

Circumvention Inquiry into Solar Imports

June 8, 2022

On April 1, 2022, the Commerce Department [initiated](#) an inquiry into whether Chinese manufacturers of crystalline silicon photovoltaic (CSPV) cells and panels are circumventing U.S. measures intended to counteract unfair trade practices. Commerce initiated the inquiry in response to a [petition](#) by Auxin Solar Inc., a U.S. manufacturer, alleging that solar cells and panels imported from Cambodia, Malaysia, Thailand, and Vietnam use Chinese-made parts and components to avoid high U.S. tariffs on solar equipment imported directly from China. The investigation has been controversial, including among Members of Congress. Some stakeholders assert that uncertainty about the tariffs could slow deployment of solar energy in the United States while others insist that action is needed to protect U.S. solar manufacturing. While the Biden Administration recently used emergency authorities in effort to support U.S. solar deployment, a final decision in this circumvention inquiry is expected no later than April 2023.

Background

In 2012, the Commerce Department and the U.S. International Trade Commission (ITC) determined that imports of solar cells and panels from China were being sold below cost (“dumped”) or unfairly subsidized and were injuring or threatened to injure the U.S. solar manufacturing industry. Commerce imposed two remedial orders. Its antidumping ([AD](#)) [order](#) imposed duties ranging from 18-25% on goods produced by specific Chinese firms and duties of 250% on imports from all other Chinese firms. The countervailing duty ([CVD](#)) [order](#), meant to counteract subsidies, imposed duties of around 14-15% on all solar products from China. In its [petition](#), Auxin contended that certain producers in Southeast Asia outside China have manufacturing operations that involve minimal capital investments and technical

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research and rely on essential Chinese inputs (e.g., solar glass, aluminum frames, and silver paste) to make CSPV cells and panels that are then exported to the United States.

How Commerce Conducts Circumvention Inquiries

Circumvention inquiries determine whether a good imported from a country that is not subject to an AD or CVD order should be included in the scope of an existing order.

Any [interested party](#) (e.g., relevant domestic and foreign manufacturers, importers, unions, and trade associations) may [submit](#) a request for a circumvention inquiry. The Secretary of Commerce may also [self-initiate an inquiry](#). Once the Secretary receives a request, federal law and regulations establish deadlines for further action:

- Within [30 days](#) of receiving a request containing the [required information](#), the Secretary is to initiate an inquiry, publish a notice in the *Federal Register*, and instruct customs to suspend liquidation (i.e., the final calculation of duties) and require any firm under investigation to [deposit duties](#).
- Within [150 days](#) of the notice, the Secretary is to issue a preliminary determination.
- Within [300 days](#) of the notice, [law](#) and [regulations](#) require that the Secretary issue a final determination.
- If the investigation is “extraordinarily complicated,” the Secretary may extend the deadline by up to [65 days](#).

As part of its inquiry, [Commerce considers](#) whether “the process of assembly or completion in the foreign country ... is minor or insignificant.” In making that determination, Commerce takes into account the level of investment, research, and development undertaken in the foreign country, the nature of the production process, the extent of the production facilities, and the value added to the final product.

If Commerce determines that the goods in question should be included within the scope of the existing order(s) (an “affirmative determination”), duties could [be applied to goods that entered the United States after publication of the notice](#). In certain circumstances, the Secretary may collect duties on goods entered [prior to publication](#), back to the [date of the original order\(s\)](#). Commerce could [apply duties](#) to covered goods specific to particular producers, exporters, or importers, and on a country-wide basis (i.e., against solar imports from Cambodia, Malaysia, Thailand, and/or Vietnam).

Domestic Solar Industry

Manufacturing of CSPV panels, the most common source of solar energy in the United States, involves four primary stages: the refinement of polysilicon, production of thin sheets of silicon (wafers), fabrication of solar cells, and panel assembly. Completed solar systems also require numerous components not used to generate electricity, such as inverters that convert direct current into alternating current and racking systems that position the panels.

No CSPV cells are produced in the United States. As of February 2022, 13 U.S. factories assembled CSPV panels using imported cells, according to the National Renewable Energy Laboratory. Seven other CSPV panel plants closed between 2018 and 2021. In 2020, domestic production accounted for [10% of apparent U.S. consumption](#) of CSPV panels, according to the ITC. Most new solar installations in the United States use panels assembled in Malaysia, Thailand, or Vietnam. [Critics of the current circumvention inquiry assert](#) that higher tariffs on these imports could raise the cost of solar systems in the United States and reduce installation work, the [main source of solar-related U.S. employment](#).

Issues for Congress

Opponents to the circumvention inquiry has raised questions about Commerce’s procedures for initiating circumvention inquiries and the role of the Secretary of Commerce. In a recent [congressional hearing](#), some Members of Congress expressed concerns about the relative ease with which an investigation can be initiated, the absence of a domestic industry support requirement (which exists for [regular AD/CVD investigations](#)), and the absence of a procedure for Commerce to consider external factors (e.g., public interest). Prior to the ongoing investigation, the House passed [H.R. 4521](#), which would codify Commerce’s circumvention

regulations, potentially making it easier for Commerce to initiate such investigations. Similar provisions are not in the Senate version (S. 1260) of the bill.

[Some Members of Congress](#) have urged Commerce to perform an expedited investigation to offset uncertainty faced by the U.S. solar industry. In response, Secretary of Commerce Gina Raimondo stated that Commerce is “[required by statute to have a fulsome investigation,](#)” but would conduct the investigation as fast as possible. [Other Members](#) have supported Commerce’s investigation, arguing that it is necessary to ensure that U.S. laws to counteract unfair trade practices that could harm domestic industries are properly enforced.

On June 6, 2022, [President Biden used emergency authorities to suspend](#) AD/CV duties on imports of solar cells and modules from Cambodia, Malaysia, Thailand, and Vietnam for 24 months to support U.S. solar deployment efforts. The action [does not terminate the investigation](#). Should Commerce make an affirmative determination, solar cells that enter after the expiration or termination of the 24-month period will be subject to AD/CV duties. The impact of the order on the [potential retroactive](#) AD/CV duties on panels entered before June 6 or after the expiration or termination of the 24-month period is currently unclear.

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