

E-Commerce at the Border

An analysis of the challenge faced by US Customs and Border Protection in managing the increased volume of e-commerce packages at the border



Executive Summary: E-Commerce at the Border

This report provides an analysis of the challenges faced by U.S. Customs and Border Protection (CBP) in managing the increased volume of de minimis packages at the border, a result of the rapid growth of e-commerce. Additionally, this report provides recommendations that CBP could pursue to help further its E-Commerce Strategy.

Challenges Associated with E-Commerce

For CBP, the rapid growth in the volume of e-commerce shipments has become increasingly difficult to manage due to evolving challenges. These include:

- *Regulatory Challenges:* De minimis packages, those below an \$800 value, are not classified as formal entries and thus CBP is not able to collect as much data on these shipments for risk management purposes;
- *Screening and Risk Management Constraints:* The growth of e-commerce has created a host of new importers about whom CBP has little information, especially small and medium-sized importers, who are entering a market with a steep regulatory learning curve. CBP has been challenged to perform risk management and cargo screening procedures on the increased volume of de minimis packages from these importers;
- *Staffing Shortages:* The increased volume of de minimis packages is challenging staffing and other resources in smaller ports by creating new and increased air cargo arrivals.
- *United States Postal Service (USPS) Integration Problems:* CBP has been hampered by a lack of coordination and information-sharing with USPS, which makes it challenging to target high-risk parcels for inspection.

CBP E-commerce Initiatives

CBP has been working to modernize its approach to e-commerce, as cited in its [E-commerce Strategy](#), which highlights the agency's four main priorities on the issue.

1. *Enhance legal and regulatory authorities to better position CBP to address emerging threats.*
2. *Better position CBP to respond to emerging threats and supply chain dynamics.*
3. *Drive private sector compliance through enforcement and incentives.*
4. *Facilitate and lead international trade standards for e-commerce.*

Among pilot initiatives taken to date, the CBP-USPS Electronic Advance Data program has shown particularly positive results through increased seizures of contraband. This pilot is aimed at working with foreign partners to gather more data, earlier in the international mail shipping process to manage risk.

Additionally, CBP established an E-commerce and Small Business team in its Office of Trade and its Commercial Customs Operations Advisory Committee formed a Trade Modernization Subcommittee, E-commerce Working Group, charged with developing and furthering CBP's E-commerce Strategy.

Opportunities for Enhanced Focus

Among the many initiatives and focus areas cited in CBP's E-Commerce Strategy, the following present opportunity for near-term progress through private sector engagement with technology providers and the trade community.

- Utilizing state-of-the-art data analytics to gather and analyze advance information for targeting purposes.
- Deploying non-intrusive inspection technology that can expedite screening of small packages, while maintaining efficiency and flow of imports;
- Conducting outreach with the trade community to co-create a risk management structure for integration into existing agency trusted trader framework.
- Exploring blockchain technology to facilitate CBP's e-commerce strategy, e.g. capture PGA licenses, permits, certificate of origins, and help verify the supply chain.

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Introduction

For the U.S. government, specifically U.S. Customs and Border Protection (CBP), the rapid growth in volume of e-commerce shipments has become increasingly challenging to manage due to new and evolving regulations, screening and risk management constraints, and staffing issues.

E-commerce is the buying and selling of goods and services online through the internet. E-commerce is a relatively new phenomenon with major advancements in the United States dating back to the mid-1990s. In 1995, Amazon launched an online bookstore, followed shortly by eBay. Since then, as Amazon and others developed their respective platforms, e-commerce has rapidly grown and now differentiates between m-commerce - transactions completed through mobile devices, and t-commerce – transactions conducted via a 'smart' TV.¹

By offering ease of access and a variety of means by which transactions can be completed, E-commerce is fast becoming the platform that consumers and businesses use to access global markets. Research suggests that “worldwide e-commerce sales are expected to increase to over \$4 trillion by 2020”, the equivalent to “all imports and exports in the U.S. last year.”² Data further indicates that American consumers will spend \$632 billion online in 2020, an increase from \$385 billion in 2016.³ As far as U.S. imports in this area, CBP Office of Trade records show that e-commerce resulted in nearly a 50 percent increase in express consignment billings in five years and a 300 percent increase in international mail.⁴ In fiscal year 2013, CBP processed 150 million international mail shipments and by fiscal 2017 that number had risen to over 500 million shipments.⁵

The rapid rise in e-commerce can be attributed to the convenience it provides sellers and consumers. However, for the U.S. government, specifically CBP, the expansion of e-commerce and the volume of small, de minimis packages crossing the U.S. border that has resulted, presents a growing challenge.

