

CHAPTER 4: UNSAFE AND UNREGULATED CHINESE CONSUMER GOODS: CHALLENGES IN ENFORCING IMPORT REGULATIONS AND LAWS

Abstract

The rapid escalation of e-commerce sales impedes U.S. efforts to ensure the safety and regulatory compliance of consumer products flooding the market from China. These new channels, combined with China's reinvigorated focus on export manufacturing as a pillar of economic growth, mean that Chinese factories will remain major suppliers across the consumer products space. Though the quality of goods sourced from China has improved somewhat over the past two decades as a result of increased due diligence and monitoring on the factory floor, significant exceptions remain, and overall product quality and safety still fall short of U.S. standards. Many Chinese companies that disregard manufacturing best practices utilize cross-border e-commerce channels to send products directly to consumers under a *de minimis* exemption that provides duty-free entry for small parcel shipments. A continually rising flood of small parcels at U.S. ports of entry compounds the difficulty of detecting potentially risky products before they reach households and children. Holding Chinese manufacturers and exporters accountable remains challenging—if not virtually impossible—under the Xi regime. Moreover, China is home to the world's largest counterfeiting industry, harming not only U.S. businesses but also consumers who face increased safety risks from shoddily made imitations. Accurate data on consumer product imports are crucial to enforcement, but an increased number of Chinese exporters are seeking to exploit loopholes in U.S. law and disguise the nature and/or origins of their imports to dodge higher tariffs on products from China.

Key Findings

- China aims to continue growing its manufacturing sector, leading to further industrial overcapacity and a surge in exports. Chinese manufacturers have, in general, improved in quality and reliability over the past decade, owing in part to increased enforcement by Chinese authorities domestically and increased due diligence by foreign firms. However, the scale and dynamism of China's manufacturing sector means regulators in the United States struggle to respond to emergent product safety issues. New online platforms and the multitude of third-party e-commerce sellers and resellers compound these issues.

- U.S. regulators are overwhelmed by the volume of imports arriving from China, and they are only able to inspect a small fraction of imports, potentially leaving large numbers of unsafe or illegal goods to enter the U.S. market daily.
- Unscrupulous China-based sellers lack the diligence, capacity, and skill required to produce high-quality goods that meet U.S. safety regulations, thus increasing U.S. consumers' exposure to risks stemming from unsafe, counterfeit, and poor-quality goods from China. These deceptive tactics by Chinese producers are particularly concerning in industries such as batteries and medical products, where defective products pose potentially debilitating or deadly consequences.
- U.S. import regulators face significant challenges in monitoring the growing volume of Chinese e-commerce shipments specifically, which typically enter under a *de minimis* exemption that provides duty-free treatment for parcels valued under \$800. The growth of smaller, China-based sellers on U.S. e-commerce sites and the rising popularity of Chinese e-commerce platforms present a novel and growing risk to U.S. consumers and the ability to enforce safety regulations and other laws. Insufficient data, personnel, and overwhelming volume mean these shipments receive less scrutiny.
- Some Chinese companies have tried to circumvent normal U.S. customs channels in response to tariffs and other U.S. laws. Though the true scale of customs fraud is unknowable, some actors are using illegal tactics such as transshipment, circumvention, and import undervaluation to evade paying customs duties. These tactics worsen the information available to U.S. agencies, increasing the challenge of identifying hazardous imports.

Recommendations

The Commission recommends:

- With respect to imports sold through an online marketplace, Congress eliminate Section 321 of the Tariff Act of 1930 (also known as the “*de minimis*” exemption), which allows goods valued under \$800 to enter the United States duty free and, for all practical purposes, with less rigorous regulatory inspection. Congress should provide U.S. Customs and Border Protection adequate resources, including staff and technology, for implementation, monitoring, and enforcement.
- Congress amend the Consumer Product Safety Act to (1) grant the U.S. Consumer Product Safety Commission (CPSC) unilateral mandatory recall authority over products where the Chinese seller is unresponsive to requests from the CPSC for further information or to initiate a voluntary recall and the CPSC has evidence of a substantial product hazard, defined as either failing to comply with any CPSC rule, regulation, standard, or ban or posing a substantial risk of injury to the public; and (2) classify Chinese e-commerce platforms as distributors to allow for enforcement of recalls and other safety standards for products sold on these platforms.

- Congress direct the U.S. Department of Homeland Security and U.S. Customs and Border Protection, in conjunction with the U.S. Department of Commerce, to develop assessment tools capable of identifying the true origins of parts, components, and materials contained in products entering the United States to prevent tariff evasion and limit safety and security risks in light of the increasing complexity of global supply chains.
- Congress require that the U.S. Trade Representative, in consultation with the U.S. Department of Commerce, the U.S. International Trade Commission, and other entities, as appropriate, prepare a comprehensive report within 90 days on the operation of the U.S.-Mexico-Canada Trade Agreement since its entry into force that provides data and information on:
 - Chinese-affiliated investments in Mexico and Canada and specific information on their production of goods and how those goods may enter the U.S. market either as finished products or as components in other products;
 - Trade flows of products produced in China to Mexico and Canada and how such trade flows have changed;
 - Prices of products produced in China shipped to Mexico and Canada as well as products shipped through those countries to the United States and how those prices relate to the prices of such goods shipped directly into the U.S. market; and
 - Trade enforcement actions by Mexico and Canada regarding Chinese-produced products (including those transshipped through third countries' markets) and how such actions relate to U.S. trade enforcement actions.
- Congress amend applicable laws to mandate that online marketplaces clearly disclose on product listings for Chinese-made goods the name, physical address, and contact information for the manufacturer. The online marketplaces should also be required to clearly display a warning label that the item is manufactured in a country that does not comply with U.S. consumer safety standards.
- Congress direct the U.S. Government Accountability Office to investigate the reliability of safety testing certifications for consumer products and medical devices imported from China.

Introduction

According to data provided by the U.S. Census Bureau, the United States imported \$426.9 billion in goods from China in 2023, although this undercounts e-commerce sales.¹ Everything from water heaters to consumer electronic products to pool drain covers and children's toys are made in factories across China and then shipped into the U.S. market. In most cases, these Chinese-made products present minimal to no health and safety risks to U.S. consumers, in part due to efforts by U.S.-based importers and retailers to vet and monitor the quality of manufacturing taking place in China. However, changing consumption patterns and marketing and sell-

ing strategies by Chinese firms are increasingly exposing U.S. consumers to poorly made and poorly regulated goods from China. A large and increasing portion of imports from China comes from online shopping—and specifically by the purchase of consumer goods through e-commerce platforms with direct delivery to homes. These platforms directly connect U.S. consumers to China-based manufacturers that often lack the diligence, capacity, and skill required to produce high-quality goods that meet U.S. safety regulations. Moreover, since these firms are based in China, they generally lie outside the reach of U.S. regulators, courts, and law enforcement agencies. They are therefore able to sell unsafe goods directly into the U.S. market and are unlikely to ever be held accountable for the harm these products cause. These problems are further compounded by the limited capacity to monitor the millions of small parcels that enter the U.S. market duty free each day under a *de minimis* exemption.* As a result, billions of dollars of potentially unsafe, hazardous, and even deadly goods are shipped from China directly to the doorsteps of U.S. homes every year, presenting a risk to U.S. consumers and firms alike.

U.S. information on imports from China is hampered by illegal and duplicitous behavior by some Chinese exporters. Billions of dollars' worth of counterfeit goods from China are seized each year by U.S. customs authorities, although this is likely just a fraction of the knockoff goods sold into the U.S. market. In addition to infringing on intellectual property rights (IPR) and causing financial and reputational harm to U.S. businesses, Chinese counterfeits may lack the safety features and materials of legitimate products, posing hazards to U.S. consumers from toxic materials and other risks. Parallel to this behavior, an increased number of exporters are seeking to avoid or evade U.S. customs duties. Recent U.S. trade actions taken since 2018 resulted in increased tariffs on two-thirds of goods entering the U.S. market from China, creating an increased financial incentive to game the U.S. import process and mitigate tariff burdens. Though the true scale of illegal behavior is unknowable, anecdotal evidence suggests a rising number of companies are employing tactics like transshipment, circumvention, and evasion to avoid tariffs, amplifying the challenges facing U.S. customs officials.

This chapter begins with an overview of the challenges in assuring the quality of China-based producers, which are amplified by the scale of China's manufacturing sector as well as challenges in ensuring the quality of goods from China-based producers. The chapter considers the difficulties of enforcing tariffs and regulations on Chinese imports at the border and the tactics used to evade detection. The chapter then examines the safety and reliability of goods from China and considers the challenges U.S. regulators face in monitor-

*On September 13, 2024, the Biden Administration announced that it intended to release two Notices of Proposed Rulemaking that would modify the *de minimis* exemption. These include rules that would make goods subject to tariffs under Section 232 of the Trade Expansion Act of 1962 as well as Section 201 and Section 301 of the Trade Act of 1974 ineligible for *de minimis* entry and expand the information required on *de minimis* customs invoices. The Biden Administration also announced that the U.S. Consumer Product Safety Commission plans to propose a final rule that requires all importers of consumer products to electronically file product certificates, which attest that a product complies with U.S. product safety laws and regulations. As of October 11, 2024, these rulemakings have not been released. White House, *Biden-Harris Administration Announces New Actions to Protect American Consumers, Workers, and Businesses by Cracking Down on De Minimis Shipments with Unsafe, Unfairly Traded Products*, September 13, 2024.

ing imports from China. This portion also pays special attention to the impact e-commerce has on consumer product safety and U.S. regulators' burdens. This chapter draws on the Commission's 2024 hearing on "Consumer Products from China: Safety, Regulations, and Supply Chains," consultations with policy experts, and open source research and analysis.

U.S. Consumer Product Sourcing from China

The sheer volume of products entering from China poses a fundamental challenge to the effective enforcement of U.S. laws, regulations, and trade measures. This issue is especially acute in the consumer products sector, which constitutes roughly half of China's exports to the United States.² China is the largest source of consumer goods for the United States, accounting for over 25 percent of U.S. consumer product imports in 2023.³ This total, amounting to \$210.2 billion, exceeded the combined value of consumer products sourced from the United States' next four largest trading partners.⁴ Chinese producers likely have an even larger role in the consumer products space than these data indicate, as they undercount e-commerce shipments and also do not reflect China's expanding role as a supplier of manufacturing inputs. China's export manufacturing capacity will likely expand further as China's government focuses on export manufacturing as a pillar of economic growth amid the economy's slowdown. (For more, see Chapter 1, "U.S.-China Economic and Trade Relations (Year in Review).") As a consequence, the manufacturing practices and standards of Chinese manufacturers will continue to have an outsized impact on the safety and quality of goods for sale in the U.S. market.

In addition to this overwhelming volume of goods, U.S. regulators are also sifting through a growing number of factories in China that are sending goods into the U.S. market. The number of companies in China involved in its traded goods sector grew 29 percent between 2019 and 2023, with over 645,000 businesses in China undertaking either import or export activities by the end of 2023.⁵ This growth was partly driven by an acceleration in direct-to-consumer e-commerce trade, which expanded during the COVID-19 pandemic as quarantine measures pushed consumers to rely more on online channels for shopping.⁶ According to China's customs agency, total e-commerce exports have grown from \$92 billion in 2018 to \$262 billion in 2023, increasing 36 percent on average each year.⁷ E-commerce trade now accounts for 7.7 percent of China's overall exports.⁸ In 2023, China reported that more than 100,000 different companies participated in cross-border e-commerce transactions.⁹ The United States is the largest export market for China-based e-commerce sellers.¹⁰ Chinese e-commerce firms sent \$97.9 billion in goods to the United States in 2023, equivalent to nearly 20 percent of China's total U.S.-bound exports, according to China's customs agency.*¹¹

*The United States does not produce an official estimate on imports that were sold through an e-commerce platform. Many, but not all, e-commerce shipments enter under the United States' de minimis exemption, which provides duty-free treatment for parcels valued under \$800. U.S. Customs and Border Protection reports that de minimis imports from China totaled \$10.4 billion in fiscal year 2021 (the most recent year showing shipments by country), but this estimate may be unreliable due to the difficulty in recording and verifying the value of individual parcels. George Serletis, "U.S. Section 321 Imports Surge with Rising E-Commerce Shipments from China," *U.S. International Trade Commission*, November 2023; Josh Zumbrun, "The \$67 Billion Tariff

The growth in firms selling directly to U.S. consumers poses a challenge for U.S. regulators in monitoring imports, enforcing U.S. regulations, and identifying bad actors.* Additionally, U.S. businesses that source products from China-based manufacturers continue to encounter difficulties due to unscrupulous tactics employed by some Chinese manufacturers.

Challenges in Ensuring the Quality of China-Based Producers

Many foreign firms hire quality control (QC) inspectors in China to ensure Chinese manufacturers meet global standards; however, corruption and gamesmanship frequently undermine the integrity of these inspections. Corruption in the QC inspection process is a common issue facing foreign firms seeking to produce in China. Some Chinese factory owners attempt to influence QC inspectors through a variety of means, from overt cash offers to more subtle forms of compensation like free entertainment.¹² In addition, QC inspectors themselves may seek to extort suppliers by threatening to submit an unfavorable report unless the supplier offers compensation.¹³ Attempted and realized extortion by both inspectors and suppliers adds uncertainty to U.S. firms' assessments of Chinese manufacturers' production quality. U.S. firms looking to conduct regular QC inspections in China must therefore carefully vet and rotate inspectors to avoid this risk, a process that adds time and cost to production.¹⁴ In addition, there is a cottage industry of consultants in China helping factories pass inspections by any means necessary. In 2021, the *South China Morning Post* investigated these consultants by placing an ad for a fictitious factory looking for help selling to European buyers.¹⁵ One Shanghai-based consultant responded to the ad by saying, "As long as you cooperate, keep the troublemakers out of the factory on inspection day, and make sure workers follow our guidance on answering questions, we will guarantee you pass."¹⁶ Beyond coaching employees, these consultants can provide forged records and time cards and can even bring auditors to a "show factory"—a different plant that is more aligned with "Western" production standards.¹⁷

Even when a U.S. firm believes it has found a quality manufacturer, it can be difficult to ensure that Chinese producers continue to adhere to contractually agreed-upon standards. Some foreign purchasers experience quality fade, a phenomenon where a manufacturer begins cutting corners to reduce costs and increase profits, resulting in decreased product quality. AsiaInspection,† a third-party QC service, analyzed data on thousands of in-factory quality checks from 2018 and found that 26 percent of made-in-China products were manufactured outside of quality specifications.¹⁸ In addition to variance in product quality, U.S. purchasers reportedly face the risk

Dodge That's Undermining U.S. Trade Policy," *Wall Street Journal*, April 25, 2022; U.S. Customs and Border Protection, *Section 321 De Minimis Shipments: Fiscal Year 2018 to 2021 Statistics*, October 2021.

*One method used by the U.S. Consumer Product Safety Commission, which is charged with enforcing U.S. product safety rules and regulations, to identify hazardous imports is to screen for entities that have previously violated U.S. regulations or that have not previously imported regulated products. Jim Joholske, written response to questions for the record for the U.S.-China Economic and Security Review Commission, *Hearing on Consumer Products from China: Safety, Regulations, and Supply Chains*, March 1, 2024, 2.

