

## **Antidumping and Countervailing Duties General Information and Research Resources**

### **Disclaimer**

Deringer is providing the information, resources and guidance contained in this document to help importers better understand the antidumping/countervailing duty (AD/CVD) regime and get started on AD/CVD research. It is not an exhaustive list of requirements or resources, and it is for reference purposes only.

### **Importer's Reasonable Care Obligation for AD/CVD**

Importers are obligated by the regulatory *reasonable care* standard to employ due diligence in determining if goods are subject to ANY antidumping or countervailing duty case. Although you may have been contacted by Deringer Operations regarding a specific case, there may be additional cases that are applicable to your products. Furthermore, there may be cases applicable to your products do not “flag” in a customs broker’s system and, therefore, Deringer would be unable to alert you.

The consequences of AD/CVD evasion are severe, including monetary penalties ***which can be several times the loss of revenue up to the domestic value of the merchandise***, and may include a referral to U.S. Immigration and Customs Enforcement for civil and/or criminal investigation.

More information is available at the following U.S. Government websites:

- CBP - [Antidumping and Countervailing Duties Frequently Asked Questions](#)
- Department of Commerce International Trade Administration - [U.S. Antidumping/Countervailing Duties](#)
- International Trade Commission - [Understanding AD/CVD Investigations](#)

### **This document contains the following:**

- **Attachment A**, *What are Antidumping and Countervailing Duties?*, which provides an overview of the AD/CVD regime
- **Attachment B**, *Importer Compliance with AD/CVD Regulations*, which discusses AD/CVD research, and the concepts of AD/CVD Evasion and Circumvention
- **Attachment C**, *Resources for AD/CVD Research*, which provides a list and description of several U.S. Government resources, including those provided by CBP, the Department of Commerce, and the International Trade Commission

## Attachment A: What are Antidumping and Countervailing Duties?

Under the Tariff Act of 1930, U.S. industries may petition the government for relief from imports that:

- Are sold in the United States at less than fair value, which should be addressed via the application of antidumping duties, or
- Benefit from foreign government subsidies, which should be addressed via the application of countervailing duties.

The U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (USITC) jointly administer the antidumping and countervailing duties (AD/CVD) investigation process, while U.S. Customs and Border Protection (CBP) is the agency charged with enforcement of AD/CVD requirements at the US border.

### Lifecycle of an AD/CVD Case

Upon receipt of a complaint, Commerce will determine whether an investigation is warranted. If yes, the investigation will be conducted by both Commerce and the ITC.

- The Department of Commerce (Commerce) investigates and determines whether imported goods are sold at less than fair value or are subsidized by a foreign government, and
- The International Trade Commission (ITC) investigates and determines whether there is material injury or threat of material injury to a domestic industry producing a like product.

Investigations are conducted in two phases – preliminary and final.

- If there is an affirmative preliminary determination by both agencies, AD/CVD duties will be assessed on imports of goods subject to the case. With its affirmative preliminary determination, Commerce will establish a dumping and/or subsidy “margin” to compensate for the less-than-fair-value sales and/or foreign subsidies – i.e., to “level the playing field,” and will instruct CBP to suspend liquidation of entries of subject goods and to collect cash deposits at the rate determined by Commerce.
- If there is an affirmative final determination by both agencies, Commerce will issue an AD/CVD Order that establishes a final deposit rate, and issue further instructions to CBP regarding the continuation of suspension of liquidation and cash deposit collection.
  - Cash deposit rates vary from product to product, often reaching 100% or more of the value of the subject goods.
  - If company-specific rates were established during the investigation, company-specific cases will be created under the “parent case” to administer collection of the cash deposit rate applicable to a specific manufacturer and/or exporter.
- Administrative Review of the order will take place annually in the anniversary month of the publication of the order, during which AD or CV duty rates may be adjusted.

### Administrative Reviews and Retroactive Rate Changes

At the time of the annual administrative review, Commerce will determine whether the dumping and/or subsidy margin for the previous period should be adjusted up or down. Upon issuance of the final review results, Commerce will:

- Instruct CBP to collect cash deposits for future entries at the new deposit rate, and
- Instruct CBP to liquidate **past entries** based on the new deposit rate.
  - If the new deposit rate is higher than the cash deposit rate at the time of entry, CBP will issue a bill to the importer for the additional amount due when past entries are liquidated.
  - If the new deposit rate is lower, CBP will issue refunds at the time of liquidation.

