

**Commercial Customs Operations Advisory  
Committee (COAC)  
Next Generation Facilitation Subcommittee  
21<sup>st</sup> Century Customs Framework Task Force  
Report & Recommendations**

June 2022

**COAC**

COMMERCIAL CUSTOMS OPERATIONS  
ADVISORY COMMITTEE

**Commercial Customs Operations Advisory Committee (COAC)**  
**June 2022**

**COAC Subcommittee on Next Generation Facilitation**  
**21<sup>st</sup> Century Customs Framework Task Force Report and Recommendations**

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## Executive Summary:

The first significant customs modernization legislation in nearly 30 years is beginning to take shape in Congress, providing the opportunity to identify statutes and, subsequently, regulations that require updates to better reflect today's global trade environment, ensure supply chain continuity, and promote best practices. The administration and Congress should take this opportunity to update our laws to strengthen our economy security by increasing trade throughput, reducing delays, reducing cost, deterring and detecting violations and lowering non-tariff barriers for trade.

We welcome the opportunity to partner with the Administration, Congress, and Customs and Border Protection (CBP) to reimagine the process to make trade more fluid and transparent to the right degree and facilitate legal transactions. This legislation should advance [CBP's 21<sup>st</sup> Century Customs Framework](#). We believe CBP's draft approach and the proposed [Cassidy bill](#) omit trade facilitation privileges focusing predominantly on enforcement. We support enforcement measures and efforts to identify and curtail bad actors but believe they should seek to strike a balance with facilitation of legitimate trade.

This report summarizes the 21<sup>st</sup> Century Customs Framework Task Force position on each CBP challenge area and puts forward statutory edits for consideration that balance enforcement efforts with facilitation of legitimate trade.

## Background:

The 21st Century Customs Framework (21CCF) is CBP's comprehensive trade modernization effort comprising policy, regulatory, and statutory reform that seeks to address modern trade challenges, leverage emerging opportunities, and achieve transformational long-term change.

As part of this initiative, CBP has developed draft legislative concepts that the agency believes are designed to remove modernization barriers, eliminate outdated requirements, and provide sufficient legal flexibility to implement the 21CCF modernization vision over time. The legislative concepts are intended to address five challenge areas:

- Challenge 1: Limited Data Collection (previously Enhanced Facilitation)
- Challenge 2: Restricted Data Usage (previously Seamless Data Sharing)
- Challenge 3: Narrow Visibility and Accountability (previously Increased Visibility & Accountability)
- Challenge 4: Untimely & Ineffective Enforcement (previously Timely and Effective Enforcement)
- Challenge 5: Insufficient Funding (previously Secure Funding)

## Statement of Work:

The 21CCF Task Force provides an opportunity for representatives from the Trade, CBP, and the Partner Government Agencies (PGAs) to share inputs and perspectives on the 21CCF draft legislative concepts. More specifically, the 21CCF Task Force is designed to allow for robust discussion concerning:

- Challenges facing CBP, the Trade, and the PGAs that legislative updates may address.

- Inputs and perspectives on the draft 21CCF legislative concepts and their potential impacts; and
- Opportunities for regulatory, policy, and technical change critical to realizing the 21CCF vision.

The 21CCF Task Force held working sessions to discuss the draft legislative concepts. During the working sessions, the Task Force members shared ideas, feedback, and recommendations on the following:

- o Challenges and Operational Needs – to detail current operational challenges and drivers facing CBP, the Trade, and the PGAs that legislative updates may address
- o Outcomes and Benefits – to include the future-state outcomes and benefits that 21CCF trade modernization can produce for the Trade and Government
- o Legislative Concepts – to include an overview of the draft 21CCF legislative concepts as well as individual legislative discussion drafts

To further distill and refine discussion feedback from the Task Force, CBP established the 21CCF Focus Group (FG), which represents a subgroup within the Task Force focused on specific challenges in the trade environment. The 21CCF Focus Group consists of a cross-section of the larger 21CCF Task Force and includes members of the trade community and CBP. The Focus Group works to develop recommendations and to determine whether and how to best incorporate the feedback received during 21CCF Task Force meetings.

See Appendix A for comprehensive timeline and summary for all 21CCF Task Force and Focus Group activities.

## **COAC Position Summary of CBP Challenge Areas:**

### **CBP Challenge Area 1: Limited Data Collection**

Increases in trade volumes and parties that facilitate cross-border transactions, particularly in the small package environment, compound existing blind spots that leave supply chains vulnerable to forced labor, counterfeit goods, and other violations.

#### **19 USC § 1484**

CBP is seeking to amend the statute to clarify CBP’s authority to:

- Require the electronic filing of all entry data, unless exempt;
- Require all entry data to be filed in a single filing;
- Enable earlier data collection;
- Collect data related to entry, but prior to filing for release or entry, from persons other than the Importer of Record (IOR) or broker.
- Collect additional data elements from parties throughout the supply chain;
- Hold parties in the IOR’s supply chain providing data to CBP responsible for the accuracy of data; and
- Utilize data collected from the Trade for any lawful purpose.

**Trade Needs:**

- A “reasonable knowledge and belief” standard for advance documentation and information.
- Eliminate requirement for independent verification of such advance data to reflect a commercially realistic standard.

**Status: COAC and CBP agree to continued dialog in Q3**

- Further discussions between CBP and Trade are needed to ensure an appropriate standard of knowledge is included in (a)(2)(D)(ii), and whether it should be “best of” or “reasonable belief.”
- Further discussion to address Trade’s concerns regarding the standard of care and basis of liability for third-party filers of advance data.
- Further discussion to address Trade’s concerns over the scope of proposed 1595a penalties and the parties that should be responsible for providing advanced documentation.
- Seek opportunity to mirror parts of 1415 existing language in 1484 to establish parameters around how and where CBP can request incremental data from parties.

