

# **Commercial Customs Operations Advisory Committee (COAC)**

**Trade Modernization Subcommittee**

**E-Commerce Working Group, Section 321 Team  
Draft Recommendations**

The logo for the Commercial Customs Operations Advisory Committee (COAC) features the letters 'COAC' in a bold, serif font. The 'C' and 'A' are blue, while the 'O' and the second 'C' are red. Below the letters are two horizontal lines, one red and one blue.

**COMMERCIAL CUSTOMS OPERATIONS  
ADVISORY COMMITTEE**

**Commercial Operations Advisory Committee**  
E-Commerce Working Group  
Section 321 Team  
DRAFT Recommendations

As set forth in the Statement of Work for the E-Commerce Working Group, the COAC is addressing opportunities and challenges related to the Trade Facilitation and Trade Enforcement Act of 2015 provision increasing the *de-minimis* value entry exemption to \$800 (19 U.S.C. 1321). The following recommendations are intended to improve the import process from a facilitation and enforcement perspective for section 321-eligible shipments across all modes of transportation.

**Issue I: How may a service provider file PGA data when required for section 321 --via manifest (AMS) and/or via cargo release (ACE)?**

1. In order to promote a level playing field and not impair the flow of legitimate commerce, COAC recommends that CBP in conjunction with the PGAs should adopt policies or requirements that generally would not limit, encourage or require section 321 filings to a certain class or group of service providers.
2. The COAC recommends CBP provide section 321 filing capability in ACE for ACE filers and that automated solutions, including the ability to file PGA data, should be available in ABI and AMS

**Issue II: What data elements and detail is required for section 321 filings involving a PGA and is a ten (10) digit HTSUS number necessary?**

3. COAC recommends that CBP should collaborate with the Trade to ensure that shipments released using section 321 subject to PGA review have the necessary data elements/data sets required for CBP and the PGA to release cargo consistent with the risk and targeting standards aligned with the agencies missions, and to safeguard public health and safety of the American consumer.
4. COAC recommends that CBP in conjunction with the PGAs clarify publicly to the Trade whether a merchandise description only or alternatively an HTSUS number at the ten or six-digit level is recommended or required for section 321 importations. Additionally, should CBP and the PGAs recommend or require an HTSUS number it should clarify the circumstances where an HTSUS is recommended or required, e.g., in all cases, in cases of revenue or fees, or when required by PGA's for admissibility determinations.

**Issue III: What is the process to determine section 321 eligibility (for PGA, ADD/CVD, etc.) and is a ten (10) digit HTSUS needed in order to make such an assessment?**

5. COAC recommends that CBP should collaborate with those parties providing section 321 data and the Trade to ensure they have an adequate process in place, and/or an automated

solution to determine if a shipment is subject to PGA admissibility requirements or not, and if it is in fact eligible for section 321 clearance.

**Issue IV: What type of guidance and collaboration should occur between the Government (PGAs/BIEC/CBP) and the Trade to implement section 321?**

6. COAC recommends that CBP work with the partner government agencies (PGAs) to encourage each PGA, who has not yet done so at the time of these recommendations, to clarify publicly to the Trade whether section 321 imports require a data set as they do for entry types 01 or 11 for cargo release, or if a limited data set is sufficient. If the PGA will not require the submission of PGA data for such shipments, exempting section 321 importations from PGA review, then the COAC recommends that they state this policy. COAC recommends that CBP engage the BIEC for additional outreach and coordination efforts to obtain such clarification.
7. COAC recommends that CBP and the PGAs that currently require the payment of duties or fees, e.g., antidumping and countervailing duties, or fees on entries, clarify publicly to the Trade whether for section 321 imports, they also will require such duties and fees, or consider them exempt on section 321 importations.
8. COAC recommends further, if CBP and/or the PGAs, determine certain data elements for admissibility or revenue/fees are required for section 321 importations CBP should establish filing requirements. In such a case, CBP should arrive at these requirements, including data elements, in collaboration with the Trade, including the COAC and the TSN to ensure minimal effect on costs and efficiencies to process section 321 importations.
9. COAC recommends that CBP and the Trade continue to work on ways to better educate and inform the trade community to improve descriptions of merchandise provided on commercial and shipping documents to facilitate a more comprehensive description on manifest data provided to filers of Sections 321 transactions (e.g., matching customs declaration and Universal Product Codes/ UPCs or European Article Numbers/EAN to address potential IPR issues).

**Issue V: Who should be considered the responsible party for enforcement purposes and who should be considered a trusted party for facilitation benefits?**

10. Rather than identifying a particular party that categorically should be liable or responsible for the appropriate and accurate filing of section 321 importations, CBP should clarify publicly to the Trade existing laws and regulations such as those relating to risk-based cargo release, product admissibility, manifesting cargo, intellectual property, commercial negligence/fraud, etc. that provide CBP with the ability to hold various parties responsible for the accuracy of such transactions. The COAC recommends that CBP should also consider those parties who have the primary financial gain due to the sale of the goods and/or knowledge about the nature of manufacture, country of origin, or admissibility of

the product or goods. Further the COAC recommends a continued dialogue on this issue with CBP and the Trade including this COAC Working Group.

11. CBP should consider, in conjunction with the PGAs, providing benefits to trusted partners (C-TPAT and/or ISA members) involved with section 321 importations as already is the case for cargo release/entry. In particular, CBP should consider expedited processing and less targeting due to minimal risk associated with such transactions when there is additional processing or screening performed. CBP should leverage COAC as a resource in future discussions on this topic.