



A New Anti-Circumvention Investigation into Solar Imports

Executive Summary

- In March, the Department of Commerce began an investigation to determine if imports of solar cells and modules from Cambodia, Malaysia, Thailand and Vietnam (CMTV) are circumventing existing antidumping and countervailing tariffs on imports of solar cells and modules from China.
- Based on statutory rules, if anti-circumventing tariffs are imposed, they would retroactively apply to imports of solar cells and modules from the CMTV countries from April 1, 2022, to as far back as November 2021, meaning U.S. importers of such products do not currently know their exact costs.
- The installation and utilization of solar panels in the United States has been sharply curtailed due to the uncertainty the U.S. solar industry faces from the anti-circumvention tariffs.
- The United States' comparative advantage is in the downstream portion of the solar supply chain and hence most of the U.S. solar industry specializes in value-adding activities such as using imports of cells and modules to assemble full panels and installing those panels in residential and commercial projects.
- If the tariffs are imposed, they would presumably help the few U.S. manufacturers of solar cells and modules but punish the United States' value-adding solar firms further along the supply chain.

Introduction

On March 28, 2022, the Department of Commerce (DOC) initiated an [investigation](#) to determine if the United States should impose additional antidumping/countervailing (AD/CV) duties on imports of solar cell and modules coming from Cambodia, Malaysia, Thailand, and Vietnam (CMTV). The investigation stems from a [petition](#) from a single U.S.-based manufacturer that claims Chinese companies circumvent [current U.S. AD/CV tariffs](#) by performing a minor production step in the CMTV countries so that the origin of the products is changed and thus avoid the AD/CV tariffs. The petition was heavily based on a BloombergNEF (BNEF) report that supposedly found that circumvention of current AD/CV tariffs was occurring. In May, the authors of that report stated the U.S. manufacturer misinterpreted the findings and that they did not support the conclusion that circumvention was occurring, which suggests the circumvention petition is without merit.¹

¹ <https://www.canarymedia.com/articles/solar/bnef-says-auxin-misinterpreted-its-research-in-calling-for-solar-tariffs>

A preliminary decision on whether to impose anti-circumvention duties is due by August 29, 2022. Due to statutory rules, if the tariffs are imposed, they would retroactively apply to imports of solar cells and modules from the CMTV countries from April 1, 2022, to as far back as November 4, 2021; DOC has the discretion to decide which date will apply.² With just the announcement of the investigation, U.S. companies have already halted most of their imports of solar cells and modules from the CMTV countries, which provide 80 percent of foreign solar cells and modules to the United States, due to uncertainty over the exact prices and costs of their imports.

As with many other industries and products, the United States' comparative advantage is in the downstream portion of the supply chain, e.g., using solar cells and modules to assemble solar panels or providing a service such as installing such panels in residential and commercial projects. In 2015, there were about 209,000 workers in the U.S. solar industry, and more than half of these jobs were in the installation of panels.³ In 2020, there were more than 230,000 workers with an even higher portion – 66 percent – working in solar panel installation⁴ Since the investigation has led to a significant decrease in the importation of foreign solar cells and modules, the supply of such inputs for the U.S. solar industry has dried up. According to the Solar Energy Industries Association (SEIA), this anti-circumvention case could decrease solar deployment in the United States by 46 percent over the next two years; this would reduce solar power capacity by 24 gigawatts (GWs), which is more than the total solar capacity installed in 2021 (which was a record year for U.S. solar power generation) and reduce employment in the solar industry by up to 40 percent (100,000 jobs). Clearly, these outcomes would be contrary to the Biden Administration's goal of expanding clean and renewable energy in the United States.^{5, 6} In short, a decision to impose additional tariffs on solar cell and module imports will help the few U.S. manufacturers of these products—but it will do so at the expense of the most value-adding economic activities in the U.S. solar industry while undermining the Biden Administration's efforts to meaningfully address climate change.

