

Customs Modernization Reauthorization Proposals

The trade landscape is changing. The rise of global e-commerce, post-Covid supply-chain constraints and resiliency planning, new sourcing considerations, new players in the trade space, and the overall rethinking of trade. These changes can make global supply chains more complex as more participants and business models enter the space. These challenges, however, also present opportunities. For example, small and medium-sized businesses now can compete in the global economy in new and powerful ways.

The U.S. Customs and Border Protection's 21st Century Customs Framework (21CCF) is an important starting point to any customs modernization discussion. We also applaud CBP's decision to involve the trade community through the Commercial Customs Operations Advisory Committee (COAC) and the 21CCF Task Force in developing the 21CCF proposal. The vast majority of the trade community is compliant with existing U.S. trade laws and shares a commitment to advancing our nation's economic security. While work on this effort is winding down, the trade community is shifting its focus to Congress on completing work on a comprehensive customs modernization legislative proposal. Congress should look to the 21CCF proposal as a starting point while also looking to build upon CBP's existing trade facilitation authorities and incorporate a robust trade facilitation component that supports our nation's competitiveness and provides all entities with the necessary tools to combat nefarious actors. Customs modernization should not only provide CBP with appropriate authority and tools to stop unlawful trade, but to also improve trade facilitation, protect good actors, and provide opportunities for the trade community to engage with CBP in advancing its important trade mission.

Therefore, as Congress works to modernize CBP's customs authorities, we outline several priorities below that are critical to any legislative effort. The 21CCF product is an important start but these additional proposals will be critical to provide CBP with the tools and resources to meet the changes of the trade landscape while also helping simplify and streamline the customs process to make U.S. businesses more competitive – and resilient against forced labor and counterfeits – in the global economy.

Trade Facilitation Proposals

- **A Government Wide Policy Approach to Customs Entry Processes:** The current, fragmented approach to goods entry is unnecessarily costly and slow, with many agencies requiring duplicative information via paper-based processes. CBP's Automated Commercial Environment (ACE) established the capability for a single, intergovernmental interface; however, in practice, each federal agency adopted or opted to continue different policies, procedures, and processes that undermined the promise and intent of ACE, resulting in shippers interacting with multiple agencies to clear goods. There should be a single, centralized policy and regulatory process that is coordinated through CBP, utilizing the Border Interagency Executive Council (BIEC) or another body that reduces the duplicative nature of the entry process while modernizing many of the current paper-based processes into a fully digital process. Regardless of the mechanism, the authority to make and drive decisions must reside within this forum and the private sector should be fully included to provide valuable insight into the impact of current and future trade developments. The initial focus of this effort should be reducing the redundant information requirements across Government agencies and

consolidating inspectional authorities on the border to ensure appropriate personnel are available when and where CBP is clearing shipments.

- **Continue to Facilitate Entries Under Regulations:** Congress should expand the United States' global leadership in implementing the Trade Facilitation Agreement by amending 19 USC 1498 to grant the Secretaries the ability through rulemaking to adjust for inflation for entries under regulations. Finally, Congress should codify the parties granted the right to make entry as currently defined under customs regulations.
- **Fight forced labor through better information sharing:** Forced labor is abhorrent and has no place in supply chains. Congress should consider the following proposals to mitigate forced labor:
 - Require public disclosure of a sanitized (e.g., non-classified) version of the Department of State's and the United States Trade Representative's diplomatic strategies to address root causes of forced labor.
 - Empower the Forced Labor Enforcement Task Force created under the United States-Mexico-Canada Free Trade Agreement (USMCA) to execute its mission to coordinate a government-wide strategy.
 - Encourage CBP and other government agencies to share specific information with the private sector, particularly with trusted entities, to better inform sourcing decisions and address forced labor risks earlier in the supply chain.
 - Create a "safe space" for industry to voluntarily share information with the government without fear that such exchanges will result in punitive actions or violate existing law. Other federal agencies have established similar "safe spaces" to great effect.
 - When goods are detained or denied entry due to suspected forced labor, CBP should be required to disclose what specific component of the shipment is suspected of forced labor composition. This would expedite the submission and review of documents relevant to CBP's concern.
 - Require CBP to disclose why a shipment was denied entry to allow importers to identify and remediate areas of concern of their supply chains suspected of forced labor.
- **Timelines for Government Response:** The trade is bound by very defined timelines in most circumstances and yet there are very few timelines that bind CBP and other partner government agencies (PGAs). This can lead to uncertainty for U.S. businesses as they try to move forward with business planning, product launches, and financial certainty. The customs modernization effort should establish reasonable timelines for CBP and other PGAs to respond to trade actions and requests, such as petitions, protests, advice, and customs rulings. If a decision is not produced within the timeline, it should be considered an affirmative response for the trade. Holding agencies accountable to provide timely decisions should be a key part of this legislation.
- **Codify the Express Delivery Sector:** The pandemic underscored the importance of the express delivery sector as it was crucial to maintain global supply chains to transport necessary medical supplies and consumer goods as safely and efficiently as possible. U.S. importers and exporters from across industry sectors have always relied on this mode of transportation prior to the pandemic, but more so during it. However, the express delivery clearance process exists only by regulation, without specific statutory basis like other essential members of the trade

