

CONSUMER PRODUCT SAFETY INSPECTION
ENHANCEMENT ACT

SEPTEMBER 24, 2020.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. PALLONE, from the Committee on Energy and Commerce,
submitted the following

R E P O R T

[To accompany H.R. 8134]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 8134) to support the Consumer Product Safety Commission’s capability to protect consumers from unsafe consumer products, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

H.R. 8134, the “Consumer Product Safety Inspection Enhancement Act”, was introduced on August 28, 2020, by Representatives Jan Schakowsky (D–IL) and Jeff Duncan (R–SC) and was referred

to the Committee on Energy and Commerce. H.R. 8134 directs the Consumer Product Safety Commission (CPSC) to enhance its ability to identify unsafe consumer products entering the United States, especially e-commerce shipments entering under the de minimis value exemption. The bill also requires the CPSC to hire not less than 16 employees and add staffing every year until needs are met to identify violative products at ports and to complete a study and report on the CPSC's efforts and needs to effectively stop violative products from entering the United States.

II. BACKGROUND AND NEED FOR LEGISLATION

The CPSC import surveillance program is a key component of the focus by CPSC on prevention—stopping hazardous products from reaching consumers.¹ Imports represent slightly more than half of all available consumer products in the U.S. and three out of four consumer products identified as noncompliant.² The agency's import surveillance program was established following the enactment of the Consumer Product Safety Improvement Act (CPSIA) of 2008 on August 14, 2008.³ As required by section 222 of the CPSIA, the CPSC developed a targeting system called Risk Assessment Methodology (RAM) to target and prioritize for inspection shipments likely to contain violative consumer products.⁴ In addition, CPSC compliance inspectors work side-by-side with U.S. Customs and Border Patrol (CBP) staff at ports of entry to identify and block shipments containing violative consumer products.⁵

Currently, CPSC inspectors are present at only six percent of U.S. ports and concentrated only at seaports that receive large, high-value shipping containers.⁶ In 2019, only 19 ports in the U.S. had any kind of CPSC presence.⁷

E-commerce shipments, however, generally enter the U.S. through airports, express consignment carrier facilities, and international mail facilities where the CPSC has virtually no presence.⁸ E-commerce spending has risen steeply in recent years and the coronavirus disease of 2019 (COVID-19) pandemic has further accelerated the trend towards online shopping. A CPSC report issued in November 2019 estimated that by 2023, the number of e-commerce shipments will reach 60 million, representing 57 percent of the total volume of imports under the agency's jurisdiction.⁹

In addition to the staffing constraints, the CPSC lacks the data it needs to effectively risk assess and target e-commerce shipments entering the U.S. under the de minimis value exemption. De minimis shipments may evade scrutiny as they enter the U.S. because they are exempt from the extensive entry data normally required for higher-valued shipments and that are needed by the CPSC to

¹U.S. Consumer Product Safety Commission, *Fiscal Year 2021 Performance Budget Request to Congress* (Feb. 10, 2020) (www.cpsc.gov/s3fs-public/FY-2021-Congressional-Justification.pdf).

²*Id.*

³U.S. Consumer Product Safety Commission, *CPSC e-Commerce Assessment Report* (Nov. 2019) (www.cpsc.gov/s3fs-public/CPSC-e-Commerce-Assessment-Report.pdf).

⁴Consumer Product Safety Improvement Act of 2008, Pub. L. No. 110-313.

⁵U.S. Consumer Product Safety Commission, *About the Office of Import Surveillance* (www.cpsc.gov/Imports).

⁶*See* note 1; *See* note 3.

⁷*See* note 1.

⁸*See* note 3.

⁹*Id.*

effectively risk assess.¹⁰ The exemption limit was quadrupled to \$800 under the Trade Facilitation and Trade Enforcement Act of 2015, greatly increasing the number of shipments qualifying for the exemption.¹¹ Another challenge is that the CPSC does not have access to real-time manifest data.¹² Manifest data, which is required on all shipments regardless of value, provide some data on the nature of a shipment and could be used by CPSC to risk assess e-commerce shipments entering under the de minimis value exemption if provided to the agency in real-time.¹³

The CPSC also has limited access to intellectual property rights (IPR) seizure data.¹⁴ Many products that have IPR violations also have consumer product safety violations, so access to such data could help the CPSC better target products likely to have consumer safety violations.¹⁵ A 2018 CPSC study also found that electronic filing of certificates of compliance before import would allow the CPSC to refine its ability to risk assess and target shipments for inspection.¹⁶ The availability of a product's certificate of compliance is strongly associated with the product's compliance.¹⁷ Currently, importers only need to file certificates of compliance 24 hours before a product's arrival, limiting their utility for risk assessment purposes. The CPSC could also benefit from enhanced integration with the targeting systems of other system participants, such as express couriers and international mail facilities.

The CPSC currently lacks the staffing, data, and IT infrastructure necessary to effectively target and inspect products entering the U.S., especially e-commerce shipments entering under the de minimis value exemption.¹⁸ H.R. 8134 is needed to enhance the ability of the CPSC to stop unsafe shipments from entering the U.S. and to refocus the Commission's efforts to also protect consumers from the rapidly increasing number of e-commerce shipments entering under the de minimis value exemption. In addition to protecting American consumers from unsafe consumer products, an expanded and enhanced import surveillance program will also protect manufacturers and retailers from having to carry out costly recalls.

III. COMMITTEE HEARINGS

For the purposes of section 103(i) of H. Res. 6 of the 116th Congress, the following hearing was used to develop or consider H.R. 8134:

The Subcommittee on Consumer Protection and Commerce held an informational hearing on March 4, 2020. The hearing was entitled, "Buyer Beware: Fake and Unsafe Products on Online Marketplaces." The Subcommittee received testimony from the following witnesses:

¹⁰ 19 C.F.R. § 10.151; 19 C.F.R. § 10.153; U.S. Customs and Border Protection, *Entry Summary* (July 2, 2019) (www.cbp.gov/trade/programs-administration/entry-summary).

