

Trade Facilitation and Trade Enforcement Act of 2015

3:50 pm - 4:50 pm

This panel will provide an overview of this expansive Act, discuss the new enforcement procedures for AD/CVD and explore the applicable standard of review.

Participants:

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Emily Simon, Attorney-Advisor, U.S. Customs and Border Protection

David Fogue, Partner, Barnes Richardson

Tara Hogan, Senior Trial Counsel, Department of Justice

PANELISTS FOR THE ENFORCE ACT CITBA PANEL – APRIL 21, 2016

Tara Hogan is Senior Trial Counsel for the Commercial Litigation Branch's National Courts Section, Department of Justice. She represents the United States before the Court of International Trade in a wide variety of trade matters, including challenges to antidumping and countervailing duty determinations; customs enhanced bonding determinations, and the defense of Harbor Maintenance Tax-related litigation. Additionally, she handles a wide range of civil and appellate matters, including procurement, constitutional matters, and employment appeals. She recently completed a detail assignment to the Interagency Trade Enforcement Center. She is the recipient of the Civil Division's Perseverance Award (2013) and the Department of Justice's Outstanding Mentor Award (2011). She joined the Civil Division in 2004 through the Attorney General's Honors Program. Ms. Hogan's education includes a B.A. in philosophy *cum laude* from Mary Washington College (1999) and a J.D. *summa cum laude* from California Western School of Law (2004).

John M. Herrmann is a partner in the Washington, D.C. office of Kelley Drye & Warren, where he is a member of the firm's International Trade and Customs practice. Prior to returning to Kelley Drye in May 2009, Mr. Herrmann served in the administration of President George W. Bush, including in assignments as the Special Assistant to the President and Senior Director for International Trade, Energy, and Environment on the staff of the National Security Council and as Senior Advisor to the Assistant Secretary of Commerce for Import Administration at the U.S. Department of Commerce. Mr. Herrmann also served as a law clerk to former Chief Judge Gregory W. Carman at the United States Court of International Trade from 1996 to 1998, as well as a legal intern to the Chairman of the U.S. International Trade Commission in 1995. Mr. Herrmann began his career at the White House, serving from 1991 to 1993 as the executive assistant to the Assistant to the President for Economic and Domestic Policy.

David Forgue is a partner in the Chicago office of Barnes, Richardson & Colburn. David has extensive experience with customs law issues, including legal compliance reviews, investigations and audits, customs classification, customs valuation, NAFTA and other preferential duty programs, and country of origin marking. He also has extensive experience in antidumping duty matters, both in advising domestic parties and foreign manufacturer/importers. David received a B.A. in political science *magna cum laude* from the University of Illinois (1993) and a J.D. *magna cum laude* from the University of Illinois College of Law (1996). He eagerly awaits witnessing his first Chicago Cubs World Series title.

Emily M. Simon is an Attorney-Advisor for Regulations and Rulings in the Office of Trade, U.S. Customs and Border Protection. She works in the Commercial Trade Facilitation Division, where she is responsible for drafting binding advance rulings and other legal decisions in connection with the importation of merchandise into the United States. She also advises other government agencies and the public on the application of trade laws. Prior to her service at CBP, she counseled clients on customs matters in private practice and worked closely with companies in the aerospace/defense, automotive, food/beverage, information technology, medical device and telecommunication industries. She represented clients before various government agencies and also provided guidance on developing internal controls, managing international supply chains, obtaining the release of seized goods, protecting intellectual property rights, enforcing antidumping and countervailing duty orders, and addressing customs issues in litigation and investigations under the Foreign Corrupt Practices Act. She earned her J.D. from The George Washington University Law School (2004).



H. R. 644

One Hundred Fourteenth Congress
of the
United States of America

AT THE SECOND SESSION

*Began and held at the City of Washington on Monday,
the fourth day of January, two thousand and sixteen*

An Act

To reauthorize trade facilitation and trade enforcement functions and activities,
and for other purposes.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Trade Facilitation and Trade Enforcement Act of 2015”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is follows:

Sec. 1. Short title, table of contents.
Sec. 2. Definitions.

TITLE I—TRADE FACILITATION AND TRADE ENFORCEMENT

Sec. 101. Improving partnership programs.
Sec. 102. Report on effectiveness of trade enforcement activities.
Sec. 103. Priorities and performance standards for customs modernization, trade facilitation, and trade enforcement functions and programs.
Sec. 104. Educational seminars to improve efforts to classify and appraise imported articles, to improve trade enforcement efforts, and to otherwise facilitate legitimate international trade.
Sec. 105. Joint strategic plan.
Sec. 106. Automated Commercial Environment.
Sec. 107. International Trade Data System.
Sec. 108. Consultations with respect to mutual recognition arrangements.
Sec. 109. Commercial Customs Operations Advisory Committee.
Sec. 110. Centers of Excellence and Expertise.
Sec. 111. Commercial risk assessment targeting and trade alerts.
Sec. 112. Report on oversight of revenue protection and enforcement measures.
Sec. 113. Report on security and revenue measures with respect to merchandise transported in bond.
Sec. 114. Importer of record program.
Sec. 115. Establishment of importer risk assessment program.
Sec. 116. Customs broker identification of importers.
Sec. 117. Priority trade issues.
Sec. 118. Appropriate congressional committees defined.

TITLE II—IMPORT HEALTH AND SAFETY

Sec. 201. Interagency import safety working group.
Sec. 202. Joint import safety rapid response plan.
Sec. 203. Training.

TITLE III—IMPORT-RELATED PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

Sec. 301. Definition of intellectual property rights.
Sec. 302. Exchange of information related to trade enforcement.
Sec. 303. Seizure of circumvention devices.
Sec. 304. Enforcement by U.S. Customs and Border Protection of works for which copyright registration is pending.
Sec. 305. National Intellectual Property Rights Coordination Center.
Sec. 306. Joint strategic plan for the enforcement of intellectual property rights.

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- Sec. 307. Personnel dedicated to the enforcement of intellectual property rights.
- Sec. 308. Training with respect to the enforcement of intellectual property rights.
- Sec. 309. International cooperation and information sharing.
- Sec. 310. Report on intellectual property rights enforcement.
- Sec. 311. Information for travelers regarding violations of intellectual property rights.

TITLE IV—PREVENTION OF EVASION OF ANTIDUMPING AND
COUNTERVAILING DUTY ORDERS

- Sec. 401. Short title.
- Sec. 402. Definitions.
- Sec. 403. Application to Canada and Mexico.
 - Subtitle A—Actions Relating to Enforcement of Trade Remedy Laws
 - Sec. 411. Trade remedy law enforcement division.
 - Sec. 412. Collection of information on evasion of trade remedy laws.
 - Sec. 413. Access to information.
 - Sec. 414. Cooperation with foreign countries on preventing evasion of trade remedy laws.
 - Sec. 415. Trade negotiating objectives.
 - Subtitle B—Investigation of Evasion of Trade Remedy Laws
 - Sec. 421. Procedures for investigating claims of evasion of antidumping and countervailing duty orders.
 - Subtitle C—Other Matters
 - Sec. 431. Allocation and training of personnel.
 - Sec. 432. Annual report on prevention and investigation of evasion of antidumping and countervailing duty orders.
 - Sec. 433. Addressing circumvention by new shippers.

