U.S. Customs and Border Protection

Enforce and Protect Act of 2015
Overview of the Investigation Process

Background:

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, and the U.S. Customs and Border Protection's (CBP) implementing regulations were issued on August 22, 2016. EAPA establishes procedures for an "interested party" to submit an allegation that a U.S. importer is evading its payment of antidumping and countervailing (AD/CV) duties on its entries.

Benefits of Filing an EAPA Allegation:

- Creates a multi-party proceeding with greater information-sharing and transparency to investigate the evasion of AD/CVD orders.
- Requires CBP to determine whether evasion occurred within specified timeframes and provide that determination to the parties to the investigation.
- Provides CBP with new tools to investigate allegations and authorize the collection of information from the party bringing the allegation, the importer, the foreign manufacturer/exporter, and even the foreign government.
- Allows for parties to the investigation to contest the determination as to evasion by requesting an administrative review of the determination with CBP Office of Trade's Regulations and Rulings Directorate. Afterward, a party to that administrative review may file suit with the Court of International Trade to contest CBP's determination.

Filing an EAPA Allegation:

- CBP will begin accepting EAPA allegations via the e-Allegations portal in December 2016.
- Checklists that may assist in determining whether a party has provided sufficient information for both allegation receipt and initiation purposes are provided on the EAPA website under "Resources."
- The party submitting the allegation may provide information to CBP during the proceeding and receive notification of interim measures and the final determination from CBP.
- Business confidential information filed by a party must be enclosed within single brackets, the first page must be marked as "business confidential," and an explanation must be provided as to why the bracketed information is entitled to business confidential treatment; a public version of that document must also be filed, pursuant to 19 C.F.R. §165.4(a)(2).
- Small businesses are entitled to technical assistance if they lack adequate internal resources or the financial ability to obtain outside assistance in preparing and submitting an EAPA allegation. See the Small Business Administration's Website for qualifying information.

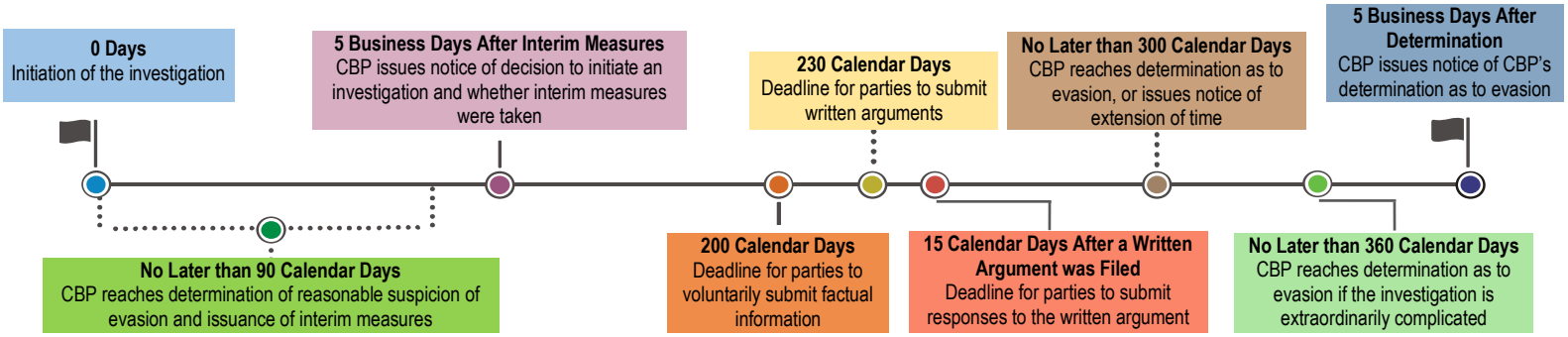
Investigating an EAPA Allegation:

CBP has 15 business days from the date of receipt of a properly filed EAPA allegation to determine whether to investigate. CBP will begin an investigation if:

- "The information provided in the allegation …reasonably suggests that covered merchandise has been entered into the customs territory of the United States through evasion." *See* 19 U.S.C. §1517(b)(1).
- The allegation contains information that "reasonably suggests" that such entry was made by a material false statement or act, or material omission that resulted in the reduction or avoidance of applicable AD/CVD cash deposits or other security.

Evidence of importation, without more evidence to show the type of evasion being alleged, is not sufficient to reasonably suggest evasion.

EAPA Investigation Timeline



Additional Resources for Filing an EAPA Allegation:

- U.S. Customs and Border Protection EAPA Webpage: https://www.cbp.gov/trade/trade-enforcement/tftea/enforce-and-protect-act-eapa
- U.S. International Trade Commission: adcvd.cbp.gov/index.asp
- U.S. Department of Commerce: http://trade.gov/enforcement/operations/index.asp
- Harmonized Tariff Schedule of the United States: https://hts.usitc.gov/current

For any questions, please contact CBP at: eapallegations@cbp.dhs.gov

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