

# Combating Evasion of Duties Front and Center

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Last year, President Obama [signed](#) into law the Trade Facilitation and Trade Enforcement Act of 2015 (“TFTEA”). Section 421 of the TFTEA (commonly called the Enforce and Protect Act, or EAPA), establishes procedures for submitting and investigating allegations of evasion of antidumping and countervailing duties.

The statute encouraged a wide variety of stakeholders to participate in this new administrative process. For example, the statute defined “interested parties” who may file an allegation of evasion to include foreign exporters and producers, importers, and domestic manufacturers and wholesalers, of products covered by antidumping and countervailing duty orders. Indeed, interested parties on all sides of the trade equation who play by the rules have an incentive to participate in the CBP’s evasion investigations.

In August 2016, however, CBP published in the federal register an [interim final rule](#) which some have claimed discourages the broad participation envisioned by the statute. Just last week, Senators [Sherrod Brown](#) and [Rob Portman](#) expressed this very sentiment in a letter to Kevin McAleenan, the Acting Commission of CBP.

Senators Brown and Portman identified one issue that was also commonly identified in the comments CBP received last winter concerning its interim rule – the lack of an administrative protective order or “APO.” In the context of antidumping and countervailing duty proceedings, the APO allows counsel and consultants who are approved by the Department of Commerce and/or International Trade Commission to view business proprietary information submitted by parties on the record of the proceeding. Without this type of procedure in EAPA investigations, neither counsel to the importers subject of the allegations nor counsel to the party making the allegations will be able to review and vet confidential information placed on the record of the investigation by other parties. The lack of an APO, also limits the ability of counsel to assist CBP in developing the administrative record and conducting its investigations of evasion.

Investigations currently underway are proceeding under the interim final rule. CBP has not yet indicated when it will issue a final rule and, it thus, remains to be seen what types of changes to the interim final rule CBP will make. Encouraging broader participation in the administrative process among the trade community would seem to be an ideal guidepost for any changes the agency does make.