

Insights: Alert

Update – President Biden Pauses Import Duties on Solar Cells and Modules Under Investigation by International Trade Administration

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On June 6, 2022, President Biden took [executive action](#) to pause antidumping and countervailing import duties on solar cells and modules from countries currently the subject of a circumvention inquiry (Inquiry) by the International Trade Administration (ITA) of the U.S. Department of Commerce (Commerce).

As [previously reported](#), the Inquiry, which was published by the ITA on April 1, 2022, was initiated at the request of U.S.-based solar manufacturer Auxin Solar, Inc. (Auxin) and concerns the assertion that crystalline silicon (c-Si) photovoltaic cells and modules being “completed in Cambodia, Malaysia, Thailand, or Vietnam using parts and components manufactured in China” are circumventing “U.S. antidumping duty (AD) and countervailing duty (CVD) orders.” Should the Inquiry substantiate this claim, it could lead to as much as a fivefold increase in applicable duties that may be retroactively imposed on subject cells and modules imported any time on or after November 4, 2021 or, based on an exception, as early as October 19, 2021.

In response to recent pressures on solar development caused by the Inquiry, the President declared an “emergency to exist with respect to threats to the viability of sufficient electricity generation capacity to meet expected customer demand.” Invoking Section 318(a) of the Tariff Act of 1930, the President directed Commerce to suspend “the collection of duties and estimated duties” of solar cells and modules from Cambodia, Malaysia, Thailand, and Vietnam. Commerce has complied and issued “regulations to temporarily permit for up to 24 months duty-free access to solar cells and modules” from the affected countries.

Commerce has stated that its anti-circumvention proceeding “continues uninterrupted and whatever conclusion Commerce reaches when the investigation concludes will apply once this short-term emergency period is over.”

Alongside the emergency declaration, the President also issued a [memorandum](#) authorizing the Department of Energy to use the Defense Production Act to support domestic manufacturing of solar panel components, including photovoltaic modules and module components. The White House also plans to use federal procurement to increase domestic solar manufacturing “by directing the development of master supply agreements, including ‘super preference’ status.”

These actions received a mixed response. Many solar developers praised the emergency declaration as

necessary to alleviate the confusion and costs caused by the Inquiry, which has forced developers to hold billions in reserves to pay for the potential tariffs and jeopardized as many as two-thirds of all ongoing and planned U.S. solar projects. On the other hand, domestic producers and labor associations have derided the actions, with Auxin, calling them “potentially illegal.”

One thing that everyone can agree on is that there will be more to come from the results of the anti-circumvention proceeding and potential challenges to the executive actions by Auxin and other domestic producers.

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