檔　號:
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# 經濟部國際貿易局 函

受文者：中華民國全國工業總會

發文日期：中華民國110年9月29日
發文字號：貿多字第1107030467號
速別：普通件
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附件：如文(請至附件下載區下載https://att.trade.gov.tw/，識別碼：YpsV9)

主旨：有關美國商務部(DOC)公布「反傾銷稅及平衡稅」修正規定事，請查照。

說明：

一、依據駐美國代表處經濟組本(110)年9月21日經美字第1100001193號函辦理（如附件）。

二、DOC於本年9月20日公布「反傾銷稅及平衡稅(AD/CVD)」修正規定，本次法規修正為20年來最全面更新貿易救濟法規，其中可能與我國廠商較為直接相關之修正要點包括：

(一)「新廠商複查」(New Shipper Reviews)：

1、背景：該複查為提供新廠商取得其個別傾銷差額或補貼稅率之快速程序，其中新廠商係指在原本AD/CVD調查期間並未出口至美國的出口商或製造商，亦非受調查出口商或製造商之關聯企業(not affiliatedwith an exporter or producer)。

2、現行規定：新廠商申請該複查時，無須提交資訊證明其與非關連客戶(unaffiliated customer)之交易是否

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構成善意交易(bona fide sales)。

3、修正規定：

(1)為避免廠商濫用該複查程序，要求廠商於該複查期間提出AD/CVD稅之現金擔保(cash deposit)，不得用債券或證券(bond or security)取代；

(2)新增商務部在判斷構成善意交易之考量因素，例如該出口商、製造商或客戶是否因課徵AD/CVD稅後才設立，以及彼此之間是否有與受調查產品無關的業務往來等；

(3)倘出口商或製造商未能證明其與非關聯客戶之交易屬善意交易，則DOC可撤回該複查。

4、生效時間：本年10月20日。

(二)「反規避」調查及決定：

1、背景：「反規避」調查係防止被課徵AD/CVD之出口商或製造商將原涉案產品零組件出口至美國（或第三國），再於當地簡單裝配，或另以改變產品型態等方式規避AD/CVD。

2、現行規定：目前「反規避」調查係規定在「反傾銷與平衡稅」法規中的範圍(scope)認定以及個案中對相關法規的解釋。

3、修正規定：DOC在其法規中為「反規避」調查與決定建立新的獨立專章，整合過去DOC進行「反規避」調查的大部分實務做法，要點包括：

(1)明定DOC可基於利害關係人申請而啟動反規避調查，或自行啟動調查；

(2)DOC應於相關申請後30日內(可延長至45日內)決定是否啟動調查，並應於300日內(可延長至365日內)作出最終裁定；

(3)「反規避」決定可適用於被調查國全體廠商(countrywide)。

4、生效時間：本年11月4日。

(三)要求進口商或出口商出具證明：

1、背景：DOC得在包括「反規避」調查等情況下要求進口商、出口商或其他利害關係人出具證明，以確認特定貨品是否為AD/CVD命令的適用範圍。

2、現行規定：目前無明文規範，惟DOC在實務上會要求進口商等利害關係人出具證明。

3、修正規定：DOC已就過去實務情形彙整並制定本項新的規範，得要求進口商、出口商或其他利害關係人出具「特定貨品是否在課徵AD/CVD命令的範圍」之證明，倘當事人未能出具或該證明包含重大虛偽、虛構或詐欺之陳訴時，DOC得請求海關收取AD/CVD命令之現金擔保。

4、生效時間：本年10月20日。

正本：中華民國全國工業總會、台灣鋼鐵工業同業公會、台灣鋼線鋼纜工業同業公會、台灣螺絲工業同業公會、財團法人中華民國紡織業拓展會、台灣區人造纖維製造工業同業公會、台灣區絲織工業同業公會、台灣區金屬品冶製工業同業公會、台灣鍛造協會、台灣區塑膠原料工業同業公會、台灣區塑膠製品工業同業公會、台灣橡膠暨彈性體工業同業公會、台灣太陽光電產業協會、台灣區彈簧工業同業公會、台灣染料顏料工業同業公會

