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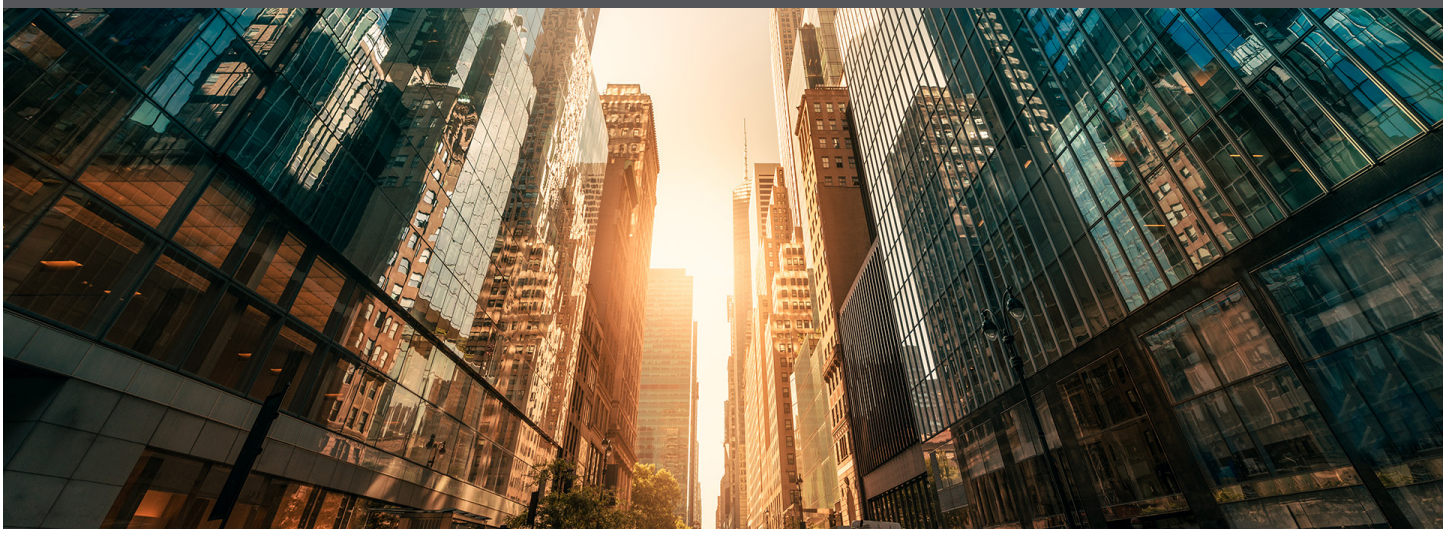

MAY 28, 2024

Recent International Trade Activity Impacting Imported Solar Panels

Three recent events could impact the duties that U.S. companies will owe on imports from crystalline silicon photovoltaic ("CSPV") cells and modules. First, the U.S. Department of Commerce ("Commerce") initiated new antidumping and countervailing duty investigations on CSPV cells and modules from Cambodia, Malaysia, Thailand, and Vietnam.[1] Second, the Office of the U.S. Trade Representative ("USTR") recently proposed increasing Section 301 duties on CSPVs from China in the context of its four-year review of Section 301 duties.[2] Third, the Biden Administration announced its intention to "imminently" rescind the Section 201 duty exclusion for bifacial CSPV cells and modules.[3] Businesses that utilize the CSPV cells and modules that are covered by these actions or proposed actions should consider:

- *Participating in or monitoring the new antidumping duty and countervailing duty investigations;*
- *Submitting comments and/or exclusion requests on the proposed Section 301 duties; and*
- *Discussing business strategies to avoid the new Section 201 duties for bifacial CSPV cells and modules, including restructuring or revising existing agreements.*

NEW ANTIDUMPING AND COUNTERVAILING DUTY INVESTIGATIONS

On May 20, 2024, Commerce initiated new antidumping and countervailing duty investigations on CSPV cells and modules from Cambodia, Malaysia, Thailand, and Vietnam pursuant to a petition filed by a coalition of U.S. companies (the "Petitioner"). The scope of the new investigations[4] explicitly excludes CSPV cells and modules covered by the recent circumvention determinations concerning imports of CSPV cells and modules from the same countries.[5] In other words, products that are within the scope of the circumvention determinations should be excluded from the scope of the new investigations.

