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Insights: Alert

U.S. Department of Commerce Imposes Sweeping Country-Wide Import Duties on Certain Solar Cells and Models

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On December 2, 2022, the International Trade Administration ("ITA") of the U.S. Department of Commerce ("Commerce") preliminarily issued a "country-wide" circumvention determination in its circumvention inquiry ("Inquiry") regarding the imposition of anti-dumping and countervailing import duties on certain solar cells and modules from Vietnam, Cambodia, Malaysia, and Thailand.

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) photvoltaic 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."

Having now completed its initial investigation, "Commerce preliminarily found that four of the eight companies being investigated are attempting to bypass U.S. duties by doing minor processing" in one of the four countries before the products are imported to the United States. The four companies found to be circumventing U.S. import duties are BYD Hong Kong (Cambodia), Canadian Solar (Thailand), Trina (Thailand), and Vina Solar (Vietnam). Additional companies failed to respond to Commerce's preliminary request for information and have been "found to be circumventing" by default. This has led Commerce to conclude that "circumvention was occurring through each of the four Southeast Asian countries."

Accordingly, Commerce made "a 'country-wide' circumvention finding." This labels the entire country "as one through which solar cells and modules are being circumvented" from China. While not a ban, all affected solar cells and modules made on or after April 1, 2022, originating from these four countries will presumably have AD/CVD duties imposed. The AD/CVD rate applied is company specific and governed by the existing AD/CVD orders applied to China. Where no company-specific rate exists under the AD/CVD orders, the required cash deposit rate will be the China-wide rate for AD duties (238.95%) and the All-Others rate for CVD duties (15.28%).

Companies may avoid these duties by certifying that they are not circumventing the anti-dumping or countervailing duty orders. Nearly two dozen companies identified by Commerce, however, are temporarily prohibited from seeking this certification. In contrast, the four companies that were already preliminarily found to have not been circumventing U.S. duties—New East Solar (Cambodia), Hanwha (Malaysia), Jinko (Malaysia), and Boviet (Vietnam)—need to take no further action as long as their supply chain and processing remains the same.

At this time, due to President Biden's June 6, 2022, executive order and the November 15, 2022 rule issued by Commerce, no duties will be “collected on any solar module and cell imports from these four countries” until June 6, 2024 unless parties cannot certify that the products will not be used in the U.S. within six months of their entry date. Commerce has indicated that pending its final determination it will immediately begin suspending liquidation and require estimated AD/CVD cash deposits based on established rates after June 6, 2024.

Commerce's Inquiry will continue with in-person audits of the parties. Impacted parties will have an opportunity to comment on this preliminary determination. Commerce is set to issue its final determination May 1, 2023.

Meanwhile, this preliminary decision will only continue to hobble domestic solar panel projects that are already facing unprecedented supply shortages due to enforcement of the new Uyghur Forced Labor Prevention Act that has seen thousands of shipping containers of solar panels denied entry into the U.S. even as 23 gigawatts worth of solar projects have been delayed so far this year.

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