TITLE V—SMALL BUSINESS TRADE ISSUES AND STATE TRADE
COORDINATION

- Sec. 501. Short title.
- Sec. 502. Outreach and input from small businesses to trade promotion authority.
- Sec. 503. State Trade Expansion Program.
- Sec. 504. State and Federal Export Promotion Coordination.
- Sec. 505. State trade coordination.

TITLE VI—ADDITIONAL ENFORCEMENT PROVISIONS

- Sec. 601. Trade enforcement priorities.
- Sec. 602. Exercise of WTO authorization to suspend concessions or other obligations under trade agreements.
- Sec. 603. Trade monitoring.
- Sec. 604. Establishment of Interagency Center on Trade Implementation, Monitoring, and Enforcement.
- Sec. 605. Inclusion of interest in certain distributions of antidumping duties and countervailing duties.
- Sec. 606. Illicitly imported, exported, or trafficked cultural property, archaeological or ethnological materials, and fish, wildlife, and plants.
- Sec. 607. Enforcement under title III of the Trade Act of 1974 with respect to certain acts, policies, and practices.
- Sec. 608. Honey transshipment.
- Sec. 609. Establishment of Chief Innovation and Intellectual Property Negotiator.
- Sec. 610. Measures relating to countries that deny adequate protection for intellectual property rights.
- Sec. 611. Trade Enforcement Trust Fund.

TITLE VII—ENGAGEMENT ON CURRENCY EXCHANGE RATE AND
ECONOMIC POLICIES

- Sec. 701. Enhancement of engagement on currency exchange rate and economic policies with certain major trading partners of the United States.
- Sec. 702. Advisory Committee on International Exchange Rate Policy.

TITLE VIII—MATTERS RELATING TO U.S. CUSTOMS AND BORDER
PROTECTION

- Subtitle A—Establishment of U.S. Customs and Border Protection
- Sec. 801. Short title.

the volume, value, and type of merchandise seized for infringing intellectual property rights as a result of such efforts.

(5) A summary of training relating to the enforcement of intellectual property rights conducted under section 308 and expenditures for such training.

SEC. 311. INFORMATION FOR TRAVELERS REGARDING VIOLATIONS OF INTELLECTUAL PROPERTY RIGHTS.

(a) **IN GENERAL.**—The Secretary of Homeland Security shall develop and carry out an educational campaign to inform travelers entering or leaving the United States about the legal, economic, and public health and safety implications of acquiring merchandise that infringes intellectual property rights outside the United States and importing such merchandise into the United States in violation of United States law.

(b) **DECLARATION FORMS.**—The Commissioner shall ensure that all versions of Declaration Form 6059B of U.S. Customs and Border Protection, or a successor form, including any electronic equivalent of Declaration Form 6059B or a successor form, printed or displayed on or after the date that is 30 days after the date of the enactment of this Act include a written warning to inform travelers arriving in the United States that importation of merchandise into the United States that infringes intellectual property rights may subject travelers to civil or criminal penalties and may pose serious risks to safety or health.

TITLE IV—PREVENTION OF EVASION OF ANTIDUMPING AND COUNTER-VAILING DUTY ORDERS

SEC. 401. SHORT TITLE.

This title may be cited as the “Enforce and Protect Act of 2015”.

SEC. 402. DEFINITIONS.

In this title:

(1) **APPROPRIATE CONGRESSIONAL COMMITTEES.**—The term “appropriate congressional committees” means—

(A) the Committee on Finance and the Committee on Appropriations of the Senate; and

(B) the Committee on Ways and Means and the Committee on Appropriations of the House of Representatives.

(2) **COVERED MERCHANDISE.**—The term “covered merchandise” means merchandise that is subject to—

(A) a countervailing duty order issued under section 706 of the Tariff Act of 1930 (19 U.S.C. 1671e); or

(B) an antidumping duty order issued under section 736 of the Tariff Act of 1930 (19 U.S.C. 1673e).

(3) **ELIGIBLE SMALL BUSINESS.**—

(A) **IN GENERAL.**—The term “eligible small business” means any business concern that, in the judgment of the Commissioner, due to its small size, has neither adequate internal resources nor financial ability to obtain qualified outside assistance in preparing and submitting for consideration allegations of evasion.

(B) **NONREVIEWABILITY.**—Any agency decision regarding whether a business concern is an eligible small business for purposes of section 411(b)(4)(E) is not reviewable by any other agency or by any court.

(4) **ENTER; ENTRY.**—The terms “enter” and “entry” refer to the entry, or withdrawal from warehouse for consumption, of merchandise in the customs territory of the United States.

(5) **EVADE, EVASION.**—The terms “evade” and “evasion” refer to entering covered merchandise 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.

(6) **SECRETARY.**—The term “Secretary” means the Secretary of the Treasury.

(7) **TRADE REMEDY LAWS.**—The term “trade remedy laws” means title VII of the Tariff Act of 1930 (19 U.S.C. 1671 et seq.).

SEC. 403. APPLICATION TO CANADA AND MEXICO.

Pursuant to article 1902 of the North American Free Trade Agreement and section 408 of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3438), this title and the amendments made by this title shall apply with respect to goods from Canada and Mexico.

Subtitle A—Actions Relating to Enforcement of Trade Remedy Laws

SEC. 411. TRADE REMEDY LAW ENFORCEMENT DIVISION.

(a) **ESTABLISHMENT.**—

(1) **IN GENERAL.**—The Secretary of Homeland Security shall establish and maintain within the Office of Trade established under section 4 of the Act of March 3, 1927 (44 Stat. 1381, chapter 348, 19 U.S.C. 2071 et seq.), as added by section 802(h) of this Act, a Trade Remedy Law Enforcement Division.

(2) **COMPOSITION.**—The Trade Remedy Law Enforcement Division shall be composed of—

(A) headquarters personnel led by a Director, who shall report to the Executive Assistant Commissioner of the Office of Trade; and

(B) a National Targeting and Analysis Group dedicated to preventing and countering evasion.

(3) **DUTIES.**—The Trade Remedy Law Enforcement Division shall be dedicated—

(A) to the development and administration of policies to prevent and counter evasion, including policies relating to the implementation of section 517 of the Tariff Act of 1930, as added by section 421 of this Act;

(B) to direct enforcement and compliance assessment activities concerning evasion.

(C) to the development and conduct of commercial risk assessment targeting with respect to cargo destined for the United States in accordance with subsection (c);

(D) to issuing Trade Alerts described in subsection (d); and

(E) to the development of policies for the application of single entry and continuous bonds for entries of covered merchandise to sufficiently protect the collection of anti-dumping and countervailing duties commensurate with the level of risk of noncollection.