There is some risk that the Petitioner may seek to expand the reach of these investigations to CSPV cells and modules from other countries. In particular, the Petitioner asserted that it "believes that there may be solar modules entering the United States from

other third countries (*e.g.,* India) that contain subject country-origin cells and thus may be subject to the[] Petitions."[6] However, the Petitioner acknowledges that it "does not have evidence indicating" that imports of CSPV cells and modules from countries other than those listed in the petitions should be covered by the investigation.[7]

The Petitioner does not allege estimates of countervailing duty rates for the different countries. However, the Petitioner alleges the following estimates of antidumping duty rates:

- Cambodia: 126.07 percent
- Malaysia: 81.24 percent
- Thailand: 70.35 percent
- Vietnam: 271.45 percent[8]

Commerce intends to select companies that it will individually examine by June 10, 2024.[9]

Commerce normally imposes measures (*e.g.*, requires the suspension of liquidation and the collection of cash deposits) when it issues a preliminary determination in an antidumping duty or countervailing duty investigation. Commerce's preliminary determination in the countervailing duty investigations is due July 18, 2024, or September 23, 2024, if the deadline is fully extended. Commerce's preliminary determination in the antidumping duty investigations is due October 1, 2024, or November 30, 2024, if the deadline is fully extended. Should Commerce make a "critical circumstances" finding,[10] it may impose measures on entries of subject merchandise that entered the United States up to 90 days prior to its preliminary determinations.[11]

The International Trade team at Blank Rome has deep experience in this area and can assist businesses in participating in the antidumping and countervailing proceedings. Additionally, we have experience assisting businesses in reducing tariff risks associated with the purchase of CSPV cells and modules that could be subject to the investigations.

SECTION 301 DUTIES

On May 14, 2024, the USTR issued its report in the four-year review of duties on goods imported from China under Section 301. As part of that review, USTR announced tariff increases on a range of products, including solar cells and modules from China.[12] Currently, Section 301 duties apply to CSPV cells and modules from China in the amount of 25 percent.[13] USTR proposes increasing these duties to 50 percent, effective August 1, 2024.[14] USTR has invited interested parties to comment on the proposed tariff action. The period for comments begins on May 29, 2024, and ends on June 28, 2024.[15]

While USTR is proposing tariff increases on machinery used to manufacture solar cells and modules, it is also "proposing 19 temporary exclusions for certain solar manufacturing equipment," with the intent of supporting "investment in U.S. solar manufacturing."[16]

The International Trade team at Blank Rome can assist clients in preparing and filing comments and/or requests for exclusions with respect to these Section 301 duties.

SECTION 201 DUTIES BIFACIAL EXEMPTION

The Biden Administration announced that it is ending a Section 201 duty exclusion that has applied to bifacial solar cells and modules, which will reimpose Section 201 duties on those products.[17] Section 201 duties are designed to increase the U.S. industry's ability to compete with foreign industries, and are levied by the President pursuant to a determination by the U.S. International Trade Commission that imports of certain merchandise are injuring the U.S. industry producing the relevant merchandise.[18] As of February 7, 2024, Section 201 duties on CSPV cells and modules are 14.72 percent, but will decrease to 14 percent on February 7, 2025.[19]

Generally, since June 2019, bifacial CSPV cells and modules have benefited from an exclusion from Section 201 duties.[20] The White House press release states that

"the Biden-Harris Administration is announcing that it *plans to imminently* remove this exclusion."[21] The press release further indicates that there will be a 90-day safe-harbor period for certain bifacial CSPV modules. Specifically, "Importers with pre-existing contracts for bifacial solar modules to be delivered within 90 days of the removal of the exclusion will be able to certify those contracts to continue using the exclusion for that period."

Currently, Section 201 duties do not apply to the first five gigawatts of CSPV cells and modules imported into the United States during a given year,[22] and only apply to CSPV cells and modules that enter after the Section 201 quota is satisfied. The press release indicates that the Administration will monitor the five-gigawatt quota and raise it by 7.5 gigawatts if imports approach the five-gigawatt level.

For more information on these developments and assistance with minimizing negative impacts on business operations, contact Lynn G. Kamarck or Tyler J. Kimberly in Blank Rome's International Trade group.

