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DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 165

[USCBP-2016-0053; CBP Dec. 16-11]

RIN 1515-AE10

Investigation of Claims of Evasion of Antidumping and Countervailing

Duties

AGENCIES: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Interim regulations; solicitation of comments.

SUMMARY: In accordance with section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, this rule amends the U.S. Customs and Border Protection regulations to set forth procedures for CBP to investigate claims of evasion of antidumping and countervailing duty orders.

DATES: The interim rule is effective [INSERT DATE OF PUBLICATION IN THE **FEDERAL REGISTER**]; comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

ADDRESSES: You may submit comments, identified by docket number, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2016-0053.
- Mail: Trade and Commercial Regulations Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street, N.E., 10th Floor, Washington, D.C. 20229-1177.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the SUPPLEMENTARY INFORMATION section of this document.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street, N.E., 10th Floor, Washington, D.C. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: Kevin M. McCann, Chief, Analytical Communications Branch, Office of Trade, U.S. Customs and Border Protection, 202-863-6078.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the interim rule. U.S. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this interim rule. Comments that will provide the most assistance to CBP in developing these regulations will reference a specific portion of the interim rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. See ADDRESSES above for information on how to submit comments.

Background

On February 24, 2016, President Obama signed into law the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA), which contains Title IV-Prevention of Evasion of Antidumping and Countervailing Duty Orders (short title “Enforce and Protect Act of 2015” or “EAPA”) (Pub. L. 114-125, 130 Stat. 122, 155, Feb. 24, 2016) (19 U.S.C. 4301 note). The EAPA establishes a formal process for CBP to investigate allegations of the evasion of AD/CVD orders. Section 421 of the EAPA requires that regulations be prescribed as necessary and within 180 days of TFTEA’s enactment to implement the provisions of the EAPA that establish procedures for investigating claims of evasion of AD/CVD orders.

Antidumping and Countervailing Duty Orders

The antidumping (AD) law provides for increased duties on imported products that the United States International Trade Commission (ITC) has found to have materially injured or threatened with material injury a domestic industry and that the United States Department of Commerce (Commerce) has found to have been sold in the U.S. market at prices below fair market value. The countervailing duty (CVD) law provides for increased duties on imported

products that the ITC has found to have materially injured or threatened with material injury a domestic industry and that Commerce has found to have benefitted from a countervailable subsidy from a foreign government or public entity. Statutory authority for AD and CVD investigations derives from Title VII of the Tariff Act of 1930, as amended, 19 U.S.C. 1671 and 1673.

If both Commerce and the ITC issue affirmative final determinations, Commerce issues an AD and/or CVD order that establishes cash deposit rates for the additional duties on entries of imported merchandise subject to the order. Those entries will be liquidated at the cash deposit rate, unless interested parties request an administrative review to establish a revised and final dumping or countervailing duty rate. U.S. Customs and Border Protection is responsible for the collection of cash deposits and final duties on imports of subject merchandise.

Evasion of Antidumping and Countervailing Duty Orders

Evasion refers to entering merchandise into the customs territory of the United States for consumption by an act or omission that is material and false, and which results in antidumping or countervailing duties being reduced or not applied to or collected on such merchandise.

Examples of evasion could include, but are not limited to, the misrepresentation of the merchandise's true country of origin (e.g., through fraudulent country of origin markings on the product itself or false sales), false or incorrect shipping and entry documentation, or misreporting of the merchandise's physical characteristics. CBP is responsible for ensuring that the appropriate duties are collected on imports of merchandise. U.S. Immigration and Customs Enforcement (ICE) is responsible for conducting criminal investigations of the evasion of AD/CVD orders.

Under current customs laws, CBP can take enforcement actions against the evasion of

AD/CVD orders, which include the assessment of civil penalties against importers who evade such orders. However, allegations as to evasion submitted by private parties prior to the implementation of the EAPA, did not afford the parties an opportunity to participate in the investigation nor did CBP have an obligation to notify parties that submitted allegations of evasion as to the outcome of CBP's review.

Enforce and Protect Act of 2015

Section 421 of the EAPA amends the Tariff Act of 1930 by creating a new framework for CBP to investigate allegations of evasion of AD/CVD orders, under newly created section 517 ("Procedures for Investigating Claims of Evasion of Antidumping and Countervailing Duty Orders").

Section 421 of the EAPA requires the Commissioner of U.S. Customs and Border Protection (the Commissioner) to initiate an investigation within 15 business days of receipt of a properly filed allegation from an interested party or referral from another Federal agency (hereinafter referred to as a "request for an investigation" from or by another Federal agency) that reasonably suggests that merchandise covered by an AD/CVD order has entered the customs territory of the United States through evasion.

Under the EAPA, when CBP receives properly filed allegations from interested parties that merchandise covered by an AD/CVD order has entered the United States through evasion, or receives requests from Federal agencies for an investigation, the statute requires CBP to take certain actions within specified timeframes. The EAPA requires CBP to determine, not later than 300 calendar days (or 360 calendar days in extraordinarily complicated cases) after the date of initiation of an EAPA investigation, whether there is substantial evidence that merchandise covered by an AD/CVD order was entered into the customs territory of the United States through

evasion.

The EAPA authorizes CBP to collect such information as is necessary to make the determination through such methods as CBP considers appropriate. One such method specifically mentioned by the EAPA is the use of questionnaires, which can be used to request information from the interested party making the allegation and the government of the foreign country from which the allegedly covered merchandise was exported, as well as the importer, foreign producer or exporter of the allegedly covered merchandise. The EAPA provides that pursuant to sections 412(b) and 421(a), CBP may make an adverse inference if the importer, foreign producer or exporter of the merchandise under investigation, or the interested party making the allegation, did not act to the best of its ability to provide the information requested by CBP. The EAPA further requires CBP, no later than five business days after making a determination, to communicate the determination to the interested party who made an allegation that initiated the evasion investigation.

If CBP makes an affirmative determination of evasion, CBP will: (1) suspend the liquidation of unliquidated entries of the covered merchandise that is subject to the determination; (2) extend the period for liquidating the unliquidated entries of covered merchandise that entered before the initiation of the investigation; (3) when necessary, notify Commerce of the determination and request that Commerce determine the appropriate duty rates for such covered merchandise; (4) require importers of covered merchandise to post cash deposits and assess duties on the covered merchandise; and/or (5) take such additional enforcement measures as CBP deems appropriate, including (but not limited to) modifying CBP's procedures for identifying future evasion, reliquidating entries as provided by law, and referring the matter to ICE for a possible civil or criminal investigation.

In order to ensure that appropriate duties can be collected on entries of covered merchandise made during the pendency of an EAPA investigation, the EAPA provides for an interim measures mechanism. Under this mechanism, CBP will determine within 90 calendar days of initiation of an EAPA investigation whether there exists reasonable suspicion that covered merchandise subject to an allegation was entered through evasion. If CBP determines that such reasonable suspicion exists, CBP will: (1) suspend the liquidation of unliquidated entries of the covered merchandise entered after the date of initiation; (2) extend the period for liquidating the unliquidated entries of covered merchandise that entered before the initiation of the investigation; and (3) take any additional measures necessary to protect the ability to collect appropriate duties, which may include requiring a single transaction bond or posting cash deposits or reliquidating entries as provided by law with respect to entries of the covered merchandise. As provided for in section 517(b)(6) of the Tariff Act of 1930, as amended by the EAPA (19 U.S.C. 1517(b)(6)), if CBP determines during the course of an EAPA investigation that the merchandise being investigated poses a health or safety risk, CBP will notify the appropriate Federal agencies of that risk and will exercise its administrative powers, as appropriate.

The EAPA provides a period of 30 business days after a determination for the interested party who made the allegation of evasion or the person determined to have entered the covered merchandise subject to the evasion determination to request a de novo administrative review. And not later than 60 business days after such a request for a review of an initial determination is properly filed, CBP must complete the review and issue a final administrative determination.

