

(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.)

§ 4392. Annual report on prevention and investigation of evasion of antidumping and countervailing duty orders

(a) In general

Not later than January 15 of each calendar year that begins on or after the date that is 270 days after February 24, 2016, the Commissioner, in consultation with the Secretary of Commerce and the Director of U.S. Immigration and Customs Enforcement, shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report on the efforts being taken to prevent and investigate the entry of covered merchandise into the customs territory of the United States through evasion.

(b) Contents

Each report required under subsection (a) shall include—

(1) for the calendar year preceding the submission of the report—

(A) a summary of the efforts of U.S. Customs and Border Protection to prevent and investigate the entry of covered merchandise into the customs territory of the United States through evasion;

(B) the number of allegations of evasion received, including allegations received under subsection (b) of section 1517 of this title, and the number of such allegations resulting in investigations by U.S. Customs and Border Protection or any other Federal agency;

(C) a summary of investigations initiated, including investigations initiated under subsection (b) of such section 1517 of this title, including—

(i) the number and nature of the investigations initiated, conducted, or completed; and

(ii) the resolution of each completed investigation;

(D) the amount of additional duties that were determined to be owed as a result of such investigations, the amount of such duties that were collected, and, for any such duties not collected, a description of the reasons those duties were not collected;

(E) with respect to each such investigation that led to the imposition of a penalty, the amount of the penalty;

(F) an identification of the countries of origin of covered merchandise determined under subsection (c) of such section 1517 of this title to be entered into the customs territory of the United States through evasion;

(G) the amount of antidumping and countervailing duties collected as a result of any investigations or other actions by U.S. Customs and Border Protection or any other Federal agency;

(H) a description of the allocation of personnel and other resources of U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement to prevent and investigate evasion, including any assessments conducted regarding the allocation of such personnel and resources; and

(I) a description of training conducted to increase expertise and effectiveness in the prevention and investigation of evasion; and