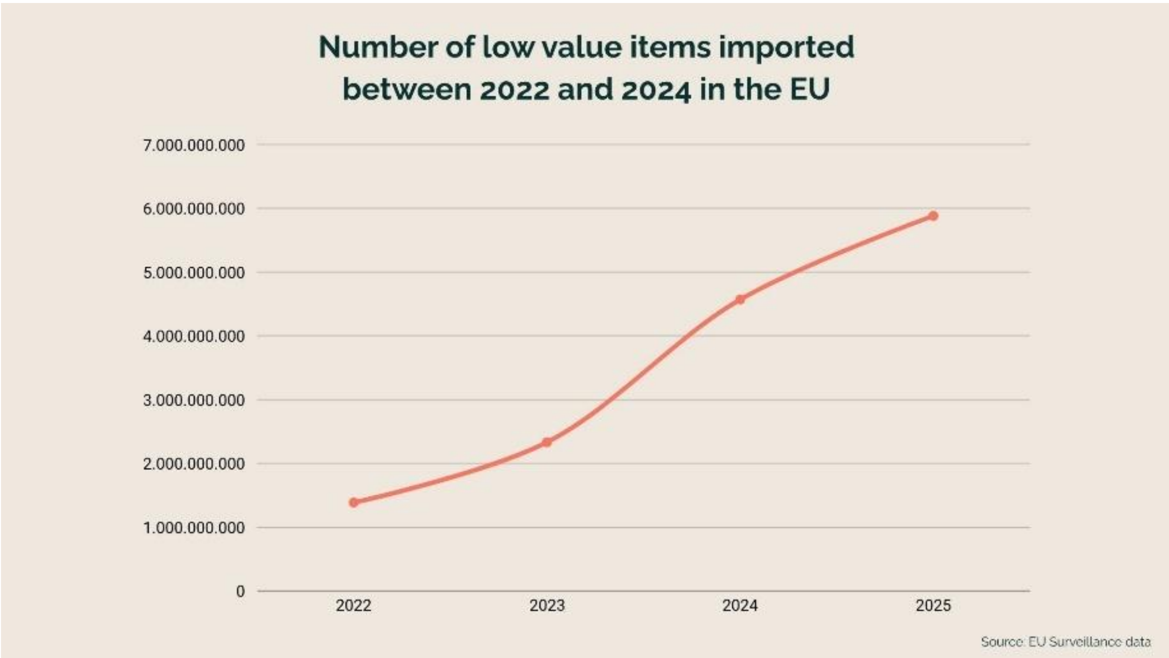
Joint policy paper

The European Product Act: Restore a Level Playing Field & Protect Consumers

In recent years, e-commerce from third-country sellers sold via e-commerce platforms (e.g. Temu, AliExpress, Amazon Marketplace as well as smaller e-commerce platforms like Bol.com, and Allegro.pl) to EU consumers has grown exponentially. According to the European Commission approximately 5.9 billion low-value consignments entered the EU market in 2025, corresponding to around 16 million parcels per day.



Multiple investigations and coordinated enforcement campaigns by e.g. market surveillance authorities, consumer organisations, industry and business organisations demonstrate that a significant share of these products do not comply with EU legislation, and some products are even dangerous to consumers.

These findings are consistent across product categories and Member States. It illustrates that this is a structural challenge and the current legislation is not suited for the business model of e-commerce platforms with global traders. The current lack of proactive obligations for these e-commerce platforms with sellers from outside the EU gambles with consumer safety and the protection of the environment as well as it creates unfair competition and undermines the function of the internal market.

The legal loophole

The current product regulation is not suited for today's business models. We need to revise it in a wise and future-proof way, if we want to maintain the fundamental principles of the internal market:

- Products need to be compliant and checked for compliance before being placed on the EU market no matter the sale channel.
- There must always be at least one economic operator under EU jurisdiction that is obligated to ensure compliance of the specific product before it is placed on the market.

These two fundamental principles are not fulfilled today when EU consumers buy products from sellers in third countries through e-commerce platforms. No matter if they buy online directly from the seller or by using an e-commerce platform. The reasons are:

- According to current legislation the seller is the one placing the product on the EU market. This seller is out of EU jurisdiction and any obligation according to EU law can therefore not be enforced.
- All e-commerce platforms however – no matter where they are established – fall under EU jurisdiction, cf. article 13 of the DSA. Here is the challenge however that platforms are not considered to be placing products from the third-party sellers on the market.
- Article 4 of the Market Surveillance Regulation only obligates the sellers in third countries to assign a responsible person. But this person has no obligations in relation to the compliance of the product, and the platforms shall only check that a name is listed, not that the person exists or knows that the seller has assigned him.

The European Product Act can close the loophole

The forthcoming European Product Act provides an opportunity to tackle the new business model of e-commerce platforms and restore coherence with fundamental principles.

This can be done with different models:

1. Change the definition of "placing on the market" so that the activities of e-commerce platforms are considered "placing on the market", if the seller is located outside the EU.

    - That would entail that when a platform enters into a contract with a seller in a third country and allows this seller to gain access to EU consumers through the platform, the platform needs to ensure that the seller has documented that the product is compliant in accordance with the legislation applicable to the product concerned.

    - Any e-commerce platform that facilitates products between EU-based sellers and EU consumers would <u>not</u> be considered "placing products on the market" as those products are already placed on the market by the EU seller or an EU-based supplier to the EU based seller.

2. Require that all products placed on the EU market are connected to an economic operator under EU jurisdiction, who has the obligation to ensure that all compliance tasks have been carried out before the product is placed on the EU market. This would require:

    - A new operator type that can replace the role of the commercial "importer[1]" (there is currently no commercial importer, cf. product legislation when the sale is done between a non-EU seller and an EU consumer). This could be an authorized representative (AR).
    - A system to ensure that there is in fact such an AR operator in place and that this operator represents both the seller and the individual products placed on the EU market by the seller.
    - A set of requirements on the e-commerce platforms that facilitate the sale and present the products, to ensure that the right and actual operator is in place before the product can be listed and sale can be facilitated by the platform.
    - The online platforms must be held responsible by the EU authorities, if it turns out that they did not check enough or that it turns out that no operator in the EU is responsible for the compliance of a product from a seller in a third country that is facilitated by the platform.

Recently, the Commission fined Temu with 200 million euros for violation of the Digital Services Act. The application of the DSA does not, however, solve the above-mentioned challenge. The rules that the Commission finds that Temu has violated do only apply to platforms with more than 45 million users and do not intend to ensure that every product that is facilitated is safe.

The DSA does not obligate the platforms nor other business – no matter size – to ensure compliance of every product from outside the EU such as the product legislation intends to ensure.

These are the two main reasons why the Digital Services Act does not safeguard consumers and why the level playing field in the internal market is not in line with the fundamental principles of product legislation and the Charter of Fundamental Rights, cf. Articles 37 and 38.

[1] Definition of importer is different in product and customs legislation. When the manufacturer of the product is placed outside the EU, the importer is the one considered to be placing the product on the EU market.