

(whichever is applicable) of zero (or *de minimis*) and a weighted-average dumping margin or countervailable subsidy rate of greater than *de minimis*, or vice versa.

§ 351.225 Scope rulings.

(a) *Introduction.* Questions sometimes arise as to whether a particular product is covered by the scope of an anti-dumping or countervailing duty order. Such questions may arise for a variety of reasons given that the description of the merchandise subject to the scope is written in general terms. The Secretary will initiate and conduct a scope inquiry and issue a scope ruling to determine whether or not a product is covered by the scope of an order at the request of an interested party or on the Secretary's initiative. A scope ruling that a product is covered by the scope of an order is a determination that the product has always been covered by the scope of that order. This section contains rules and procedures regarding scope rulings, including scope ruling applications, scope inquiries, and standards used in determining whether a product is covered by the scope of an order. Unless otherwise specified, the procedures as described in subpart C of this part (§§ 351.301 through 351.308 and §§ 351.312 through 351.313) apply to this section.

(b) *Self-initiation of a scope inquiry.* If the Secretary determines from available information that an inquiry is warranted to determine whether a product is covered by the scope of an order, the Secretary may initiate a scope inquiry and publish a notice of initiation in the FEDERAL REGISTER.

(c) *Scope ruling application—(1) Contents.* An interested party may submit a scope ruling application requesting that the Secretary conduct a scope inquiry to determine whether a product, which is or has been in actual production by the time of the filing of the application, is covered by the scope of an order. The Secretary will make available a scope ruling application, which the applicant must complete and serve in accordance with the requirements of paragraph (n) of this section.

(2) *Requested information.* To the extent reasonably available to the applicant, the scope ruling application must

include the following requested information and relevant supporting documentation.

(i) A detailed description of the product and its uses, as necessary:

(A) The physical characteristics (including chemical, dimensional, and technical characteristics) of the product;

(B) The country(ies) where the product is produced, the country from where the product is exported, and if imported, the declared country of origin;

(C) The product's tariff classification under the Harmonized Tariff Schedule of the United States and copies of any Customs rulings relevant to the tariff classification;

(D) The uses of the product;

(E) Clear and legible photographs, schematic drawings, specifications, standards, marketing materials, and any other exemplars providing a visual depiction of the product; and

(F) A description of parts, materials, and the production process employed in the production of the product;

(ii) A concise public summary of the product's description under paragraphs (c)(2)(i)(A) through (C) of this section.

(iii) The name and address of the producer, exporter, and importer of the product.

(iv) A narrative history of the production of the product at issue, including a history of earlier versions of the product if this is not the first model of the product.

(v) The volume of annual production of the product for the most recently completed fiscal year.

(vi) If the product has been imported into the United States as of the date of the filing of the scope ruling application:

(A) An explanation as to whether an entry of the product has been declared by an importer, or determined by the Customs Service, as subject to an order, and

(B) Relevant documentation, including dated copies of the Customs Service entry summary forms (or electronic entry processing system documentation) identifying the product upon importation and other related commercial documents, including invoices and

contracts, which reflect the details surrounding the sale and purchase of that imported product.

(vii) A statement as to whether the product undergoes any additional processing in the United States after importation, or in a third country before importation, and a statement as to the relevance of this processing to the scope of the order.

(viii) The applicant's statement as to whether the product is covered by the scope of the order, including:

(A) An explanation with specific reference to paragraph (j) and (k) of this section, as appropriate;

(B) Citations to any applicable legal authority; and

(C) Whether there are companion orders as described in paragraph (m)(2) of this section.

(ix) Factual information supporting the applicant's position, including full copies of prior scope determinations and relevant excerpts of other documents identified in paragraph (k)(1) of this section.

(d) *Initiation of a scope inquiry and other actions based on a scope ruling application*—(1) *Initiation of a scope inquiry based on a scope ruling application.* Except as provided under paragraph (d)(2) of this section, within 30 days after the filing of a scope ruling application, the Secretary will determine whether to accept or reject the scope ruling application.

(i) If the Secretary determines that a scope ruling application is incomplete or otherwise unacceptable, the Secretary may reject the scope ruling application and will provide a written explanation of the reasons for the rejection. If the scope ruling application is rejected, the applicant may resubmit the full application at any time, with all identified deficiencies corrected.

(ii) If the Secretary does not reject the scope ruling application or initiate the scope inquiry within 31 days after the filing of the application, the application will be deemed accepted and the scope inquiry will be deemed initiated.