(b) DUTIES OF DIRECTOR.—The duties of the Director of the Trade Remedy Law Enforcement Division shall include—

(1) directing the trade enforcement and compliance assessment activities of U.S. Customs and Border Protection that concern evasion;

(2) facilitating, promoting, and coordinating cooperation and the exchange of information between U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, and other relevant Federal agencies regarding evasion;

(3) notifying on a timely basis the administering authority (as defined in section 771(1) of the Tariff Act of 1930 (19 U.S.C. 1677(1))) and the Commission (as defined in section 771(2) of the Tariff Act of 1930 (19 U.S.C. 1677(2))) of any finding, determination, civil action, or criminal action taken by U.S. Customs and Border Protection or other Federal agency regarding evasion;

(4) serving as the primary liaison between U.S. Customs and Border Protection and the public regarding activities concerning evasion, including activities relating to investigations conducted under section 517 of the Tariff Act of 1930, as added by section 421 of this Act, which include—

(A) receiving allegations of evasion from parties, including allegations described in section 517(b)(2) of the Tariff Act of 1930, as so added;

(B) upon request by the party or parties that submitted such an allegation of evasion, providing information to such party or parties on the status of U.S. Customs and Border Protection's consideration of the allegation and decision to pursue or not pursue any administrative inquiries or other actions, such as changes in policies, procedures, or resource allocation as a result of the allegation;

(C) as needed, requesting from the party or parties that submitted such an allegation of evasion any additional information that may be relevant for U.S. Customs and Border Protection determining whether to initiate an administrative inquiry or take any other action regarding the allegation;

(D) notifying on a timely basis the party or parties that submitted such an allegation of the results of any administrative, civil, or criminal actions taken by U.S. Customs and Border Protection or other Federal agency regarding evasion as a direct or indirect result of the allegation;

(E) upon request, providing technical assistance and advice to eligible small businesses to enable such businesses to prepare and submit such an allegation of

evasion, except that the Director may deny technical assistance if the Director concludes that the allegation, if submitted, would not lead to the initiation of an administrative inquiry or any other action to address the allegation;

(F) in cooperation with the public, the Commercial Customs Operations Advisory Committee established under section 109, the Trade Support Network, and any other relevant parties and organizations, developing guidelines on the types and nature of information that may be provided in such an allegation of evasion; and

(G) consulting regularly with the public, the Commercial Customs Operations Advisory Committee, the Trade Support Network, and any other relevant parties and organizations regarding the development and implementation of regulations, interpretations, and policies related to countering evasion.

(c) PREVENTING AND COUNTERING EVASION OF THE TRADE REMEDY LAWS.—In carrying out its duties with respect to preventing and countering evasion, the National Targeting and Analysis Group dedicated to preventing and countering evasion shall—

(1) establish targeted risk assessment methodologies and standards—

(A) for evaluating the risk that cargo destined for the United States may constitute evading covered merchandise, and

(B) for issuing, as appropriate, Trade Alerts described in subsection (d), and

(2) to the extent practicable and otherwise authorized by law, use information available from the Automated Commercial System, the Automated Commercial Environment, the Automated Targeting System, the Automated Export System, the International Trade Data System established under section 411(d) of the Tariff Act of 1930 (19 U.S.C. 1411(d)), and the TECS (formerly known as the “Treasury Enforcement Communications System”), and any similar and successor systems, to administer the methodologies and standards established under paragraph (1).

(d) TRADE ALERTS.—Based upon the application of the targeted risk assessment methodologies and standards established under subsection (c), the Director of the Trade Remedy Law Enforcement Division shall issue Trade Alerts or other such means of notification to directors of United States ports of entry directing further inspection, physical examination, or testing of merchandise to ensure compliance with the trade remedy laws and to require additional bonds, cash deposits, or other security to ensure collection of any duties, taxes, and fees owed.

SEC. 412. COLLECTION OF INFORMATION ON EVASION OF TRADE REMEDY LAWS.

(a) AUTHORITY TO COLLECT INFORMATION.—To determine whether covered merchandise is being entered into the customs territory of the United States through evasion, the Secretary, acting through the Commissioner—

(1) shall exercise all existing authorities to collect information needed to make the determination; and

(2) may collect such additional information as is necessary to make the determination through such methods as the

Commissioner considers appropriate, including by issuing questionnaires with respect to the entry or entries at issue to—

(A) a person who filed an allegation with respect to the covered merchandise;

(B) a person who is alleged to have entered the covered merchandise into the customs territory of the United States through evasion; or

(C) any other person who is determined to have information relevant to the allegation of entry of covered merchandise into the customs territory of the United States through evasion.

(b) ADVERSE INFERENCE.—

(1) USE OF ADVERSE INFERENCE.—

(A) IN GENERAL.—If the Secretary finds that a person described in subparagraph (B) has failed to cooperate by not acting to the best of the person's ability to comply with a request for information under subsection (a), the Secretary may, in making a determination whether an entry or entries of covered merchandise may constitute merchandise that is entered into the customs territory of the United States through evasion, use an inference that is adverse to the interests of that person in selecting from among the facts otherwise available to determine whether evasion has occurred.

(B) PERSON DESCRIBED.—A person described in this subparagraph is—

(i) a person who filed an allegation with respect to covered merchandise;

(ii) a person alleged to have entered covered merchandise into the customs territory of the United States through evasion; or

(iii) a foreign producer or exporter of covered merchandise that is alleged to have entered into the customs territory of the United States through evasion.

(C) APPLICATION.—An inference described in subparagraph (A) may be used under that subparagraph with respect to a person described in clause (ii) or (iii) of subparagraph (B) without regard to whether another person involved in the same transaction or transactions under examination has provided the information sought by the Secretary, such as import or export documentation.

(2) ADVERSE INFERENCE DESCRIBED.—An adverse inference used under paragraph (1)(A) may include reliance on information derived from—

(A) the allegation of evasion of the trade remedy laws, if any, submitted to U.S. Customs and Border Protection;

(B) a determination by the Commissioner in another investigation, proceeding, or other action regarding evasion of the unfair trade laws; or

(C) any other available information.

SEC. 413. ACCESS TO INFORMATION.

(a) IN GENERAL.—Section 777(b)(1)(A)(ii) of the Tariff Act of 1930 (19 U.S.C. 1677(b)(1)(A)(ii)) is amended by inserting "negligence, gross negligence, or" after "regarding".

(b) **ADDITIONAL INFORMATION**—Notwithstanding any other provision of law, the Secretary is authorized to provide to the Secretary of Commerce or the United States International Trade Commission any information that is necessary to enable the Secretary of Commerce or the United States International Trade Commission to assist the Secretary to identify, through risk assessment targeting or otherwise, covered merchandise that is entered into the customs territory of the United States through evasion.

SEC. 414. COOPERATION WITH FOREIGN COUNTRIES ON PREVENTING EVASION OF TRADE REMEDY LAWS.

(a) **BILATERAL AGREEMENTS**—

(1) **IN GENERAL**—The Secretary shall seek to negotiate and enter into bilateral agreements with the customs authorities or other appropriate authorities of foreign countries for purposes of cooperation on preventing evasion of the trade remedy laws of the United States and the trade remedy laws of the other country.

(2) **PROVISIONS AND AUTHORITIES**—The Secretary shall seek to include in each such bilateral agreement the following provisions and authorities:

(A) On the request of the importing country, the exporting country shall provide, consistent with its laws, regulations, and procedures, production, trade, and transit documents and other information necessary to determine whether an entry or entries exported from the exporting country are subject to the importing country's trade remedy laws.