Section 517(g) of the Tariff Act of 1930, as amended by the EAPA (19 U.S.C. 1517(g)), provides that judicial review of the final administrative determination and the original

determination as to evasion will be available to the party alleging evasion or the party found to have entered merchandise subject to the investigation through evasion. A request for such judicial review must be made not later than 30 business days after completion of the final administrative determination. The request for judicial review must be made to the U.S. Court of International Trade (CIT).

In accordance with section 421 of TFTEA requiring that regulations be prescribed as necessary to implement these procedures, CBP is amending title 19 of the Code of Federal Regulations to create new part 165 setting forth procedures for investigating claims of evasion of AD and CVD orders. In these regulations, CBP has endeavored to make the proceedings under the EAPA as transparent as possible and to provide for full participation and engagement by all parties involved in an EAPA proceeding.

New part 165 is drafted with a scope section followed by four subparts: General Provisions; Initiation of Investigations; Investigation Procedures; and Administrative Review of Determinations.

Discussion of New Part 165

Scope

Section 165.0 briefly describes the nature of EAPA investigations and the types of requirements that are set forth in this part. Investigations under the EAPA will be conducted by CBP's Trade Remedy Law Enforcement Directorate (TRLED) which has been established consistent with section 411 of the EAPA. It should be noted that investigations under the EAPA are not the exclusive means, or only statutory authority, by which CBP can investigate allegations by the public or requests by other Federal agencies with respect to the evasion of AD/CVD orders. For example, the public currently has the option to make more general

allegations of evasion through CBP's "e-Allegations" system, an official online portal for the public to report violations of the trade laws. This current functionality will remain in e-Allegations, but e-Allegations will also have another option for filing allegations of evasion under the EAPA.

Subpart A -- General Provisions

Section 165.1 lists definitional terms that are used throughout the new part. It is noted that the definition of "interested party" includes not only the importer of the covered merchandise who is alleged to have engaged in evasion, but also importers of the covered merchandise who wish to bring allegations against competing importers. The term "interested party" does not include other Federal agencies. CBP also notes that the term "domestic like product" is referenced in the definition of "interested party." CBP will rely on the definition of this term, as it is applied by the U.S. International Trade Commission, pursuant to 19 U.S.C. 1677(10).

Section 165.2 specifies that entries that may be the subject of an allegation under § 165.11 or of a request from a Federal agency made under § 165.14 are those entries of allegedly covered merchandise made within one year prior to the receipt of such an allegation or such a request from a Federal agency. CBP is specifying the one-year period for an EAPA investigation in order that the information required for conducting the investigation and rendering a timely determination will be current and readily available. This does not limit CBP's authority, however, to act under any other provision of law with respect to information obtained during an EAPA investigation. For example, CBP has the right to assess penalties pursuant to 19 U.S.C. 1592 in appropriate cases involving the evasion of AD and CVD orders.

Section 165.3 identifies the persons that may make submissions on behalf of interested parties and specifies when power of attorney documentation is required. Agents may act on

behalf of an interested party in an EAPA proceeding, including an importer against whom an allegation has been brought. Also, an affiliate of an importer may file documents on the importer's behalf for the EAPA proceedings, but nonetheless must be authorized to act as an agent by means of a power of attorney. A power of attorney is required when an agent who is not an attorney at law is used to make filings under the EAPA.

Section 165.4 addresses how an interested party that makes a submission to CBP in an EAPA proceeding can protect confidential business information. Examples of the kinds of information that may be considered business confidential include: trade secrets concerning the nature of a product or production process; production costs and other pricing information; and lists of customers, distributors, and suppliers. This section also specifies what information must be provided to CBP as public information in order to facilitate the consolidation of allegations and administration of the proceedings. This section was included in order to protect business confidential information while at the same time ensuring transparency so that an alleged evader will be notified of the allegation and parties to the investigation can participate in the proceeding. Finally, as there is no administrative protective order (APO) process provided for in the EAPA, parties involved in an EAPA proceeding are advised not to submit information to CBP that they obtained exclusively under a protective order from another agency, court, or proceeding unless the scope of that protective order explicitly covers the EAPA investigation or proceeding under consideration. Accordingly, parties are advised to exercise caution when submitting information to CBP in an EAPA proceeding.

Section 165.5 sets forth the scope of and general means by which CBP will obtain information for EAPA proceedings (which must be submitted electronically). CBP requires that only English language or English language translations of written submissions will be

accepted. Oral discussions or communications with CBP will not be considered part of the record unless memorialized in written submissions. During CBP's investigation, it is possible that there will be other parties from whom CBP will solicit information and that CBP will put that information on the record. Those parties (who are not parties to the investigation as defined in § 165.1), however, do not have a right to participate in the proceedings.

Additionally, CBP may, for good cause, grant requests for extensions of regulatory (but not statutory) deadlines imposed under this part.

Section 165.6 provides that CBP may draw adverse inferences both in an EAPA investigation and in an administrative review of an evasion determination when the party making the allegation, the alleged evader, a foreign producer or exporter fails to cooperate and comply to the best of its ability with a request for information made by CBP. It also establishes that adverse inferences may be based on the allegation of evasion; other CBP investigations, proceedings or other actions regarding evasion; or any other available information. CBP will not apply an adverse inference against a foreign government if the foreign government does not respond to a request for information.

Section 165.7 obligates interested parties to report to CBP any knowledge or reason to suspect that the covered merchandise may pose a health or safety risk to U.S. consumers. It also requires CBP to report to the appropriate Federal agencies any health or safety risk that the covered merchandise may pose to U.S. consumers.

Subpart B – Initiation of Investigations

Section 165.11 provides the criteria for filing an allegation of evasion pursuant to the EAPA and the specific information that must be contained in an allegation. Each allegation may only concern one importer (because business confidential information may be involved in an

EAPA proceeding), although an interested party may file multiple allegations.

Section 165.11 authorizes CBP to provide technical assistance and guidance to small businesses (and to other parties as resources permit) that consider filing an EAPA allegation. It also specifies that technical assistance is available prior to the submission of an allegation to CBP in order to ensure that the filing requirements are satisfied. Any technical assistance and guidance that are provided, however, will not become part of the record, and the fact that assistance or guidance was provided does not guarantee that CBP will proceed to initiate an EAPA investigation. Moreover, such technical assistance and guidance provided by CBP does not include providing research assistance to support an allegation of evasion or to identify potential parties that might be involved in the evasion of AD or CVD orders.

Section 165.12 provides that the date of receipt of a properly filed allegation is the date that CBP determines that the EAPA allegation contains all the information and certifications required in § 165.11 of this part and transmits notice thereof together with a CBP-assigned control number to the party that filed the allegation. CBP will promptly review each allegation as filed for sufficiency. If an allegation is found to be insufficient, the party who filed the allegation will be notified of the insufficiencies and be given the opportunity to remedy them. The CBP-assigned control number should be used to monitor the status of an allegation throughout the pendency of the EAPA proceeding. CBP has 15 business days from the date of receipt to determine whether to initiate an investigation under the EAPA. A party filing an allegation may withdraw the allegation by submitting a request to withdraw the allegation to the designated e-mail address specified by CBP. Decisions regarding whether to initiate an investigation under the EAPA will be effectuated by CBP's TRLED. Such decisions are not subject to administrative or judicial review. In the event that an allegation is

withdrawn, CBP may continue to investigate (other than under the EAPA) whether evasion has occurred as originally alleged using but not limited to any information obtained (including from the party who filed the allegation) prior to the date of the request to withdraw the allegation.

Section 165.13 allows for the consolidation of multiple allegations against one or more importers and sets forth criteria for that purpose. It also indicates that the time period to make a decision on whether to investigate is triggered by the first properly filed allegation received by CBP.

