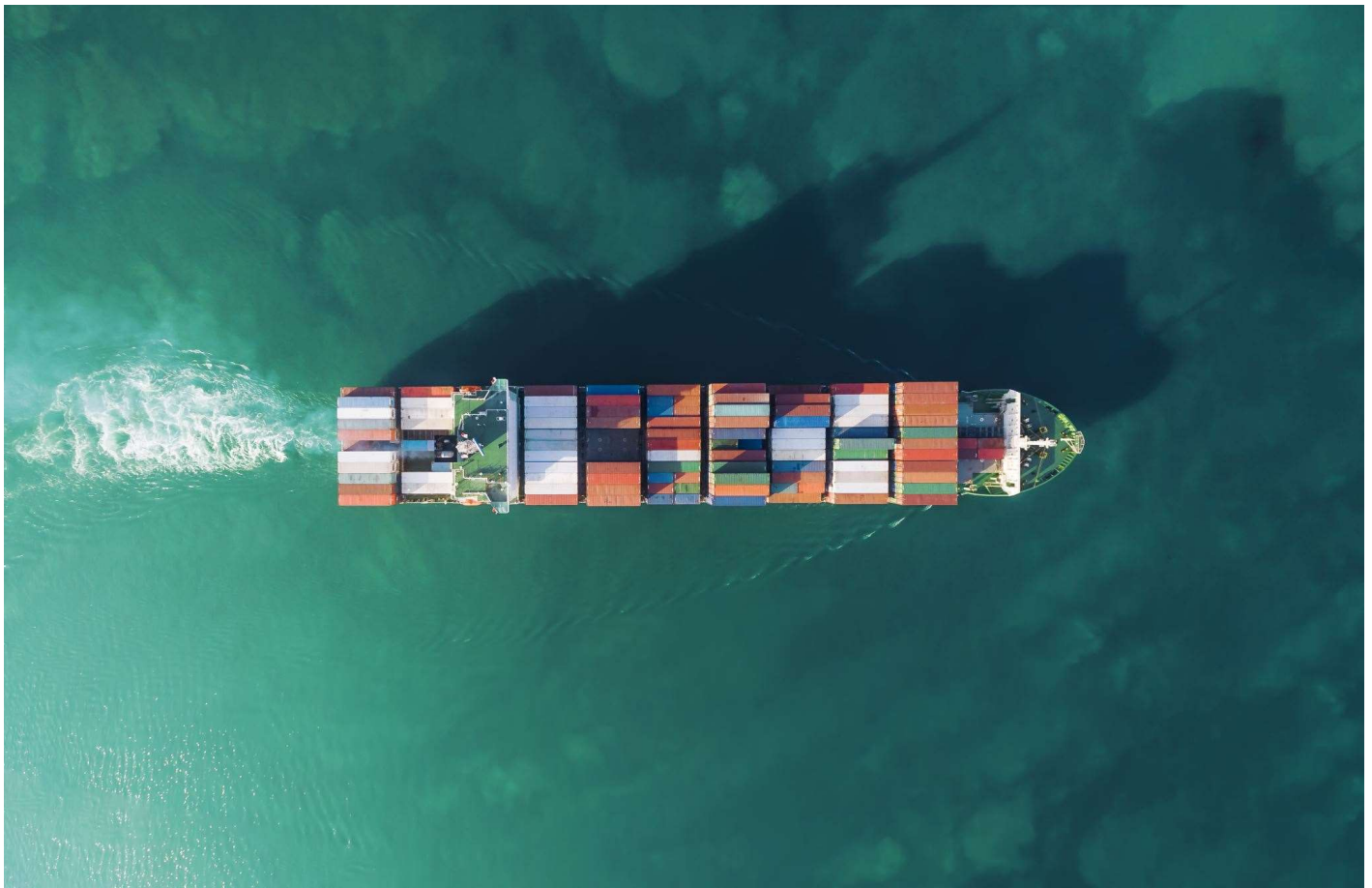


Navigating the Changes in Antidumping and Countervailing Duties

KEY CHANGES AFFECTING BOTH MARKET AND NON-MARKET ECONOMIES



July 2024

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The U.S. Department of Commerce has recently proposed a comprehensive set of revisions to its **antidumping** (AD) and **countervailing duty** (CVD) regulations, aiming to codify existing practices and introduce new procedural and substantive changes. [These proposed changes, open for public comment until September 10, 2024](#), are designed to refine Commerce's approach to AD/CVD cases, ensuring consistency and fairness in proceedings. Key highlights include the formalization of adverse facts available (AFA) application, updates to subsidy regulations, and expanded criteria for cross-ownership analysis. Notably, the Proposed Rule introduces significant changes for non-market economy (NME) cases, and adapts Commerce's practices to the recent [U.S. Supreme Court ruling in Loper Bright](#). As stakeholders review these proposals, understanding the detailed amendments and their implications for international trade is crucial.

Business Impacts

Potential Positive Business Impacts

- 1. Increased Clarity and Predictability**
 - The codification of existing practices into formal regulations will provide businesses with clearer guidelines, reducing uncertainty and helping companies better comply with AD/CVD requirements.
- 2. Fairer Competition**
 - By addressing cross-ownership and expanding subsidy investigations, the Proposed Rule aims to ensure a level playing field, benefiting companies that operate within fair trade practices.
- 3. Enhanced Compliance Mechanisms**
 - The new rules on adverse facts available (AFA) will encourage companies to provide complete and accurate information, leading to more accurate duty assessments and fairer competition.
- 4. Adaptation to Inflation**
 - The new regulation allowing for indexing countervailable benefits in high-inflation countries ensures more accurate calculations, protecting businesses from unfair competitive advantages due to economic instability.
- 5. Reduced Risk of Arbitrary Decisions**
 - The proposed changes following the Loper Bright decision will subject Commerce's interpretations to stricter judicial review, potentially reducing the risk of arbitrary or biased decisions, and increasing trust in the AD/CVD process.

