

Commerce Department Announces Proposed Modifications to Regulations, Including for New Shipper Reviews, Scope Rulings, and Circumvention Inquiries

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In an effort “to strengthen the administration and enforcement of AD/CVD laws,” the Department of Commerce (Commerce) announced several proposed changes to its regulations concerning antidumping (AD) and countervailing duty (CVD) proceedings. Many of these proposed changes are designed to prevent foreign producers/exporters and U.S. importers of subject merchandise from abusing existing AD/CVD proceedings to obtain advantageous rulings.

Commerce’s proposal was published in the *Federal Register* on August 13, 2020. Parties have until September 14, 2020 to submit written comments on Commerce’s proposed rules.

The most substantial modifications proposed by Commerce include:

- **New Shipper Reviews**: In response to abuse of new shipper reviews, Commerce proposes allowing a new shipper review only where the requester shows a reasonable likelihood that there will be a *bona fide* sale. Proposed modifications introduce documentation requirements to assist Commerce in determining whether a *bona fide* sale will ultimately occur, expand Commerce’s ability to rescind a new shipper review, and clarify the factors Commerce may consider in a *bona fide* sale determination.
- **Scope Rulings**: Commerce also proposes numerous modifications to its scope inquiry procedures. Most notably, Commerce proposes a standardized scope ruling application

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to request a scope ruling and the elimination of the distinction between formal scope inquires and informal scope rulings. Commerce's proposed scope inquiry modifications would also codify and clarify the basis for scope rulings regarding country of origin, scope language interpretation, and "mixed media" products (i.e., products partially incorporating subject merchandise).

- **Circumvention Inquiries:** Commerce's proposed modifications move circumvention inquiries into a newly created regulatory section to better distinguish these proceedings from scope inquiries. Commerce also clarifies its discretion to self-initiate circumvention inquiries and apply any circumvention determination to all producers in a country based on the possibility of subsequent circumvention attempts.
- **Certifications of Entries:** Commerce proposes creating a new section in its regulations requiring importers, producers, and exporters to certify entries and sales of subject merchandise, as it has previously done in circumvention proceedings. The proposed change would also formally establish Commerce's ability to instruct U.S. Customs and Border Protection (CBP) to collect cash deposits for parties submitting false or deficient certifications.

The proposed rules also contain several additional changes:

- Commerce proposes establishing a deadline for comments on industry support following the filing of a petition. Such comments would be due least at least five days before the AD/CVD investigation initiation deadline, and any rebuttal comments would be due no later than two days afterwards.
- Commerce proposes several modifications to its process for "covered merchandise referrals" from CBP, including expedited timelines and more efficient solicitation of information from interested parties.
- Commerce proposes streamlining certification filing requirements for importers that claim to have been reimbursed for AD/CVD duties to align with CBP's requirements.
- Commerce has suggested adopting procedural changes to entries of appearances, service lists, and requests for access to business proprietary information, consistent with the proposed modifications to scope and circumvention inquiries discussed above.