As discussed above, requests for an investigation relating to potential evasion of AD/CVD orders may be filed by other Federal agencies with CBP. Section 165.14 sets forth the procedures for such requests for an investigation. Federal agencies are not considered a “party to the investigation” as defined in § 165.1. It should be noted, however, that other Federal agencies may continue to use methods other than under the EAPA, as permitted under the law, to inform CBP of possible instances of evasion.

Section 165.15 specifies that CBP will decide if an investigation is warranted based on whether the allegation made under § 165.11 or a request from a Federal agency made under § 165.14 reasonably suggests that evasion has occurred (i.e., the covered merchandise at issue has been entered into the customs territory of the United States through evasion). The deadline to decide whether to initiate an investigation is 15 business days from the date of receipt by CBP of a properly filed allegation or request. If CBP determines that it will initiate an investigation, it will notify all known parties to the investigation no later than 95 calendar days after the initiation of the investigation. CBP will use this 95 calendar-day period in order to investigate the allegation. This timeframe for notification takes into account the dual considerations of

transparency and the need to provide adequate time for CBP's investigatory process.

Alternatively, if CBP determines that it will not initiate an investigation, it will notify the interested party who filed the allegation within five business days of that determination.

Section 165.16 specifies that CBP may, at its discretion, refer the issue to the Department of Commerce if there is uncertainty as to whether the goods that are the subject of the allegation are within the scope of the applicable AD/CVD order(s). It also directs that the parties to the investigation must be advised of the date of this referral and the time taken by Commerce to decide this issue does not count against any of the deadlines for the EAPA investigation (i.e., the referral to Commerce tolls these deadlines).

Subpart C – Investigation Procedures

As described in § 165.21, CBP will maintain an electronic administrative record for purposes of making a determination as to evasion and conducting an administrative review of the determination as described in subpart D of this part.

Section 165.22 provides that the determination as to whether evasion occurred will be made within 300 calendar days from the date of initiation of the investigation unless, for an extraordinarily complicated case, CBP, at its discretion, extends the deadline by an additional 60 calendar days. This section also sets forth the statutory criteria for extraordinarily complicated cases. Notice of such an extension will be provided to all parties to the investigation. CBP will strive to ensure compliance with these time periods during the course of an investigation. If CBP does not make a determination by the deadline, however, this will not result in a deemed decision with respect to whether or not evasion occurred.

Section 165.23 sets forth the types of and requirements for the submission of factual information. This information will become part of the administrative record. CBP may obtain

factual information in a variety of ways. Parties to the investigation may voluntarily submit information to CBP or may provide information in response to requests by CBP (including in response to questionnaires). Interested parties who are not parties to the investigation may provide information only in response to requests by CBP.

Section 165.24 provides that no later than 90 calendar days after the initiation of an investigation, CBP will suspend the liquidation of entries made on or after the date of initiation of the investigation and extend the liquidation for entries made prior to the date of initiation of the investigation if there is reasonable suspicion that evasion has taken place. CBP will give notice to the parties to the investigation of any interim measures it takes within five business days after it takes such measures.

Section 165.25 specifies that, at its discretion, CBP has the authority to conduct verifications of information collected under § 165.23 of this part, in the United States or in foreign countries as is necessary to make its determination. Verifications in foreign countries will be conducted as appropriate and consistent with any agreements or memoranda relating to such activities with the foreign government in whose country the proposed verification is scheduled to occur.

Section 165.26 deals with the ability of parties to the investigation to submit written arguments to CBP in order that they may actively participate in an EAPA proceeding. It provides that the parties to the investigation may submit written arguments to CBP and must serve all other parties to the investigation by an e-mail message or through any other method approved or designated by CBP with a public version of the written arguments. Parties to the investigation receiving a written argument may file a response within 15 calendar days of the filing of the written argument. The party filing a written response must provide it to CBP and serve a public

version on all other parties to the investigation via an e-mail message or through any other method approved or designated by CBP.

Section 165.27 provides that upon conclusion of the investigation, CBP will determine whether there is substantial evidence based upon the record that evasion of an AD/CVD order has occurred. Within five business days of CBP's initial determination as to evasion, CBP will issue notice of its determination to the interested party or parties who made the allegation and to the importer alleged to have evaded an AD/CVD order. This section also addresses action by CBP in the event of a negative determination.

Section 165.28 discusses what actions CBP may take if there is an affirmative determination as to evasion.

Subpart D – Administrative Review of Determinations

Subpart D specifies the requirements for requesting an administrative review of an initial determination. Under § 165.41, any party to the investigation has up to 30 business days after the date the initial determination is issued to request an administrative review of that determination by Regulations and Rulings, Office of Trade. Parties seeking review of the initial determination must serve all other parties to the investigation with a public version of the request via an e-mail message or through any other method approved or designated by CBP.

Under § 165.42, parties to the investigation are given an opportunity to submit responses to the request for administrative review.

Section 165.43 provides that any requests for review and responses to requests for review will remain part of the administrative record and cannot be withdrawn.

Section 165.44 provides that Regulations and Rulings may request additional written information from the parties to the investigation at any time during the administrative review

process.

Section 165.45 describes that under an administrative review the initial determination will be reviewed de novo. The final administrative determination will be issued within 60 business days from the date of request for review. The review will be based upon the administrative record developed during the initial investigation period and any requests for administrative review and responses to those requests.

Section 165.46 states that Regulations and Rulings will issue a final administrative determination to all parties to the investigation. The final administrative determination is subject to judicial review in accordance with section 421 of the EAPA.

Finally, § 165.47 notifies the public that nothing within this part precludes CBP from taking any action authorized under the law, such as assessing penalties under 19 U.S.C. 1592.

Inapplicability of Notice and Delayed Effective Date Requirements

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), agencies generally are required to publish a notice of proposed rulemaking in the Federal Register that solicits public comments on the proposed regulatory amendments and consider public comments in deciding on the content of the final amendments. Section 553(b)(A) of the APA, however, provides that the standard prior notice and comment procedures do not apply to an agency rulemaking to the extent that the rule is a rule of procedure.

The substantive provisions of the EAPA have been established by Congress, and these regulations set forth the procedures for implementing the statute and do not include substantive requirements. Although CBP could issue this as a final rule without prior notice and comment, CBP is soliciting comments in this interim rule and will consider all comments received before issuing a final rule.

Statutory and Regulatory Requirements

Executive Orders 13563 and 12866

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a “significant regulatory action,” as defined in section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed this regulation.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions) when the agency is required to publish a general notice of proposed rulemaking for a rule. Since a general notice of proposed rulemaking is not necessary for this rule, CBP is not required to prepare a regulatory flexibility analysis for this rule.

Paperwork Reduction Act

An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

OMB approved collection 1651-0131 will be amended to reflect the additional respondents for e-Allegations and the three new questionnaires for EAPA requirements as

described above in accordance with 19 CFR 165.5(a) and 165.23(a). We estimate that this rule will result in an additional 419 responses annually and an additional 9,386 burden hours. The revision to the information collection includes 44 additional e-Allegations which is in addition to the previously approved 1,600 total e-Allegation submissions annually (for a total of 1,644 e-Allegation submissions). It also establishes new questionnaires for alleged violators of AD/CVD violations, alleged evaders of AD/CVD orders, and other interested parties, such as the foreign producer or exporter or a foreign government. This revision to this information collection includes 150 new alleged violator questionnaires annually, 150 new alleged evader questionnaires annually, and 75 new other interested party questionnaires annually. The other interested party could be a foreign producer or exporter or foreign government, or any other interested party. Collection 1651-0131 will be revised to reflect the increased burden hours for each additional e-Allegation submission and EAPA questionnaire added to e-Allegations as follows:

E-Allegations

Estimated number of annual respondents: 44

Estimated number of annual responses: 44

Estimated time burden per response: 15 minutes (.25 hours)

Estimated total annual time burden: 11 hours

Allegor Questionnaire

Estimated number of annual respondents: 150

Estimated number of annual responses: 150

Estimated time burden per response: 25 hours

Estimated total annual time burden: 3,750 hours

Alleged Evader Questionnaire

Estimated number of annual respondents: 150

Estimated number of annual responses: 150

Estimated time burden per response: 25 hours

Estimated total annual time burden: 3,750 hours

Other Interested Party Questionnaire

Estimated number of annual respondents: 75

Estimated number of annual responses: 75

Estimated time burden per response: 25 hours

Estimated total annual time burden: 1,875 hours

Comments concerning the collections of information and the accuracy of the estimated annual burden, and suggestions for reducing that burden, should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503. A copy should also be sent to the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street, N.E., 10th Floor, Washington, D.C. 20229-1177.