How the Shipping of E-commerce Works

In almost every cross-border e-commerce transaction there are consumers, an e-commerce facilitation platform, the manufacturer of the product, a carrier, and border management agencies, such as CBP. The rise in e-commerce, however, has made it easier for U.S. consumers to bypass domestic retailers and interact directly with an overseas manufacturer or supplier, which has impacted the supply chain and importation process.

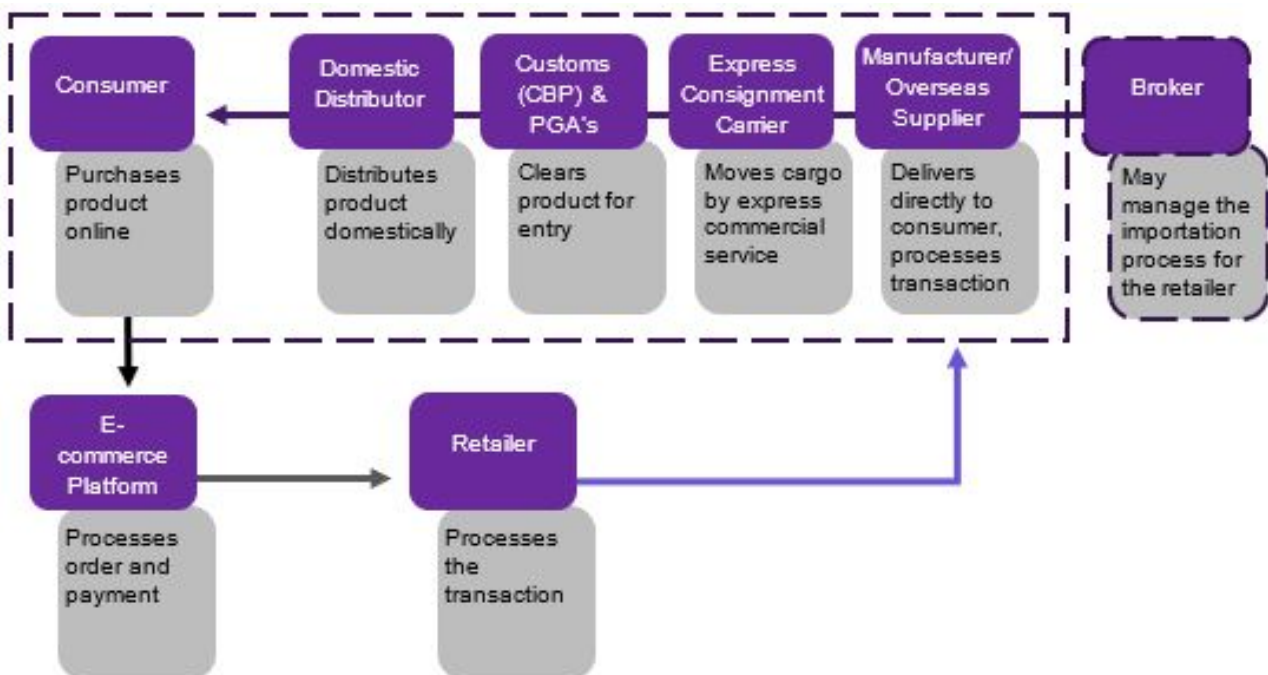
Without an established retailer, there is less likely to be a regular importer or an established, licensed customs broker that submits a proper filing to CBP. Receiving reduced or improper information decreases CBP's ability to screen shipments, therefore increasing risk to the supply chain in the form of a trade violation or a potential safety hazard.

E-Commerce Supply Chain

Below is an example of an international e-commerce supply chain. While this supply chain could have many variations, it is important to note that the rise of e-commerce has frequently eliminated or significantly altered the traditional roles of the importer, retailer, and broker.