(B) On the written request of the importing country, the exporting country shall conduct a verification for purposes of enabling the importing country to make a determination described in subparagraph (A).

(C) The exporting country may allow the importing country to participate in a verification described in subparagraph (B), including through a site visit.

(D) If the exporting country does not allow participation of the importing country in a verification described in subparagraph (B), the importing country may take this fact into consideration in its trade enforcement and compliance assessment activities regarding the compliance of the exporting country's exports with the importing country's trade remedy laws.

(b) **CONSIDERATION**—The Commissioner is authorized to take into consideration whether a country is a signatory to a bilateral agreement described in subsection (a) and the extent to which the country is cooperating under the bilateral agreement for purposes of trade enforcement and compliance assessment activities of U.S. Customs and Border Protection that concern evasion by such country's exports.

(c) **REPORT**—Not later than December 31 of each calendar year beginning after the date of the enactment of this Act, the Secretary shall submit to the appropriate congressional committees a report summarizing—

(1) the status of any ongoing negotiations of bilateral agreements described in subsection (a), including the identities of the countries involved in such negotiations;

- (2) the terms of any completed bilateral agreements described in subsection (a); and
- (3) bilateral cooperation and other activities conducted pursuant to or enabled by any completed bilateral agreements described in subsection (a).

SEC. 415. TRADE NEGOTIATING OBJECTIVES.

The principal negotiating objectives of the United States shall include obtaining the objectives of the bilateral agreements described under section 414(a) for any trade agreements under negotiation as of the date of the enactment of this Act or future trade agreement negotiations.

Subtitle B—Investigation of Evasion of Trade Remedy Laws

SEC. 421. PROCEDURES FOR INVESTIGATING CLAIMS OF EVASION OF ANTIDUMPING AND COUNTERVAILING DUTY ORDERS.

(a) **IN GENERAL.**—The Tariff Act of 1930 is amended by inserting after section 516A (19 U.S.C. 1516a) the following:

***SEC. 517. PROCEDURES FOR INVESTIGATING CLAIMS OF EVASION OF ANTIDUMPING AND COUNTERVAILING DUTY ORDERS.**

“(a) **DEFINITIONS.**—In this section:

“(1) **ADMINISTERING AUTHORITY.**—The term ‘administering authority’ has the meaning given that term in section 771(1).

“(2) **COMMISSIONER.**—The term ‘Commissioner’ means the Commissioner of U.S. Customs and Border Protection.

“(3) **COVERED MERCHANDISE.**—The term ‘covered merchandise’ means merchandise that is subject to—

“(A) an antidumping duty order issued under section 736, or

“(B) a countervailing duty order issued under section 706.

“(4) **ENTER; ENTRY.**—The terms ‘enter’ and ‘entry’ refer to the entry, or withdrawal from warehouse for consumption, of merchandise into the customs territory of the United States.

“(5) **EVASION.**—

“(A) **IN GENERAL.**—Except as provided in subparagraph (B), the term ‘evasion’ refers to entering covered merchandise 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.

“(B) **EXCEPTION FOR CLERICAL ERROR.**—

“(i) **IN GENERAL.**—Except as provided in clause (ii), the term ‘evasion’ does not include entering covered merchandise into the customs territory of the United States by means of—

“(I) a document or electronically transmitted data or information, written or oral statement,

or act that is false as a result of a clerical error;
or

“(II) an omission that results from a clerical error.

“(ii) PATTERNS OF NEGLIGENT CONDUCT.—If the Commissioner determines that a person has entered covered merchandise into the customs territory of the United States by means of a clerical error referred to in subclause (I) or (II) of clause (i) and that the clerical error is part of a pattern of negligent conduct on the part of that person, the Commissioner may determine, notwithstanding clause (i), that the person has entered such covered merchandise into the customs territory of the United States through evasion.

“(iii) ELECTRONIC REPETITION OF ERRORS.—For purposes of clause (ii), the mere nonintentional repetition by an electronic system of an initial clerical error does not constitute a pattern of negligent conduct.

“(iv) RULE OF CONSTRUCTION.—A determination by the Commissioner that a person has entered covered merchandise into the customs territory of the United States by means of a clerical error referred to in subclause (I) or (II) of clause (i) rather than through evasion shall not be construed to excuse that person from the payment of any duties applicable to the merchandise.

“(G) INTERESTED PARTY.—

“(A) IN GENERAL.—The term ‘interested party’ means—

“(i) a foreign manufacturer, producer, or exporter, or the United States importer, of covered merchandise or a trade or business association a majority of the members of which are producers, exporters, or importers of such merchandise;

“(ii) a manufacturer, producer, or wholesaler in the United States of a domestic like product,

“(iii) 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,

“(iv) a trade or business association a majority of the members of which manufacture, produce, or wholesale a domestic like product in the United States,

“(v) an association a majority of the members of which is composed of interested parties described in clause (ii), (iii), or (iv) with respect to a domestic like product, and

“(vi) if the covered merchandise is a processed agricultural product, as defined in section 771(4)(E), a coalition or trade association that is representative of either—

“(I) processors;

“(II) processors and producers; or

“(III) processors and growers.

“(B) DOMESTIC LIKE PRODUCT.—For purposes of subparagraph (A), the term ‘domestic like product’ means a product that is like, or in the absence of like, most

similar in characteristics and uses with, covered merchandise.

“(b) INVESTIGATIONS.—

“(1) IN GENERAL.—Not later than 15 business days after receiving an allegation described in paragraph (2) or a referral described in paragraph (3), the Commissioner shall initiate an investigation if the Commissioner determines that the information provided in the allegation or the referral, as the case may be, reasonably suggests that covered merchandise has been entered into the customs territory of the United States through evasion.

“(2) ALLEGATION DESCRIBED.—An allegation described in this paragraph is an allegation that a person has entered covered merchandise into the customs territory of the United States through evasion that is—

“(A) filed with the Commissioner by an interested party; and

“(B) accompanied by information reasonably available to the party that filed the allegation.

“(3) REFERRAL DESCRIBED.—A referral described in this paragraph is information submitted to the Commissioner by any other Federal agency, including the Department of Commerce or the United States International Trade Commission, that reasonably suggests that a person has entered covered merchandise into the customs territory of the United States through evasion.

“(4) CONSIDERATION BY ADMINISTERING AUTHORITY.—

“(A) IN GENERAL.—If the Commissioner receives an allegation under paragraph (2) and is unable to determine whether the merchandise at issue is covered merchandise, the Commissioner shall—

“(i) refer the matter to the administering authority to determine whether the merchandise is covered merchandise pursuant to the authority of the administering authority under title VII; and

“(ii) notify the party that filed the allegation, and any other interested party participating in the investigation, of the referral.

“(B) DETERMINATION; TRANSMISSION TO COMMISSIONER.—After receiving a referral under subparagraph (A)(i) with respect to merchandise, the administering authority shall determine whether the merchandise is covered merchandise and promptly transmit that determination to the Commissioner.

“(C) STAY OF DEADLINES.—The period required for any referral and determination under this paragraph shall not be counted in calculating any deadline under this section.