Signing Authority

This document is being issued in accordance with § 0.1(a)(1) of the CBP regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his or her delegate) to approve regulations related to certain customs revenue functions.

List of Subjects in 19 CFR Part 165

Administrative practice and procedure, Business and industry, Customs duties and inspection.

Amendments to the Regulations

For the reasons set forth above, chapter I of title 19, Code of Federal Regulations (19

CFR chapter I), is amended by adding part 165 to read as follows:

**PART 165 – INVESTIGATION OF CLAIMS OF EVASION OF ANTIDUMPING AND
COUNTERVAILING DUTIES**

Sec.

165.0 Scope.

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Subpart D – Administrative Review of Determinations

165.41 Filing a request for review of the initial determination.

165.42 Responses to requests for administrative review.

165.43 Withdrawal.

165.44 Additional information.

165.45 Standard for administrative review.

165.46 Final administrative determination.

165.47 Potential penalties and other actions.

Authority: 19 U.S.C. 66, 1481, 1484, 1508, 1517 (as added by Pub. L. 114-125, 130 Stat. 122, 155 (19 U.S.C. 4301 note)), 1623, 1624, 1671, 1673.

§ 165.0 Scope.

This part relates to allegations by the public and requests from Federal agencies for an investigation regarding the evasion of antidumping (AD) and countervailing duty (CVD) orders and the procedures by which CBP investigates such claims consistent with the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA), which contains Title IV-Prevention of Evasion of Antidumping and Countervailing Duty Orders (short title “Enforce and Protect Act of 2015” or “EAPA”) (Pub. L. 114-125, 130 Stat. 122, 155, Feb. 24, 2016) (19 U.S.C. 4301 note). This part includes the requirements for the filing of allegations and requests for investigations, the

investigation procedures, and administrative review of determinations as to evasion of AD/CVD orders under the EAPA. The procedures under this part are not the exclusive manner by which CBP may receive allegations or requests for an investigation from Federal agencies or investigate such allegations or requests with respect to the evasion of AD/CVD orders. An investigation as described in this part, if initiated by CBP, does not preclude CBP or any other government entity from initiating any other investigation or proceeding pursuant to any other provision of law, including proceedings initiated under 19 U.S.C. 1592.

Subpart A – General Provisions

§ 165.1 Definitions.

As used in this part, the following terms will have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular section of this part:

Allegation. The term “allegation” refers to a filing with CBP under § 165.11 by an interested party that alleges an act of evasion by an importer of AD/CVD orders.

AD. The term “AD” refers to antidumping duty, consistent with section 736, Tariff Act of 1930, as amended (19 U.S.C. 1673e).

AD/CVD. The term “AD/CVD” refers to antidumping/countervailing duty, as these terms are defined in this section.

Covered merchandise. The term “covered merchandise” means merchandise that is subject to a CVD order issued under section 706, Tariff Act of 1930, as amended (19 U.S.C. 1671e), and/or an AD order issued under section 736, Tariff Act of 1930, as amended (19 U.S.C. 1673e).

CVD. The term “CVD” refers to countervailing duty, consistent with section 706, Tariff

Act of 1930, as amended (19 U.S.C. 1671e).

Enter or entry. The terms “enter” and “entry” refer to the entry for consumption, or withdrawal from warehouse for consumption, of merchandise in the customs territory of the United States, see § 101.1 of this chapter, or to the filing with CBP of the necessary documentation to withdraw merchandise from a duty-deferral program in the United States for exportation to Canada or Mexico or for entry into a duty-deferral program in Canada or Mexico, see §§ 141.0a(f) and 181.53 of this chapter.

Evade or evasion. The terms “evade” and “evasion” refer to the entry of covered merchandise into the customs territory of the United States for consumption by means of any document or electronically transmitted data or information, written or oral statement, or act that is material and false, or any omission that is material and that results in any cash deposit or other security or any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the covered merchandise.

Interested party. The term “interested party” in this part refers only to the following:

(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;

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

Investigation. The term “investigation” refers to the CBP administrative process described in subpart C of this part, and is a formal investigation within the meaning of section 592(c)(4), Tariff Act of 1930, as amended (19 U.S.C. 1592(c)(4)).

Parties to the investigation. The phrase “parties to the investigation” means the interested party (or interested parties, in the case of consolidation pursuant to § 165.13) who filed the allegation of evasion and the importer (or importers, in the case of consolidation pursuant to § 165.13) who allegedly engaged in evasion. In the case of investigations initiated based upon a request from a Federal agency, parties to the investigation only refers to the importer or importers who allegedly engaged in evasion, and not the Federal agency.

Regulations and Rulings. The term “Regulations and Rulings” means the Executive Director, Regulations and Rulings, Office of Trade, or his or her designee.

TRLED. The term “TRLED” refers to the Trade Remedy Law Enforcement Directorate, Office of Trade, that conducts the investigation of alleged evasion under this part, and that was established as required by section 411 of the EAPA.

§ 165.2 Entries subject to this part.

Entries that may be the subject of an allegation made under § 165.11 or a request for an investigation under § 165.14 are those entries of allegedly covered merchandise made within one year before the receipt of an allegation under § 165.11 or of a request for an investigation under § 165.14. In addition, at its discretion, CBP may investigate other entries of such covered merchandise.

§ 165.3 Power of attorney.

(a) When required. Any submission made under this part other than by a principal or its employees may be filed by a person acting as agent or attorney in fact for the principal; a power of attorney must specifically authorize such person to make, sign, and file the submission or grant unlimited authority to such person.

(b) Exception. No power of attorney is required for an attorney at law to act as agent or attorney for the principal. The signing of a submission as agent or attorney for the principal by the attorney at law will be considered a declaration by the attorney that the attorney is currently an active member in good standing of the highest court of a state, possession, territory, commonwealth, or the District of Columbia, and has been authorized to sign and file the submission for the principal.

(c) Execution--(1) Corporation. A corporate power of attorney to file the submissions described in paragraph (a) of this section must be signed by a duly authorized officer or employee of the corporation.

(2) Partnership. A partnership power of attorney to file the submissions described in paragraph (a) of this section must be signed by at least one member in the name of the partnership or by at least one duly authorized employee of the partnership, provided the power recites the name(s) of all of the members.

(3) Other persons. A power of attorney filed by a person other than a corporation or partnership must be signed by that person or an employee of that person who has the legal authority to act on that person's behalf when filing the submissions described in paragraph (a) of this section.

(d) Revocation. Any power of attorney will be subject to revocation at any time by written notice given to and received by CBP, Office of Trade.

(e) Proof. CBP will require proof of execution of a power of attorney, where applicable, the first time that an agent makes a submission on behalf of any interested party during an investigation or administrative review of a determination as to evasion. CBP may require proof of authority to execute a power of attorney pursuant to paragraph (c) of this section, at any point during the proceedings described in this part.