## **Attachment B: Importer Compliance with AD/CVD Regulations**

To ensure full compliance with AD/CVD requirements, importers must conduct **a thorough search of all potentially applicable cases**, then review the language of those cases to determine whether any products are within scope. Resources for conducting AD/CVD research can be found in Attachment C of this document.

Identifying all potentially-applicable AD/CVD cases and reviewing their scope descriptions to determine applicability, particularly for complicated AD/CVD cases, can be a challenging and time-consuming process. For importers who are not familiar with AD/CVD case research and analysis, professional assistance is available:

- Deringer’s Trade Advisory Group offers fee-based AD/CVD consulting services - please contact [Consulting@ANDeringer.com](mailto:Consulting@ANDeringer.com) for further information.
- Trade/customs attorneys who specialize in AD/CVD are another option for assistance in case research and scope determinations.

Additional AD/CVD information can be found on Deringer’s FAQ page: <https://info.anderinger.com/faq>.

### **AD/CVD Evasion**

Per the provisions of the Enforce and Protect Act (EAPA) of 2015, CBP must investigate allegations of **evasion** of AD/CV duties. Any false entry data or omission, even if unintentional, that results in failure to pay the correct amount of AD/CV duties can be construed as evasion. You can find more information on EAPA here: [Enforce and Protect Act \(EAPA\)](#)

### **AD/CVD Circumvention**

After an AD/CVD Order has been issued, Commerce may conduct inquiries – upon the submission of a request by an interested party or on its own initiative – into whether that Order is being circumvented. Circumvention may occur when:

- A product has been completed or assembled in a 3<sup>rd</sup> country, including the United States, from components imported from a country subject to an AD/CVD Order;
- The characteristics of a product from a country subject to an AD/CVD order differ in only minor or insignificant ways from the characteristics of subject merchandise; or
- A product from a country subject to an AD/CVD order that was developed after the Order was issued has the same general characteristics and fulfills the same function as subject merchandise.

If Commerce determines that circumvention has occurred, it will extend the scope of the AD/CVD Order to cover the product that was examined.

## **Attachment C: Resources for AD/CVD Research**

The table below provides links to a number of U.S. Government resources that are helpful when conducting AD/CVD research. Further information on each resource is provided below the table. Please note that the links provided were valid as of the date of publication of this resource document, but may have changed in the interim. If so, an internet search using the resource title may help to locate the correct website.

<b><i>Resource Title</i></b>	<b><i>Link</i></b>
<b>ACE<sup>1</sup> Services AD/CVD Web</b>	<a href="#">ACE   AD-CVD application (dhs.gov)</a>
<b>ACE Portal</b>	<a href="https://ace.cbp.gov/s/login">https://ace.cbp.gov/s/login</a> <b>NOTE:</b> ACE Account & Log-in Credentials Required
<b>ITA<sup>2</sup> ACCESS</b>	<a href="#">ACCESS</a> <b>NOTE:</b> ACCESS Guest Account Registration & Log-in Credentials Required
<b>ITA ACCESS AD/CVD Search</b>	<a href="#">ACCESS ADCVD Search</a>
<b>ITA Legacy Website</b>	<a href="#">ITA Final Scope Rulings</a>
<b>ITA AD/CVD Orders/ Suspension Agreements</b>	<a href="#">ITA Orders/Suspension Agreements</a>
<b>ITA AD/CVD Case Announcements</b>	<a href="#">ITA Case Announcements</a>
<b>Federal Register</b>	<a href="https://www.federalregister.gov/">https://www.federalregister.gov/</a>
<b>CSMS Messages</b>	<a href="#">CSMS - 100 Most Recent Messages</a> <a href="#">CSMS - Archived to September 2011</a>
<b>International Trade Commission</b>	<a href="#">Import Injury Investigations</a>

**ACE Services:** Search by case number to see all Department of Commerce instruction messages to Customs, such as case preliminary and final determinations, deposit rates and liquidation instructions. Use the “Advanced Search” option to limit search results to specific message types and/or date ranges.

