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# Commerce Proposes New Regulations for Scope Rulings and Anti-Circumvention of Antidumping and Countervailing Duty Orders

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On August 13, 2020, the Department of Commerce ("Commerce") issued a public notice on new regulations to improve administration and enforcement of antidumping ("AD") and countervailing duty ("CVD") orders, including the retroactive application of scope rulings and expansion of anti-circumvention restrictions to include subject components assembled in the United States or third countries. The proposed regulations also allow Commerce to self-initiate both the scope and anti-circumvention inquiries.

## Scope Rulings Applied Retroactively

For scope inquiries, Commerce's current regulations limit the application of AD/CVD duties to items determined to be included in the scope of the AD and/or CVD order(s) at the time of entry into the United States. Under these existing rules, if a scope ruling determines that the item in question is included in the scope of order(s), duties are only collected from the date of Commerce's scope ruling. In other words, they are prospective.

However, under the proposed regulations a scope ruling that a product is within the scope of the order is a determination that the product has always been within the scope of the order. As a result, any goods entered into the United States will be subject to the order for the entirety of the import entry's suspension's lifetime, not just from the date of the scope ruling's effect.

Based on these changes, importers who previously freely imported non-subject merchandise upon reading the plain language of an AD/CVD order could now be subject to AD/CVD deposits on entries not previously requiring such deposits on any unliquidated entries should Commerce issue a scope ruling covering the imported merchandise. This retroactive application will be levied by Customs and Border Protection potentially subjecting importers to dramatically higher costs.

## Expansion of Anti-Circumvention Provisions

The proposed regulations also adopt the same retroactive language for anti-circumvention proceedings, with importers required to pay AD/CVD duties on unliquidated entries backdated to the publication of the investigation's preliminary determination.

Commerce also proposes expanding anti-circumvention restrictions to merchandise completed or assembled in the United States or a third country. For importers of merchandise assembled in multiple countries, this may lead to additional duties levied on input materials from an AD/CVD order-subject country such as China, while the final assembly or fabrication takes place in a third country such as Vietnam.

This can cause disruption and uncertainty in supply lines, shipping costs, and duty deposits depending on the product and the AD/CVD orders in place on unfinished goods.

In advance of these proposed changes, importers are advised to assess whether any of their product components are sourced from countries subject to AD/CVD orders and to consider steps to mitigate such exposure.

## Commerce Self-Initiation

Proposed changes to the regulations also provide Commerce with the ability to self-initiate scope and anti-circumvention inquiries. With more resources at its disposal, this could take a considerable burden off of petitioning domestic producers to seek these proceedings and could increase their occurrence.

The deadline to submit public comments to Commerce on these proposed rules and regulations is September 14, 2020.

If you have any questions regarding the content of this alert, please contact Mark Ludwikowski (mludwikowski@clarkhill.com; 202-640-6680), Kevin Williams (kwilliams@clarkhill.com; 312-985-5907); William Sjoberg (wsjoberg@clarkhill.com; 202-772-0924), Courtney Gayle Taylor (cgtaylor@clarkhill.com; 202-552-2350); Dennis Devaney (ddevaney@clarkhill.com); or another member of Clark Hill's International Trade Business Unit.