

Update to Customs Test Program for Low-Value Imports

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New changes went into effect today for a testing program for low-value imports which have gained great significance with the rise of cross-border e-commerce. U.S. Customs and Border Protection (“CBP”) published these changes a Federal Register Notice (the “Notice”) dated January 16, 2024 (89 FR 2630). The popular Section 321 program that allows for imports of articles valued under \$800 USD for single importers without payment of duties was modified by this Notice. In short, CBP’s test program for Entry Type 86 Shipments intended to increase use of Section 321 of the Tariff Act of 1930 (“Entry Type 86 Shipments”) has been updated to protect against abuse in the supply chain and to refine technical requirements for certain duty-free entries.

Background

CBP increased the de minimis value for duty-free imports under 19 USC 1321 (“Section 321”) to \$800 in February 2016. This change was prompted by the global shift to e-commerce and allows for one person (*i.e.*, importer of record), in any one day, to import goods valued at or below \$800 without the obligation to pay duties or taxes. Unsurprisingly, this increase greatly expanded the number of imports qualifying for the benefits provided under Section 321 and also lead to an increased effort by retailers and service providers to leverage Section 321.

The benefits of this change are clear in the world of e-commerce retail. However, Section 321 can prove difficult to implement as the “one person on one day” criteria requires that the goods are sold to an individual consumer serving as the importer of record in lieu of the importation of high-volume shipments on a corporate account prior to sale. In an effort to manage this restriction, many retailers and service providers are looking to update their supply chain to take advantage of Section 321 imports as best as possible. For example, we have advised clients on creative strategies for landing product prior to the parcel-by-parcel entry under this program thereby preserving the lower cost to consumers.

Changes to the Entry Type 86 Program

CBP shares an interest in driving adoption of the Section 321 program although abuse can understandably occur in addition to practical operational challenges. In response, CBP implemented the Entry Type 86 test program in September 2019. (84 FR 40079). Under the program, Entry Type 86 Shipments can be entered under expedited and informal procedures.

Effective today, CBP is updating the Entry Type 86 program as follows:

Entry Deadline Changes - CBP now requires that Entry Type 86 must be filed in advance of arrival of the cargo in port or upon arrival of the cargo in port. (89 FR 2630). Previously, Entry Type 86 could be filed “within 15 days” of the arrival of the cargo in port. (89 FR 2630). CBP states that the 15-day

time frame was inconsistent with the expedited process it sought to implement for Entry Type 86 Shipments. (89 FR 2630).

Technical Requirements for Shipments - When filing an Entry Type 86, no bond and entry summary documentation are required. The importing party is also exempt from payment of the usual harbor maintenance tax and merchandise processing fee otherwise applicable to imports. (Sect. IV, 89 FR 2630). The data elements required to be filed for Entry Type 86 Shipments are: (i) bill of lading or air waybill number; (ii) entry number; (iii) planned port of entry; (iv) shipper name, address, and country; (v) consignee name and address; (vi) country of origin; (vii) quantity; (viii) fair retail value in the country of shipment; (ix) ten-digit HTSUS number; and (x) the importer of record number, if the shipment is subject to PGA reporting requirements. (Sect. IV, 89 FR 2630). The following regulatory waivers apply to the extent that they are inconsistent with the requirements of the Notice (Sect. V, 89 FR 2630):

- The duty-free and tax-free shipment requirements for imports of less than \$800 for “release from manifest” are inconsistent with requirements in the Notice. (19 CFR 10.151).
- Certain additional information requirements in manifests are waived for Entry Type 86 Shipments (19 CFR 128.21(a)).
- Other regulations for shipments valued at \$800 or less or which qualify for informal entry or for all cargo generally, that pertain to: such shipments in general; manifest segregation for shipments; and bill of lading and manifest information and additional information requirements. (19 CFR 128.21(a), 128.24(e), 143.23(j-k), 143.26(b)).

Additionally, the Notice clarifies that CBP may require that Entry Type 86 Shipments be entered formally, and, in such instances, no Entry Type 86 filing will be acceptable. (Sect. V, 89 FR 2630). No exemption from Partner Government Agency (“PGA”) regulations applies to Entry Type 86 Shipments. (Sect. I, 84 FR 2630).

Consequences of Misconduct - The Notice also clarifies that participants in the test program for Entry Type 86 Shipments may be subject to civil and criminal penalties, administrative sanctions, or liquidated damages as provided by law for the following actions: failure to follow the rules, requirements, terms, and conditions that pertain to Entry Type 86 Shipments; failure to exercise reasonable care in the execution of obligations under the program; and failure to abide by applicable laws and regulations that have not been waived. (Sect. VIII, 89 FR 2630).

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