†AsiaInspection is now called QIMA.

of their Chinese manufacturers suddenly going out of business.¹⁹ Chinese producers—particularly those operating in low-tech, labor-intensive industries like textiles, clothing, shoes, and toys—face rising competition from other countries with low-wage manufacturing, like Vietnam.²⁰ As Dan Harris, founder of the international law firm Harris Sliwoski, observes, some Chinese manufacturers have suddenly gone out of business without informing their U.S. purchaser, leaving the U.S. firm without a supplier and sometimes without the product they purchased.²¹ The number of bankruptcies in China has risen since 2016, when the Party-state launched a deleveraging campaign to curtail lending from the “shadow” or informal banking system.* According to aggregated statistics provided by China’s Supreme People’s Court, the number of bankruptcy filings accepted in Chinese courts increased from roughly 5,000 filings in 2016 to more than 15,000 in 2021.†²²

U.S. firms’ ability to seek relief for unsatisfactory production is further undermined by the China Export & Credit Insurance Corporation, or Sinosure, which appears to engage in extorting foreign firms.²³ Sinosure is China’s only state-owned policy-oriented credit insurer, and as a result, it enjoys a strong position in the export credit insurance market.²⁴ Sinosure facilitates trade with China by providing insurance to Chinese manufacturers that sell to foreign purchasers on credit; if a foreign purchaser defaults on payment, Sinosure will compensate the Chinese manufacturer.²⁵ However, according to Mr. Harris, issues with this system arise when Chinese manufacturers deliver poor-quality or hazardous goods and the foreign purchaser refuses to pay the balance owed or requests new products. The Chinese manufacturer contacts Sinosure, which then demands payment from the foreign purchaser on behalf of the manufacturer, threatening to sue the purchaser in either China or their home country. Mr. Harris testified before the Commission that in some cases, Sinosure will put the foreign purchaser on a blacklist and refuse to provide insurance to Chinese manufacturers seeking to supply to that purchaser.²⁶ The foreign purchaser must then either pay for all its products in full up front and accept greater risk of being defrauded by the manufacturer or else effectively be banned from purchasing Chinese exports. Left with few options, many foreign purchasers end up paying for the defective and sometimes even undelivered products.²⁷ Mr. Harris argues that Sinosure’s aggressive approach to repayment effectively subsidizes low-quality Chinese manufacturers.²⁸ Meanwhile, U.S. businesses

*Shadow banking refers to banking services that are provided by non-bank financial institutions outside of the regulatory structure of the formal banking system. China’s shadow banking sector ballooned after 2009 as banks channeled funds to off-balance-sheet entities to circumvent restrictions on credit growth, and informal or non-bank lending accounted for 31 percent of total credit growth between 2012 and 2016. As China started to regulate these channels and tighten access to credit after 2016, many borrowers from shadow banks were suddenly cut off from new credit, and rising default rates forced China’s banking system to absorb a growing volume of non-performing assets. This had the effect of raising borrowing costs economy-wide and squeezing non-state firms’ access to new credit as banks sought to avoid taking on new credit risk by charging higher interest rates. This impacted businesses’ capacity to refinance or roll over debt, contributing to rising defaults. Logan Wright, “Grasping Shadows: The Politics of China’s Deleveraging Campaign,” *Center for Strategic and International Studies*, April 2023.

†Chinese bankruptcy data understate the number of defunct companies, as many smaller companies choose to settle with creditors outside of court. China has established new specialized bankruptcy courts across China since 2019 in an effort to improve the bankruptcy process and reduce delays and other frictions in bankruptcy proceedings. Bo Li and Jacopo Ponticelli, “Going Bankrupt in China,” *Review of Finance* 26:3 (2022): 456–458, 466.

and consumers may struggle to sue a Chinese counterparty in both U.S. and Chinese courts.²⁹

Challenges to Tariff Enforcement at the Border

The China Section 301 tariff actions are unprecedented in the recent history of U.S. trade policy. The United States has not previously raised import duties on such a large volume of imports sourced from a single country. Since 2018, U.S. Customs and Border Protection (CBP) has assessed \$231 billion in Section 301 duties on imports from China, roughly equivalent to \$39 billion per year.³⁰ This exceeds the \$35 billion in duties collected by CBP in fiscal year (FY) 2017 from all countries across all trade duties and remedies.³¹ These duties created a significant financial incentive for firms to reduce their tariff burden, including through legal off-ramps from paying import duties and through tactics to evade tariffs illegally. Firms' attempts to utilize exceptions and exploit gaps in tariff enforcement have created acute challenges for U.S. customs authorities.

Chinese Exporters Use Small Parcel Shipments to Avoid U.S. Import Duties

Since 2017, cross-border e-commerce trade between the United States and China has surged as Chinese exporters take advantage of the de minimis customs exemption to avoid Section 301 tariffs and other import duties, violating the original intent of the law.[†] The de minimis rule is a provision in U.S. law that authorizes the customs authority to waive most import duties on shipments imported by "one person on one day," provided that the combined value of the shipments is less than \$800.³² In contrast, China's own de minimis threshold is less than \$10.³³ (For more, see Appendix I, "United States' Top 15 Trading Partners' De Minimis Thresholds.") Between FY 2018 and FY 2023, the annual volume of de minimis imports from all countries more than doubled to reach one billion small parcels (see Figure 1).³⁴ By comparison, the number of shipments entering the U.S. market through formal customs channels, which excludes de minimis entries but includes containers offloaded at ports, increased only 4.9 percent from 35 million in FY 2018 to 36.7 million in FY 2023.[‡]³⁵ The volume of de minimis shipments has continued to grow disproportionately, with an average of nearly

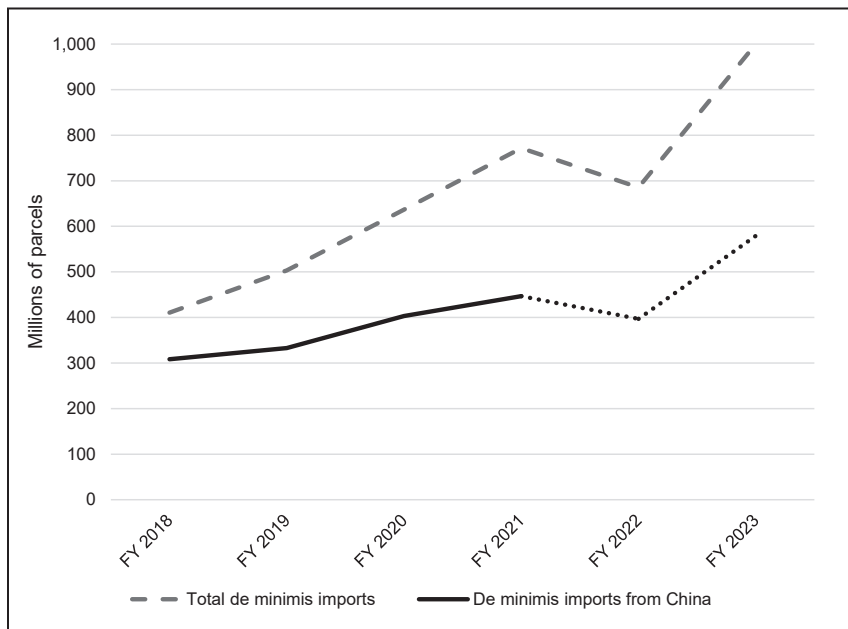
*For more on China's selective enforcement of contract law, see U.S.-China Economic and Security Review Commission, Chapter 2, Section 1, "Rule by Law: China's Increasingly Global Legal Reach," in *2023 Annual Report to Congress*, November 2023, 175–222.

†The de minimis exemption was introduced in 1938 as an amendment to the Tariff Act of 1930. The exemption was intended to exempt low-value shipments from standard customs procedures, where the administrative costs of collecting tariffs would otherwise outweigh the revenue generated. The threshold was initially set at \$5 for bona fide gifts and souvenirs and other items acquired abroad by travelers and \$1 for all other cases, including commercial merchandise. Congress raised the latter threshold to \$5 in 1978 before increasing it to \$200 in the Customs Modernization Act of 1994. It was raised to the current level of \$800 in the Trade Facilitation and Trade Enforcement Act of 2015, which was aimed at facilitating cross-border e-commerce trade for small foreign sellers on platforms such as eBay. Charles Benoit, "De Minimis' in Customs Law: How Express Shippers Turned an Administrative Customs Provision into an Instrument of Economic Devastation and Lawlessness at Ports," *Coalition for a Prosperous America*, November 2021, 3, 5, 7–8.

‡An importer is required to file an entry summary to enter merchandise into U.S. commerce, which CBP uses to assess whether the cargo is admissible and determine the duties owed. Generally, an importer can either file a formal entry or, if the merchandise is valued under \$2,500, file an informal entry and make use of simplified customs procedures. Shipments valued under \$800 may be eligible for de minimis entry, and importers do not need to file entry summaries. Informal Entry Procedures, 19 C.F.R. §128.24, 2016.

four million de minimis shipments entering the United States each day between October 2023 and June 2024.³⁶ The majority of these packages were likely imported from China. In FY 2021—the most recent period for which CBP has produced country-level data—imports from China accounted for 58 percent of the total 771 million de minimis entries.³⁷

Figure 1: Volume of U.S. De Minimis Imports from China (FY 2018–FY 2023)



Note: CBP has only published data on China's share of de minimis imports up to FY 2021. The projection for Chinese shipments after FY 2022, shown by the dotted line segment, is based on the ratio of Chinese de minimis packages to total de minimis imports in FY 2021. Given the rapid growth of Chinese e-commerce platforms Shein and Temu in recent years, using FY 2021 as a baseline likely underestimates the current volume of de minimis shipments from China.

Source: U.S. Customs and Border Protection, *E-Commerce*, August 22, 2024; U.S. Customs and Border Protection, *Section 321 De Minimis Shipments: Fiscal Year 2018 to 2021 Statistics*, October 2022, 3.

The surge in de minimis imports coincided with both an expansion in U.S. e-commerce consumption during the COVID-19 pandemic and the imposition of the China Section 301 duties. This suggests some Chinese firms utilized direct-to-consumer e-commerce channels to avoid paying higher tariffs. Products targeted by most U.S. trade remedies, including Section 301 tariffs, remain eligible for duty-free treatment under the de minimis exemption, provided shipments meet the \$800 value threshold.³⁸ Products subject to an antidumping and countervailing duty (AD/CVD) order, though, are not eligible for de minimis entry.³⁹ Chinese companies in sectors heavily targeted by U.S. Section 301 duties have utilized e-commerce channels to avoid paying duties. The apparel sector is illustrative. The Section 301 tariff actions applied a 7.5 percent tariff to 90 percent of U.S. apparel imports from China (relative to 2017 import levels).⁴⁰ The

Chinese fast-fashion company Shein has since developed expansive logistics operations based on using small parcel shipments that fall below the de minimis threshold.⁴¹ Along with the Chinese e-commerce platform Temu, these companies are estimated to account for over half of all de minimis shipments from China.⁴² In total, one study estimates that as a result of de minimis imports, \$7.8 billion in duties were avoided in 2021, equivalent to 9.2 percent of total duties collected that year.⁴³

The de minimis exemption also allows Chinese exporters to use fulfillment centers and warehouses in Mexico and Canada to “wash” bulk shipments of tariffs. CBP evaluates the “one person on one day” condition at the time of importation to the United States, meaning Chinese exporters can place goods in a bonded warehouse across the U.S. border until it makes a sale through a direct-to-consumer e-commerce channel.⁴⁴ This enables exporters to use ocean-borne shipping to transport Chinese products in bulk to bonded warehouses located in Canada or Mexico before breaking the containerized shipment into individual parcels that fall below the U.S. de minimis threshold.⁴⁵ Though CBP has not published data on the volume of Chinese de minimis packages entering indirectly through border warehousing, data on truck-borne de minimis imports suggest a growing number of firms are taking advantage of such schemes. Between FY 2020 and FY 2023, de minimis packages carried by truck into the United States grew from 97 million to 170 million and now make up nearly 20 percent of all de minimis bills of lading.⁴⁶ Although Canadian and Mexican products likely constitute a significant portion of these imports given these producers’ proximity to the U.S. border, the volume of de minimis packages that enter via overland routes still exceeds the combined number of parcels sourced from these two U.S. neighbors.⁴⁷ Instead, tens of millions of these packages were likely sourced from other overseas countries utilizing warehousing schemes.⁴⁷

CBP has the authority to adjust the de minimis exemption without additional legislation. The statute underlying the de minimis exemption—Section 321 of the Tariff Act of 1930—authorizes CBP to waive duties on shipments valued under \$800, but it can also create rules to deny de minimis treatment when it “is necessary for any reason to protect the revenue or to prevent unlawful importations.”⁴⁸ Elizabeth Drake, partner at Schagrin Associates, testified before the Commission that CBP “already has the discretion to deny

* Bulk shipments sent directly to a U.S.-based bonded warehouse or free trade zone are not eligible for the de minimis exemption, as the receiving entity is considered the importer of record for the purposes of determining the “one person.” U.S. International Trade Commission, *Foreign Trade Zones (FTZs): Effects of FTZ Policies and Practices on U.S. Firms Operating in U.S. FTZs and under Similar Programs in Canada and Mexico*, April 2023, 98–99, 220–221.

† Importers can even use U.S. ports of entry to receive ocean-borne freight as part of these schemes to utilize the de minimis exemption. For example, some third-party logistics providers load containers that arrive at the Ports of Los Angeles and Long Beach onto trucks and drive the containers in-bond across the border to fulfillment centers in Tijuana, Mexico. *Economist*, “How Chinese Goods Dodge American Tariffs,” June 27, 2024; Josh Zumbun, “The \$67 Billion Tariff Dodge That’s Undermining U.S. Trade Policy,” *Wall Street Journal*, April 25, 2022.

‡ In FY 2021, 65 million and 22 million de minimis shipments were produced and sourced from Canada and Mexico, respectively. This includes packages carried by air freight, which is by far the most prevalent transportation method, and only a portion of these totals reflects shipments carried overland. By comparison, 109 million de minimis parcels crossed the U.S. border on trucks during the same time period. U.S. Customs and Border Protection, *E-Commerce*, April 10, 2024; U.S. Customs and Border Protection, *Section 321 De Minimis Shipments: Fiscal Year 2018 to 2021 Statistics*, October 2022, 3.

de minimis treatment in order to protect the revenue or to ensure the effective enforcement of import admissibility standards,” including to address issues related to health and safety, enforcement of the Uyghur Forced Labor Prevention Act, imports of fentanyl and fentanyl precursors (see textbox below), and other imports that violate U.S. regulations.⁴⁹ CBP could prevent shipments subject to Section 301 duties and other trade remedies from entering under the de minimis provision through an administrative ruling.⁵⁰

Chinese Fentanyl Traffickers Exploit the De Minimis Rule to Skirt Detection

Chinese chemical manufacturers have exploited e-commerce channels, including international mail and express consignment operations, to route fentanyl and fentanyl-related substances (such as precursors) into the United States, contributing to the U.S. opioid crisis. Direct shipments of fentanyl from Chinese drug makers to U.S. doorsteps had risen up until 2019, when China “scheduled” the entire class of fentanyl-type drugs—meaning the production and export of these drugs is banned without special government permits—significantly reducing the flow of finished drugs.⁵¹ At the time, however, China scheduled just two of the numerous precursor chemicals used to synthesize fentanyl,* and Chinese entities subsequently shifted to supply North America-based drug traffickers with other fentanyl inputs.⁵² China is now the primary supplier of chemicals and materials for synthesizing fentanyl to Mexican cartels and other criminal groups operating in the United States.⁵³

De minimis shipments serve as a key vector linking these supply chains as Chinese entities exploit the less stringent reporting requirements and minimal likelihood of inspection.† Some Mexico-based criminal groups have found it easier to first ship fentanyl materials to the United States under de minimis provisions, smuggle them across the border for further processing, and then send the drug back into the United States.⁵⁴ These chemicals are widely and easily available on Chinese e-commerce storefronts. In 2024, a team of Reuters reporters was able to procure all the chemicals needed to produce fentanyl by placing orders with Chinese online sellers, some of whom provided recipes for synthesizing fentanyl from their products.⁵⁵ Moreover, unlike many other

* Fentanyl can be synthesized directly from a wide range of chemicals, called precursors. Drug makers also make use of pre-precursors to produce precursors for fentanyl manufacturing. The International Narcotics Control Board has identified 153 fentanyl-related substances that currently have no other legitimate uses. Ricardo Barrios, Susan V. Lawrence, and Liana W. Rosen, “China Primer: Illicit Fentanyl and China’s Role,” *Congressional Research Service* CRS IF 10890, February 20, 2024.

† Given the overwhelming volume of small parcels entering the United States, U.S. regulators rely on advanced electronic data, automated screening, and other data sources to identify shipments that may contain opioids or other illegal goods. However, CBP states that it cleared over 685 million de minimis shipments with insufficient data to properly determine risk in FY 2022. In addition, the U.S. Department of Homeland Security Office of the Inspector General concluded in 2023 that “CBP did not consistently target for additional inspection or evaluate potentially inadmissible international mail entering the United States through its nine [international mail facilities],” and it has not fully implemented requirements to utilize advanced electronic data as required in the Synthetics Trafficking and Overdose Prevention Act of 2018 (STOP Act). U.S. Department of Homeland Security, Office of Inspector General, *CBP Did Not Effectively Conduct International Mail Screening or Implement the STOP Act (Redacted)*, September 25, 2023; U.S. Customs and Border Protection, Commercial Customs Operations Advisory Committee, *Government Issue Paper, Next Generation Facilitation Subcommittee, E-Commerce Task Force*, June 2023.

