

Backgrounder and Statement on Commerce Investigation of Chinese Solar Cells and Modules Circumventing AD/CVD Duties Through Malaysia, Thailand, and Vietnam

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Washington, DC – This document is to provide information and background about the status of petitions filed by American Solar Manufacturers Against Chinese Circumvention (“A-SMACC”) requesting that the Department of Commerce investigate unfairly traded imports from Malaysia, Thailand, and Vietnam of solar cells and modules that are unlawfully circumventing antidumping and countervailing duties on China. Wiley Rein LLP is advising A-SMACC. Petitions available by clicking on country name: Malaysia, Thailand, Vietnam.

All the information in the document may be attributed to Tim Brightbill, partner in Wiley’s International Trade Practice.

Commerce Must Investigate Chinese Solar Cells and Modules Circumventing AD/CVD Duties Through Malaysia, Thailand, and Vietnam

- On August 16, 2021, American Solar Manufacturers Against Chinese Circumvention (A-SMACC) filed with the Commerce Department a request to investigate solar cells and modules imported from certain companies in Malaysia, Thailand, and Vietnam that are circumventing antidumping (AD) and countervailing (CVD) duties that were lawfully imposed on Chinese solar cells and modules.
- Chinese producers subject to the existing AD/CVD duties have established affiliated operations in the third countries and

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moved the end of the production process – while retaining as much of the subsidized supply chain, labor, R&D, and investment as possible in China – to avoid paying the required AD/CVD duties. Nearly all the raw materials, R&D, and capital investment is still coming from China. These factories exist only to serve the U.S. market and to avoid AD/CVD duties. This is the very definition of circumvention.

- The companies subject to the circumvention ruling requests are affiliated with Chinese producers and are using Chinese-origin components (such as wafers, silver paste, solar glass, and/or aluminum extrusions) to complete cells and modules in the third countries.
 - Malaysia: Jinko Solar Malaysia, LONGi Malaysia, and JA Solar Malaysia.
 - Thailand: Canadian Solar Thailand, Trina Solar Thailand, Talesun Thailand, and Astroenergy Thailand.
 - Vietnam: Trina Solar Vietnam, Canadian Solar Vietnam, CSUN Vietnam, Boviet Solar, GCL-Si Vietnam, Vina Solar, LONGi Group, and Jinko Solar Vietnam.
- These Chinese-owned companies are covered by the circumvention action. Any other solar producers in the three countries are not covered.
- A-SMACC did not request specific duty rates to be imposed on these companies. (The high rates alleged by SEIA are simply false.) The current subsidy rate from the most recent CVD review is 19% and the preliminary rates in the ongoing AD review range from 0% to 14%.

American Solar Manufacturing is Growing and Will Support the Biden Administration’s Climate Change Goals

- This circumvention case will promote the Biden Administration’s goals of rapidly addressing climate change while Building Back Better and rebuilding the solar supply chain and solar manufacturing here in the United States. We can and must do both.
- U.S. solar demand and installations reached record levels last year and are continuing to increase rapidly every year. American solar manufacturing is at its highest level in history, and numerous U.S. companies have publicly announced new American manufacturing facilities and massive new investments.
- Since 2017, well over 5 GW of new U.S. solar manufacturing capacity has come online and nearly 8 GW of additional annual production capacity has been announced in 2021. However, unfair imports have continued to increase rapidly, and China has developed monopoly control of much of the CSPV supply chain. Failure to address circumvention behavior would further harm and could destroy the U.S. industry.

There is Plenty of Global Capacity to Meet U.S. Solar Demand Without Resorting to Dumped and Subsidized Chinese Products Circumventing AD/CVD Duties

- The circumvention ruling requests cover only **certain** Chinese-owned companies in Malaysia, Thailand, and Vietnam. There is plenty of fairly traded, non-Chinese available capacity to meet U.S. solar demand from non-subject companies in those countries and in the rest of the world, in addition to new

and increasing capacity from U.S. producers.

- There is still substantial “Tier One” solar module manufacturing capacity, estimated at 30 GW or more annually, that is non-Chinese and/or not subject to these circumvention inquiries.
- Solar projects in the United States should not be reliant on unfair and illegal trade practices, whether it is dumped and subsidized Chinese pricing directly or the dumped and subsidized pricing of the Chinese-affiliated companies in the countries circumventing AD/CVD duties.

Putting an End to the Rampant Circumvention is a Key Part of Rebuilding the Solar Supply Chain and Solar Manufacturing in the United States

- An affirmative determination in these cases will promote solar deployment and solar manufacturing jobs in the United States.
- Relief from the dumped and subsidized Chinese solar cells/modules that are surging into the U.S. market through illegal circumvention will enable domestic innovation and increase domestic supply, which will allow solar prices to decrease while bolstering the resilience of the U.S. solar supply chain and reducing our dependence on manufacturing controlled by China. Moreover, module costs are only 10% to 30% of total solar installation costs.
- SEIA’s claims of hypothetical harm are again wrong and wildly overstated. SEIA made similar claims 10 years ago during the Solar I and II investigations, and again during the solar 201 safeguards investigation. Every time, they claimed that trade remedies would cost tens of thousands of solar jobs and reduce solar demand – and every time they have been wrong. Instead, solar demand and deployment increased substantially, and solar prices have continued to decrease. For instance, annual U.S. solar installations grew from less than 1.9 GW in 2011 to 19.2 GW in 2020. This massive growth happened with trade remedies in place.
- The development of the next generation of solar technology should be here in America, where solar was invented. We should not be dependent on China for solar power.

Commerce Has Legal Authority to Address Chinese Producers’ Circumvention Through the Third Countries

- Congress granted Commerce specific authority to address circumvention – by including merchandise not within the literal scope of an existing AD/CVD order within the scope of such order. This includes merchandise completed or assembled in third countries.
- The statute lists the exact requirements for an affirmative finding of circumvention by Commerce. A-SMACC demonstrated with overwhelming evidence that each statutory factor is met. Commerce should initiate the proceedings and investigate the circumvention.
- Commerce does not need to make another finding of dumping or subsidization, because the original proceedings already did so. The statute does establish a procedure for the U.S. International Trade Commission to provide advice to Commerce regarding injury concerns in the course of a circumvention inquiry. Claims that A-SMACC is trying to avoid the requirement to show dumping or subsidization or

harm from imports are unfounded and ignore the specific, statutorily approved framework for circumvention proceedings.

- A-SMACC did not request that particular tariff rates be applied. The AD/CVD rates that will likely apply to the circumventing merchandise are the China-wide rates in place at the time, unless there is an applicable company-specific rate, consistent with Commerce's precedent.
- A-SMACC had to treat as confidential the identities of the companies that are part of A-SMACC because disclosure could lead to retribution against these companies, including from the Chinese government and other China-affiliated entities, and cause substantial harm. A-SMACC's request for confidential treatment is lawful and consistent with Commerce's regulations and practice.
- There is a history of Chinese retaliation in this case, as the Department of Justice during the Obama Administration indicted PRC officials for hacking and stealing intellectual property from the original petitioner in this trade case, SolarWorld.
- Commerce should immediately initiate these investigations and begin to investigate Chinese solar circumvention by these companies.

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