副本：本局局長室、劉副局長室、雙邊貿易二組 電子交換 2021/09/29 12:25 文章

局長 江文若

檔號 / /
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# 駐美國代表處經濟組　函

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受文者：經濟部國際貿易局

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發文日期：中華民國110年9月21日
發文字號：經美字第1100001193號
速別：普通件
密等及解密條件或保密期限：
附件：如文　(經美1100001193_Attach1.pdf, 經美1100001193_Attach2.pdf, 經美1100001193_Attach3.pdf)

主旨：陳報美商務部公布「反傾銷稅及平衡稅」修正規定事，敬請查參。

說明：

訂

一、相關文號：本組去(109)年8月12日經美字第1090000701號函。

二、美商務部於本(9)月20日公布「反傾銷稅及平衡稅」修正規定，商務部長Gina Raimondo表示，該部致力於保護美國勞工、農民及公司免於不公平貿易損害，本次法規修正為20年來最全面更新貿易救濟法規。修正規定之部分內容將於本年10月20日生效，其他部分則於本年11月4日生效。

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三、此次修正規定要點如下：

(一)新增「產業支持」(Industry Support)評論之提出期限：

1、背景：對於反傾銷(AD)及平衡稅(CVD)調查申請，商務部應於20日內(可延長至40日內)決定該申請是否具備啟動調查之要件，包括產業支持調查。過去並未規

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國際貿易局　110/09/22
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定利害關係人對「產業支持」評論之提出期限。

2、修正規定：利害關係人對「產業支持」之評論須於商務部決定是否啟動調查之日5日前提出；反駁意見須於該評論截止日後2日內提出。

(二)避免廠商濫用「新廠商複查」(New Shipper Reviews)：

1、背景：該複查係提供新廠商取得其個別傾銷差額或補貼稅率之快速程序。新廠商係在原本AD或CVD調查期間並未出口產品至美國的出口商或製造商，亦非受調查出口商或製造商之關係企業。

2、修正規定：為避免廠商濫用該複查程序，要求廠商於該複查期間提出關稅之現金擔保(cash deposit)；規定相關交易構成善意交易(bona fide sales)之判斷因素；倘若並無善意交易之相關資訊，或出口商或製造商無法證明其與無關聯客戶(unaffiliated customer)存在善意交易，則商務部可撤回該複查。

(三)更新AD或CVD「範圍調查」及裁定之相關規定：

1、背景：AD或CVD對於其適用範圍之產品係以一般用語描述，有時產生「特定產品是否在AD或CVD範圍」之疑義。倘利害關係人向商務部申請作出範圍裁定或商務部自行發動調查時，商務部將進行範圍調查(scope inquiry)，以認定某產品是否包含於命令範圍內。

2、修正規定：

(1)明定「範圍裁定」申請所需資訊；要求商務部於30日內決定接受或拒絕「範圍裁定」申請，範圍調查應於120日內(可延長至300日內)完成。

(2)明定「範圍裁定」考量標準，如產品原產地、「混合產品」分析方式。

(四)新增「反規避」調查及決定之相關規定：

1、背景：「反規避」調查係防止被課徵AD或CVD之出口商或製造商將原涉案產品零組件出口至美國(或第三國)，再於當地簡單裝配，或另以改變產品型態等方式規避AD或CVD。

2、修正規定：明定商務部可基於利害關係人申請而啟動反規避調查，或自行啟動調查；商務部應於相關申請後30日內(可延長至45日內)決定是否啟動調查；商務部應於300日內(可延長至365日內)作出最終裁定。另，反規避決定可適用於被調查國全體廠商(country-wide)。

(五)明定商務部協助美國海關(CBP)調查廠商逃避AD或CVD：

1、說明：美國海關 (CBP)依據2015年「執行和保護法案」(EAPA)，得對於逃避AD或CVD情形進行調查，倘海關於該調查程序無法確定涉案產品是否在AD或CVD範圍，得請求商務部協助認定。惟美國關稅法對於商務部協助CBP程序，原無規定。

2、修正規定：

(1)明定商務部對於CBP涵蓋貨品範圍請求(Covered Merchandise Referrals)之處理方式，商務部應於收到請求後20日內決定是否啟動調查，且應於120日內(可延長至150日內)作出最終認定。