¹¹ 19 U.S.C. § 1321.

¹² See note 3.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ U.S. Consumer Product Safety Commission, *eFiling Certificate of Compliance Study Assessment* (Aug. 28, 2018) (www.cpsc.gov/s3fs-public/eFiling-Certificate-Study-Evaluation-Report-FINAL.pdf).

¹⁷ *Id.*

¹⁸ See note 3.

- Dharmesh Mehta, Vice President of Worldwide Customer Trust and Partner Support, Amazon
- Amber Leavitt, Associate General Counsel and Head of IP, eBay
- Jeff Myers, Senior Director for Intellectual Property, Apple
- Andrew Love, Head of Brand Security/Investigations/Global Enforcement, Specialized Bicycles
- David Friedman, Vice President, Advocacy, Consumer Reports
- Lori Wallach, Director, Global Trade Watch, Public Citizen.

IV. COMMITTEE CONSIDERATION

H.R. 8134, the “Consumer Product Safety Inspection Enhancement Act”, was introduced on August 28, 2020, by Representatives Schakowsky (D–IL) and Duncan (R–SC) and was referred to the Committee on Energy and Commerce. It was then referred to the Subcommittee on Consumer Protection and Commerce on August 31, 2020. A hearing on the bill was held on March 4, 2020, prior to the bill’s introduction.

On September 9, 2020, the Subcommittee on Consumer Protection and Commerce was discharged from further consideration of H.R. 8134, as the full Committee on Energy and Commerce called the bill up for consideration. The full Committee met in virtual open markup session on September 9, 2020, to consider H.R. 8134. There were no amendments offered to the bill and the Committee then agreed to a motion on final passage by Mr. Pallone, Chairman of the committee, to order H.R. 8134, reported favorably to the House, without amendment, by a voice vote, a quorum being present.

V. COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list each record vote on the motion to report legislation and amendments thereto. The Committee advises that there were no record votes taken on H.R. 8134, including the motion on final passage by Mr. Pallone.

VI. OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the oversight findings and recommendations of the Committee are reflected in the descriptive portion of the report.

VII. NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit

authority, or an increase or decrease in revenues or tax expenditures.

VIII. FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

IX. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII, the general performance goal or objective of this legislation is to enhance the ability of the Consumer Product Safety Commission to identify unsafe consumer products entering the United States, especially shipments entering under the de minimis value exemption.

X. DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII, no provision of H.R. 8134 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111-139 or the most recent Catalog of Federal Domestic Assistance.

XI. COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(1) of rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

XII. EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

Pursuant to clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.R. 8134 contains no earmarks, limited tax benefits, or limited tariff benefits.

XIII. ADVISORY COMMITTEE STATEMENT

No advisory committee within the meaning of section 5(b) of the Federal Advisory Committee Act was created by this legislation.

XIV. APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

XV. SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 designates that the short title may be cited as the “Consumer Product Safety Inspection Enhancement Act”.

Sec. 2. Enhanced risk assessment methodology

Section 2 amends the Consumer Product Safety Act to add a new subsection establishing an enhanced risk assessment methodology. Paragraph (1) of this subsection requires the Consumer Product

Safety Commission (CPSC), not later than 18 months after the date of enactment, to enhance the targeting, surveillance, and screening of consumer products entering the U.S. at ports of entry, including ports of entry for de minimis shipments, by working in consultation with U.S. Customs and Border Protection to (1) access and leverage all available data, including manifest data and intellectual property rights seizure data; (2) prioritize shipments coming from the People’s Republic of China; and (3) use the Participating Government Agencies Message Set and additional consumer product specific data elements. This paragraph also requires the Commission to build and improve its information technology system to support electronic access to and connection with the data and targeting systems of applicable system participants.

Paragraph (2) of this subsection further requires, not later than two years after the date of enactment, the electronic filing of certificates of compliance for all consumer products entering the United States.

Paragraph (3) of this subsection defines terms used in the subsection, including “de minimis shipments”, “express consignment carrier facility”, “ports of entry for de minimis shipments”, and “violative consumer products”.

Sec. 3. Additional CPSC surveillance personnel at key ports of entry for de minimis shipments

Section 3 requires the CPSC to hire not less than 16 full-time equivalent (FTE) personnel for the purpose of identifying, assessing, and addressing shipments of violative consumer products at ports of entry, and shall add additional staffing every year until staffing needs are met, as identified by the CPSC in the report to Congress required in section 4.

Sec. 4. Report to Congress

Section 4 requires the CPSC to transmit to Congress, and make publicly available, a study and report assessing the risk to consumers associated with the targeting and screening of de minimis e-commerce shipments, not later than 18 months after the date of enactment. Subsection (b) of this section specifies that the CPSC shall (1) examine a sampling of de minimis shipments and shipments coming from the People’s Republic of China; (2) detail plans and timelines to effectively address targeting and screening of de minimis shipments; (3) establish metrics by which to evaluate the effectiveness of the efforts of CPSC in this regard; and (4) assess projected technology, resources, and staffing necessary.

Sec. 5. Definitions

This section defines terms used throughout the bill, including the terms “de minimis shipments”, “ports of entry for de minimis shipments”, “violative consumer products”, “electronic commerce platform”, and “express consignment carrier facility”.

Sec. 6. Savings clause

This section provides that nothing in this Act shall be construed to limit, affect, or conflict with any other authority of the CPSC or any other statutory requirements governing the CPSC.

XVI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

There were no changes made in existing law by H.R. 8134, as reported.

