

a verification described in subparagraph (C) if the Secretary determines that the person has provided incorrect information regarding the country of origin of that good.

**(b) Negative determination**

**(1) In general**

A negative determination described in this subsection with respect to a good imported, exported, or produced by an importer, exporter, or producer is a determination by the Secretary, based on a verification conducted under subsection (a), that—

(A) a claim by the importer, exporter, or producer that the good qualifies as an originating good under section 4531 of this title is inaccurate; or

(B) the good does not qualify for preferential tariff treatment under the USMCA because—

(i) the importer, exporter, or producer failed to respond to a written request for information or failed to provide sufficient information to determine that the good qualifies as an originating good;

(ii) after receipt of a written notification for a visit to conduct verification under subsection (a), the exporter or producer did not provide written consent for that visit;

(iii) the importer, exporter, or producer does not maintain, or denies access to, records or documentation required under section 1508(7) of this title;

(iv) in the case of verification conducted under subsection (a)(2)—

(I) access or permission for a site visit is denied;

(II) officials of the United States are prevented from completing a site visit on the proposed date and the exporter or producer does not provide an acceptable alternative date for the site visit; or

(III) the exporter or producer does not provide access to relevant documents or facilities during a site visit; or

(v) the importer, exporter, or producer—

(I) otherwise fails to comply with the requirements of this section; or

(II) based on the preponderance of the evidence, circumvents the requirements of this section.

**(2) Requests for information**

The Secretary shall not make a negative determination described in paragraph (1)(B) unless—

(A) in a case in which the Secretary conducts a verification with respect to a good by written request or questionnaire submitted to the importer under article 5.9.1(a) of the USMCA and the claim for preferential tariff treatment under the USMCA is based on a certification of origin completed by the exporter or producer of the good, the Secretary requests information from the exporter or producer that completed the certification; or

(B) in a case in which the Secretary conducts a verification with respect to a textile

or apparel good by requesting a site visit under article 6.6.2 of the USMCA, the Secretary requests information from the importer and from any exporter or producer that provided information to the Secretary to support the claim for preferential tariff treatment.

**(c) Action based on determination**

**(1) Denial of preferential tariff treatment**

Upon making a negative determination described in subsection (b)(1) with respect to a good, the Secretary may deny preferential tariff treatment under the USMCA with respect to the good.

**(2) Withholding of preferential tariff treatment based on pattern of conduct**

If verifications of origin relating to identical goods indicate a pattern of conduct by an importer, exporter, or producer of false or unsupported representations relevant to a claim that a good imported into the United States qualifies for preferential tariff treatment under the USMCA, U.S. Customs and Border Protection, in accordance with regulations prescribed by the Secretary, may withhold preferential tariff treatment under the USMCA for entries of those goods imported, exported, or produced by that person until U.S. Customs and Border Protection determines that person has established compliance with requirements for claims for preferential tariff treatment under the USMCA.

**(d) Prevention of circumvention**

In making a determination under this section, including whether to accept or reject a claim for preferential tariff treatment under the USMCA, the Secretary shall interpret the requirements of this section in a manner to avoid and prevent circumvention of those requirements.

(Pub. L. 116–113, title II, §207, Jan. 29, 2020, 134 Stat. 49.)

**Executive Documents**

DELEGATION OF FUNCTIONS

Proc. No. 10053, pars. (10)–(12), June 29, 2020, 85 F.R. 39826, authorized the Committee for Implementation of Textile Agreements to exercise the authority of the President under subsec. (a)(1)(B) and (a)(2)(B) to direct action under subsec. (c) or (a)(2)(D), respectively, of this section with respect to textile and apparel goods, and authorized the Secretary of the Treasury to exercise the authority of the President under subsec. (a)(1)(B) to direct action under subsec. (a)(1)(B)(i) or (c) of this section with respect to goods other than textile or apparel goods.

**§ 4534. Drawback**

**(a) “Good subject to USMCA drawback” defined**

For purposes of this Act, the term “good subject to USMCA drawback” means any imported good other than the following:

(1) A good entered under bond for transportation and exportation to a USMCA country.

(2) A good exported to a USMCA country in the same condition as when imported into the United States. For purposes of this paragraph—

(A) processes such as testing, cleaning, re-packing, sorting, marking, or inspecting a

good, or preserving it in its same condition, shall not be considered to change the condition of the good, and

(B) except for a good referred to in paragraph 11 of Annex 3-B of the USMCA that is exported to Mexico, if a good described in the first sentence of this paragraph is commingled with fungible goods and exported in the same condition, the origin of the good may be determined on the basis of the inventory methods provided for in the regulations implementing this title.<sup>1</sup>

(3) A good—

(A) that is—

(i) deemed to be exported from the United States,

(ii) used as a material in the production of another good that is deemed to be exported to a USMCA country, or

(iii) substituted for by a good of the same kind and quality that is used as a material in the production of another good that is deemed to be exported to a USMCA country, and

(B) that is delivered—

(i) to a duty-free shop,

(ii) for ship's stores or supplies for ships or aircraft, or

(iii) for use in a project undertaken jointly by the United States and a USMCA country and destined to become the property of the United States.