(2)商務部可採取在「範圍調查」及「反規避調查」之標準及分析方式，認定相關產品是否在AD或CVD範圍。

四、檢附商務部新聞稿及說明、相關報導，併請卓參。

正本：經濟部國際貿易局

副本：行政院經貿談判辦公室、經濟部、陳政務次長室(請經濟部代陳)、經濟部工業局、經濟部貿易調查委員會(均含附件)電子公文交換章
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國際
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Press Release

# COMMERCE STRENGTHENS RULES TO FIGHT UNFAIR TRADE PRACTICES

For Immediate Release
September 20, 2021
Contact: Office of Public Affairs
Phone: 202-482-3809

**WASHINGTON** - Today, the U.S. Department of Commerce announced modifications to its antidumping duty (AD) and countervailing duty (CVD) regulations, which will improve enforcement activities designed to defend U.S. companies from unfair and illegal trade practices.

"The Commerce Department is committed to safeguarding American workers, farmers, and other businesses from foreign actions that undermine free and fair trade," said U.S. Secretary of Commerce Gina M. Raimondo. "These regulations represent the most comprehensive updates to trade enforcement in more than two decades. I thank U.S. industries and interagency partners who contributed through their review and input to this important rulemaking."

The new regulations apply to various aspects of AD/CVD proceedings, including:

- Standalone rules governing circumvention inquiries and determinations;
- Rules for Commerce to assist U.S. Customs and Border Protection in combating duty evasion;
- Rules to prevent abuse of new shipper reviews;
- Rules updating the procedures and standards for scope inquiries and rulings; and
- Revised timeline for submitting comments pertaining to industry support.

These final regulations take into consideration comments from the public on the draft regulations, which were published on August 13, 2020. Certain parts of the rule will be effective within 30 days of the September 20, 2021 publication date (October 20, 2021) while other parts will be effective within 45 days (November 4, 2021), as detailed in the rule. For more information on the new regulations, please refer to the **Federal Register notice** and the **updated AD/CVD FAQ section** on trade.gov.

https://www.trade.gov/antidumping-and-countervailing-duty-frequently-asked-questions

On September 20, 2021, the U.S. Department of Commerce (Commerce) announced modifications to its antidumping duty (AD) and countervailing duty (CVD) regulations, which will improve enforcement activities designed to defend U.S. companies from unfair and illegal trade practices. A summary of the modified regulations is below and the full text can be found in the **September 2021 Federal Register notice** and in the **August 2020 Federal Register Notice**.

# Initiation Comment Period for Industry Support

## Context:

The antidumping and countervailing duty provisions of the trade laws provide Commerce with 20 calendar days in which to determine whether the elements necessary for initiation of antidumping or countervailing duty investigations have been satisfied, including a determination of industry support for the petition. Commerce may extend the time for an additional 20 calendar days, for a maximum of 40 calendar days, solely to determine industry support for a petition.

## Past Practice:

Comments on industry support for a petition could be filed up to and including the scheduled date of the determination of whether to initiate the requested investigations.

## Change:

Comments on industry support for a petition may now be filed no later than 5 business days before the scheduled date of the decision on initiation; and rebuttal comments or information to rebut, clarify, or correct such information on industry support may now be filed no later than 2 calendar days from the scheduled date for filing the original comments.

**These changes apply to proceedings in which petitions for investigations are filed on or after October 20, 2021.**

## Who Does This Affect:

The revised commenting period affects potential interested parties and members of the domestic industry.

# 'New Shipper' Reviews

## Context:

The statute provides a procedure by which "new shippers" can obtain their own individual dumping margin or countervailable subsidy rate on an expedited basis. A new shipper is an exporter or producer that did not export to the United States, and is not affiliated with an exporter or producer that did export to the United States, during the period of investigation.

## Past Practice:

Commerce's regulations allowed new shippers to obtain a new shipper review without submitting information pertaining to whether the sales at issue constitute bona fide sales. In addition, the requester was not required to submit any certification with respect to its unaffiliated purchaser's information and participation.