“(D) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to affect the authority of an interested party to commence an action in the United States Court of International Trade under section 516A(a)(2) with respect to a determination of the administering authority under this paragraph.

“(5) CONSOLIDATION OF ALLEGATIONS AND REFERRALS —

“(A) IN GENERAL.—The Commissioner may consolidate multiple allegations described in paragraph (2) and referrals described in paragraph (3) into a single investigation

if the Commissioner determines it is appropriate to do so.

“(B) EFFECT ON TIMING REQUIREMENTS.—If the Commissioner consolidates multiple allegations or referrals into a single investigation under subparagraph (A), the date on which the Commissioner receives the first such allegation or referral shall be used for purposes of the requirement under paragraph (1) with respect to the timing of the initiation of the investigation.

“(6) INFORMATION SHARING TO PROTECT HEALTH AND SAFETY.—If, during the course of conducting an investigation under paragraph (1) with respect to covered merchandise, the Commissioner has reason to suspect that such covered merchandise may pose a health or safety risk to consumers, the Commissioner shall provide, as appropriate, information to the appropriate Federal agencies for purposes of mitigating the risk.

“(7) TECHNICAL ASSISTANCE AND ADVICE.—

“(A) IN GENERAL.—Upon request, the Commissioner shall provide technical assistance and advice to eligible small businesses to enable such businesses to prepare and submit allegations described in paragraph (2), except that the Commissioner may deny technical assistance if the Commissioner concludes that the allegation, if submitted, would not lead to the initiation of an investigation under this subsection or any other action to address the allegation.

“(B) ELIGIBLE SMALL BUSINESS DEFINED.—

“(i) IN GENERAL.—In this paragraph, the term ‘eligible small business’ means any business concern that the Commissioner determines, due to its small size, has neither adequate internal resources nor the financial ability to obtain qualified outside assistance in preparing and filing allegations described in paragraph (2).

“(ii) NON-REVIEWABILITY.—The determination of the Commissioner regarding whether a business concern is an eligible small business for purposes of this paragraph is not reviewable by any other agency or by any court.

“(c) DETERMINATIONS.—

“(1) DETERMINATION OF EVASION.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), not later than 300 calendar days after the date on which the Commissioner initiates an investigation under subsection (b) with respect to covered merchandise, the Commissioner shall make a determination, based on substantial evidence, with respect to whether such covered merchandise was entered into the customs territory of the United States through evasion.

“(B) ADDITIONAL TIME.—The Commissioner may extend the time to make a determination under subparagraph (A) by not more than 60 calendar days if the Commissioner determines that—

“(i) the investigation is extraordinarily complicated because of—

“(I) the number and complexity of the transactions to be investigated;

“(II) the novelty of the issues presented, or
“(III) the number of entities to be investigated,

and

“(ii) additional time is necessary to make the determination under subparagraph (A).

“(2) **AUTHORITY TO COLLECT AND VERIFY ADDITIONAL INFORMATION.**—In making a determination under paragraph (1) with respect to covered merchandise, the Commissioner may collect such additional information as is necessary to make the determination through such methods as the Commissioner considers appropriate, including by—

“(A) issuing a questionnaire with respect to such covered merchandise to—

“(i) an interested party that filed an allegation under paragraph (2) of subsection (b) that resulted in the initiation of an investigation under paragraph (1) of that subsection with respect to such covered merchandise;

“(ii) a person alleged to have entered such covered merchandise into the customs territory of the United States through evasion;

“(iii) a person that is a foreign producer or exporter of such covered merchandise; or

“(iv) the government of a country from which such covered merchandise was exported; and

“(B) conducting verifications, including on-site verifications, of any relevant information.

“(3) **ADVERSE INFERENCE.**—

“(A) **IN GENERAL.**—If the Commissioner finds that a party or person described in clause (i), (ii), or (iii) of paragraph (2)(A) has failed to cooperate by not acting to the best of the party or person’s ability to comply with a request for information, the Commissioner may, in making a determination under paragraph (1), use an inference that is adverse to the interests of that party or person in selecting from among the facts otherwise available to make the determination.

“(B) **APPLICATION.**—An inference described in subparagraph (A) may be used under that subparagraph with respect to a person described in clause (ii) or (iii) of paragraph (2)(A) without regard to whether another person involved in the same transaction or transactions under examination has provided the information sought by the Commissioner, such as import or export documentation.

“(C) **ADVERSE INFERENCE DESCRIBED.**—An adverse inference used under subparagraph (A) may include reliance on information derived from—

“(i) the allegation of evasion of the trade remedy laws, if any, submitted to U.S. Customs and Border Protection;

“(ii) a determination by the Commissioner in another investigation, proceeding, or other action regarding evasion of the unfair trade laws; or

“(iii) any other available information.

“(4) **NOTIFICATION.**—Not later than 5 business days after making a determination under paragraph (1) with respect to covered merchandise, the Commissioner—

"(A) shall provide to each interested party that filed an allegation under paragraph (2) of subsection (b) that resulted in the initiation of an investigation under paragraph (1) of that subsection with respect to such covered merchandise a notification of the determination and may, in addition, include an explanation of the basis for the determination; and

"(B) may provide to importers, in such manner as the Commissioner determines appropriate, information discovered in the investigation that the Commissioner determines will help educate importers with respect to importing merchandise into the customs territory of the United States in accordance with all applicable laws and regulations.

"(d) EFFECT OF DETERMINATIONS.—

"(1) IN GENERAL.—If the Commissioner makes a determination under subsection (c) that covered merchandise was entered into the customs territory of the United States through evasion, the Commissioner shall—

"(A)(i) suspend the liquidation of unliquidated entries of such covered merchandise that are subject to the determination and that enter on or after the date of the initiation of the investigation under subsection (b) with respect to such covered merchandise and on or before the date of the determination; or

"(ii) if the Commissioner has already suspended the liquidation of such entries pursuant to subsection (e)(1), continue to suspend the liquidation of such entries;

"(B) pursuant to the Commissioner's authority under section 504(b)—

"(i) extend the period for liquidating unliquidated entries of such covered merchandise that are subject to the determination and that entered before the date of the initiation of the investigation; or

"(ii) if the Commissioner has already extended the period for liquidating such entries pursuant to subsection (e)(1), continue to extend the period for liquidating such entries;

"(C) notify the administering authority of the determination and request that the administering authority—

"(i) identify the applicable antidumping or countervailing duty assessment rates for entries described in subparagraphs (A) and (B); or

"(ii) if no such assessment rate for such an entry is available at the time, identify the applicable cash deposit rate to be applied to the entry, with the applicable antidumping or countervailing duty assessment rate to be provided as soon as that rate becomes available;

"(D) require the posting of cash deposits and assess duties on entries described in subparagraphs (A) and (B) in accordance with the instructions received from the administering authority under paragraph (2); and

"(E) take such additional enforcement measures as the Commissioner determines appropriate, such as—

"(i) initiating proceedings under section 592 or 596;

“(ii) implementing, in consultation with the relevant Federal agencies, rule sets or modifications to rule sets for identifying, particularly through the Automated Targeting System and the Automated Commercial Environment authorized under section 13031(f)(4) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)(4)), importers, other parties, and merchandise that may be associated with evasion;

“(iii) requiring, with respect to merchandise for which the importer has repeatedly provided incomplete or erroneous entry summary information in connection with determinations of evasion, the importer to deposit estimated duties at the time of entry; and

“(iv) referring the record in whole or in part to U.S. Immigration and Customs Enforcement for civil or criminal investigation.

