

(c) Preventing and countering evasion of the trade remedy laws

In carrying out its duties with respect to preventing and countering evasion, the National Targeting and Analysis Group dedicated to preventing and countering evasion shall—

(1) establish targeted risk assessment methodologies and standards—

(A) for evaluating the risk that cargo destined for the United States may constitute evading covered merchandise; and

(B) for issuing, as appropriate, Trade Alerts described in subsection (d); and

(2) to the extent practicable and otherwise authorized by law, use information available from the Automated Commercial System, the Automated Commercial Environment, the Automated Targeting System, the Automated Export System, the International Trade Data System established under section 1411(d) of this title, and the TECS (formerly known as the “Treasury Enforcement Communications System”), and any similar and successor systems, to administer the methodologies and standards established under paragraph (1).

(d) Trade Alerts

Based upon the application of the targeted risk assessment methodologies and standards established under subsection (c), the Director of the Trade Remedy Law Enforcement Division shall issue Trade Alerts or other such means of notification to directors of United States ports of entry directing further inspection, physical examination, or testing of merchandise to ensure compliance with the trade remedy laws and to require additional bonds, cash deposits, or other security to ensure collection of any duties, taxes, and fees owed.

(Pub. L. 114–125, title IV, § 411, Feb. 24, 2016, 130 Stat. 156.)

§ 4372. Collection of information on evasion of trade remedy laws**(a) Authority to collect information**

To determine whether covered merchandise is being entered into the customs territory of the United States through evasion, the Secretary, acting through the Commissioner—

(1) shall exercise all existing authorities to collect information needed to make the determination; and

(2) may collect such additional information as is necessary to make the determination through such methods as the Commissioner considers appropriate, including by issuing questionnaires with respect to the entry or entries at issue to—

(A) a person who filed an allegation with respect to the covered merchandise;

(B) a person who is alleged to have entered the covered merchandise into the customs territory of the United States through evasion; or

(C) any other person who is determined to have information relevant to the allegation of entry of covered merchandise into the customs territory of the United States through evasion.

(b) Adverse inference**(1) Use of adverse inference****(A) In general**

If the Secretary finds that a person described in subparagraph (B) has failed to cooperate by not acting to the best of the person’s ability to comply with a request for information under subsection (a), the Secretary may, in making a determination whether an entry or entries of covered merchandise may constitute merchandise that is entered into the customs territory of the United States through evasion, use an inference that is adverse to the interests of that person in selecting from among the facts otherwise available to determine whether evasion has occurred.

(B) Person described

A person described in this subparagraph is—

(i) a person who filed an allegation with respect to covered merchandise;

(ii) a person alleged to have entered covered merchandise into the customs territory of the United States through evasion; or

(iii) a foreign producer or exporter of covered merchandise that is alleged to have entered into the customs territory of the United States through evasion.

(C) Application

An inference described in subparagraph (A) may be used under that subparagraph with respect to a person described in clause (ii) or (iii) of subparagraph (B) without regard to whether another person involved in the same transaction or transactions under examination has provided the information sought by the Secretary, such as import or export documentation.

(2) Adverse inference described

An adverse inference used under paragraph (1)(A) may include reliance on information derived from—

(A) the allegation of evasion of the trade remedy laws, if any, submitted to U.S. Customs and Border Protection;

(B) a determination by the Commissioner in another investigation, proceeding, or other action regarding evasion of the unfair trade laws; or

(C) any other available information.

(Pub. L. 114–125, title IV, § 412, Feb. 24, 2016, 130 Stat. 158.)

§ 4373. Additional information

Notwithstanding any other provision of law, the Secretary is authorized to provide to the Secretary of Commerce or the United States International Trade Commission any information that is necessary to enable the Secretary of Commerce or the United States International Trade Commission to assist the Secretary to identify, through risk assessment targeting or otherwise, covered merchandise that is entered into the customs territory of the United States through evasion.

(Pub. L. 114–125, title IV, §413(b), Feb. 24, 2016, 130 Stat. 160.)