## Change:

Commerce is making conforming amendments to the new shipper regulation to require cash deposit of duties, instead of allowing the issuance of bonds, during the new shipper review, consistent with a change to the statute. The regulation also clarifies the circumstances under which it will grant a new shipper review and establishes that additional information and certifications will be required to obtain a new shipper review. In addition, Commerce is establishing factors to consider in determining whether the sales at issue constitute bona fide sales for purposes of the antidumping and countervailing duty laws. Lastly, the regulation establishes that Commerce may rescind the new shipper review if necessary information pertaining to the bona fide sale issue is not on the record, or if the exporter or producer failed to demonstrate the existence of a bona fide sale to an unaffiliated customer.

**These changes apply to new shipper reviews in which the request for review is filed on or after October 20, 2021.**

## Who Does This Affect:

Foreign producers or exporters interested in requesting a new shipper review of an established antidumping or countervailing duty order.

# Scope

## Context:

When Commerce publishes antidumping and countervailing duty orders it provides a general description of the merchandise covered by the order (i.e., the "scope" of the order). Questions sometimes arise as to whether a particular product is covered by the scope of the order.

## Past Practice:

Commerce's current regulations allow for parties to seek scope rulings from Commerce by submitting a scope ruling request. Commerce issues its scope rulings based on the information contained in the scope ruling request (i.e., an "informal scope inquiry"), or, if further inquiry is warranted, it initiates a formal scope inquiry and then issues a scope ruling. Commerce may also self-initiate a formal scope inquiry. Since the scope regulations were issued in 1997, Commerce has established methodologies to determine a product's country of origin, crafted remedies on a case-by-case basis to clarify whether a product is covered by the scope of an order, and frequently had to issue multiple supplemental questionnaires to get the information necessary to make a scope ruling determination. Commerce's regulations also establish various procedures and standards for conducting a scope inquiry and issuing a scope ruling, as well as ordering the suspension of liquidation of entries of products subject to a scope inquiry. Lastly, although circumvention inquiries are considered an entirely different area of trade law, Commerce's conduct of circumvention inquiries fell under the scope regulations.

## Change:

Commerce adopted numerous procedural and substantive changes to its new scope regulations. The procedural changes include:

- Eliminating "informal inquiry" proceedings;
- Adopting a standardized scope ruling application (which explicitly lists the types of information needed, thereby reducing the need for multiple supplemental questionnaires);
- Streamlining initiation, notice, service, and other procedures; and adopting new regulatory deadlines. Of note, parties filing a scope application must now serve a copy of it on the newly established Annual Inquiry Service List for the relevant order or suspended investigation. Commerce will allow interested parties to submit an entry of appearance to be added to the Annual Inquiry Service List for those cases where they qualify as an interested party, and then update the lists on an annual basis.

In addition, Commerce will now have 30 days to accept or reject a scope ruling application; applications that are not rejected are deemed accepted and a scope inquiry will be initiated. Scope inquiries must be completed within 120 days or, if extended, within 300 days. The new regulations also provide Commerce with the flexibility to address scope matters in other segments of the proceeding (including circumvention inquiries, covered merchandise inquiries, and administrative reviews) or to align scope deadlines with other segments of the proceeding. Commerce's new regulations also separate the conduct of circumvention inquiries into a different set of regulations. Further, Commerce has amended and restructured its regulations governing the substantive standards and analysis Commerce employs in issuing a scope ruling, including:

- Codifying its country of origin/substantial transformation analysis to determine the origin of a product that is the subject of a scope inquiry;
- Formally adopting its "mixed-media" analysis dealing with mixed component products;
- Codifying its practice of issuing either company-specific or country-wide scope rulings;
- Strengthening its suspension of liquidation regulations to deter abuse of scope procedures by ensuring that antidumping and countervailing duties apply to products determined to be within the scope of the orders, regardless of when a scope ruling is requested, as appropriate.

**These changes apply to scope inquiries for which a scope ruling application is filed, as well as any scope inquiry self-initiated by Commerce, on or after November 4, 2021.**

## Who Does This Affect:

Interested parties, such as foreign and domestic producers, importers, and exporters, interested in seeking a scope ruling or participating in a scope inquiry to determine whether a particular product is covered by the scope of an antidumping or countervailing duty order.

