



In-Depth Review of Essential EAPA Strategies

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EAPA – Background Overview

- ▶ The Enforce and Protect Act (EAPA), Title IV, Section 421 of the Trade Facilitation and Enforcement Act (TFTEA) of 2015, was signed into law on February 24, 2016. CBP's implementing regulations were issued on August 22, 2016.
- ▶ EAPA establishes procedures for an “**interested party**” to submit an “**allegation**” that an importer is evading its payment of antidumping and countervailing (AD/CVD) duties.

EAPA – Background Overview

- ▶ AD and CVD duties are intended to offset the value of dumping and/or subsidization, thereby leveling the playing field for domestic industries injured by such unfairly traded imports.
- ▶ EAPA legislation is specifically intended to improve trade law enforcement and duty collection for antidumping and countervailing duty orders.
- ▶ <https://www.cbp.gov/trade/eapa>



Definitions – *Evade or Evasion*

▶ § 165.1

- ▶ **Evade or Evasion.** The terms “evade” and “evasion” refer to the entry of covered merchandise by means of any document or electronically transmitted data or information, written or oral statement, or act that is material and false, or any omission that is material,
- ▶ and that results in any cash deposit or amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the covered merchandise.
- ▶ Examples of evasion include, but are not limited to, the transshipment, misclassification, and/or undervaluation of covered merchandise.

Comparison to False Claims Act or 19 USC 1592

- ▶ FCA and 1592 require not only a false customs entry and avoidance of duty, but also culpability by the IOR. FCA requires a “knowing” violation and 1592 requires negligence, gross negligence or fraud.
- ▶ EAPA evasion **does not require any culpability**. Even a completely innocent importer exercising reasonable care can be found to be evading the AD/CVD duties.

Who May Bring an Allegation?

▶ § 165.1 Definitions

- ▶ **Allegation.** The term “allegation” refers to a filing with CBP under § 165.11 by an interested party that alleges an act of evasion of AD/CVD orders by an importer.
- ▶ **Interested party.** The term “interested party” in this part refers only to the following:
 1. A **foreign manufacturer, producer, or exporter, or any importer** (not limited to importers of record and including the party against whom the allegation is brought), of covered merchandise or a trade or business association a majority of the members of which are producers, exporters, or importers of such merchandise;
 2. A manufacturer, producer, or wholesaler in the United States of a domestic like product;
 3. A certified union or recognized union or group of workers that is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a domestic like product;
 4. A trade or business association a majority of the members of which manufacture, produce, or wholesale a domestic like product in the United States;
 5. An association a majority of the members of which is composed of interested parties described in paragraphs (2), (3), and (4) of this definition with respect to a domestic like product; or,
 6. If the covered merchandise is a processed agricultural product, as defined in 19 U.S.C. 1677(4)(E), a coalition or trade association that is representative of any of the following: processors; processors and producers; or processors and growers.

Bringing an Allegation: The Mechanics

- ▶ CBP has designed an investigative process that follows strict timelines. The majority of determinations are issued within **300 days**.
- ▶ Each case is coordinated by a “case investigator” who oversees the process from filing to the determination as to evasion.
- ▶ Requirements for the Allegor:
 - The allegor must provide:
 - ▶ their name and contact information;
 - ▶ a description of covered merchandise and the applicable AD/CVD order(s);
 - ▶ evidence that reasonably suggests evasion of an AD/CVD order. There is no intent requirement.

Initiation of Investigation

- ▶ CBP initiates if allegor's evidence "reasonably suggests" that the covered merchandise has been entered through evasion. Very low evidentiary threshold.
- ▶ CBP must initiate within 15 business days; can decline if evidence is insufficient and will notify allegor
- ▶ CBP's initiation is secret –not disclosed to the targets
- ▶ CBP then issues CF28s to importers alleged to be evading and/or examines target shipments
 - ▶ Purpose is to develop evidence to support the "reasonable suspicion" standard needed for interim measures.
 - ▶ Critical phase in the investigation

Interim Measures

▶ § 165.24 Interim measures

(a) **Reasonable suspicion.** No later than **90 calendar days** after initiating an investigation under § 165.15, CBP will take interim measures if there is a reasonable suspicion that the importer entered covered merchandise into the customs territory of the United States through evasion.