(2) *Addressing the scope issue in another segment of the proceeding.* Within 30 days after the filing of a scope ruling application, if the Secretary determines upon review of the application that the scope issue before the Sec-

retary should be addressed in an ongoing segment of the proceeding, such as a circumvention inquiry under § 351.226 or a covered merchandise inquiry under § 351.227, rather than initiating a scope inquiry, the Secretary will notify the applicant of its intent to address the scope issue in such other segment.

(3) *Notice of scope applications.* On a monthly basis, the Secretary will publish a notice in the FEDERAL REGISTER listing scope applications filed with the Secretary.

(e) *Deadlines for scope rulings*—(1) *In general.* The Secretary shall issue a final scope ruling within 120 days after the date on which the scope inquiry was initiated under paragraph (b) or (d) of this section.

(2) *Extension.* The Secretary may extend the deadline in paragraph (e)(1) of this section by no more than 180 days if the Secretary determines that good cause exists to warrant an extension. Situations in which good cause has been demonstrated may include:

(i) If the Secretary has issued questionnaires to the applicant or other interested parties; received responses to those questionnaires; and determined that an extension is warranted to request further information or consider and address the parties' responses on the record adequately; or

(ii) The Secretary has issued a preliminary scope ruling (*see* paragraph (g) of this section).

(3) *Alignment with other segments.* If the Secretary determines it is appropriate to do so, the Secretary may align the deadlines under this paragraph with the deadlines of another segment of the proceeding.

(f) *Scope inquiry procedures.* (1) Within 30 days of the Secretary's self-initiation of a scope inquiry under paragraph (b) of this section, interested parties are permitted one opportunity to submit comments and factual information addressing the self-initiation. Within 14 days of the filing of such comments, any interested party is permitted one opportunity to submit comments and factual information to rebut, clarify, or correct factual information submitted by the other interested parties.

(2) Within 30 days of the initiation of a scope inquiry under paragraph (d)(2)

of this section, an interested party other than the applicant is permitted one opportunity to submit comments and factual information to rebut, clarify, or correct factual information contained in the scope ruling application. Within 14 days of the filing of such rebuttal, clarification, or correction, the applicant is permitted one opportunity to submit comments and factual information to rebut, clarify, or correct factual information submitted in the interested party's rebuttal, clarification or correction.

(3) Following initiation of a scope inquiry under paragraph (b) or (d) of this section, the Secretary may issue questionnaires and verify submissions received, where appropriate. The Secretary may limit issuance of questionnaires to a reasonable number of respondents. Questionnaire responses are due on the date specified by the Secretary. Within 14 days after a questionnaire response has been filed with the Secretary, an interested party other than the original submitter is permitted one opportunity to submit comments and factual information to rebut, clarify, or correct factual information contained in the questionnaire response. Within seven days of the filing of such rebuttal, clarification, or correction, the original submitter is permitted one opportunity to submit comments and factual information to rebut, clarify, or correct factual information submitted in the interested party's rebuttal, clarification or correction.

(4) If the Secretary issues a preliminary scope ruling under paragraph (g) of this section, which is not issued concurrently with the initiation of the scope inquiry, the Secretary will establish a schedule for the filing of scope comments and rebuttal comments. Unless otherwise specified, any interested party may submit scope comments within 14 days after the issuance of the preliminary scope ruling, and any interested party may submit rebuttal comments within 7 days thereafter. Unless otherwise specified, no new factual information will be accepted in the scope or rebuttal comments.

(5) If the Secretary issues a preliminary scope ruling concurrently with the initiation of a scope inquiry under

paragraph (g) of this section, paragraphs (f)(1) through (4) of this section will not apply. In such a situation, the Secretary will establish appropriate procedures on a case-specific basis.

(6) If the Secretary determines it is appropriate to do so, the Secretary may rescind, in whole or in part, a scope inquiry under this section and will notify interested parties.

(7) If the Secretary determines it is appropriate to do so, the Secretary may alter or extend any time limits under this paragraph or establish a separate schedule for the filing of comments and/or factual information during the scope inquiry.

(g) *Preliminary scope ruling.* The Secretary may issue a preliminary scope ruling, based upon the available information at the time, as to whether there is a reasonable basis to believe or suspect that the product subject to a scope inquiry is covered by the scope of the order. In determining whether to issue a preliminary scope ruling, the Secretary may consider the complexity of the issues and arguments raised in the scope inquiry. The Secretary may issue a preliminary scope ruling concurrently with the initiation of a scope inquiry under paragraph (b) or (d) of this section.