**19 USC § 1498**

CBP is seeking to amend the statute to clarify CBP’s authority to:

- codify the roles and responsibilities for parties eligible to make entry under the regulations

**Trade Needs:**

- Divergence of perspective among trade - concerns that for de minimis, including PGA restricted commodities: a.) excluding consignee as party with the right to make informal (de minimis) section 321 entry could prevent some express and other carriers from making entry, but to the contrary b.) not limiting the right to make such entry to owner, purchaser or customs broker (like formal entry) opens the door to non-licensed, non-regulated, including foreign parties, to make entry.
- Consider how best to address this potential change to existing practices and identify language that would support current business models while promoting efficiency and security.

**Status: No further action required at this time**

- CBP clarified that submission of advance data will be treated differently than the filing of an entry and advance data may be filed by parties other than those qualified to make entry.
- CBP struck statutory language identifying other parties eligible to make entry. This enables CBP with trade input to specify such parties in the regulations rather than codify at the statutory level, but conversations persist at statutory level.
- Codify that brokers as the only party able to make entry on another party’s behalf.

**19 USC § 1321**

CBP is seeking to amend the statute to clarify CBP’s authority to:

- Collect necessary information from all relevant parties related to merchandise seeking to qualify for an administrative exemption, including de minimis;

- Utilize data collected from the trade industry for any lawful purpose; and
- Impose penalties on parties who knowingly submit incorrect information.

**Trade Needs:**

- Establish a “reasonable belief” standard for filers of advance documentation and information.
- Remove the \$5K and \$10K penalty regime as excessive to value of shipments.

**Status: No further action required at this time**

- CBP clarified that advance data is separate from the entry filing and may be filed by parties other than those qualified to make entry.
- CBP accepted FG recommendation to lower penalty amounts from \$5K/\$10K to \$1K/\$2K for advanced data.

## **CBP Challenge Area 2: Restricted Data Usage**

Limited and inefficient data sharing impedes the effectiveness of proactive efforts to root out counterfeiting and other violative supply chain practices at the source.

**19 USC § 1415**

CBP is seeking to amend the statute to clarify CBP’s authority to:

- Use advance electronic data for any lawful purpose.

**Trade Needs:**

- Permit advance data to be used only for U.S. government purposes and limit overuse or over sharing of data.
- The “reasonably verifiable” standard from 19 USC 1415 (3)(B) should be applied in the proposed text.
- Trade data should be treated as private property and protected as confidential.

**Status: COAC and CBP agree to continued dialog in Q3**

- The Task Force has strong concerns about transparency surrounding the data sharing permitted under previously published Customs Mutual Assistance Agreements (CMAAs) and holding international governments accountable for protecting data and enforcing penalties.
- The Task Force is discussing concerns regarding the scope of the proposed provisions - commercial data being used for “any lawful purpose.”
- Further discussion is needed to incorporate language that will require CBP to provide notification to party when there is knowledge that their data has been breached.
- COAC recommends that CBP seek to modify 19 U.S.C. §1431(c) so that it automatically treats manifest and Customs declaration data of all transportation modes as private and confidential business information.

### **19 USC § 1628a and 1628b**

CBP is seeking to amend the statute to clarify CBP's authority to:

- Provide information to supply chain parties regarding violative merchandise and its packaging; and
- Share shipment information with persons/entities who can help to ensure compliance with Customs laws, including, but not limited to, marketplaces or platforms that facilitate or are otherwise involved in the sale of imported goods.

#### **Trade Needs:**

- Assurance that a written record will be provided to parties receiving compliance or enforcement information for clarity and transparency.
- Clarification regarding liability for receiving data and what action is required of the recipient.

#### **Status: No further action required at this time**

- CBP addressed COAC ask to replace "suspect" standard in (a) with "reasonable suspicion".
- CBP addressed COAC ask to better clarify the reasoning and expectations for sharing information with industry (e.g., promote compliance with customs laws vs. ensure compliance).
- CBP addressed COAC ask to include notification of information transmitted in accordance with regulations prescribed by the Secretary.

## **CBP Challenge Area 3: Narrow Visibility and Accountability**

Increasingly complex global supply chains hinder visibility for Government and Trade alike, masking unethical and illegal trade practices.

### **19 USC § 1508**

CBP is seeking to amend the statute to clarify CBP's authority to:

- Expand the parties that are required to retain records for import transactions; and
- Clarify that the parties who may be required to produce records and subject to recordkeeping penalties.

#### **Trade Needs:**

- Noting that additional, non-traditional parties will be covered, limit required documents to those kept in the ordinary course of business as well as those relative to party's role in transaction.
- Given the expansion of responsible parties, incorporate reasonable care and knowledge based standards to avoid strict liability for entities unable to comply with document demands.

#### **Status: No further action required at this time**

- CBP addressed COAC ask to limit required documents to those kept in the ordinary course of business as well as those relative to party's role in transaction.

### **19 USC § 1509**

CBP is seeking to amend the statute to clarify CBP's authority to:

- Clarify parties covered by CBP's summons authority and to allow CBP to summons persons to produce records required under 1508 that pertain to the importation of prohibited merchandise, or to the nonpayment of duties, taxes, and fees.

#### **Trade Needs:**

- Limitations on language presented by CBP, which would appear to allow anyone within CBP to issue a summons. Unchanged, this language could have serious unintended consequences and ramifications whereby individuals without appropriate training and authority could issue a summons.

