

§ 1517. Procedures for investigating claims of evasion of antidumping and countervailing duty orders

(a) Definitions

In this section:

(1) Administering authority

The term “administering authority” has the meaning given that term in section 1677(1) of this title.

(2) Commissioner

The term “Commissioner” means the Commissioner of U.S. Customs and Border Protection.

(3) Covered merchandise

The term “covered merchandise” means merchandise that is subject to—

- (A) an antidumping duty order issued under section 1673e of this title; or
- (B) a countervailing duty order issued under section 1671e of this title.

(4) Enter; entry

The terms “enter” and “entry” refer to the entry, or withdrawal from warehouse for consumption, of merchandise into the customs territory of the United States.

(5) Evasion

(A) In general

Except as provided in subparagraph (B), the term “evasion” refers to entering covered merchandise into the customs territory of the United States 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 merchandise.

(B) Exception for clerical error

(i) In general

Except as provided in clause (ii), the term “evasion” does not include entering covered merchandise into the customs territory of the United States by means of—

- (I) a document or electronically transmitted data or information, written or oral statement, or act that is false as a result of a clerical error; or
- (II) an omission that results from a clerical error.

(ii) Patterns of negligent conduct

If the Commissioner determines that a person has entered covered merchandise into the customs territory of the United States by means of a clerical error referred to in subclause (I) or (II) of clause (i) and that the clerical error is part of a pattern of negligent conduct on the part of that person, the Commissioner may determine, notwithstanding clause (i), that the person has entered such covered merchandise into the customs territory of the United States through evasion.

(iii) Electronic repetition of errors

For purposes of clause (ii), the mere non-intentional repetition by an electronic

system of an initial clerical error does not constitute a pattern of negligent conduct.

(iv) Rule of construction

A determination by the Commissioner that a person has entered covered merchandise into the customs territory of the United States by means of a clerical error referred to in subclause (I) or (II) of clause (i) rather than through evasion shall not be construed to excuse that person from the payment of any duties applicable to the merchandise.

(6) Interested party

(A) In general

The term “interested party” means—

- (i) a foreign manufacturer, producer, or exporter, or the United States importer, of covered merchandise or a trade or business association a majority of the members of which are producers, exporters, or importers of such merchandise;
- (ii) a manufacturer, producer, or wholesaler in the United States of a domestic like product;
- (iii) 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;
- (iv) a trade or business association a majority of the members of which manufacture, produce, or wholesale a domestic like product in the United States;
- (v) an association a majority of the members of which is composed of interested parties described in clause (ii), (iii), or (iv) with respect to a domestic like product; and
- (vi) if the covered merchandise is a processed agricultural product, as defined in section 1677(4)(E), a coalition or trade association that is representative of either—
 - (I) processors;
 - (II) processors and producers; or
 - (III) processors and growers.

(B) Domestic like product

For purposes of subparagraph (A), the term “domestic like product” means a product that is like, or in the absence of like, most similar in characteristics and uses with, covered merchandise.

(b) Investigations

(1) In general

Not later than 15 business days after receiving an allegation described in paragraph (2) or a referral described in paragraph (3), the Commissioner shall initiate an investigation if the Commissioner determines that the information provided in the allegation or the referral, as the case may be, reasonably suggests that covered merchandise has been entered into the customs territory of the United States through evasion.

(2) Allegation described

An allegation described in this paragraph is an allegation that a person has entered covered merchandise into the customs territory of the United States through evasion that is—

(A) filed with the Commissioner by an interested party; and

(B) accompanied by information reasonably available to the party that filed the allegation.

(3) Referral described

A referral described in this paragraph is information submitted to the Commissioner by any other Federal agency, including the Department of Commerce or the United States International Trade Commission, that reasonably suggests that a person has entered covered merchandise into the customs territory of the United States through evasion.