(h) *Final scope ruling.* The Secretary will issue a final scope ruling as to whether the product that is the subject of the scope inquiry is covered by the scope of the order, including an explanation of the factual and legal conclusions on which the final scope ruling is based. The Secretary will promptly convey a copy of the final scope ruling in the manner prescribed by section 516A(a)(2)(A)(ii) of the Act to all parties to the proceeding (see § 351.102(b)(36)), subject to the notice requirements for Governments of an FTA country under § 356.6 and § 356.7.

(i) *Other segments of the proceeding.* (1) Notwithstanding any other provision of this section, the Secretary may, but is not required to, address scope issues in another segment of the proceeding, such as an administrative review under § 351.213, a circumvention inquiry under § 351.226, or a covered merchandise inquiry under § 351.227 without conducting or completing a scope inquiry under this section. For example, the

Secretary may rescind a scope inquiry under paragraph (f)(6) of this section and determine whether the product at issue is covered by the scope of the order in another segment of the proceeding (including another scope inquiry).

(2) During the pendency of a scope inquiry or upon issuance of a final scope ruling under paragraph (h) of this section, the Secretary may take any further action, as appropriate, with respect to another segment of the proceeding. For example, if the Secretary considers it appropriate, the Secretary may request information concerning the product that is the subject of the scope inquiry for purpose of an administrative review under § 351.213.

(j) *Country of origin determinations.* In considering whether a product is covered by the scope of the order at issue, the Secretary may need to determine the country of origin of the product. To make such a determination, the Secretary may use any reasonable method and is not bound by the determinations of any other agency, including tariff classification and country of origin marking rulings issued by the Customs Service.

(1) In determining the country of origin, the Secretary may conduct a substantial transformation analysis that considers relevant factors that arise on a case-by-case basis, including:

(i) Whether the processed downstream product is a different class or kind of merchandise than the upstream product;

(ii) The physical characteristics (including chemical, dimensional, and technical characteristics) of the product;

(iii) The intended end-use of the downstream product;

(iv) The cost of production/value added of further processing in the third country or countries;

(v) The nature and sophistication of processing in the third country or countries; and

(vi) The level of investment in the third country or countries.

(2) In conducting a country of origin determination, the Secretary also may consider where the essential component of the product is produced or

where the essential characteristics of the product are imparted.

(k) *Scope rulings.* (1) In determining whether a product is covered by the scope of the order at issue, the Secretary will consider the language of the scope and may make its determination on this basis alone if the language of the scope, including the descriptions of merchandise expressly excluded from the scope, is dispositive.

(i) The following primary interpretive sources may be taken into account under paragraph (k)(1) introductory text of this section, at the discretion of the Secretary:

(A) The descriptions of the merchandise contained in the petition pertaining to the order at issue;

(B) The descriptions of the merchandise contained in the initial investigation pertaining to the order at issue;

(C) Previous or concurrent determinations of the Secretary, including prior scope rulings, memoranda, or clarifications pertaining to both the order at issue, as well as other orders with same or similar language as that of the order at issue; and

(D) Determinations of the Commission pertaining to the order at issue, including reports issued pursuant to the Commission's initial investigation.

(ii) The Secretary may also consider secondary interpretive sources under paragraph (k)(1) introductory text of this section, such as any other determinations of the Secretary or the Commission not identified above, Customs rulings or determinations, industry usage, dictionaries, and any other relevant record evidence. However, in the event of a conflict between these secondary interpretive sources and the primary interpretive sources under paragraph (k)(1)(i) of this section, the primary interpretive sources will normally govern in determining whether a product is covered by the scope of the order at issue.

(2)(i) If the Secretary determines that the sources under paragraph (k)(1) of this section are not dispositive, the Secretary will then further consider the following factors:

(A) The physical characteristics (including chemical, dimensional, and technical characteristics) of the product;

(B) The expectations of the ultimate users;

(C) The ultimate use of the product;

(D) The channels of trade in which the product is sold; and

(E) The manner in which the product is advertised and displayed.

(ii) In the event of a conflict between the factors under paragraph (k)(2)(i) of this section, paragraph (k)(2)(i)(A) will normally be allotted greater weight than the other factors.