community such as brokers and importers. Codifying the unique processes and procedures of the express industry in statute, as currently reflected in regulation and trade agreements, would recognize the express sector as a standard mode – like air, rail, truck, and ocean vessel – by which cargo enters the U.S. Such codification of the express delivery clearance process includes the allowance for:

- a single submission of information, a manifest, covering all goods contained in an express shipment;
 - expedited release of these shipments based on the minimum documentation of a single submission of information; and
 - consolidated entries.
- **Establish Data Collection Standards:** Data is critical for CBP to perform its important trade function but there should be clear standards that guide why CBP may require the trade community to provide certain data, how it can be used, and affirmatively require the removal of duplicative data requirements across all U.S. federal agencies. One solution is to tie CBP’s data collection to the trade facilitation principles modeled after the Trade Act of 2002 (see 19 U.S.C. 1415). Congress previously took important steps to streamline and automate the appropriate level of data required to import goods into the U.S and it should continue working with the trade community to ensure the accuracy and usefulness of required data and to create the opportunity for voluntary bidirectional information sharing. Requiring additional data at entry frequently adds transaction costs for business and therefore CBP should be able to clearly justify new data collection requirements. Government information requirements should apply equally to all delivery service providers, to include the U.S. Postal Service. In addition, with increased authority for CBP to collect data, it is important to include appropriate business confidentiality protections so that confidential information does not end up in the public domain.
 - **Clarify the benefits, opportunities, and harmonization of trusted trader programs:** Congress should direct GAO, DHS IG, or other appropriate oversight bodies to provide regular evaluations of Trusted Trader programs, like CTPAT to evaluate the benefits provided to participating organizations are commercially significant and consistent with requirements in the Trade Facilitation and Trade Enforcement Act of 2015. This evaluation should also include the codification of minimum standards of participation to provide objective measurements of participation. In addition, this evaluation should consider reducing certain fees to reflect the lower “service” demands for specific entries due to private sector investments in Trusted Trader program participation. In addition, Trusted Traders should be seen as a reliable cadre of partners who are willing to collaborate with the government in addressing ongoing and emerging compliance challenges with an eye toward effective and efficient solutions. All U.S. government agencies should be required to recognize this status by providing similar benefits in the entry process. Trusted Traders are given benefits through third country programs where Mutual Recognition Arrangements are in place but are not “trusted” by federal agencies that have regulatory authority related to import requirements. Congress should require Trusted Trader recognition across that group of U.S. agencies. The study should also examine importers to pay duties in a similar manner to how corporations pay quarterly estimated taxes, which allows the importer to reconcile each quarter or at the end of the year based on what is entered into commerce vs shipments reexported, destroyed, or filed for duty drawback.