Chinese Fentanyl Traffickers Exploit the De Minimis Rule to Skirt Detection—Continued

illegal drugs, large-scale production of fentanyl does not depend on industrial-scale supplies of chemicals, and small parcel shipments of inputs can yield large quantities of the product. Just one kilo of the precursor 1-boc-4 piperidone is enough to produce 750,000 fentanyl tablets.⁵⁶ Economists Timothy J. Moore, William W. Olney, and Benjamin Hansen link increased state-level imports to a rise in opioid deaths, estimating that fentanyl smuggled through legal customs channels killed approximately 14,000–20,000 Americans per year, accounting for 30–40 percent of all opioid deaths between 2017 and 2020.^{*57}

Though China has taken recent steps to curb the flow of fentanyl-related material, cooperation with the United States remains limited. In August 2024, China announced that it would expand regulatory controls to cover three additional fentanyl precursors.⁵⁸ This move came two years after UN member states agreed to subject these inputs to international restrictions.⁵⁹ (For more on U.S.-China counternarcotics diplomacy, see Chapter 2, “U.S.-China Security and Foreign Affairs (Year in Review).”) However, as of October 11, 2024, China has not placed controls on other common fentanyl precursors, despite continued U.S. diplomatic pressure.^{†60}

Illicit Actors Evade Tariffs through Customs Fraud

The increase in tariffs on Chinese products created a significant incentive to lower or evade U.S. import duties, leading to an increase in trade-related fraud. To avoid paying duties, firms may employ a wide range of illegal and deceptive tactics, with two being particularly prominent.⁶¹ First, importers may file false invoices with U.S. customs to evade tariffs, misreporting the nature of the merchandise through tactics including undervaluation, product misclassification, and other methods.⁶² Second, importers may employ transshipment and circumvention schemes to route goods through third country markets to obtain a more favorable duty rate.⁶³

The number of customs violations penalized by the U.S. government rose following the introduction of the China Section 301 tariffs and other trade measures aimed at China. Between October 2018 and September 2019—the first fiscal year after the Office of the U.S. Trade Representative initiated the China Section 301 trade actions—CBP collected \$30.1 million in penalties and liquidated

*This study relied on import data from the U.S. Census Bureau, which does not include de minimis shipments.

†For example, China currently does not have control measures for N-Phenethyl-4-piperidone (NPP) and 4-Anilino-N-phenethylpiperidine (ANPP), two precursors that are extensively used by Mexican drug cartels in fentanyl production. These chemicals, among others, are included in Table I of the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, to which China is a signatory. The agreement requires members to take measures to prevent the distribution of listed substances for the illicit manufacture of drugs and maintain systems to monitor manufacture and distribution of listed substances for legitimate purposes. John Coyne and Liam Auliciems, “No, China Isn’t Really Suppressing Its Production of Fentanyl Precursors,” *The Strategist*, August 23, 2024; International Narcotics Control Board, “Precursors and Chemicals Frequently Used in the Illicit Manufacture of Narcotic Drugs and Psychotropic Substances: 2019,” February 27, 2020, 47, 106–107, 108.

damages* related to customs violations, double the value collected in FY 2018.⁶⁴ In FY 2022, the most recent period for which CBP has published data, this amount fell back to \$19.3 million, yet CBP still issued nearly twice as many penalties and liquidated damages compared to FY 2018, suggesting that the frequency of infractions remains above norm.⁶⁵ The import value related to these infractions is not available. CBP also collected \$78 million in unpaid duties as a result of audits in FY 2022 and identified \$97 million in lost value or revenue through investigations into AD/CVD evasion under its Enforce and Protect Act (EAPA) authority, up from \$42 million resulting from audits and \$15 million from EAPA investigations in FY 2018.⁶⁶ It is likely that additional illicit activity has gone undetected. Though it is difficult to estimate the true scale of illegal activity, signs suggest that trade misinvoicing and illegal transshipment have grown more rampant since 2018.

Duty Evasion through False Import Declarations

The declining quality of U.S. import data points toward systemic tariff avoidance. U.S. duty assessment is based on customs documentation filed by importers, creating an incentive to misreport the nature of the imported merchandise.⁶⁷ Such tactics include underreporting the value of the shipment or misclassifying the merchandise as a different Harmonized Tariff System (HTS) heading to obtain a lower duty.⁶⁸ According to the U.S. Government Accountability Office (GAO), “Many trade-related documents, such as purchase orders, invoices, and customs documents, are vulnerable to fraudulent manipulation.”⁶⁹ Because such evasive activity leads to a poor-quality data environment, it is not possible to accurately measure the impact of illicit import invoices. However, researchers have taken advantage of discrepancies in trade data gathered by U.S. and Chinese statistical authorities to approximate the level of trade fraud; though U.S. tariffs create a financial incentive to falsify information reported to U.S. customs, they have little effect on companies’ incentives to file accurate export invoices with Chinese customs. According to these studies, importers may be understating their U.S. imports by tens of billions of dollars per year (for more, see textbox below).⁷⁰

Customs Fraud, De Minimis Shipments, and Worsening Data on the U.S.-China Trade Deficit

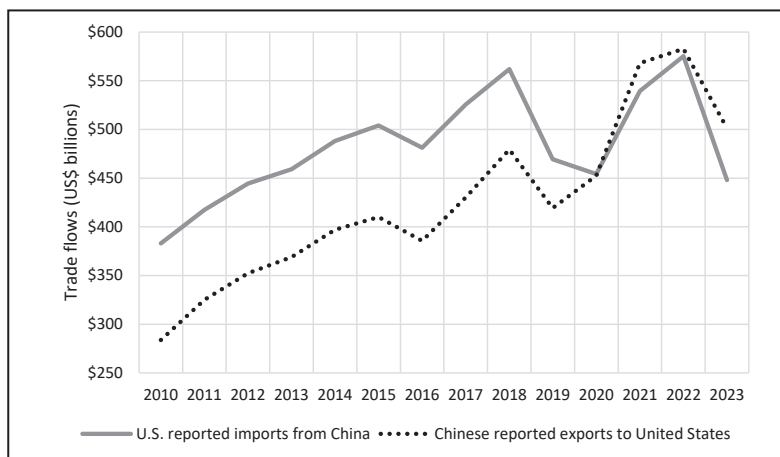
The true value of the bilateral trade deficit between the United States and China is likely tens of billions of dollars higher than reported in official U.S. trade estimates. U.S. data on imports from China are based on customs declarations, meaning that tariff evasion creates errors in aggregate U.S. trade data and leads to discrepancies with the trade data reported by Chinese customs author-

*CBP has legislative authority to issue penalties for filing fraudulent customs documentation and other tactics to evade customs enforcement. In addition, many importers are required to purchase importation bonds, which are surety bonds that form a contract between CBP and the importer. If the importer breaches its obligations under the bond, including by violating trade laws and regulations, CBP can collect liquidated damages against the import bond. U.S. Customs and Border Protection, *What Every Member of the Trade Community Should Know About: Customs Administrative Enforcement Process: Fines, Penalties, Forfeitures, and Liquidated Damages*, February 2004, 25, 40; Government Accountability Office, *Civil Fines and Penalties Debt: Review of U.S. Customs Service’s Management and Collection Process*, May 2002, 9.

Customs Fraud, De Minimis Shipments, and Worsening Data on the U.S.-China Trade Deficit—Continued

ities. Mirror trade analysis is a commonly used technique to identify false or missing customs declarations based on differences in trade reported by the customs agencies of the exporting and importing nations.*⁷¹ Prior to 2018, the U.S. Census Bureau's estimates on imports of goods from China have exceeded the equivalent figure from China's customs agency by an average of \$95 billion, largely owing to financial incentives for Chinese firms to underreport the value of exports to Chinese customs to receive tax advantages under China's value-added tax regime prior to 2018.⁷² However, this pattern has reversed since the Section 301 tariffs went into effect (see Figure 2). In 2020, the gap between U.S. and Chinese data all but disappeared as the United States reported a steeper decline in imports than China.⁷³ Economists at the U.S. Federal Reserve estimate that \$55 billion in value is missing from U.S. import data due to firms' efforts to avoid U.S. tariffs.[†]⁷⁴ Because of this evasion, Adam Wolfe, emerging markets economist for Absolute Strategy Research, assesses that "Chinese data are likely more reliable since U.S.-based firms have a financial incentive to understate their imports to avoid paying higher tariffs."⁷⁵

Figure 2: Disappearing Gap in Reported Goods Imports from China: U.S. vs. Chinese Data, 2010–2023



Source: United Nations Statistics Division, "UN Comtrade Database."

*As reviewed in a recent GAO report, mirror trade analysis has significant limitations when it comes to identifying illicit trade behavior. Legitimate reasons for trade gaps may exist, such as differing customs valuation methodologies between different countries. U.S. Government Accountability Office, *Trade-Based Money Laundering: U.S. Government Has Worked with Partners to Combat the Threat, but Could Strengthen Its Efforts*, April 2020, 57–59.

†The change in the reported data was also a result of Chinese exporters overstating the value of shipments to Chinese customs. China lowered the gross value-added tax and raised the value-added tax rebate on exports after the tariffs went into effect, changing the incentives for Chinese firms to report the value of their exports. Economists Hunter L. Clark and Anna Wong find that the value-added tax effect caused China's reported exports to increase (leading to a smaller gap in U.S.-China trade data), but this effect was marginal compared to the undervaluation effect in U.S. import data. Hunter L. Clark and Anna Wong, "Did the U.S. Bilateral Goods Deficit with China Increase or Decrease during the US-China Trade Conflict?" *U.S. Federal Reserve*, June 21, 2021.

Customs Fraud, De Minimis Shipments, and Worsening Data on the U.S.-China Trade Deficit—Continued

Two tactics to avoid tariffs are likely to blame for the deterioration in the quality of U.S. trade data. First, some U.S.-based importers have evaded tariffs by illicitly misreporting the value of shipments to U.S. customs officials, since underreporting the value reduces the gross import tax assessed on each shipment.⁷⁶ Second, shipments valued less than \$800 that utilize the de minimis exemption are not included in the U.S. Census Bureau's trade estimates.⁷⁷ This data gap alone leaves potentially tens of billions of dollars in unaccounted imports from China-based e-commerce companies; CBP estimates that \$54.5 billion in de minimis shipments from all countries entered the United States in FY 2023.^{*78}

Distorted trade data may prevent U.S. policymakers from designing effective trade and supply chain policies and obscure the true extent of the United States' continued reliance on Chinese manufacturers. For instance, recorded U.S. imports of clothing from China have declined 39 percent between 2018 and 2023, according to U.S. customs data; however, estimates indicate that textile and apparel products make up around half of all de minimis shipments entering the United States.⁷⁹ Moreover, these problematic data potentially compromise the U.S. government's ability to evaluate the impact of tariffs on the U.S. economy. For instance, the U.S. International Trade Commission's 2023 *Economic Impact of Section 232 and 301 Tariffs on U.S. Industries* report relies on U.S. Census Bureau data to model the impact of the tariffs on trade, production, and prices, and its findings could be flawed if the data are problematic.⁸⁰

Legal action targeting evasion of China Section 301 tariffs has been limited. To date, the U.S. government has penalized only a few instances of Section 301 evasion under the False Claims Act (FCA), which prohibits making false statements or otherwise defrauding the U.S. government, including false customs documentation.⁸¹ The FCA contains a whistleblower provision whereby a person can file a lawsuit based on allegations of fraud against the government, including customs evasion, and be financially rewarded for it.† Up to May 2024, the U.S. government has reached settlements in four cases under the FCA that involved evasion of China Section 301

*The consistency of the de minimis value estimates produced by CBP is questionable. The Coalition for a Prosperous America asserts that CBP relies only on data submitted through electronic manifests, which cover only a portion of the shipments. Compared to CBP's estimate of \$46.5 billion in imports in FY 2021, the organization instead estimates that the United States imported \$188 billion in de minimis shipments in 2022. A separate study based on data on shipments valued under \$800 from three global carriers implies that the average shipment was valued at \$120 in 2021. This suggests that FY 2021 de minimis imports totaled \$82.2 billion. Pablo D. Fajgelbaum and Amit Khandelwal, "The Value of De Minimis Imports," *NBER Working Paper*, June 2024, 7, 17; Charles Benoit, "Falsehoods & Facts: The Truth about De Minimis," *Coalition for a Prosperous America*, August 14, 2023.

†In a successful case, the whistleblower receives a monetary reward worth 15–30 percent of the funds recovered by the government, incentivizing private citizens to act as bounty hunters. Jonathan Tycko, "A Statistical Analysis of the Government's Settlement of False Claims Act Lawsuits Alleging Evasion of Customs Duties," *National Law Review*, August 3, 2023.

duties, with settlements totaling \$5.7 million.⁸² These cases likely reflect only a portion of the ongoing litigation, as other cases may be held under seal within the U.S. court system until a settlement or judgment is reached.*⁸³ Historically, the amount of time required to complete an FCA customs case—from filing the case to reaching a settlement—averaged 3.1 years.⁸⁴ However, the FCA may be underutilized to pursue customs evasion due to the complexities of such cases. For instance, the U.S. Department of Justice has the option to intervene and take over a case, a move that increases the chances of success due to the resources available to government prosecutors.†⁸⁵ The government is less likely to intervene in cases involving smaller financial stakes or where the evidence is not particularly strong.⁸⁶ A whistleblower may choose to litigate a case independently, but they will need to bear the legal costs themselves. Customs fraud cases may be particularly complex to litigate independently given the complicated and often arcane nature of U.S. customs regulations.⁸⁷ In addition, potential whistleblowers may be located outside the United States, making them reticent to file out of fear of retaliatory action.‡

Whistleblower lawsuits under the FCA complement direct governmental authorities to pursue customs fraud. CBP has a statutory mandate to detect and penalize customs fraud under the Tariff Act of 1930.⁸⁸ To aid its enforcement efforts, CBP provides a monetary incentive, separate from the FCA provisions, for whistleblowers to flag instances of evasion and transshipment.⁸⁹ However, CBP is not required to respond to or publicly report on the results of investigations into such allegations.⁹⁰ As Ms. Drake testified before the Commission, the enforcement process is opaque, and “the private sector has no formal role in helping Customs guard against evasion” of customs duties other than AD/CVD.⁹¹ In contrast, the tools available to combat AD/CVD evasion—the anti-circumvention statute administered by the U.S. Department of Commerce and the Enforce and Protect Act (EAPA) authorities administered by CBP—provide specific timelines and statutory requirements to involve private petitioners and have been viewed as highly effective.⁹² (For more, see Appendix II, “Authorities for Combating Evasion of U.S. Customs

*When an FCA case is filed with a court, the court initially places the case under seal for 60 days, but the U.S. government may request the court extend the seal so it can conduct its investigation. While the case is under seal, the court will not acknowledge the existence of the lawsuit, and the case will not appear on the court’s publicly available electronic docket (PACER). Jonathan Tycko, “Can a False Claims Act *Qui Tam* Case, Alleging Customs Fraud, Be Filed and Pursued Anonymously?” *National Law Review*, February 8, 2024.

†The U.S. Department of Justice created a “Trade Fraud Task Force” to lead its efforts on trade-related crimes and coordinate with other agencies, such as CBP, on ensuring compliance with U.S. trade laws. However, some assess that the task force has limited capacity given the scale of international trade crime it faces. Camille Edwards and Olga Torres, “DOJ Involvement in the Enforcement of Trade and National Security Laws,” *JD Supra*, April 23, 2024; U.S. Representatives Mike Gallagher and Raja Krishnamoorthi, *Letter to the Honorable Alejandro Mayorkas*, January 19, 2024, 4.

‡The FCA allows for foreign whistleblowers to file cases of fraud against the U.S. government, but they may not be afforded the same whistleblower protections as U.S. citizens or employees of U.S. companies. Though such lawsuits can be filed anonymously, the identity of the whistleblower may be easy to deduce once the court case is unsealed. The FCA includes a provision that offers relief to employees who experience retaliation or job loss for filing fraud allegations, including reinstatement to their position. However, for employees working overseas, the process of filing a claim of retaliation is complex, and the provision may not extend to foreign companies not governed by U.S. law. Tycko & Zavareei, “International Whistleblower Protections,” Jason Zuckerman and R. Scott Oswald, “Whistleblowers: What Protections and Forms of Relief Are Available for Foreign-Based Employees,” *Employment Law Group*, 2011, 24–25.

Duties: Antidumping and Countervailing Duties vs. Section 301 and Other Tariffs.”)

