a paper copy of the manifest.

With the de minimus level raised to $800 more stuff can be put in a single package without incurring duty. A lot of e-commerce retailers are interested in using standard freight carriers, such as airlines, and approaching customs brokers to clear these shipments because UPS, FedEx and DHL are more expensive. When a company has hundreds or thousands of shipments per day, the costs add up. But according to Tom Gould, senior director of customs and international trade at Sandler, Travis & Rosenberg, a lot of e-commerce that could take advantage of de minimus levels won't be able to because there's no system to file those manifests electronically.

There is no need to file a normal customs entry for shipments under $800. Instead, clearance is based off the manifest—the list of everything on the plane or other conveyance. But brokers have no method of clearing those informal entries off a manifest other than a paper process.

That might work if someone has two or three shipments, but if a Delta passenger plane has hundreds of shipments in its hold someone at CBP is going to have to sort through the manifest and figure out which ones can clear under the $800 level and which ones need a regular customs entry.

And the process can vary by port of entry. In Los Angeles, for example, CBP allows a broker to create an entry form and attach a photo copy of the manifest. After CBP signs off on it, the broker can give the document to the truck driver to pick up the shipment.

The situation is less of a problem at the land borders, where truckers have the informal entry process built into the truck e-manifest system.

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CPSC gets tough on product safety compliance

In March, the U.S. Consumer Product Safety Commission reached a landmark $15.45 million settlement with Chinese company Gree Electric Appliances, as well as its Hong Kong and U.S. affiliates, for violation of federal product safety regulations.

The agency alleged that Gree manufactured, imported and sold about 2.5 million defective dehumidifiers that posed a strong risk of injury based on smoke and burn hazards. The CPSC charged Gree with knowingly failing to immediately report such defects as required under law and that it falsely represented the products complied with United Laboratories' flammability standards.

Gree also consented to an internal compliance program to ensure it conformed to U.S. product safety laws.

The Gree settlement reflects not only the importance of timely reporting of hazards, but also the importance of ensuring products that are certified as being compliant with voluntary product safety standards, such as UL certifications, are based on proper testing and certification, according to a client bulletin from law firm Baker & McKenzie. It also serves as a reminder that the CPSC will take action to impose the maximum civil penalty available in the right circumstances, it said.

CPSC Chairman Elliot Kaye underscored this point in a recent speech, stating: "To remove any doubt as to whether we are sending a message that this kind of conduct will not be tolerated, we absolutely are sending that message. Companies behaving similarly should be prepared to pay similarly."

"The Gree settlement fires a warning shot to companies selling, manufacturing, or distributing consumer goods in the United States: meet your reporting *and* ensure product certifications are accurate under the U.S. consumer product safety laws or voluntary standards, or face record-high consequences," Baker & McKenzie said. ■