Insights: Alert

# Solar Tariff Deja Vu: Commerce Again Considers Anti-Dumping/Countervailing Duties on Certain Solar Models from Southeast Asia

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Written by

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On April 30, 2024, the International Trade Commission ("ITC") and the U.S. Department of Commerce ("Commerce") noticed that they are once again conducting a preliminary investigation into the import of crystalline silicon photovoltaic ("CSPV") cells and modules from Cambodia, Malaysia, Thailand, and Vietnam. This would be the second such investigation in two years. And another successful finding could lead to the imposition of retroactive duties in excess of 200%.

This investigation was prompted by a petition filed by the American Alliance for Solar Manufacturing Trade Committee, a coalition of seven solar manufacturers. The petition alleges that CSPV cells and modules imported from these four countries are being "subsidized" by their respective governments and "sold in the United States at less than fair value." The petition alleges that in 2023 alone, imports from these subject countries accounted for over 80% of all solar module imports, totaling 34 gigawatts worth of modules valued at nearly $12 billion.

The petitioners allege that dumping AD/CVD rates between 70%—for modules imported from Thailand—to in excess of 271%—for modules imported from Vietnam—are appropriate. A preliminary finding in favor of the petitioners could even lead to retroactive duties back dated 90-days from a preliminary determination. Of course, the actual rates applied, if any, will be based on company and country data if the investigation goes forward.

Unless it extends the deadline, ITC will make a preliminary determination of an injury by June 10, 2024. And if the investigation proceeds, Commerce could make its first preliminary determination as early as the end of July 2024.

Importantly, this petition also dovetails with new a new Commerce rule that considers so-called cross-border subsidies provided by governments when conducting AD/CVD investigations. It is likely this new rule will aid the petitioners.

This new investigation is distinct from the earlier April 2022 inquiry initiated by Auxin Solar, Inc. wherein Commerce issued a final "country-wide" circumvention determination for the four countries, imposing, among other things, the China-wide rate for AD duties in excess of 200%. While that earlier inquiry focused on CSPV cells and modules being "completed" in the subject countries from "parts and components manufactured in

China," this new investigation request focuses on production in the subject countries—where companies allegedly moved to from China to avoid the earlier duties—now subsidized by their respective governments.

And yet, the threat of this petition is just the latest in a series of tariffs impacting the solar industry this year. The AD/CVD rates imposed by Commerce, mentioned above, go into effect June 6, 2024, and the Biden Administration looks ready to revoke an exception to tariffs for bifacial modules, which would impose a double-digit duty on the modules that make up 98% of U.S. solar imports.

We are continuing to monitor these developments impacting cross-border trade and the solar industry as they unfold and will be available to provide updated analysis as the landscape continues to change.

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