Transshipment and Circumvention through Third Country Markets

Trade data indicate that some countries have emerged as hubs for the transshipment of goods and duty evasion through circumvention strategies. As U.S. imports shifted to third countries, some Chinese exporters sought to lower their tariff burden by transiting goods through these new export hubs. In 2019, Vietnam’s customs agency identified dozens of products destined for the United States that were imported from China and given “made in Vietnam” labels.⁹³ Closely related to transshipment is duty circumvention, which involves importing products subject to an AD/CVD order or components of those products into a third country, doing minimal additional processing (e.g., assembling components), and exporting the final product as originating in the country of minimal processing.*⁹⁴ It is challenging, however, to quantify the full extent of transshipment and circumvention (see textbox below). Between FY 2017 and FY 2023, CBP completed more than 200 investigations into AD/CVD evasion under the EAPA and identified \$1.2 billion in duties owed to the U.S. government.⁹⁵

Evaluating Transshipment and Circumvention Based on Trade Data

As documented by a number of scholars, third countries that increased their exports to the United States since 2017 frequently increased imports from China of the exact same product codes they were shipping to the United States, suggesting that finished goods were merely being rerouted through other economies.⁹⁶ However, the correlation between third countries’ imports from China and exports to the United States may also reflect legitimate trade. Rules of origin can be complicated and very product-specific. Even when a product imported from China is exported without a change in its tariff classification, a domestic manufacturer can significantly transform the good in a way that meets U.S. criteria for country of origin. Further, the apparent flow of Chinese products through these markets may instead reflect imports for final demand by these countries. Since producers in other economies may struggle to match the cost efficiency of Chinese production, these economies may purchase low-cost goods from China for domestic consumption as well as engage in some level of additional processing for re-export to the United States. For instance, after the United States placed an AD/CVD on Chinese solar panels in the early 2010s, Chinese solar companies sought out other markets for their subsidized production, causing shipments of solar products that were previously bound for the United States to shift to countries such as Malaysia.⁹⁷ Many of these Chinese imports were used for solar installation

*AD/CVD circumvention as defined in the Tariff Act of 1930 also covers making minor alterations in the original country so that the product falls outside the coverage of the AD/CVD order while still retaining the same general characteristics. Tariff Act of 1930 § 1677j, Pub. L. 71-361, codified at 19 U.S. Code § 1677j, 1994.

Evaluating Transshipment and Circumvention Based on Trade Data—*Continued*

in Malaysia.⁹⁸ Meanwhile, Malaysia's domestic solar industry expanded rapidly, fueled by investments from Chinese and South Korean solar producers.⁹⁹ Since they could not compete domestically on cost with unfairly traded Chinese imports, this production was exported.¹⁰⁰ Some Malaysia-based production involved minimal additional processing of imported Chinese components and was found by the Commerce Department to constitute evasion of U.S. trade remedy duties on Chinese imports.¹⁰¹ Some of the new production, however, involved substantial manufacturing in Malaysia and was not found by the Commerce Department to constitute circumvention.¹⁰² These facts demonstrate that transshipment and evasion activities can occur alongside legitimate trade flows.*¹⁰³

Transshipment and circumvention can create risks for the United States by obscuring an import's source country and factory, increasing the challenge of securing supply chains against regions known for hazardous or unethical sourcing and production practices. For instance, China is the world's largest importer of timber that is at high risk of having been cut through illegal logging, the import of which is banned in the United States.¹⁰⁴ Since 2017, an accelerating volume of wooden furniture appeared to flow from China into Vietnam for export to the United States, raising the risk that unethically or illegally sourced timber enters the domestic market.¹⁰⁵ More fundamentally, Chinese exporters that are willing to transship products illegally are also less likely to adhere to U.S. safety and quality standards, as exemplified by the "honey laundering" practice of Chinese honey producers. Since the United States placed antidumping duties on Chinese honey in 2001, Chinese producers used transshipment schemes involving Thailand, Malaysia, the Philippines, Russia, and other countries to continue accessing the U.S. market, some of which involved adulterating the honey to obscure its origin, affecting the quality and safety of the honey.¹⁰⁶ Due to these ongoing tactics, in 2020 CBP released a strategy for testing honey imports to verify the country of origin and detect adulteration.¹⁰⁷

Chinese State Support for Overseas Manufacturing Likely Perpetuates Economic Distortions

Chinese companies, particularly those that benefit from state support, are seeking to avoid tariffs by moving production overseas. Previously, when the United States used AD/CVD orders to address non-market support in certain Chinese sectors, some Chinese com-

*On August 18, 2023, the Commerce Department issued its final determination on circumvention of AD/CVD orders on solar cells and modules from China. It concluded that five firms located in Cambodia, Thailand, and Vietnam were re-exporting Chinese solar products to evade U.S. duties. It investigated two companies operating in Malaysia—South Korea's Hanwha Q Cells and China's Jinko Solar—but determined that these companies were not circumventing the orders. The department also placed a country-wide circumvention finding on all four economies, meaning that all exporters in these markets must certify that they are not circumventing the AD/CVD orders before they are allowed to import the product under the most-favored-nation tariff. U.S. Department of Commerce, *Final Determination of Circumvention Inquiries of Solar Cells and Modules from China*, August 18, 2023.

panies responded by setting up factories overseas to continue exporting to the United States. Despite being located outside of China, many of these manufacturers continued to benefit from Chinese government support and sell goods at less than market value. Ms. Drake notes multiple examples where Chinese companies increased outbound investment after the United States reached an affirmative finding in investigations and applied duties.¹⁰⁸ Chinese tire manufacturers that were impacted by U.S. AD/CVD orders on passenger vehicle and light truck tires (issued in 2015) and truck and bus tires (issued in 2019) subsequently set up plants in Thailand, Vietnam, and Taiwan.¹⁰⁹ Exports from these economies have since surged. Between 2020 and 2022, U.S. imports of truck and bus tires from Thailand more than doubled from 4.7 million units to 10.2 million units.¹¹⁰ Three Chinese companies have opened factories in Thailand since 2017, helping drive the surge in exports.*¹¹¹ Following a petition from the United Steelworkers, the Commerce Department initiated an antidumping investigation into imports of these tires from Thailand in November 2023, and in October 2024 it found that Thailand-based tire manufacturers were dumping their products in the United States.¹¹² Since 2017, similar patterns have emerged or accelerated in other sectors subject to U.S. AD/CVD orders, including China's quartz producers and its steel industry.¹¹³

Such producers may benefit from Chinese policies to push manufacturing capacity overseas. Though the true level of non-market support to overseas production platforms is difficult to quantify, the Commerce Department as well as multiple analysts assess that their scale is growing.¹¹⁴ The Party-state has long supported Chinese companies with surplus industrial capacity to set up facilities overseas. (For more on the role of Chinese producers in U.S. imports from Vietnam and other third countries, see Chapter 1, "U.S.-China Economic and Trade Relations (Year in Review).") At the 2014 China-ASEAN Summit, then Premier Li Keqiang stated that China encourages "competitive Chinese producers of iron and steel, cement and plate, etc. to shift their operation to ASEAN countries to meet the local need of infrastructure development through investment, leasing, and loan lending so as to achieve mutual benefit."¹¹⁵ China's Belt and Road Initiative widened financing channels to support foreign direct investment (FDI) in member countries, and many of the projects financed by China's policy banks, including China Exim Bank and China Development Bank, involved overseas production facilities in steel, textiles, metals, and other areas where China has domestic surplus capacity.¹¹⁶ Though these policies are not specific to companies subject to antidumping or antisubsidy measures, some companies have taken advantage of China's "Going Out" policy[†] and the Belt and Road Initiative explicitly to avoid such duties. For in-

*In its AD/CVD investigation of truck and bus tires from China, the Commerce Department found that one of these companies, Double Coin Holding, benefited from state subsidies. In 2017, the Commerce Department assessed a 38.6 percent subsidy rate on Double Coin in addition to an economy-wide 22.6 percent dumping rate. Meanwhile, Double Coin invested \$285 million to set up a factory in Thailand, which began producing tires for the U.S. market in 2018. *Tire Business*, "Double Coin Shipping to U.S. from New Thai Factory," April 12, 2018; U.S. International Trade Administration, *Commerce Finds Dumping and Subsidization of Imports of Truck and Bus Tires from the People's Republic of China*, January 23, 2017.

†After 1999, China promulgated the "Going Out" strategy to accelerate overseas investment by Chinese companies. Subsequent implementing regulations simplified the approval process and relaxed requirements for overseas investment projects. Nargiza Salidjanova, "Going Out:

stance, China National Building Material, which produces glass fibers among other industrial materials, established subsidiaries in 2012 in Egypt for the explicit purpose of avoiding trade remedies imposed by the EU that began in 2011.¹¹⁷ An executive of one of the subsidiaries, Jushi, stated, “If you export fiberglass to Europe from China, you have to pay antidumping and antisubsidy duties of 24.8 percent, not to mention the tariff. There is no tariff if you export to Europe or the Middle East from Egypt, nor any antidumping and antisubsidy duties.”¹¹⁸ The European Commission subsequently initiated an antisubsidy investigation into Jushi’s Egypt production over support provided by China. In 2020, the EU imposed countervailing duties on certain glass fiber products from Egypt (see text-box below).¹¹⁹

EU Antisubsidy Investigations Document How Chinese State Support Is Funneled through Overseas Special Economic Zones

The EU has applied its antisubsidy and antidumping laws in novel ways to respond to Chinese subsidies to overseas subsidiaries. The European Commission’s investigation into state support for Egypt-based subsidiaries of Chinese companies in the fiberglass industry concluded in 2020, resulting in AD/CVD orders targeting exports from entities based in both Egypt and China.¹²⁰ The investigation found that the Chinese-owned entities received support from the Chinese government through a special economic zone set up jointly by the two governments called the China-Egypt Suez Economic and Trade Cooperation Zone.¹²¹ The commission concluded that the companies in the zone benefited from various forms of state support, including preferential loans from Chinese banks, loans and capital injections from the state-owned parent companies, and direct subsidies from the Egyptian government.¹²² While the details of the financing arrangements were not fully disclosed by the parties involved,* Chinese state support clearly assisted the development of Chinese industrial champions in Egypt.¹²³ Notably, the European Commission attributed Chinese state support to the Egyptian government, using a legal workaround in order to apply EU antisubsidy laws to the case. The treatment of transnational subsidies remains a contested issue under the WTO Agreement on Subsidies and Countervailing Measures, with differing interpretations on whether the subsidy recipient must be located in the same territory as the government or public body providing the aid.†¹²⁴ Instead of

An Overview of China’s Outward Foreign Direct Investment,” *U.S.-China Economic and Security Review Commission*, March 30, 2011, 5.

* For example, as the banks involved did not provide their credit risk assessments for the financing in question, the commission instead compared the interest rates to market indicators, reaching the conclusion that the interest rates offered were below market rates. European Commission, *Commission Implementing Regulation (EU) 2020/776 of 12 June 2020 Imposing Definitive Countervailing Duties on Imports of Certain Woven and/or Stitched Glass Fibre Fabrics Originating in the People’s Republic of China and Egypt and Amending Commission Implementing Regulation (EU) 2020/492 Imposing Definitive Anti-Dumping Duties on Imports of Certain Woven and/or Stitched Glass Fibre Fabrics Originating in the People’s Republic of China and Egypt*, *EUR-Lex*, June 15, 2020, 104–108.

† Separate from the transnational subsidy issue, the United States alleges that prior rulings at the WTO hamper efforts to punish China’s unfair trade practices. As a result of another U.S.-China dispute in 2008, the WTO determined that Chinese state-owned enterprises and Chi-

EU Antisubsidy Investigations Document How Chinese State Support Is Funneled through Overseas Special Economic Zones—Continued

ruling on the matter, the European Commission determined that Egypt had actively sought and cooperated with China to invite the financial support to the special economic zone, which enabled the commission to make a ruling under its existing antisubsidy statutes.¹²⁵

In 2022, the European Commission applied a similar reasoning to impose countervailing duties on steel producers in Indonesia that benefited from Chinese support.*¹²⁶ At Indonesia's request, the WTO established a dispute settlement panel in May 2023 to examine whether the EU acted inconsistently with the Agreement on Subsidies and Countervailing Measures when it attributed Chinese financial contributions to the Indonesian government.†¹²⁷

Before 2024, the United States did not treat cross-border support to Chinese production facilities located in third countries as countervailable subsidies.¹²⁸ Prior to a policy revision issued in March 2024, the Commerce Department's regulations precluded the agency from countervailing cross-border support for production.‡¹²⁹ Consequently, it has only ever assessed support provided by the host government to domestic enterprises in previous countervailing duty investigations.¹³⁰ Additionally, the "non-market economy" methodology for the Commerce Department's antidumping investigations prevented the government from examining cases where a producer in a market economy, such as India, benefited from equipment and raw material imported from China at below-market prices.¹³¹ In March 2024, the Commerce Department updated its methodology

nese state commercial banks would not be considered "public bodies." The WTO opined that the United States was imposing excess AD/CVDs because it was too broad in its interpretation of "public body" and, consequently, its assessment of China's state subsidies. "The mere fact that a government is the majority shareholder of an entity does not demonstrate that the government exercises meaningful control over the conduct of that entity, much less that the government has bestowed it with governmental authority." World Trade Organization, "United States—Definitive Anti-Dumping and Countervailing Duties on Certain Products from China: Appellate Body Report." 2011, 123, 130.

*The support was linked to the Indonesian Morowali Industrial Park, which is focused on building a stainless steel industry. China cooperated with Indonesia to build the industrial park. European Commission, *Commission Implementing Regulation (EU) 2022/433 of 15 March 2022 Imposing Definitive Countervailing Duties on Imports of Stainless Steel Cold-Rolled Flat Products Originating in India and Indonesia and Amending Implementing Regulation (EU) 2021/2012 Imposing a Definitive Anti-Dumping Duty and Definitively Collecting the Provisional Duty Imposed on Imports of Stainless Steel Cold-Rolled Flat Products Originating in India and Indonesia*, March 15, 2022, 105–106.

†The European Commission also investigated ongoing circumvention activities, and in May 2024 it imposed duties on Taiwan, Turkey, and Vietnam after it found that steel from Indonesia was being shipped through these countries to the EU with minimal additional processing. European Commission, *Commission Fights Circumvention of Tariffs on Imports of Cold-Rolled Stainless Steel*, May 7, 2024.

‡When the Commerce Department self-imposed this rule on its AD/CVD proceedings, it believed a government "would not normally be motivated to promote, at what would be considerable cost to its own taxpayers, manufacturing or higher employment in foreign countries." However, the Commerce Department now judges that such cases have become more prevalent, citing China's support for overseas special economic zones as an example. U.S. Department of Commerce, "Regulations Improving and Strengthening the Enforcement of Trade Remedies Through the Administration of the Antidumping and Countervailing Duty Laws," *Federal Register* 89:58 (March 25, 2024): 20827.

for AD/CVD investigations, removing the restriction on investigating transnational subsidies and clarifying when it can determine a “particular market situation” exists, enabling it to take distorted costs and inputs in cross-border trade into account in antidumping proceedings.¹³² In May 2024, pursuant to an industry petition, the Commerce Department launched AD/CVD investigations into solar cells and modules produced in Cambodia, Malaysia, Thailand, and Vietnam to assess potential unfair trade practices, including alleged instances of transnational subsidies provided by Chinese policy banks.*¹³³

Consumer Safety Enforcement inside China’s Domestic Market

In the past 15 years, China has significantly strengthened and expanded its domestic consumer product safety regulatory regime following a deadly food safety scandal. In 2008, an estimated 300,000 infants and young children across China fell ill and six babies died after consuming milk powder containing melamine, an industrial chemical used in plastics and fertilizer.¹³⁴ The melamine was intentionally added to the powder by the producer in order to fool tests that measure protein content.¹³⁵ Following the events of the scandal, in 2009 the Standing Committee of the National People’s Congress repealed the country’s 1995 Food Hygiene Law and replaced it with the significantly expanded Food Safety Law.¹³⁶ This revised regulation contained 104 articles, created the country’s Food Safety Commission, and established a national food recall system, among other acts.¹³⁷ The Chinese government has amended and expanded the Food Safety Law several times, including in 2015 and most recently in 2023.¹³⁸ Alongside revising food safety for domestic production, the Chinese government significantly expanded regulations for cosmetics and medical devices as well.¹³⁹ The government also implemented a significant bureaucratic reorganization to consolidate and streamline market regulation. In 2018, the government created the State Administration for Market Regulation (SAMR), which consolidated the function of several previously independent agencies responsible for regulating a range of products, including food, drugs, toys, and consumer goods.¹⁴⁰ SAMR has a broad mandate, replacing the China Food and Drug Administration to regulate drug safety supervision and overseeing production permits for industrial products, product quality inspections, the reporting system for product quality and product recalls, and anti-counterfeiting efforts.¹⁴¹

Despite this bureaucratic reorganization and wide-ranging regulatory expansion, the Chinese government remains unable to effectively regulate consumer and food products, creating risks for

*The Commerce Department issued a preliminary affirmative determination in October 2024, and it set countervailing duty rates on solar products from these four countries. The agency also calculated preliminary countervailing duty rates for companies that benefited from policy lending from Chinese banks under the Belt and Road Initiative under an application of “facts available” for non-cooperative respondents. However, it also preliminarily assessed that none of the respondents that complied with the investigation benefited from these Chinese programs. U.S. Department of Commerce, *Preliminary Affirmative Determinations in the Countervailing Duty Investigations of Crystalline Photovoltaic Cells Whether or Not Assembled into Modules from Cambodia, Malaysia, Thailand and Vietnam*, October 1, 2024; U.S. Department of Commerce, International Trade Administration, *Decision Memorandum for the Preliminary Affirmative Determination in the Countervailing Duty Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from Malaysia*, September 30, 2024, 46.

