

# The Enforce and Protect Act “EAPA” Update

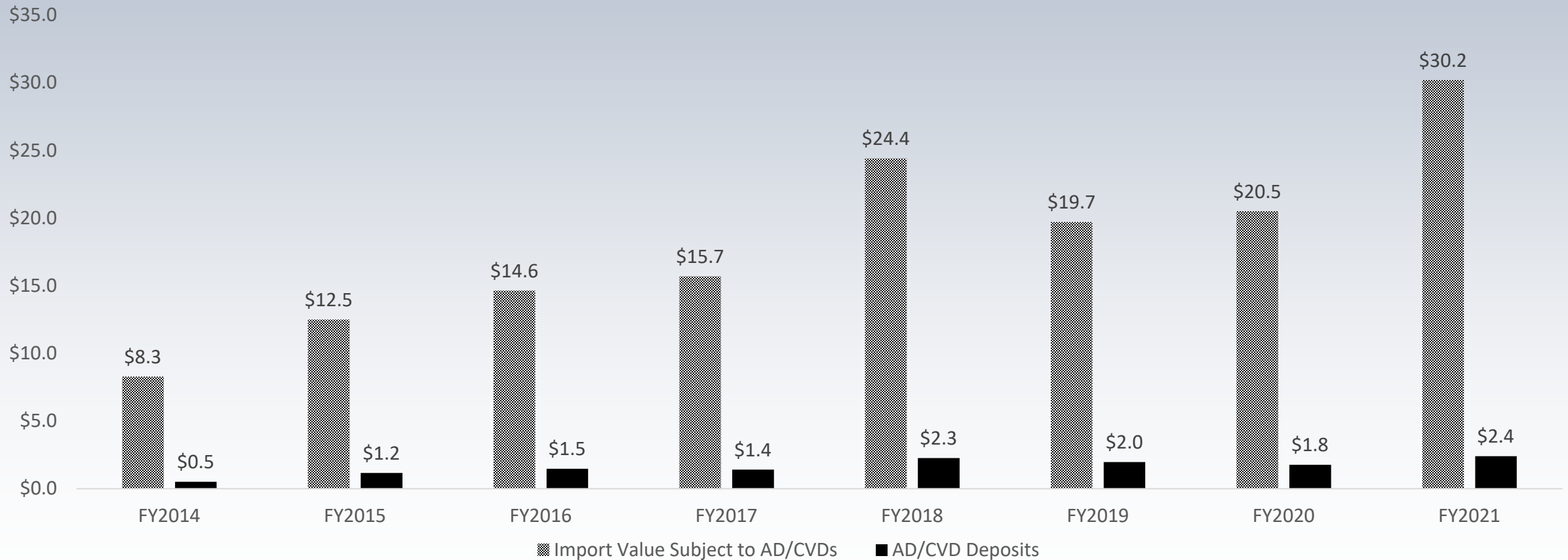
21<sup>st</sup> Judicial Conference  
U.S. Court of International Trade

