



LEGAL ALERT

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Commerce Preliminarily Finds High Dumping Margins for Solar Cells from People's Republic of China

by Richard C. Katz

Back in October 2011, a group of U.S. domestic producers, led by Solar World Industries America of Hillsboro, Oregon, filed a petition for the institution of antidumping and countervailing duty investigations against crystalline silicon photovoltaic cells and modules from China. On May 17, 2012, the U.S. Department of Commerce (Commerce) announced its preliminary determination in the antidumping portion of the investigation, finding that Chinese producers sold solar cells in the United States at dumping margins ranging from 31.14 percent to 249.96 percent of the freight on board (f.o.b.) price.

Chinese respondents in the case, Wuxi Suntech and Trina Solar, received preliminary dumping margins of 31.22 and 31.14 percent, respectively. Fifty-nine other Chinese exporters qualified for a separate rate of 31.18 percent. All other Chinese producers/exporters received a rate of 249.96 percent. Commerce will now advise U.S. Customs & Border Protection (CBP) to collect a cash deposit or

require a bond in the amount of the dumping margins applicable to all entries of these products made up to 90 days prior to late May 2012 (i.e., all entries made after late February 2012).

Combined with prior Commerce countervailing duty determinations in March, the preliminary dumping findings will result in the imposition of duty deposit rates of between 35 percent and 255 percent (depending upon the producer/exporter). Obviously, these significant duty deposit requirements will have a major impact on prices of imported Chinese solar panels.

The U.S. antidumping law provides for the imposition of increased import duties on products sold to the United States at unfairly low prices, thereby injuring competing U.S. manufacturers and their labor force. The U.S. countervailing duty law provides for increased duties on products sold to the United States benefitting from illegal export subsidies. The Solar World petition alleged both predatory pricing and illegal subsidies by the Chinese industry, which is why separate duty deposit requirements were imposed in March and May, respectively.

Products: The products covered by the investigation are crystalline silicon photovoltaic cells and modules, laminates and panels, consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including, but not limited to, modules, laminates, panels and building integrated materials.

Critical Circumstances: Commerce has preliminarily determined that "critical circumstances" exist in this case. Therefore, both the May 2012 antidumping finding and the March 2012 countervailing duty finding will include a 90-day retroactive duty assessment.

Next Steps: Commerce is currently scheduled to make its final determination in the dumping case in early October 2012. If the Commerce's final determination is affirmative *and* the U.S.

International Trade Commission then confirms its preliminary injury finding, an antidumping order against these products will be imposed by Commerce. The final dumping margins may be different than the announced preliminary rates, either lower or higher.

Industry Reaction: Outside the confines of the trade case itself, the Chinese government has threatened to take retaliatory action against various U.S. exports to China, including U.S.-sourced polysilicon used in the manufacture of the Chinese panels. In addition to the U.S. trade case, solar panel manufacturers in India are petitioning their government to impose increased tariffs on both U.S. and Chinese products. And in a separate U.S. filing, the wind power industry has sought increased tariffs against wind towers from China and Vietnam. The U.S. solar installation industry, which, to a great degree depends on low-priced Chinese imports, is extremely upset about the dumping finding, claiming that it will lead to a loss of installer jobs. Whatever the ultimate outcome of the U.S. solar panels trade case, it already caused a good deal of disruption in the world-wide alternative energy industry and soured U.S.-China trade relations.

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