

The Enforce and Protect Act (“EAPA”): A Primer on the Administrative CBP Process and Summary of Judicial Decisions

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I. INTRODUCTION

Enacted in 2015, the Enforced and Protect Act (“EAPA”)³ gives U.S. Customs & Border Protection (“CBP”) enhanced tools to enforce U.S. antidumping and countervailing duty (hereinafter “ADD/CVD”) laws and to protect U.S. industry, which has complained for years that importers and foreign sellers were evading U.S. ADD/CVD orders.⁴ From the point of view of many in U.S. industry, by the time CBP took enforcement action, violators would disappear and CBP would not be unable to collect ADD/CVD owed for products imported into the United States.⁵ As a result, US industry would contend that the intended effects of the ADD/CVD order, namely, a more level playing field, were often not realized. US industry successfully lobbied for Congress to give CBP increased powers to fight ADD/CVD evasion. The EAPA is the result of those efforts.

Prior to the EAPA, the U.S. International Trade Commission (“ITC”) and U.S. Department of Commerce (“Commerce”) would conduct ADD/CVD investigations and, if warranted by the results of their investigation, Commerce would issue an ADD/CVD order. Importers would, per the mandate of 19 U.S.C. § 1484, then exercise reasonable care and be required to determine whether the goods they import were subject to an ADD/CVD order. A failure of an importer to exercise reasonable care subjected the importer to possible civil penalties under 19 U.S.C. § 1592 or, in more egregious (willful) cases, criminal prosecution under 18 U.S.C. § 545.

For goods subject to an order, importers would be required to file the requisite ADD/CVD entry with CBP (called an “03” type of entry)⁶ and pay the applicable amount of estimated ADD/CVD duties. Because CBP is an agency of limited resources and has to police 37 million import transactions per year valued at over \$2.8 trillion,⁷ it was (and is) entirely possible for importers to evade ADD/CVD orders by misdescribing their goods or reporting a false (incorrect) country of origin – either willingly, negligently, or as a result of being duped by their foreign suppliers.

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³ (Pub. L. 114-125, 130 Stat. 122, 155, Feb. 24, 2016) ([19 U.S.C. 4301 note](#)).

⁴ See, e.g., https://www.akingump.com/a/web/28443/aohQ7/gtcj_91_bernd-g-janzen-jean-rene-broussard.pdf.

⁵ See, e.g., <https://www.gao.gov/products/gao-16-542>.

⁶ See https://www.cbp.gov/sites/default/files/assets/documents/2019-Dec/CBP%20Form%207501_0.pdf.

⁷ https://www.cbp.gov/sites/default/files/assets/documents/2022-Apr/FINAL%20FY2021_%20Trade%20and%20Travel%20Report%20%28508%20Compliant%29%20%28April%202022%29_0.pdf.

Of course, even after passage of the EAPA in 2015, the requirement for importers to exercise reasonable care remains a cornerstone of U.S. import laws, and CBP still retains, and often exercises, the power to enforce ADD/CVD laws through civil penalties under 19 U.S.C. § 1592 and/or 18 U.S.C. § 545. None of that changed as a result of the EAPA, but the EAPA is a powerful, relatively new, tool in CBP’s toolbox for administering and enforcing the nation’s ADD/CVD laws. Since enactment of the EAPA, CBP has used it to identify underpaid ADD/CVD as follows:⁸

FY 2018	FY 2019	FY 2020	FY 2021	FY 2022 (as of 6/30/22)
\$15 million	\$250 million	\$215 million	\$112 million	\$78 million

II. THE EAPA

Section 411 of the EAPA resulted in the creation of a Trade Remedy Law Enforcement Directorate (“TRLED”) within CBP’s Office of Trade. The EAPA charged TRLED with, among other things, conducting investigations as to whether any person is importing products into the United States in violation of U.S. trade laws, specifically ADD/CVD laws. Most importantly, at least from the perspective of U.S. industry, Section 517(c) of the EAPA charged TRLED with conducting these investigations rapidly – requiring that the investigation be completed within less than one year (300 days) from the time it was initiated. A distinguishing and defining feature of the EAPA is, therefore, speed.

A. Initiation of an EAPA Investigation

In the overwhelming majority of cases, an EAPA investigation starts when an “interested party”⁹ files an allegation with CBP alleging that an importer is evading an ADD/CVD order.

⁸ See <https://www.cbp.gov/newsroom/stats/trade> (last accessed October 10, 2022).

⁹ An “interested party” is defined in 19 C.F.R. § 165.1 as any one of the following six (6) parties:

- (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;

Usually, the “interested party” filing the allegation is a company in the U.S. domestic industry. However, at least one recent EAPA case involved one importer alleging another importer was evading ADD/CVD.¹⁰ The EAPA regulations also allow another government agency, such as Commerce, to also request that CBP conduct an EAPA investigation.¹¹

Currently, requests for an EAPA investigation must be filed through CBP’s EAPA portal (<https://eapallegations.cbp.gov/s/>)¹² and must contain the following:¹³

- (1) Name of the interested party making the allegation and identification of the agent filing on its behalf, if any, and the email address for communication and service purposes;
- (2) An explanation as to how the interested party qualifies as an interested party pursuant to § 165.1;
- (3) Name and address of importer against whom the allegation is brought;
- (4) Description of the covered merchandise;
- (5) Applicable AD/CVD orders; and
- (6) Information reasonably available to the interested party to support its allegation that the importer with respect to whom the allegation is filed is engaged in evasion.

The party petitioning for the investigation also must consent to public release of items (1) through (5) above¹⁴ and must certify that all statements in its submission are accurate and true to the best of the submitter’s knowledge and belief.¹⁵

The target of the EAPA investigation is not notified or served with the allegation at the time the petitioner submits the allegation or at the time CBP initiates the EAPA investigation. Rather, CBP notifies the importer within 95 calendar days after CBP decides to initiate an EAPA investigation.¹⁶ Thus, for roughly 3 months after an EAPA investigation commences, an importer is unaware of the existence of the EAPA investigation.

CBP must make a determination as to whether to initiate an EAPA case within 15 business days of receipt of a properly filed allegation.¹⁷ While an EAPA proceeding may start (in the non-legal

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- (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 USC 1677(4)(E), a coalition or trade association that is representative of any of the following: processors; processors and producers; or processors and growers.

¹⁰ See EAPA Case 7651 – available at <https://www.cbp.gov/document/publications/eapa-case-7651-charman-manufacturing-inc-notice-initiation-investigation-and>.

¹¹ 19 CFR § 165.14.

¹² 19 CFR § 165.11(a).

¹³ 19 CFR § 165.11(b).

¹⁴ 19 CFR § 165.11(c).

¹⁵ 19 CFR § 165.5(b)(2).

¹⁶ 19 CFR § 165.15(d)(1).

¹⁷ 19 CFR § 165.12(a).

sense) when the interested party files the allegation, the regulations contemplate that CBP initiate an EAPA investigation if the information in the allegation (or agency request, if the case is requested by another federal agency) “**reasonably suggests**” evasion.¹⁸ The only limits on CBP at this point of the EAPA process are clerical errors and withdrawals of an allegation or request.¹⁹ In those two instances, CBP may not initiate an EAPA investigation. In all other instances, CBP will initiate as long as it believes the information in the allegation (or agency request) “**reasonably suggests**” evasion.

If, at any time point after receipt of an allegation, CBP is unable to determine whether merchandise is “covered merchandise,” it can refer the matter to Commerce to make a scope determination.²⁰ Commerce is instructed to make that determination and “promptly” transmit it back to CBP. While the matter is referred to Commerce, the EAPA statutory deadlines are stayed.²¹

B. Interim Measures

After initiating an investigation, CBP has a maximum of 90 calendar days to determine whether there is a “**reasonable suspicion**” that the importer is evading an ADD/CVD order.²² Neither the EAPA nor its implementing regulations provide any guidance on what factors to consider in determining whether there is a “**reasonable suspicion.**” Instead, the criteria to use is left to CBP.

CBP bases its “**reasonable suspicion**” decision on information provided in the petition, as well as other information CBP obtained by CBP, such as through issuance of CBP Form 28s (known as a “Request for Information”) to the importer, CBP’s own research, reports from customs and other attaches in foreign embassies, etc.

A CBP Form 28 is pictured below:

¹⁸ 19 CFR § 165.11(b).

¹⁹ 19 CFR § 165.15(c).

²⁰ 19 U.S.C. § 1517(b)(4); 19 CFR § 165.16(a).

²¹ 19 U.S.C. § 1517(b)(4)(C).

²² 19 CFR § 165.24(a).



DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection
REQUEST FOR INFORMATION
19 CFR 151.11

OMB APPROVAL NO. 1651-0023
EXPIRATION DATE: 09-30-2019
ESTIMATED BURDEN:

1. Date of Request (<i>mm-dd-yyyy</i>)		2. Date of Entry and Importation (<i>mm-dd-yyyy</i>)			
3. Manufacturer/Seller/Shipper		4. Carrier		5. Entry No.	
5a. Invoice Description of Merchandise		5b. Invoice No.		6. HTSUS Item No.	
7. Country of Origin/Exportation		8. CBP Broker and Reference or File No.			
9. TO:		10. FROM:			
Production of Documents and/or Information Required by Law: If you have provided the information requested on this form to U.S. Customs and Border Protection at other ports, please indicate the port of entry to which it was supplied, and furnish a copy of your reply to this office, if possible.				11a. Port	11b. Date Information Furnished (<i>mm-dd-yyyy</i>)
General Information and Instructions					
12. Please Answer Indicated Question(s)			13. Please Furnish Indicated Item(s)		
<input type="checkbox"/> A. Are you related (see reverse) in any way to the seller of this merchandise? If you are related, please describe the relationship, and explain how this relationship affects the price paid or payable for the merchandise.		<input type="checkbox"/> A. Copy of contract (or purchase order and seller's confirmation thereof) covering this transaction, and any revisions thereto.			
<input type="checkbox"/> B. Identify and give details of any additional costs/expenses incurred in this transaction, such as: <input type="checkbox"/> (1) packing <input type="checkbox"/> (2) commissions <input type="checkbox"/> (3) proceeds that accrue to the seller <input type="checkbox"/> (4) assists <input type="checkbox"/> (5) royalties and/or license fees		<input type="checkbox"/> B. Descriptive or illustrative literature or information explaining what the merchandise is, where and how it is used, and exactly how it operates. <input type="checkbox"/> C. Breakdown of components, materials, or ingredients by weight and the actual cost of the components at the time of assembly into the finished article. <input type="checkbox"/> D. Submit samples: Article number: _____ Article description _____ Number from container: _____ Mark(s) and number: _____ Samples consumed in analysis, and other samples whose return is not specifically requested, will not normally be returned. <input type="checkbox"/> E. See item 14 below.			
14. CBP Officer Message					
15. Reply Message (Use additional sheets if more space is needed.)					
16. CERTIFICATION		It is required that an appropriate corporate/company official execute this certificate and/or endorse all correspondence in response to the information requested. (NOTE: NOT REQUIRED IF FOREIGN FIRM COMPLETES THIS FORM.)			
I hereby certify that the information furnished herewith or upon this form in response to this inquiry is true and correct, and that any samples provided were taken from the shipment covered by this entry.				16a. Name and Title/Position of Signer (Owner, Importer, or Corporate/Company Official)	16b. Signature
				16c. Telephone No.	16d. Date (<i>mm-dd-yyyy</i>)
17. CBP Official		18. Team Designation		19. Telephone No.	
20. Fax No.		21. Email			

CBP Form 28 (07/18)

In Box 14 of the CBP Form 28, CBP usually requests the importer to provide CBP with information about the origin of the goods on a particular shipment or shipments within 30 days of CBP's request. CBP may request any or all of the following information in the CBP Form 28 in order for CBP to make an assessment about the accuracy of the origin the importer declared:

1. All Bills of lading showing movement of the goods from outside the factory through to the place of delivery in the U.S.
2. Purchase order and any revisions from the manufacturer to the importer of record.
3. Manufacturer invoices and proof of payments from importer to manufacturer for the shipment.
4. Records from the factory demonstrating that raw materials were obtained by the factory and were available for production i.e., purchase order for raw materials, invoices for raw materials, shipping records for raw materials, proof of payment for raw materials, Customs clearance records for raw materials imported into the country of manufacture.
5. Importer of Record copy of commercial invoice, if purchased.
6. Production records for products produced.
7. Assembly or production records maintained on the factory floor by the production manager
8. Timecards to show that employees were working during the time the goods were manufactured.
9. Export documentation showing the goods purported to be produced by the factory were ones exported.
10. Complete description of all production processing steps and dates they were performed. Provide photos.
11. Pictures of the factory inside and out, factory inspection reports conducted by the importer or their agent.
12. A complete list and types of machinery available for the production process, including pictures.

13. Any other documents you can provide that may substantiate origin* e.g., bill of lading, truck waybill, etc. showing movement of this shipment.

Whether an importer can provide such information depends heavily upon the cooperation of the foreign manufacturer since the documentation requested in the typical CBP Form 28 is documentation that is mainly within the purview of the foreign manufacturer, not the importer. If the importer is fortunate enough to be related to the foreign manufacturer, the importer may find it easier to obtain such information. By contrast, if the importer is unrelated to the foreign manufacturer, the foreign manufacturer may be reluctant to share such information with the importer and, in the best case for the importer, might share such information directly with CBP. In the worst case scenario for the importer, the foreign manufacturer may not wish to share any of the information, may not understand the request (or not accurately understand it), or may not have the staff and resources to compile the information within the relatively short time frame.

The response to the CBP Form 28 is an important consideration in CBP's determination that there is a "**reasonable suspicion**" of evasion. After all, one would expect an allegation to be biased in favor of the party who is making the allegation and CBP, while it may do its own research, is, at least at this stage of the investigation, not in a position to necessarily have detailed knowledge about the production and origin of the goods at issue in the EAPA investigation. For these reasons, an accurate and thorough response to a CBP Form 28 asking about origin is of paramount importance. A good response allows CBP to have additional data from the importer or foreign manufacturer as to what is happening in the transactions, although it bears repeating that at this stage (the CBP Form 28 stage) the importer may still be completely unaware that an EAPA allegation has been filed against the importer.

If, at the end of the 90 day maximum time period, CBP concludes (based on the petition, the CBP Form 28 response, and any other information gathered by CBP during the 90 day time period) that there is a "**reasonable suspicion**" that an importer is evading an ADD/CVD order, CBP will implement "**interim measures.**"²³ "**Interim measures**" are highly significant in the EAPA proceedings. When CBP implements "**interim measures,**" it means the following:²⁴

1. For any/all unliquidated entries as of the date interim measures are implemented:
 - a. CBP will extend the liquidation of such entries
 - b. Suspend the liquidation of any entries filed on/after the date of initiation
 - c. Protect the revenue of the government by requiring the importer to use single transaction bonds or to make cash deposits of antidumping duties on all future imports made during the remainder of the case

²³ 19 CFR § 165.24.

²⁴ 19 CFR § 165.24(b).

2. For any liquidated entries, CBP takes other measures it believes are appropriate to protect the revenue of the government outside of the EAPA proceedings

The significance of CBP's "*interim measures*" decision may be illustrated by the following example. For purposes of the example, assume the antidumping duty rate that would apply in the event an importer is evading antidumping duties is 50% and that the product subject to ADD/CVD is widgets from China. Assume further that the importer (called "Acme Imports") imports \$2m of widgets from Thailand per month and has consistently done so over the past 5 years and that the importer would like to continue to import widgets into the future. Acme Imports has been paying 2% in "regular" customs duties on its imports. Also assume that the EAPA case initiated on widgets from Thailand imported by Acme Imports is initiated on July 1, 2022 and that "*interim measures*" are implemented on October 1, 2022. Lastly, assume that prior to the EAPA case, Acme Imports' entries were liquidating within the normal 314 liquidation cycle.

In the above example, Acme Imports would:

1. Face potential ADD/CVD liability on its entries from roughly November 2021 through September 30, 2022 of **\$11 million** (\$2m entered value per month X 11 months X 50% ADD/CVD duties)²⁵
2. Face ongoing liability of **\$1 million per month** (\$2m entered value per month X 50% ADD/CVD duties)
3. Face potential collection actions from CBP on shipments prior to November 2021 equal to **tens of millions of dollars**
4. Face demands from CBP to increase its import bond to at least **\$13.2 million** – which would also result in the surety asking the importer for collateral equal to at least that much and likely more in the **\$20 million plus range**²⁶

²⁵ Assuming a normal 314 liquidation cycle, one would expect entries from late November 2021 to remain unliquidated as of October 1, 2022. See, e.g., CBP ACE Message 48407264, dated June 4, 2021 (available at <https://content.govdelivery.com/accounts/USDHSCBP/bulletins/2e2a2e0>); see also "Announcement of a General Program Test Regarding Post-Entry Amendment Processing," 65 Fed. Reg. 70,872 (Nov. 28, 2000).

²⁶ In order to import, an importer must have a customs bond on file with CBP. 19 C.F.R. § 142.4. CBP generally requires bonds to be equal to 10% of the duties paid over the last 12 month period (Customs Directive 3510-004, dated July 23, 1991) (https://www.cbp.gov/sites/default/files/documents/3510-004_3.pdf), but for ADD/CVD situations, CBP generally requires the bond to be equal to the ADD/CVD owed on 12 months of imports. See "Monetary Guidelines for Setting Bond Amounts for Importations Subject to Enhanced Bonding Requirements," 71 Fed. Reg. 62,276 (Oct. 24, 2006). Sureties, in turn, particularly for commonly used "continuous" entry bonds (meaning bonds that cover multiple entries) typically request the importer to put up collateral for *more than* one year of imports – and can demand collateral equal to two or three years' worth of imports since surety liability under the bond is equal to the bond amount for every year the bond is in effect. See, e.g., <https://www.pcbusa.com/post/ignorance-is-not-bliss-the-potential-perils-of-antidumping-and-countervailing-duties-8077>

5. Should the ADD/CVD order at issue be one involving China, also face liability for Section 301 tariffs, currently at 25% for many products and 15% for others, although it is an open legal question as to whether the EAPA statute gives CBP sufficient legal authority to also render a decision that the goods are of Chinese origin for purposes of Section 301 tariffs. Using the 25% Section 301 rate, that means the importer would face additional liability of:
 - a. **\$5.5 million** in Section 301 tariffs for shipments from roughly November 2021 through September 2022 (\$2m entered value per month X 11 months X 25% Section 301 tariffs) – this means the importer’s exposure for shipments from November 2021 through September 2022 is **\$16.5 million** (\$11 million in ADD/CVD + \$5.5 million in Section 301 tariffs)
 - b. **\$500,000 per month** in Section 301 tariffs on shipments after October 1, 2022 (\$2m per month X 25%) – this means the importer’s ongoing, increased duty payments (i.e., beyond the regular 2% duties it has already been paying) during the investigation would be **\$1.5 million per month**
 - c. Face demands from CBP to increase its import bond to more like **\$20 million** and resulting collateral requests by the surety of closer to **\$40 million**

From the point of view of the domestic industry, which sought speed in the enforcement of U.S. ADD/CVD laws, the result is exactly what one would hope for: within 90 days of the case initiation, CBP is now assessing and collecting ADD/CVD. From the point of view of the importer, Acme Imports went from paying no ADD/CVD and only \$480,000 in “regular” duties per year (with a corresponding minimum import bond of \$50,000 that is not backed by any collateral) to needing to pay literally **tens of millions of dollars** – only for the ability try to continue to exist while the importer defends itself against the allegations that it evaded ADD/CVD based solely on a **“reasonable suspicion.”**

If, of course, Acme Imports is **actually** evading the ADD/CVD order, then this financial hurricane may²⁷ be warranted and the EAPA is having its intended effect. However, if the importer is **actually not evading** the ADD/CVD order, then the financial hurricane, at least to the owner of Acme Imports, will be viewed as unjust and unfair, particularly since, at least at the **“interim measures”** stage, **CBP will not have determined that Acme Imports is actually evading** any

²⁷ It is important to note that the party under review in an EAPA investigation, and about whom a determination is made to as evasion, is the importer – not the foreign manufacturer or foreign shipper. See 19 C.F.R. § 165.1 (defining “parties to the investigation”). As a result, in some instances, the importer may be unaware of any evasion done by the foreign shipper or foreign manufacturer and be more akin to an “innocent bystander.” In other instances, of course, the importer may know (or should know) about the evasion either explicitly or implicitly, such as through pricing terms that are unrealistic for goods unless those goods are being “dumped” or “subsidized” in contravention of the ADD/CVD laws.