(4) A good exported to a USMCA country for which a refund of customs duties is granted by reason of—

(A) the failure of the good to conform to sample or specification, or

(B) the shipment of the good without the consent of the consignee.

(5) A good that qualifies under the rules of origin set out in section 202<sup>1</sup> that is—

(A) exported to a USMCA country,

(B) used as a material in the production of another good that is exported to a USMCA country, or

(C) substituted for by a good of the same kind and quality that is used as a material in the production of another good that is exported to a USMCA country.

(6) A good provided for in subheading 1701.13.20 or 1701.14.20 of the HTS that is imported under any re-export program or any like program and that is—

(A) used as a material, or

(B) substituted for by a good of the same kind and quality that is used as a material,

in the production of a good provided for in existing Canadian tariff item 1701.99.00 or existing Mexican tariff item 1701.99.01, 1701.99.02, or 1701.99.99 (relating to refined sugar).

(7) A citrus product that is exported to Canada.

(8) A good used as a material, or substituted for by a good of the same kind and quality that is used as a material, in the production of—

(A) apparel, or

(B) a good provided for in subheading 6307.90.99 (insofar as it relates to furniture moving pads), 5811.00.20, or 5811.00.30 of the HTS,

that is exported to Canada and that is subject to Canada's most-favored-nation rate of duty upon importation into Canada.

Where in paragraph (6) a good referred to by an item is described in parentheses following the item, the description is provided for purposes of reference only.

**(b) Same kind and quality**

For purposes of paragraphs (3)(A)(iii), (5)(C), (6)(B), and (8) of subsection (a), and for purposes of obtaining refunds, waivers, or reductions of customs duties with respect to a good subject to USMCA drawback under section 1313(n)(2) of this title, a good is a good of the same kind and quality as another good—

(1) for a good described in such paragraph (6)(B), if the good would have been considered of the same kind and quality as the other good on the day before the date on which the USMCA enters into force; or

(2) for other goods if—

(A) the good is classified under the same 8-digit HTS subheading number as the other good; or

(B) drawback would be allowed with respect to the goods under subsection (b)(4), (j)(1), or (p) of section 1313 of this title.

**(c) Elimination of drawback for fees under section 624 of title 7**

Notwithstanding any other provision of law, the Secretary of the Treasury may not, on condition of export, refund or reduce a fee applied pursuant to section 624 of title 7 with respect to goods included under subsection (a) that are exported to a USMCA country.

**(d) Inapplicability to countervailing and anti-dumping duties**

Nothing in this section or the amendments made by it shall be considered to authorize the refund, waiver, or reduction of countervailing duties or antidumping duties imposed on an imported good.

**(e) Action on claim**

**(1) In general**

If the Commissioner of U.S. Customs and Border Protection determines that a claim of preferential tariff treatment has been made with respect to an article for which a claim described in paragraph (2) has been made, the Commissioner may make such adjustments regarding the previous customs treatment of the article as may be warranted.

**(2) Claims described**

A claim described in this paragraph is a claim for—

(A) a refund, waiver, or reduction of duty, under any applicable provision of law; or

(B) a credit against a bond under section 1312(d)(1) of this title.

(Pub. L. 116–113, title II, §208, title V, §501(a)–(d), Jan. 29, 2020, 134 Stat. 52, 67, 68; Pub. L. 116–260,

<sup>1</sup> See References in Text note below.

div. O, title VI, § 601(c)(1), Dec. 27, 2020, 134 Stat. 2150.)

### Editorial Notes

#### REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 116–113, Jan. 29, 2020, 134 Stat. 11, known as the United States–Mexico–Canada Agreement Implementation Act. For complete classification of this Act to the Code, see Short Title note set out under section 4501 of this title and Tables.

This title, referred to in subsec. (a)(2)(B), is title II of Pub. L. 116–113, Jan. 29, 2020, 134 Stat. 19, which enacted this subchapter and amended and enacted provisions set out as notes under several sections within this title. For complete classification of title II to the Code, see Tables.

Section 202, referred to in subsec. (a)(5), is section 202 of Pub. L. 103–182, title II, Dec. 8, 1993, 107 Stat. 2069, which was classified to section 3332 of this title prior to repeal by Pub. L. 116–113, title VI, § 601, Jan. 29, 2020, 134 Stat. 78, effective on the date the USMCA entered into force (July 1, 2020).

The amendments made by this section, referred to in subsec. (d), mean the amendments made by section 203(b) and (c) of Pub. L. 103–182, which amended sections 81c, 1311 to 1313, and 1562 of this title.