Antidumping/Countervailing Duties and Circumvention

Under Title VII of the Tariff Act of 1930, a U.S. domestic industry can petition DOC and the United States International Trade Commission (USITC) to investigate if a specific imported product is either dumped or has received unfair subsidies.⁷ DOC specifically investigates if

² On November 4th, 2021, newly established regulations that govern DOC's ability to investigate circumvention came into effect. One of the provisions in the regulation allows DOC to not just retroactively impose tariffs to the announcement of the investigation, which in this case is April 1st, 2022 but also to the date of when the regulation came into effect, November 4th, 2021. This decision can be made at the full discretion of the Secretary.

³ <https://www.seia.org/research-resources/national-solar-jobs-census-2015>

⁴ <https://www.seia.org/research-resources/national-solar-jobs-census-2020>

⁵ <https://www.seia.org/solar-industry-research-data>

⁶ <https://www.seia.org/news/tariff-case-cuts-solar-deployment-forecasts-nearly-half-100000-jobs-risk>

⁷ Dumping occurs when an import is sold in a country for less than it would sell in the exporting country's domestic market. Unfair subsidies occur when a foreign government provides direct financial assistance to its firms or

dumping is occurring or if an imported product received unfair subsidies. USITC specifically investigates if a U.S. domestic industry either suffered a “material injury” or a “threat of material injury.”⁸ To determine if dumping or unfair subsidization is occurring for a specific import, DOC will compare the prices of the imports with those of similar products produced in the United States. For material injury, the USITC examines “income-and-loss data” of petitioners.

The AD/CV process begins when a U.S. domestic industry files a petition with DOC and USITC to investigate dumping and/or unfair subsidies. DOC will determine if the petition has merit. The process then moves into the preliminary investigation phase in which USITC investigates if a U.S. domestic industry has suffered a material injury. If it finds it has, DOC then investigates if dumping or unfair subsidies are occurring. If DOC finds that it is, it will issue a preliminary decision to impose tariffs. Following this preliminary phase, both agencies will then perform their respective final investigations to formulate a final AD/CV order. The anti-circumvention case is currently in the USITC preliminary determination phase that attempts to find material injury suffered by a U.S. domestic industry.

Below is a figure from the [Congressional Research Service](#) that outlines the AD/CV process.

Circumvention

The ability of DOC/USITC to investigate circumvention was recently modified in [October 2021](#). Circumvention is determined to have occurred when, after a final U.S. AD/CV order has been issued, a foreign firm whose exports are subject to the tariffs switches its manufacturing process to perform a “minor” or “insignificant” step in a third country. The foreign firm’s exports would presumably no longer be subjected to an AD/CV tariff since their product’s country of origin is now different. Circumvention cases must be based on a prior final AD/CV order; else, the statutory process for circumvention tariffs is very similar to the process for AD/CV cases. A U.S. domestic industry can petition DOC and USITC to investigate circumvention. USITC specifically investigates if a U.S. domestic industry has suffered a material injury and DOC specifically investigates if circumvention of an already issued AD/CV tariff is occurring. In this step, DOC will attempt to establish if a foreign firm performed a “minor” or “insignificant” step to avoid AD/CV tariffs. If the findings are affirmative, DOC will impose anti-circumvention tariffs.

The single U.S. manufacturer that submitted the petition based almost of its claims of circumvention on the findings of a BloombergENF (BENF) report, which it referenced 38 times. In May, the authors of the BENF report stated that the U.S.-based manufacturer misinterpreted the findings and that their research does not support the conclusion that

industries that are contingent on meeting export targets or the use of domestic inputs over imported inputs in production.

⁸ Material Injury is very broadly defined as “harm which is not inconsequential, immaterial, or unimportant.”

circumvention is occurring.⁹ Based on this information, DOC could elect to issue a preliminary decision to not impose tariffs even before the August 29 due date.