ADD/CVD order, or even that there is substantial evidence of any evasion. CBP will only have determined that there is a “**reasonable suspicion**” of evasion – the legal standard for the imposition of interim measures under EAPA.

To date, no court has litigated what constitutes a “**reasonable suspicion**” in the context of EAPA²⁸ – or even whether an importer could bring a challenge to whether the “interim measures” pass the “**reasonable suspicion**” standard. Query whether such an action could be brought. On the one hand, a court may be reluctant to entertain a lawsuit at the “**interim measures**” stage since “**interim measures**” are not the final agency determination of evasion in an EAPA proceeding and the EAPA does not explicitly provide for judicial review of anything other than final agency determinations of evasion.²⁹ On the other hand, the EAPA specifically states that nothing in the EAPA “shall affect the availability of judicial review to an interested party under any other provision of law.”³⁰

Leaving the above judicial review question for another day, after “**interim measures**” are put in place, CBP continues to conduct an investigation about whether the importer is evading an ADD/CVD order. The EAPA ultimately requires CBP to determine whether there is “**substantial evidence**,” not just a “**reasonable suspicion**,” that an importer is evading an ADD/CVD order. It bears repeating that even with the higher evidentiary standard, CBP’s determination is not that the importer is *actually* evading. Rather, CBP need only determine that there is “**substantial evidence**” of evasion. As with the “**reasonable suspicion**” standard, the neither the EAPA nor its implementing regulations delineate what constitutes “**substantial evidence**”, leaving it to the parties to debate, and for CBP to decide.

CBP must conclude the EAPA investigation within 300 calendar days from the date CBP initiates the EAPA investigation, although CBP is authorized to extend the deadline by an additional 60 calendar days³¹ if additional time is needed to make a determination and 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.

During the investigation stage, CBP will gather information from various sources. One of the most important sources of information will again be information from the importer, the

²⁸ In the criminal law context, by contrast, the phrase “reasonable suspicion” has been litigated many times. It generally means more than an “inchoate and unparticularized suspicion or ‘hunch,’” Terry v. Ohio, 392 U.S. 1, 27 (1968), and must be based on “specific and articulable facts,” “taken together with rational inferences from those facts,” *id.* at 21, and the suspicion must be associated with the specific individual, Ybarra v. Illinois, 444 U.S. 85, 91 (1979).

²⁹ 19 U.S.C. § 1517(g).

³⁰ *Id.*

³¹ 19 USC § 1517(c)(1)(B).

manufacturer and the exporter/shipper (if not exporter/shipper is not the manufacturer). CBP gathers this information by issuing detailed questionnaires to the importer, foreign producer, and/or foreign exporter. An example of a questionnaire is attached as an Appendix to this article. While the CBP Form 28 referenced earlier may ask for the detailed information about one or a few shipments, a hallmark characteristics of the questionnaire is that it asks for such information for all shipments during the period of investigation (“POI”) – which is usually about one year prior to initiation of the EAPA investigation through the date the questionnaires are issued.

As can be seen, the questionnaires require the parties to provide volumes of information about all activity during the POI. All information not in English must be translated into the English language. The typical due date on these questionnaires is usually no more than 3 or 4 weeks, but CBP will consider short extensions (1 or 2 weeks) if requested to CBP at least 3 business days before any due date. The EAPA regulations allow for extensions to be made within the 3 business day time period, but only if there are “extraordinary circumstances” shown as to why the 3 business day rule could not be met.³² Given the various statutory and regulatory milestones in a case, CBP does not generally grant long extensions of time.

To incentivize compliance with CBP’s questionnaire requests, the EAPA regulations allow CBP to apply “adverse inferences” if the importer of foreign producer or exporter fail to answer CBP’s request in a timely manner.³³ The EAPA regulations do not state this explicitly, but, instead, allow CBP to apply “adverse inferences” if the importer or foreign producer/exporter do not cooperate and comply to the best of their ability with a request for information made by CBP. A similar inference may be used against the party that requested the EAPA proceeding, but since requests for information are usually not issued to that party (because the party making the allegation does not normally receive questionnaires from CBP regarding its own imports or allegations), the threat of adverse inferences seems more academic than real.

The EAPA regulations establishes procedures for the conduct of the EAPA investigation.³⁴ These procedures require the creation of an administrative record that must contain at least the following information:³⁵

1. Materials obtained and considered by CBP during the course of the investigation
2. Factual information submitted to CBP
3. Information obtained during and the results of any verification
4. Materials from other agencies provided to CBP pursuant to the investigation
5. Written arguments submitted to CBP

³² An “extraordinary circumstance” is, per the EAPA regulations, “an unexpected event that could not have been prevented even if reasonable measures had been taken.” 19 C.F.R. § 165.5(c). The EAPA regulations make clear that it is within CBP’s reasonable discretion to determine what constitutes extraordinary circumstances, what constitutes good cause, and to grant or deny a request for an extension.

³³ 19 C.F.R. § 165.6.

³⁴ 19 C.F.R. §§ 165.21-165.28

³⁵ 19 C.F.R. § 165.21.

6. Summaries of oral discussions with interested parties relevant to the investigation

The administrative record in EAPA cases, at least as of this writing, is contained in CBP's EAPA portal (shown below):

The screenshot shows the CBP EAPA Portal website. At the top, the URL is eapallegations.cbp.gov/s/. The header includes the U.S. Customs and Border Protection logo and a search bar. The navigation menu contains: Home, About CBP, Submit EAPA Allegation, View EAPA Status, and View EAPA Tasks. The main content area is titled "CBP EAPA Portal" and features three columns:

- Submit EAPA Allegation:** "If you are ready to submit an EAPA allegation, please click the button below to file your allegation. If you do not feel that the information you have meets EAPA requirements, you may want to consider filing an e-Allegation on the home page. Click start to begin." Includes a "Learn more Enforce and Protect Act (EAPA)" link and a "START" button.
- View EAPA Status:** "If you are involved in an EAPA investigation, click start to check the status or submit information." Includes a "START" button.
- View EAPA Tasks:** "If you are involved in an EAPA investigation with tasks, click start to check the task status." Includes a "START" button.

At the bottom, there is a footer with the text: "Need Assistance? Please contact ATAPCaseManagement@cbp.dhs.gov" and a long list of links including Accessibility, Accountability, DHS Components, FOIA, Forms, Inspector General, No Fear Act, Privacy Statement, Site Policies, The White House, USA.gov, Plug-ins, and DHS.gov.

U.S. Customs and Border Protection

Home About CBP Submit EAPA Allegation View EAPA Status View EAPA Tasks

Case: EAPA-

Case Status Documents Tasks

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TRLED	Public Document	Public Document	Sep 30, 2021	Sep 30, 2021	...

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All factual information and written arguments submitted to CBP, including questionnaire responses and any voluntarily produced factual information, must be served on other interested parties on the same day filed with CBP.³⁶

The EAPA and its regulations currently do not have any type of administrative protective order (“APO”) procedure, such as that used in ADD/CVD proceedings at the Department of Commerce,³⁷ whereby at least the attorneys for each interested party are able to view the confidential information (assuming they are on the administrative protective order). As a result, in an EAPA proceeding, only CBP sees all of the confidential information that is submitted.

In the case of confidential information submitted to CBP, the party filing the information must bracket the information it claims is confidential and explain why such information qualifies as confidential.³⁸ It also must create a public version of the information and serve the public, rather than the confidential, version on other interested parties. The public version, per the EAPA regulations:

³⁶ 19 C.F.R. § 165.23(c).

³⁷ See 19 C.F.R. §§ 351.305 and 351.306.

³⁸ 19 C.F.R. § 165.4.

must contain a summary of the bracketed [confidential] information in sufficient detail to permit a reasonable understanding of the substance of the information. If the submitting interested party claims that summarization is not possible, the claim must be accompanied by a full explanation of the reasons supporting that claim.

As a result of these filing requirements, each interested party (allegor (petitioner), alleged violator (respondent)) is dependent upon the adequacy of the public summary provided in terms of evaluating information filed by other interested parties.

While creating a public version of a confidential document sounds simple enough, there have been many disputes around public versions, such as disputes as to whether information qualifies as confidential, disputes as to the adequacy of public summary, and disputes regarding claims that summarization is not possible. During the course of the EAPA investigation, CBP resolves disputes between the parties as to what is confidential, whether public summaries are adequate, etc.

