

## Commerce Department Issues Proposed Rule Suspending Solar Tariffs

17 July 2022

*Industry has until August 1 to submit comments*

On July 1, 2022, the U.S. Department of Commerce International Trade Administration (“Commerce”) issued a [proposed rule](#) to temporarily suspend the imposition of tariffs on solar cells and modules imported from the Kingdom of Cambodia, Malaysia, the Kingdom of Thailand and the Socialist Republic of Vietnam that currently are the subject of [antidumping and countervailing duty circumvention inquiries](#). Industry has until August 1 to submit comments, after which Commerce will issue a final rule and likely implement the tariffs suspension.

### The Presidential Proclamation

The proposed rule is pursuant to the June 6 [Proclamation](#) under which President Biden declared an emergency with respect to the availability of sufficient electricity generation capacity to meet expected customer demand. Specifically, President Biden announced [three lines of effort](#) to accelerate clean energy development:

1. Use the Defense Production Act to accelerate domestic clean energy technology production.
2. Develop master supply agreements.
3. Create a “24-month bridge” that temporarily permits solar component imports from the aforementioned four Asian countries that are subject to circumvention inquiries without subjecting importers to retroactive tariffs.

In what appears to be a measured effort to coordinate with industry, allow for industry participation and perhaps also to reduce the risks of legal challenges to suspending

tariffs, Commerce is first issuing a proposed rule and providing an opportunity for industry comment.

## The Tariffs Suspension

In a circumvention inquiry, once there is a preliminary affirmative determination, antidumping and/or countervailing duties can be imposed retroactive at least to when the cases were initiated (here, April 1), meaning imports made prior to the findings still would be subject to the tariffs. The circumvention inquiries had taken U.S. industry somewhat by surprise and were seen as chilling the market for solar projects.

Under the proposed rule, no such duties will be imposed until what Commerce terms the “Date of Termination,” which is the earlier of June 6, 2024, or when the emergency is terminated. This would apply even for imports made prior to issuance of the Proclamation and even if Commerce makes affirmative preliminary or final determinations.

Commerce administers antidumping and countervailing duty rules by directing U.S. Customs and Border Protection (“CBP”) to suspend liquidation of entries, i.e., to not allow the processing of imports to be finalized, and by collecting cash deposits, which impose provisional import duties. This enables the U.S. government to exercise leverage over importers while the final applicable antidumping and/or countervailing duties owed are calculated. Under the proposed rule, there would be the following principal impacts:

- *Existing suspension of liquidation and collection of cash deposits:* Where, in connection with initiation of the circumvention inquiries Commerce has already directed CBP to continue suspension of liquidation of entries that were already subject to suspension and to collect cash deposits, Commerce would:
  - issue instructions to CBP to discontinue the suspension of liquidation and collection of cash deposits, and
  - direct CBP to liquidate those entries without regard to antidumping and countervailing duties and refund those cash deposits collected.
- *Affirmative preliminary and final determination:* If, before the Date of Termination, Commerce issues an affirmative preliminary determination in one of the circumvention inquiries, Commerce would not, at that time, direct CBP to suspend liquidation and collect cash deposits for entries of that merchandise entered, or

withdrawn from warehouse, for consumption before, on, or after the date of initiation of that circumvention inquiry (and, in the case of a final determination, after the date of initiation of that circumvention inquiry and before the Date of Termination).

- *Liquidation:* If, before the Date of Termination, Commerce issues an affirmative final determination in one of the circumvention inquiries, Commerce would direct CBP to liquidate without regard to antidumping or countervailing duties entries of that merchandise entered, or withdrawn from warehouse, for consumption before the Date of Termination if liquidation instructions were issued to CBP pursuant to a different segment of the proceeding.
- *After the Date of Termination:* Also, Commerce would direct CBP to commence suspension of liquidation of the merchandise, as applicable, and collect cash deposits at the applicable rate only on merchandise entered, or withdrawn from warehouse, for consumption, on or after the Date of Termination.

Note that the tariffs suspension, e.g., would not apply to solar cells and modules that are manufactured and exported from China and are subject to existing antidumping and countervailing duty orders. It also would not apply to solar cells and modules that are exported from Cambodia, Malaysia, Thailand and Vietnam where they incorporate solar cells manufactured in China.

## How to Submit Comments

Those interested in submitting comments may do so through the Federal eRulemaking Portal at <https://www.Regulations.gov>, Docket No. ITA-2022-0006. Comments may also be submitted by mail or hand delivery/courier, addressed to Lisa W. Wang, Assistant Secretary for Enforcement and Compliance, Room 1870, Department of Commerce, 1401 Constitution Ave. NW, Washington, DC 20230. Commerce will make the comments publicly available on the portal site and will not accept comments requesting that any part of the material be treated confidentially.

*Summer associate Tucker Ring provided valuable research and drafting assistance in support of this post.*

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