#### **Status: No further action required at this time**

- CBP agreed to revise the language to ensure that no delegate of the Secretary below the rank of port director, Center director, field director of regulatory audit or special agent in charge may issue summons, consistent with current CBP regulations.
- Additionally, CBP has replaced language reading "not acting to the best of such person's ability" with the phrase "make reasonable efforts" as the standard for applying an adverse inference where there is a failure to provide such documents.

## **CBP Challenge Area 4.1: Preventing Loss of U.S. Revenue**

High-risk actors, like those who are suspended/debarred, jeopardize rightfully owed duties, taxes, and fees.

### **19 USC § 4320, 1321, and 1498**

CBP is seeking to amend the statute to clarify CBP's authority to:

- Exclude persons suspended or debarred under the Federal System for Award Management ("SAM") from participating in the Importer of Record program;
- Exempt imports caused or facilitated by suspended and debarred persons from duty and tax administrative exemptions in the de minimis environment; and
- Create special rules for the declaration and entry of imports caused or facilitated by suspended and debarred persons.

#### **Trade Needs:**

- Trade envisions system that prohibits importing rights due to egregious CBP, import related infractions, related to an inability or refusal to pay duties, taxes or fees.
- CBP to build ACE flag to make monitoring of suspended or debarred entities easier for the trade.
- CBP to maintain and publish "denied parties list" separate from the SAM exclusion list.

#### **Status: COAC and CBP agree to continued dialog in Q3**

- Further discussions are needed to fine tune language that limits the qualifying abuses actions to federal, import related issues, particularly related to the financial inability or refusal to pay duties, taxes, or fees.

- Further discussions concerning the reference to the specific system of records (“SAMS or any successor system”), which potentially could prohibit importations from parties subject to other unrelated infractions.
- See “4.1\_Preventing Loss of U.S. Revenue SD Trade Presentation Final 5.24.22” for an overview of regulations and processes related to suspension and debarment.

### **19 USC § 1623**

CBP is seeking to amend the statute to clarify CBP’s authority to:

- Create a regulatory regime for information sharing with sureties; and
- Ensure that duties, taxes, and fees are fully secured by bonds.

#### **Trade Needs:**

- Bonds to secure risk must be consistent with surety and underwriting standards and commercial reality.
- Trade objects to CBP making agency decisions under 1623 no longer subject to judicial review.

#### **Status: COAC and CBP agree to continued dialog in Q3**

- CBP addressed COAC ask to strike unlimited bond liability for sureties in exchange for information that the surety industry has requested.
- Further discussion needed among sureties and CBP concerning the sharing of information with the sureties. CBP is also seeking more discretion when setting bonding requirements and requiring that unpaid bond amounts bear interest until the full balance is paid.

### **19 USC § 1517**

CBP is seeking to amend the statute to clarify CBP’s authority to:

- Permit CBP to expand an EAPA investigation to other entities not named in the underlying EAPA investigation, the investigation develops evidence that leads the agency to believe that additional evasion has occurred.

#### **Trade Needs:**

- Language to ensure that a sufficiently high standard of evidentiary proof is required to expand the underlying investigation.
- Trade discussed due process concerns for the additional parties that may be named subsequently to initiation of investigation.
- Trade asked CBP to address concerns regarding those situations where traders modify supply chains to become compliant, but interim measures are still applied, requiring importer to claim a false country of origin and entry type.

#### **Status: COAC and CBP agree to continued dialog in Q3**

- Further discussion to ensure that any new entities named to the EAPA investigation receive the same level of due process, including timetable, as the entity originally named.
- Seek different enforcement mechanisms for importers who know they are under investigation and change their IOR number to avoid interim measures.

- Need ability for parties to be heard if circumstances change rendering interim measures and required COO and entry type declarations false.

## **CBP Challenge Area 4.2: Streamlining Enforcement Avenues that Protect U.S. Intellectual Assets and American Consumers**

Lengthy seizure timelines exacerbate the challenges of facilitating enforcement in the growing small package environment.

### **19 USC § 1526(e), 1595a(f), and 1607**

CBP is seeking to amend the statute to clarify CBP's authority to:

- Develop regulations providing alternatives to seizure and summarily forfeit, without notice, certain IPR-infringing and other goods.
- Prevent counterfeit exports from reaching the U.S. market;
- Permit CBP to summarily forfeit Schedule III, IV, and V narcotics.
- Permit CBP to summarily forfeit products not in compliance with the Federal Food, Drug, and Cosmetic Act and Drug Cosmetic Act or the Public Health Service Act; and
- Summarily forfeit counterfeit merchandise.

#### **Trade Needs:**

- Trade strongly opposes CBP to summarily forfeit without due process (i.e., proper notice, petition, detention, etc.)
- Trade is open to streamlining summary forfeiture, with appropriate notice, in the de minimis environment, but not for broader trade.

#### **Status: COAC and CBP agree to continued dialog in Q3**

- Further discussion needed to ensure that proposed streamlined forfeiture procedures are restricted to de minimis shipments and to ensure that some level of due process and notice are mandated.
- Summary forfeiture with notice (aligned with 19 CFR 162.45) could provide an alternative, but not "summarily forfeited" without any notice like Class 1 or 2 narcotics, noting that some of the alleged violations occasionally lead to release upon further review, contrary to Class 1 or 2 narcotics.

### **19 USC § 1499**

CBP is seeking to amend the statute to clarify CBP's authority to:

- Exempt imports entered subject to an administrative exemption under 19 USC 1321(a)(2)(C) from deemed exclusion procedures under 19 USC 1499(c)(5);
- Promulgate regulations related to notices of detention for de minimis shipments; and
- Dispose of detained de minimis imports after a 15-day period of no response.

#### **Trade Needs:**

- COAC supports CBP's proposed discussion draft language.