The voluntary submission of factual information by interested parties generally ends at the 200 calendar day mark of the EAPA investigation,³⁹ although CBP is allowed to place factual information on the administrative record after the 200 calendar day mark.⁴⁰ In that case, interested parties have 10 calendar days to provide any rebuttal information.⁴¹

CBP also may conduct a verification at the importer and/or the foreign producer or shipper.⁴² However, whether to conduct a verification is left up to the discretion of CBP.⁴³

After the factual investigation period ends, “parties to the investigation”⁴⁴ may submit written arguments to CBP explaining why there is, or there is not, “**substantial evidence**” of evasion. The deadline for submitting written arguments to CBP is 230 calendar days after initiation of the EAPA investigation.⁴⁵

As noted earlier, CBP must reach a decision as to whether there is “**substantial evidence**” of evasion no later than 300 calendar days after initiation of an EAPA case. CBP must notify all parties to the investigation of its determination within five business days of the determination.⁴⁶

³⁹ 19 C.F.R. § 165.23.

⁴⁰ Id.

⁴¹ Id.

⁴² 19 C.F.R. § 165.25.

⁴³ Id.

⁴⁴ Foreign producers and shippers are not “parties to the investigation” under the EAPA regulations. Rather, the EAPA regulations limit the “parties to the investigation” to the interested party who filed the allegation and the importer(s) who allegedly engaged in evasion. 19 C.F.R. § 165.1.

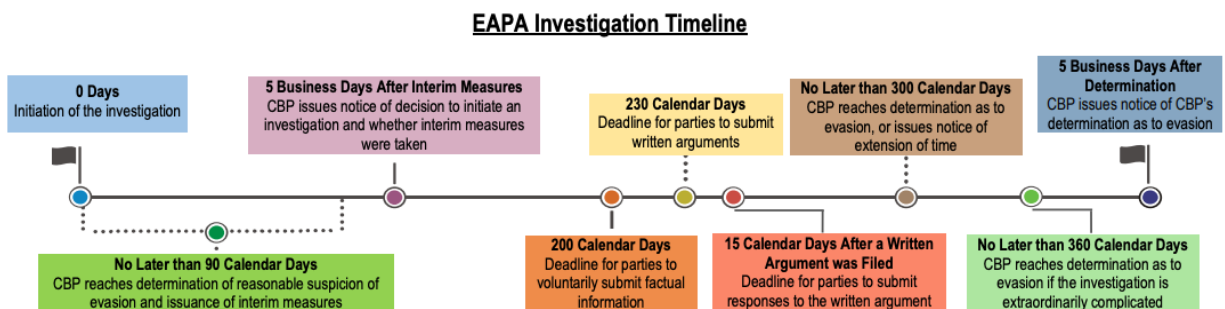
⁴⁵ 19 C.F.R. § 165.26.

⁴⁶ 19 CFR § 165.27(b).

Should CBP find that there is “*substantial evidence*” of evasion, CBP will:⁴⁷

1. With regard to entries that are unliquidated at the time of the determination:
 - a. Suspend the liquidation of unliquidated entries of covered merchandise that is the subject of the determination and that were entered on or after the date of initiation of the investigation or
 - b. Continue the suspension of liquidation (or extension of liquidation in the event CBP had extended the liquidation) of any such entries in the event CBP had already suspended (or extended) the liquidation of those entries
 - c. For entries where liquidation was not suspended, extend the period for liquidating the entries pursuant to CBP’s authority to do so under 19 USC 1504(b)
2. With regard to entries that are liquidated at the time of the determination:
 - a. Initiate or continue “appropriate actions” separate from the EAPA proceeding
3. Notify the Commerce Department of its determination and request Commerce to:
 - a. Identify the applicable ADD/CVD assessment rates and/or
 - b. Identify the applicable ADD/CVD cash deposit rate to be applied if there is no assessment rate and to ask Commerce to provide the applicable assessment rate as soon as that rate is available.
4. Collect cash deposits and assess ADD/CVD on entries subject to the determination.

In summary, the EAPA investigative timeline is as follows:⁴⁸



⁴⁷ 19 CFR § 165.28.

⁴⁸ https://www.cbp.gov/sites/default/files/assets/documents/2017-Apr/EAPA%20Investigation%20Process%20Overview_FINAL%20%28002%29.PDF

C. Appeals

Parties to the investigation (meaning the importer and/or the alleged, but not the foreign manufacturer or foreign shipper) may, but are not required to, ask CBP's Office of Regulations and Rulings ("ORR") to review the "**substantial evidence**" determination TRLED made.⁴⁹ These administrative appeals are conducted on a *de novo* basis, but are based solely on the contents of the administrative record and the written appeal and rebuttal arguments made by the parties to the investigation.⁵⁰ In other words, new facts cannot be introduced during the administrative review/appeal stage. The review must include consideration of the entire administrative record.⁵¹ The deadline for filing a request for an administrative review is 30 business days from issuance of the TRLED determination of which review is sought, and CBP's Office of Regulations and Rulings must complete the review within 60 business days of the commencement of the administrative review.⁵²

A party to the investigation who is not satisfied with the results of the administrative review at the Office of Regulations and Rulings, or, if not administrative review is sought, the original TRLED determination as to "substantial evidence" (or lack thereof) of evasion, may file suit in the CIT. Appeals to the U.S. Court of International Trade ("CIT") are not *de novo* review cases by the CIT. Rather, 19 U.S.C. § 1517(g)(2) provides:

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.

D. EAPA Statistics

As noted at the outset of this paper, Congress enacted the EAPA in 2015. Since the enactment of the EAPA in 2015, there have been approximately⁵³ 167 EAPA proceedings that TRLED has publicly discussed. Certain products are by and far the most prevalent under review. Of the 167 proceedings, the products involved are as follows:

⁴⁹ 19 C.F.R. § 165.41.

⁵⁰ 19 C.F.R. § 165.45.

⁵¹ Id. In several CIT cases, the court has granted a request for voluntary remand based on ORR's failure to receive or review the entire record reviewed by TRLED.

⁵² Id.

⁵³ The statistic in this section represent an unofficial compilation of cases and case outcomes.

Product	# of Cases
Quartz Surface Products	28
Steel Wire Garment Hangers	25
Wooden Cabinets & Vanities and Component Parts Thereof	21
Aluminum Extrusions	15
Xanthan Gum	12
Glycine	10
Hardwood plywood	9
Carbon Steel Butt-Weld Pipe Fittings	8
Cast Iron Soil Pipe	5
Diamond Sawblades	5
Steel Trailer Wheels 12 to 16.5 Inches in Diameter	3
Amorphous Silica Fabric	2
Cast Iron Soil Pipe Fittings	2
Common Alloy Aluminum Sheet	2
Stainless Steel Flanges	2
Steel Grating	2
Activated Carbon	1
Cased Pencils	1
Certain Steel Wheels 22.5 and 24.5 Inches in Diameter	1
Circular Welded Carbons Steel Pipes and Tubes	1
Circular Welded Pipe	1
Forged Steel Fittings	1
Fresh Garlic	1
Frozen Warmwater Shrimp	1
Hydrofluorocarbon Blends	1
Lightweight Thermal Paper	1
Magnesia Carbon Brick	1
Malleable Cast Iron Pipe Fittings	1
Oil Country Tubular Goods	1
Polyethylene Retail Carrier Bags	1
Uncovered Inner Springs Units	1
Wooden Bedroom Furniture	1
Total	167

As shown in the following chart, nearly 80% of CBP's investigations have resulted in affirmative final determinations by TRLED. And, interestingly, although several CIT cases have already addressed issues regarding CBP's scope referrals to Commerce, only five cases in total have included such referrals.

Outcome	# of Cases
Affirmative Final Determination	132
Interim Measures	19
Negative Final Determination	8
Scope Referral	5
Initiation	2
Non-Initiation	1
Total	167

As discussed earlier in this paper, parties to the investigation may request ORR to review, de novo, TRLED’s evasion determination. Of the 167 EAPA proceedings, that relief has been pursued in roughly one third of the proceedings, for a total of 52 ORR reviews. Overwhelmingly, ORR affirms TRLED’s affirmative evasion determination.

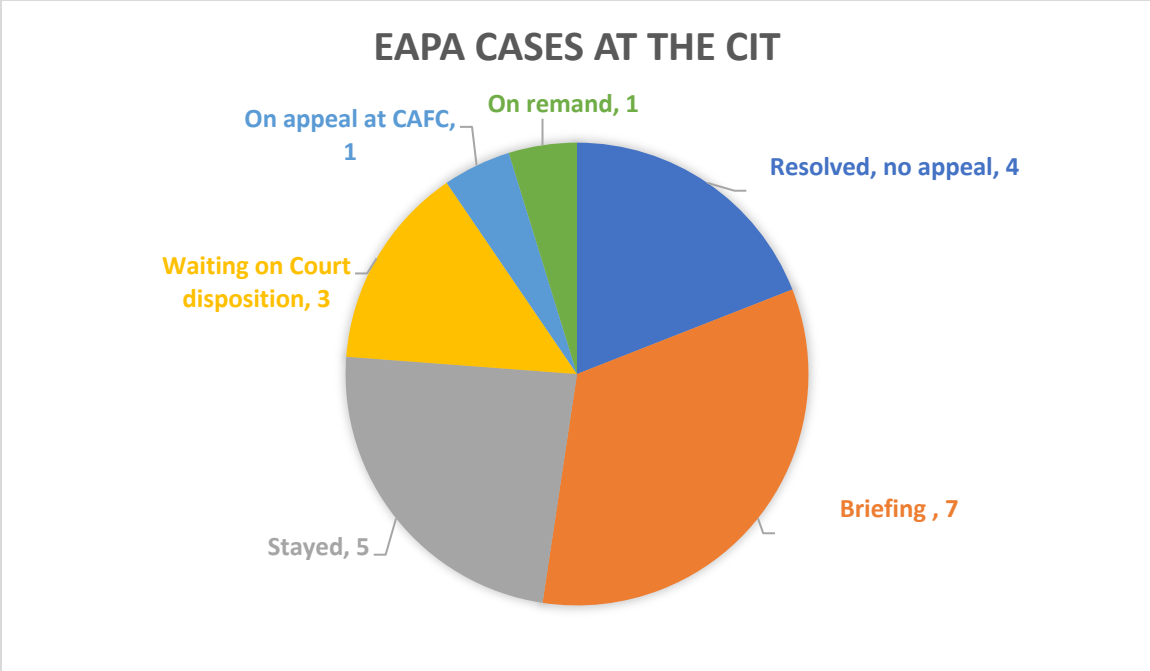
Administrative Reviews	# of Cases
Affirmed	42
Reversed	5
Affirmed (Reversed on Remand)	3
Affirmed (Affirmed on Remand)	1
Mixed (Affirmed in Part; Reversed in Part)	1
Total	52

In recent years, the CIT has had occasion to adjudicate a number of EAPA related disputes. A summary of several recent cases is set forth below.