Chinese and U.S. consumers. A 2018 study conducted by researchers from Tsinghua University and University of Cambridge found that 12 percent of toys purchased from Taobao—an e-commerce website owned by Alibaba that operates almost exclusively in China—contained lead levels exceeding China’s regulatory standard for paints in toy manufacturing.¹⁴² When compared against U.S. lead standards, the percentage of offensive toys increased to nearly 36 percent.¹⁴³ In July 2024, Chinese state media reported that shipping companies were using the same tanker trucks to carry cooking oil and toxic liquids without cleaning the trucks in between, leading to an investigation by Chinese authorities.¹⁴⁴ In addition to exposing Chinese consumers to health and safety risks, the Chinese government’s inability to set and uniformly enforce product safety regulations has led to policy inconsistency, which harms Chinese and international firms operating in China alike. In a 2024 white paper, the American Chamber of Commerce in China (AmCham China) noted that the requirements facing U.S. cosmetic companies to register and file a review for foreign-made cosmetic products are “not sufficiently transparent, with inconsistent standards of review, and sometimes unclear conclusions, affecting the registration process of cosmetics” while creating inefficiencies and raising costs.¹⁴⁵

Instead of improving product safety, the Chinese government has at times leveraged it to undercut foreign firms operating in China while punishing foreign governments for undesirable policies. In June 2021, China’s General Administration of Customs (GAC) released a list of “quality and safety unqualified” products from 16 companies, including H&M, Nike, and Zara.¹⁴⁶ The GAC’s announcement was part of a broader campaign by the Chinese government targeting U.S. and other foreign firms in retaliation for their statements against forced labor in China’s western province of Xinjiang as well as actions taken by their home governments. Six months before the Customs Administration announcement, in January 2021, CBP began banning cotton and tomato products from Xinjiang pursuant to an order by the Trump Administration.¹⁴⁷ By March 2021, Britain, Canada, and the EU had all joined the United States in imposing sanctions on China for its abuses in the region.¹⁴⁸ In retaliation, the Chinese government took a series of actions meant to decrease the availability and profitability of major U.S., European, and Japanese clothing brands sold in the Chinese market. Chinese state media fomented an ostensibly grassroots call for a boycott of H&M, resurfacing a statement the company made the prior year confirming that it had stopped sourcing Xinjiang cotton due to forced labor concerns.¹⁴⁹ H&M’s products were then removed from Chinese e-commerce websites, and the addresses for its approximately 500 stores in China were removed from the ride-hailing app Didi Chuxing.¹⁵⁰ Apps associated with Nike and Adidas were pulled, and Chinese celebrities exited endorsement deals with these and other foreign companies.¹⁵¹ The accusations by China’s customs agency of unsafe products further galvanized Chinese consumers, who switched away from foreign brands in favor of domestic producers, resulting in U.S. firms like Nike losing market share to Chinese competitors like Anta Sports and Li Ning.¹⁵²

U.S. Import Regulations and Consumer Goods from China

Trends in Health and Safety in China-Based Manufacturing

China is a primary source of consumer product imports for the United States, with e-commerce becoming an increasingly important pathway for U.S. consumers to purchase goods from China. Since 2000, the proportion of U.S. consumers shopping online increased from 22 percent to 79 percent.¹⁵³ At the same time, the number of China-based sellers on U.S. e-commerce sites as well as the number of U.S. users shopping on Chinese e-commerce websites has increased substantially. In December 2023, almost 49 percent of Amazon's top third-party sellers were based in China, up from 18 percent in January 2017.¹⁵⁴ Similarly, in 2022 nearly half of all new third-party sellers on Walmart.com were based in China.¹⁵⁵ In parallel, Chinese e-commerce platforms Shein and Temu have experienced a recent boom in popularity among U.S. users. Between September 2022 and October 2023, the number of monthly active U.S. users on Shein almost doubled from 27 million to 51 million, while the number of Temu users increased from just 1.5 million to over 133 million during the same period.¹⁵⁶ The business models of these e-commerce platforms often facilitate the direct shipment of consumer goods from China-based manufacturers to U.S. consumers.

The safety and quality of imported consumer goods from China has historically been a concern for the United States, with product issues reaching a peak in 2007. Dubbed the "Year of the Recall" by *Consumer Reports*, in 2007 millions of units of Chinese-made products were recalled for serious health and safety violations, including one million cribs presenting strangulation risks, 175 million pieces of children's jewelry made with hazardous levels of lead, and 175,000 Curious George plush dolls contaminated with lead, among other products.*¹⁵⁷ While these recalls affected a variety of goods, children faced a disproportionately high risk; of the 448 recalls issued by the Consumer Product Safety Commission (CPSC) in 2007, 52 percent were for children's products.†¹⁵⁸ Unfortunately, the consequences of using these unsafe goods were severe in many cases. In a 2007 recall notice for drop-side cribs, CPSC stated it was aware of at least two infant deaths associated with the crib and noted that a third was under investigation.¹⁵⁹ By 2010, the number of recalled drop-side cribs had increased to over nine million, and the number of reported deaths rose to over 30 in the United States alone.¹⁶⁰ Flaws existed in both the design and materials of the cribs, manufacturing of which had been outsourced to China; drop-side cribs could be installed incorrectly by parents, and plastic materials that were less sturdy than traditional wood and metal cribs could

*Product recalls were not limited to consumer goods and also included food products regulated by the Food and Drug Administration (FDA), including five types of farmed fish and seafood containing traces of antifungals and antibiotics. Kayla Webley, "List of Problem Chinese Imports Grows," *NPR*, July 10, 200.

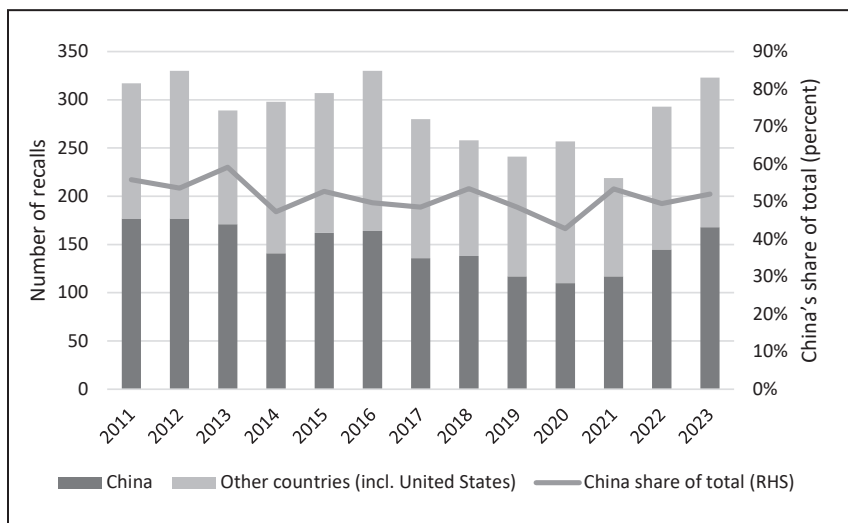
†In 2005 and 2006, CPSC issued 321 and 320 recalls, respectively. In 2007, the number of recalls increased 40 percent to 448. Kids in Danger, "2007: The Year of the Recall: An Examination of Children's Product Recalls in 2007 and the Implications for Child Safety," February 2008, 1; U.S. Consumer Product Safety Commission, "Recalls [2005–2007]."

fail and break.*¹⁶¹ Risks of unsafe Chinese-made products were not just limited to human consumers. In 2007, pet food made with melamine-tainted wheat gluten supplied by Chinese manufacturers was linked to the death of as many as 8,500 pet cats and dogs.¹⁶²

A significant legislative overhaul in consumer product safety regulations increased CPSC capacity and authority and preceded a steady decrease in CPSC-issued recalls up to 2021. In 2008, Congress passed the Consumer Product Safety Improvement Act (CPSIA) both as a response to the series of high-profile recalls made the year prior and as the culmination of grassroots efforts to improve product safety, particularly in goods made for children.¹⁶³ CPSIA provided CPSC with an expanded set of regulatory and enforcement tools and included provisions addressing myriad issues like lead, phthalates, toy safety, third-party testing and certification, and civil and criminal penalties, among others.¹⁶⁴ Critically, CPSIA created the first comprehensive and publicly available consumer incident database, which allows the public to report product hazards they have experienced and research others' reports of harm.¹⁶⁵

CPSIA led to some progress in product safety, but issues persist, particularly for Chinese-made goods. After CPSIA passed, product recalls trended down through 2021.¹⁶⁶ Since 2021, however, the number of recalls has jumped. Between 2021 and 2023, the number of recalls issued by CPSC increased 47 percent, rising from 219 to 323.¹⁶⁷ The annual number of recalls for products made in China also increased by 44 percent over the same period, from 117 to 168.¹⁶⁸ For well over a decade, Chinese-made goods have been the source of roughly half of all recalls (see Figure 3).¹⁶⁹

Figure 3: Recalls Issued by CPSC, 2011–2023

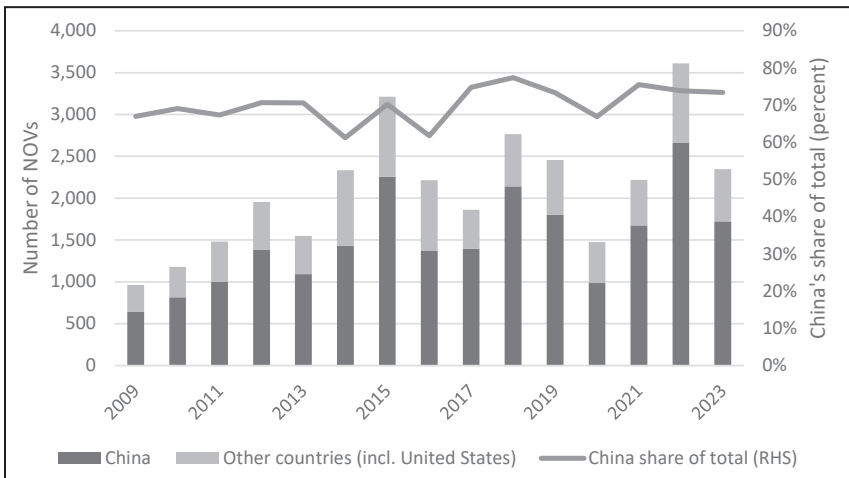


Source: U.S. Consumer Product Safety Commission, "Recalls—Manufactured In [2011–2023]."

*In 2010, CPSC voted to ban all drop side cribs from the U.S. market due to risks inherent in their design. U.S. Consumer Product Safety Commission, *CPSC Approves Strong New Crib Safety Standards to Ensure a Safe Sleep for Babies and Toddlers*, December 17, 2010.

In addition to recalls, CPSC has a variety of other tools to alert producers and the public of unsafe products, including notices of violation (NOVs). An NOV is an official determination by CPSC given to a company indicating when a mandatory product standard has been violated.¹⁷⁰ While recalls declined between 2009 and 2021, the number of NOVs trended up over that time frame, especially for products made in China (see Figure 4). In 2009, CPSC issued 963 NOVs in total, with 645 of those notices issued for products made in China.¹⁷¹ By 2023, total NOVs had risen to 2,347, while NOVs for Chinese products reached 1,724, accounting for roughly three-fourths of the total NOVs that year.¹⁷² Since 2009, Chinese-made goods have consistently accounted for between 60 and 80 percent of NOVs.¹⁷³

Figure 4: NOVs Issued by CPSC, 2009–2023



Source: U.S. Consumer Product Safety Commission, “Violations–LOA Date, Country [2009–2023],” April 23, 2024.

According to CPSC, in 2019 in the United States, consumer products (domestically produced and imported) were involved in 50,900 deaths and over 36 million injuries.¹⁷⁴ CPSC estimates that consumer product-related incidents cost the United States \$1 trillion each year, including deaths, injuries, and property damage.¹⁷⁵

These persistent and increasing concerns regarding the safety of consumer products from China are driven in part by rising e-commerce imports bought from third-party sellers. Although it is not possible to draw a causal relationship between the number of Chinese-made goods entering the United States and rising recall and NOV counts with the data presented, it should be noted that these trends have occurred against a backdrop of rising e-commerce shipments from China.¹⁷⁶ In a 2019 investigative report, the *Wall Street Journal* found 10,870 items for sale on Amazon that had been declared unsafe or banned by federal regulators were deceptively labeled, or lacked federally required warnings.*¹⁷⁷ Of the 1,934 sell-

*These products were listed between May and August of 2019. After Amazon was informed of the items, 83 percent of the over 10,000 items listed were taken down or altered as of August 23, 2019.

ers of these goods whose addresses could be determined, 54 percent were based in China.¹⁷⁸ The true number of China-based sellers could be higher, since Chinese producers may list a U.S. reshipping warehouse as their location, giving consumers the impression that a good is from a U.S. seller.¹⁷⁹ China-based sellers have been consistently linked to unsafe, hazardous, and low-quality products. For example, in April 2024, CPSC issued a recall for children’s multipurpose helmets imported by the Chinese company Fengwang Sports and sold exclusively on Temu.¹⁸⁰ The helmets “do not comply with the positional stability, dynamic strength of retention system, impact attenuation, and certification requirements in violation of the CPSC federal safety regulation” and can fail to protect riders in the event of a crash.¹⁸¹ In 2023, a similar recall was issued for helmets produced and sold by a Chinese company offered exclusively through Amazon.¹⁸²

Direct-to-consumer e-commerce platforms are also leading venues for Chinese counterfeit goods entering the United States, undermining U.S. companies’ efforts to provide high-quality and safe goods to consumers. According to data published by CBP, China and Hong Kong are the largest sources of counterfeits entering the United States, accounting for 83.6 percent of counterfeit seizures by value in FY 2023.*¹⁸³ Of the estimated \$2.76 billion in retail value of counterfeits seized by CBP in FY 2023, products from China and Hong Kong totaled \$1.82 billion and \$488 million, respectively.†¹⁸⁴ According to the Office of the U.S. Trade Representative’s *2023 Review of Notorious Markets for Counterfeiting and Piracy*, China is the number one source of counterfeit products in the world.¹⁸⁵ The review named multiple online platforms, including Temu’s Chinese domestic counterpart Pinduoduo and physical market locations in China.¹⁸⁶ Daniel Shapiro, senior vice president of brand relationships and strategic partnerships at brand protection provider Red Points, testified before the Commission that among e-commerce platforms, Chinese marketplaces that ship internationally are by far the largest source of counterfeits; just over 85 percent of all China-originated IPR infringements reported by Red Points came from Chinese e-commerce platforms like Alibaba, DHGate, JD.com, Temu, Shein, and AliExpress.¹⁸⁷ As of February 2024, Shein faced almost 100 cases of copyright infringement in the United States, while sellers on Temu have been accused of copying product photos, descriptions, and even entire Amazon storefronts alongside offering counterfeit products.¹⁸⁸ Counterfeits present significant economic harm to U.S. businesses, costing them over \$200 billion annually and resulting in the loss of more than 750,000 U.S. jobs.¹⁸⁹

Alexandra Berzon, Shane Shifflett, and Justin Scheck, “Amazon Has Ceded Control of Its Site. The Result: Thousands of Banned, Unsafe or Mislabeled Products,” *Wall Street Journal*, August 23, 2019.