§ 165.4 Release of information provided by interested parties.

(a) Claim for business confidential treatment. Any interested party that makes a submission to CBP in connection with an investigation under this part, including for its initiation and administrative review, may request that CBP treat any part of the submission as business confidential information except for the information specified in paragraph (c) of this section. Business confidential treatment will be granted if the requirements of this section are satisfied and the information for which protection is sought 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).

(1) Identification of business confidential information. An interested party submitting information must identify the information for which business confidential treatment is claimed by enclosing the claimed confidential information within single brackets. The first page of any

submission containing business confidential information must clearly state that the submission contains business confidential information. The submitting interested party must also provide with the claimed business confidential information an explanation of why each item of bracketed information is entitled to business confidential treatment.

(2) Public version. An interested party filing a submission containing claimed business confidential information must also file a public version of the submission. The public version must be filed on the same date as the business confidential version and contain a summary of the bracketed 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. The public version must be clearly marked as a public version on the first page.

(b) Nonconforming submissions. CBP will reject a submission that includes a request for business confidential treatment but does not meet the requirements of paragraph (a) of this section.

(1) Notice of rejection. If CBP determines that the claim of confidentiality is nonconforming, it will treat the relevant portion of the submission as business confidential information until the appropriate corrective action is taken or the submission is rejected.

(2) Corrective action. The submitting interested party may take any of the following actions within two business days after receiving CBP's notice of rejection:

(i) Correct the problems and resubmit the information by an e-mail message or through any other method approved or designated by CBP;

(ii) If CBP denies a request for business confidential treatment, agree to have the information in question treated as public information;

(iii) Submit other material concerning the subject matter in lieu of the rejected information.

(3) Effects of rejection. If the submitting interested party does not take any of the actions in paragraph (b)(2) of this section, CBP will not consider the rejected submission and, if applicable, adverse inferences may be drawn pursuant to § 165.6.

(c) Information that will not be protected as confidential. The following information provided by a party to the investigation in an allegation of evasion will not be protected as business confidential information and will be treated as public pursuant to the certification of informed consent referenced in § 165.11(c):

(1) Name of the party to the investigation providing the information and identification of the agent filing on its behalf, if any, and e-mail address for communication and service purposes;

(2) Specification as to the basis upon which the party making the allegation qualifies as an interested party as defined in § 165.1;

(3) Name and address of importer against whom the allegation is brought;

(4) Description of covered merchandise; and

(5) Applicable AD/CVD orders.

(d) Certification. In accordance with paragraph (a)(2) of this section, when providing a public version of their submissions, interested parties must certify that the information they are providing is either their own information (i.e., information from their own business records and not business confidential information of another entity) or information that was publicly obtained or in the public domain.

(e) Information placed on the record by CBP. Any information that CBP places on the administrative record, when obtained other than from an interested party subject to the

requirements of this section, will include a public summary of the business confidential information as described in paragraph (a)(2) of this section, when applicable.

§ 165.5 Obtaining and submitting information.

(a) Obtaining of information by CBP. In obtaining information necessary to carry out its functions and duties under this part, CBP may employ any means authorized by law. In general, CBP will obtain information from its own files, from other agencies of the United States Government, through questionnaires and correspondence, and through field work by its officials.

(b) Submissions to CBP. The following requirements pertain to all parties who knowingly make submissions covered in this part:

(1) Form. All submissions to CBP must be in writing in the English language or accompanied by an adequate English language translation as they will be part of the record for proceedings and determinations covered in this part. Oral discussions or communications with CBP will not be considered part of the record, unless they are memorialized in a written document that is placed on the record. All submissions must be made electronically to the designated e-mail address specified by CBP for purposes of the investigation or through any other method approved or designated by CBP.

(2) Certifications. Every written submission made to CBP by an interested party under this part must be accompanied by the following certifications from the person making the submission:

(i) “On behalf of the party making this submission, I certify that all statements in this submission (and any attachments) are accurate and true to the best of my knowledge and belief.”

(ii) “On behalf of the party making this submission, I certify that any information for which I have not requested business confidential treatment pursuant to 19 CFR 165.4(a), may be

released for public consumption.”

(iii) “On behalf of the party making this submission, I certify that I will advise CBP promptly of any knowledge of or reason to suspect that the covered merchandise poses any health or safety risk to U.S. consumers pursuant to 19 CFR 165.7(a).”

(3) False statement. Any interested party that provides a material false statement or makes a material omission or otherwise attempts to conceal material facts at any point in the proceedings may be subject to adverse inferences (see § 165.6) and prosecution pursuant to 18 U.S.C. 1001.

(c) Compliance with CBP time limits--(1) Requests for extensions. CBP may, for good cause, extend any regulatory time limit if a party requests an extension in a separate, stand-alone submission and states the reasons for the request. Such requests must be submitted no less than three business days before the time limit expires unless there are extraordinary circumstances. An extraordinary circumstance is an unexpected event that could not have been prevented even if reasonable measures had been taken. 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.

(2) Rejection of untimely submissions. If a submission is untimely filed, then CBP will not consider or retain it in the administrative record and adverse inferences may be applied, if applicable.

§ 165.6 Adverse inferences.

(a) In general. If the party to the investigation that filed an allegation, the importer, or the foreign producer or exporter of the covered merchandise fails to cooperate and comply to the best of its ability with a request for information made by CBP, CBP may apply an inference

adverse to the interests of that party in selecting from among the facts otherwise available to make the determination as to evasion pursuant to § 165.27 and subpart D of this part.

(b) Other adverse inferences. CBP may also apply an inference adverse to the interests of a party based on a prior determination in another CBP investigation, proceeding, or action that involves evasion with respect to AD/CVD orders, or any other available information.

(c) Application. An adverse inference described in this section may be used with respect to the importer of the covered merchandise, or the foreign producer or exporter of the covered merchandise without regard to whether another party involved in the same transaction or transactions under examination has provided the information sought by CBP, such as import or export documentation.

§ 165.7 Protection of public health and safety.

(a) Notification to CBP. Any interested party, including an importer, must promptly notify CBP if it has knowledge or reason to suspect that the covered merchandise may pose a health or safety risk to U.S. consumers at any point during the proceedings described in this part.

(b) Transmission by CBP. During the course of an investigation or administrative review of a determination as to evasion under this part, CBP will consider whether the covered merchandise may pose a health or safety risk to U.S. consumers and will take into account any notification received under paragraph (a) of this section. CBP will promptly transmit information to the appropriate Federal agencies for purposes of mitigating the risk and will exercise its administrative powers, as appropriate.

Subpart B – Initiation of Investigations

§ 165.11 Allegations by interested parties.

(a) Filing of allegation. Any interested party, as defined in § 165.1, may file an

allegation that an importer of covered merchandise has evaded AD/CVD orders. An allegation must be filed electronically through the appropriate portal on CBP's online e-Allegations system or through any other method approved or designated by CBP. Each allegation must be limited to one importer, but an interested party may file multiple allegations. An allegation must satisfy the requirements in paragraphs (b) through (d) of this section.

(b) Contents. An allegation of evasion must include, but is not limited to, the following information:

(1) Name of the interested party making the allegation and identification of the agent filing on its behalf, if any, and the e-mail 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.

(c) Certifications. An allegation must also be accompanied by the certifications required under § 165.5(b) and the following statement of informed consent from the person making the submission: "I certify my understanding and consent that the information provided for in § 165.11(b)(1) through (5) may be released for public consumption."

(d) Signature. The person signing the allegation on behalf of the interested party must include his or her name, position in the company or other affiliation, and provide contact information. Electronic submission of this information will be considered "signed" for purpose

of filing the allegation.

(e) Technical assistance and guidance--(1) Availability. CBP will provide technical assistance and guidance for the preparation of an allegation of evasion and its submission to CBP, as described in this section.