III. CIT DECISIONS REGARDING EAPA

As of this writing, there have been a total of 34 appeals of CBP’s EAPA determinations docketed at the CIT, and, taking into account consolidations, there have been 21 cases presented to CIT judges.

Four cases have been finally resolved, five are currently stayed pending other actions, and one case is before the Federal Circuit where briefing has been completed and the parties await the scheduling of oral argument, as soon as December 2022.



A total of seven EAPA-related slip opinions have been issued by the CIT: [20-106](#); [21-152](#); [22-19](#); [22-53](#); [22-75](#); [22-90](#); and [22-96](#).

Despite the relatively small case load that has made it through briefing at the CIT, common themes have quickly emerged. First, importers have complained about (lack of) access to business proprietary information during the administrative proceeding. These complaints are typically framed as due process arguments, and generally challenge the procedure—or lack thereof—for providing access to other companies’ business proprietary information during the investigation or the inability of the importer to defend itself adequately based on the public summaries provided. The CIT has addressed such due process arguments in at least five cases thus far, with several others pending resolution on the issue, and a due process argument has been briefed at the Federal Circuit.

A second topic that has arisen concerns the interaction between CBP’s EAPA statutory scheme and Commerce’s statutory scheme, upon which much of the EAPA was modelled. Questions have arisen as to the appropriate reliance, if any, on case law involving Commerce’s statutory scheme but in the EAPA context. The CIT has also addressed the interaction between CBP’s EAPA investigations and Commerce’s scope inquiries, and the timelines associated with those.

Below is a brief summary of cases pending or resolved at the CIT and some, but certainly not all, of the issues presented in those cases.

1. *Lyke Industrial Tool, LLC v. United States*, Court No. 19-cv-00028, Judge Restani

Lyke is notable because it was the first EAPA case filed at the CIT. The case was dismissed at the request of the parties about three months later.

2. *Royal Brush Manufacturing Inc. v. United States*, Court No. 19-cv-00198, Judge Barnett

In the first EAPA case heard on the merits, Judge Barnett faced the gamut of EAPA issues, including (1) CBP's interpretation of "new factual information" in the context of a verification report, and (2) the public summary requirement when business proprietary information is placed on the record during the investigation.

First, Judge Barnett considered whether CBP properly declined to accept the importer's rebuttal submission during the administrative proceeding, which turned on the question of whether CBP's verification report constituted "new factual information."

After the deadline had passed for parties to submit factual information, CBP conducted an on-site verification of the foreign manufacturer's facility to interview company officials, tour the facilities, and review original records to verify the on-the-record responses. Afterwards, CBP placed on the record a "verification report" that, according to CBP, summarized the relevant facts and observations from the on-site verification. The report included, for example, available payroll records to assess whether sufficient personnel worked the number of shifts required to meet the purported production capacity. CBP explained in the report that it found "discrepancies" in the record based on information collected during the on-site verification, and it documented those discrepancies in the report.

After CBP placed the verification report on the record, Royal Brush submitted "rebuttal information" to the verification report. CBP rejected the submission, concluding that the verification report did not contain "new factual information" and thus Royal Brush was not permitted to submit "rebuttal information."⁵⁴ CBP, however, failed to identify the standard that it used to define "factual information." Royal Brush disagreed and, borrowing from Commerce's ADD/CVD proceedings the definition of "factual information," argued that the verification report contained "new factual information" in the form of expert analysis, and thus argued that CBP's rejection of its rebuttal submission was unlawful.

The question presented at CIT was whether CBP properly concluded that the verification report did not contain new factual information. Judge Barnett held that it was not appropriate to adopt a definition from Commerce unless expressly adopted by CBP, and remanded the case.

⁵⁴ Section 165.23(c)(1) provides that

[i]f CBP places new factual information on the administrative record on or after the 200th calendar day after the initiation of the investigation (or if such information is placed on the record at CBP's request), the parties to the investigation will have ten calendar days to provide rebuttal information to the new factual information.

On remand, CBP provided its analysis and explanation, and CBP's explanation satisfied the court. CBP described the scope and purpose of the verification report as a tool that "documents the verification process," and determined that, as a matter of practice, a verification report is not itself "new factual information." CBP explained that, if new information were discovered during verification, CBP would place such information on the record and permit rebuttal information. CBP re-examined the verification report at issue and demonstrated that the findings in the report identified discrepancies in the record, which were simply the results of the verification, and not new factual information.

This case thus provides context regarding CBP's verification procedure and the purpose underlying verification, and gives color to CBP's analysis regarding what constitutes "new factual information." *Royal Brush* also highlights an issue that's become familiar in EAPA cases—that is, the parties' tendency to borrow from Commerce's statutory and regulatory scheme and deep library of case law interpreting such. When addressing the verification issue, Judge Barnett noted that the government's reliance on various cases describing the purpose of verification reports in Commerce cases "indicate Commerce's views on verification, not Customs' views."

Royal Brush also raised for the first time various due process arguments regarding the administrative proceeding, which have continued to be litigated in nearly every EAPA case. *Royal Brush* argued that it was denied due process during the administrative process for a variety of reasons, including that CBP maintained a "secret" administrative record. As explained above, the EAPA statute or regulations do not include an APO procedure.⁵⁵ Thus, when companies submit business proprietary information on the record, CBP is legally forbidden from disclosing that information. *Royal Brush* contended that it was constitutionally entitled to the information.

Judge Barnett's discussion of the due process issues raised in *Royal Brush* has since been instructive in several cases involving public summaries of business confidential information, and thus warrants mention. Judge Barnett recognized that an importer participating in an administrative proceeding has a procedural due process right to "notice and a meaningful opportunity to be heard," but acknowledged that EAPA does not require or establish a procedure for the issuance of an administrative protective order. Judge Barnett recognized, however, that CBP's regulations do establish a procedure regulating the release of information

⁵⁵ CBP's regulation permits interested parties to request confidential treatment for information that "consists of trade secrets and commercial or financial information obtained from any person, which is privileged or confidential in accordance with 5 U.S.C. [§] 552(b)(4)." 19 C.F.R. § 165.4(a). A party seeking confidential treatment "must also file a public version of the submission" that "contain[s] a summary of the bracketed information in sufficient detail to permit a reasonable understanding of the substance of the information." *Id.* § 165.4(a)(2); see also *id.* § 165.4(e) (extending the public summary requirement to confidential information placed on the record by CBP).

provided by interested parties, and, although Royal Brush never cited this regulation in its briefing, the court held that CBP's compliance with the regulation was relevant to assessing Royal Brush's due process claims. Because CBP did not provide the requisite public summaries, the court remanded to CBP with instruction to ensure that the requisite public summaries accompanied the confidential filings.

After remand, Royal Brush argued that the public summaries, which contained descriptors (*e.g.*, "number") rather than substantive information (*e.g.*, 42%), failed to meaningfully convey the information, in violation of Royal Brush's due process. The court rejected Royal Brush's argument. Reiterating the absence of a PO process, Judge Barnett analyzed the due process arguments under the *Mathews* balancing test, and held that Royal Brush failed to demonstrate that due process required CBP to disclose the substance of business confidential information during the course of the administrative proceeding. The court explained that due process requires notice and an opportunity to be heard, and held that both were provided in the form of public summaries and comment procedures. The court further acknowledged that CBP is precluded from disclosing business proprietary information by statute and regulation, 19 C.F.R. § 165.4(a); 18 U.S.C. § 1905, and held that Royal Brush failed to identify how CBP could convey the substance, but not the specifics, of the information in a different manner. At bottom, the court held that Royal Brush spoke only in "generalities" about its desire to access certain information but failed to demonstrate that due process requires access to such information.

On appeal, Royal Brush continues to argue that its due process rights were violated, that CBP erred by rejecting its rebuttal filing, and that the finding of evasion is arbitrary and capricious.

Royal Brush was an important case because it was the first case to address many EAPA disputes and because it provides a framework for the due process arguments that may arise in future cases. After Judge Barnett remanded for CBP to place public summaries on the record, several other cases have been remanded at the request of the parties for the same reason. The Federal Circuit must now balance CBP's legal obligations to protect business proprietary information and the competing due process concerns of parties in EAPA proceedings.

3. *Vietnam Finewood Company Limited et al. v. United States*, Court No. 19-cv-00218, Judge Barnett

Vietnam Finewood is an early case that's instructive on EAPA jurisdiction.

In this case, CBP initiated an investigation and imposed interim measures against the subject importer after finding reasonable suspicion of evasion. CBP then made a scope referral to Commerce. Before Commerce responded to the scope referral, plaintiffs filed suit in the CIT under the court's residual jurisdiction clause, 28 U.S.C. § 1581(i).

The government moved to dismiss, arguing that plaintiffs had a remedy under 28 U.S.C. § 1581(c), and that remedy was not manifestly inadequate. The government further argued

that the absence of a final agency action foreclosed judicial review at the time. Plaintiffs contended, amongst other arguments, that CBP's failure to timely complete the investigation meant that CBP's stay of the proceedings and scope referral were untimely and void *ab initio*, thereby establishing (i) jurisdiction. Plaintiffs further contended that they lacked recourse under (c) jurisdiction because CBP had not yet completed its investigation and lacked any time to do so.