#### **Status: No further action required at this time.**

- Seek to clarify that the USG will be the party to take possession and destroy.

### **19 USC § 1514(a)(4)**

CBP is seeking to amend the statute to clarify CBP's authority to:

- Exclude CBP enforcement decisions related to exclusion orders issued by the U.S. International Trade Commission under Section 337 from the scope of decisions that are administratively protestable.

#### **Trade Needs:**

- COAC supports CBP's proposed discussion draft language.

#### **Next Steps: No further action required at this time**

- None.

## **CBP Challenge Area 4.3: Driving Trade Compliance through Expanded and Streamlined Penalties**

Current penalty authorities do not allow for the parties most culpable to be penalized for their actions.

### **19 USC § 1526(f)**

CBP is seeking to amend the statute to clarify CBP's authority to:

- Apply penalties consistently throughout the supply chain.

#### **Trade Needs:**

- Change from strict liability to knowledge standard, noting that additional, non-traditional parties are being covered.

#### **Status: No further action required at this time**

- CBP declined to place "knowingly" standard in this statute as there is not a "knowingly" standard related to the underlying violation.
- CBP addressed COAC ask to strike "is in any way concerned with any unlawful activity" from proposed statute changes.
- CBP addressed COAC ask to reinsert "aids and abets."
- Must ensure that statutory interpretation of "interdiction" includes notice so that Trade is aware of inadmissibility and can address non-compliance.

### **19 USC § 1436**

CBP is seeking to amend the statute to clarify CBP's authority to:

- Penalize any person who is directly or in any way concerned with certain carrier-related violations, including violations related to conveyance entry and the production of manifests.

#### **Trade Needs:**

- Change from strict liability standard to a knowledge standard, noting that additional, non-traditional parties are being covered by penalty provision.

#### **Next Steps: No further action required at this time**

- CBP accepted recommendation to insert a knowledge standard for parties, other than party in charge of conveyance, who provide carriers incorrect information.

- CBP clarified the parties and their respective responsibilities as well as the applicability of penalties to those parties.

### **19 USC § 1595a(b)**

CBP is seeking to amend the statute to clarify CBP's authority to:

- Clarifies CBP's authority to assess penalties for unlawful imports regardless of whether a seizure has occurred and regardless of whether the underlying violation is related to the conveyance of the goods.

#### **Trade Needs:**

- Change from strict liability standard to knowledge standard, noting that additional, non-traditional parties are being covered.
- Need to align value with declared/transactional value to ensure objective, uniform, and appropriate penalty regime.

#### **Status: COAC and CBP agree to continued dialog in Q3**

- CBP added language to (b) to clarify that penalties are related to the underlying violation at hand.
- Trade concerned with how this penalty applies to entries made under the voluntary advanced entry data under the proposed changes to 1484.
- CBP rejected a request to insert a knowledge standard in 1595a(b) on the basis that it would override the standard set forth in the underlying violations, many of which belong to the PGAs.
- Further discussions required to properly define "value" and seeking to include "dutiable", "appraised", "customs" or "import/export" in order to properly define value to be used as penalty basis, consistent with current 1595a(c) seizure mitigation guidelines.

### **19 USC § 1595a(d)&(e)**

CBP is seeking to amend the statute to clarify CBP's authority to:

- Clarify that CBP's seizure and forfeiture authority for unlawful exports is discretionary and provides authority to assess penalties for unlawful exports.

#### **Trade Needs:**

- Change from strict liability to knowledge standard, noting that additional, non-traditional parties are being covered.
- Concerns with CBP assessing export penalties under 1595 in addition to Partner Government Agencies with export authorities, without clarification of limitation of CBP penalty authority.

#### **Status: COAC and CBP agree to continued dialog in Q3**

- CBP not open to insert a knowledge standard in 1595a(d) and (e) on the basis that it would override the standard set forth in the underlying violations, many of which belong to the PGAs.
- CBP explained that penalty provision would be specific to customs related activity and non-PGA based.

- Further discussion needed regarding possible alternative language that clarifies any penalty is in lieu of seizure and only related to Customs related activity.

### **19 USC § 1592**

CBP is seeking to amend the statute to clarify CBP's authority to:

- Penalize those who facilitate the import of goods and knowingly or negligently defraud the government of revenue;
- Eliminates gross negligence standard as a level of culpability; and
- Eliminates pre-penalty notice for fraud cases, providing CBP discretion to bring fraud cases directly to litigation.

#### **Trade Needs:**

- Trade strongly opposed to removing gross negligence standard.
- Trade offered an alternative that would allow CBP, recognizing exigent circumstances, to bring fraud cases directly to court.

#### **Status: COAC and CBP agree to continued dialog in Q3**

- COAC heard CBP's concerns about the difficulties that CBP has in prosecuting fraud and gross negligence cases effectively.
- CBP to consider providing legal authority supporting the agency's proposed changes.
- Further discussion is needed to ensure gross negligence standard is preserved, but with statutory definition to appropriately distinguish from fraud.
- COAC will offer compromise for retaining language that provides CBP discretion in filing fraud cases directly with the CIT.
- Further work to ensure clear definitions of fraud, gross negligence, and negligence are represented in the statute.

### **19 USC § XXXX**

CBP is seeking to create a new provision the statute to clarify CBP's authority to:

- penalize parties who intentionally destroy, hide assets, or alter evidence during an investigation.

#### **Trade Needs:**

- Trade does not see the need for a new civil provision penalizing parties that intentionally spoil evidence and would rather see CBP continue to address it through the criminal states under Title 18.