(i) Small businesses. Small businesses are entitled to technical assistance upon request. In general, small businesses are eligible to make such requests if they have neither adequate internal resources nor financial ability to obtain qualified outside assistance in preparing and submitting for CBP's consideration allegations of evasion. Small businesses must satisfy the applicable standards set forth in 15 U.S.C. 632 and implemented in 13 CFR part 121.

(ii) Other parties. Other parties may request technical assistance, which CBP may provide if resources are reasonably available.

(2) Requests. Requests for technical assistance may be made at any time via the e-mail address designated on CBP's online e-Allegations system or through any other method approved or designated by CBP.

(3) Limitations. The act of providing technical assistance is not part of the record for the investigation, nor does it compel a decision by CBP to initiate an investigation pursuant to § 165.15.

§ 165.12 Receipt of allegations.

(a) Date of receipt. The "date of receipt" of a properly filed allegation is the date on which CBP provides an acknowledgment of receipt of an allegation containing all the information and certifications required in § 165.11, together with a CBP-assigned control

number, to the party that filed the allegation. CBP has 15 business days from the date of receipt to determine whether to initiate an investigation under the EAPA.

(b) Withdrawal. An allegation may be withdrawn by the party that filed it if that party submits a request to withdraw the allegation to the designated e-mail address specified by CBP.

§ 165.13 Consolidation of allegations.

(a) In general. Multiple allegations against one or more importers may be consolidated into a single investigation at CBP's discretion. Consolidations may be made at any point prior to the issuance of a determination as to evasion with respect to a particular importer. If multiple allegations are received and consolidated prior to the initiation of an investigation, then the date of receipt of the first properly filed allegation will start the time period for the deadline to initiate the investigation described in § 165.15 with respect to that allegation.

(b) Criteria. CBP may consolidate multiple allegations if warranted based on the consideration of certain factors. The factors that CBP may consider include, but are not limited to, whether the multiple allegations involve:

- (1) Relationships between the importers;
- (2) Similarity of covered merchandise;
- (3) Similarity of AD/CVD orders; and
- (4) Overlap in time periods for entries of covered merchandise.

(c) Notice. Notice of consolidation will be promptly transmitted to all parties to the investigation if consolidation occurs at a point in the investigation after which they have already been notified of the ongoing investigation. Otherwise, parties will be notified no later than 95 calendar days after the date of initiation of the investigation.

(d) Service requirements for other parties to the investigation. Upon notification of consolidation, parties to the consolidated investigation must serve via an e-mail message or through any other method approved or designated by CBP upon the newly added parties to the investigation the public versions of any documents that were previously served upon parties to the unconsolidated investigation. Service must take place within five business days of the notice of consolidation.

§ 165.14 Other Federal agency requests for investigations.

(a) Requests for investigations. Any other Federal agency, including the Department of Commerce or the United States International Trade Commission, may request an investigation under this part. CBP will initiate an investigation if the Federal agency has provided information that reasonably suggests that an importer has entered covered merchandise into the customs territory of the United States through evasion, unless the agency submits a request to withdraw to the designated e-mail address specified by CBP.

(b) Contents of requests. The following information must be included in the request for an investigation:

- (1) Name of importer against whom the allegation is brought;
- (2) Description of the covered merchandise;
- (3) Applicable AD/CVD orders;
- (4) Information that reasonably suggests that an importer has entered covered merchandise into the customs territory of the United States through evasion;
- (5) Identification of a point of contact at the agency; and
- (6) Notification of any knowledge of or reason to suspect that the covered merchandise poses any health or safety risk to U.S. consumers.

(c) Receipt of requests. Requests for an investigation must be filed electronically via CBP's online e-Allegations system or through any other method approved or designated by CBP. The date of receipt is the date that CBP transmits notice of the assigned control number to the Federal agency that filed the request.

(d) Notice of release of information--(1) Public information. CBP will treat the information required by paragraphs (b)(1) through (3) of this section as public information.

(2) Business confidential treatment. CBP will create a public summary of the information required by paragraphs (b)(4) and (6) of this section.

(e) Access to investigation. The Federal agency is not a party to the investigation. Therefore, it will neither receive official notice of developments after CBP's receipt of the request for an investigation nor will it receive service of any documents filed by interested parties. Only the parties to the investigation will be entitled to notice and service, as well as the related rights to administrative review and judicial review.

§ 165.15 Initiation of investigations.

(a) Time for determination. CBP will make a determination as to whether to initiate an investigation on or before the 15th business day after the date on which a properly filed allegation is received under § 165.12(a) or a request for an investigation is received from a Federal agency under § 165.14.

(b) Criteria for initiation. CBP will initiate an investigation under subpart C of this part if the following criteria are satisfied:

(1) Nature of merchandise. The covered merchandise described in the allegation or Federal agency request for an investigation is properly within the scope of an AD/CVD order. If CBP lacks sufficient information to make such determination as to the scope of the order, then it

will refer the matter to the Department of Commerce pursuant to § 165.16.

(2) Likelihood of evasion. The information provided in the allegation or Federal agency request for an investigation reasonably suggests that the covered merchandise has been entered for consumption into the customs territory of the United States through evasion as it is defined in § 165.1.

(c) Exceptions. Even if the criteria in paragraph (b) of this section are satisfied, CBP will not initiate an investigation under the following circumstances:

(1) Clerical error. A clerical error, as defined in 19 U.S.C. 1517(a)(5)(B), is not evasion, although CBP will take appropriate actions to ensure that AD/CVD duties are assessed and collected.

(2) Withdrawal. An allegation or a request for an investigation from another Federal agency may be withdrawn pursuant to the requirements of § 165.12(b) or § 165.14(a), as applicable.

(d) Notification of the investigation. If CBP determines that it will not initiate an investigation, it will notify the interested party who filed the allegation within five business days of that determination. Otherwise, the parties to the investigation will be notified consistent with the following time limits:

(1) In general. CBP will issue notification of its decision to initiate an investigation to all parties to the investigation no later than 95 calendar days after the decision has been made, and the actual date of initiation will be specified therein. However, notification to all parties to the investigation will occur no later than five business days after interim measures are taken pursuant to § 165.24.

(2) Consolidated allegations. If multiple allegations are consolidated, any interested

party who filed an allegation after initiation of an investigation will be notified by CBP of the date of the decision to initiate an investigation when that party receives notice of consolidation under § 165.13(c).

(e) Record of the investigation. If an investigation is initiated pursuant to subpart B of this part, then the information considered by CBP prior to initiation will be part of the administrative record pursuant to § 165.21.

§ 165.16 Referrals to Department of Commerce.

(a) When required. A referral is required if at any point after receipt of an allegation, CBP cannot determine whether the merchandise described in an allegation is properly within the scope of an antidumping or countervailing duty order.

(b) Referral. The referral may contain any necessary information available to CBP regarding whether the merchandise described in an allegation is subject to the relevant AD/CVD orders.

(c) Notice of referral. TRLED will promptly notify the parties to the investigation of the date of the referral.

(d) Effect on investigation. The time period required for any referral and determination by the Department of Commerce will not be counted toward the deadlines for CBP to decide on whether to initiate an investigation under § 165.15 or the deadline to issue a determination as to evasion under § 165.27.

(e) Notice of decision. CBP will place the determination by the Department of Commerce on the administrative record of CBP's proceeding and will electronically notify the parties to the investigation.

Subpart C -- Investigation Procedures

§ 165.21 Administrative record.

