

## International Trade Alert

January 3, 2014

### **U.S. Subsidiary of SolarWorld Files New AD/CVD Petitions on Chinese-Origin Solar Cells**

On December 31, 2013, SolarWorld Industries America, Inc. (“SolarWorld”) – the U.S. subsidiary of Germany-based SolarWorld AG – filed petitions for the imposition of antidumping and countervailing duties (AD/CVDs) on Chinese-origin crystalline silicon photovoltaic (PV) cells, as well as an AD petition on PV cells from Taiwan. These petitions come two years and two months after SolarWorld’s original AD and CVD petitions against PV cells from China, creating new challenges for the multi-billion dollar international trade in solar and other green energy products.

The apparent purpose of the new petitions is to fill a gap in the coverage of the existing AD and CVD orders, which the U.S. Department of Commerce (DOC) imposed in December 2012. At the time of the original investigations, SolarWorld had asked DOC to include in the scope of the orders PV modules assembled in China using cells produced in China and third countries. Over SolarWorld’s objections, DOC limited the product reach of the orders to Chinese-origin PV cells and to modules containing only Chinese-origin PV cells. With the new petitions, SolarWorld is attempting to close a loophole in the current orders that has permitted Chinese PV cell producers to shift some of their production to third countries, including Taiwan, and thereby avoid AD and CVD liability. Under the new petitions, solar cells produced in any country and incorporated into Chinese-made modules will be subject to AD and CVD liability. Taiwanese-origin cells will also be subject to AD liability, whether exported directly to the United States or incorporated into Chinese-made modules exported to the United States.

Under U.S. AD/CVD law, DOC will normally determine within 20 days from the date on which the petitions are filed whether SolarWorld’s petitions are legally adequate to warrant the initiation of the requested AD and CVD investigations. If DOC initiates investigations, it will be required to issue preliminary determinations no later than August 2014 in the AD investigation and July 2014 in the CVD investigation. In most cases, duties will not apply to any imports that enter the United States before the date of the preliminary ruling.

As a result of the filing of the petitions, the U.S. International Trade Commission (ITC) will immediately initiate a preliminary investigation to determine whether the imports at issue have caused, or threaten to cause, material injury to the U.S. PV cell industry. The ITC must issue its preliminary determination within 45 days of the date of petition filing. In the coming days, the ITC will send questionnaires to U.S. importers, foreign producers/exporters and U.S. producers of PV cells covered by the new petition.

SolarWorld filed its new petitions against the backdrop of ongoing administrative, judicial and settlement proceedings involving the existing AD and CVD orders and a related Chinese AD/CVD proceeding against U.S.-origin polysilicon, the major raw material in the production of PV cells. The DOC this month

will launch its first administrative reviews of the existing AD/CVD orders, which will determine the final duty liability for entries of covered PV cells imported during the period May 25, 2012, through November 30, 2013, for the AD order, and during the period March 26, 2012, through November 30, 2013, for the CVD order. The U.S. Court of International Trade is also currently considering a number of appeals arising from the existing AD and CVD orders, including a challenge filed by SolarWorld against DOC's determination in the original PV cells investigations to limit the scope to Chinese-origin PV cells.

The new petitions seem certain to complicate ongoing discussions between the U.S. and Chinese governments to settle the existing orders and related proceedings. While China was able to achieve a settlement agreement with the European Union that sets minimum prices for Chinese-origin PV products, talks between China and the United States have shown little progress in recent months. Recent efforts between the two governments to settle China's preliminary AD/CVD measures against U.S.-origin polysilicon failed to produce an agreement.

U.S. importers of products covered by the new petitions should quickly assess their exposure to AD and CVD liability and revisit their commercial arrangements as may be warranted.

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