#### **Status: COAC and CBP Agree to Continued Dialog in Q3**

- CBP provided edited version to clarify that the proposed new statute is meant to apply only to those entities that intend to obstruct an investigation
- Further discussion required to ensure relevant standard for spoliation of evidence under Federal Rule of Civil Procedure 37(b)(2), which provides varying dispositions due to the criticality, relevance, etc. of the evidence is reflected in this new statute
- CBP seeks opportunity to clarify use of this statute.

## **Trade Sector Modernization Opportunities:**

### **One Government Approach to Trade Modernization (Import/Export) & Partnership Programs:**

To ensure that our Nation is well-positioned to compete in an open, fair, and growing world economy, the Federal Government must increase efforts to improve the technologies, policies, and other controls governing the movement of goods across our national borders. We envision the Department of Homeland Security (DHS) coordinating policies across all government agencies to align with enforcement risk and facilitation opportunities, as well as to provide guidance, resolution, and periodic reviews of program status. All government agencies engaged on cross border transactions must be required by statute to develop complementary and coordinated risk management processes, including the sharing of information; identifying and managing trusted traders; and providing a single, true 1USG release at the border. CBP and the PGAs must embrace and implement uniform data sharing protocols between them to facilitate effective targeting and immediate release of cargo within the 1USG ACE platform. Border Interagency Executive Council (BIEC) must play a crucial role to harmonize PGA data collection, analytics, and response to ensure timely decisions and the 21CCF statutory framework should require the COAC to report directly to the BIEC. Industry should have a platform to easily access publicly available PGA data.

Further, to advance national economic security, trade enforcement and trade facilitation, CBP, in collaboration with the PGAs, must implement partnership programs under the Customs Trade Partnership Against Terrorism (CTPAT) envisioned pursuant to the Trade Facilitation and Enforcement Act of 2015 (19 USC §4301).

COAC recommends amendments to 19 USC §1411 and 19 USC §4316 to codify Partner Government Agency engagement with trade, including COAC reporting to the existing Border Interagency Executive Council, establishing a framework that requires the PGAs engagement with and reporting to the trade, provides visibility and input to harmonize cargo processing and release protocols, requires true 1USG cargo release through interoperable platforms, and also ensures appropriations for funding of such measures.

COAC recommends CBP enhance uniform data sharing protocols between CBP and participating government agencies (PGAs) to facilitate effective targeting and immediate, true release of cargo within the 1USG ACE platform.

COAC recommends that CBP ensure that the Border Interagency Executive Council (BIEC) harmonize PGA data collection, analytics, and response to ensure timely decisions.

COAC recommends amendments to 19 USC §4301 requiring each PGA with authority to detain and release merchandise entering the U.S. to set forth CTPAT-PGA minimum security and compliance criteria and to implement a program for importers, exporters and other appropriate

parties, providing benefits, facilitating the release of cargo, minimizing inspections and exams, limiting the recall of merchandise into custody as well as other tangible, meaningful benefits that CBP and the PGAs develop in collaboration with the Commercial Customs Operations Advisory Committee (COAC). The CTPAT-PGA programs shall not limit or restrict any PGA's ability to develop and implement its own trusted trader programs in addition to the CTPAT-PGA program, in order to provide more fulsome or recurring benefits.

Trade understands restrictions for CBP to recoup revenue from current fees. Trade believes there should be an effort to fix current revenue authorities so that CBP can better fund current activities before considering new or altered fees.

COAC recommends that CBP seek legislation that authorizes Congress to appropriate the necessary amounts to carry out improvements in a uniform 1USG single window cargo admissibility, release, and summary, specifically related to improvements in the Automated Commercial Environment and the International Trade Data System and to carry out a government-wide CTPAT-PTGA program via the CBP CTPAT portal for each of fiscal years 2023 through 2027.

#### **Trade 1USG Wishlist:**

- Increased DHS/Treasury Oversight and Engagement
- Clear, common, published definitions for all PGA parties
- Distinct and common identifiers for all parties
- Complimentary and coordinated risk management process through the sharing of information
- Timely coordinated interagency targeting examination and release of cargo
- Identifying and managing trusted traders
- Providing a true single release methodology
- Standardized transparency, roles and metrics (e.g., operational metrics on a regular cadence)
- At an international or regional level CBP must proactively engage PGA interagency and all topics and positions on all international discussions/topics/agreements including:
  - Customs Mutual Recognition Agreements (MRA);
  - Customs Mutual Assistance Agreements (CMAA); and
  - Mutual Memorandum of Understanding (MMU)
- Importer/Exporter-Authorized Global Single Window
  - Data standardization
  - Centers of Excellence and Expertise (CEE)/Port Policy/Procedure for delegation of authority and execution
- Confidential business information and data protections (domestic and international)

### **Prior Relevant COAC Recommendation:**

- 10455 - COAC recommends that the government agencies impacting trade and logistics must adopt a 1USG approach, incorporating the BIEC, to ensure trade flows continue despite multi-jurisdictional admissibility and/or revenue collection requirement.
- 10362 - COAC recommends that, as a top priority, CBP and the PGAs encourage uniform national policies and procedures that harmonize and streamline licensing and permitting procedures, in-bond and foreign trade zone (FTZ) movements as well as cargo inspection and swift, uniform release procedures through risk management consistent with CBPs and other customs administrations best practices such as fast lane processing for imports and exports. Such policies and procedures should be designed to facilitate not only large containerized, but also small parcel e-commerce, shipments.

### **Account-Based Processing (Other than CTPAT):**

Identifying importers with stable and compliant supply chains should be eligible to be managed from an account-based processing methodology. We anticipate managed accounts having benefits of streamlined import, export, and inquiry processing. Doing so would allow importers to receive admissibility on transaction-by-transaction basis and allow revenue collection on a periodic basis (e.g., quarterly, yearly), making corrections easier and avoiding penalties for errors that are realized after entry.