(a) Administrative record. CBP will maintain a record for purposes of making a determination as to evasion under § 165.27 and conducting an administrative review under § 165.46. The administrative record will contain all of the following, if applicable, but is not limited to:

(1) Materials obtained and considered by CBP during the course of an investigation under this part;

(2) Factual information submitted pursuant to § 165.23;

(3) Information obtained during and the results of any verification conducted pursuant to § 165.25;

(4) Materials from other agencies provided to CBP pursuant to the investigation;

(5) Written arguments submitted pursuant to § 165.26 and subpart D of this part; and

(6) Summaries of oral discussions with interested parties relevant to the investigation pursuant to § 165.23.

(b) Maintenance of the record. CBP will maintain the administrative record of each investigation or review conducted by CBP pursuant to this part. All information properly filed with CBP pursuant to §§ 165.4 and 165.5 will be placed on the administrative record. CBP will not consider in its determinations or include on the administrative record any information that is not properly filed with CBP.

§ 165.22 Time for investigations.

(a) Time for determination. Unless CBP has extended the deadline in accordance with paragraph (c) of this section or due to a referral to the Department of Commerce pursuant to §

165.16, CBP will make a determination under § 165.27 not later than 300 calendar days after the date on which CBP initiates an investigation under § 165.15 with respect to whether covered merchandise was entered through evasion.

(b) Time for determination with consolidated allegations. If CBP consolidates multiple allegations under § 165.13 into a single investigation under § 165.15, the date on which CBP receives the first of such allegations will be used for the purposes of the requirement under paragraph (a) of this section with respect to the timing of the initiation of the investigation.

(c) Extension of time for determination. CBP may extend the time to make a determination under paragraph (a) of this section by not more than 60 calendar days if CBP determines that—

(1) The investigation is extraordinarily complicated because of—

(i) The number and complexity of the transactions to be investigated;

(ii) The novelty of the issues presented; or

(iii) The number of entities to be investigated; and

(2) Additional time is necessary to make the determination under paragraph (a) of this section.

(d) Notification of extension of time for determination. CBP will notify all parties to the investigation of an extension not later than 300 calendar days after the date on which CBP initiates an investigation under § 165.15.

§ 165.23 Submission of factual information.

All submissions of factual information to CBP must comply with the requirements specified in §§ 165.4 and 165.5 and this section. The submissions will be placed on the administrative record.

(a) Request for information by CBP. In making a determination under § 165.27, CBP may require additional information as is necessary, from, among others:

- (1) An interested party that filed an allegation under § 165.11;
- (2) An importer who allegedly engaged in evasion;
- (3) A person that is a foreign producer or exporter of covered merchandise; and/or
- (4) The government of a country from which covered merchandise may have been

exported.

(b) Voluntary submission of factual information. Any party to the investigation may submit additional information in order to support the allegation of evasion or to negate or clarify the allegation of evasion.

(c) Time limits and service requirements--(1) Responses to CBP requests for factual information. Factual information requested by CBP pursuant to paragraph (a) of this section must be submitted to CBP within the timeframe set forth by CBP in the request. The public version must also be served via an e-mail message or through any other method approved or designated by CBP on the parties to the investigation. If 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.

(2) Voluntary submission of factual information. Factual information voluntarily submitted to CBP pursuant to paragraph (b) of this section must be submitted no later than 200 calendar days after CBP initiated the investigation under § 165.15. The public version must also be served via an e-mail message or through any other method approved or designated by CBP on

the parties to the investigation. Voluntary submissions made after the 200th calendar day after initiation of the investigation will not be considered or placed on the administrative record, except rebuttal information as permitted pursuant to the next sentence herein. Parties to the investigation will have ten calendar days from the date of service of any factual information or from the date of placement of any factual information on the record to provide rebuttal information to that factual information, if the information being rebutted was placed on the administrative record no later than 200 calendar days after CBP initiated the investigation under § 165.15.

(d) Oral discussions. Notwithstanding the time limits in paragraph (c) of this section, CBP may request oral discussions either in-person or by teleconference. CBP will memorialize such discussions with a written summary that identifies who participated and the topic of discussion. In the event that confidential business information is included in the written summary, CBP will also place a public version on the administrative record.

§ 165.24 Interim measures.

(a) Reasonable suspicion. No later than 90 calendar days after initiating an investigation under § 165.15, CBP will take interim measures if there is a reasonable suspicion that the importer entered covered merchandise into the customs territory of the United States through evasion.

(b) Measures. If CBP decides that there is reasonable suspicion under paragraph (a) of this section, then:

(1) For entries that remain unliquidated, CBP will:

(i) Suspend the liquidation of each unliquidated entry of such covered merchandise that entered on or after the date of the initiation of the investigation under § 165.15;

(ii) Extend the period for liquidating each unliquidated entry of such covered merchandise that entered before the date of the initiation of the investigation under § 165.15 pursuant to section 504(b), Tariff Act of 1930, as amended (19 U.S.C. 1504(b)); and

(iii) Take such additional measures as CBP determines necessary to protect the revenue of the United States, including requiring a single transaction bond or additional security or the posting of a cash deposit with respect to such covered merchandise pursuant to section 623, Tariff Act of 1930, as amended (19 U.S.C. 1623).

(2) For entries that are liquidated, CBP may initiate or continue any appropriate measures separate from this proceeding.

(c) Notice. If CBP decides that there is reasonable suspicion under paragraph (a) of this section, CBP will issue notification of this decision to the parties to the investigation within five business days after taking interim measures. CBP will also provide parties to the investigation with a public version of the administrative record as of that date.

§ 165.25 Verifications of information.

(a) Prior to making a determination under § 165.27, CBP may in its discretion verify information in the United States or foreign countries collected under § 165.23 as is necessary to make its determination.

(b) CBP will place any relevant information on the administrative record and provide a public summary.

§ 165.26 Written arguments.

All written arguments submitted to CBP pursuant to a proceeding under this part must comply with the requirements specified in §§ 165.4 and 165.5 and this section. The submissions will be placed on the administrative record.

(a) Written arguments. Parties to the investigation:

(1) May submit to CBP written arguments that contain all arguments that are relevant to the determination as to evasion and based solely upon facts already on the administrative record in that proceeding. All written arguments must be submitted to the designated e-mail address specified by CBP or through any other method approved or designated by CBP no later than 230 calendar days after the investigation was initiated pursuant to § 165.15; and

(2) Must serve a public version of the written arguments prepared in accordance with § 165.4 on the other parties to the investigation by an e-mail message or through any other method approved or designated by CBP the same day it is filed with CBP.

(b) Responses to the written arguments. Parties to the investigation:

(1) May submit to CBP a response to a written argument filed by another party to the investigation. The response must be in writing and submitted to the designated e-mail address specified by CBP or through any other method approved or designated by CBP no later than 15 calendar days after the written argument was filed with CBP. The response must be limited to the issues raised in the written argument; any portion of a response that is outside the scope of the issues raised in the written argument will not be considered; and

(2) Must serve a public version of the response prepared in accordance with § 165.4 on the other parties to the investigation by an e-mail message or through any other method approved or designated by CBP the same day it is filed with CBP.

(c) Written arguments submitted upon request. Notwithstanding paragraphs (a) and (b) of this section, CBP may request written arguments on any issue from any party to the investigation at any time during an investigation.

(d) Form of written argument and response to the written arguments. The written

argument and response to the written argument must be double-spaced, with headings and footnotes single-spaced, margins one inch on all four sides, and font Times New Roman, 12-point font size. The written argument must be no more than 50 pages in length, including exhibits, and the response to the written argument must be no more than 50 pages in length, including exhibits, excluding any pages containing the table of contents and the table of cited authorities. Each written argument and response to the written argument must contain:

(1) The name, address, and e-mail address of the party and of his or her duly authorized agent or attorney at law (if represented by a duly authorized agent or attorney at law);

(2) A summary of the argument or response to the argument, which is a concise summary;

(3) The argument or response to the argument that clearly and accurately presents points of fact and law with applicable citations;

(4) A table of contents and a table of cited authorities; and

(5) A conclusion that states a proposal for CBP's determination as to evasion.