(b) **Measures**

(1) For entries that remain unliquidated, CBP will:

- i. **Suspend** the liquidation of each unliquidated entry of such covered merchandise that entered on or after the date of the initiation of the investigation under § 165.15;
- ii. **Extend** the period for liquidating each unliquidated entry of such covered merchandise that entered before the date of the initiation of the investigation under § 165.15 pursuant to section 504(b), Tariff Act of 1930, as amended (19 U.S.C. 1504(b)); and
- iii. Take such additional measures as CBP determines necessary to protect the revenue of the United States, including requiring a single transaction bond or additional security or the **posting of a cash deposit** with respect to such covered merchandise pursuant to section 623, Tariff Act of 1930, as amended (19 U.S.C. 1623).

Can CBP reject entries retroactively?

Interim Measures Continued

▶ **§ 165.24 Interim measures**

(2) For entries that are liquidated, CBP may initiate or continue any appropriate measures separate from this proceeding.

(c) **Notice.** If CBP decides that there is reasonable suspicion under paragraph (a) of this section, CBP will issue a notice of this decision to the parties to the investigation within five business days after taking interim measures. CBP will also provide parties to the investigation with a public version of the administrative record within 10 business days of the issuance of a notice of initiation of an investigation.

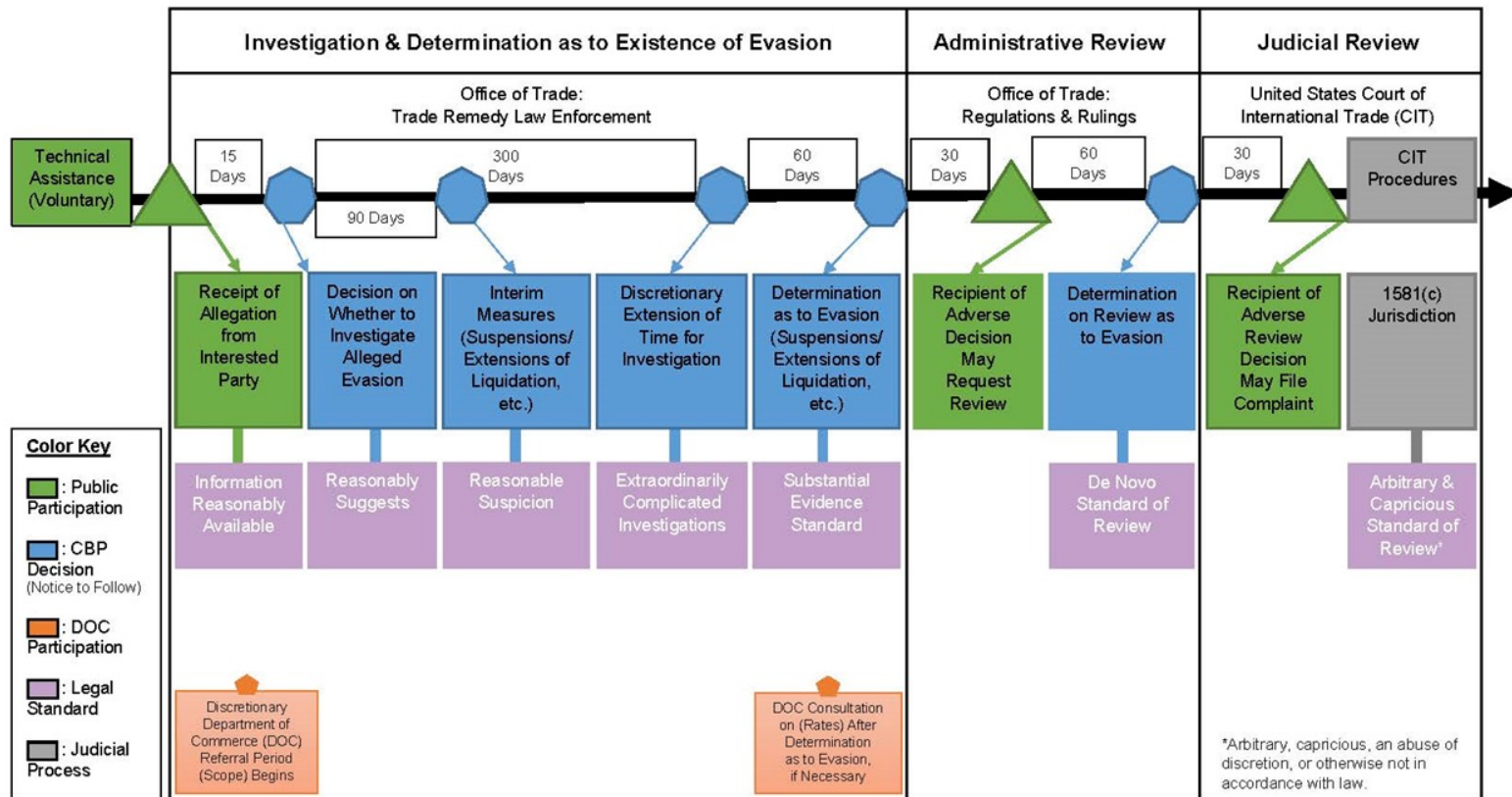
Timeline of Investigative Process

- ▶ After CBP receives a properly filed allegation from an interested party, it has 15 business days to determine whether to initiate an EAPA investigation.

0 Days	Allegation
15 business days from the date of receipt	Initiation of the investigation
No later than 90 calendar days	Determination of reasonable suspicion of evasion and issuance of interim measures
5 business days after interim measures are taken	Notice of decision to initiate an investigation and whether interim measures were taken
200 calendar days	Deadline to voluntarily submit factual information