Decreased Imports Leads to Decreased Utilization

If the DOC's preliminary decision does impose anti-circumvention tariffs, these tariffs will retroactively apply to imports of solar cells and modules starting on April 1, 2022, or even as far back as November 4, 2021. Based on statutory rules, DOC has the discretion to impose the tariffs retroactively to the announcement of the investigation (April 1, 2022) or to the date the new regulations governing circumvention came into effect (November 4, 2021).¹⁰ Until the preliminary decision is made in August, U.S. solar firms that imported solar cells or modules from the CMTV countries within this timeframe will not know the exact prices of their inputs.¹¹ As a result, there is little to no supply of solar cells and modules for U.S. firms to use. According to a SEIA survey reported in April, 83 percent of respondents who own U.S. firms that purchase or use solar modules reported either a delay or complete cancellation of their module supply. In the same survey, 80 percent of U.S. solar manufacturers expect "severe or devastating negative impacts" due to the anti-circumvention case. These respondents are U.S. manufacturers who specialize in assembling solar cells and modules to produce full solar panels. Since they will lose significant access to their inputs, this will impede their ability to assemble solar panels and sell them in the United States.

Going further down the supply chain, since there is shortage of solar cells and modules, and thus a shortage of solar panels, many of the residential and utility-scale projects that use solar panels have also been largely halted. The SEIA reduced its solar installation projections by 43 percent for 2022 and 2023. This slowdown would translate into a loss of 24 GWs of planned solar capacity over the next two years; this loss would be more than the total capacity installed in 2021, which was a record year for solar installations.¹² As with many other industries, U.S. solar firms have a [comparative advantage](#) in the latter stages of the supply chain, manufacturing higher-value items (in this case, assembling panels) and installing bifacial panels for large-scale utility projects.¹³ It should therefore come as no surprise that protectionist trade policies that attempt to bolster the front end of the U.S. solar supply chain (the few U.S. solar cell and module manufacturers) instead punish the

⁹ <https://www.canarymedia.com/articles/solar/bnef-says-auxin-misinterpreted-its-research-in-calling-for-solar-tariffs>

¹⁰ On November 4th, 2021, newly established regulations that govern DOC's ability to investigate circumvention came into effect. One of the provisions in the regulation allows DOC to not just retroactively impose tariffs to the announcement of the investigation, which in this case is April 1st, 2022 but also to the date of when the regulation came into effect, November 4th, 2021. This decision can be made at the full discretion of the Secretary.

¹¹ If a U.S. firm imported solar cells and modules from the CMTV countries in for example January 2022, and in August 2022 the preliminary decision results in the imposition of tariffs, that U.S. firm will receive a bill from Customs and Border Protection to pay the tariff that has been retroactively levied on the import.

¹² <https://www.seia.org/news/tariff-case-cuts-solar-deployment-forecasts-nearly-half-100000-jobs-risk>

¹³ https://www.seia.org/sites/default/files/2022-04/FINAL%20Auxin%20Impact%20Analysis%202022-04-26_0.pdf

larger and more economically valuable portion of the U.S. solar industry that specializes in the value-adding activities often found in the later stages of a supply chain.

Expanding Clean Energy vs. Trade Protectionism: The Policy Dilemma

The Biden Administration has stated that it wants all electricity production to come from renewable sources by 2035—particularly from solar energy—and to ensure that clean energy technology “will be built in the United States with American made steel and other materials, creating hundreds of thousands of jobs at home.” These may be contradictory goals, however, and that may be playing out in this solar saga. In 2018, former-President Donald Trump issued Section 201 tariffs on solar cells and modules imported from all countries with a particular focus on China. These tariffs did nothing to raise [domestic manufacturing](#) of solar cells and modules in the United States and instead raised costs and decreased installation and utilization. Attempting to increase the U.S. presence on the front end of the solar supply chain through protectionism will only raise costs and ultimately lower installation and utilization.