§ 4374. Cooperation with foreign countries on preventing evasion of trade remedy laws

(a) Bilateral agreements

(1) In general

The Secretary shall seek to negotiate and enter into bilateral agreements with the customs authorities or other appropriate authorities of foreign countries for purposes of cooperation on preventing evasion of the trade remedy laws of the United States and the trade remedy laws of the other country.

(2) Provisions and authorities

The Secretary shall seek to include in each such bilateral agreement the following provisions and authorities:

(A) On the request of the importing country, the exporting country shall provide, consistent with its laws, regulations, and procedures, production, trade, and transit documents and other information necessary to determine whether an entry or entries exported from the exporting country are subject to the importing country's trade remedy laws.

(B) On the written request of the importing country, the exporting country shall conduct a verification for purposes of enabling the importing country to make a determination described in subparagraph (A).

(C) The exporting country may allow the importing country to participate in a verification described in subparagraph (B), including through a site visit.

(D) If the exporting country does not allow participation of the importing country in a verification described in subparagraph (B), the importing country may take this fact into consideration in its trade enforcement and compliance assessment activities regarding the compliance of the exporting country's exports with the importing country's trade remedy laws.

(b) Consideration

The Commissioner is authorized to take into consideration whether a country is a signatory to a bilateral agreement described in subsection (a) or a party to the USMCA (as defined in section 4502 of this title) and the extent to which the country is cooperating under the bilateral agreement or the USMCA, as the case may be, for purposes of trade enforcement and compliance assessment activities of U.S. Customs and Border Protection that concern evasion by such country's exports.

(c) Report

Not later than December 31 of each calendar year beginning after February 24, 2016, the Secretary shall submit to the appropriate congressional committees a report summarizing—

(1) the status of any ongoing negotiations of bilateral agreements described in subsection (a), including the identities of the countries involved in such negotiations;

(2) the terms of any completed bilateral agreements described in subsection (a); and

(3) bilateral cooperation and other activities conducted pursuant to or enabled by any completed bilateral agreements described in subsection (a).

(Pub. L. 114–125, title IV, §414, Feb. 24, 2016, 130 Stat. 160; Pub. L. 116–113, title IV, §401, Jan. 29, 2020, 134 Stat. 61.)

Editorial Notes

AMENDMENTS

2020—Subsec. (b). Pub. L. 116–113 inserted “or a party to the USMCA (as defined in section 4502 of this title)” after “subsection (a)” and “or the USMCA, as the case may be,” after “the bilateral agreement”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2020 AMENDMENT

Amendment by Pub. L. 116–113 effective on the date on which the USMCA enters into force (July 1, 2020), but not applicable to certain determinations under section 1516a of this title or binational panel reviews under NAFTA, see section 432 of Pub. L. 116–113, set out as a note under section 1516a of this title.

EFFECT OF TERMINATION OF USMCA COUNTRY STATUS

For provisions relating to effect of termination of USMCA country status on sections 401 to 432 of Pub. L. 116–113, see section 4601 of this title.

§ 4375. Trade negotiating objectives

The principal negotiating objectives of the United States shall include obtaining the objectives of the bilateral agreements described under section 4374(a) of this title for any trade agreements under negotiation as of February 24, 2016, or future trade agreement negotiations.

(Pub. L. 114–125, title IV, §415, Feb. 24, 2016, 130 Stat. 161.)

PART II—OTHER MATTERS

§ 4391. Allocation and training of personnel

The Commissioner shall, to the maximum extent possible, ensure that U.S. Customs and Border Protection—

(1) employs sufficient personnel who have expertise in, and responsibility for, preventing and investigating the entry of covered merchandise into the customs territory of the United States through evasion;

(2) on the basis of risk assessment metrics, assigns sufficient personnel with primary responsibility for preventing the entry of covered merchandise into the customs territory of the United States through evasion to the ports of entry in the United States at which the Commissioner determines potential evasion presents the most substantial threats to the revenue of the United States; and

(3) provides adequate training to relevant personnel to increase expertise and effectiveness in the prevention and identification of entries of covered merchandise into the customs territory of the United States through evasion.

(Pub. L. 114–125, title IV, §431, Feb. 24, 2016, 130 Stat. 169.)