Potential Negative Business Impacts

- 1. Increased Administrative Burden**
 - Businesses, especially those in non-market economies, may face significant challenges in meeting the tighter deadlines and expanded criteria for Separate Rate Applications (SRAs), increasing compliance costs and administrative burdens.
- 2. Potential for Higher Duties**

- The removal of provisions allowing for the lowering of CVD rates post-investigation may lead to consistently higher duty rates, increasing costs for importers and potentially leading to higher prices for consumers.
- 3. Greater Scrutiny and Documentation Requirements**
 - The expanded analysis for cross-ownership and attribution of subsidies will require businesses to provide more detailed documentation, increasing the time and resources needed to comply with investigations.
- 4. Uncertainty Due to Judicial Reviews**
 - The heightened scrutiny of Commerce's decisions by the courts could lead to more frequent challenges of AD/CVD rulings, creating uncertainty and potential delays in final duty assessments.
- 5. Impact on Small Exporters**
 - Smaller exporters in non-market economies may struggle to meet the new SRA criteria and deadlines, potentially losing their separate rate status and facing higher, more punitive duty rates.

Policy Analysis

The U.S. Department of Commerce's Proposed Rule aims to refine and codify its AD/CVD regulations, enhancing clarity and fairness in trade practices. Key recommendations include formalizing the use of adverse facts available, updating subsidy regulations, revising cross-ownership criteria, and adapting to the Loper Bright decision's impact on judicial reviews. These changes seek to ensure consistent application of trade laws, address high-inflation CVD investigations, and impose stricter criteria for Separate Rate Applications in non-market economy cases.

Themes to Watch in the Next 12 to 24 Months:

- 1. Implementation of Codified Practices**
 - The formal adoption of existing practices into regulations will be crucial for ensuring consistency.
 - Monitoring how effectively businesses adapt to these changes will be important.
 - **Key Ideas:** Compliance training, Regulatory adaptation strategies.
- 2. Impact on Non-Market Economies**
 - The revised SRA criteria and deadlines will significantly impact exporters from non-market economies.
 - Assessing the preparedness of these exporters to meet new requirements is essential.
- 3. Judicial Review Dynamics Post-Loper Bright**
 - The overturning of Chevron deference may lead to more challenges to Commerce's decisions.
 - Observing the frequency and outcomes of these judicial reviews will be critical.
- 4. Cross-Ownership and Subsidy Investigations**

- The expanded scope of investigations into cross-owned entities and service providers will impact many companies.
 - Evaluating how businesses restructure or document their operations to comply will be telling.
- 5. Adaptation to High-Inflation Contexts**
- The indexing of countervailable benefits for high-inflation countries will be a significant procedural shift.
 - Understanding how effectively this adjustment reflects economic realities will be key.
- 6. International Trade Relations**
- These regulatory changes will influence U.S. trade relationships, especially with non-market economies.
 - Tracking diplomatic and trade responses from affected countries will be insightful.
- 7. Business Cost Management**
- Increased administrative and compliance costs due to the new regulations will affect profitability.
 - Identifying strategies businesses employ to manage these costs will be important.
- 8. Stakeholder Engagement and Feedback**
- The public comment period ending in September 2024 will shape the final regulations.
 - Analyzing the feedback and Commerce's responsiveness will provide insights into future regulatory trends.
- 9. Technological and Data Management Adjustments**
- Businesses may need to upgrade their data management systems to comply with detailed documentation requirements.
 - Observing the technological adaptations in response to these regulations will be valuable.
- 10. Long-term Regulatory Stability**
- The Proposed Rule aims to provide long-term stability by codifying practices.
 - Evaluating the long-term impact on business operations and trade practices will be necessary.

3 Actions Businesses Can Take

To navigate the proposed changes to the AD/CVD regulations effectively, businesses must focus on enhancing compliance mechanisms, preparing for increased scrutiny, and engaging in proactive advocacy. These actions will help them mitigate risks, adapt to new requirements, and influence the regulatory landscape.

1. Enhance Compliance and Documentation Processes

- **Why It Matters:** The proposed rules increase the need for thorough documentation and adherence to new criteria, especially regarding cross-ownership and subsidy investigations.
 - **Key Ideas:**
 - **Internal Audits:** Conduct regular internal audits to ensure all documentation and processes align with the new AD/CVD regulations.
 - **Training Programs:** Implement comprehensive training for staff on the new regulations and compliance requirements to minimize errors and omissions.
2. **Prepare for Judicial Review Challenges**
- **Why It Matters:** The Loper Bright decision changes the judicial review landscape, potentially leading to more challenges of Commerce's decisions.
 - **Key Ideas:**
 - **Legal Readiness:** Develop a robust legal strategy to prepare for potential challenges and ensure that your interpretations of AD/CVD rules align with the “best” interpretation standard.
 - **Monitoring Cases:** Stay informed about relevant cases and judicial decisions that could impact your business operations and regulatory compliance.
3. **Engage with Public Comments Sought Prior to Final Rule**
- **Why It Matters:** Engaging in the public comment period can influence the final shape of the regulations, ensuring they are fair and practical for businesses while creating public value.
 - **Key Ideas:**
 - **Stakeholder Engagement:** Actively participate in stakeholder meetings and submit detailed comments during the public comment period to suggest improvements of public value.
 - **Coalition Building:** Collaborate with industry associations and other businesses to present share impact of the regulatory process.