



November 19, 2021

The Honorable Bill Cassidy, M.D.  
520 Hart Senate Office Building  
Washington, DC 20510

RE: Customs Modernization Act of 2021

Dear Senator Cassidy:

We are writing to provide our input on the recently released “Customs Modernization Act of 2021” Discussion Draft. Thank you for the opportunity to engage in a dialogue on the future of trade and your openness to ideas and feedback from private industry. We appreciate your efforts to address important customs enforcement challenges and your commitment to create a legislative framework for modernizing trade. We are concerned that, as drafted, this bill fails to deliver the meaningful trade facilitative measures that are critical to this exceptional opportunity to re-imagine the U.S. customs process.

### **21<sup>st</sup> Century Customs Framework Process**

As you know, since 2018 U.S. Customs and Border Protection (CBP) has had some collaboration with private industry in structured and deliberative discussions on trade modernization through its 21<sup>st</sup> Century Customs Framework (21CCF) initiative. This engagement with the trade has taken place through many formal and informal forums such as the Commercial Customs Operations Advisory Committee (COAC) and the 21CCF Task Force and Focus Group. Nonetheless, for a significant majority of the trade, this discussion draft represents the first time they have seen anything other than high-level conceptual presentations made in public forums.

As Congress, CBP, and private industry consider the most comprehensive re-working of our nation’s customs laws in nearly thirty years, it is essential that customs modernization efforts adhere to a careful process. To date, congressional committees of jurisdiction have held no hearings on the topic and discussed no legislative or regulatory proposals in an open, public forum. Accordingly, companies have had no opportunity to participate in public discussions of this variety. Additionally, the congressionally chartered COAC is currently being reestablished, which means that CBP currently lacks a valuable avenue for stakeholder engagement and feedback. We request a bipartisan and deliberative process to move forward with any discussion on legislation to realize a truly holistic vision for the future of trade facilitation and enforcement.

The 21CCF initiative can serve as a continuation of a productive partnership between CBP and the private sector dating back to the 1993 Customs Modernization Act (“Mod Act”) that seeks to strike the appropriate balance between customs enforcement tools and trade facilitative measures. **However, this bill would expand CBP’s enforcement authorities dramatically**

**without offering any of the trade facilitative measures needed to modernize trade and embrace the technological advances that have altered trade.**

### **Overbroad Enforcement Authorities**

The bill would expand CBP's enforcement authorities in concerning ways:

- The bill would provide CBP with wide-ranging discretion to demand more data from a variety of traders with no meaningful restraints on the agency. As a result, the bill falls short of the standard CBP promoted throughout the 21CCF process—to design a regime that aims to obtain “the right data, from the right party, at the right time.” Legislation should not take an approach that requires information from every entity even remotely involved in the supply chain. Any new data that is sought by CBP should be obtained from the “right” party in the supply chain, i.e., the party most likely to obtain and capable of submitting the data in the ordinary course of its business, *without* duplicative data collection from a different party interacting with CBP at a different point in the same supply chain.
- Some of these new authorities in the bill home in on low-value shipments. We are concerned that these authorities could permit CBP to undermine the benefits of de minimis clearance without actually modifying the current \$800 threshold. In fact, the bill could give CBP the authority to turn the current U.S. import process on its head by making de minimis shipments more burdensome to clear than formal entries.
- The changes made by the proposal to the penalty provisions of U.S. customs laws may have unintended consequences that could greatly impact less sophisticated actors who have recently started engaging in international trade. For example, the bill would equip CBP with a virtually limitless ability to penalize all supply chain participants for intellectual property rights violations. The bill's penalty provisions should reflect that many parties are not as well versed in the technical language of trade regulations.

### **Impact on Small and Medium-Sized Businesses**

E-commerce has been a significant driver of U.S. economic prosperity and has been particularly important in buoying U.S. small and medium enterprises (SMEs) during the COVID-19 pandemic. E-commerce provides a streamlined channel for importing goods that SMEs require for their manufacturing processes or retail outlets, as well as access to global markets for exporters to sell their products.

The bill's data collection provisions pose challenges across all elements of the e-commerce supply chain including, but not limited to, online marketplaces and platforms, electronic payments and delivery services, which are limited in terms of the data to which they have access, and which lack the technology required to submit this data to CBP. E-commerce enables SMEs in the United States and around the globe to expand their business. This proposal could hinder SMEs and individual sellers from taking advantage of the economic opportunity afforded by access to a global marketplace.

Governments at the World Customs Organization and foreign customs authorities are looking to the United States for leadership and a modeling of best practices. Reforms enacted through the 21CCF process are likely to be adopted by foreign governments. Accordingly, we request that Congress be mindful of the precedent any customs reform will set and of the impact the

mimicking of that reform by foreign governments will have on U.S. companies operating on a global stage, particularly U.S. SME exporters. As such, Congress should also encourage the participation of other executive agencies with equities in the process, notably the Department of Commerce, Office of the U.S. Trade Representative, and the Small Business Association.

### **Absence of Trade Facilitative Measures**

While the draft legislation addresses the enforcement component of the 21CCF initiative, the bill fails to include any of the meaningful trade facilitation benefits that would justify the immense investments private industry would need to implement to comply with the enforcement provisions set forth in the bill. For example, the bill would not enhance trusted trader programs such as C-TPAT to ensure they deliver commercially meaningful benefits. Increasing the resiliency of global supply chains depends on the implementation of trade facilitation measures which simplify customs processes rather than making them costlier, more opaque, and more burdensome. In any case, the faster clearance of goods by CBP is not a benefit that industry is seeking in return for being subject to more data collection and more compliance burdens. Fast clearance is an expectation that taxpayers paid for through the development and implementation of ACE via CBP's large annual budgets. In other words, fast clearance is the quintessential public good that benefits traders, businesses, and consumers of all types and sizes. Recent supply chain disruptions have only served to reemphasize this fact.

### **Need for Sufficient Time to Review and Provide Input**

This moment presents a rare opportunity to comprehensively re-work U.S. customs laws; therefore, the public should be offered ample time to analyze draft legislative reforms. We hope that you continue to seek private sector input at each turn in your process, e.g., as you publish future drafts of the bill.

### **About NFTC**

NFTC is dedicated to making America more successful in the global economy by ensuring the adoption of competitive tax and trade policies, strengthening the global rules-based trading system, and opening foreign markets to U.S. products and services. The Council's membership spans the breadth of the national economy. It includes sectors such as energy products, aerospace, capital goods, transportation, consumer goods, technology, healthcare products, services, e-commerce, and retail. Our companies account for more than \$3 trillion in total sales worldwide, employ over five million Americans and produce a huge share of our nation's total exports.

Sincerely,

A handwritten signature in black ink that reads "Jake Colvin". The signature is fluid and cursive, with a long horizontal stroke at the end.

Jake Colvin  
President