

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

September 2022

**COAC**

COMMERCIAL CUSTOMS OPERATIONS  
ADVISORY COMMITTEE

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

**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 taking 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 economic security by increasing trade throughput, reducing delays, reducing costs, 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 to facilitate legal transactions through legislation that should advance [CBP's 21<sup>st</sup> Century Customs Framework](#). We continue to assert the position that CBP's draft Challenge Areas summarized in this report and the proposed [Cassidy bill](#) omit trade facilitation objectives and are focused predominantly on enforcement enhancements. 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.

During the June 2022 meeting, COAC published the [21CCF Report](#) which provided an executive summary, timeline of activities, COAC position and status for each proposed amendment to or enactment of an enforcement statute, and an overview of trade facilitation and modernization opportunities. This report is a continuation of the COAC 21<sup>st</sup> Century Customs Framework Task Force activities and provides key updates related to the remaining CBP Challenge Areas.

The COAC is seeking to finalize all discussions related to CBP Challenge Areas this quarter in an effort to focus more holistically on the trade facilitation and modernization opportunities that must be advanced as part of this legislation. The broader trade sector will not endorse the modified CBP Challenge Areas if CBP and the Trade are unable to collectively advance facilitative measures.

## Background:

The 21<sup>st</sup> 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 CBP 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 several working sessions to discuss the draft legislative concepts. During the working sessions, the Task Force members shared ideas, feedback, and recommendations on the following:

- Challenges and Operational Needs – to detail current operational challenges and drivers facing CBP, the Trade, and the PGAs that legislative updates may address.
- Outcomes and Benefits – to include the future-state outcomes and benefits that 21CCF trade modernization can produce for the Trade and Government.
- 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, 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 how to best incorporate the feedback received during 21CCF Task Force meetings.

## 21<sup>st</sup> Century Customs Framework Working Model:

The views advanced by COAC related to 21CCF are based on the collective input of trade via the 21CCF Task Force, 21CCF Focus Group, and the COAC members. We recognize the complexity of topics discussed through this process and there are times where there is a divergence of opinion among the Task Force. In these situations the divergence is discussed in detail through the 21CCF Focus Group and COAC members align on the final approach in an effort to reach consensus of the majority views.

21CCF Working Model Illustration:



Our goal is to engage in constructive dialog with CBP to advance the trade sectors interests as they are represented through the 21CCF. We then seek areas where CBP and COAC can reach alignment on CBP Challenge Areas and statutory amendments that advance facilitation as well as document the areas where COAC and CBP agree to disagree. This process allows us to advance statutory changes where COAC and CBP agree and also provides a roadmap for other trade stakeholders to advance with their membership. Trade stakeholders have the ability to endorse the

views documented by COAC or voice their opposition. This working model has been successful in capturing the majority of the interests of the Trade and has proven to be an effective model to manage and distill the complexity.

## 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.
- Elimination of any requirement for independent verification of such advance data to reflect a commercially realistic standard.
- Ability to include mitigation language for 19 USC § 1484 and 19 USC § 1321 (19 USC § 1618)

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

- CBP addressed COAC ask to ensure an appropriate standard of knowledge is included in (a)(2)(D)(ii), and modified to "best of."
- CBP clarified application of the scope of proposed § 1595a penalties.
- CBP addressed COAC ask to include a reference to mitigation guidelines under 19 USC § 1618.
- Trade and CBP will continue to evaluate opportunity to develop facilitative filing concept and include at statutory level for 19 U.S.C. §1484, §1431, and §1415.

#### 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 the Trade - concerns that for de minimis, including PGA restricted commodities: a.) excluding consignee as a 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 parties, 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 may 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 the 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 are 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 Focus GroupFG 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.
- Trade seeks increased transparency from CBP on Customs Mutual Assistance Agreements (CMAAs) and CBP should ensure each is linked to the CBP website.
- Modify language to limit the scope of ACAS, ISF, and advanced data from being used for “any lawful purpose” and seeking language that will require CBP to provide notification to a party when there is knowledge that their data has been breached.