# Circumvention

## Context:

The antidumping and countervailing duty statute identifies four types of merchandise originating from a country with an existing antidumping and countervailing duty order that, in certain instances, may be found circumventing the order(s): (1) merchandise that is completed or assembled in the United States after importation; (2) merchandise completed or assembled in a third country before exportation to the United States; (3) merchandise that has undergone minor alterations; and (4) merchandise that was later-developed after the order was established. If Commerce reaches an affirmative final determination, such merchandise will be covered by the scope of the order(s).

## Past Practice:

Commerce's conduct of circumvention inquiries was generally governed by Commerce's scope regulations and its interpretation of the statute on a case-by-case basis.

## Change:

Commerce has now established new standalone regulations governing the conduct of circumvention inquiries and the issuance of circumvention determinations. These regulations incorporate much of the practice that Commerce has implemented over decades of administering and applying the circumvention law. Of note, these regulations provide that Commerce may conduct a circumvention inquiry at the request of an interested party or self-initiate a circumvention inquiry. These regulations also detail the required content of a circumvention request, and clarify notice, service, and other procedures. For instance, parties filing a circumvention request must also serve a copy of it on the newly established Annual Inquiry Service List for the relevant order, as described above in the "Scope" section. In addition, these regulations establish specific deadlines for ensuring the timely completion of circumvention inquiries, requiring that Commerce determine within 30 days, or, if extended, within 45 days, whether to accept and initiate a circumvention request. Commerce must issue its final determination within 300 days, or, if extended, within 365 days. The regulations also allow for Commerce to address a scope matter or covered merchandise referral within a circumvention inquiry, defer a circumvention inquiry to first consider a scope matter, or align its deadlines with other segments of the proceeding.

On substance, these regulations codify much of Commerce's existing practice in reaching circumvention determinations that was simply not present in the previous scope regulations. For example, the regulations codify the legislative history criteria used in minor alterations inquiries and Commerce's long-standing "commercial availability" test applied in later-developed merchandise inquiries. In addition, the regulations codify Commerce's ability to apply circumvention determinations on a country-wide basis to both products which are similar and to products which are the same as those subject to inquiry, and to impose a certification requirement. Commerce has also overhauled its regulations to adopt a case-specific analysis of whether it is appropriate to extend the suspension of liquidation to certain entries that pre-date the initiation of the circumvention inquiry.

**These changes apply to circumvention inquiries for which a circumvention request is filed, as well as any circumvention inquiry self-initiated by Commerce, on or after November 4, 2021.**

## Who Does This Affect:

Interested parties such as importers, exporters, and domestic producers, interested in seeking a circumvention determination or participating in an inquiry to determine whether a particular product is circumventing the scope of an antidumping or countervailing duty order.

# Covered Merchandise Referrals

## Context:

In 2016, the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) (Pub. L. No. 114-125, 130 Stat. 122) was signed into law, which contains title IV – Prevention of Evasion of Antidumping and Countervailing Duty Orders (short title "Enforce and Protect Act of 2015" or "EAPA"). Section 421 of the EAPA (codified as section 517 of the Act) establishes a formal process for CBP to conduct investigations of potential duty evasion of antidumping and countervailing duty orders. Pursuant to section 517 of the Act, CBP may make a referral to Commerce to determine whether the product at issue is covered by the scope of the order(s) (i.e., a covered merchandise referral/inquiry).

## Past Practice:

There is no current regulation governing Commerce's receipt of a covered merchandise referral from CBP; Commerce's practice has developed on a case-by-case basis.

## Change:

Commerce has established new regulations governing its receipt of covered merchandise referrals from CBP and providing a new type of inquiry – a covered merchandise inquiry. Of note, these regulations provide that, after receiving a sufficient covered merchandise referral from CBP, Commerce has 20 days to determine whether to initiate a covered merchandise inquiry or to address the referral in an ongoing segment of the proceeding. In addition, these regulations establish specific deadlines for ensuring the timely completion of covered merchandise inquiries, requiring that Commerce reach a final determination within 120 days, or, if extended, within 150 days. Commerce may also align its deadlines with other segments of the proceeding. These regulations also adopt specific notice, service, and other procedures.