*China is the largest source of counterfeits not only the for the United States but also globally. An Organisation for Economic Co-operation and Development study that compiled counterfeit seizure data across countries found that China and Hong Kong were the source for the vast majority of counterfeit imported products between 2017 and 2019. Organisation for Economic Co-operation and Development, European Union Intellectual Property Office, “Global Trade in Fakes: A Worrying Threat,” June 22, 2021.

† Commonly seized Chinese-made counterfeits include handbags and wallets, clothing and accessories, and watches and jewelry. Together, these three product categories account for 65 percent of all seized lines from China and Hong Kong and 81 percent of total seizure value from these producers. U.S. Customs and Border Protection, *Intellectual Property Rights*, January 19, 2024.

Due to the illicit nature of these goods, counterfeits can present heightened health and safety risks to U.S. consumers.¹⁹⁰ In a study published in 2022, 36 percent of counterfeit apparel items tested by the American Apparel & Footwear Association failed to comply with U.S. product safety standards.*¹⁹¹ Tested items were found to contain arsenic, lead, phthalates, and other toxic heavy metals known to damage kidneys, bones, respiratory systems, and neurological development.¹⁹² Similarly, in 2018, Chinese counterfeit cosmetics seized from vendors in Los Angeles and Houston were found to contain hazardous materials, including lead, arsenic, and human waste.¹⁹³ These dangerous counterfeit cosmetics were labeled as reputable U.S. brands, potentially misleading purchasers into believing they were receiving authentic and safe products.¹⁹⁴

Counterfeits pose a more acute challenge for technical components that may be hidden from U.S. consumers' view, such as auto parts. In March 2023, CBP seized nearly \$200,000 in counterfeit auto parts shipped from China, including features vital to safely operating airbag covers, front fenders, and bumpers.¹⁹⁵ Counterfeit materials have also been discovered in commercial jets. In one instance uncovered in 2023, the certificates verifying the origin of titanium used to manufacture airplane fuselages were found to have been forged by a supplier in China.¹⁹⁶ In total, CBP seized counterfeit automotive and aerospace products worth \$7.6 million in 2023, with \$5.2 million and \$2.2 million of this originating in China and Hong Kong, respectively.¹⁹⁷ The National Crime Prevention Council estimates that over 350,000 serious injuries and 70 deaths occur every year due to counterfeit products.¹⁹⁸

China is a prominent source of counterfeit medications, and U.S. households additionally face direct risks to their health from unsafe pharmaceuticals from China. In FY 2023, CBP seized \$86.6 million in counterfeit medications and personal care products that originated in China and Hong Kong, accounting for 47 percent of the total.¹⁹⁹ According to the Organisation for Economic Co-operation and Development (OECD), China is the world's second-largest source of fake pharmaceuticals ranging from antibiotics to cancer treatments.†²⁰⁰ China's growing position in the biopharmaceutical industry may enable Chinese counterfeiters to more easily replicate advanced drug discoveries, undercutting IP owners and posing health risks to U.S. households. (For more on China's position in biopharmaceutical supply chains, see Chapter 3, "U.S.-China Competition in Emerging Technologies.") For example, in December 2023, the U.S. Food and Drug Administration (FDA) warned of fake Ozempic, a diabetes drug used to treat obesity, entering the United States after seizing a shipment of counterfeit products.²⁰¹ Though the FDA has not announced the origin of the fake drugs, an investigative report by *Vanity Fair* identified a shipment of 10,000 units of fake Ozempic sent by air mail to the United States from China.²⁰²

*The American Apparel & Footwear Association tested 47 counterfeit items of clothing, footwear, and other accessories and found that 17 products failed safety standards. American Apparel & Footwear Association, "Fashion Industry Study Reveals Dangerous Chemicals, Heavy Metals in Counterfeit Products," March 23, 2022.

†India was the source of 53 percent of all seized counterfeit drugs by value worldwide, according to the OECD's dataset of global IPR seizures. Organisation for Economic Co-operation and Development, EU Intellectual Property Office, "Mapping the Scale of the Fake Pharmaceutical Challenge," in *Trade in Counterfeit Pharmaceutical Products*, March 23, 2020, 33

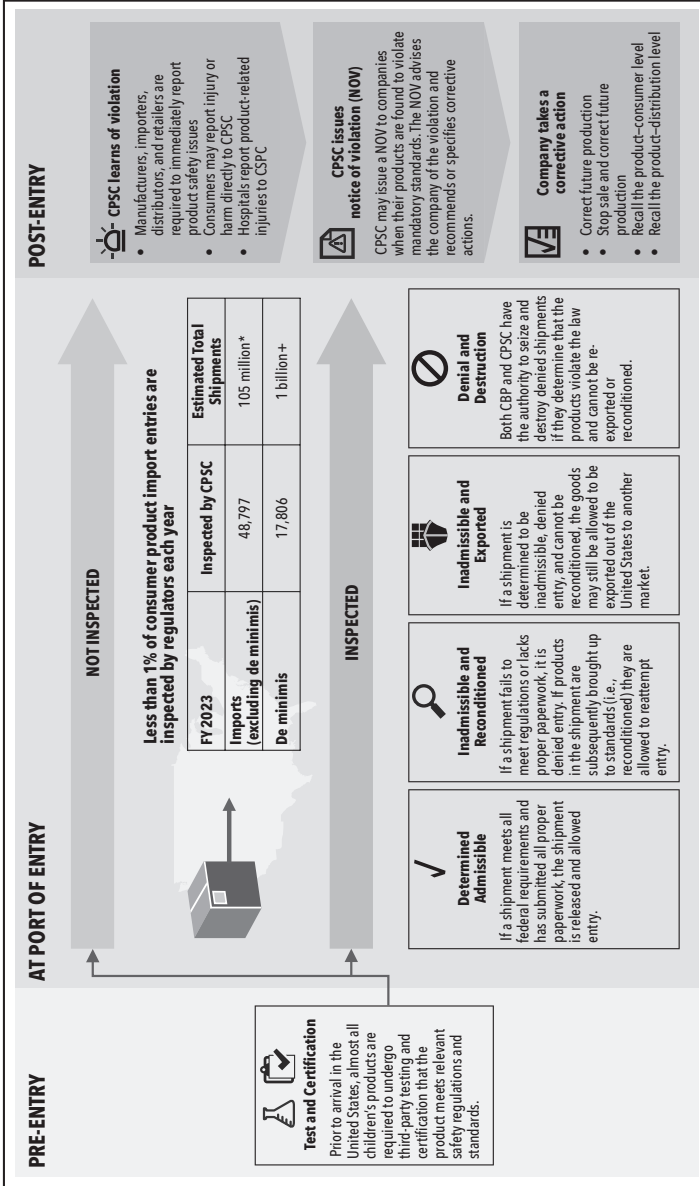
Challenges Encountered by U.S. Regulators with Imports from China

The Volume of Imports from China Burdens Regulators and Increases Consumer Risks

U.S. regulators are overwhelmed by the volume of imports from China and a lack of time and capacity required to properly inspect goods entering the United States. This allows large numbers of potentially unsafe or illicit goods to enter the U.S. market daily. In FY 2022, CBP processed \$3.35 trillion in imports, including more than 33.4 million imported cargo containers at U.S. ports, not including de minimis entries.²⁰³ According to CBP's annual *Trade and Travel Report* for FY 2022, a physical inspection of a cargo container takes 120 minutes on average, while a technology-aided nonintrusive inspection takes eight minutes.²⁰⁴ Challenges with inspection times are further compounded by a shortage of staff, particularly for consumer products. There are currently 328 ports of entry located throughout the United States.²⁰⁵ CPSC has 520 employees, including 120 investigators and compliance officers located at 23 ports with the highest volumes of consumer product imports as of March 2022.²⁰⁶ In testimony before the Commission, Jim Joholske, director of the Office of Import Compliance for CPSC, noted that the agency had "fewer than 50 investigators stationed at some of the largest ports in the country" and further assessed that "the sheer volume of imports from China remains overwhelming and difficult to monitor."²⁰⁷ Given its staffing and resource capacity, CPSC seeks to position its personnel to maximize the percentage of potentially unsafe products it screens, including by deploying additional resources to express courier facilities and international mail facilities.²⁰⁸ (For an overview of U.S. consumer product safety enforcement throughout the import process, see Figure 5.)

Chinese e-commerce platforms' ability to take advantage of the de minimis threshold also poses significant challenges to U.S. import regulators. According to the latest available data published by CBP, de minimis imports from China increased from 300 million packages in FY 2018 to nearly 450 million in FY 2021—equal to 58 percent of the United States' total de minimis imports that year.²⁰⁹ According to the U.S. International Trade Commission, 83 percent of total U.S. e-commerce imports benefited from this exclusion in FY 2022.²¹⁰ Limited staff resources across U.S. regulators and insufficient shipment data (see textbox below) mean the vast majority of these packages are not inspected for compliance with U.S. regulations. De minimis shipments often arrive in the United States via express couriers, consignment, and international mail.²¹¹ In the first three quarters of FY 2024, an average of nearly four million de minimis shipments arrived in the United States each day from all countries.²¹² According to CBP, in 2022, 80 percent of all IPR-related shipment seizures arriving from China entered the United States through international mail and express consignment, the same channels used for shipping small e-commerce packages directly to consumers.²¹³ In addition, research suggests e-commerce exporters are exploiting gaps in regulatory coverage for de minimis shipments to bypass inspections. In a 2019 report, CPSC stated that

Figure 5: Points of Inspection in Manufacturing and Import Cycle for Children’s Products



Source: Various.²¹⁴

* In 2023, the number of individual import line items to the United States was 105 million. This refers to the number of separate product lines entering the United States through normal customs channels. U.S. Census Bureau, *USA Trade Online*.

“some industry stakeholders indicated that due to the small size of their shipments, de minimis e-commerce sellers can disperse the risk of having their products interdicted by various border management agencies by sending multiple shipments to different ports.”²¹⁵

Limited Data on De Minimis Shipments and Ongoing Data Pilots

The United States collects only limited data on de minimis shipments,* posing challenges to identifying unsafe or illegal imports. Unlike shipments entering through normal customs channels, CBP does not require de minimis entries to declare the HTS code for the shipments’ contents, which is used for a variety of purposes, including assessing import duties and preparing U.S. trade statistics. Instead, these importers can provide a “specific” description of the product, but often these are vague, inaccurate, and difficult for regulators to process. CBP’s regulations also only require de minimis importers to provide information on the shipper, which is frequently the entity arranging the shipment rather than the manufacturer of the product.[†]²¹⁶

These data gaps compromise the enforcement of U.S. regulations and laws. For instance, the lack of HTS data inhibits CPSC from screening for products subject to high standards, like children’s products, and inadequate data on the manufacturer prevents targeting imports based on risk factors such as past violations. As Mr. Joholske testified, “Without the same data as we have on higher value shipments, CPSC cannot utilize its risk assessment methodology to know what should be targeted for inspection.”²¹⁷ These issues pose challenges to the enforcement of other laws, including the Uyghur Forced Labor Prevention Act.²¹⁸

To mitigate these issues, CBP has initiated data pilots to begin collecting additional information on de minimis imports, but participation in these programs remains voluntary. In July 2019, CBP launched its Section 321 Data Pilot, through which approved carriers, brokers, freight forwarders, and online marketplaces could submit additional data on de minimis shipments in advance to CBP, including data elements not traditionally collected like product images and URL links.²¹⁹ CBP has extended this pilot to run through August 2025.²²⁰ In August 2019, CBP began the Entry Type 86 test, which enabled de minimis importers to file entry releases electronically through the Automated Commercial Environment—CBP’s online trade processing portal.²²¹ Entry Type 86 is intended to provide CBP and other government agencies greater visibility into de minimis imports, asking filers to submit the shipment’s ten-digit HTS codes, among other expanded data elements. This test currently has no sunset date. In its September

*CBP’s regulations require the following data fields for a shipment to be released under de minimis: “(1) Country of origin of the merchandise; (2) Shipper name, address and country; (3) Ultimate consignee name and address; (4) Specific description of the merchandise; (5) Quantity; (6) Shipping weight; and (7) Value.” U.S. Customs and Border Protection, “Form of Entry,” 19 CFR 143.23(k).

†In contrast, importers that file for formal entries are required to provide a “Manufacturing ID,” which is a unique code for the manufacturer or entity initiating the shipment. Fariha Kamal, C.J. Krizan, and Ryan Monarch, “Identifying Foreign Suppliers in U.S. Merchandise Import Transactions,” *Federal Reserve International Finance Discussion Papers*, August 2015, 4–5.

Limited Data on De Minimis Shipments and Ongoing Data Pilots—*Continued*

13, 2024 announcement on its intent to propose rulemaking on the de minimis exemption, the Administration indicated it would require additional data elements on de minimis shipments, including HTS codes.²²² In FY 2023, CBP received filings on 785.7 million de minimis shipments through these two programs out of a total of over one billion de minimis entries.²²³

Evasion of Regulations and Fraudulent Certification

In most cases, a permit or advanced inspection is not needed to import goods into the United States; in the limited set of cases where advanced testing and certification is required, these efforts are subject to abuse and evasion by Chinese manufacturers.²²⁴ Federal law requires importers to verify some consumer products' compliance with safety regulations through testing, including all-terrain vehicles, mattresses, bicycle helmets, and almost all children's products.²²⁵ Producers of these regulated goods must provide documentation of successful testing to retailers, distributors, and—upon request—the government (for more on the approval process for third-party testing laboratories, see textbox below).²²⁶ However, only producers of children's products are required to use CPSC-approved third-party labs; other products can be tested in-house or by other qualified labs and test facilities that do not require CPSC accreditation.²²⁷

Products regulated by other agencies require testing as well. The U.S. Department of Transportation regulates the shipping of lithium-ion batteries, and New York City recently started requiring batteries to certify via labeling that they meet testing requirements.²²⁸ However, these certifications can be forged, resulting in significant consequences for U.S. consumers. A 2023 investigation by CBS New York found fake certification stickers for lithium-ion batteries for sale on a Chinese e-commerce marketplace following an e-bike fire in New York City.²²⁹ The New York City Fire Department stated that lithium-ion batteries had been linked to more than 200 fires and 17 deaths in New York City between January and November 2023.*²³⁰

Issues have arisen with other types of third-party testing as well. The FDA requires producers of medical devices to submit testing data on device performance, which is part of a safety review process that may also include mandatory onsite inspections by the FDA.²³¹ In February 2024, the FDA issued a reminder for medical device manufacturers to independently verify third-party-generated data after the agency “identified an increase in submissions containing unreliable data generated by third-party test labs, including from numerous such facilities based in China and India.”²³² The FDA encouraged manufacturers to contract testing to accredited labs under the Accreditation Scheme for Conformity Assessment program,

*The unnamed Chinese marketplace removed the counterfeit stickers after being notified by CBS New York. CBS New York Team, Walter Smith Randolph, and Tim McNicholas, “Online Marketplace Removes Fake UL Labels after CBS New York Investigation,” November 17, 2023.

which is not currently required when testing medical devices.²³³ The agency further noted, “When such data are submitted to the FDA, the agency is unable to rely on them to grant marketing authorization and it calls into question the data integrity of the entire file.”²³⁴

Third-Party Conformity Bodies

In the United States, third-party conformity assessment bodies must be accredited by a signatory member to the International Laboratory Accreditation Cooperation-Mutual Recognition Arrangement (ILAC-MRA), an international framework that aims to standardize testing standards and allow the cross-border recognition of labs accredited by a foreign accreditation body.*²³⁵ Third-party testers are also subject to periodic audits at least every two years.²³⁶ These audits consist of a reassessment of the lab’s management and technical requirements by the lab’s accreditation body and an examination of this documentation by CPSC.²³⁷ As of October 2024, 292 out of a total of 677 third-party testing laboratories approved by CPSC were located in China, and almost all were accredited by the China National Accreditation Service for Conformity Assessment.²³⁸ The majority of accepted Chinese testing labs are independently owned, but some are also partially owned by manufacturers, private labelers, or government entities.²³⁹

In some cases, U.S. regulators may conduct advanced inspections of foreign manufacturers to ensure quality production, but these efforts are sometimes undermined by a lack of capacity. While the FDA is required to conduct mandatory in-country inspections of overseas facilities for drugs, medical devices, biological materials, and food products, it announced in March 2020 that it would stop routine inspections of overseas and domestic producers because of the COVID-19 pandemic.²⁴⁰ Due to staffing shortages and exacerbated by a backlog in the wake of the pandemic, the agency has since struggled to resume regular inspections, leading to increased risks to U.S. consumers.²⁴¹ Following a series of deaths from bacteria-tainted eyedrops,† a ProPublica analysis of FDA data revealed that the agency inspected only 6 percent of the approximately 2,800 foreign manufacturing facilities where drugs and their ingredients were produced in 2022.‡²⁴² Even in cases where the FDA is able to inspect foreign manufacturers, there are significant questions

*To be accepted by CPSC, labs must be independently accredited to ISO/IEC 17025—General Requirements for the Competence of Testing and Calibration Laboratories by a member of the ILAC-MRA. Applicants must also detail the scope of tests related to children’s product safety that they intend to offer. The submission is then reviewed by CPSC upon initial acceptance and then audited at least every two years going forward. U.S. Consumer Product Safety Commission, *CPSC-Accepted Laboratories Frequently Asked Questions*; U.S. Consumer Product Safety Commission, *CPSC Form 223—Lab Accreditation*; U.S. Consumer Product Safety Commission, “Requirements Pertaining to Third Party Conformity Assessment Bodies,” *Federal Register* 77: 31084 (May 24, 2012).