October 27, 2022

# Why Was the Enforce and Protect Act Needed?

# Over the Last Eight Years, the Total AD/CVD Deposit Rate Has Been 8.9%

Import Value Subject to AD/CVDs and AD/CVD Deposits

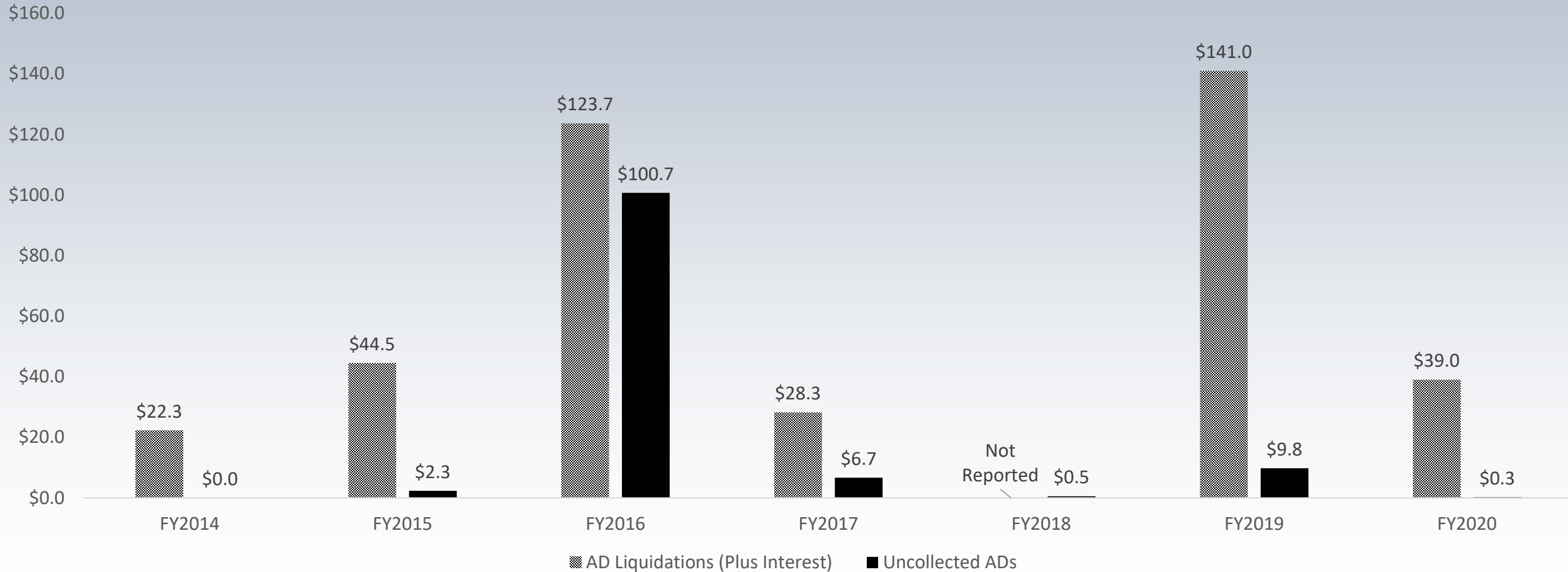


# AD/CVD Collection Challenges

- As of the end of fiscal year 2020, there were 82,808 unpaid AD/CVD bills from FY2001 through FY2020.
- These bills total \$4.16 billion in outstanding, uncollected AD/CVD debt.
- Per the GAO, between FY2001 and FY2018, CBP issued over 544,000 AD/CVD bills where rates had increased about deposit levels following an administrative review.
- Of these bills, just \$1.6 billion in additional AD/CVDs was collected, while \$4.5 billion was uncollected.
- These figures indicate that over an 18-year period, CBP was only able to collect 26% of AD/CVDs assessed above deposit rates.

# Between FY2014 and FY2020, Roughly 30% of the \$400 million in ADs Assessed on Shrimp Has Gone Uncollected

AD Liquidations on Shrimp Imports versus Open Bills (Uncollected ADs)



# Post-Importation Enforcement Is Difficult

“FAN also told ICE agents that he created Honey World on the advice of ALW United States Executive 2, who told FAN that a high volume of imports by a single company would be noticed by CBP. FAN also stated that he acted upon additional advice provided to him by an employee of the FAN Companies, who advised FAN that he should import into the United States using multiple companies to avoid added scrutiny and attention by CBP and that this advice was seconded by ALW Executives in at least one-in-person meeting with FAN.”

Source: Declaration of Immigration and Customs Enforcement (March 12, 2010), United States v. Fan, Case No. 1:10-cr-00198 (emphases added).

# Post-Importation Enforcement Is Difficult

“KBB Express Inc. was a freight forwarding company located in South El Monte, California that provided nationwide transportation, delivery, and other logistical services for imported and entered merchandise, including Chinese-origin honey. LIN owned and operated KBB Express Inc., and **also served as the U.S. agent for at least twelve importers of record** that were controlled by Chinese honey producers and manufacturers. These importers of record included Bright Step (United States) Limited; Sweet Campo Co., Ltd.; Migrow Trading Inc.; Chix Trading Inc.; Rouka International Inc.; Oliv Amber Trading Co., Ltd.; Titto International Inc.; Stariver Trading Inc.; Tobest Trading Co., Ltd.; Russa International Inc.; Sunny (USA) Trading Inc.; and Silver Spoon International Inc. As the U.S. agent for these companies, LIN handled the process of importing, and coordinated with customhouse brokers to enter and bring in, Chinese-origin honey into the United States without paying antidumping duties and honey assessment fees.”

Source: U.S. Attorney’s Office, Pre-Sentencing Report, United States v. Lin, (Sept. 25, 2013),  
at 4-6 (emphases added).