230 calendar days	Deadline to submit written arguments
15 calendar days after a written argument was filed	Deadline to submit responses to the written argument
No later than 300 calendar days	Determination as to evasion or notice of extension of time
No later than 360 calendar days	Determination as to evasion if the investigation is extraordinarily complicated
5 business days after determination	Notice of CBP's determination as to evasion

Overview of EAPA Investigations

The Enforce and Protect Act of 2015, Section 421 - Investigation of Evasion of Trade Remedy Laws



"Evasion" generally refers to entering merchandise covered by an antidumping/countervailing duty (AD/CVD) order into the customs territory of the United States by means of any document or electronically transmitted data or information, written or oral statement, or act that is material and false, or any omission that is material, and that results in any cash deposit or other security or any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the merchandise.

Official Document of U.S. Customs and Border Protection

OT.RR:CTF.ER EMS 07/28/2016

How CBP Conducts the Investigation

- ▶ Once CBP has commenced a formal investigation as to whether the company has evaded the AD/CVD Order at issue, CBP will issue a **Request for Information Questionnaire or “RFI”**, pursuant to 19 CFR 165.23(a).
- ▶ Often, an RFI is long and detailed including numerous pages of parts, questions, and subparts to each question. Strict deadlines for submission. Full translations required
- ▶ The RFI carefully details the instructions for filing a response. Importantly, the filer must ***prepare Business Confidential and Public Versions of all responses and exhibits during the course of the investigation.***
- ▶ CBP will issue RFI’s to the ***foreign producers***, and will conduct on-site ***verification*** of RFI responses, and may visit raw material suppliers of the producers

**U.S. CUSTOMS & BORDER PROTECTION
OFFICE OF TRADE
TRADE REMEDY LAW ENFORCEMENT DIRECTORATE
ENFORCE AND PROTECT ACT (EAPA) CONSOLIDATED CASE**

IDENTIFIED IMPORTER REQUEST FOR INFORMATION (RFI)

