

Guide to Anti-Dumping and Countervailing Duties Scope Rulings

In addition to the normal duties importers must pay on merchandise pursuant to the duty rates set out in the Harmonized Tariff Schedule (HTS), many importers also must pay anti-dumping duties (ADD) or countervailing duties (CVD) pursuant to ADD/CVD orders. The only method for obtaining a binding determination to confirm whether goods are subject to an ADD/CVD order is a scope ruling.

ADD/CVD Background

“Dumping” occurs when foreign manufacturers sell goods in a country for less than fair value, resulting in injury to the industry for those goods in the country in which the foreign product is being dumped. ADD cases are company-specific. The U.S. calculates anti-dumping duties to bridge the gap between the unfair price of the dumped goods and the goods’ fair market value. On the other hand, countervailing duties are established when a foreign government provides assistance and subsidies to foreign manufacturers so that the manufacturers are able to sell goods cheaper than domestic manufacturers. CVD cases are country-specific; duties are calculated to duplicate the value of the subsidy.

Duty rates of ADD/CVD are set by the Department of Commerce International Trade Administration (ITA), and U.S. Customs and Border Protection (CBP) enforces ADD/CVD orders. To determine whether or not any products are subject to ADD or CVD, an importer should first review the scope of ADD/CVD orders, which can be found at <https://catalog.data.gov/dataset/antidumping-and-countervailing-duty-orders>.

ADD/CVD orders reference the HTS classification of the goods subject to the orders, but the HTS classifications are listed in the scope of the orders for convenience only, and do not determine whether a product falls under the scope of an ADD/CVD order. Instead, the written description of the order’s scope is dispositive. It may also be helpful to discuss the application of ADD/CVD orders with a Customs Import Specialist or an ITA International Trade Compliance Analyst. But this informal discussion will not produce a binding determination.

Scope Rulings

A scope ruling is issued by the ITA to clarify the scope of an ADD/CVD order. Some scope rulings are self-initiated by the ITA, but generally an “interested party” initiates an inquiry by applying for a scope ruling. An “interested party” is defined in the Tariff Act of 1930 (as amended) and includes 1) a foreign manufacturer, producer, or exporter, or the U.S. importer, of subject merchandise; 2) the government of a country in which the merchandise is produced, manufactured, or exported; 3) a U.S. manufacturer, producer, or wholesaler of a domestic like product; and 4) unions, trade associations, and business associations that represent industry engaged in the manufacture, production, or wholesale of a domestic like product in the U.S.

For an interested party, the scope ruling application is a mechanism to explain and describe the characteristics of a product and argue why the product is outside the scope of the ADD/CVD order (if valid arguments exist). Preparing and submitting a scope ruling request can be very technical and procedurally complicated. The regulations applicable to scope ruling submissions are found at 19 C.F.R. § 351.225. A simplified outline of a scope ruling request follows.

Simplified Scope Ruling Process

Scope ruling requests must contain the following:

- A detailed description of the product, including its technical characteristics and uses, and its current U.S. tariff classification number;
- A statement of the interested party's position as to whether the product is within the scope of an order, including:
 - A summary of the reasons for this conclusion,
 - Citations to any applicable statutory authority, and
 - Any factual information supporting this position, including relevant prior scope rulings.

At the same time an interested party submits a scope ruling request to ITA, it must also serve a copy of the scope ruling request to all parties on the Comprehensive Scope Service List. Scope ruling requests must include a Company Certification of Accuracy, Representative Certification of Accuracy, and Certificate of Service. Importantly, a request submission is not considered complete without these certifications.

After the interested party prepares a scope ruling request, the request must be submitted electronically via the Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS"), found at <https://access.trade.gov>. First time users of ACCESS will need to register first; a confirmation email will be sent once the registration has been processed and approved. After receiving the scope ruling request through ACCESS, the ITA has a 45-day deadline to either issue a final ruling or initiate a scope inquiry. If a scope inquiry is initiated, notice will be sent to all parties on the Comprehensive Scope Service List, comments will be solicited, and the ITA will typically issue a final ruling within 120 days of the initiation of the inquiry.

If a final ruling determines that the product falls within the scope of the ADD/CVD order, then any suspension of liquidation will continue or, if there has been no suspension of liquidation, CBP will suspend liquidation and require a cash deposit of estimated duties pursuant to the ADD/CVD order. If a final ruling holds that the product is not subject to the ADD/CVD order, then any suspension of liquidation on the subject product will end and any cash deposits or bonds related to the product will be refunded and released.