- A **consumer** purchases a product through an **e-commerce platform**, such as Amazon.
 - However, in some cases, a platform may be run directly by the seller.
 - If no retailer is involved, the consumer themselves may serve as the importer.
- If a **retailer** is involved, they would then be responsible for coordinating with their supplier (in this case, overseas) to start the process of shipping the product to the U.S.
 - A retailer who is acting as the importer, may have their own in-house or contracted **broker** to ensure that proper documentation is filed to CBP and any partner government agency (PGA), if necessary.
 - However, a small business acting as a **non-traditional importer** may not file or be required to file traditional customs documentation, as explained further in the section on *de minimis*.
- Because e-commerce often involves small packages, the **international carrier** is often an **express consignment** air cargo carrier; such as UPS, DHL, or FedEx.
- Once imported, the product may be delivered to a mail facility or express consignment hub for sorting. It is then delivered to the consumer, generally via the same express consignment carrier or the U.S. Postal Service.

Figure 1: Example of an E-commerce Supply Chain



Increasing the de minimis

Coinciding with this rise in low value e-commerce shipments was an increase in the CBP de minimis value. De minimis relates to “the value of a shipment of merchandise imported by one person on one day that generally may be imported free of duties and taxes.”⁶ This increase was codified in the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA), which formally reauthorized CBP for the first time since its inception in 2003. The TFTEA included numerous provisions to streamline and modernize customs and trade processes. This included amending the Tariff Act of 1930 and Title 19 of the United States Code Section 321 to raise the de minimis value from \$200 to \$800.

Raising the de minimis to \$800 has increased the number of duty-free eligible imports, lowered costs to importers, and now made it easier and more affordable than ever before to do business in small, cross-border shipments. The accelerated processing and delivery of merchandise through U.S. customs has contributed to the growth of de minimis package importers.

Increased de minimis, Increased Risk

Challenges for Brokers and Importers

While intended to make trade flows more efficient for both CBP and the trade industry, the de minimis increase has made many stakeholders, including a larger number of customs brokers, wary of its benefits compared to costs. Brokers assert it will lead to a decrease in CBP inspections as data gathering and targeting are not required for goods under \$800, thus presenting a risk to the shipping and importation process.

The elimination of data filing requirements for an increased volume of de minimis shipments means that traditional brokers are no longer needed to fulfill that function. Moreover, a disparate field of non-traditional, less knowledgeable importers may, knowingly or unknowingly, circumvent U.S. import laws with fraudulent customs classifications and quota violations, resulting in potentially dangerous imports.⁷ So while intended to facilitate streamlined trade flow, a rise in the de minimis value may have unintended national security or product safety implications, such as breaches in intellectual property rights, or illegal opioid imports.

Challenges for CBP

The increased volume of de minimis packages that do not require a full set of data to be filed with CBP has presented challenges along with the overall increase in small, non-containerized trade facilitated by e-commerce. Many of the de minimis goods are from less traditional importers, often small and medium-sized entities, who forego traditional container shipping. This all presents a combination of regulatory, risk management, and staffing challenges for CBP.

Regulatory challenges

De minimis packages are not classified as formal entries and thus CBP does not collect as much data on these shipments, particularly the full Harmonized Tariff Schedule number and other data elements that would be used for targeting and enforcement purposes by CBP or other government agencies that have regulatory authority over U.S. imports.

Risk management and screening challenges

The increased de minimis value, simplicity of engaging with e-commerce, easier access to the importation process, and greater fragmentation of the supply chain has created a variety of new importers, especially small and medium-sized entities, entering into a market with a steep regulatory learning curve. Many of the new importers created by this new e-commerce environment are unaware of CBP importation and clearance rules and procedures, such as Section 321 daily allowances or the need to declare certain shipments to the appropriate PGA; for example, declaring drug shipments, such as supplements, to the U.S. Food and Drug Administration.