**ACE Portal:** Use the basic “search by case number” function to view event, rate and suspension of liquidation information for both the “all others” case number and any “company-specific” case numbers. Use the “Advanced Search” function to search by case name, country of origin, HTS number and other parameters.

**Note – this is the only resource that provides access to 3<sup>rd</sup>-Country AD/CVD case information.<sup>3</sup>**

**ITA ACCESS:** Users must sign up for a guest account in order to use this resource. The “Search” function allows access to all Department of Commerce documentation for a given case. To find all scope rulings issued for a particular case, insert the case number, select “SCO – Scope Inquiry” under Segment, and select “USDOC”

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<sup>1</sup> ACE is the “Automated Commercial Environment”, CBP’s primary electronic Customs interface.

<sup>2</sup> The ITA is the Department of Commerce “International Trade Administration”, which is responsible for determining case rates and issuing scope rulings, among many other AD/CVD duties.

<sup>3</sup> The Department of Commerce and CBP assign 3<sup>rd</sup>-Country case numbers when there has been a determination of evasion of AD/CVD duties by routing in-scope merchandise from an origin country subject to AD/CVD duties through a country (“3<sup>rd</sup> Country”) not subject to AD/CVD duties, and performing operations on the merchandise in the 3<sup>rd</sup> country that changes the CUSTOMS origin from the origin country to the 3<sup>rd</sup> country. If the operations performed in the 3<sup>rd</sup> country are not sufficient to remove the merchandise from the scope of the origin country case, the merchandise will still be subject to the case, and the collection of AD/CVD duties will be administered by CBP through use of a 3<sup>rd</sup>-Country case number.

under Filed Firm/Organization Name. Alternatively, if the ACCESS barcode # of a specific ruling is known, that identifier can be entered in the “Bar Code” field.

**ITA ACCESS AD/CVD Search:** Search by case number, country or origin, or product description to return potentially-applicable cases. Click on a returned case to access and review its scope and see upcoming developments.

Caution – search terms must match exactly to return cases. Deringer recommends that multiple searches be performed utilizing different search terms (e.g., “wood”, “softwood”, “soft-wood” and “soft wood”) to return the maximum number of potentially-applicable cases and reduce the chance of missing an applicable case.

**Caution – this site does not include 3<sup>rd</sup>-country cases. (See footnote 3 for more information on 3<sup>rd</sup>-country cases.)**

**ITA Legacy Website:** Select a country to see a list of cases. Then select a case to see a list of scope rulings issued by the Department of Commerce, including a description of the product addressed in the ruling. Each ruling will have an “ACCESS Barcode #” reference. To access a scope ruling, go to the ITA’s ACCESS website (see below). A web search using the ACCESS Barcode # may also return the scope ruling in the search results.

**Caution – this site does not include 3<sup>rd</sup>-country cases. (See footnote 3 for more information on 3<sup>rd</sup>-country cases.)**

**ITA AD/CVD Orders/Suspension Agreements:** Provides a list of current AD/CVD orders and suspension agreements, with functionality to sort by country of origin, product, or commodity group.

Note – although this is a useful site to find cases, it is not interactive. Once a case is found, further information on the case is accessible through the above ACE and ACCESS resources.

**Caution – this site does not include 3<sup>rd</sup>-country cases. (See footnote 3 for more information on 3<sup>rd</sup>-country cases.)**

**ITA AD/CVD Case Announcements:** Provides chronologically-ordered information on case initiations and determinations (preliminary and final) with links to additional information for each.

**Caution – this site does not include 3<sup>rd</sup>-country cases. (See footnote 3 for more information on 3<sup>rd</sup>-country cases.)**

**Federal Register:** Use the advanced search function, limited to the Department of Commerce, to isolate Federal Register notices by case number or name.

**CSMS Messages:** The archive allows access to all CBP-issued messages, including those related to AD/CVD. Use “CNTR F” to search for information 1) by country name or product description, or 2) by “antidumping” or “countervailing” to find all AD/CVD messages.

**International Trade Commission:** This site contains ITC AD/CVD information organized by date under the “Import Injury” section. Note that the ITC designates AD/CVD cases by investigation numbers instead of case numbers. It is a useful resource for accessing historical case documentation for scope applicability research, in addition to the account-credential version of ACCESS (ITA) above.