To assess jurisdiction, the court characterized the nature of plaintiffs' challenge as contesting CBP's alleged failure to complete the EAPA investigation within the statutory period and CBP's allegedly deficient and dilatory referral of the matter to Commerce for a scope determination. On those issues, the court held that plaintiffs had adequate remedies to challenge an adverse final determination and administrative review pursuant to 19 U.S.C. § 1517(g) and 28 U.S.C. § 1581(c).

As will be instructive in future cases, Judge Barnett held that CBP's scope referral to Commerce—which can happen at any time during the proceeding when CBP “cannot determine whether the merchandise described in an allegation is properly within the scope” of an AD/CVD order—effectively stays the administrative proceeding and the statutory deadlines to make an evasion determination. The court further held that the statute contains no explicit deadline by when CBP must refer a matter to Commerce for a scope determination.

4. *Diamond Tools Technology LLC v. United States*, Court No. 20-cv-00060, Judge Reif

In a lengthy 64 page opinion in *Diamond Tools*, Judge Reif discussed a multitude of EAPA issues. Ultimately, Judge Reif remanded the case to CBP in November 2021, and the case is now fully briefed and argued on remand, awaiting a second decision.

During the initial review of the appeal of CBP's evasion determination, Judge Reif considered the impact of CBP's missing a statutory deadline, several due process challenges, the interaction between CBP's EAPA regulations and Commerce's scope inquiries, and the merits of the evasion determination. The highlights are as follows:

Judge Reif first considered whether CBP's failure to meet the statutory deadline to impose interim measures nullifies any interim measures imposed. As a reminder, section 1517(e) provides that, no later than 90 calendar days after initiating an investigation CBP “shall decide” if there is a reasonable suspicion of evasion and, if so, impose interim measures. In *Diamond Tools*, CBP did not meet the 90-day deadline to impose interim measures because of discrepancies in the record. Plaintiff argued that the imposition of untimely interim measures was unlawful.

The court held that the statutory deadline was precatory, not mandatory, and thus sustained CBP's implementation of interim measures. Relying on a collection of Supreme Court and Federal Circuit precedent, the court held that the statute's use of “shall” does not alone limit the agency's power. The court further held that, in the absence of a consequence for

noncompliance with a statutory deadline, timing provisions are at best precatory, not mandatory.

The court next considered due process. Plaintiff argued that CBP's imposition of interim measures without first providing notice and an opportunity to comment deprived it of due process. The court rejected this argument, acknowledging the possibility that a protected interest could exist, but holding that plaintiff failed to state with particularity that a legitimate property interest exists in the specific context of interim measures. Judge Reif noted that interim measures are temporary and, under the EAPA statute, can extend only upon a final determination of evasion.

Plaintiff also raised the due process argument that CBP's failure to provide access to other companies' business proprietary information during the administrative proceeding violated their due process rights. Judge Reif rejected this argument, holding that plaintiff failed to demonstrate that due process requires that plaintiff receive access to other companies' business proprietary information.

Finally, the court addressed the interaction between CBP's EAPA investigations and Commerce's scope inquiries. During the administrative proceeding, at the request of the company that made the EAPA allegation, Commerce initiated a circumvention inquiry on December 1, 2017. Thereafter, but still during the EAPA investigation, CBP found it was unable to determine whether diamond sawblades were covered merchandise, and thus made a scope referral to Commerce. After receiving that referral, Commerce "aligned [the] covered merchandise referral segment with the concurrent anti-circumvention inquiry." Commerce ultimately determined that, based on the results of its circumvention inquiry, the particular diamond sawblades at issue were subject to the AD order.

Plaintiff argued that Commerce's circumvention determination "expanded" the order covering the diamond sawblades. They argued that CBP could not lawfully include in the final determination entries made before December 1, 2017, because doing so would improperly retroactively apply Commerce's circumvention determination.

In response, the government argued that when CBP makes a scope referral to Commerce, Commerce is limited to a binary "covered" or "not covered" response, and Commerce does not supply the separate determination as to the date that the merchandise became "covered." The government further argued that plaintiff's argument is based on Commerce's circumvention regulation, which cannot be read to supersede CBP's independent authority to suspend liquidation under EAPA.

Judge Reif held that the statute is not clear as to whether CBP, having referred a "covered merchandise" matter to Commerce, is consequently bound by the timeline created by Commerce's initiation of a circumvention inquiry in a separate proceeding. Having acknowledged that there exists no language in the statutory scheme nor guidance in the case law, the court examined whether CBP's interpretation of the referral provision is entitled to

deference and, ultimately, determined that it was. This holding is significant, as several parties have raised similar arguments regarding the effect of Commerce's scope determination during an EAPA investigation.

Finally, although the court held that entries made before December 1, 2017, are "covered merchandise," it ultimately concluded that CBP failed to demonstrate how, if at all, plaintiff entered the covered merchandise by means of material and false statement or material omission. The court remanded the issue to CBP. Post remand briefing and argument is complete.

5. *All One God Faith, Inc. v. United States*, Consol. Court No. 20-cv-00164 (*Ascension Chemicals LLC v. United States*, Court No. 20-cv-00160; *GLOB Energy Corporation v. United States*, 20-cv-00161; *UMD Solutions LLC v. United States*, Court No. 20-cv-00162; *Crude Chem Technology LLC v. United States*, Court No. 20-cv-00163), Judge Katzmann

In this consolidated case, Chief Judge Stanceu dismissed the complaint for lack of subject matter jurisdiction and denied the plaintiffs' remaining motions for judgment on the agency record.

The case involved xanthan gum from China that was being transshipped through India in an effort to evade ADD/CVD. The court first addressed jurisdiction. Of the seventeen entries at issue, five had been finally liquidated. After the five entries had been liquidated, plaintiffs protested the liquidation. CBP denied the protest and plaintiffs did not appeal. Instead, plaintiffs initiated an action to challenge CBP's evasion determination.

The court held that it lacked subject matter jurisdiction over any claims regarding the liquidated entries, because liquidation was final and conclusive. The court reiterated the well-established principle that, although the court may review a claim of erroneous liquidation where that liquidation has been timely protested and the denial of such protest appealed, there was no appeal in this case and thus no jurisdiction over those final liquidated entries.

As it relates to the unliquidated entries, plaintiffs raised two challenges. First, they argued that CBP was legally required to refer the matter to Commerce for a changed circumstances review, because record evidence showed that the domestic manufacturer that filed the EAPA allegation was no longer producing oilfield xanthan gum in the United States and thus was not at risk of injury from low-cost imports from China. The court rejected this argument finding it unsupported by the record and holding that plaintiff failed to plausibly allege that CBP was obligated to refer the matter to Commerce. The EAPA statute only provides a mechanism for referral to Commerce when CBP is "unable to determine whether merchandise at issue is covered merchandise." Nothing further is required.

Second, plaintiffs argued that CBP should not have applied adverse inferences to the alleged manufacturers of the subject entries, because *plaintiffs* cooperated with CBP to the best of their ability. The court rejected this argument. It was undisputed that the foreign

manufacturers did not cooperate, and thus CBP's application of adverse inferences to the *foreign manufacturers* – not the plaintiffs – was appropriate.

6. *Aspects Furniture International, Inc. v. United States*, Court No. 20-cv-03824, Judge Choe-Groves

Aspects Furniture is fully briefed but not yet decided. In this case involving certain wooden bedroom furniture from China, plaintiffs challenge various aspects of CBP's affirmative evasion determination.

At verification during the investigation, CBP's employees reportedly witnessed Aspects Furniture employees deleting and destroying documents and correspondence. Plaintiffs challenged CBP's alleged reliance on these statements—calling them “hearsay”—in rendering the evasion determination. In response, the government argues that the Administrative Procedure Act, and not the Federal Rules of Evidence (“FRE”), governs the admissibility of evidence in administrative proceedings.

Aspects Furniture also argued that CBP abused its discretion in failing to consider affidavits that were submitted as part of a voluntary submission, despite being submitted more than 18 months after the deadline.

We expect the court to issue the first ruling as to whether the FRE play any role in CBP's investigation, and to also address CBP's discretion to reject untimely filings.

Aspects Furniture also raised several constitutional arguments. Aspects Furniture argues that CBP's failure to provide a mechanism to access other companies' business proprietary information during the investigation deprived it due process. Although the CIT has addressed and rejected similar arguments, the difference here is that Aspects Furniture defines its due process interests as “goodwill, reputation, and freedom to take advantage of business opportunities.”

An opinion is forthcoming.

7. *American Pacific Plywood Inc. v. United States*, Consol. Court No. 20-cv-03914 (*U.S. Global Forest v. United States*, Court No. 20-cv-03915; *InterGlobal Forest LLC v. United States*, Court No. 20-cv-03916) Judge Miller Baker

In the first EAPA case to request a three-judge panel, plaintiffs argued that reassignment to a panel was appropriate to render a “decision on the constitutionality of the EAPA law and regulations.” Plaintiffs generally argued that the case “concerns questions of the constitutionality of the EAPA statute and regulations.” In support, plaintiffs supplied a bulleted list of alleged constitutional violations during the EAPA proceeding, including CBP's alleged failure to provide notice of visit to the manufacturing facilities before initiation of the investigation, failure to provide notice and an opportunity to defend before interim measures

were applied, failure to provide unfettered access to other parties' business confidential information, failure to provide CBP's analysis of certain confidential information, and failure to inform parties of deficiencies or gaps in the submitted data. Plaintiffs also complained that EAPA's statute and regulations, which only allow "parties to an EAPA investigation" to request an administrative review, violate the law.

