

E-Commerce

COAC Recommendations

And a Few Thoughts and Opportunities

Trade Modernization Subcommittee Recommendations

E-commerce / Section 321:

- The 13 recommendations were the result of weeks of conference calls, 2 onsite committee meetings, the Trade Sub-Committee calls, and the onsite full COAC discussions
- There was not consensus on all of the recommendations, with several voting no on different ones
- All recommendations passed at the public COAC meeting and have been presented to CBP
- Acting Commissioner McAleenan has indicated in speeches that the CBP leadership was disappointed that the recommendations were not more specific
- Without consensus the COAC was reluctant to be more specific as there was not support for a more detailed direction.

Trade Modernization Subcommittee Recommendations

E-commerce / Section 321:

Filing Partner Government Agency (PGA) data:

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.
3. 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 AMS.

Data elements:

4. 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.
5. COAC recommends that CBP in conjunction with the PGAs clarify publicly to the Trade whether a merchandise description only or alternatively an HTSUS number 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, and prior to arriving at this determination consult COAC.

Trade Modernization Subcommittee Recommendations

E-commerce / Section 321:

Process to determine section 321 eligibility:

6. COAC recommends that CBP should collaborate with 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.

Guidance and collaboration between Government and Trade:

7. 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. 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 in writing. COAC recommends that CBP engage the BIEC for additional outreach and coordination efforts to obtain such clarification.
8. COAC recommends that CBP and government agencies 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.

Trade Modernization Subcommittee Recommendations

E-commerce / Section 321:

9. 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.
10. 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, including manifests, to filers of Sections 321 transactions.
11. COAC recommends that the work load staffing model that CBP currently utilizes to identify the level of officials needed to facilitate and manage the flow of legitimate cargo, include a review and determination of the additional volume of shipments that are being imported under the Section 321 limit of \$800 currently in the statute. This will ensure that CBP address the new and different flows of commerce enabled under the statute in an efficient and comprehensive manner

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E-commerce / Section 321:

Responsible party for enforcement and trusted party for facilitation benefits:

12. Rather than identifying a particular party that categorically should be liable or responsible for the appropriate and accurate filing of Section 321 imports, 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.
13. CBP should consider, in conjunction with the PGAs, providing benefits to trusted partners 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.

E-Commerce Information

- E-Commerce is a major supply chain change and trade disrupter
- It is not just affecting the US – it is a continuing dialogue at the WCO
- The changes are driven by several entities:
 - Third party selling platforms
 - Customers themselves!
 - Buying patterns have changed
 - Transportation costs are affordable
 - Small and Medium businesses
 - They are more flexible
 - Do not want to maintain large inventories in distribution centers
 - Large companies
 - May offer tax benefits
 - Reduces inventory costs
 - Responding to competition from 3rd party selling platforms
- This segment was increasing before the raise to the De Minimus levels, but accelerated after the law changed
- The largest increase in volume has been in the under \$200 range

E-Commerce and Section 321 – What Can a Broker/FF Do?

- Don't view this as “just” Express traffic
 - With an ABI solution, it opens the door for creative solutions
 - Delivery time options
 - Ocean and Rail consolidations
 - Growing segment of trade
- View this as an opportunity
 - Consulting opportunities abound
 - Companies want to take advantage of the benefits – help them design a solution
 - Partner with a good attorney
 - Offer services that can be tailored to the clients you serve: Small, Medium and Large
 - Offer manifest screening services to carriers
 - You are the experts! They need the HELP!
 - All shipments should be manifested with the shipper and consignee at the package level
 - Communicate with your clients
 - Talk to them about the options and your role in each of them
 - If subject to an OGA – reach out to the CBP CENTER
 - If the clients have experiences with a carrier that doesn't follow their direction – help them find another one

Thank you

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