(4) Consideration by administering authority

(A) In general

If the Commissioner receives an allegation under paragraph (2) and is unable to determine whether the merchandise at issue is covered merchandise, the Commissioner shall—

(i) refer the matter to the administering authority to determine whether the merchandise is covered merchandise pursuant to the authority of the administering authority under subtitle IV; and

(ii) notify the party that filed the allegation, and any other interested party participating in the investigation, of the referral.

(B) Determination; transmission to Commissioner

After receiving a referral under subparagraph (A)(i) with respect to merchandise, the administering authority shall determine whether the merchandise is covered merchandise and promptly transmit that determination to the Commissioner.

(C) Stay of deadlines

The period required for any referral and determination under this paragraph shall not be counted in calculating any deadline under this section.

(D) Rule of construction

Nothing in this paragraph shall be construed to affect the authority of an interested party to commence an action in the United States Court of International Trade under section 1516a(a)(2) of this title with respect to a determination of the administering authority under this paragraph.

(5) Consolidation of allegations and referrals

(A) In general

The Commissioner may consolidate multiple allegations described in paragraph (2) and referrals described in paragraph (3) into a single investigation if the Commissioner determines it is appropriate to do so.

(B) Effect on timing requirements

If the Commissioner consolidates multiple allegations or referrals into a single investigation under subparagraph (A), the date on which the Commissioner receives the first such allegation or referral shall be used for purposes of the requirement under paragraph (1) with respect to the timing of the initiation of the investigation.

(6) Information-sharing to protect health and safety

If, during the course of conducting an investigation under paragraph (1) with respect to covered merchandise, the Commissioner has reason to suspect that such covered merchandise may pose a health or safety risk to consumers, the Commissioner shall provide, as appropriate, information to the appropriate Federal agencies for purposes of mitigating the risk.

(7) Technical assistance and advice

(A) In general

Upon request, the Commissioner shall provide technical assistance and advice to eligible small businesses to enable such businesses to prepare and submit allegations described in paragraph (2), except that the Commissioner may deny technical assistance if the Commissioner concludes that the allegation, if submitted, would not lead to the initiation of an investigation under this subsection or any other action to address the allegation.

(B) Eligible small business defined

(i) In general

In this paragraph, the term “eligible small business” means any business concern that the Commissioner determines, due to its small size, has neither adequate internal resources nor the financial ability to obtain qualified outside assistance in preparing and filing allegations described in paragraph (2).

(ii) Non-reviewability

The determination of the Commissioner regarding whether a business concern is an eligible small business for purposes of this paragraph is not reviewable by any other agency or by any court.

(c) Determinations

(1) Determination of evasion

(A) In general

Except as provided in subparagraph (B), not later than 300 calendar days after the date on which the Commissioner initiates an investigation under subsection (b) with respect to covered merchandise, the Commissioner shall make a determination, based on substantial evidence, with respect to whether such covered merchandise was entered into the customs territory of the United States through evasion.

(B) Additional time

The Commissioner may extend the time to make a determination under subparagraph (A) by not more than 60 calendar days if the Commissioner determines that—

(i) 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

(ii) additional time is necessary to make the determination under subparagraph (A).

(2) Authority to collect and verify additional information

In making a determination under paragraph (1) with respect to covered merchandise, the Commissioner may collect such additional information as is necessary to make the determination through such methods as the Commissioner considers appropriate, including by—

(A) issuing a questionnaire with respect to such covered merchandise to—

(i) an interested party that filed an allegation under paragraph (2) of subsection (b) that resulted in the initiation of an investigation under paragraph (1) of that subsection with respect to such covered merchandise;

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

(iii) a person that is a foreign producer or exporter of such covered merchandise; or

(iv) the government of a country from which such covered merchandise was exported; and

(B) conducting verifications, including on-site verifications, of any relevant information.

(3) Adverse inference

(A) In general

If the Commissioner finds that a party or person described in clause (i), (ii), or (iii) of paragraph (2)(A) has failed to cooperate by not acting to the best of the party or person's ability to comply with a request for information, the Commissioner may, in making a determination under paragraph (1), use an inference that is adverse to the interests of that party or person in selecting from among the facts otherwise available to make the determination.