PERIOD OF INVESTIGATION: to the Present

RESPONSE DUE DATE: 5:00 P.M. EASTERN TIME
FOURTEEN DAYS FROM THE DATE
OF ISSUANCE

RESPOND VIA THE EAPA PORTAL AT: <https://eapallegations.cbp.gov/>

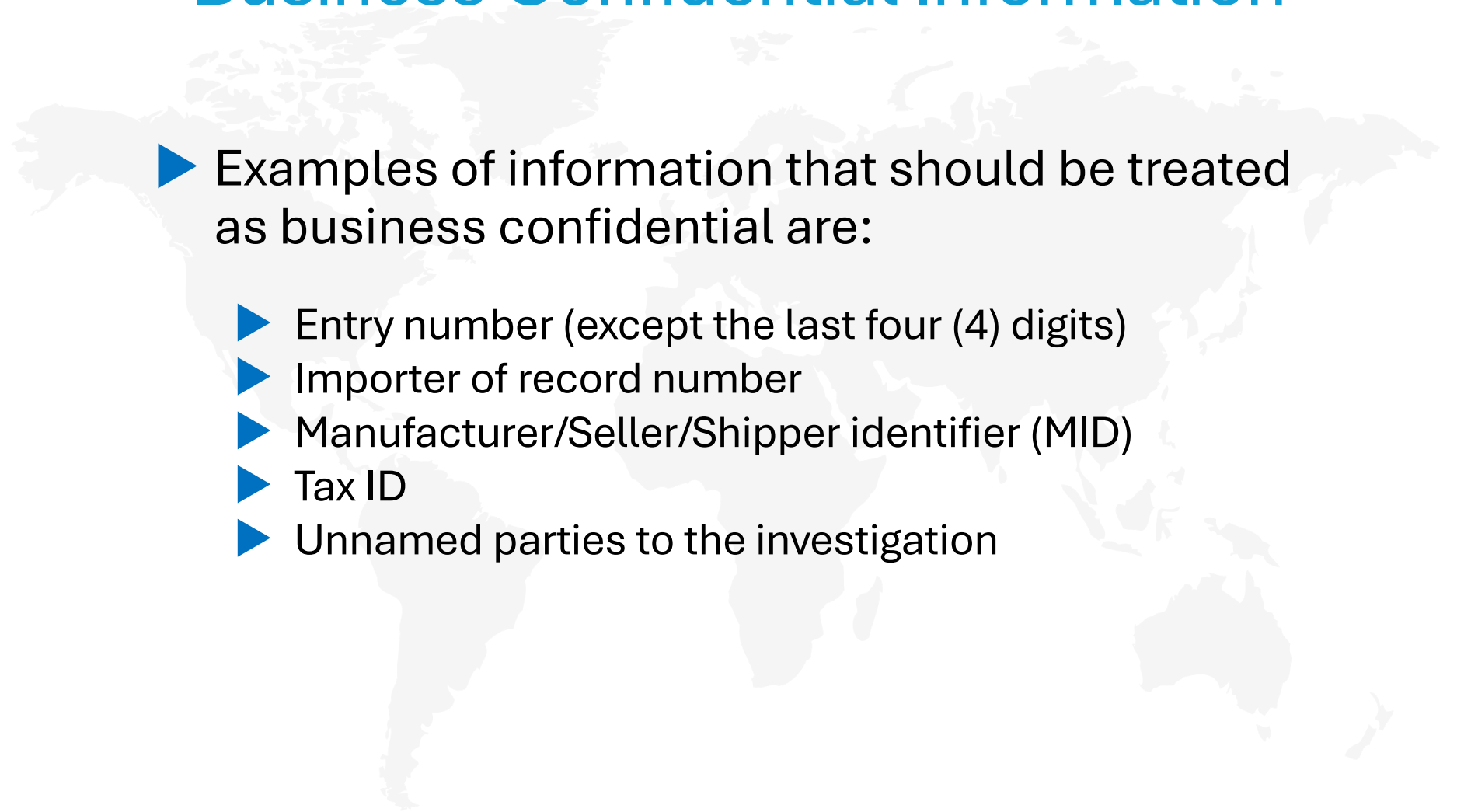
CONTENTS OF REQUEST FOR INFORMATION

1. General Instructions
2. Part I: General Information
3. Part II: Corporate Structure
4. Part III: Accounting/Financial Practices
5. Part IV: Sales
6. Part V: Procurement
7. Part VI: Sales Reconciliations
8. Part VII: Customs Entry and Compliance
9. Appendix I: Excel Attachment
10. Appendix II: Bracketing Example
11. Appendix III: Glossary of Terms
12. Appendix IV: Public Service List & Certificate of Service
13. Appendix V: PDF Preparation Guide

Business Confidential Information

- ▶ Any interested party that makes a submission to CBP in connection with an EAPA investigation may request that CBP treat any part of the submission as **business confidential information (BCI)**. 19 CFR 165.4.
- ▶ Business confidential treatment will be granted if the requirements of 19 CFR 165.4 are satisfied:
 - The information for which protection is sought must consist of *trade secrets and commercial or financial information* obtained from any person.
 - The information must be privileged or confidential in accordance with 5 U.S.C. 552(b)(4).
- ▶ **The responder must place brackets (“[]”) around BCI information**
- ▶ ***BCI will not be shared with the parties to the investigation during the course of an EAPA investigation.***

Business Confidential Information

- 
- ▶ Examples of information that should be treated as business confidential are:
 - ▶ Entry number (except the last four (4) digits)
 - ▶ Importer of record number
 - ▶ Manufacturer/Seller/Shipper identifier (MID)
 - ▶ Tax ID