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

- CBP addressed trades concerns and added language to limit the scope of ACAS data from being used for “any lawful purpose” and added a reference to information sharing protections under 19 USC § 1628.
- COAC recommended modification to 19 U.S.C. § 1431(c) during the June 2022 Public meeting so that it automatically treats manifest and Customs declaration data of all transportation modes as private and confidential business information.
- Trade and CBP seeking opportunity to develop facilitative filing concept and include at the statutory level for 19 U.S.C. §1484, §1431, and §1415.

**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 which parties 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 the 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 a 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 summon 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, or field director of regulatory audit or special agent in charge may issue a 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 statutes 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 a system that prohibits importing rights due to egregious CBP, import related infractions, related to an inability or refusal to pay duties, taxes or fees.
- Modify language that requires a secondary due process step, prior to importer of record suspension when SAMS exclusions are not at the direction of CBP.
- 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: No further action required at this time**

- CBP addressed COAC ask and modified language that requires a secondary due process step, prior to importer of record suspension when SAMS exclusions are not at the direction of CBP. Doing so limits the qualifying abuse actions to federal, import related issues, particularly related to the financial inability or refusal to pay duties, taxes, or fees.
- CBP addressed COAC ask and modified 19 USC § 4320(b)(6)(i) to “and circumstances of importers ...”
- CBP provided an overview of regulations and processes related to suspension and debarment to 21CCF TF Members.
- 19 USC § 1498 allows CBP to create regulations (subject to NPRM) to evaluate whether individuals excluded may be able to import under 19 USC § 1321.
- CBP removed 19 USC § 1321 amendment that was originally submitted.

**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.
- Modification to 19 USC § 1623(a) to include language formalizing the administrative process of bond review and allowing for a relaxed judicial review process.
- Modification to 19 USC § 1623(b)(2) to better define sets of information to be shared with surety such as material information to make informed decision, take informed action, etc.
- Modification to 19 USC § 1623(c)(1)&(2) – first to ensure more than 30 days as to when interest will be assessed and then to limit this provision as to not be duplicative of 19 USC § 1505. Interest should only be assessed once section 1505 exceeds the bond amount. (CBP draft)

- Trade seeks modification to 19 USC § 580 and eliminate it entirely if CBP is now getting the interest through mechanisms of 19 USC § 1623

**Status: COAC and CBP agree to continued dialog in Q4**

- CBP addressed COAC ask to strike unlimited bond liability for sureties in exchange for information that the surety industry has requested.
- CBP attempted to address COAC ask and modified language of 19 USC § 1623(a) to include language formalizing the administrative process of bond review and allowing for a relaxed judicial review process.
- The proposed language which sets a “clear and convincing” standard for review at the administrative level is completely inappropriate. Further discussion is needed to refine the language to seek a more balanced approach.
- Further discussion needed among sureties and CBP concerning the sharing of information with the sureties, 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, if 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 the 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 the importer to claim a false country of origin and entry type.

**Status: COAC and CBP agree to continued dialog in Q4**

- CBP addressed COAC ask 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.
- Trade continues to seek a modification that provides a mechanism to terminate an investigation rendering interim measures once the IOR identified validates and provides evidence that their supply chain has been adjusted to ensure compliance.
- Further discussion to develop different enforcement mechanisms for importers who know they are under investigation and change their IOR number to avoid interim measures. We must ensure there is a mechanism 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 statutes to clarify CBP's authority to:

- Develop regulations providing alternatives to seizure and allow CBP to 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 authority to summarily forfeit without due process (i.e., proper notice, petition, detention, etc.)
- Trade seeks modification to ensure that proposed streamlined summary forfeiture procedures (with notice to carrier only) are restricted to de minimis shipments and ensure that some level of due process and notice are mandated when informal entry types are used.
- Trade would limit their risk and exposure by choosing to enter merchandise under standard informal entry procedures, which require CBP to follow existing due process requirements.