(B) 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 paragraph (2)(A) without regard to whether another person involved in the same transaction or transactions under examination has provided the information sought by the Commissioner, such as import or export documentation.

(C) Adverse inference described

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

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

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

(iii) any other available information.

(4) Notification

Not later than 5 business days after making a determination under paragraph (1) with respect to covered merchandise, the Commissioner—

(A) shall provide to each interested party that filed an allegation under paragraph (2) of subsection (b) that resulted in the initiation of an investigation under paragraph (1) of that subsection with respect to such covered merchandise a notification of the determination and may, in addition, include an explanation of the basis for the determination; and

(B) may provide to importers, in such manner as the Commissioner determines appropriate, information discovered in the investigation that the Commissioner determines will help educate importers with respect to importing merchandise into the customs territory of the United States in accordance with all applicable laws and regulations.

(d) Effect of determinations

(1) In general

If the Commissioner makes a determination under subsection (c) that covered merchandise was entered into the customs territory of the United States through evasion, the Commissioner shall—

(A)(i) suspend the liquidation of unliquidated entries of such covered merchandise that are subject to the determination and that enter on or after the date of the initiation of the investigation under subsection (b) with respect to such covered merchandise and on or before the date of the determination; or

(ii) if the Commissioner has already suspended the liquidation of such entries pursuant to subsection (e)(1), continue to suspend the liquidation of such entries;

(B) pursuant to the Commissioner's authority under section 1504(b) of this title—

(i) extend the period for liquidating unliquidated entries of such covered merchandise that are subject to the determination and that entered before the date of the initiation of the investigation; or

(ii) if the Commissioner has already extended the period for liquidating such entries pursuant to subsection (e)(1), continue to extend the period for liquidating such entries;

(C) notify the administering authority of the determination and request that the administering authority—

(i) identify the applicable antidumping or countervailing duty assessment rates for entries described in subparagraphs (A) and (B); or

(ii) if no such assessment rate for such an entry is available at the time, identify the applicable cash deposit rate to be applied to the entry, with the applicable antidumping or countervailing duty assessment rate to be provided as soon as that rate becomes available;

(D) require the posting of cash deposits and assess duties on entries described in sub-

paragraphs (A) and (B) in accordance with the instructions received from the administering authority under paragraph (2); and

(E) take such additional enforcement measures as the Commissioner determines appropriate, such as—

(i) initiating proceedings under section 1592 or 1595a of this title;

(ii) implementing, in consultation with the relevant Federal agencies, rule sets or modifications to rule sets for identifying, particularly through the Automated Targeting System and the Automated Commercial Environment authorized under section 58c(f)(4) of this title, importers, other parties, and merchandise that may be associated with evasion;

(iii) requiring, with respect to merchandise for which the importer has repeatedly provided incomplete or erroneous entry summary information in connection with determinations of evasion, the importer to deposit estimated duties at the time of entry; and

(iv) referring the record in whole or in part to U.S. Immigration and Customs Enforcement for civil or criminal investigation.

(2) Cooperation of administering authority

(A) In general

Upon receiving a notification from the Commissioner under paragraph (1)(C), the administering authority shall promptly provide to the Commissioner the applicable cash deposit rates and antidumping or countervailing duty assessment rates and any necessary liquidation instructions.

(B) Special rule for cases in which the producer or exporter is unknown

If the Commissioner and the administering authority are unable to determine the producer or exporter of the merchandise with respect to which a notification is made under paragraph (1)(C), the administering authority shall identify, as the applicable cash deposit rate or antidumping or countervailing duty assessment rate, the cash deposit or duty (as the case may be) in the highest amount applicable to any producer or exporter, including the “all-others” rate of the merchandise subject to an antidumping order or countervailing duty order under section 1673e of this title or 1671e of this title, respectively, or a finding issued under the Antidumping Act, 1921, or any administrative review conducted under section 1675 of this title.