 - ▶ Unnamed parties to the investigation

Public Versions

- ▶ An interested party who files a submission containing BCI **must also file a public version** of the same submission. 19 CFR 165.4(a)(2).
- ▶ The public version must be filed on the same date as the business confidential version and contain a ***summary of the bracketed, redacted information*** in sufficient detail to permit a reasonable understanding of the substance of the information

Administrative Protective Order (APO)

- ▶ CBP has implemented a process that will allow certain authorized individuals to access business confidential information on the administrative record of an EAPA investigation under an APO.
- ▶ An APO will be issued on **day 90** after the initiation of an EAPA investigation, and will set a deadline to apply.
- ▶ Only legal counsel for a “party to the investigation” can get access to the APO.
- ▶ Business Confidential documents shared through the EAPA portal.

INVOICE

ABC Trading Co.
ABC Town, Jiangxi Country, Yuncheng City, ShanXi Province, China.

IV NO: H1DC1723Y
P.O: NA1330_P
FROM: XINGANG

CONTRACT DATE: 2017/5/9
SHIPMENT DATE: 2017/7/3
DESTINATION: [Name]

Company name and contact info

TERM ^{Sale} _{Term} XIN GANG

Descript. Of Goods	Size	BUNDLE	Pieces/BU NDLE	Pieces	UNIT PRICE (USD)	AMOUNT (USD)
NO HUB PIPE	1.5" X10'				Numbers	
NO HUB PIPE	3" X10'					
NO HUB PIPE	5" X10'					
NO HUB PIPE	6" X10'					
NO HUB PIPE	10" X10'					
NO HUB PIPE	15" X10'					
TOTAL: 3X40' HC						

PUBLIC VERSION

See website for large version of reverse | 请至网站浏览放大版背面信息 | 请至网站浏览放大版背面信息



ORIENT EXPRESS CONTAINER CO., LTD.

WEBSITE: WWW.OECGROUP.COM

BILL OF LADING NO. COPY

BL Number: OERT20473200072

NO NUMBER OF ORIGINALS APPLY

SUPPLIER

ABC Trading Co.

