Insights: Alerts

International Trade Administration Inquiry Poised to Impose Significant Import Duties on Certain Solar Cells and Modules

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On April 1, 2022, the International Trade Administration ("ITA") of the U.S. Department of Commerce ("Commerce") published notice of a circumvention inquiry ("Inquiry") that could materially increase the cost of certain solar cells and modules imported into the United States.

The Inquiry, which was initiated at the request of solar manufacturer Auxin Solar Inc. ("Request"), concerns the assertion that crystalline silicon (c-Si) photovoltaic cells and modules "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." These inquiries allow the Government to investigate whether antidumping and countervailing duties are being circumvented.

Through the Inquiry, and following the approach taken in prior circumvention inquiries on a country-wide basis, Commerce will "solicit information from certain companies in Cambodia, Malaysia, Thailand, and Vietnam concerning their production of solar cells and modules and their shipments thereof to the United States."

The Inquiry does not yet require U.S. Customs and Border Protection to make a final computation of duties for subject products (also known as suspension of liquidation), but such a determination could follow either a preliminary or final circumvention determination. The duties may be applied retroactively to any subject cells or modules imported at any time on or after October 19, 2021. This would have a substantial impact on solar developers. **By some estimates, impacted products could see a fivefold increase in applicable duties.**

Companies and individuals wishing to provide input on the Inquiry and related Request will have opportunities to do so, but will need to act quickly. For example, interested parties will be able "to submit comments and factual information to rebut, clarify, or correct factual information contained in the request." **The anticipated deadline for these comments is May 2, 2022.** In addition, Commerce is in the process of identifying and selecting companies as respondents in the investigation. The process of identifying respondents is expected to conclude as soon as this week.

The Inquiry is governed by 19 C.F.R. § 351.226 and section 781(b) of the Tariff Act of 1930. Per applicable regulations, Commerce has 150 days from the date of the notice announcing its inquiry to issue a preliminary determination (approx. August 29, 2022). **An affirmative final determination will empower Commerce to retroactively apply duties as a penalty.** A negative final determination will terminate the suspension of liquidation and require Commerce to refund all case deposits paid on the subject products.

Purchasers of subject panels should be aware that they may be subject to the retroactive tariffs for any past solar cell or module purchases made after October 19, 2021, and should take into consideration the potential effect of these tariffs in future purchases.

If you have any questions concerning ITA's Inquiry or its potential impacts, please don't hesitate to reach out.

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