

March 17, 2025

The Honorable Pete R. Flores
Acting Commissioner
U.S. Customs & Border Protection
1300 Pennsylvania Avenue, NW
Washington, DC 20229

Re: Entry of Low Value Shipments (Docket No. USCBP-2025-0002)

Dear Commissioner Flores:

The Footwear Distributors & Retailers of America (FDRA) appreciates the opportunity to provide comments to U.S. Customs & Border Protection (CBP) on its proposed regulations titled “Entry of Low-Value Shipments (ELVS).”

FDRA is the footwear industry’s trade and business association, representing more than 500 footwear companies and brands across the U.S. This includes the majority of U.S. footwear manufacturers and over 97 percent of the industry. FDRA has served the footwear industry for 80 years, and our members include a broad and diverse cross section of the companies that make and sell shoes, from small family-owned businesses to global brands that reach consumers around the world.

Many of our member companies have long used de minimis, also known as Section 321 shipments, to deliver footwear to U.S. consumers. Section 321(a)(2) of the Tariff Act (19 USC §1321(a)(2)) provides an exemption from the requirements of filing formal entry on shipments valued at \$800 or less (Low-Value Exemption or LVE). It is important to preserve this program for the U.S. footwear businesses and consumers that rely on it.

At the same time, FDRA also believes the program should be strengthened to prevent bad actors from abusing the program to deliver harmful and illicit goods to unsuspecting consumers in the U.S. The reforms proposed by CBP in this rulemaking are an important step toward greater accountability for those who utilize the program. The revisions will improve the flow of LVE shipments, allow CBP to better screen and interdict counterfeit merchandise, create another speed bump to importers of counterfeit products, and perhaps most importantly, create additional data identifying the supplier and purchasers of the counterfeit merchandise.

One of the most important proposed changes in the ELVS revisions is the effort to better identify who is eligible to claim LVE treatment on imported goods. See current 19 CFR §10.151. First, the revisions provide that if *one person* on *one day* imports more than \$800 goods (retail value from exporting country), then all goods imported on that day from that *one person* are prohibited from LVE treatment. Further, to better identify who can claim the benefit of the LVE treatment, the revisions define the person as the “owner or purchaser” of the goods on one day. These changes are aimed at foreign exporters who break up shipments into multiple shipments for LVE

MATT PRIEST, President & CEO

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treatment, who identify themselves as the purchaser of the goods when the goods are being shipped to a U.S. fulfillment facility or sales platform, or who utilize straw purchaser names. It also places a burden on the fulfillment house to the extent the shipper fails to identify who is the purchaser or owner of the goods. Based on previous CBP directives, if the only information provided as to the purchaser or ultimate consignee is the fulfillment house, then the fulfillment house is deemed to be responsible for the goods. These regulations place a burden on the fulfillment house to ensure that its customers properly provide manifest information to CBP on shipper or purchaser's identity, or they risk being deemed the importer.

A second helpful change is the revision to 19 CFR §101.1, which better defines "shipment" by limiting it to an individual bill of lading with its own unique bill number assigned to a single ultimate consignee, for which no lower bill exists. This helps CBP drill down to the "one person" responsible for each shipment.

The third major change is the creation of the "basic entry process" (BEP) and "enhanced entry process" (EEP). In the past, LVE shipments were entered through the release from manifest process. This required the importer to provide an airway bill or manifest summary for entry. To the extent the manifest does not include the information, the importer must provide the seven data points currently required under 19 CFR §143.23(k). However, as a practical matter, the manifest information is often incomplete or unusable, and CBP regularly passed goods without receiving all seven data points. As examples, manifests often fail to identify the shipper, or the purchaser or ultimate consignee of the goods. These manifests may also provide generic addresses rather than physical addresses or incomplete exporter information, often in languages other than English. Likewise, manifest information often supplies limited information on the merchandise being shipped and/or no value representation (other than a check box through the express operator or carrier).

Consequently, much of CBP's small package review and interdiction amounts to selecting random LVE shipments and reviewing the manifest information for compliance with 19 CFR §143.23(k). CBP then uses the manifest irregularities as a basis for opening the individual LVE shipments to assess whether the merchandise is legitimate. This process is very time consuming. It is also not adequate for handling a review of the billion plus LVE shipments CBP receives each year.

Both the new BEP and EEP procedures require additional information for CBP review. This information will generally be submitted to CBP electronically, either through ACE with the EEP or electronically through BEP entries. This will allow CBP to both review the shipments prior to them leaving the port of export, and further, apply CBP risk assessment algorithms to LVE shipments to better target shipments for additional investigation.

Looking first at the BEP procedures, this revision makes changes to two data points currently required under 19 CFR §143.26(k). First, it changes data point "3" to require the filer to identify the name and address of the person claiming the exemption. Then, in an added 8th data point, the filer must give the name and address to the final deliver-to party. These changes will better inform CBP as to who is claiming the exemption and where the goods will ultimately be

delivered. Both pieces of data will better allow CBP to deny LVE treatment for importers bringing in more than \$800 in goods in a single day.

The EEP process will ultimately be the way most LVE shipments are handled, and it is specifically aimed at integrated online marketplaces. The EEP procedures require the filer to provide the individual bill of lading as well as the eight data points noted above with the BEP process. Additionally, under proposed §143.26(l)(1), the filer must provide the CTIN (individual bill number or unique number associated with merchandise), the country of shipment, the 10-digit HTSUS classification code, and finally, one or more of the following: 1) ULR to marketplace listing; 2) product picture; 3) product identifier; and/or shipment x-ray or security screening report number verifying what is in the package. Additionally, §143.26(l)(2) requires the filer to also provide the following additional information if applicable to the shipment: 1) seller's name and address; 2) purchaser's name and address; 3) any data required by other agencies; 4) advertised retail product description; and 5) marketplace name or website or phone number.

The EEP process is a culmination of various recommendations from CBP to better allow the agency to review and target illicit goods. All information must be submitted electronically to CBP prior to the airplane arriving in the U.S. Between the eight data points under BEP, and the additional data points provided under §143.26(l)(1) and (2), CBP should be in a much better position to identify counterfeit product based on its marketplace listing, description, photograph and CTIN. Further, by requiring the HTSUS classification, existing tariffs which are not avoided under the LVE procedures could be applied or cited as a basis for refusing entry. Taken together, these data points should allow CBP to segregate suspected counterfeit product much more efficiently, and moreover, develop actionable intelligence on suppliers and distributors.

From the brand holder's perspective, these data requirements also place marketplaces and other express consignment operators (ECOs) who are providing this data, on actual notice of product descriptions, CTIN, HTSUS numbers, product sellers, and product buyers associated with specific product listings.

In conclusion, the changes provided for by the ELVS revisions will help CBP better review and target counterfeits, provide better information to rights holders when seizures occur, and potentially, assist rights holders in claims against ECOs, carriers, fulfillment houses, domestic distributors, and foreign exporters.

We appreciate the opportunity to provide feedback to CBP, and we look forward to working with you on this important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Priest", written in a cursive style.

Matt Priest
President & CEO
Footwear Distributors and Retailers of America