- **Limit the Use of Outdated “Redelivery” Authority:** Cargo released from ports for entry into the U.S. economy is currently subject to a 60-day “redelivery” period after release decisions are made, meaning a government agency can arbitrarily require that cargo be made available for further inspection or be subject to significant financial penalty. This does not align with modern trade practices where goods are frequently delivered directly to the end user in a short period of time after release. This authority should be limited further and reserved for security and safety concerns only.
- **Progressive Filing:** Government agencies have access to significant information about shipments before they arrive at U.S. ports for formal processing by CBP. This information allows for advanced targeting and analysis by other agencies that have regulatory responsibilities in the import process and should facilitate quicker determinations of admissibility. This goal would be well-served by embracing iterative or progressive data filing to allow the best party, with access to the most current data file it at the earliest feasible time, building the data for each shipment until the arrival at the border. At such time, if an entry summary is filed, it must be certified and submitted by an importer, importer-of-record, or licensed customs broker. This should be linked to trusted trader and authorized economic operator benefits, such as admissibility decisions that the trade can rely upon, qualification of free trade agreement qualifications, and promoting confidence in the broader construct of a secure and compliant supply chain. Essentially, Congress should direct CBP to establish a Green Lane for inbound cargo, that could have full USG release prior to arrival. This program would be in addition to the information already filed for security purposes, especially in the air environment, and apply to both imports and exports.
- **Section 301 Duty Refunds:** Many companies granted exclusions from Section 301 duties are owed refunds on duties that had already been paid because exclusions were retroactive to when duties went into effect. The problem is that CBP’s legal authority to process the refunds expired before these companies were able to collect refunds. In many cases, the Customs clock ran out before the exclusion was even granted – in these cases, companies never had an opportunity to get their money back. Legislative language is necessary to give CBP the one-time legal authority it needs to ensure companies can get their money back.
- **Automated Commercial Environment (ACE):** The trade community currently faces a series of challenges which ACE was designed to meet, including a lack of capability to handle and track in real time intermodal shipment transfers, insufficient functionality to allow the supply chain to efficiently handle in-bond functions, and the automation of the export process. Funding to provide the functionality to meet these needs is a critical near-term requirement. Congress should also direct CBP to develop the successor trade facilitation system (ACE 2.0) to allow for a business process model or account-based processing (e.g., giving businesses the choice to file entries in a manner that makes sense for them). This successor system should have an effective governance structure that supports government-wide decision making as well as incorporates the needs of and gathers regular feedback from industry. This system should also be optimally efficient and fully leverage current information processing technology (AI, cloud computing, etc.).
- **Duty and Fee Structure Study:** Congress should direct a study by the Government Accountability Office or other appropriate independent authority to examine CBP’s current duty

and fee structure and make recommendations on a comprehensive restructuring in light of today's trade environment. The study should examine the effects of users who pay the duties and fees, especially small- and medium-sized entities, as well as what duties and fees are obsolete in today's economy.

- **Support Due Process:** Congress should ensure due process for all parties involved in the trade where there is a suspected violation or noncompliance with U.S. law.
- **Visibility and Transparency:** Congress should require CBP to provide visibility parity to all currently authorized parties (to include brokers and carriers) of a shipment to allow for transparent information exchange and effective streamlining of imports.
- **Increased Resources to Fight Counterfeits:** CBP should take additional steps to help battle counterfeiting, equipping private sector actors with better information on both good and bad actors. As a start, CBP should fully implement provisions in the Trade Facilitation and Trade Enforcement Act of 2015 to increase information sharing with the private sector to facilitate targeted enforcement. Additionally, it should simplify the process of detention and seizure of counterfeit products.
- **Enhance Information Sharing with the Private Sector:** The government should more readily share enforcement-related information with “parties of interest” to a particular transaction. Current limitations, like the Trades Secrets Act, should be revisited and revised along the lines of section 71022(d) of the Senate-passed U.S. Innovation and Competition Act of 2021. Congress should permit the sharing of information on abandoned shipments, not just those where an official enforcement action was taken.
- **Fund Ports of the Future:** Port infrastructure is not able to keep up with the volumes and needs of modern trade. Funding should be appropriated and allocated to CBP cargo processing and trade facilitation capabilities, including advanced technologies like Artificial Intelligence/Machine Learning and advanced robotic facilities including advanced Nonintrusive Imaging technologies.
- **Green Trade Benefits:** Congress should focus CBP's efforts to develop a “green trade” strategy by providing specific duty preferences and by directing the agency to develop commercially meaningful benefits for “green”-compliant imports, among other steps.