

International Trade Alert

Akin Gump
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Commerce Publishes Final Revised AD/CVD Regulations

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Key Points

- On September 20, Commerce published in the *Federal Register* updated regulations affecting its administration of new shipper reviews, scope inquiries and circumvention inquiries.
- The new regulations go into effect in either 30 or 45 days, depending on the provision.

New Documentation Requirements for New Shipper Reviews and Scope Inquiries

The U.S. Department of Commerce ("Commerce") set new documentation requirements for parties requesting new shipper reviews and scope inquiries. New shipper reviews allow exporters and producers that did not export to the United States during the period of investigation to obtain their own individual antidumping or countervailing duty (AD/CVD) margin on an expedited basis. The new regulations require more extensive documentation in the initial new shipper review or scope inquiry request than the previous regulations. However, the new regulations should allow Commerce to make initial decisions in these proceedings with fewer follow-up requests for information than has been common under the prior rules.

New Time Limits for Scope and Circumvention Inquiries

Commerce set new deadlines for the initiation of scope and circumvention inquiries and new time limits for parties to submit affirmative and rebuttal comments. Previously, these deadlines were set on a case-by-case basis or governed by Commerce's other regulations.

New Dates for the Suspension of Liquidation for Scope and Circumvention Inquiries

Commerce clarified its instructions to U.S. Customs and Border Protection (CBP) regarding the timing of the suspension of liquidation pursuant to scope and circumvention inquiries. These new rules expand Commerce's discretion to collect

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duties retroactively on earlier entries in certain circumstances, including even earlier than the date of initiation of the inquiry.

New Mixed Media Analysis for In-Scope Components

Commerce codified its “mixed-media analysis,” which applies to subject merchandise assembled or packaged with non-subject merchandise. An example of mixed media is a toolkit that is not subject to an AD or CVD order that contains steel nails that are subject to an order. Commerce set out factors it will consider when analyzing whether an in-scope component should be excluded from the scope of an antidumping or countervailing duty order because of its inclusion in non-subject merchandise. These factors include:

- The practicability of separating the in-scope component for repackaging or resale.
- The value of the in-scope component as compared to the value of the merchandise as a whole.
- The use or function of the in-scope component relative to the ultimate use or function of the merchandise as a whole.

Commerce’s mixed-media analysis has changed multiple times and been particularly controversial over the last decade.

Country of Origin Determinations:

Commerce sets out its standard for “substantial transformation” when determining a product’s country of origin. Notably, Commerce explains that it is not bound by other agency findings, including that of CBP. Therefore, parties cannot rely on CBP country-of-origin findings for determining a product’s country-of-origin in the context of AD and CVD orders.

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