CBP leadership and COAC are interested in facilitative measures that embrace account-based processing as well as other efficiencies. Trade developed a preliminary envisioned structure, which includes Types of parties (non-trusted, unknown, and known), risk-based criteria (company size, transactional volume, complexity, governance, commodity, origin, etc.), and benefits afforded (drawback simplification, reconciliation, customs concierge, etc.). Although trade identified the core concept, it requires further evaluation to build out potential program requirements and related benefits.

COAC recommends CBP consider the concept of account-based processing, bringing the concept to an appropriate COAC working group to fully scope and explore the potential.

### **Reimagined CBP Partnership Programs and Related Benefits:**

Provide partnership program members with an upfront reduction in the penalty amount assessed in advance of the petition process. Amend CTPAT laws to provide additional trade benefits and incentivize industry-led solutions through the use of approved pre-screening technology. Also, pursue a statutory amendment to authorize harmonization of trusted trader programs, like Canada's PIP, and global initiatives like WCO standards, to promote a world-wide approach and to account for the reality of today's cross-border supply chain flows and new participants.

### **Trade Partnership Programs Wishlist:**

- Changes to the program should be subject to the public notice and comment process.
- Enhanced benefits and incentives related to account-based processing.

- Mitigation guidelines need to recognize trusted trader status as a mitigating factor in more than just the limited circumstances as they do now. 19 USC § 1592 should reference consideration of trusted trader (security and trade compliance) status.
- Reasonable care decision-making should be updated and measured at the account level instead of transactional levels.
- More meaningful benefits should be offered, such as exemption from Merchandise Processing Fee (MPF) and/or Harbor Maintenance Fee (HMF).
- Greater visibility to the reason(s) shipments are held. When CBP stops a shipment, the agency has information that would be helpful, including why it was stopped and what container or box it was in. This should be made available for trusted traders (CTPAT and Trade Compliance) in real time vs. through a FOIA request.
- Random inspections should be minimized for CTPAT members in favor of inspections based on concrete information of issues with a shipment.
- More transparency and visibility regarding data that CBP collects for Trusted Traders (CTPAT and Trade Compliance).
- Upfront reduction in the penalty amount assessed in advance of the petition process
- CBP should establish a voluntary program that encourages entities involved in international trade to cooperate with CBP to strengthen IPR protection. Participating in this new trusted importer program would be a mitigating factor in penalizing parties involved tangentially in the import of violative products.

COAC recommends CBP seek an amendment to 19 USC § 58c in an effort codify the ability to reduce Merchandise Processing Fee (MPF) for CTPAT Trade Compliance members and ensure MPF is allocated to CBP for operations and automation.

### **Trade Automation Modernization:**

Digital technologies such as distributed ledgers, artificial intelligence, machine learning, and commercial cloud computing applications have the potential to create novel ecosystems for trade: helping coordinate value chains by increasing trust and speed of transactions; empowering actors; enabling the verification of the provenance of products; facilitating the transfer of funds; and automating processes and decisions related to CBP targeting, commodity classification, valuation, and tariff compliance. At the same time, these digital technologies can enhance trust for consumers, increase the resilience of value chain for private actors, and enable the public sector to better manage risk and costs for customs authorities. CBP should seek to codify trade automation opportunities.

### **Trade Automation Wishlist:**

- Seek to automate processes and decisions related to CBP targeting, exams, commodity classification, valuation, and tariff compliance.
- Acknowledge Machine Learning Classification
  - Advanced technologies such as Blockchain, Artificial Intelligence, Machine Learning and others are being evaluated and used in prototypes and production applications by Industry and CBP.
  - Utilization of these technologies and their acceptance should be acknowledged in the CBP reasonable care standards.

- ACE being fully functional - Refer to NCBFAA Punch list of things to do; COAC recommendations not deployed - should include:
  - Creating a full buildout of ACE multimodal, end-to-end automation, to allow seamless real-time electronic in-bond transfers within and across multi-modal manifest and broker systems
  - Modernizing in-bond regulations to eliminate the unnecessary closure of active bonds and filing of subsequent in-bonds by allowing a single in-bond to move among multiple bonded parties
  - Creating a permanent automated export manifest process beyond the pilot phase as outlined in the COAC White Paper, “Export Operations for the 21st Century.”
- Harmonize CBP data regulations with commercial documents & digitize; true digitization across agencies.
- Throughout 19 USC and all agencies CBP enforces, eliminate any paper, or document and require it as paperless data; including paperless carnets.
  - Paperless and scalable technology used for risk assessment; remote functionality for CBP staff
- Single system of record for all points of contact; all communications are electronic
  - Via a single system, not necessarily the ACE Portal.
  - Efficiency, permanent record; proof of delivery/receipt/traceability.

COAC recommends CBP bring the trade automation wish list to an appropriate COAC working group to evaluate each opportunity.

## Entry Processing and System Modernization

- **ACE 2.0 pilots:** As CBP moves forward with pilot projects to test the impact of some ACE 2.0 concepts in specific industries; steel, natural gas, oil, food safety and e-commerce, results should be shared with the trade to identify gaps and collaborate while expanding to additional industrial sectors.
- **Conditional Release:** CBP should evaluate the opportunity to address the existing conditional release period under 19 USC §1484. Trade believes the 30-day period is antiquated and that in this day and age, there should be more certainty if trade is providing CBP with advance data.
- **Streamline Dates:** CBP should evaluate the opportunity to streamline and properly define dates related to entry processing. Specifically, the arrival date and the entry date to ensure it is enforceable for CBP and viable for trade.
- **Release Process:** CBP should explore ability to improve the overall release process, not only between CBP and the PGA’s, but also between CBP, PGA’s and all the carriers via the Advanced Manifest System (AMS) data.
- Complexity in trade challenge the design of ACE 2.0 to promote interoperability; continue to drive to a single window eliminating duplication of data and paper, strive to streamline automation for better data quality. Establish timeline and deliverables for all prior recommendations
- COAC recommends CBP bring the entry processing and modernization enhancements to an appropriate COAC working group to evaluate each opportunity.

