



An Importer's Responsibility: General Guidance on Antidumping/Countervailing Duties

Trade compliance is always important, but the Enforce and Protect Act (EAPA) of 2015 has established antidumping and countervailing duties (AD/CVD) as a priority trade issue for US Customs and Border Protection. Under EAPA, CBP must investigate any evasion allegations within a strict time frame. Importers must act with care and diligence to determine if their imported merchandise is subject to AD/CVD.

What Are Antidumping and Countervailing Duties?

Often they are spoken of together, but there is a difference. The US Department of Commerce assesses antidumping duties as a trade remedy on certain imported goods found to be “dumped” into the US at less than fair value. Whereas, countervailing duties are a trade remedy assessed on imported goods whose sale is assisted or subsidized by a foreign government.

Who Shoulders the Responsibility of Determining AD/CVD Applicability?

The importer of record carries the responsibility of being informed of any AD/CVD that may apply to their imported goods and file their entry summaries accordingly. **It is important to note that while the common definition of “evade” includes a conscious effort to avoid something, the EAPA definition does not.** An unintentional act(s) may be considered by CBP to be evasion. AD/CVD general and case information is available publicly online, and importers should avail themselves of the guidelines and regulations to avoid the consequences.

What Are the Consequences of AD/CVD Evasion, Including “Unintentional” Evasion?

EAPA establishes formal procedures for CBP to submit and investigate AD/CVD allegations of duty evasion against US importers.

Examples of evasion could include, but are not limited to:

1. The misrepresentation of the merchandise's true country of origin (e.g., through fraudulent country of origin markings on the product itself or false sales),
2. False or incorrect shipping and entry documentation, including undervalued goods,
3. Misreporting of the merchandise's physical characteristics.

To date, the consequences of AD/CVD evasion have been severe and could include any or all of the following:

1. Suspension of liquidation of unliquidated entries of subject merchandise,
2. Assessing the amount of duties determined to be owed,
3. Requirement of “Live Entry” where duties must be paid prior to release of the goods,
4. Single transaction bond per shipment,
5. Higher continuous importer bond requirements,
6. Section 1592 penalties assessed on the importer of record, from up to several times the loss of revenue up to the domestic value of the merchandise,
7. Section 1592 penalties to the importer of record's officer(s), and
8. Referral to US Immigration and Customs Enforcement (ICE) for civil and/or criminal investigation.

What Resources Are Available for Researching Cases?

- CBP - "[Priority Trade Issue: Antidumping and Countervailing Duties](#)" provides an overview of EAPA, enforcement updates, actions and initiatives since 2015, case data, FAQs, and more.
- CBP - [ACE database lookup](#) by case or message number from 1/1/16 to present.
- International Trade Administration (ITA) - "Antidumping and Countervailing Duty Scope Descriptions and Determinations," [legacy website 1991-2019](#).

Further Guidance on Determining Applicability

When reviewing your goods for potential applicability, keep in mind that each case scope defines goods subject to the case, as well as goods excluded from the case. The scope may indicate harmonized tariff numbers under which the goods may fall, and tariff numbers are not dispositive.

- If your goods are subject to a case and entered under a tariff not indicated, you are still required to pay the applicable AD/CVD.
- After a case scope has been issued, importers have the right to file for a scope ruling. A scope ruling requests binding confirmation of whether a product is subject to or excluded from a case.
- Importers should review ITA's ACCESS for additional scope rulings on their products.

Forms: Non-Reimbursement Statement

When antidumping is applicable and you are not being reimbursed by any party for the antidumping duties paid, it is recommended that you execute a [Blanket Statement of Non-Reimbursement found on Deringer's forms page](#). If this form is not provided before liquidation, CBP will presume there was reimbursement and double the antidumping duties. CBP has [provided guidance on properly completing the Non-Reimbursement form](#).

Please contact Deringer's [post-entry department](#) with any questions or concerns. The Non-Reimbursement form can also be filed in the ACE portal, as described in [CBP's ACE reference document](#). Importers who choose to file in the ACE portal should notify Deringer's [post-entry department](#) by sending a copy of the ACE declaration for our records.



Contact Information

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The advice offered above is strictly an informal opinion of the sender and is based solely upon information provided. Reliance upon this advice does not constitute reasonable care under the Customs Modernization Act. In order to exercise the highest degree of reasonable care, A.N. Deringer, Inc. recommends that our clients perform a complete review, which may include application for a binding ruling from U.S. Customs and Border Protection. Should you wish assistance in this matter, please consider our Trade Advisory Group at (518) 314-0830 or contact the sender for more information.