The perception by some that the de minimis increase would allow CBP to spend less time focusing on low value, presumably low risk shipments, and instead focus on inspecting high risk shipments, has not been the case.⁸ A lower value shipment is not necessarily lower risk and CBP still spends a significant amount of time and resources on these parcels.⁹ CBP has additionally been hampered by the limited information received with de minimis packages, as these informal shipments do not require the same level of data to be submitted as formal imports. Thus, they present a greater challenge to CBP's ability to screen the increased volume of cargo for harmful products or other trade violations.

CBP has also been challenged by a lack of sufficient technology to effectively scan all packages. For example, CBP has struggled to detect certain drugs, such as opioids, including deadly synthetic opioids such as fentanyl, without physically opening the package, presenting health and safety hazards to CBP operators and slowing the overall importation process.¹⁰ In this regard, CBP has been challenged in balancing its mission to protect public health and safety against consumer and importer expectations for efficient cargo processing.

Staffing challenges

In recent years, CBP has seen a shift in imports, away from traditional twenty-foot equivalent unit (TEUs) maritime shipping containers towards a growing number of smaller packages, many qualifying as de minimis, often shipped via air mail. The increasing number of smaller, de minimis packages has exacerbated ongoing staffing challenges, particularly at what have been traditionally lower volume ports of entry.

CBP Commissioner, Kevin McAleenan, commented that “[de minimis] is challenging our resources in smaller ports. We’re seeing air cargo landing at non-traditional ports and that’s overwhelming resources there.”¹¹ The varying levels of resource capacity dedicated to processing imports across the ports of entry may experience inconsistencies in screening, processing and enforcement.

CBP staff at the ports have a myriad of duties, including: interdiction of drugs, weapons, illegal cash, intellectual property rights violations, and duty evasion, etc. Considering the agency has already been experiencing staffing shortages in recent years, the additional responsibilities created by an influx of de minimis e-commerce packages makes CBP Officers’ jobs even more challenging.

U.S. Postal Service Challenges

Another pressing challenge is the need for more integration between CBP and the US Postal Service (USPS). This has become especially apparent with respect to the ongoing opioid crisis.

Fentanyl, a type of opioid, along with other dangerous synthetic drugs, are increasingly being shipped through the international mail system, spurred by e-commerce. The USPS is not required to provide electronic advance data (EAD) to CBP, such as the shipper's and recipient's name and address, once a parcel reaches the U.S. border.¹²

As CBP cannot physically scan every package that comes through an international mail facility, they are reliant on EAD and information shared by other government agencies. The lack of EAD from the USPS makes it challenging for CBP to target high-risk parcels for inspection, and ultimately prevent illegal and dangerous parcels from entering the U.S. Among the number of packages that CBP does have the resources to focus further on, the agency currently relies on x-ray machines, handheld lasers, and fentanyl-sniffing dogs to detect parcels containing illicit and synthetic drugs.¹³

Current CBP E-commerce Initiatives

CBP has sought to modernize its approach to e-commerce in recent years. For example, the CBP-USPS EAD sharing program being conducted at the New York International Service Center (ISC) aims to target specific incoming mail for inspection using EAD from foreign postal operators.¹⁴ While the EAD pilot program has had varying levels of success to date, there is great potential for it to not only improve the security of incoming mail but also help prioritize high-risk shipments for scrutiny among the vast quantity of smaller, low-risk packages. The program will also assist CBP in improving its long-term working relationship with USPS.

A joint CBP and Transportation Security Administration (TSA) program, the Air Cargo Advance Screening (ACAS) initiative, requires increased advance air cargo data to be delivered to CBP as early as possible in the process, often prior to loading, while still at a foreign port. ACAS helps to deter threats, as it obtains information on inbound air shipments further back in the supply chain and helps to manage risk among the increase in small packages. While ACAS had been a successful voluntary program for air carriers since the early part of this decade, in June 2018, it officially became formalized.¹⁵

Additionally, in 2016, CBP established an E-commerce and Small Business team within its Office of Trade. CBP's Commercial Customs Operations Advisory Committee (COAC) also formed a Trade Modernization Subcommittee E-commerce Working Group in early 2017. These entities were charged with developing CBP's *E-Commerce Strategy* and updating its online content pertaining to e-commerce to assist new importers and stakeholders.¹⁶

The recent release of CBP's E-commerce Strategy highlighted the agency's four preliminary goals as they relate to e-commerce:

1. *Enhance legal and regulatory authorities to better position CBP to address emerging threats.* CBP aims to achieve this goal by reviewing existing legal and regulatory authorities, developing a plan to incentivize compliance from stakeholders, and partnering with domestic and international stakeholders.
2. *Better position CBP to respond to emerging threats and supply chain dynamics.* CBP's three objectives for this goal include: enabling risk-based enforcement, such as data analytics and pilot projects, determining high risk e-commerce packages using technology

and software, and optimizing workforce, policies, and procedures to adapt to an evolving e-commerce environment.