Lynn G. Kamarck
202.420.3150 | lynn.kamarck@blankrome.com

Tyler J. Kimberly
202.420.2687 | tyler.kimberly@blankrome.com

1. *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From Cambodia, Malaysia, Thailand, and the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigations,* 89 Fed. Reg. 43,816 (Dep't Commerce May 20, 2024) *("CVD Initiation"); Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From Cambodia, Malaysia, Thailand, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations,* 89 Fed. Reg. 43,809 (Dep't Commerce May 20, 2024) *("AD Initiation").*

2. *See* Office of the USTR Executive Office of the President, *Four-Year Review of Actions Taken in The Section 301 Investigation: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation* (May 14, 2024) ("USTR Section 301 Report").

3. The White House Briefing Room, Statements and Releases, *FACT SHEET: Biden-Harris Administration Takes Action to Strengthen American Solar Manufacturing and Protect Manufacturers and Workers from China's Unfair Trade Practices* (May 16, 2024), available at FACT SHEET: Biden-Harris Administration Takes Action to Strengthen American Solar Manufacturing and Protect Manufacturers and Workers from China's Unfair Trade Practices | The White House ("Section 201 Press Release").

4. *See CVD Initiation,* 89 Fed. Reg. at 43,821; *AD Initiation,* 89 Fed. Reg. at 43,816.

5. *See Antidumping and Countervailing Duty Orders on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Scope Determination and Final Affirmative Determinations of Circumvention With Respect to Cambodia, Malaysia, Thailand, and Vietnam,* 88 Fed. Reg. 57,419 (Dep't Commerce Aug. 23, 2023).

6. In the Matter of: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from Cambodia, Malaysia, Thailand, and the Socialist Republic of Vietnam, Petition for the Imposition of Antidumping and Countervailing Duties Pursuant to Section 701 and 731 of the Tariff Act of 1930, as Amended (Apr. 24, 2024) at 23.

7. *Id.*

8. *AD Initiation,* 89 Fed. Reg. at 43,812.

9. *See CVD Initiation,* 89 Fed. Reg. at 43,819–20; *AD Initiation,* 89 Fed. Reg. at 43,813–14.

10. "Critical circumstances" means that following the initiation of the investigation, there was a surge of imports of the subject

merchandise. *See U.S. Customs and Border Protection, Antidumping and Countervailing Duties (AD/CVD) Frequently Asked Questions* (FAQ: What are critical circumstances and what happens if it is determined that critical circumstances exist?), *available at* Antidumping and Countervailing Duties (AD/CVD) Frequently Asked Questions | U.S. Customs and Border Protection (cbp.gov)

11. 19 C.F.R. § 351.206.

12. USTR Section 301 Report at 85; *see also Request for Comments on Proposed Modifications and Machinery Exclusion Process in Four-Year Review of Actions Taken in the Section 301 Investigation: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation* 89 Fed. Reg. 46,252 (USTR May 28, 2024) *("USTR Request for Comment").*

13. *See, e.g., Notice of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation,* 83 Fed. Reg. 40,823, 40,827 (USTR Aug. 16, 2018) (List 2).

14. USTR Request for Comment, 89 Fed. Reg. at 46,254, 46,259.

15. *Id.* at 46,253.

16. USTR Section 301 Report at 87 & App'x L; *see also* USTR Request for Comment, 89 Fed. Reg. 46,291-93 (listing the machinery subject to the exclusions).

17. Section 201 Press Release.

18. *See* 19 U.S.C. § 2251.

19. *See Proclamation 10339 of February 4, 2022,* 87 Fed. Reg. 7,357, 7,361–62 (Feb. 9, 2022) ("Proclamation 10339").

20. *Exclusion of Particular Products From the Solar Products Safeguard Measure,* 84 Fed. Reg. 27,684 (USTR June 13, 2019). Bifacial CSPV modules that entered the United States after October 25, 2020, and before February 7, 2022, did not benefit from the Section 201 exclusion. *Solar Energy Indus. v. United States,* 86 F.4th 885, 893 n.2 (Fed. Cir. 2023).

21. Section 201 Press Release (emphasis added).

22. *Proclamation 10339,* 87 Fed. Reg. at 7,359.

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