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

- CBP addressed COAC ask and modified language to limit application of summary forfeiture to the de minimis environment for imports and under \$800 for the aggregate value of the shipment for exports.
- Trade would limit their risk and exposure if entry types 01 and 11 are used which would require CBP to follow existing due process requirements.

### **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 the 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 the party in charge of the 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.
- Modification to 19 USC § 1595a(b) to properly define "value" and seeking to include "dutiable", "appraised", "customs" or "import/export" in order to properly define the value to be used as the penalty basis, consistent with current § 1595a(c) seizure mitigation guidelines.
- Trade would like to seek a culpability standard for § 1595a(b) penalty, especially for carriers.

#### **Status: COAC and CBP agree to continued dialog in Q4**

- CBP addressed COAC ask and added language to (b) to clarify that penalties are related to the underlying violation at hand.
- 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.
- CBP addressed COAC ask and modified 19 USC § 1595a(b) to establish parameters on value by inserting "... not to exceed the domestic value...".

### **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 section 1595 in addition to Partner Government Agencies with export authorities, without clarification of any limitation of CBP penalty authority.

#### **Status: COAC and CBP agree to continued dialog in Q4**

- CBP not open to inserting 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 the penalty provision would be specific to customs related activity and non-PGA based.
- CBP attempted to address COAC ask and modified 19 USC § 1595a(e) to establish parameters on value by inserting "... not to exceed the export value...".

- CBP also modified 19 USC § 1595a(g) to provide discretion to issue a penalty in lieu of seizure or forfeiture.
- CBP hosted single issue call August 31, 2022 with the COAC Export Working Group and 21<sup>st</sup> Century Task Force Members to discuss concerns regarding language to seek final direction.
- Trade suggests CBP engage with Census, Commerce, the State Department and Treasury to ensure roles and responsibilities related to export enforcement and penalty authorities are properly aligned.
- If seizure of administrative situations is the basis for proposal, consider adjusting to denying the ability to export vs. issuing a penalty in lieu of seizure (in alignment with Commerce, State Department and Treasury).

### **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;
- Eliminate the gross negligence standard as a level of culpability; and
- Eliminate pre-penalty notices for fraud cases, providing CBP discretion to initiate litigation in fraud cases directly.

#### **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 Q4**

- 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 a statutory definition to appropriately distinguish it from fraud.
- COAC will offer a compromise for retaining language that provides CBP discretion in filing fraud cases directly with the CIT.
- CBP to articulate operational/legal drivers, provide underlying statistics related to enforcement, and set up single issue call for industry to clarify its concerns.
- 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 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 destroy, alter, or conceal evidence and would rather see CBP continue to address it through the criminal statutes under Title 18.

**Status: CBP and COAC Agree to Disagree**

- CBP provided an edited version to clarify that the proposed new statute is meant to apply only to those entities that intend to obstruct an investigation.
- Trade does not support the introduction of this new statute and believes CBP already has appropriate authority.

**COAC Recommendations:**

1. COAC recommends CBP increase transparency for the Trade for Customs Mutual Assistance Agreements (CMAAs) and CBP must ensure the text of each is linked to the CBP website.
2. 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 § 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
- 19 USC § 1498

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

- 19 USC § 1526(e)
- 19 USC § 1595a(f)
- 19 USC § 1607

3. 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 § 1431

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

- 19 USC § 1623
- 19 USC § 1517

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 § 1411 and 19 USC § 4316 – Codify PGA engagement with the 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.
- 19 USC § 4311 – 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.
- 19 USC § 1431(c) - Automatically treat manifest and Customs declaration data of all transportation modes as private and confidential business information.
- 19 USC § 58c in an effort codify the ability to reduce the Merchandise Processing Fee (MPF) for CTPAT members and ensure the MPF is allocated to CBP for operations and automation.
- Statute TBD – seek legislation that authorizes Congress to appropriate the necessary amounts to carry out improvements in a uniform 1USG single window for 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.