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International Trade

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Commerce's Updated Antidumping and Countervailing Duty Regs Bring Pros and Cons

On Monday, March 25, 2024, the U.S. Department of Commerce ("Commerce") issued extensive updates to its antidumping ("AD") and countervailing duty ("CVD") regulations, to take effect April 24, 2024.[1] These changes will enhance the ability of domestic companies to enlist the U.S. government's assistance in restricting unfairly traded competing imports. Conversely, companies who source elements of their supply chain from outside the United States may see an impact on their suppliers.

The final rule empowers Commerce to address a number of issues involving internationally traded goods.

- Commerce announced procedures to address "government inactions and failure to enforce property (including intellectual property), human rights, labor, and environmental protections" that lower the cost of production in foreign countries. This provision was highly controversial.

- Commerce outlines how it will address distortions in foreign markets that impact both the prices and costs of foreign imports into the United States. It provides numerous examples of such distortions, e.g., global overcapacity, governmental control or support of foreign producers, and other foreign government interventions that distort prices and costs.

- Commerce has removed its existing regulatory restrictions on investigating and addressing transnational subsidies, which are those where a foreign government subsidizes companies outside of its borders. This could potentially subject new categories of subsidies to countervailing duties.

Commerce also adopted technical changes to its procedures that could significantly affect ongoing and future investigations and reviews. These include the following.

- Commerce has updated a number of technical provisions governing how it addresses foreign government subsidization. For example, it specifies how it will address the costs of complying with government regulations; how it determines benefit for loans, equity infusions, debt forgiveness programs, direct taxes, and export insurance; whether a provision of goods is made for adequate remuneration; how it calculates ad valorem subsidy rates; and how it attributes subsidies to products.

- Commerce made extensive technical changes to scope and circumvention inquiry proceedings, as well as covered merchandise referrals. Parties who are currently involved in such matters should consult with counsel to determine whether the updates implicate their interests.

Companies currently involved in AD and CVD proceedings, and those considering filing a scope application or requesting a circumvention inquiry, or already involved in either type of inquiry, should seek guidance on how these new regulations may impact their interests. Parties in the beginning stages of investigations and reviews should be especially sensitive to these new regulations because Commerce's newly added provisions on particular market situations and willingness to countervail transnational subsidies could result in complex issues of first impression before the agency. Companies whose supply chains or final products could be impacted by changes in the ability of foreign products to compete in the U.S. market may want to examine whether these changes could have an impact on their operations.

For more information or assistance, contact Tim J. Hruby, Brendan S. Saslow, or another member of Blank Rome's International Trade group.

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1. *Regulations Improving and Strengthening the Enforcement of Trade Remedies Through the Administration of the Antidumping and Countervailing Duty Laws,* 89 Fed. Reg. 20,766 (Dep't of Comm. Mar. 25, 2024) (Final Rule).

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