

United States Senate

WASHINGTON, DC 20510

June 28, 2016

The Honorable Jeh Johnson
United States Secretary of the Department of Homeland Security
245 Murray Lane SW
Washington, D.C. 20528

The Honorable R. Gil Kerlikowske
Commissioner
U.S. Customs and Border Protection
1300 Pennsylvania Ave. NW
Washington, DC 20229

Dear Secretary Johnson & Commissioner Kerlikowske:

The Trade Facilitation and Trade Enforcement Act of 2015 (the “Act”) contains a new transformative framework to support CBP’s mission to defend the U.S. economy, businesses, and workers from imports attempting to evade antidumping and countervailing duty (AD/CVD) laws. Section 421 of the Act (the “Enforce provisions”) requires CBP to create a process that promotes transparency, partnership with interested parties and accountability to address challenges with some of the traditional enforcement approaches adopted by CBP. As you move forward with finalizing Interim Final Regulations (“IFR”), we urge you to keep our goals in mind.

The IFR should ensure that all interested parties, including U.S. businesses and workers, can submit information, have access to the information submitted by other parties and a meaningful opportunity to comment on all of the information that CBP will rely on in making its determination. Simply accepting complaints from U.S. companies or workers is insufficient. They have a direct interest in the outcome of these proceedings and the expertise to assist with enforcement. Access to information will promote meaningful participation by all interested parties which will only lead to higher quality decisions. CBP must find a way to strike a balance between protecting confidential information while still providing stakeholders access to the information they need to contribute to these proceedings. We strongly encourage CBP to establish a process similar to the Administrative Protective Order process used by Commerce and the ITC.

There are additional areas where the IFR should promote transparency. CBP should notify interested parties of all key milestones, including initiation, interim measures, referrals to

Commerce, consolidation of multiple allegations and so forth. In addition, CBP's Enforce determinations should include explanations so interested parties and the larger trade community can understand CBP's reasoning.

We also encourage CBP to provide interested parties meaningful opportunities to provide affirmative and rebuttal arguments throughout the proceedings, including any administrative review. We understand that CBP is considering adopting an *inter partes* type mechanism for enforcement of ITC 337 exclusion orders. Enforcement of AD/CVD orders would also benefit from this type of process.

We applaud your leadership on trade enforcement issues and your willingness to embrace a new path for addressing AD/CVD evasion.

Sincerely yours,



Rob Portman
U.S. Senator



Sherrod Brown
U.S. Senator



Roy Blunt
U.S. Senator



Debbie Stabenow
U.S. Senator



Ben Cardin
U.S. Senator