

International Trade Alert

June 5, 2014

U.S. Department of Commerce Imposes Preliminary Countervailing Duties on Chinese Solar Products

On June 3, 2014, the U.S. Department of Commerce (DOC) announced its preliminary determination in the countervailing duty (CVD) investigation of crystalline silicon photovoltaic products (“solar products”) from China. DOC preliminarily found that China has subsidized the solar products covered by its investigation at rates ranging from 18.56 to 35.21 percent.

DOC’s preliminary determination will be enforced by U.S. Customs and Border Protection (CBP) through the collection of CVD cash deposits in the applicable amount from U.S. importers of record. The cash deposit requirement will become effective on the date of publication of DOC’s preliminary determination in the *Federal Register*, expected on or around June 10, 2014.

DOC’s final determination in the CVD investigation is currently scheduled for August 18, 2014, but is likely to be extended by approximately four months. The preliminary determinations in the ongoing companion antidumping (AD) investigations on solar products from China and Taiwan are scheduled for July 24, 2014.

DOC’s ongoing AD and CVD investigations are based on petitions filed last December by SolarWorld Industries America, Inc. (“SolarWorld”), the U.S. subsidiary of Germany-based SolarWorld AG. DOC’s preliminary CVD determination is the latest determination in a series of cases involving solar products from China. DOC issued AD and CVD orders on certain solar cells exported from China in 2012, and the EU recently entered into a settlement agreement with Chinese exporters of solar products.

Products Covered by DOC’s Current Investigations

The products covered by DOC’s current AD and CVD investigations are solar cells and modules, laminates and/or panels consisting of cells, whether or not assembled into other products. These investigations also cover modules, laminates and/or panels assembled in China from solar cells produced in third countries, but using ingots or wafers produced in China. DOC’s current investigations, however, specifically exclude solar cells—whether or not assembled into modules—that are covered by the existing AD and CVD orders on China.

The relationship between the scope of the current investigations and the existing orders has been the source of considerable confusion for foreign exporters and U.S. importers, who are not always able to trace the steps of the cell production process. According to SolarWorld, the scope of the current investigations is intended to address circumvention of the existing orders, which SolarWorld alleges occurred when Chinese solar cell manufacturers shifted cell conversion operations to countries outside of China to avoid duties imposed by the initial solar cells case.

DOC indicated in its preliminary determination that in order to enforce the scope of the AD and CVD investigations it will require U.S. importers to supply certifications to CBP. DOC did not, however, indicate which facts importers will be required to certify or when the certification requirement will enter into effect. Nor does DOC's preliminary determination address a number of scope comments filed by interested parties claiming that the current scope is flawed or unenforceable.

DOC's preliminary determination thus leaves open a number of scope-related issues. U.S. importers and foreign manufacturers of solar cells and modules should therefore continue to monitor these cases and evaluate their supply chains and possible exposure to AD and CVD liability.

DOJ Investigation

In an unusual complication that has received considerable press coverage, the U.S. Department of Justice recently levied criminal cyber espionage charges against several Chinese military officials. These charges specifically allege that the officials hacked SolarWorld's computer systems for the benefit of its Chinese competitors. In response, SolarWorld has requested that DOC undertake its own investigation of the allegations and reach adverse conclusions, if necessary. While DOC declined to take any action on these allegations in its preliminary determination, the charges are certain to further elevate the already high profile of these cases and may trigger further scrutiny by DOC.

Settlement

As DOC's investigations continue, some industry representatives and politicians, including Vice President Biden, have been advocating for a comprehensive settlement of the various ongoing solar cases. While China and the EU were able to reach a negotiated settlement in similar cases, calls by the Solar Energy Industries Association and members of Congress for resolution of the U.S. cases have, to date, failed to advance beyond the preliminary stage. There is no indication that a comprehensive settlement is on the immediate horizon.

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