On substance, these regulations allow for Commerce to use the standards and analysis from its scope and circumvention regulations in determining whether a product is covered by the scope of the order. In other words, these regulations allow Commerce to conduct a scope or circumvention analysis within the expedited timelines of a covered merchandise inquiry to ensure a determination is promptly transmitted to CBP consistent with the statute. These regulations also allow Commerce flexibility to ensure that entries subject to an EAPA investigation remain properly subject to suspension of liquidation during the conduct of Commerce's covered merchandise inquiry.

**These changes apply to covered merchandise inquiries for which a sufficient covered merchandise referral is received on or after November 4, 2021.**

## Who Does This Affect:

Parties to a CBP EAPA investigation, as well as any interested party seeking to participate in a covered merchandise inquiry.

# Certifications

## Context:

In various situations, including circumvention inquiries, Commerce may require certifications by importers, exporters, and other interested parties as to whether merchandise is subject to an AD/CVD order.

## Past Practice:

There is no current regulation governing Commerce's certification practice.

## Change:

Commerce has established new regulations codifying and enhancing Commerce's existing authority and practice to require certifications by importers, exporters, and other interested parties as to whether merchandise is subject to an AD/CVD order. The regulations set forth procedures for complying with certification requirements and consequences for a party's failure to satisfy certification requirements.

**These changes are applicable on or after October 20, 2021.**

## Who Does This Affect:

Interested parties such as foreign and domestic producers, importers, and exporters.

# Importer Reimbursement Certification

## Context:

Under current regulation, importers must certify whether they have or have not entered into an agreement for the payment or reimbursement of antidumping and countervailing duties by the exporter or producer.

## Past Practice:

Commerce's existing regulation sets forth requirements for the importer reimbursement certification.

## Change:

Commerce revised the regulation to no longer require a specific format for the certification and to allow for either electronic or paper filing in accordance with CBP's procedures. The revisions also clarify that certifications are required prior to liquidation but allow for CBP to accept certifications in accordance with its protest procedures.

**These changes are applicable on or after October 20, 2021.**

## Who Does This Affect:

Importers of goods subject to antidumping and countervailing duty orders.

# Other Procedural Amendments

## Context:

To implement the substantive changes to the scope, circumvention, and covered merchandise referral regulations, Commerce has adopted amendments to two of its procedural regulations.

## Past Practice:

Commerce's existing regulations set forth requirements for entries of appearance and procedures for access to business proprietary information under an administrative protective order (APO). The regulations include a requirement that a legal representative of an importer applying for APO access in a scope segment provide documentary evidence of importation or that the importer has taken steps to import the merchandise subject to the inquiry.

## Change:

Commerce revised its regulations to provide that an interested party filing a scope ruling application or a circumvention request, as well as any publicly identified parties in a covered merchandise referral from CBP, need not file an entry of appearance to be placed on the segment-specific service list for that inquiry. Commerce also revised its regulations to provide that a legal representative applying for APO access who represents an importer in a circumvention inquiry must also submit documentary evidence of importation, similar to that required in a scope inquiry. However, the revisions provide that legal representatives of importers identified in a CBP covered merchandise referral are exempt from such a requirement.

## Who Does This Affect:

Interested parties filing a scope ruling application or a circumvention request, parties to a CBP EAPA investigation, and importers.

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# Former Commerce official: New AD/CVD rules fix loopholes, inefficiencies

**September 21, 2021 at 10:13 AM**

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The Commerce Department on Monday published the first overhaul of antidumping and countervailing duty regulations in more than 20 years, aiming to close loopholes and address inefficiencies following a years-long effort that was essentially completed by the end of the Trump administration, according to a former Commerce official who led the push to craft the new regulations.

The 282-page rule is fundamentally unchanged from a version signed in January by Jeffrey Kessler before he left his post as assistant secretary of Commerce for enforcement and compliance. Kessler, a partner at WilmerHale, shepherded the regulatory update -- which he called one of his top priorities while in office -- almost to publication. He told *Inside U.S. Trade* on Friday the update will help address problems in trade enforcement practice the department has seen arise over the past two decades and "imposes structure" on "increasingly important areas of Commerce's practice."

After Kessler approved the final rule, it was put on hold because of an "across-the-board" regulatory freeze and review imposed by the Biden administration, he said. The rule was sent to the Federal Register before Kessler left office, but he didn't know if it ultimately would "see the light of day" and was "totally surprised" last week when he saw the rule was scheduled to be published.