The court denied the motion for reassignment. It held that plaintiffs' broad references to the "EAPA statute" were too vague to support reassignment on the ground of a constitutional due process challenge to the entire EAPA statute.

The parties briefed the merits, oral argument was held in August, and a decision is forthcoming. In addition to the merits of the evasion determination, we can expect the court to address the due process arguments regarding the lack of an administrative protective order, which have generally been unsuccessful to date, as well as the common challenge to the imposition of interim measures. We can also expect the court to address whether allegations of financial loss could suffice as a protected interest that's subject to due process in this context.

Finally, plaintiff-intervenor, a supplier, filed a brief raising several issues on their own behalf. The government argued that the EAPA statute limits administrative and judicial appeal only to the allegor and the party found to have entered the covered merchandise through evasion. We can expect the court to address this issue for the first time.

8. *Ad Hoc Shrimp Trade Enforcement Committee v. United States*, Court No. 21-cv-00129, Judge Kelly

In this first of its kind CIT case, the Office of Regulations and Rulings (ORR) reversed the Remedy & Law Enforcement Directorate's (TRLED) evasion determination and concluded that there was not sufficient record evidence of evasion. The case involves Indian frozen warm water shrimp allegedly transshipped through Vietnam. In rendering its affirmative evasion determination, TRLED applied adverse inferences after concluding that an affiliated importer failed to provide requested information and cooperate to the best of its ability. ORR reversed, determining that the company had adequately complied with TRLED's requests for information, even though it could not provide the information in the exact manner requested by TRLED.

At the CIT, plaintiff challenged ORR's substantive determination of non-evasion, ORR's purported failure to review the entire administrative record in support of its decision, and TRLED's alleged failure to follow CBP's regulations requiring public summary of confidential documents or explanations of why such summary is impossible.

At oral argument, government counsel conceded that TRLED failed to transmit the entire record to ORR. As a reminder, CBP's regulations requires that ORR conduct a de novo review of the "entire administrative record." Because it admittedly did not, the court remanded the case to CBP. In addition to reviewing the entire record, the court instructed CBP to explain why it accepted assertions regarding confidential information or how CBP evaluated the sufficiency of

public summarization or explanation of the inability to publicly summarize purportedly confidential documents.

Interestingly, since the parties gained unfettered access to the confidential record at the CIT, the court ordered that the joint protective order extend to the remand proceedings, thereby permitting parties to make arguments based on the entire record.⁵⁶

Briefing on the remand is scheduled to be complete in December 2022.

9. *Leco Supply Inc. v. United States*, Court No. 21-cv-00136, Judge Barnett

In this case involving wire hangers from Vietnam, after an early voluntary remand, the parties briefed the merits of the case, and oral argument is set for early November 2023. Plaintiffs challenge the merits of the evasion determination, raise due process arguments, and contest CBP's consolidation of multiple investigations.

We can expect that the court will address due process arguments regarding access to business proprietary information in light of the lack of an administrative protective order, and CBP's application of adverse inferences to the foreign manufacturer.

Other EAPA Cases at the CIT

1. *Columbia Aluminum Products, LLC v. United States*, Consol. Court No. 19-cv-00185, Chief Judge Stanceu (*Endura Products Inc. v. United States*, Court No. 19-cv-00190)

This case is pending a motion to remand. It was the first case where the impact of a scope ruling was identified. ORR initially determined that the door thresholds at issue could not become "covered merchandise" until the date when Commerce decided a scope ruling for Columbia's merchandise. After the administrative record was filed in court, the parties requested voluntary remand in January 2020 for two reasons. First, CBP sought to reconsider its administrative review analysis in light of the Federal Circuit's *en banc* decision in *Sunpreme Inc. v. United States*, 946 F. 3d 1300 (Fed. Cir. 2020) (*en banc*) where the *en banc* court held that "Customs is both empowered and obligated to determine in the first instance whether goods are subject to existing antidumping or countervailing duty orders." Second, after the appeal was docketed, ORR learned that certain documents were inadvertently not transmitted to it when conducting its review of TRLED's evasion determination.

2. *Norca Industrial Company LLC v. United States*, Consol. Court No. 21-cv-00192 (*International Piping & Procurement Group, LP v. United States*, Court No. 21-cv-00193), Judge Choe-Groves

⁵⁶ In *Fedmet*, the government expressed its opposition to an order of this kind, arguing that "the JPO cannot govern the agency's administrative proceedings conducted on remand."

This case is on remand to allow ORR to review the entire administrative record and to allow CBP to allow for bracketing of confidential information and public summaries, where applicable.

3. *Worldwide Door Components, Inc. v. United States*, Court No. 20-cv-00062, Chief Judge Stanceu

This case has been stayed since June 29, 2020 pending final resolution of *Worldwide Door Components, Inc. v. United States*, Court No. 19-cv-00012, where remand proceedings are ongoing.

4. *Global Aluminum Distributor LLC v. United States*, Consol. Court No. 21-cv-00198 (*Hialeah Aluminum Supply Inc. v. United States*, Court No. 21-cv-00207), Judge Eaton

Global Aluminum was initially remanded at the request of the government to reconsider the evasion determination in light of arguments raised in plaintiffs' motions for judgment on the agency record. On remand, ORR concluded that the record lacked substantial evidence of evasion. Thereafter, a coalition of U.S. producers of aluminum extrusions moved to intervene, and the court denied the motion as untimely.

5. *Fedmet Resources Corporation v. United States*, Court No. 21-cv-00248, Judge Miller Baker

In *Fedmet*, the government moved for voluntary remand after plaintiffs' opening motions were filed. The government requested remand to allow CBP to consider issues raised in the opening motion, in particular, arguments related to the scope of the AD/CVD Orders, and due process arguments. The court granted the motion. On remand, CBP was unable to determine whether the subject merchandise fell within the relevant ADD/CVD orders and thus referred the matter to Commerce. On the request of the government, the court stayed the case until after Commerce issues its final determination on the referral.

6. *H&E Home Inc. v. United States*, Consol. Court No. 21-cv-00337 (*Global Aluminum Distributor LLC v. United States*, Court No. 21-cv-00312; *Industrias Feliciano Aluminum Inc. v. United States*, Court No. 21-cv-00317), Judge Eaton

After twice moving to supplement the administrative record, CBP sought a voluntary remand to provide parties with public summaries of confidential information, to review and consider documents mistakenly omitted from the administrative record sent to R&R, and to revisit and review evidence in light of CBP's remand determination. Remand is pending.

7. *Ikadan System USA, Inc. v. United States*, Court No. 21-cv-00592, Judge Gordon (on voluntary remand)

This case involves tribar flooring from China. During the administrative procedure, CBP determined that the subject merchandise was covered by the ADD/CVD orders and thus did not

request a scope determination from Commerce. Plaintiffs nevertheless requested a scope ruling from Commerce (this did not stay the administrative proceedings because it was plaintiffs, not CBP, that requested the ruling). After CBP closed the EAPA record, Commerce subsequently determined – in agreement with CBP – that the plaintiff’s products are subject merchandise. CBP then moved to remand the case to place on the record and consider Commerce’s scope determination. The court granted the motion.

The remand results were filed on October 3, 2022. CBP determined that Commerce’s scope ruling reinforced the evasion determination. Merits briefing is forthcoming.

Last, but not least, the following cases have been filed at the CIT but initial briefing is not yet complete:

Blue Pipe Steel Center Co., Ltd. v. United States, Court No. 21-cv-00081, Judge Vaden

Skyview Cabinet USA, Inc. v. United States, Court No. 22-cv-00080, Judge Vaden

CEK Group LLC v. United States, Court No. 22-cv-00082, Judge Restani

Far Eastern American Inc. v. United States, Consol. Court No. 22-cv-00213 (*American Pacific Plywood, Inc. v. United States*, Court No. 22-cv-00214; *InterGlobal Forest LLC v. United States*, Court No. 22-cv-00240), Judge Barnett

Aluminum Extrusions Fair Trade Committee v. United States, Court No. 22-cv-00236 (Judge Eaton)

IV. CONCLUSION

The EAPA appears to have met its objective in terms of speedy enforcement of the ADD/CVD laws. Plus, the legal bar for launching a case is quite low, with only a “reasonable suspicion” needed before CBP imposes “interim measures” on an importer, which have devastating consequences for the importer – even before any “substantial evidence” finding by CBP. With only 8 negative findings of evasion (out of 167 cases), 42 of 52 affirmances by ORR of TRLED decisions, CBP’s “batting average” is quite high.

Respondent importers must be prepared to act quickly and to be highly organized and thorough in their responses to CBP once an EAPA case begins. The problem for importers, however, is that they remain dependent upon the efforts, information, and documentation of parties over whom the importer has no control – namely, the foreign manufacturers and shippers. Furthermore, importers, as the regulations and court cases discussed above, do not have access to much of the actual data in the case, leaving their fate entirely in CBP’s hands.

APPENDIX – EXAMPLE OF CBP QUESTIONNAIRE IN EPA PROCEEDING

A. General Information

1. If the company has a website, identify the URL address and provide a copy of the site index. Do the same for any affiliated parties.
2. Provide a detailed explanation of the company's processes for the production, sale, and exportation of the merchandise. Support this detailed explanation with documentation, photographic evidence of the production space, and all correspondence records to illustrate the process from receiving an order through the payment and finalization of a transaction.
3. Identify the roles of all parties involved in sourcing, manufacturing, selling, transporting, and completing purchasing transactions and explain each party's role, including selling/buying agents.
4. Provide location(s) and address where the company's records are maintained; if multiple locations specify what is maintained at each location.
5. Are there any other payments, in addition to the invoice values, made/received to obtain the merchandise (e.g., commissions, royalties, license fees, currency fluctuations/conversions, interest payments, inspection fees, management fees, advertising or marketing costs, warranty, etc.)? If yes, identify the nature of the payment(s), the party providing the payment and the general ledger accounts/recording mechanism used to record such payments. If general ledger accounts are not used, explain how associated transactions are tracked/maintained.
6. What bank accounts are used to receive funds from sales and make payments? Provide the bank name, account holder(s) name, and account number(s).
7. Provide a catalog of products manufactured and/or sold for the years of 20__ and 2019. Identify which products are manufactured by the company.
8. Identify procedures and the information/documents used in determining the proper classification of merchandise.

