

MANAGING THE COMMERCE DEPARTMENT'S NEW CIRCUMVENTION CASE AND SOLAR TARIFFS



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Today's Agenda

- Overview of the Circumvention Inquiry
 - Harry Clark, Partner, Washington, D.C.
 - Greg Hume, Economist and Trade Compliance Specialist, Washington, D.C.
- Managing Existing MSAs and Related Contracts
 - Eric Stephens, Partner, San Francisco
- Managing New MSAs and Related Contracts
 - Matt Archer, Partner, Houston
- Managing Existing and New PPAs and Other Revenue Contracts
 - Teresa Hill, Partner, Seattle
 - Rohit Sachdev, Partner, San Francisco
- Q&A

Commerce Department's Circumvention Inquiry – Summary

- Inquiry relates to 2012 antidumping (“AD”) and countervailing (“CVD”) duty orders on PV modules and cells made in China



-  filed circumvention petition
- Inquiry is to resolve whether U.S. imports of PV modules and cells assembled in Cambodia, Malaysia, Thailand and Vietnam from Chinese material inputs are circumventing the 2012 AD and CVD orders
 - Modules made from Chinese cells already covered by existing 2012 AD/CVD orders
- If circumvention found for a covered country, imports from that country will face same AD and CVD treatment as do imports from China
- Process governed by new and relatively untested regulations (in effect since November 2021)

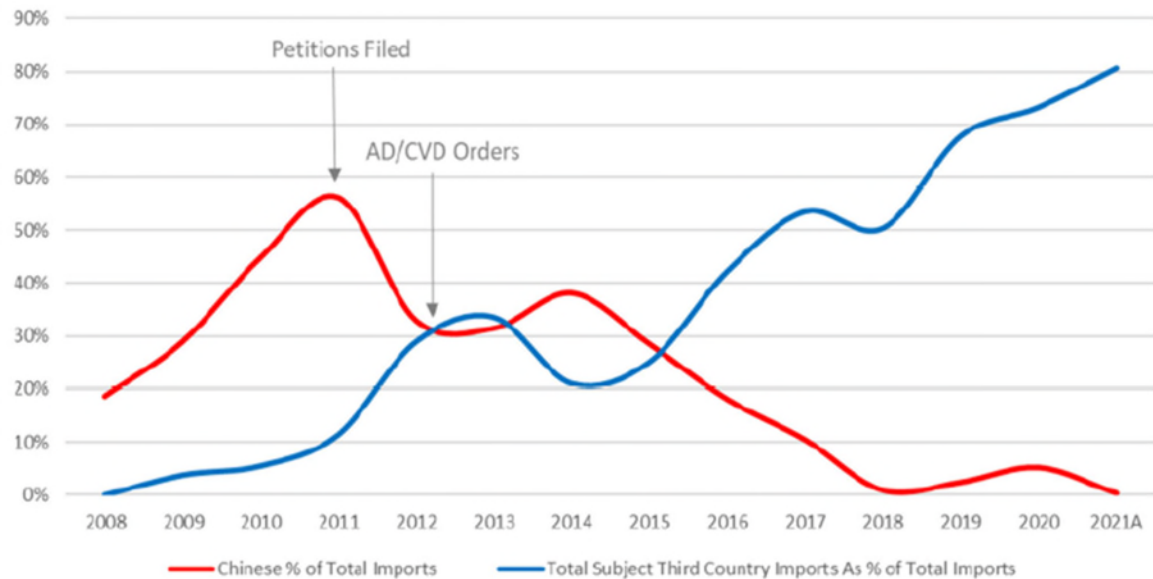


Circumvention Inquiry Timeline

- March 31, 2022: Commerce issued questionnaires soliciting information from certain Cambodian, Malaysian, Thai and Vietnamese producers concerning their production of and shipments to the United States of PV modules and cells
- Questionnaire responses expected by late April
- Late August 2022: Commerce expected to issue preliminary determination of whether imports from covered-country producers are circumventing the 2012 China AD/CVD orders
 - If affirmative for any covered country (Cambodia, Malaysia, Thailand and Vietnam):
 - Imports of PV modules and cells from that country to be treated as being in China AD/CVD case scope
 - Collection of duty deposits on imports from that country going forward and back to at least to April 1, 2022
- Late January to early April 2023: Commerce expected to issue final circumvention determination
 - Normally, final determination is affirmative if preliminary determination is affirmative

Factors Commerce to Consider in Making the Determination

- Among others:
 - If process of assembly in Cambodia, Malaysia, Thailand or Vietnam is minor or insignificant
 - E.g., involves minimal additional processing, with limited production facilities in these countries
 - If value of Chinese material inputs is a significant portion of the total value of modules and cells exported to the United States from the covered countries
 - Pattern of trade, affiliations and use of Chinese-origin components
 - E.g., whether imports of modules and cells from Cambodia, Malaysia, Thailand or Vietnam increased after the 2012 China AD/CVD orders (they did; see graphic)





Three Key Reasons for Hard-To-Predict Outcome

1

**RETROACTIVE
APPLICATION OF
DUTY DEPOSIT
REQUIREMENTS**

2

**RETROACTIVE
DUTY-COLLECTION
SYSTEM**

3

**MIX OF
COUNTRY-WIDE/
SUPPLIER-SPECIFIC RATES**



Complexity 1 -- Retroactive Application of Duty Deposit Requirements

- Retroactive collection of duty deposits on subject imports if affirmative preliminary determination
- To apply to goods entering since April 1, 2022 and potentially even earlier
 - Commerce authorized to instruct Customs to collect duty deposits on entries before April 1, 2022 based on petitioner request to do so that is supported by evidence

Complexity 2 -- Retroactive Duty-Collection System

Import of goods

Cash deposits of estimated duties go to escrow

Administrative and, often, judicial proceedings

Import "Liquidation"





Final duty liability

- Following an import and payment of duty deposit, administrative proceedings look backwards to assess level of dumping and subsidies during period of import
- Final duty liability normally not resolved for several years after import/cash deposit paid

Complexity 3 -- Mix of Country-Wide/Supplier-Specific Duty Rates

- Imports from producers with pre-existing rates from the 2012 China AD/CVD case will face those rates if affirmative circumvention determination
- Imports from producers without pre-existing rates will face the “country-wide” AD rate (239%) and/or “all other” (country wide) CVD rate (15%)
- Wide range of combined AD/CVD cash deposit rates:
 -    CanadianSolar AD/CVD combined rates of 19%
 -   AD/CVD combined rates above 100%
 - Other producers/exporters with “company-specific rates” have even higher combined deposit rates
 - All producers without a company-specific AD rate have a current cash deposit rate above 200%

Expected New Duty Deposit Rates

- Cash deposit rates are subject to change over time, perhaps markedly
- **AD:** Updated company-specific AD rates for Jinko and a few other producers expected in May 2022
 -  AD cash deposit rate may increase to more than 30%, based on the preliminary results of the ongoing administrative review
- **CVD:** Updated company-specific CVD rates for    CanadianSolar and a few other producers expected in May or June 2022
 - These rates may not change significantly, based on the preliminary results of the ongoing administrative review
- **Other AD/CVD:** Rates for other companies and AD country-wide rate not expected to change prior to March 2023
- Producers with prohibitively high (>100%) cash deposit rates may find it challenging to ever lower those deposit rates, as doing so requires a material level of imports
 - “Catch 22” situation – cannot be reviewed by Commerce, which could lead to lower rate, because high deposit rate prevents shipments to United States

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