(3) If merchandise contains or consists of two or more components and the product at issue in the scope inquiry is a component of that merchandise as a whole, the Secretary may adopt the following analysis:

(i) The Secretary will analyze the scope language under paragraph (k)(1) of this section, and, if necessary, the factors under paragraph (k)(2) of this section, to determine if the component product, standing alone, would be covered by an order;

(ii) If the Secretary determines that the component product would otherwise be covered by the scope of an order as a result of the analysis under (k)(3)(i) of this section, the Secretary will consider the scope language under paragraph (k)(1) of this section to determine whether the component product's inclusion in the merchandise as a whole results in its exclusion from the scope of the order; and

(iii) If the Secretary determines the analysis under (k)(3)(ii) of this section does not resolve whether the component product's inclusion in the merchandise as a whole results in its exclusion from the scope of the order, then the Secretary will consider, as appropriate, the following relevant factors that may arise on a product-specific basis:

(A) The practicability of separating the in-scope component for repackaging or resale, considering the relative difficulty and expense of separating the components;

(B) The measurable value of the in-scope component as compared to the measurable value of the merchandise as a whole; and

(C) The ultimate use or function of the in-scope component relative to the ultimate use or function of the merchandise as a whole.

(1) *Suspension of liquidation.* (1) When the Secretary initiates a scope inquiry under paragraph (b) or (d) of this section, the Secretary will notify the Customs Service of the initiation and direct the Customs Service to continue the suspension of liquidation of entries of products subject to the scope inquiry that were already subject to the suspension of liquidation, and to apply the cash deposit rate that would be applicable if the product were determined to be covered by the scope of the order.

(2) If the Secretary issues a preliminary scope ruling under paragraph (g) of this section that the product at issue is covered by the scope of the order, the Secretary will take the following actions:

(i) The Secretary will direct the Customs Service to continue the suspension of liquidation of previously suspended entries and apply the applicable cash deposit rate;

(ii) The Secretary will direct the Customs Service to begin the suspension of liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product not yet suspended, entered, or withdrawn from warehouse, for consumption on or after the date of initiation of the scope inquiry; and

(iii)(A) *In general.* Subject to paragraph (1)(2)(iii)(B) of this section, the Secretary normally will direct the Customs Service to begin the suspension of liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product not yet suspended, entered, or withdrawn from warehouse, for consumption prior to the date of initiation of the scope inquiry.

(B) *Exception.* If the Secretary determines it is appropriate to do so, the Secretary may, at the timely request of an interested party or at the Secretary's discretion, direct the Customs Service to begin the suspension of liquidation and apply the applicable cash deposit rate under paragraph (1)(2)(iii)(A) of this section at an alternative date. In response to a timely request from an interested party, the

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Secretary will only consider an alternative date based on a specific argument supported by evidence establishing the appropriateness of that alternative date.

(3) If the Secretary issues a final scope ruling under paragraph (h) of this section that the product at issue is covered by the scope of the order, the Secretary will take the following actions:

(i) The Secretary will direct the Customs Service to continue the suspension of liquidation of previously suspended entries and apply the applicable cash deposit rate until appropriate liquidation instructions are issued;

(ii) The Secretary will direct the Customs Service to begin the suspension of liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product not yet suspended, entered, or withdrawn from warehouse, for consumption on or after the date of initiation of the scope inquiry until appropriate liquidation instructions are issued; and

(iii)(A) *In general.* Subject to paragraph (1)(3)(iii)(B) of this section, the Secretary normally will direct the Customs Service to begin the suspension of liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product not yet suspended, entered, or withdrawn from warehouse, for consumption prior to the date of initiation of the scope inquiry until appropriate liquidation instructions are issued.

(B) *Exception.* If the Secretary determines it is appropriate to do so, the Secretary may, at the timely request of an interested party or at the Secretary's discretion, direct the Customs Service to begin the suspension of liquidation and apply the applicable cash deposit rate under paragraph (1)(3)(iii)(A) of this section at an alternative date until appropriate liquidation instructions are issued. In response to a timely request from an interested party, the Secretary will only consider an alternative date based on a specific argument supported by evidence establishing the appropriateness of that alternative date.

(4) If the Secretary issues a final scope ruling under paragraph (h) of this

section that the product is not covered by the scope of the order, and entries of the product at issue are not otherwise subject to suspension of liquidation as a result of another segment of the proceeding, such as a circumvention inquiry under § 351.226 or a covered merchandise inquiry under § 351.227, the Secretary will order the Customs Service to terminate the suspension of liquidation and refund any cash deposits for such entries.

(5) Nothing in this section affects the Customs Service's authority to take any additional action with respect to the suspension of liquidation or related measures.

