

New Value Limits and Proposed Changes for Clearance of Low Value Shipments

Ever since the Tariff Act of 1930, there has been a specific provision – Section 321 – allowing for the duty-free clearance of low value shipments. Section 321 entries are sometimes referred to as a *Di Minimis Value Exemption*, based on a Latin term used in law and government for amounts, risks, and other matters too small to be concerned with. For many years, the maximum amount for duty-free Section 321 entries was \$200, but this has recently been increased to \$800, partially to align the entry limit with the amount that returning U.S. citizens can currently bring back on a plane or other vessel, but also to keep up with e-commerce volume that’s overwhelming CBP enforcement efforts in some locations.

There have always been additional restrictions placed on the use of this provision:

1. Section 321 entries can only be used by an importer for one shipment per day. Importers who use the services of multiple customs brokers need to manage this carefully to make sure that they don’t exceed this limit;
2. Consolidated shipments consigned to one importer are treated as one importation, so it is the total value of all shipments in the consolidation that will determine eligibility based on the \$800 limit;
3. Merchandise subject to absolute or tariff-rate quota restrictions must be filed electronically on a formal entry. In the case of absolute quotas, this is true whether the quota is open or closed;
4. Alcoholic beverages or perfume containing alcohol are ineligible unless the aggregate fair retail value of the merchandise in the country of shipment does not exceed \$5.
5. Cigars and cigarettes are likewise ineligible, regardless of value;
6. Merchandise subject to reporting requirements by any other participating government agency (FDA, USDS, EPA, D.O.T., etc.) cannot be filed under the Section 321 provision since those agencies still require the transmission of data to fulfill their missions and protect consumers;
7. Anti-dumping (AD) and countervailing duties (CVD) that have been applied to a particular commodity and country of origin still need to be assessed in accordance with the AD or CVD case assigned as a result of the Department of Commerce and the U.S. International Trade Commission. The Section 321 duty-free provision cannot be used to circumvent AD or CVD duties; and
8. CBP has cautioned that importers cannot separate a single order into multiple lots to avoid duties by shipping in increments of \$800 or less.

CBP always retains the right to require a formal entry when additional information is required, and can refuse an importer’s duty-free claim if they determine that any law or regulation is being avoided by its use.

Historically, the filing of Section 321 entries has been a manual process that required the submission of evidence that the shipment was valued at, or below the threshold amount. This manual presentation of

documents tends to delay the release of air shipments that might otherwise have received a paperless release had they been filed electronically as dutiable shipments.

Procedures already exist for a quicker release off of electronic manifests by express couriers and other carriers. This type of Section 321 release often doesn't require a 10-digit tariff classification, though the carriers are still expected to transmit dutiable informal entries (with the tariff number) when the commodity is regulated by any agency in addition to CBP. Eventually, it's anticipated that simpler electronic filing of Section 321 entries will be possible for all modes of transportation and by more diverse participants, but there is much disagreement as to how to move forward.

As mentioned, clearance off of the cargo manifest often requires just an item description (when the commodity doesn't require PGA reporting), but even in the current environment, there is concern that such a limited degree of reporting on the part of couriers doesn't give CBP and PGAs the ability to properly target merchandise for enforcement efforts. Furthermore, a cargo manifest only identifies a shipper and a ship-to. There is no buyer, seller, or importer-of-record to hold accountable for illegal imports.

Some parties feel that the less labor intensive method of filing Section 321 entries off of the manifest by description alone is appropriate since, in theory, it frees-up CBP resources for review of more high value shipments. However, the National Customs Brokers and Forwarders Association of America (NCBFAA) has generally been in favor of a 10-digit tariff requirement for all de minimis entries to fully utilize the targeting abilities that have been built into the CBP Automated Commercial Environment (ACE).

There is much at stake. Mind boggling projections of E-commerce volumes in the next decade make it obvious that government agencies will be stretched thin, yet existing problems such as the opioid crisis could easily be exacerbated by a flow of illegal shipments entering with little oversight under the de minimis threshold. Clearing shipments without the 10-digit requirement and buyer, seller, and importer information could make it easier for smugglers of all kinds to import illegal merchandise or products that require permits or licenses (normally flagged by the tariff number). Similarly, it's estimated that 90% of intellectual property rights seizures are from express mail shipments. Lower levels of enforcement due to the higher de minimis values, as well as the more limited data requirements, make it easier for counterfeiters to thrive in the e-marketplace.

CBP has postponed decisions about future changes affecting the electronic filing of Section 321 entries due to complications surrounding NAFTA negotiations, and the inadequacy of funding for necessary automation. Ultimately, CBP will have to confer with the other PGAs to consider each agency's enforcement concerns, while finding a way to effectively utilize their own limited resources in the field.