“(2) COOPERATION OF ADMINISTERING AUTHORITY.—

“(A) IN GENERAL.—Upon receiving a notification from the Commissioner under paragraph (1)(C), the administering authority shall promptly provide to the Commissioner the applicable cash deposit rates and antidumping or countervailing duty assessment rates and any necessary liquidation instructions.

“(B) SPECIAL RULE FOR CASES IN WHICH THE PRODUCER OR EXPORTER IS UNKNOWN.—If the Commissioner and the administering authority are unable to determine the producer or exporter of the merchandise with respect to which a notification is made under paragraph (1)(C), the administering authority shall identify, as the applicable cash deposit rate or antidumping or countervailing duty assessment rate, the cash deposit or duty (as the case may be) in the highest amount applicable to any producer or exporter, including the ‘all-others’ rate of the merchandise subject to an antidumping order or countervailing duty order under section 736 or 706, respectively, or a finding issued under the Antidumping Act, 1921, or any administrative review conducted under section 751.

“(e) INTERIM MEASURES.—Not later than 90 calendar days after initiating an investigation under subsection (b) with respect to covered merchandise, the Commissioner shall decide based on the investigation if there is a reasonable suspicion that such covered merchandise was entered into the customs territory of the United States through evasion and, if the Commissioner decides there is such a reasonable suspicion, the Commissioner shall—

“(1) suspend the liquidation of each unliquidated entry of such covered merchandise that entered on or after the date of the initiation of the investigation;

“(2) pursuant to the Commissioner’s authority under section 504(b), extend the period for liquidating each unliquidated entry of such covered merchandise that entered before the date of the initiation of the investigation; and

“(3) pursuant to the Commissioner’s authority under section 623, take such additional measures as the Commissioner 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.

“(f) ADMINISTRATIVE REVIEW.—

“(1) IN GENERAL.—Not later than 30 business days after the Commissioner makes a determination under subsection (c) with respect to whether covered merchandise was entered into the customs territory of the United States through evasion, a person determined to have entered such covered merchandise through evasion or an interested party that filed an allegation under paragraph (2) of subsection (b) that resulted in the initiation of an investigation under paragraph (1) of that subsection with respect to such covered merchandise may file an appeal with the Commissioner for de novo review of the determination.

“(2) TIMELINE FOR REVIEW.—Not later than 60 business days after an appeal of a determination is filed under paragraph (1), the Commissioner shall complete the review of the determination.

“(g) JUDICIAL REVIEW.—

“(1) IN GENERAL.—Not later than 30 business days after the Commissioner completes a review under subsection (f) of a determination under subsection (c) with respect to whether covered merchandise was entered into the customs territory of the United States through evasion, a person determined to have entered such covered merchandise through evasion or an interested party that filed an allegation under paragraph (2) of subsection (b) that resulted in the initiation of an investigation under paragraph (1) of that subsection with respect to such covered merchandise may seek judicial review of the determination under subsection (c) and the review under subsection (f) in the United States Court of International Trade to determine whether the determination and review is conducted in accordance with subsections (c) and (f).

“(2) STANDARD OF REVIEW.—In determining whether a determination under subsection (c) or review under subsection (f) is conducted in accordance with those subsections, the United States Court of International Trade shall examine—

“(A) whether the Commissioner fully complied with all procedures under subsections (c) and (f); and

“(B) whether any determination, finding, or conclusion is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

“(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall affect the availability of judicial review to an interested party under any other provision of law.

“(h) RULE OF CONSTRUCTION WITH RESPECT TO OTHER CIVIL AND CRIMINAL PROCEEDINGS AND INVESTIGATIONS.—No determination under subsection (c), review under subsection (f), or action taken by the Commissioner pursuant to this section shall preclude any individual or entity from proceeding, or otherwise affect or limit the authority of any individual or entity to proceed, with any civil, criminal, or administrative investigation or proceeding pursuant to any other provision of Federal or State law, including sections 592 and 596.”

(b) CONFORMING AMENDMENT.—Section 1581(c) of title 28, United States Code, is amended by inserting “or 517” after “516A”.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date that is 180 days after the date of the enactment of this Act.

(d) REGULATIONS.—Not later than the date that is 180 days after the date of the enactment of this Act, the Secretary shall prescribe such regulations as may be necessary to implement the amendments made by this section.

Subtitle C—Other Matters

SEC. 431. ALLOCATION AND TRAINING OF PERSONNEL.

The Commissioner shall, to the maximum extent possible, ensure that U.S. Customs and Border Protection—

(1) employs sufficient personnel who have expertise in, and responsibility for, preventing and investigating the entry of covered merchandise into the customs territory of the United States through evasion;

(2) on the basis of risk assessment metrics, assigns sufficient personnel with primary responsibility for preventing the entry of covered merchandise into the customs territory of the United States through evasion to the ports of entry in the United States at which the Commissioner determines potential evasion presents the most substantial threats to the revenue of the United States; and

(3) provides adequate training to relevant personnel to increase expertise and effectiveness in the prevention and identification of entries of covered merchandise into the customs territory of the United States through evasion.

SEC. 432. ANNUAL REPORT ON PREVENTION AND INVESTIGATION OF EVASION OF ANTIDUMPING AND COUNTERVAILING DUTY ORDERS.

(a) IN GENERAL.—Not later than January 15 of each calendar year that begins on or after the date that is 270 days after the date of the enactment of this Act, the Commissioner, in consultation with the Secretary of Commerce and the Director of U.S. Immigration and Customs Enforcement, shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report on the efforts being taken to prevent and investigate the entry of covered merchandise into the customs territory of the United States through evasion.

(b) CONTENTS.—Each report required under subsection (a) shall include—

(1) for the calendar year preceding the submission of the report—

(A) a summary of the efforts of U.S. Customs and Border Protection to prevent and investigate the entry of covered merchandise into the customs territory of the United States through evasion;

(B) the number of allegations of evasion received, including allegations received under subsection (b) of section 517 of the Tariff Act of 1930, as added by section 421 of this Act, and the number of such allegations resulting in investigations by U.S. Customs and Border Protection or any other Federal agency;

(C) a summary of investigations initiated, including investigations initiated under subsection (b) of such section 517, including—

(i) the number and nature of the investigations initiated, conducted, or completed; and

(ii) the resolution of each completed investigation;

(D) the amount of additional duties that were determined to be owed as a result of such investigations, the amount of such duties that were collected, and, for any such duties not collected, a description of the reasons those duties were not collected;

(E) with respect to each such investigation that led to the imposition of a penalty, the amount of the penalty;

(F) an identification of the countries of origin of covered merchandise determined under subsection (c) of such section 517 to be entered into the customs territory of the United States through evasion;

(G) the amount of antidumping and countervailing duties collected as a result of any investigations or other actions by U.S. Customs and Border Protection or any other Federal agency;