Commerce Secretary Gina Raimondo called the rulemaking "the most comprehensive updates to trade enforcement in more than two decades."

"The Commerce Department is committed to safeguarding American workers, farmers, and other businesses from foreign actions that undermine free and fair trade," she said in a Monday statement. "I thank U.S. industries and interagency partners who contributed through their review and input to this important rulemaking."

Kessler highlighted updates to circumvention and scope cases, which he said have become a "much bigger part" of Commerce's workload since the 1990s. The new regulations are designed to impose "structure and clarity around the process" for those cases, he said.

A new "standalone circumvention rule," for example, explicitly empowers Commerce to self-initiate circumvention inquiries, offering a stronger legal basis for the department to do so, he said. In addition, he said, time limits on circumvention inquiries introduced in the new rules should help limit the number of cases that "drag on indefinitely."

The rules also were crafted to address problems such as "gamesmanship and delay" relating to the scope of AD/CVD orders, he said.

For example, the regulations previously were set up so that duties would not attach to "unsuspended entries" before the date of a scope inquiry's initiation, Kessler said. Importers, he contended, could game this system by delaying requests for scope rulings from Commerce.

To close this loophole, the new regulations provide for "retroactive suspension" of entries that pre-date the scope inquiry initiation, according to the Federal Register notice.

Another significant change, Kessler said, are updated rules for "new shipper reviews." Commerce conducts reviews of companies that begin shipping covered goods to the U.S. after the completion of AD/CVD investigations. According to Kessler, companies could manipulate this process by engineering costly initial sales to obtain improperly low dumping margins.

This could create a potential "whack-a-mole dynamic," he said, "where new, anonymous or fly-by-night companies sprout up in foreign countries" to obtain new shipper status.

To address this concern, the new regulations stipulate that individual AD/CVD rates for new shippers "must be based on *bona fide* sales" in the U.S. and codify "the factors that Commerce has historically used to determine whether a sale is *bona fide*," according to the Federal Register notice.

The rules require "that a new shipper establish the circumstances surrounding the sales, including the price, any expenses arising from such sales, whether the subject merchandise was resold at a profit, and whether such sales were made on an arms-length basis," according to the Federal Register. They also require documentation about a producer's business activities, including "offers to sell merchandise in the United States, identification of the complete circumstances surrounding sales to the United States, any home market, or third country sales, identification of the producer or exporter's relationship to the first unrelated United States purchaser, and with respect to non-producing exporters, an explanation of the non-producing exporter's relationship with its supplier," the notice states.

Another important change, according to Kessler, is that the rules impose deadlines for parties to challenge AD/CVD petitions for lacking industry support, so that Commerce has time to review those challenges before issuing decisions. Under the older regulations, parties could comment "up until the day of Commerce's decision," the notice states.

That system created a "scramble" for Commerce officials handling the pre-petition process, especially when, as in 2020, the department faced a dozen or more petitions at the same time, Kessler said.

The update also includes rules for handling covered merchandise inquiries referred by U.S. Customs and Border Protection under the Enforce and Protect Act of 2015. EAPA, which was implemented in 2016, established a process for CBP to investigate industry allegations that importers are evading AD/CV duties.

While the slew of changes represents a comprehensive overhaul, Kessler allowed that legislative reform of AD/CVD rules to better counter evasion might still be warranted.

Ohio Sens. Rob Portman (R) and Sherrod Brown (D) earlier this year introduced a proposal that, among other things, would establish a process for the U.S. International Trade Commission and Commerce to handle "successive and concurrent investigations" so that domestic industry can more easily seek relief when producers try to evade enforcement actions by shifting production to other countries, according to a statement from the senators.

"I don't think that this set of regulations eliminates the need for that provision," Kessler said.

The new rules will help Commerce operate more efficiently, he concluded. That the update was published in "essentially the same form" as Kessler had left it in January, he said, shows "both that the staff supports it and that ... this is not a partisan issue."

"This is really something that is needed for the efficient ... and sound administration of the trade remedy laws," he said. -- *Margaret Spiegelman* (mspiegelman@iwpnews.com)

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