(m) *Applicability of scope rulings; companion orders—*(1) *Applicability of scope rulings.* In conducting a scope inquiry under this section, the Secretary shall consider, based on the available record evidence, whether the scope ruling should be applied:

(i) On a producer-specific, exporter-specific, importer-specific basis, or some combination thereof; or

(ii) To all products from the same country with the same relevant physical characteristics, (including chemical, dimensional and technical characteristics) as the product at issue, on a country-wide basis, regardless of the producer, exporter or importer of those products.

(2) *Companion antidumping and countervailing duty orders.* If there are companion antidumping and countervailing duty orders covering the same merchandise from the same country of origin, the requesting interested party under paragraph (c) of this section must file the scope ruling application pertaining to both orders only on the record of the antidumping duty proceeding. Should the Secretary determine to initiate a scope inquiry under paragraph (b) or (d) of this section, the Secretary will initiate and conduct a single inquiry with respect to the product at issue for both orders only on the record of the antidumping proceeding. Once the Secretary issues a final scope ruling on the record of the antidumping duty proceeding, the Secretary will include a copy of that scope ruling on the record of the countervailing duty proceeding.

(n) *Service of scope ruling application; annual inquiry service list; entry of appearance.* (1) The requirements of § 351.303(f) apply to this section, except that an interested party that submits a scope ruling application under paragraph (c) of this section must serve a copy of the application on all persons on the annual inquiry service list for that order, as well as the companion order, if any, as described in paragraph (m)(2) of this section. If a scope ruling application is rejected and resubmitted pursuant to paragraph (d)(1) of this section, service of the resubmitted application is not required under this paragraph, unless otherwise specified.

(2) For purposes of this section, the “annual inquiry service list” will include the petitioner(s) and those parties that file a request for inclusion on the annual inquiry service list for a proceeding, in accordance with the Secretary’s established procedures.

(3) A new “annual inquiry service list” will be established on a yearly basis. Parties filing a request for inclusion on that list must file a request during the anniversary month of the publication of the antidumping or countervailing duty order. Only the petitioner and the government of the foreign country at issue in an antidumping or countervailing duty order will be automatically placed on the new annual inquiry service list once the previous year’s list has been replaced.

(4) Once a scope inquiry has been self-initiated or a scope ruling application is accepted by the Secretary, a segment-specific service list will be established and the requirements of § 351.303(f) will apply. Parties other than the scope ruling applicant under paragraph (c) of this section that wish to participate in the scope inquiry must file an entry of appearance in accordance with § 351.103(d)(1).

(o) *Publication of list of final scope rulings.* On a quarterly basis, the Secretary will publish in the FEDERAL REGISTER a list of final scope rulings issued within the previous three months. This list will include the case name, and a brief description of the ruling. The Secretary also may include complete public versions of its scope rulings on its website, should the Sec-

retary determine such placement is warranted.

(p) *Suspended investigations; suspension agreements.* The Secretary may apply the procedures set forth in this section in determining whether a product at issue is covered by the scope of a suspended investigation or a suspension agreement (see § 351.208).

(q) *Scope clarifications.* The Secretary may issue a scope clarification in any segment of a proceeding providing an interpretation of specific language in the scope of an order or addressing whether a product is covered or excluded by the scope of an order at issue based on previous scope determinations covering the same or similar products. Such a scope clarification may take the form of an interpretive footnote to the scope when the scope is published or issued in instructions to the Customs Service.

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§ 351.226 Circumvention inquiries.

(a) *Introduction.* Section 781 of the Act addresses the circumvention of antidumping and countervailing duty orders. This provision recognizes that circumvention seriously undermines the effectiveness of the remedies provided by the antidumping and countervailing duty proceedings and frustrates the purposes for which these laws were enacted. Section 781 of the Act allows the Secretary to apply antidumping and countervailing duty orders in such a way as to prevent circumvention by including within the scope of the order four distinct categories of merchandise. The Secretary will initiate and conduct a circumvention inquiry at the request of an interested party or on the Secretary’s initiative, and issue a circumvention determination as provided for under section 781 of the Act and the rules and procedures in this section. Unless otherwise specified, the procedures as described in subpart C of this part (§§ 351.301 through 351.308 and 351.312 through 351.313) apply to this section.

(b) *Self-initiation of circumvention inquiry.* If the Secretary determines from available information that an inquiry is warranted into the question of whether the elements necessary for a circumvention determination under