



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-570-979

Circumvention

Segments: Cambodia 2022,
Malaysia 2022, Vietnam 2022

Thailand 2022

Public Document


E&C/OIV: PAO

March 3, 2022

MEMORANDUM TO:

The File

FROM:

Paola Aleman Ordaz 
International Trade Compliance Analyst
AD/CVD Operations, Office IV

SUBJECT:

Crystalline Silicon Photovoltaic Cells, Whether or Not
Assembled into Modules from the People's Republic of
China

RE:

Letter from American Clean Power

This memorandum transmits to the file a letter, dated February 28, 2022, received from American Clean Power, commenting on these anticircumvention inquiries. See Attachment.



INTERNATIONAL
TRADE
ADMINISTRATION

Attachment



February 28, 2022

The Honorable Gina M. Raimondo
 Secretary of Commerce
 14th Street & Constitution Avenue, NW
 Washington, D.C. 20230

Dear Secretary Raimondo,

As companies representing billions of dollars of investment across the domestic solar value chain, we write in strong opposition to another baseless circumvention petition. For the reasons detailed below, we request that the Department of Commerce (Commerce) decline to initiate the investigation requested by Auxin Solar, Inc.'s *Request for an Anti-Circumvention Ruling Concerning Malaysia, Thailand, Vietnam and Cambodia on Crystalline Silicon Photovoltaic Cells* (Case Nos. A-570-979; C-570-980), filed on February 8, 2022 (Auxin Investigation).

In over a decade of administrative rulings, Commerce and U.S. Customs and Border Protection (CBP) have consistently held that the point of activation of a p-n junction in a solar cell determines the country of origin for the resulting solar panel. Auxin is essentially asking Commerce to summarily reject this decade-old precedent (upon which the entire solar industry has relied) and to find that the place of polysilicon wafer manufacture should determine a solar panel's country of origin. Such a determination would be both illogical and unfair, treating our industry differently than any other industry.

To maintain the credibility of the trade remedy process and to deter future frivolous claims which can result in real, multi-billion-dollar market impacts, Commerce should not initiate the Auxin Investigation. A decision to initiate in this instance is a decision to establish a roadmap for the future misuse of trade laws for the benefit of a single company rather than an entire domestic industry.

Initiating the investigation would have a chilling effect on the domestic industry and would impact over 80 percent of the utility-scale solar projects scheduled for installation in 2022. Even though the Auxin claim is without merit, the threat of an investigation and the accompanying retroactive tariffs is causing significant disruption in domestic solar deployment and imperiling the Biden-Harris Administration's climate goals. The petition also threatens the tens of thousands of solar manufacturing jobs already in this country for components beyond solar panels – such as trackers and racking. This will continue unless and until Commerce decides not to initiate an investigation.

This outcome is completely avoidable because the relevant statute allows Commerce discretion to decline to expand the scope of an AD/CVD order where the Secretary does not consider expansion of the scope to be appropriate. *See* 19 U.S.C. § 1677j(b)(1) (providing that Commerce “*may include* such imported merchandise within the scope of the order” and including a prerequisite that Commerce “determine{} that action is *appropriate* under {the anti-circumvention provision} to prevent evasion”).



We share and support President Biden's goal to grow the domestic solar supply chain. But a decision to initiate the Auxin Investigation will not incentivize more domestic solar manufacturing or deployment or have any positive impact on domestic cell or module production. On the contrary, it will have a materially destructive impact on the domestic solar industry and the substantial economic development and climate benefits the industry provides.

Respectfully Submitted,

AES

Algonquin Power & Utilities Corp.

Alliant Energy

American Electric Power

Apex Clean Energy

Avangrid Renewables

BayWa r.e.

Berkshire Hathaway Energy

Blue Ridge Power, LLC

Clearway Energy Group

ConnectGen LLC

CPV Renewable Power, LP

Cypress Creek Renewables

Dominion Energy

Duke Energy Corporation

EDF Renewables

EDP Renewables North America

Enel Green Power North America, Inc.

ENGIE North America

Form Energy

Hannon Armstrong



Intersect Power LLC

Invenergy

Lightsource bp

Mortenson

National Grid

NextEra Energy Inc

Nextracker

Orsted

Pattern Energy Group

Pine Gate Renewables, LLC

RES America Developments Inc

RWE

Savion, LLC

SB Energy

Sol Systems

Strata Clean Energy

Tokyo Gas America Ltd.

TPI Composites

Wanzek Construction

WECS Renewables