## Foreign Trade Zone (FTZ) Modernization

FTZs have proven to bolster local economies, create jobs in the U.S. and help our Nation to remain competitive in the world economy while providing data elements to CBP prior to entry into U.S. commerce, meeting higher security requirements, and ensuring inventory audit trail visibility. FTZs and the broader Trade community should receive the same competitive advantage as it relates to eCommerce shipments (specifically Section 321) and trade remedy treatment (Section 232 and 301) for goods entering U.S. commerce.

In addition to all government agencies engaged on cross border transactions developing complementary and coordinated risk management processes, regional and local levels within an agency must do the same. Leveraging automation opportunities, standardizing operational procedures, and shifting to a truly paperless environment can allow for more streamlined and cost effective CBP enforcement, increase the resilience of value chain for private actors, and enable the public sector to better manage risk and costs for customs authorities.

CBP is currently undergoing a review of a red-lined version of 19 CFR 146. CBP must finalize the review of 19 CFR 146 and modernize the FTZ Manual to ensure it aligns with all regulatory reform, policy changes, and automation capabilities. The review should include the following objectives:

- Conform with the FTZ Board regulations modified in 2012 and reference FTZ board production authority scope of approval and restrictions.
- Reflect a paperless environment in ACE.
- Eliminate and/or automate certain forms, seals, and processes that are antiquated.
- Distinguish authority of CBP Centers of Excellence and Expertise for post entry work.
- Revise to meet the new in-bond regulations implemented in 2018.
- Update and move all definitions to Subpart A to provide a central location for clarity.
- Reorder regulatory sections to provide clarity and logical order of content.
- Clarify language concerning valuation and quantity reporting.
- Modify the five (5) day removal rule.

CBP has long stated publicly and in its CTPAT documentation that a Foreign-Trade Zone is a best practice where CTPAT is concerned because of the security requirements and day to day CBP oversight. This needs to be formally included in the additional benefits discussion including separate CTPAT designation for FTZs with CBP Headquarters, and formally include FTZs in CBPs purview when discussing partnership programs in the trade community.

### **FTZ Modernization Wishlist:**

- Allow withdrawals from FTZs, capable of providing an audit trail and identification of eCommerce merchandise, to utilize Section 321.
- Equitable treatment between FTZs and the broader Trade environment in the application of trade remedies, for merchandise within and withdrawn from FTZs.
- Standardize CBP FTZ operational protocols at all ports (Manifest Discrepancy Reports, annual audit requirements, maintenance/updating FTZ bond value, etc.).

- Products that are manufactured in a FTZ (tariff shift) and subsequently exported to Canada and Mexico should qualify for preferential treatment and origin rules under USMCA just as Canada and Mexico allow for today.
- FTZs provide for the safety of foreign product admitted, confirmed and concurred into an FTZ. The product can be held until orders are placed for pick, pack and shipment for ecommerce and should qualify for Section 321/Entry Type 86 entries as the final customer is known prior to exiting the FTZ and entering the commerce of the United States.

## **Drawback Modernization:**

### **Streamlined Drawback Privilege Application Process**

The current process for drawback privilege applications for Accelerated Payment (AP), Waiver of Prior Notice (WPN) and One-Time Waiver of Prior Notice (WPN) per 19 CFR § 190.36, 190.90, 190.91 and 190.92 significantly delays processing of drawback claims. With the current application review, Drawback Specialists lose time that they would otherwise use to review and liquidate drawback claims.

### **Drawback Modernization Opportunities:**

- The privilege application process should be minimized and streamlined to allow for a submission process instead of the current application process; this submission process would eliminate irrelevant and redundant information currently being submitted. This process eliminates the need for Drawback Specialists to review documentation multiple times, allowing them to perform the review once during a desk review process when claims are filed.
- When submitting the drawback privilege submission for AP and WPN to CBP via DIS, the privileges should be provided immediately, as drawback claims are covered by a dollar-for-dollar bond that ensures that repayment to CBP if the claimant does not have full documentation to support AP and/or WPN requirements. This would apply the bond process to Waiver of Prior Notice requirements, giving CBP additional security that it does not currently have.
- Currently, drawback claims can be amended, but the process is cumbersome and requires the intervention of Drawback Specialists even though claimants have a right to file the amendment. The process should be revised to be similar to import summary filing where a drawback claim can be completely replaced by the claimant under the amendment process without the need for special intervention.

### **ACH and the CBP Form 4811**

Drawback claimants often use CBP Form 4811 to direct checks to their drawback broker. However, when a claimant elects to receive funds via ACH, all 4811 relationships are wiped out and all refunds are paid to the claimant via ACH. Therefore, claimants are reluctant to sign up for ACH refunds because of the elimination of these relationships. Claimants want the ability to direct payments to their broker and brokers should be able to receive those payments. Brokers (and others) receiving payments through the 4811 processes should be able to receive ACH payments from CBP, eliminating paper checks. Brokers should be allowed to receive refunds directed to them via 4811 using ACH.

