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ALERT

Commerce Publishes Final Rule on Currency Manipulation

February 4, 2020

On February 4, 2020, the U.S. Department of Commerce's Enforcement and Compliance (Commerce Department or Commerce) published its final rule on currency manipulation as a countervailable subsidy. The Commerce Department final rule helps to clarify when currency manipulation, by China or anyone else, will be considered an unfair trade practice.

While still a work in progress, affected U.S. companies and industries will now have a better understanding of how to successfully pursue relief from the effects of currency manipulation through countervailing duty tariffs. This is an improvement to U.S. trade rules, and if conditions warrant, it will likely be used to make sure foreign governments are not favoring exports through currency undervaluation. The new rules go into effect in 60 days, on April 4, 2020.

Key highlights of the currency manipulation final rule include:

- While Commerce will defer to the U.S. Department of the Treasury's (Treasury's) expertise, Commerce alone will decide whether undervalued currency subsidized specific companies.
- Any calculations by Commerce will be company-specific and focus on any benefit provided when U.S. dollars are converted into undervalued domestic currency.
- Commerce will examine the difference between a country's actual real effective exchange rate (REER) and a model of a medium-term equilibrium REER. This model will include information from Treasury.

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Practice Areas

International Trade

- Currency manipulation as a subsidy is focused on subsidization of sales; no offsetting adjustment will be made for increases in the cost of imported inputs due to undervalued currency.
- Commerce will find currency manipulation only if there is government intervention and not including currency actions by independent central banks.

For more information, please contact one of the authors listed on this alert.