B. Corporate Structure and Affiliations

1. Provide an organizational chart and description of the company's operating structure. Include any parent companies, subsidiaries and all affiliated persons¹ with the company along with a description explaining his or her affiliation.
2. Provide a list of all the production facilities, sales office locations, research and development facilities, and administrative offices involved in the development, production, sale, and/or distribution of the merchandise operated by the company and its affiliates. Briefly describe the purpose of each, the date operations began for each, and provide a complete address and telephone number for each of these plants, offices, and other facilities.
3. Provide a list of:
 - a) The shareholders who directly or indirectly own, hold, or control with power to vote, five (5) percent or more of the company's outstanding voting stock;
 - b) The ten (10) shareholders with the highest ownership percentage of the company;
 - c) All companies in which the company directly or indirectly owns, holds, or controls with power to vote, five (5) percent or more of the outstanding voting stock;
 - d) If the company is a subsidiary of another company, the ten (10) largest shareholders of the parent company and of the other subsidiaries of the parent company which are involved in the development, production, sale, and/or distribution of the merchandise under investigation; and
 - e) If the parent company is itself a subsidiary of another company, the ten (10) largest shareholders of its parent company.
4. For all of the above provide the following information:
 - a) State the percentage of voting stock owned, held, or controlled, directly or indirectly;

¹The term affiliated persons (affiliates) includes: (a) members of a family; (b) an officer or director of an organization and that organization; (c) partners; (d) employers and employees; (e) any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and that organization; (f) two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and (g) any person who controls any other person and that other person. Control exists when a person is legally or operationally in a position to exercise restraint or direction over another person. A control relationship should also have the potential to affect decisions concerning the production, pricing, or cost of the merchandise under investigation or review. Examples of situations which may indicate control include (but are not limited to): (a) joint ventures and franchises; (b) lender/borrower situations; (c) a close relationship with a supplier, (sub) contractor, lender, distributor, exporter or reseller, and (d) a group of companies controlled by, for example, a family, a corporation, or the same investors. An example of affiliation by common control may be the affiliation between the owners of a joint venture when each owner is in a control position with that joint venture. The term person includes any interested party as well as any other individual, enterprise, or entity, as appropriate. It includes any company, individual, organization, partnership, or group.

- b) Fully explain any business relationships the company had or has with the owners of the companies listed above and the effect such relationships may have on the development, production, sales, or distribution of the merchandise under investigation; and
 - c) If any of the affiliated persons identified above are in turn affiliated with other persons that are involved in the development, production (including inputs), sale, and/or distribution of the merchandise under investigation, provide a list of those persons and describe the nature of the affiliation (e.g., shared directors or managers, equity ownership, close supplier relationship). Include any such affiliated persons in the chart you provided in response to this section. Also, describe the nature of each person's involvement with the merchandise under investigation.
5. State whether the company is part of a group. Examples of groups include: (i) a parent company and its subsidiaries; (ii) a defined corporate group; (iii) a network of companies with cross ownership; and (iv) two or more companies involved in the development, production, sale, and/or distribution of the merchandise under investigation which are directly or indirectly controlled by a family or investor group.

If the company is part of a group, provide:

- a) An organization chart of the companies in the group;
 - b) The amount of outstanding voting stock directly or indirectly owned, held, or controlled, with power to vote, of each company in the group by: (i) any other company in the group; (ii) any member of the family group; and/or (iii) any member of the investor group;
 - c) The names of the officers, directors, and managers of each company in the group and indicate whether any of them are also: (i) an officer, director, or manager of another company in the group; (ii) a member of the family group; and/or (iii) a member of the investor group; and
 - d) An explanation of all business or operational relationships affecting the development, production, sale, and/or distribution of the merchandise under investigation which the company has or had with the parent company, any other company in the group, any member of the family group, and/or any member of the investor group. Such business or operational relationships may include, but are not limited to, shared managers, employees, facilities, and borrowings.
6. If the company is affiliated with another producer that manufactures or has the potential to manufacture the merchandise, identify that producer and explain whether the company and the affiliated producer manufactures or could manufacture identical or similar products without substantial retooling of either facility.
- a) If there is such a relationship, describe the nature of the relationship (e.g., ownership percentage, common officers/directors), the business relationship with such company or person, and the effect such relationship may have on the development, production, sale, and/or distribution of the merchandise under investigation.
7. Identify all suppliers, contractors, subcontractors, lenders, exporters, distributors, resellers,

and other persons involved in the development, production, sale, and/or distribution of the merchandise that CBP may also consider affiliated² with the company. Some factors which you should consider include, for example, whether you acquire a significant amount of a major input from only a single supplier, the length of time the company has had a relationship with a supplier, contractor, subcontractor, distributor, exporter or reseller, the exclusivity of the relationship, all business relationships the company has or had with these persons, and other business relationships the company has or had with the persons, and other relationships between the company and other person. (e.g., director/manager relationships).

8. Identify all business transactions that may directly or indirectly affect the development, production, sale, and/or distribution of the merchandise under investigation which the company has or had with any affiliate (except to the extent you have provided this in response to one of the questions above). Examples of such business transactions may include, but are not limited to, loans made by or to an affiliate, purchases and resales of the merchandise under investigation by an affiliated reseller, purchases made from a close supplier, and/or transactions with joint ventures, or a company acting as an agent for the company's sales.
9. Provide a copy of the company's business registration certificate that has been fully translated into English.

C. Accounting/Financial Practices

Provide the following financial documents for the two most recently completed fiscal years plus all subsequent monthly or quarterly statements:

1. Trial Balance;
2. Provide all account payable records (including beginning and ending balances and detailed monthly activity reports/journal entries). If general ledger accounts are not used, provide all such information that would ordinarily be recorded in an accounts payable as maintained. Distinguish transactions for domestic companies from those for foreign companies;
3. Provide all account receivable records (including beginning and ending balances and detailed monthly activity reports/journal entries). If general ledger accounts are not used, provide all such information that would ordinarily be recorded in an accounts receivable as maintained. Distinguish transactions for domestic companies from those for foreign companies;

²Reported affiliations, selling expenses shared by, or distributed to, business associates, and/or the existence of commissions may be used to further analyze the potential existence of affiliations between the respondent, its customers, and other relevant entities.

4. Provide an Excel spreadsheet listing all monetary transactions (including open liabilities – accounts and notes) between the company and its foreign suppliers;
5. Internal financial statements or profit and loss reports of any kind that are prepared and maintained in the normal course of business;
6. Audited, consolidated, and unconsolidated financial statements (including any footnotes and auditor’s opinion);
7. Provide copies of all company bank statements from June 20__ to present;
8. Financial statements or other relevant documents (i.e., profit and loss reports) of all affiliates involved in the production or sale of the subject merchandise, of all affiliated suppliers to these affiliates, and of the parent(s) of these affiliates; and,
9. Any financial statement or other financial report filed with the company’s local or national government.

D. Pertinent Sales, Purchase/Procurement, and Documentation Requests

Note: The following questions apply to widgets and related products invoiced since **June ---, 20__ to the present.**

1. Provide a list of all orders of widgets and related products produced at the facility (include invoice and purchase order numbers).
2. Provide a product list (include any product numbers and descriptions) of all widgets and related products that the company manufactures, sells, and/or purchases.
3. Provide a list of buyers (include names, locations, and point of contact information) of the items sold by the company; categorizing each buyer (e.g., distributor, wholesaler, retailer, end-user).
4. Provide employee records identifying all employees, including names, titles, job descriptions, hire dates, termination dates (if applicable), and payroll records. For the wages paid, provide support, i.e., payroll disbursement checks/records.
5. Provide quality inspection reports.
6. Provide purchase orders, raw materials invoices, freight bills and Customs clearance records, country of origin certificates for shipment of materials, and any other documentation related to raw materials. This includes all documentation beginning from the initial steps (i.e. sourcing of raw materials) up to the finished goods (i.e. shipment of finished goods to customer).

7. Provide purchase orders, materials invoices, shipping records, and any other documentation related to packaging material acquired by the company.
8. Provide purchase orders, invoices, and any other documentation related to materials the company sources and/or provides to any of its suppliers.
9. Provide proof of payment (e.g. bank statements, canceled check, wire transfer, letter of credit, etc.) to foreign suppliers/manufacturers and/or other parties related to the transaction.
10. Provide all correspondence related directly/indirectly to the shipment/order.
11. Provide all pertinent transportation documents (e.g., master and house bill of lading) from the source location and through to the U.S. buyer.
12. Provide payment for freight (e.g., freight bill along with wire transfers, cancelled checks, letters of credit, bank statements, etc.) for entire shipment process – from exporter/manufacturer/agents, as necessary.
13. Provide all correspondence related directly/indirectly to the sale.
14. Provide invoices and packing lists issued to U.S. buyers.
15. Provide receipt of payment for sales to U.S. buyers (e.g. bank statements, check images, incoming wire transfer, letters of credit etc.).

Products/Manufacturing Process

16. Provide a factory profile for all manufacturing facilities; including pictures and diagrams of how the manufacturing process is laid out and operates from the receipt of raw materials to the inventory, production, and shipment of finished goods to customers.
17. Describe all of the equipment used in production and provide photos of such equipment.
18. Describe the production capacity of all the equipment used to produce widgets.
19. Provide records of the equipment maintenance and quality inspections reports.
20. Provide a bill of material (or equivalent document) noting the raw materials/inputs needed to produce widgets, identify the amount of each raw material input needed.