(H) a description of the allocation of personnel and other resources of U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement to prevent and investigate evasion, including any assessments conducted regarding the allocation of such personnel and resources, and

(I) a description of training conducted to increase expertise and effectiveness in the prevention and investigation of evasion; and

(2) a description of processes and procedures of U.S. Customs and Border Protection to prevent and investigate evasion, including—

(A) the specific guidelines, policies, and practices used by U.S. Customs and Border Protection to ensure that allegations of evasion are promptly evaluated and acted upon in a timely manner;

(B) an evaluation of the efficacy of those guidelines, policies, and practices;

(C) an identification of any changes since the last report required by this section, if any, that have materially improved or reduced the effectiveness of U.S. Customs and Border Protection in preventing and investigating evasion;

(D) a description of the development and implementation of policies for the application of single entry and continuous bonds for entries of covered merchandise to sufficiently protect the collection of antidumping and countervailing duties commensurate with the level of risk of not collecting those duties;

(E) a description of the processes and procedures for increased cooperation and information sharing with the Department of Commerce, U.S. Immigration and Customs Enforcement, and any other relevant Federal agencies to prevent and investigate evasion; and

(F) an identification of any recommended policy changes for other Federal agencies or legislative changes to improve the effectiveness of U.S. Customs and Border Protection in preventing and investigating evasion.

(c) PUBLIC SUMMARY.—The Commissioner shall make available to the public a summary of the report required by subsection (a) that includes, at a minimum—

(1) a description of the type of merchandise with respect to which investigations were initiated under subsection (b) of section 517 of the Tariff Act of 1930, as added by section 421 of this Act;

(2) the amount of additional duties determined to be owed as a result of such investigations and the amount of such duties that were collected;

(3) an identification of the countries of origin of covered merchandise determined under subsection (c) of such section 517 to be entered into the customs territory of the United States through evasion; and

(4) a description of the types of measures used by U.S. Customs and Border Protection to prevent and investigate evasion.

SEC. 433. ADDRESSING CIRCUMVENTION BY NEW SHIPPERS.

Section 751(a)(2)(B) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(2)(B)) is amended—

(1) by striking clause (iii);

(2) by redesignating clause (iv) as clause (iii); and

(3) by inserting after clause (iii), as redesignated by paragraph (2) of this section, the following:

“(iv) DETERMINATIONS BASED ON BONA FIDE SALES.—Any weighted average dumping margin or individual countervailing duty rate determined for an exporter or producer in a review conducted under clause (i) shall be based solely on the bona fide United States sales of an exporter or producer, as the case may be, made during the period covered by the review. In determining whether the United States sales of an exporter or producer made during the period covered by the review were bona fide, the administering authority shall consider, depending on the circumstances surrounding such sales—

“(I) the prices of such sales;

“(II) whether such sales were made in commercial quantities;

“(III) the timing of such sales;

“(IV) the expenses arising from such sales;

“(V) whether the subject merchandise involved in such sales was resold in the United States at a profit;

“(VI) whether such sales were made on an arms-length basis; and

“(VII) any other factor the administering authority determines to be relevant as to whether such sales are, or are not, likely to be typical of those the exporter or producer will make after completion of the review.”.

Summary of Notable Provisions from the Enforce and Protect Act of 2015

The Enforce and Protect Act of 2015 (“the E/P Act”) is provided for under Title IV of the Trade Facilitation and Trade Enforcement Act of 2015 (the “TF/TE Act”), Sections 401 - 433.

Creation of the Trade Remedy Law Enforcement Division

The new legislation provides for the creation of the Trade Remedy Law Enforcement Division within the Office of Trade, U.S. Customs and Border Protection (“CBP”). The duties of this Division include:

- developing and administering policies to prevent and counter evasion, including policies relating to the implementation of CBP’s new obligations to investigate evasion of the trade remedy laws, as added by section 421 of the TF/TE Act;
- directing enforcement and compliance assessment activities concerning evasion;
- developing and conducting commercial risk assessment targeting with respect to cargo destined for the United States;
- issuing Trade Alerts; and
- developing policies for the application of single entry and continuous bonds for entries of covered merchandise to sufficiently protect the collection of antidumping and countervailing duties commensurate with the level of risk of noncollection.

Section 411(a)(1)-(3) of the TF/TE Act.

CBP’s Investigation of Evasion of the Trade Remedy Laws

- The legislation creates new obligations for CBP to investigate allegations of evasion of the trade remedy laws.
- If an interested party has information that a person has entered covered merchandise into the customs territory of the United States through evasion, the interested party may submit the information to CBP through an “allegation.” Likewise, if any other Federal agency, including the U.S. Department of Commerce (“Commerce”) or the U.S. International Trade Commission, has information that a person has entered covered merchandise into the customs territory of the United States through evasion, that agency may also refer the information to CBP. Section 421(a) of the TF/TE Act (amending the Tariff Act of 1930 to include section 517(b)(1)-(3)).
- Upon receiving an allegation of evasion or a referral from another Federal agency, CBP has 15 business days to determine whether to initiate an investigation. CBP shall initiate an investigation if it determines “that the information provided in the allegation or the referral, as the case may be, reasonably suggests that covered merchandise has been entered into the customs territory of the United States through evasion.” Section 421(a) of the TF/TE Act (amending the Tariff Act of 1930 to include section 517(b)(1)).
- If CBP receives an allegation and is unable to determine whether the merchandise at issue is “covered merchandise,” *i.e.*, merchandise that is subject to an antidumping or countervailing duty order, CBP shall refer the matter to Commerce for such a determination. Section 421(a) of the TF/TE Act (amending the Tariff Act of 1930 to include section 517(a)(3) & (b)(4)(A)).

Merits Determination

- Upon the initiation of an investigation, CBP has 300 calendar days to determine “whether such covered merchandise was entered into the customs territory of the United States through evasion.” The act permits CBP to extend this period if the investigation is extraordinary complicated and more time is required. However, CBP may not extend this period by more than 60 calendar days. Section 421(a) of the TF/TE Act (amending the Tariff Act of 1930 to include section 517(c)(1)(A)&(B)).
- CBP may collect information through issuing questionnaires and conducting on-site verifications. Section 421(a) of the TF/TE Act (amending the Tariff Act of 1930 to include section 517(c)(2)(A)&(B)).
- If CBP determines that a party or person has failed to cooperate by not acting to the best of the person’s ability to comply with CBP’s request for information, CBP may adopt an inference that is adverse to the interests of that party or person in selecting from the facts otherwise available to make the determination. Section 421(a) of the TF/TE Act (amending the Tariff Act of 1930 to include section 517(c)(3)(A)).
- If CBP makes an affirmative determination of evasion, CBP must, in part:
 - suspend the liquidation of unliquidated entries that are subject to the determination and that entered on or after the initiation of the investigation and on or before the determination;
 - extend the time period for liquidating any unliquidated entries that are subject to the determination and that entered before the initiation of the investigation;
 - notify Commerce of the affirmative determination and request that Commerce identify the applicable antidumping or countervailing duty assessment rates for the entries. If no such assessment rate is available at the time, Commerce is to identify the applicable cash deposit rate to be applied to the entry, and provide the applicable antidumping or countervailing duty assessment rate as soon as that rate becomes available;
 - require the posting of cash deposits and assess duties on the entries in accordance with Commerce’s instructions; and
 - take such additional enforcement measures as CBP determines to be appropriate.Section 421(a) of the TF/TE Act (amending the Tariff Act of 1930 to include section 517(d)(1)).