### **Streamline Drawback Headquarters Specific Ruling Process**

For manufacturing drawback, drawback manufacturers and claimants often need to apply to CBP Headquarters for Specific Rulings because they cannot use the more streamlined General

Ruling process. These rulings are unlike any other rulings issued by CBP's Regulations and Rulings (R&R) and require a completely different staff. These rulings are time-consuming to prepare, involve long reviews by an already overworked R&R staff and CBP lab personnel. Claimants wait months or years for rulings to be issued so they can file drawback. CBP should consider eliminating R&R Specific Rulings through the use of the General Ruling process. CBP R&R can create an over-arching General Ruling capturing all claims not currently covered by other General Rulings. Claimants would file for those rulings using the streamlined notice procedure and the Drawback Specialists could only refer those rulings with questions to CBP Headquarters under the Internal Advice Procedure.

## Prospective ADD/CVD program

COAC recognizes the challenges of a retrospective system in the U.S. and continues to support recommendation 12025 from the 12<sup>th</sup> Term of COAC that would provide a prospective system for collection of AD/CVD cash deposits. Because the revenue is not adequately protected when there is a retrospective change in the AD/CVD cash deposit that is posted at time of entry, CBP should leverage the current policy for "Use of Single Transaction Bonds as Additional Security for Anti-Dumping and Countervailing (AD/CVD)." CBP should amend this current policy to revise the statement to "return the bond" to "liquidate the entry to exhaust remaining liability or exposure" and include this policy in the new bond directive for full transparency to the trade.

## COAC Recommendations:

1. COAC recommends that CBP proceed to internally finalize the draft statutory language based on areas addressed in the course of 21CCF discussions for the following statutes:

### **21CCF Statutory Changes to be Finalized:**

#### CBP Challenge Area 1: Limited Data Collection

- 19 USC 1321
- 19 USC 1498

#### CBP Challenge Area 2: Restricted Data Usage

- 19 USC 1628a and b

#### CBP Challenge Area 3: Narrow Visibility and Accountability

- 19 USC 1508
- 19 USC 1509

#### CBP Challenge Area 4.1: Preventing Loss of U.S. Revenue

- 19 USC 1499

#### CBP Challenge Area 4.2: Streamlining Enforcement Avenues that Protect U.S. Intellectual Assets and American Consumers

- 19 USC 1514(a)(4)

CBP Challenge Area 4.3: Driving Trade Compliance through Expanded and Streamlined Penalties

- 19 USC 1526(f)
  - 19 USC 1436
2. COAC recommends that CBP, the 21CCF Focus Group, and any additional PGAs as appropriate, continue to discuss and attempt to finalize the below statutory changes proposed by CBP and separately, by industry.

**CBP-Proposed Statutory Changes for Further Discussion:**

CBP Challenge Area 1: Limited Data Collection

- 19 USC 1484

CBP Challenge Area 2: Restricted Data Usage

- 19 USC 1415

CBP Challenge Area 4.1: Preventing Loss of U.S. Revenue

- 19 USC 4320, 1321, and 1498
- 19 USC 1623
- 19 USC 1517

CBP Challenge Area 4.2: Streamlining Enforcement Avenues that Protect U.S. Intellectual Assets and American Consumers

- 19 USC 1526(e), 1595a(f), and 1607

CBP Challenge Area 4.3: Driving Trade Compliance through Expanded and Streamlined Penalties

- 19 USC 1595a(b)
- 19 USC 1595a(d) and (e)
- 19 USC 1592

**Industry-Proposed Statutory Changes for Further Discussion:**

- 19 USC 1431(c) - Automatically treat manifest and Customs declaration data of all transportation modes as private and confidential business information.
- 19 USC 1411 and 19 USC 4316 – Codify PGA engagement with trade, including COAC reporting to the existing Border Interagency Executive Council, establishing a framework that requires the PGAs engagement with and reporting to the trade, provides visibility and input to harmonize cargo processing and release protocols, require true 1USG cargo release through interoperable platforms, and also ensures appropriations for funding of such measures.
- 19 USC 4301 – Require each PGA with authority to detain and release merchandise entering the U.S. to set forth CTPAT-PGA minimum security and compliance criteria and to implement a program for importers, exporters, and other appropriate parties, providing benefits, facilitating the release of cargo, minimizing inspections and exams, limiting the recall of merchandise into custody as well as other tangible, meaningful benefits that CBP and PGA’s develop in collaboration with the COAC. The CTPAT PGA programs shall not limit or restrict any PGA’s ability to develop

and implement its own trusted trader programs in addition to the CTPAT PGA program, in order to provide more fulsome or recurring benefits.

- Statute TBD – seek legislation that authorizes Congress to appropriate the necessary amounts to carry out improvements in a uniform 1USG single window cargo admissibility, release, and summary, specifically related to improvements in the Automated Commercial Environment and the International Trade Data System and to carry out a government-wide CTPAT-PTGA program via the CBP CTPAT portal for each of fiscal years 2023 through 2027.
  - 19 USC § 58c in an effort codify the ability to reduce Merchandise Processing Fee (MPF) for CTPAT Trade Compliance members and ensure MPF is allocated to CBP for operations and automation.
3. COAC recommends CBP proceed to further develop sub-statutory concepts identified in the course of 21CCF discussions leveraging the appropriate COAC working group. These sub-statutory concepts include:
- Enhance uniform data sharing protocols between CBP and Partner Government Agencies (PGAs) to facilitate effective targeting and immediate, true release of cargo within the 1USG ACE platform.
  - Engage with the Border Interagency Executive Council (BIEC) to harmonize PGA data collection, analytics, and response to ensure timely decisions. Review the merits and near-term implementation of account-based processing.
  - Evaluate industry’s concept of account-based processing.
  - Evaluate industry’s trade automation wish list.
  - Evaluate opportunities to enhance entry processing and explore other modernization opportunities.

## Appendix A: Timeline and summary for all 21CCF Task Force and Focus Group activities.