†The eyedrops were produced by the India-based firm Global Pharma Healthcare. U.S. Food and Drug Administration, *Warning Letter: Global Pharma Healthcare Private Limited*, October 20, 2023.

‡By comparison, in 2019 the FDA inspected 37 percent of the approximately 2,500 overseas manufacturers. Irena Hwang, “After Pandemic Delays, FDA Still Struggling to Inspect Foreign Drug Manufacturers,” *ProPublica*, April 19, 2023.

regarding the reliability of the information gathered. In February 2024, the GAO released a report in which it concluded that the FDA faces continued issues in overseeing foreign drug manufacturers due to persistent staff vacancies, including in the FDA's China office.²⁴³ Of particular concern, the report noted that the FDA's practice of announcing visits up to 12 weeks in advance, as is typically required by foreign governments, and reliance on translators provided by the foreign establishment being inspected "can raise questions about the accuracy of information FDA investigators collect."²⁴⁴

Inefficient and Ineffective Recalls

If unsafe products are not stopped at the border, federal agencies can issue recalls to remove them from the market, but the recall process can be long, ineffective, and inefficient, particularly when dealing with China-based manufacturers. Most recalls are voluntary and issued as the result of negotiations between CPSC and the retailer or manufacturer.*²⁴⁵ CPSC cannot unilaterally recall a product without legal action.²⁴⁶ If a company does not agree to a voluntary recall, CPSC must pursue a mandatory recall through an administrative adjudicatory process or by filing a federal court action.²⁴⁷ However, since U.S. regulators cannot exercise jurisdiction over foreign firms to impose financial consequences, CPSC faces significant challenges in getting China-based and other foreign firms to comply with U.S. regulations.²⁴⁸ These firms can ignore communications from CPSC and refuse to participate in the voluntary recall process, forcing CPSC to either initiate legal proceedings or else to leave the product unrecalled.²⁴⁹ In testimony for the Commission, Mr. Joholske asserted that "CPSC has little ability to act against third-party sellers who are small manufacturers based overseas. Products including baby mattresses, lithium ion batteries, magnets, baby loungers, and more are left unrecalled because the manufacturer cannot be held responsible."²⁵⁰

In cases where firms do not cooperate, CPSC can issue a unilateral safety warning to alert the public of a product's risks.²⁵¹ The number of these warnings has increased in the past four years, largely in response to unsafe goods sold via e-commerce by Chinese and other foreign manufacturers.†²⁵² (For more on the role of e-commerce marketplaces in U.S. consumer product safety enforcement, see textbox below.) Alongside e-commerce shipments, the number of unilateral warnings issued by CPSC increased from three in 2020 to 38 in 2023.‡²⁵³ In remarks given at a seminar in 2024, CPSC Chair Alexander D. Hoehn-Saric stated, "Once a rare occurrence, these unilateral warnings are now an important part of our toolbox,

*The negotiation process between CPSC and a firm can be lengthy, taking between a few months and a few years. Teresa Murray, "Safe at Home 2024," *U.S. PIRG Education Fund*, March 2024, 6.

†CPSC cannot issue a recall for counterfeit products, since it does not regulate illegal goods. This inability to systematically remove unsafe counterfeits leaves large swaths of potentially dangerous and unregulated consumer goods from China on the market for use by U.S. consumers. Teresa Murray, written testimony for U.S.-China Economic and Security Review Commission, *Hearing on Consumer Products from China: Safety, Regulations, and Supply Chains*, March 1, 2024, 5; U.S. Customs and Border Protection, *IPR Seizures by Trading Partner*, February 10, 2024.

‡CPSC issued only two unilateral warnings in the nine-year period spanning 2011 to 2019. Matthew Cohen, "CPSC Enforcement Trend: Unilateral Press Releases," *Crowell*, October 13, 2022.

especially for products sold by foreign manufacturers on e-commerce websites.”²⁵⁴ These warnings primarily target goods made in China. According to data compiled by the U.S. Public Interest Research Group’s Education Fund, of the 38 warnings issued by CPSC in 2023, at least 20 of the products were manufactured in China.²⁵⁵ Most were sold via e-commerce platforms, with four products being sold on Temu exclusively.*²⁵⁶ As an example, CPSC issued a public warning to stop using baby loungers sold on several e-commerce websites by the Chinese seller Poetint002 due to suffocation risk, fall hazard, and failure to comply with federal regulations for infant sleep products.²⁵⁷ Although CPSC notified Poetint002 that its product violated the law, “the firm has not agreed to recall these loungers or offer a remedy to consumers.”²⁵⁸ Thousands of visually similar baby lounger products are still available on e-commerce platforms from other sellers.

In cases where companies comply with CPSC requests and an agreement for a voluntary recall is reached, low recall correction rates stymie efforts to remove unsafe products from the market. Examination of monthly progress reports on the status of recalled items suggests that in most cases, recalls have little success in removing unsafe goods from the U.S. market regardless of where the product was manufactured. Among the 27 product recalls issued before August 1, 2022, that CPSC has provided data on, 19 of the products had a correction rate of below 50 percent.²⁵⁹ Among products recalled after August 1, 2022, with data available, only 27 out of the 162 recalled products had a correction rate of 50 percent or greater.²⁶⁰

Even if a recall is issued and is initially successful, many recalled products continue to enter and circulate within the United States via online retail sales, often involving Chinese producers. In 2007, the Federal Government banned the sale of flat pool drain covers due to numerous drowning and evisceration deaths that were caused when people—primarily young children—became suctioned to the drain at the bottom of a pool.†²⁶¹ Despite this ban, Chinese sellers continue to offer flat pool drain covers directly to U.S. consumers through online marketplaces.²⁶² Since September 2022, CPSC issued seven recalls on nearly identical drain covers that were in violation of the federal safety standard.²⁶³ By the time the violations were detected, about 7,300 drains had been sold.²⁶⁴ In all seven instances, the drains were made in China and were being sold by Chinese companies directly to U.S. consumers through Amazon.²⁶⁵ These recent recalls do not appear to have solved the issue. Using an image of the drain cover from one CPSC recall alert in Google’s image search produced a listing for an identical-looking drain for sale on Amazon

*Six warnings were for products sold exclusively on Amazon and one was for a product sold exclusively on Walmart.com. Teresa Murray, “The CPSC’s Public Warnings for 2023 and by Year, 2020–2023,” in *Safe at Home in 2024*, U.S. PIRG Education Fund, March 2024, 26.

†In a 2019 report, CPSC stated that the agency was aware of 11 instances of circulation entrapments associated with pools, spas, and whirlpool bathtubs between 2014 and 2018. Of those 11 instances, two resulted in death. Although sobering, these statistics are lower than earlier figures. From 1999 to 2008, CPSC reported 83 instances, with 11 reported deaths. U.S. Consumer Product Safety Commission, *2014–2018 Reported Circulation/Suction Entrapment Incidents Associated with Pools, Spas, and Whirlpool Bathtubs*, 2019 Report, May 2019; U.S. Consumer Product Safety Commission, *1999–2008 Reported Circulation/Suction Entrapment Incidents Associated with Pools, Spas, and Whirlpool Bathtubs*, 2009 Memorandum, May 14, 2009.

between April and June 2024.*²⁶⁶ Although not listed on the U.S. version of the site, information provided by Amazon Mexico's webpage indicates the drain was made in China and sold by a Chinese vendor.²⁶⁷

E-Commerce Marketplaces' Role in Product Safety

As commerce has shifted online, CPSC faces new challenges in upholding product safety rules. Traditionally, physical stores have played a key role as sellers in ensuring the safety of consumer products. Manufacturers, distributors, and retailers may face civil liability[†] and regulatory consequences for harms caused to consumers as part of the consumer product supply chain.²⁶⁸ CPSC develops standards for firms involved in the supply chain for consumer products, including retailers in physical stores, and has the power to ban unsafe products.²⁶⁹ Retailers are expected to obtain and review certificates of compliance as mandated by CPSC from manufacturers and importers.²⁷⁰ Retailers must report harmful products to CPSC immediately, ensure the products are no longer sold in their stores, and, in some cases, notify affected customers.²⁷¹ Regulators have the legal right to enter and inspect the premises of a seller of consumer goods, which gives them a way to monitor and enforce these regulations.²⁷² The same laws that apply to brick-and-mortar stores also apply to retailers, distributors, and manufacturers of products sold online.²⁷³ However, e-commerce marketplaces have traditionally argued that they do not qualify as "retailers" or "distributors" under applicable law and instead cite the fact that they only facilitate purchases between third-party sellers and buyers without taking legal ownership of the product at any point.[‡]²⁷⁴

E-commerce marketplaces may be incentivized to provide additional consumer protections as a way to compete with other platforms.²⁷⁵ Select e-commerce marketplaces have policies in place to remove recalled products from their websites.²⁷⁶ Critics ques-

*Commission staff reported this listing to Amazon three times for a potential violation of U.S. safety standards, most recently on June 11, 2024. The listing had been removed by August 2024. On October 3, 2024, CPSC issued an NOV to the seller, but the firm has not agreed to conduct a recall. For a comparison of the drain sold online and the recalled product, see Appendix III, "Comparison of Drain Cover for Sale on Amazon as of June 11, 2024, and Recalled Drain Cover Linked to Evisceration and Drowning Deaths." U.S. Consumer Product Safety Commission, *CPSC Warns Consumers to Immediately Stop Using Maxmartt Pool Drain Covers Due to Entrapment Hazard; Violations of the Virginia Graeme Baker Pool and Spa Safety Act; Sold on Amazon.com*, October 3, 2024; Amazon, "Maxmartt Pool Floor Main Drain 2 Inch White Main Drain Water Inlet Draining Accessory Vinyl Pool Main Drain Liner for Swimming Pool," June 11, 2024. <https://web.archive.org/web/20240611144909/https://www.amazon.com/Maxmartt-White-Swimming-Draining-Accessory/dp/B083728PP2>.

[†]Civil liability has played an outsized role in holding firms accountable because consumers harmed by unsafe products can sue them to recover damages. In May 1997, the non-binding but influential Restatement (Third) of Product Liability Law stated the typical legal approach that a person injured by a defective product may sue the manufacturer and members of the chain of distribution. The degree to which retailers are civilly liable, and the legal standard required to prove harm, differ by state. Becca Trate, "From Cart to Claim: Addressing Product Liability in Online Marketplaces," *Information Technology and Innovation Foundation*, June 24, 2024, 3–4; American Law Institute, "Restatement of the Law Third, Torts: Products Liability," 1998.

[‡]Under the Consumer Product Safety Act, the term "distributor" means "a person to whom a consumer product is delivered or sold for purposes of distribution in commerce, except that such term does not include a manufacturer or retailer of such product." The term "third-party logistics provider" means a person who solely receives, holds, or otherwise transports a consumer product in the ordinary course of business but who does not take title to the product. U.S. Consumer Product Safety Commission, *Product Safety and Compliance: Best Practices for Buyers Exporting Consumer Goods to the United States*, September 2021.

E-Commerce Marketplaces' Role in Product Safety— *Continued*

tion these policies, however, pointing to numerous instances of recalled products available for purchase on e-commerce marketplaces.²⁷⁷ E-commerce marketplaces may enforce additional standards, like requiring sellers of children's products in the United States to upload certificates of compliance.²⁷⁸ While individual sellers have been liable for products sold on marketplaces, liability for the marketplaces themselves in transactions involving separate sellers has generally been limited.²⁷⁹ The high volume of sellers with almost identical products, combined with the fact that many are overseas beyond the reach of U.S. law enforcement, makes the rules far more difficult to administer.

In July 2024, CPSC determined that Amazon was acting as a distributor for products sold under the Fulfillment by Amazon (FBA) program.²⁸⁰ Such a determination would make Amazon responsible for the safety of a large portion of goods sold on the platform by giving CPSC the ability to force Amazon to recall or ban unsafe products.²⁸¹ Under the FBA program, Amazon is responsible for hosting the product listing on its site, handling payment, warehousing, packaging and shipping, returns, and customer service.²⁸² CPSC initiated the complaint against Amazon in 2021 for failing to provide adequate notification and support to customers after it facilitated the sale through FBA of over 400,000 units of "hazardous" products, including "children's sleepwear that fail to meet flammability requirements, carbon monoxide detectors that fail to alarm, and hair dryers that lack electrocution protection."²⁸³ Amazon argued that it was merely acting as a "third-party logistics provider," which would have shielded it from liability.²⁸⁴ The CPSC ruling reasoned that even though Amazon was not the legal owner of the goods, the role Amazon played in facilitating the purchase went above and beyond that of a logistics provider.²⁸⁵ Unless the CPSC ruling is overturned, Amazon will be required to update its procedures for notifying buyers about product hazards and to provide refunds or replacements for the products.²⁸⁶

The implications of the ruling are still to be determined. The ruling only applies to products sold on Amazon through FBA. The ruling is also specific to Amazon and does not cover other popular e-commerce marketplaces like eBay, Wayfair, Etsy, Shein, or Temu.²⁸⁷ Different business models like Shein and Temu that facilitate direct shipments from product manufacturers to the final consumer may not share enough characteristics of FBA for a similar argument to apply.²⁸⁸ Perversely, this could encourage e-commerce marketplaces to move toward the model of allowing international warehouses or manufacturers to ship directly to the consumer to avoid liability under programs similar to FBA.²⁸⁹ Amazon plans to start a similar service geared toward Chinese sellers in efforts to compete with Shein and Temu.²⁹⁰ Finally, the decision gives CPSC the power to enforce its regulations against Amazon but leaves unresolved the applicability of direct civil liability for harm to U.S. consumers.²⁹¹

Case Study: The Safety Risks and Health Hazards of Low-Quality Toys from China

Children's toys available for purchase in the United States are overwhelmingly sourced from China, giving China-based manufacturers an outsized role in ensuring the safety of products available to young U.S. consumers. According to data provided by the U.S. Census Bureau, China is the number one source of imported children's toys to the United States, accounting for three-quarters of all toy imports in 2023.*²⁹² Given the country's substantial role as a source of imports, China-based manufacturers also play a significant role in ensuring that toys are produced up to U.S. safety standards. Children's products and toys are among the most heavily regulated goods in the U.S. market. All toys sold in the United States and intended for use by children age 12 and under must be tested by a third-party, CPSC-approved laboratory for compliance with applicable federal safety requirements.²⁹³ Upon successful completion of testing, the manufacturer or importer will issue a Children's Product Certificate† verifying a product's compliance with regulations based on the lab results.²⁹⁴ Although there may be additional requirements for some toys, most are subject to standards prescribed by the *Standard Consumer Safety Specification for Toy Safety* as specified by the international standards-setting organization ASTM.²⁹⁵ These standards cover provisions for toys' material quality, flammability, toxicology, and stability and overload requirements, among other features.²⁹⁶ Critically, U.S. consumers cannot externally observe many of these safety features, leaving them to depend on manufacturers, importers, and retailers to appropriately vet the quality of the products they sell.