# The Enforce and Protect Act So Far



# EAPA Statistics

- CBP has now released information regarding 174 EAPA Allegations filed between 2016 and June 2022.
- 138 resulted in Final Affirmative Evasion Determinations (76%).
- 16 are pending with Interim Measures (13%).
- 8 resulted in Final Negative Evasion Determinations (5%).
- 5 are currently pending with open Scope Referrals (3%).
- 4 allegations were withdrawn (2%).
- 2 were initiated without interim measures and are pending (1%).
- 1 allegation was not initiated (>1%).

# EAPA Statistics

Evasion Type Alleged	# of EAPA Allegations
Transshipment	147
Misclassification & Transshipment	15
Misclassification	13
False Designation of Exporter/Producer	2

# EAPA Statistics

Product	# of EAPA Allegations
Quartz Surface Products	28
Steel Wire Garment Hangers	25
Wooden Cabinets & Vanities and Component Parts Thereof	21
Aluminum Extrusions	16
Xanthan Gum	12
Glycine	10
Hardwood Plywood	9
Carbon Steel Butt-Weld Pipe Fittings	8
Lightweight Thermal Paper	7
Cast Iron Soil Pipe	5
Diamond Sawblades	5
Steel Trailer Wheels 12 to 16.5 Inches in Diameter	3

**Others:** Amorphous Silica Fabric (2); Cast Iron Soil Pipe Fittings (2); Common Alloy Aluminum Sheet (2); Stainless Steel Flanges (2); Steel Grating (2); Activated Carbon; Cased Pencils; Certain Steel Wheels 22.5 and 24.5 Inches in Diameter; Circular Welded Carbon Steel Pipe and Tubes; Circular Welded Pipe; Forged Steel Fittings; Fresh Garlic; Frozen Warmwater Shrimp; Hydrofluorocarbon Blends; Magnesite Carbon Brick; Malleable Cast Iron Pipe Fittings; Oil Country Tubular Goods; Polyethylene Retail Carrier Bags; Uncovered Inner Spring Units; Wooden Bedroom Furniture.

# EAPA Statistics

- CBP has released information regarding 52 EAPA Administrative Reviews.
- Administrative reviews conducted in at least 37% of investigations that reached final determinations (52/140).

Outcome of Administrative Review	# of Admin. Reviews
Final Evasion Determination Affirmed	42
Final Evasion Determination Reversed	5
Final Evasion Determination Affirmed (Reversed on Remand)	3
Final Evasion Determination Affirmed (Affirmed on Remand)	1
Mixed (Final Evasion Determination Affirmed in Part, Reversed in Part)	1

# EAPA Statistics

- 34 appeals related to CBP's EAPA proceedings have been docketed at the U.S. Court of International Trade.
- These appeals have been consolidated into 21 separate actions before the Court.
- 4 of these actions have been finally resolved.
- One action, *Royal Brush*, is currently before the U.S. Court of Appeals for the Federal Circuit awaiting scheduling of oral argument.
- 7 slip opinions have been issued in EAPA cases:
  - Vietnam Finewood Co. v. United States*, Slip Op. 20-106 (J. Barnett)
  - Royal Brush Manufacturing, Inc. v. United States*, Slip Op. 21-152 (J. Barnett)
  - Norca Industrial Co., LLC v. United States*, Slip. Op. 22-19 (J. Choe-Groves)
  - Ad Hoc Shrimp Trade Enforcement Committee v. United States*, Slip Op. 22-53 (J. Kelly)
  - All One God Faith, Inc. v. United States*, Slip. Op. 22-75 (J. Katzmann)
  - Global Aluminum Distributor LLC v. United States*, Slip. Op. 22-90 (J. Eaton)
  - All One God Faith, Inc. v. United States*, Slip. Op. 22-96 (J. Katzmann)

# EAPA Statistics

- Since 2016, CBP has only issued one determination to not initiate an allegation
  - This was the first decision issued by TRLED in October 2016; *NEXTracker*, EAPA Inv. No. 15434
- TRLED's case numbering indicates that while there has been public reporting about 177 of the allegations filed that received investigation numbers, there are 378 investigation numbers for which no public reporting has been made.
- TRLED's public reporting of initiated investigations refers to at least four case numbers where allegations were ultimately withdrawn.
- This implies that rather than issue notices to not initiate investigations, allegations that TRLED views as weak or inappropriate for EAPA are withdrawn.

# AD/CVD Collection Under EAPA

Open Bill Totals as % of Total Liquidations