3. *Drive private sector compliance through enforcement and incentives.* CBP aims to strengthen e-commerce compliance through enforcement mechanisms, incentivizing compliance through an e-commerce known shipper program, and leverage PGA networks to enhance enforcement procedures for e-commerce shipments.
4. *Facilitate and lead international trade standards for e-commerce.* CBP's objectives include: leading standards and best practices development with the interagency and international customs community, explore technology options to increase the exchange of e-commerce information, and educate the e-commerce community to promote an understanding of applicable cross-border trade rights and responsibilities.¹⁷

CBP's e-commerce strategy aims to "strengthen its ability to protect the U.S. economy, improve trade risk management, maximize collection of owed trade revenue, deter trade and customs law violations, strengthen international mail enforcement, and enhances CBP's long-term partnership with the trade community", all of which will better position CBP in the e-commerce environment.¹⁸

World Customs Organization Global Standards on E-Commerce

As customs agencies around the world, like the U.S., have been challenged by the rise of e-commerce, the World Customs Organization (WCO) published its own Framework of Standards on Cross-Border E-Commerce¹⁹ in late June 2018, as adopted by the WCO Council. While not exactly aligned with U.S. CBP's goals, the WCO E-Commerce Framework encompasses many similar themes, such as a more efficient exchange of advance electronic data, the use of non-intrusive inspection (NII) technologies, data analytics and other cutting-edge technologies, and government-industry engagement. Simplified procedures for clearance and revenue collection, while enhancing facilitation is key for many customs services across the world. The WCO will continue to lead the exchange of best practices in e-commerce enforcement and facilitation among member agencies from around the world.

Opportunities for Enhanced Focus

Among the many initiatives and focus areas cited in CBP's E-Commerce Strategy Paper, the following present opportunity for near-term progress through private sector engagement with technology providers and the trade community.

- Utilizing the latest commercial data sources and state-of-the-art data analytics to gather and analyze advance information for targeting purposes.
- Deploying non-intrusive inspection technology that can expedite screening of small packages, while maintaining efficiency and flow of imports.
- Conducting outreach with the trade community to co-create a risk management structure for integration into existing agency trusted trader framework.
- Exploring blockchain technology to facilitate CBP's e-commerce strategy, for example: capture PGA licenses, permits, certificate of origins, and help verify the supply chain.

About CT Strategies

CT Strategies provides strategic services to clients seeking innovative insight, advisory services, and technology applications to address border management, supply chain, and port operations challenges in the United States and around the world. The CT Strategies team understands the interconnected security and economic needs of the public and private sector as passengers, cargo, and conveyances move throughout the world.

Our team helps its clients succeed based on the experience of its leadership and team members who led recent changes in data-driven trade management and enforcement in the U.S. and the greater international community. Our experience working with and for public and private sector stakeholders on multiple continents allows our team to provide a range of services and scalable solutions customized to our clients' needs.

Under the leadership of former U.S. Customs and Border Protection (CBP) officials, Allen Gina and Andrew Farrelly, CT Strategies delivers transformational solutions to its clients within, but not limited to, the following areas:

- Border Management and Risk Mitigation
- Advance Information and Intelligence Targeting
- Capacity Building
- Trade & Travel Facilitation
- Supply Chain Security
- Trusted Partnership Programs and Stakeholder Relations

CT Strategies works with clients to bring innovative border management technologies and solutions to CBP and other government agencies. This includes solutions that will assist CBP and the Department of Homeland Security (DHS) in managing the increased volume of small de minimis packages at the border. Contact us at info@ct-strategies.com or at (202) 207 2930.

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