ABC TOWN, JIANGXI COUNTRY, YUNCHENG CITY, SHANXI PROVINCE CHINA 043400

OEC GROUP HOUSTON INC.
3030 S GESSNER BLVD SUITE 270 HOUSTON, TX 77055

Company name and contact info

Company name and contact info

PLACE OF ORIGIN

APL SALALAH V.201 QEW

PLACE OF RECEIPT

TIANJIN

PORT OF ORIGIN

JINJIANG

PORT OF DESTINATION

Name

PLACE OF DELIVERY

Name

NUMBER OF ORIGINALS

THREE(3)

ARTICLES TO BE SHIPPED BY THE SHIPPER OR BY FREIGHT BY CARRIER - CARRIER NOT RESPONSIBLE

Container Numbers, Seal Numbers and Date	Kind and Approx. Weight of Goods	Number of Pieces	Shipper's Declaration	Other Data	Remarks
SEE ATTACHED	3 X 40HQ		SHIPPER'S LOAD & COUNT IS PACKAGES SEE ATTACHED		
			"FREIGHT COLLECT" SVC TYPE: CMTY SAY TOTAL: [Number], PACKAGES ONLY		Numbers SURRENDER

TOTAL NUMBER OF PACKAGES (3 X 40HQ) [Number] (For Use on B/L)

ORIGIN: [Country] (For Use on B/L)

RECEIVED for order only, on condition above is square signed under the condition unless otherwise stated. The Goods to be shipped are those described in the Bill of Lading and the quantity, weight and value are as stated therein, subject to the provisions of the Bill of Lading.

DESCRIPTION	NO.	UNIT	PRICE	TOTAL
IMPORT SECURITY FILING				AS ARRANGED
OCEAN FREIGHT				AS ARRANGED
AMS FEE				AS ARRANGED

IN WITNESS WHEREOF, the undersigned official of the carrier has signed and affixed his seal to this Bill of Lading on the date and at the place stated above.

ORIENT EXPRESS CONTAINER CO., LTD.

DECLARATION OF THE SHIPPER

NONE

TIANJIN / JUL 03 2017

DECLARATION OF THE CARRIER

NONE

JUL 03 2017

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ORIENT EXPRESS CONTAINER CO., LTD. 请至网站浏览放大版背面信息 www.oecgroup.com

Adverse Inference and Additional Information

- ▶ If a company fails to cooperate and comply with the RFI, CBP may apply an **inference adverse** to the company. 19 CFR 165.27.
- ▶ Any party to the investigation may submit ***additional information*** in order to support the allegation of evasion or to negate or clarify the allegation of evasion. 19 CFR 165.23(b).
- ▶ Factual information voluntarily submitted to CBP pursuant to paragraph (b) of this section must be submitted ***no later than 200 calendar days after CBP initiated the investigation*** under 19 CFR 165.15. 19 CFR 165.23(c)(2).

Timeline for Administrative Reviews

- ▶ A party to an EAPA investigation that has received an adverse determination from CBP may file a request for an administrative review to CBP no later than 30 business days after the initial determination as to evasion.

Day	Event
No later than 30 business days after the issuance of the initial determination as to evasion.	Request for Review
0 days	Initiation of the administrative review and transmission of the case tracking number
10 business days	Deadline to submit written responses to the request(s) for review
60 business days	Completion of the administrative review

Judicial Review

- ▶ Timing and Eligibility for Review:
 - ▶ A person determined to have committed evasion or an interested party who filed an allegation leading to an investigation may seek judicial review in the United States Court of International Trade ***within 30 business days of the Commissioner completing a review of a determination regarding evasion of customs duties.*** 19 U.S. Code § 1517(g).
- ▶ Standard of Review: The Court will examine
 - ▶ Whether the Commissioner complied with all procedures under subsections (c) and (f).
 - ▶ Whether any determination, finding, or conclusion is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.
- ▶ Other Judicial review of CBP decision?
 - ▶ (g)(3) “Nothing in this subsection shall affect the availability of judicial review to an interested party under any other provision of law.”

QUESTIONS?

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