Despite these extensive regulations, toys made in China continue to present elevated health and safety risks to U.S. children. A review of CPSC toy recalls issued from 2019 to 2023 reveals that 85 percent were for products made in China.‡²⁹⁷ Of the 16 lead- and phthalate-related recalls conducted in the past five years, all but one were for products made in China.²⁹⁸ Even in cases where a finished toy was not imported from China, toy components manufactured in China still present safety concerns. In May 2023, a small U.S. bike manufacturer issued a recall for an electric bike with a built-in seat for young children.²⁹⁹ Although the bike was designed

*Part of the decline may be due to some toy sales shifting to cross-border e-commerce channels that utilize the de minimis exemption, for which the United States collects insufficient data.

†The Children's Product Certificate must be furnished to CPSC upon request and currently can be furnished electronically or physically. In practice, many importers and manufacturers email the certificate to CPSC when requested. A new proposal by CPSC would change this process to a mandatory e-filing system for foreign manufacturers when the product is imported. In a past study, CPSC found that shipments accompanied by a certificate, or where a certificate was provided within 24 hours of request, are significantly less likely to violate safety rules than products for which it took longer than 24 hours to provide the certificate or where no certificate was ever provided, even after CPSC requested one. No shipments, including de minimis, would be exempt from the e-filing requirement. CPSC anticipates that requiring e-filing of certificates will improve its risk assessment methodology and ability to target high-risk shipments for inspection. On September 13, 2024, the Administration announced that CPSC intends to issue a final rule to enact these changes. Sheila A. Millar and Antonia Stamenova-Dancheva, "CPSC Proposes Significant Changes to Rule Governing Certificates of Compliance," *National Law Review*, January 4, 2024; U.S. Consumer Product Safety Commission, *eFiling Certificate of Compliance Study Assessment*, August 28, 2018.

‡Of 87 toy recalls, 74 were related to products manufactured in China. U.S. Consumer Product Safety Commission, *Recalls*.

and assembled by the small business, the firm used yellow-painted wood panels from China containing levels of lead that exceeded federal standards.³⁰⁰

Toy safety concerns have been exacerbated by the rise of China-based e-commerce sellers and Chinese e-commerce websites, which often sell recalled toys or other children's products with known safety issues. The continued production and resale of magnetic ball sets provides an example of how online sales undermine consumer safety. Magnetic ball sets consist of numerous small, round, powerful magnets that can be pulled apart or reconnected to form different shapes. Often sold as a children's toy, these sets pose serious health and safety risks if ingested, as the small magnets may connect while inside a person's body, potentially resulting in serious injury or even death.³⁰¹ More than 2,000 emergency room visits and at least seven deaths have been linked to these products between 2017 and 2021.³⁰² CPSC issued a warning in 2007 and then again in 2011 after the agency received more than 200 reports of children swallowing magnets, with at least 18 of those cases resulting in emergency surgery.³⁰³ Between 2012 and 2014, CPSC issued six recalls for magnetic ball sets due to injury hazard; the agency then issued at least another five between December 2023 and March 2024, with most of the products being made in and offered online by China-based sellers.³⁰⁴ In addition to these recalls, CPSC has issued at least 21 notices of violation for magnet sets.³⁰⁵ In every case, the sets were sold online, and in 17 of the 21 instances, CPSC identified the responsible company as based in China.³⁰⁶ Despite these well-known and documented risks, magnet sets that do not comply with federal safety standards continue to be sold into the U.S. market via e-commerce platforms by China-based sellers.

Counterfeit toys from China present acute risks for U.S. consumers, since manufacturers of these products are unlikely to submit their fraudulent goods to the extensive testing and certification required by the Federal Government. Of the 165 toy-related counterfeit shipment seizures conducted by CBP in FY 2022, 133 seizures were from China or Hong Kong.*³⁰⁷ In FY 2023, over half of seized Chinese and Hong Kong counterfeit toy shipments were found entering the United States through express consignment or mail, venues commonly used for e-commerce imports.³⁰⁸ Although information on the product safety of these recent seizures is not available, past experience suggests these products likely posed significant risks. In 2019, CBP and several other federal agencies and international partners executed Operation Holiday Hoax, a sting operation to prevent counterfeit goods from entering the United States and other markets.³⁰⁹ After searching a shipment from China, the joint team recovered 155,000 units of suspected counterfeit toys, later found to contain lead.³¹⁰ Counterfeits may pose other hazards as well, such as inappropriate age-labeling, which may mislead consumers into purchasing a toy that carries an added but unidentified risk for younger children.³¹¹

*CBP reported the total value of all toy-related seizures to equal \$7.2 million. Of that total, counterfeits from China and Hong Kong accounted for \$6.3 million in value, or 87 percent. U.S. Customs and Border Protection, *IPR Seizures by Trading Partner*, October 21, 2023.

Experiences in Quality Sourcing from China: Lovevery's Process

Ensuring safe manufacturing in China is possible, and many U.S. producers and retailers are able to source quality goods from China by implementing a rigorous review process. Lovevery, an educational play products and toy company headquartered in Boise, Idaho, is one example of a U.S. producer that is able to effectively source from China by implementing a quality and safety inspection process. A key feature of this process is testing conducted by multiple unrelated parties at several stages of manufacturing. This distribution of responsibility creates an informal check system that holds all production partners accountable for their contribution.

- *Partner expectations and testing:* Lovevery sets testing and safety requirements both for its product manufacturers as well as the suppliers that provide inputs for finished goods. This includes testing for chemical hazards at the supplier level prior to shipping materials to the manufacturer.³¹² Suppliers are also expected to inspect and sometimes test components and raw materials that enter the factory before they are used in final assembly.³¹³ Once production begins, Lovevery implements in-process testing for items that are critical to either the quality or safety of the product, providing a second layer of review conducted by the manufacturer.³¹⁴
- *Contracted audits:* In addition to obtaining required product certifications from CPSC-approved labs, Lovevery works with contractors to audit China-based factories. These external audits ensure raw materials are compliant with standards and that nothing is introduced during manufacturing that may compromise the product's quality or safety.³¹⁵ These audits allow U.S.-based producers like Lovevery to review the quality of checks performed by manufacturers and suppliers.

This inspection process reduces the likelihood of an unsafe product reaching the U.S. market, but it comes at a considerable cost to U.S. firms—costs not incurred by those China-based manufacturers that sell online directly to U.S. consumers with no regard for safety regulations. Bryan Brown, group vice president of safety, quality, and regulatory compliance for Lovevery, notes that although critical to the production process for children's products, "using the right materials, adding extra steps in manufacturing, building in redundancy for things such as small part containment as well as in-process destructive testing drives a higher product cost."³¹⁶ These higher costs create opportunity for some unethical China-based manufacturers to undercut competition by simply not following safety procedures or U.S. regulations. In many instances, these China-based manufacturers will imitate or attempt to entirely reproduce goods sold by U.S. companies. Mr. Brown states that "in addition to the obvious issues of intellectual property infringement and unfair competition, these [knockoff or counterfeit] toys are simply not made to the same standard or,

**Experiences in Quality Sourcing from China:
Lovevery's Process—*Continued***

frankly, to any reasonable standard. They are almost always less expensive and for that reason, consumers likely gravitate to them for the perceived price value.”³¹⁷ Most often, these cheap and unsafe goods are sold online via third-party e-commerce platforms and enter the United States with limited if any vetting or verification, presenting significant physical risks to U.S. consumers and substantial economic harm to U.S. firms.³¹⁸

Implications for the United States

The rising popularity of online shopping among U.S. consumers, in part due to the COVID-19 pandemic and the increasing use of e-commerce platforms by China-based sellers, present a novel and increasing challenge to the U.S. import regulatory regime. Online shopping platforms have given Chinese manufacturers unprecedented access to the U.S. market, but many of the sellers on these sites are unaware of, unable to, or unwilling to produce up to U.S. regulatory standards. Moreover, since these manufacturers lie outside the jurisdiction of U.S. regulators, courts, and law enforcement, these firms are not held accountable for the unsafe and sometimes deadly goods they sell. This combination of unfettered access and limited consequences allows China-based sellers to disregard critical U.S. safety regulations. This may lead to rising instances of hazardous products entering the United States from China, subjecting unknowing U.S. consumers to a higher likelihood of product-related mishaps, injuries, or even death. In addition, by refusing to follow critical but costly U.S. product safety regulations, unethical Chinese firms receive an unfair competitive edge vis-à-vis law-abiding firms. This discrepancy in ability to enforce regulations may result in significant economic harm to U.S. firms. Chinese state-owned entities such as Sinosure have appeared to protect Chinese producers of harmful or poor-quality products from legal or contractual recourse, underlining how China continues to engage in practices that advantage its domestic firms and are inconsistent at least in spirit with the nondiscrimination obligation central to WTO commitments.

Challenges to enforcement of customs regulations and duties parallel the difficulties of monitoring product safety at the border. As Chinese companies seek continued access to the U.S. market despite rising trade tensions, U.S. customs authorities may struggle to monitor and penalize efforts to evade tariffs and other restrictions on imports. This task may grow more complicated as supply chains continue adjusting to the evolving bilateral relationship between the United States and China. With an increasing share of U.S. imports being sourced outside of China, it may become more difficult to detect instances of illegal transshipment of products from China. As the volume of goods incoming from markets such as Vietnam and Mexico increases, U.S. customs authorities may need to deploy additional resources to ensure that Chinese companies are not seeking to merely reroute made-in-China products around U.S. trade restrictions or engage in other forms of duty evasion. Congress expanded

CBP's power to investigate evasion specifically of AD/CVD orders through the Enforce and Protect Act of 2015, but the agency lacks equivalent authorities to investigate evasion of other duties, such as Section 301 tariffs. With the majority of U.S. imports from China now subject to Section 301 duties, a broader review of CBP's tools and penalties for enforcing U.S. trade policy may be merited given the potential scale of Chinese duty evasion.

Given China's stated policy to support its manufacturing sectors' share in the economy, Chinese manufacturers may increasingly use legitimate channels to remain intertwined with U.S. global value chains. An increasing number of Chinese producers are shifting their factories abroad, where they can produce for the U.S. market and avoid China-specific tariffs. (For more on these supply shifts, see Chapter 1, "U.S.-China Economic and Trade Relations (Year in Review).") In addition, a growing portion of China's manufacturing sector is engaged in producing inputs and components and exporting them for final assembly outside of China. As downstream producers will continue to face challenges in ensuring Chinese imported components comply with safety and regulatory standards, this could create new risk vectors for U.S. businesses and households that are difficult to uncover. U.S. households purchasing products from factories in Mexico, Vietnam, and elsewhere that utilize inputs from China may not be aware of the enhanced safety risk. U.S. agencies will need to continually develop and deploy updated assessment tools and techniques to ensure parts, components, and materials embedded in key U.S. imports do not raise safety or trade law evasion concerns.

Appendix I: United States' Top 15 Trading Partners' De Minimis Thresholds

Trading Partner	De Minimis Threshold	Notes
Mexico	\$50	The \$50 threshold is for shipments from countries outside of United States-Mexico-Canada Agreement (USMCA). For shipments from Canada and the United States the threshold is \$117.
Canada	\$15	The \$15 threshold is for shipments from outside of USMCA. For shipments from Mexico and the United States, the threshold is \$150.
China	\$7	
Germany	\$155	
Japan	\$140	The de minimis threshold varies by harmonized system codes; some imports are dutiable under the \$140 de minimis value.
South Korea	\$150	The \$150 threshold is the general de minimis threshold. For shipments from the United States, the threshold is \$200.
United Kingdom	\$160	
Taiwan	\$60	
Vietnam	\$43	
Netherlands	\$155	
India	N/A	India does not support a de minimis exemption. All imports are subject to duty and tax.
Italy	\$155	
Ireland	\$155	
France	\$155	
Brazil	\$50	Brazil's de minimis exemption applies only to postal shipments to individuals. In June 2024, Brazil introduced a 20 percent tax on e-commerce imports valued under \$50.

Note: These data include information on the United States' top 15 trading partners, ordered in terms of total trade based on data provided by the U.S. Census Bureau as of January 2024. This group of trading partners accounts for 75 percent of the United States' total trade. Data on the de minimis thresholds come from the Global Express Association (GEA), which is the U.S. International Trade Administration's suggested source for finding information on de minimis values by trading partner. Reported thresholds are approximations, and U.S. dollar equivalents are based on the exchange rate the day the threshold was entered into the GEA database.

Source: Various.³¹⁹

Appendix II: Authorities for Combating Evasion of U.S. Customs Duties: Antidumping and Countervailing Duties vs. Section 301 and Other Trade Measures

Panel A: Antidumping and Countervailing Duty Enforcement

Tool	Description	Timeline	Recent Enforcement Actions	Enforcement Body
Scope and Circumvention Inquiry	When a product subject to an AD/CVD order is altered or transformed in a minor way and sold as new merchandise, the Commerce Department can conduct an investigation to determine if the product is also subject to the AD/CVD order. This can include minor alterations that take place outside of the dutied country (including in the United States or a third-party country) using inputs subject to an AD/CVD order.	Statutory requirement to issue a final determination within 300 days after initiation.	In 2023, the Commerce Department reached final affirmative determinations in seven circumvention inquiries involving AD/CVD orders on China. ³²⁰	Commerce Department, either self-initiated or on request from an interested party.
Enforce and Protect Act (EAPA)	When an importer attempts to evade paying an AD/CVD duty when importing into the United States (including through misclassification, misvaluation, or transshipment), CBP may investigate if evasion took place and bill the importer for any additional duties due.	Statutory requirement to issue a final determination within 300 days after initiation.	In FY 2022, CBP reached an affirmative determination in 53 EAPA investigations, covering about \$100 million in evasion of all AD/CVD orders (including those involving China). ³²¹	Customs and Border Protection on request from an interested party filing through the e-Allegation portal.

Panel B: Custom Duty Enforcement (Including Section 301 Duties)

Tool	Description	Timeline	Recent Enforcement Actions	Enforcement Body
Traditional Customs Enforcement	<p>The Tariff Act of 1930 authorizes CBP to investigate and issue penalties for evasion of customs duties, including through misclassification, misvaluation, or transshipment. CBP has broad authority to make seizures and enforce any fines on imports.³²² The U.S. Court of International Trade has exclusive jurisdiction on all civil actions initiated by the U.S. government arising out of an import transaction.³²³ Enforcement actions under the Tariff Act of 1930 usually result in lower damages than a False Claims Act lawsuit—the latter provides for treble damages—and has a shorter statute of limitations of five years, compared to six under the False Claims Act.³²⁴</p>	<p>No statutory deadlines.</p>	<p>In FY 2022, CBP collected \$19.3 million from penalties and liquidated damages on shipments from all countries.³²⁵</p>	<p>CBP and U.S. Court of International Trade</p>
Reverse False Claims Act Lawsuit	<p>Under the False Claims Act, a party can be held liable for knowingly providing false statements to the U.S. government. Evasion of tariffs, including through misclassification, misvaluation, or providing false country of origin (i.e., transshipment), may be prosecuted as a “reverse false claim” lawsuit, wherein the defendant is charged with knowingly retaining funds owed to the government.³²⁶ Defendants are liable to three times the damages owed to the government.³²⁷ The False Claims Act has a whistleblower provision, incentivizing private citizens to file a suit on behalf of the government in return for a portion of any settlements or judgments.³²⁸</p>	<p>It takes on average 3.1 years to complete a False Claims Act customs fraud case.³²⁹</p>	<p>In 2023, three cases alleging China Section 301 duty evasion under the False Claims Act resulted in settlements of \$5.2 million.³³⁰</p>	<p>Usually prosecuted by the U.S. Department of Justice Civil Division, frequently after a lawsuit is filed by a private whistleblower on behalf of the government, known as a qui tam lawsuit.*</p>

* A qui tam lawsuit allows the private individual who filed the lawsuit to receive a portion of the proceeds if the defendant is found liable. Bryan Lemons, “An Overview of ‘Qui Tam’ Actions,” *Federal Law Enforcement Training Centers*.

Appendix III: Comparison of Drain Cover for Sale on Amazon as of June 11, 2024, and Recalled Drain Cover Linked to Evisceration and Drowning Deaths

Image 1: Drain cover manufactured in China and previously for sale on Amazon by a China-based seller.



Source: Amazon, "Maxmartt Pool Floor Main Drain 2 Inch White Main Drain Water Inlet Draining Accessory Vinyl Pool Main Drain Liner for Swimming Pool." <https://web.archive.org/web/20240517140655/https://www.amazon.com/Maxmartt-White-Swimming-Draining-Accessory/dp/B083728PP2>.

Image 2: Recalled drain cover imported from China and sold on Amazon.



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