§ 165.27 Determination as to evasion.

(a) Determination. Upon conclusion of the investigation, CBP will make a determination based on substantial evidence as to whether covered merchandise was entered into the customs territory of the United States through evasion.

(b) Notification. No later than five business days after making a determination under paragraph (a) of this section, CBP will send via an e-mail message or through any other method approved or designated by CBP a summary of the determination limited to publicly available information under paragraph (a) to the parties to the investigation.

(c) Negative determination. If CBP makes a determination under paragraph (a) of this

section that covered merchandise was not entered into the customs territory of the United States through evasion, then CBP will cease applying any interim measures taken under § 165.24 and liquidate the entries in the normal course.

§ 165.28 Assessments of duties owed; other actions.

(a) Effect on liquidation. For entries of covered merchandise that are already liquidated when an affirmative determination is made as to evasion under § 165.27, CBP will initiate or continue any appropriate actions separate from this proceeding. For entries of covered merchandise that are unliquidated:

(1) Suspension of liquidation. (i) CBP will suspend the liquidation of unliquidated entries of covered merchandise that is subject to the determination and that entered on or after the date of the initiation of the investigation under § 165.15 with respect to such covered merchandise; or

(ii) If CBP has already suspended the liquidation of such entries pursuant to § 165.24, then CBP will continue to suspend their liquidation.

(2) Extension of liquidation. (i) If liquidation is not suspended, then CBP will extend the period for liquidating the unliquidated entries of covered merchandise that is subject to the determination, pursuant to CBP's authority under section 504(b), Tariff Act of 1930, as amended (19 U.S.C. 1504(b)); or

(ii) If CBP has already extended the period for liquidating such entries pursuant to § 165.24, then CBP will continue to extend the period for liquidating such entries.

(b) Notification to the Department of Commerce. If CBP makes a determination under § 165.27 that covered merchandise was entered into the customs territory of the United States through evasion, CBP will notify the Department of Commerce of the determination and request, if necessary, that the Department of Commerce:

(1) Identify the applicable antidumping or countervailing duty assessment rates for merchandise covered by the determination; and/or

(2) If no assessment rate is available at the time, identify the applicable cash deposit rate to be applied, with the applicable antidumping or countervailing duty assessment rate to be provided as soon as that rate becomes available.

(c) Cash deposits and duty assessment. CBP will require the posting of cash deposits and assess duties on entries of covered merchandise subject to its affirmative determination of evasion.

Subpart D – Administrative Review of Determinations

§ 165.41 Filing a request for review of the initial determination.

(a) How to file a request for administrative review. Requests for administrative review of the initial determination as to evasion pursuant to § 165.27 must be submitted electronically to Regulations and Rulings, in a manner as prescribed by CBP. Requests for review may be filed by any party to the investigation or its attorney at law, or duly authorized agent, and must comply with the requirements specified in § 165.3. Electronic signatures are acceptable.

(b) Release of information and service. Requests for review must comply with the requirements for release of information specified in § 165.4.

(c) Notice to parties to the investigation. Each party who files a request for review must provide the other parties to the investigation with a public version in accordance with § 165.4.

(d) When filed. Requests for review must be filed no later than 30 business days after the issuance of the initial determination as to evasion. Untimely or incomplete requests for review will not be accepted.

(e) True and accurate information. All requests must be accompanied by the

certifications required pursuant to § 165.5. Any false statements contained in a request for review may subject the party to prosecution under 18 U.S.C. 1001 or other applicable laws.

(f) Content. Each request for review must be based solely on the facts already upon the administrative record in the proceeding, in writing, and may not exceed 30 pages. It must be double-spaced with headings and footnotes single spaced, margins one inch on all four sides, and 12-point font Times New Roman. If it exceeds 10 pages, it must include a table of contents and a table of cited authorities. Each request for review must set forth the following:

(1) The allegation control number assigned by CBP with respect to the investigation under consideration;

(2) The name, address and e-mail address of the party seeking review and the name, address and e-mail address of his or her duly authorized agent or attorney at law (if represented by a duly authorized agent or an attorney at law);

(3) A statement of the procedural history and facts as set forth in the administrative record and identified by specific page number or exhibit number and relied upon by the party to prove or establish whether evasion occurred or not;

(4) A concise summary of the argument;

(5) The argument expressing clearly and accurately the points of fact and of law presented and citing the authorities and statutes relied on; and

(6) A conclusion specifying whether the initial determination should be affirmed or reversed.

(7) Each party seeking business confidential treatment must comply with the requirements in § 165.4.

(g) Assigned case number. Upon receipt of a timely request for review, the submission

will be reviewed to ensure it has been properly filed. If the submission has been properly filed, a case number will be assigned for tracking purposes.

(h) Consolidation of requests for administrative review. Multiple requests for review under the same allegation control number assigned by CBP involving the same importer and merchandise may be consolidated into a single administrative review matter.

(i) Commencement of administrative review. The 60 business-day review period will commence on the date when CBP accepts the last properly filed request for administrative review and transmits electronically the assigned administrative review case number to all parties to the investigation. All properly filed requests for administrative review must be submitted to CBP no later than 30 business days after the issuance of the initial determination.

§ 165.42 Responses to requests for administrative review.

Any party to the investigation, regardless of whether it submitted a request for administrative review, may submit a written response to the filed request(s) for review. Each written response may not exceed 30 pages in total (including exhibits but not table of contents or table of authorities) and must follow the requirements in § 165.41(f). The written responses to the request(s) for review must be limited to the issues raised in the request(s) for review and must be based solely on the facts already upon the administrative record in that proceeding. The responses must be filed in a manner prescribed by CBP no later than 10 business days from the commencement of the administrative review. All responses must be accompanied by the certifications provided for in § 165.5. Each party seeking business confidential treatment must comply with the requirements in § 165.4. The public version of the response(s) to the request(s) for review must be provided to the other parties to the investigation via an e-mail message or through any other method approved or designated by CBP.

§ 165.43 Withdrawal.

Requests for review and responses to requests for review will remain part of the administrative record and cannot be withdrawn.

§ 165.44 Additional information.

CBP may request additional written information from the parties to the investigation at any time during the review process. The parties who provide the requested additional information must provide a public version to the other parties to the investigation via an e-mail message or through any other method approved or designated by CBP. The submission of additional information requested by CBP must comply with requirements for release of information in § 165.4. CBP may apply an adverse inference as stated in § 165.6 if the additional information requested under this section is not provided.

§ 165.45 Standard for administrative review.

CBP will apply a de novo standard of review and will render a determination appropriate under law according to the specific facts and circumstances on the record. For that purpose, CBP will review the entire administrative record upon which the initial determination was made, the timely and properly filed request(s) for review and responses, and any additional information that was received pursuant to § 165.44. The administrative review will be completed within 60 business days of the commencement of the review.

§ 165.46 Final administrative determination.

(a) Finality. The final administrative determination issued by Regulations and Rulings will be in writing and will set forth the conclusion reached on the matter. The conclusion will be transmitted electronically to all parties to the investigation. The final administrative determination is subject to judicial review pursuant to section 421 of the EAPA.

(b) Effect of the final administrative determination. If the final administrative determination affirms the initial determination as to evasion, then no further CBP action is needed. If the final administrative determination reverses the initial determination, then CBP will take appropriate actions consistent with the final administrative determination.

§ 165.47 Potential penalties and other actions.

CBP and other government agencies reserve the right to undertake additional investigations or enforcement actions in cases covered by these provisions. Nothing within this part prevents CBP from assessing penalties of any sort related to such cases or taking action under any other relevant laws.

R. Gil Kerlikowske,
Commissioner, U.S.
Customs and Border,
Protection.

Approved: August 17, 2016.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.
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