#### CODIFICATION

Subsecs. (a), (d), and (e) of former section 3333 of this title, which were transferred and redesignated as subsecs. (a), (c), and (d), respectively, of this section by Pub. L. 116–113, § 501(b)(1), (2), (d)(1)–(3), were based on Pub. L. 103–182, title II, § 203(a), (d), (e), Dec. 8, 1993, 107 Stat. 2086, 2092.

#### AMENDMENTS

2020—Pub. L. 116–113, § 501(a), struck out “[reserved]” after “Drawback” in section catchline.

Subsec. (a). Pub. L. 116–113, § 501(b)(3)(A)–(C), substituted “USMCA” for “NAFTA” in heading, struck out “and the amendments made by subsection (b)” after “of this Act” and substituted “USMCA drawback” for “NAFTA drawback” in introductory provisions, and substituted “USMCA country” for “NAFTA country” wherever appearing in pars. (1) to (5).

Pub. L. 116–113, § 501(b)(1), (2), transferred subsec. (a) of section 3333 of this title to this section and inserted it after section catchline. See Codification note above.

Subsec. (a)(2)(A). Pub. L. 116–113, § 501(b)(3)(D)(i), inserted “sorting, marking,” after “repacking.”

Subsec. (a)(2)(B). Pub. L. 116–113, § 501(b)(3)(D)(ii), substituted “paragraph 11 of Annex 3–B of the USMCA” for “paragraph 12 of section A of Annex 703.2 of the Agreement”.

Subsec. (a)(6). Pub. L. 116–113, § 501(b)(3)(E), amended par. (6) generally. Prior to amendment, par. (6) read as follows: “A good provided for in subheading 1701.11.02 of the HTS that is—

“(A) used as a material, or

“(B) substituted for by a good of the same kind and quality that is used as a material, in the production of a good provided for in existing Canadian tariff item 1701.99.00 or existing Mexican tariff item 1701.99.01 or 1701.99.99 (relating to refined sugar).”

Subsec. (b). Pub. L. 116–113, § 501(c), added subpar. (b).  
Subsec. (c). Pub. L. 116–113, § 501(d)(4), substituted “exported to a USMCA country.” for “exported to—

“(1) Canada after December 31, 1995, for so long as it is a NAFTA country; or

“(2) Mexico after December 31, 2000, for so long as it is a NAFTA country.”

Pub. L. 116–113, § 501(d)(1)–(3), transferred subsec. (d) of section 3333 of this title to this section, inserted it after subsec. (b), and redesignated it as subsec. (c). See Codification note above.

Subsec. (d). Pub. L. 116–113, § 501(d)(1)–(3), transferred subsec. (e) of section 3333 of this title to this section,

inserted it after subsec. (c), and redesignated it as subsec. (d). See Codification note above.

Subsec. (e). Pub. L. 116–260 added subsec. (e).

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 2020 AMENDMENT

Amendment by Pub. L. 116–260 effective July 1, 2020, see section 601(h) of div. O of Pub. L. 116–260, set out as a note under section 81c of this title.

Amendment by section 501(b) to (d) of Pub. L. 116–113 effective on the date the USMCA enters into force (July 1, 2020) and applicable with respect to goods entered, or withdrawn from warehouse for consumption, on or after that date, see section 501(g) of Pub. L. 116–113, set out as a note under section 81c of this title.

### § 4535. Regulations

#### (a) Secretary of the Treasury

The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out this title<sup>1</sup> and the amendments made by this title<sup>1</sup> (except as provided by subsection (b)).

#### (b) Secretary of Labor

The Secretary of Labor shall prescribe such regulations as may be necessary to carry out the labor value content determination under section 4532 of this title.

(Pub. L. 116–113, title II, § 210, Jan. 29, 2020, 134 Stat. 53.)

### Editorial Notes

#### REFERENCES IN TEXT

This title, referred to in subsec. (a), is title II of Pub. L. 116–113, Jan. 29, 2020, 134 Stat. 19, which enacted this subchapter and amended and enacted provisions set out as notes under several sections within this title. For complete classification of title II to the Code, see Tables.

#### SUBCHAPTER III—APPLICATION OF USMCA TO SECTORS AND SERVICES

##### PART A—RELIEF FROM INJURY CAUSED BY IMPORT COMPETITION

### Editorial Notes

#### CODIFICATION

Pub. L. 116–113, title V, § 502(a), (d), Jan. 29, 2020, 134 Stat. 70, struck out “[reserved]” at end of part heading and reenacted part heading without change.

### § 4551. USMCA article impact in import relief cases under Trade Act of 1974

#### (a) In general

If, in any investigation initiated under chapter 1 of title II of the Trade Act of 1974 [19 U.S.C. 2251 et seq.], the International Trade Commission makes an affirmative determination (or a determination which the President may treat as an affirmative determination under such chapter by reason of section 1330(d) of this title), the International Trade Commission shall also find (and report to the President at the time such injury determination is submitted to the President) whether—

(1) imports of the article from a USMCA country, considered individually, account for a substantial share of total imports; and

<sup>1</sup> See References in Text note below.