(e) Interim measures

Not later than 90 calendar days after initiating an investigation under subsection (b) with respect to covered merchandise, the Commissioner shall decide based on the investigation if there is a reasonable suspicion that such covered merchandise was entered into the customs territory of the United States through evasion and, if the Commissioner decides there is such a reasonable suspicion, the Commissioner shall—

(1) suspend the liquidation of each unliquidated entry of such covered merchandise that

entered on or after the date of the initiation of the investigation;

(2) pursuant to the Commissioner’s authority under section 1504(b) of this title, extend the period for liquidating each unliquidated entry of such covered merchandise that entered before the date of the initiation of the investigation; and

(3) pursuant to the Commissioner’s authority under section 1623 of this title, take such additional measures as the Commissioner 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.

(f) Administrative review

(1) In general

Not later than 30 business days after the Commissioner makes a determination under subsection (c) with respect to whether covered merchandise was entered into the customs territory of the United States through evasion, a person determined to have entered such covered merchandise through evasion or an interested party that filed an allegation under paragraph (2) of subsection (b) that resulted in the initiation of an investigation under paragraph (1) of that subsection with respect to such covered merchandise may file an appeal with the Commissioner for de novo review of the determination.

(2) Timeline for review

Not later than 60 business days after an appeal of a determination is filed under paragraph (1), the Commissioner shall complete the review of the determination.

(g) Judicial review

(1) In general

Not later than 30 business days after the Commissioner completes a review under subsection (f) of a determination under subsection (c) with respect to whether covered merchandise was entered into the customs territory of the United States through evasion, a person determined to have entered such covered merchandise through evasion or an interested party that filed an allegation under paragraph (2) of subsection (b) that resulted in the initiation of an investigation under paragraph (1) of that subsection with respect to such covered merchandise may seek judicial review of the determination under subsection (c) and the review under subsection (f) in the United States Court of International Trade to determine whether the determination and review is conducted in accordance with subsections (c) and (f).

(2) Standard of review

In determining whether a determination under subsection (c) or review under subsection (f) is conducted in accordance with those subsections, the United States Court of International Trade shall examine—

(A) whether the Commissioner fully complied with all procedures under subsections (c) and (f); and

(B) whether any determination, finding, or conclusion is arbitrary, capricious, an abuse

of discretion, or otherwise not in accordance with law.

(3) Rule of construction

Nothing in this subsection shall affect the availability of judicial review to an interested party under any other provision of law.

(h) Rule of construction with respect to other civil and criminal proceedings and investigations

No determination under subsection (c), review under subsection (f), or action taken by the Commissioner pursuant to this section shall preclude any individual or entity from proceeding, or otherwise affect or limit the authority of any individual or entity to proceed, with any civil, criminal, or administrative investigation or proceeding pursuant to any other provision of Federal or State law, including sections 1592 of this title and 1595a of this title.

(June 17, 1930, ch. 497, title IV, § 517, as added Pub. L. 114–125, title IV, § 421(a), Feb. 24, 2016, 130 Stat. 161.)

REFERENCES IN TEXT

The Antidumping Act, 1921, referred to in subsec. (d)(2)(B), is act May 27, 1921, ch. 14, title II, 42 Stat. 11, which was classified generally to sections 160 to 171 of this title, and was repealed by Pub. L. 96–39, title I, § 106(a), July 26, 1979, 93 Stat. 193.

PRIOR PROVISIONS

A prior section 1517, act June 17, 1930, ch. 497, title IV, § 517, 46 Stat. 737, related to frivolous protest or appeal, prior to repeal by act June 25, 1948, ch. 646, § 39, 62 Stat. 992, eff. Sept. 1, 1948. See section 2641 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE

Pub. L. 114–125, title IV, § 421(c), Feb. 24, 2016, 130 Stat. 168, provided that: “The amendments made by this section [enacting this section and amending section 1581 of Title 28, Judiciary and Judicial Procedure] shall take effect on the date that is 180 days after the date of the enactment of this Act [Feb. 24, 2016].”