Administrative Review

- A person determined to have entered covered merchandise through evasion or an interested party that filed an allegation may file an appeal with CBP for *de novo* review of the determination. The appeal must be filed within 30 business days after CBP makes its determination. CBP has 60 business days to complete the administrative review of the merits determination. Section 421(a) of the TF/TE Act (amending the Tariff Act of 1930 to include section 517(f)).

Judicial Review

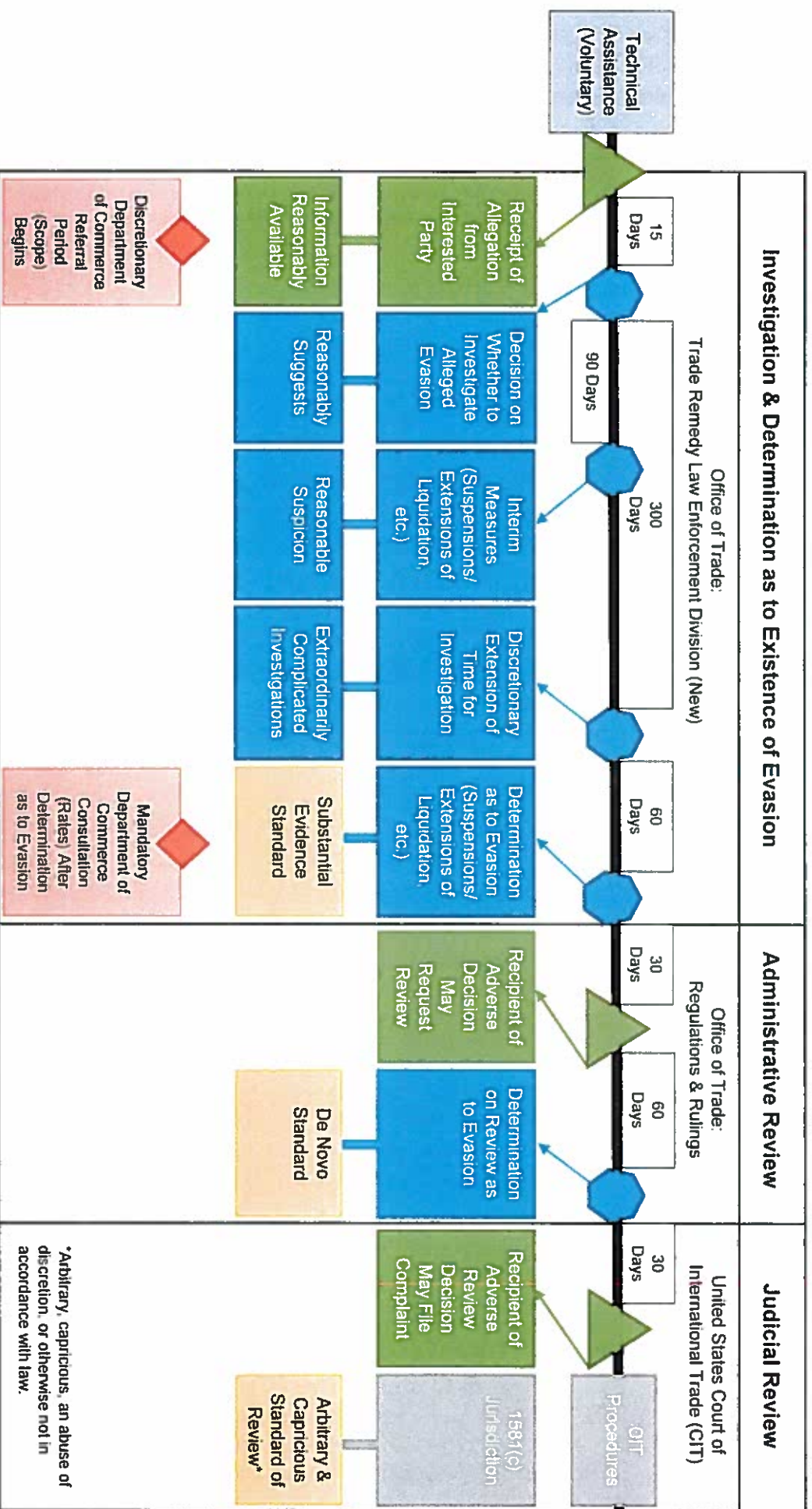
- A person determined to have entered covered merchandise through evasion or an interested party that filed an allegation may seek judicial review of CBP's merits determination and the *de novo* administrative review of the merits determination in the U.S. Court of International Trade "to determine whether the determination and review is conducted in accordance with subsections (c) and (f)" of the Act. These subsections set forth the procedures for the merits determination and the *de novo* administrative review. Section 421(a) of the TF/TE Act (amending the Tariff Act of 1930 to include section 517(g)(1)).
- In reviewing whether CBP conducted the determinations in accordance with the relevant subsections of the Act, the U.S. Court of International Trade shall examine—"(A) whether the Commissioner fully complied with all procedures under subsections (c) and (f); and (B) whether any determination, finding, or conclusion is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." Section 421(a) of the TF/TE Act (amending the Tariff Act of 1930 to include section 517(g)(2)).
- Jurisdiction in the U.S. Court of International Trade for this civil action is codified under 28 U.S.C. § 1581(c). Section 421(b) of the TF/TE Act.

Congressional Reporting Requirements

- Not later than January 15 of each calendar year, the Commissioner of CBP, in consultation with the Secretary of Commerce and the Director of U.S. Immigration and Customs Enforcement, shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report on the efforts being taken to prevent and investigate the entry of covered merchandise into the customs territory of the United States through evasion. Section 432(a) of the TF/TE Act.
- The contents of the report are described in section 432(b) of the TF/TE Act.

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.

Event	Day	Authority	Notes
Allegation or referral filed	0	19 USC 1517(b)(2)-(3)	https://www.congress.gov/bills/114/congress/114th-congress/house-bills/644/text/toc-H208943AA733446E294E4465DA92FF9CF
Customs initiates	15	19 USC 1517(b)(1)	This is business days, so add weekends/holidays as well
Interim measures	initiation + 90	19 USC 1517(e)(1)	Suspend liq... "protect revenue" at this point. Suspended for entries on or after initiation.
Determination	initiation + 300	19 USC 1517(c)(1)(A)	Practically probably added about 20 days for initiation (15 plus weekends)
Extended deadline	initiation + 360	19 USC 1517(c)(1)(B)	Only if Commissioner extends
Interested party notified	determination + 5	19 USC 1517(c)(4)	
Administrative review request	determination + 30	19 USC 1517(f)(1)	De novo review of Commissioner by Commissioner (!)
Administrative review deadline	review request + 60	19 USC 1517(f)(2)	May not be extended
Judicial review deadline	review decision + 30	19 USC 1517(g)(1)	(c) case under arbitrary and capricious standard