REGULATIONS

Pub. L. 114–125, title IV, § 421(d), Feb. 24, 2016, 130 Stat. 169, provided that: “Not later than the date that is 180 days after the date of the enactment of this Act [Feb. 24, 2016], the Secretary [of the Treasury] shall prescribe such regulations as may be necessary to implement the amendments made by this section [enacting this section and amending section 1581 of Title 28, Judiciary and Judicial Procedure].”

§§ 1518, 1519. Repealed. June 25, 1948, ch. 646, § 39, 62 Stat. 992, eff. Sept. 1, 1948

Section 1518, acts June 10, 1890, ch. 407, § 12, 26 Stat. 136; May 27, 1908, ch. 205, § 3, 35 Stat. 406; Aug. 5, 1909, ch. 6, § 28, 36 Stat. 98; May 28, 1926, ch. 411, § 1, 44 Stat. 669; June 17, 1930, ch. 497, title IV, § 518, 46 Stat. 737, related to the judges of the United States Customs Court: their appointment, salary, retirement, vacancies, and powers; the control of the fiscal affairs and of the clerical force of the court; and the division of the court. See sections 251 to 254, 456, 1581, 2071, 2639, and 2640 of Title 28, Judiciary and Judicial Procedure. Last sentence of section, relating to the transfer of unexpended appropriations for salaries to be available for expenditures for the same purposes, was omitted as executed.

Section 1519, act June 17, 1930, ch. 497, title IV, § 519, 46 Stat. 739, related to publication of Customs Court’s decisions. See section 255 of Title 28, Judiciary and Judicial Procedure.

§ 1520. Refunds and errors

(a) Cases in which refunds authorized

The Secretary of the Treasury is authorized to refund duties or other receipts in the following cases:

(1) *Excess deposits*.—Whenever it is ascertained on liquidation or reliquidation of an entry or reconciliation that more money has been deposited or paid as duties than was required by law to be so deposited or paid.

(2) *Fees, charges, and exactions*.—Whenever it is determined in the manner required by law that any fees, charges, or exactions, other than duties and taxes, have been erroneously or excessively collected.

(3) *Fines, penalties, and forfeitures*.—Whenever money has been deposited in the Treasury on account of a fine, penalty, or forfeiture which did not accrue, or which is finally determined to have accrued in an amount less than that so deposited, or which is mitigated to an amount less than that so deposited or is remitted.

(4) *Prior to liquidation*.—Prior to the liquidation of an entry or reconciliation, whenever an importer of record declares or it is ascertained that excess duties, fees, charges, or exactions have been deposited or paid.

(b) Authorization of appropriations

The necessary moneys to make such refunds are authorized to be appropriated annually from the general fund of the Treasury.

(c) Repealed. Pub. L. 108–429, title II, § 2105, Dec. 3, 2004, 118 Stat. 2598

(d) Goods qualifying under free trade agreement rules of origin

Notwithstanding the fact that a valid protest was not filed, the Customs Service may, in accordance with regulations prescribed by the Secretary, reliquidate an entry to refund any excess duties (including any merchandise processing fees) paid on a good qualifying under the rules of origin set out in section 3332 of this title, section 202 of the United States-Chile Free Trade Agreement Implementation Act, section 4033 of this title, section 202 of the United States-Oman Free Trade Agreement Implementation Act, section 203 of the United States-Peru Trade Promotion Agreement Implementation Act, section 202 of the United States-Korea Free Trade Agreement Implementation Act, section 203 of the United States-Colombia Trade Promotion Agreement Implementation Act, or section 203 of the United States-Panama Trade Promotion Agreement Implementation Act for which no claim for preferential tariff treatment was made at the time of importation if the importer, within 1 year after the date of importation, files, in accordance with those regulations, a claim that includes—

(1) a written declaration that the good qualified under the applicable rules at the time of importation;

(2) copies of all applicable NAFTA Certificates of Origin (as defined in section 1508(b)(1) of this title), or other certificates or certifications of origin, as the case may be; and

(3) such other documentation and information relating to the importation of the goods as the Customs Service may require.