

Circumvention Inquiry into Solar Imports

Updated August 24, 2023

On August 18, 2023, the Commerce Department issued a final determination affirming that Chinese-manufactured crystalline silicon photovoltaic (CSPV) cells and panels are circumventing U.S. antidumping and countervailing duty orders. Commerce [initiated](#) the inquiry in April 2022 in response to U.S.-based Auxin Solar's [petition](#) alleging that solar cells and panels imported from Cambodia, Malaysia, Thailand, and Vietnam use Chinese-made parts and components to avoid high U.S. tariffs on solar equipment imported directly from China. The investigation has been controversial, including among Members of Congress. Some stakeholders assert that uncertainty about the tariffs could slow deployment of solar energy in the United States while others insist that action is needed to protect U.S. solar manufacturing.

Background

In 2012, the Commerce Department and the U.S. International Trade Commission (ITC) determined that imports of solar cells and panels from China were being sold below cost (“dumped”) or unfairly subsidized and were injuring or threatened to injure the U.S. solar manufacturing industry. Commerce imposed two remedial orders. The antidumping ([AD](#)) [order](#) imposed duties ranging from 18% to 25% on goods produced by specific Chinese firms and 250% on imports from all other Chinese firms. The countervailing duty ([CVD](#)) [order](#), which counteracts subsidies, imposed duties of 14%-15% on all solar products from China. In its [petition](#), Auxin contended that certain producers in Southeast Asia have manufacturing operations that involve minimal capital investments and technical research and rely on Chinese inputs (e.g., solar glass, aluminum frames, and silver paste) to make CSPV cells and panels that are then exported to the United States.

How Commerce Conducts Circumvention Inquiries

Circumvention inquiries determine whether a good imported from a country not subject to an AD or CVD order should be included in the scope of an existing order.

Any [interested party](#) (e.g., relevant domestic and foreign manufacturers, importers, unions, and trade associations) may [submit](#) a request for a circumvention inquiry. The Secretary of Commerce may also [self-initiate an inquiry](#). Once the Secretary receives a request, federal law and regulations establish deadlines for further action:

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- Within **30 days** of receiving a request containing the **required information**, the Secretary is to initiate an inquiry, publish a notice in the *Federal Register*, and instruct Customs to suspend liquidation (i.e., the final calculation of duties) and require any firm under investigation to **deposit duties**.
- Within **150 days** of the notice, the Secretary is to issue a preliminary determination.
- Within **300 days** of the notice, **law** and **regulations** require that the Secretary issue a final determination.
- If the investigation is “extraordinarily complicated,” the Secretary may extend the final determination deadline by up to **65 days**.

As part of its inquiry, **Commerce considers** whether “the process of assembly or completion in the foreign country ... is minor or insignificant.” In making that determination, Commerce takes into account the level of investment, research, and development undertaken in the foreign country, the nature of the production process, the extent of the production facilities, and the value added to the final product.

If Commerce determines that the goods in question should be included within the scope of the existing order(s) (an “affirmative determination”), duties could **be applied to goods that entered the United States after publication of the notice**. In certain circumstances, the Secretary may collect duties on goods entered **prior to publication**, back to the **date of the original order(s)**. Commerce could **apply duties** to covered goods specific to particular producers, exporters, or importers, and on a country-wide basis (i.e., against solar imports from Cambodia, Malaysia, Thailand, and/or Vietnam).

Domestic Solar Industry

Manufacturing of CSPV panels, the most common source of solar energy in the United States, involves four primary stages: the refinement of polysilicon, production of thin sheets of silicon (wafers), fabrication of solar cells, and panel assembly. Completed solar systems also require numerous components not used to generate electricity, such as inverters that convert direct current into alternating current and racking systems that position the panels.

No CSPV cells are produced in the United States. As of August 2023, **16 U.S. factories assembled CSPV panels using imported cells**, according to the Department of Energy. Seven CSPV panel plants closed between 2018 and 2021. In 2020, domestic production accounted for **10% of apparent U.S. consumption** of CSPV panels. Most new solar installations in the United States use panels assembled in Malaysia, Thailand, or Vietnam. **Critics of the circumvention inquiry asserted** that higher tariffs on these imports could raise the cost of solar systems in the United States and reduce installation work, the **main source of solar-related U.S. employment**.

Issues for Congress

Critics of the inquiry raised questions about Commerce’s procedures for initiating circumvention inquiries. In May 2022, **some Members of Congress expressed concerns** about the relative ease with which an investigation can be initiated, the absence of a domestic industry support requirement (which exists for **regular AD/CVD investigations**), and the absence of a procedure for Commerce to consider external factors (e.g., public interest). Prior to the ongoing investigation, the House passed **H.R. 4521** (117th Congress), which would have codified Commerce’s circumvention regulations, potentially making it easier for Commerce to initiate such investigations. The provisions were not included in a later version of the bill that was passed and signed into law (P.L. 117-167). Similar bills to codify Commerce’s circumvention regulations—H.R. 3882 and S. 1856—have been introduced in the 118th Congress.

On June 6, 2022, President Biden [declared an emergency](#) citing [Section 318 of the Tariff Act of 1930](#) and authorized the Secretary of Commerce to suspend AD/CV duties on imports of solar cells and modules from Cambodia, Malaysia, Thailand, and Vietnam for 24 months to support U.S. solar deployment efforts. In declaring the emergency, President Biden did not cite to the [National Emergencies Act \(NEA\)](#) and at least some observers [argued](#) that Section 318 should fall under the NEA. In responding to the criticism, the Commerce Department [asserted](#) that the President had independent emergency authority under Section 318 and noted that, in the alternative, Commerce “[did] not agree that Proclamation 10414 fails to conform with the requirements of the [NEA].” Should Section 318 fall under the NEA, Congress could terminate the emergency declared by the President.

Following the declaration of emergency, Commerce [proceeded with the investigation](#), and on September 16, 2022, Commerce published a [final rule](#) implementing the declaration. On December 2, 2022, Commerce issued an [affirmative preliminary determination](#). Per Commerce’s [instructions](#), importers must certify that their solar cells and panels meet the requirements of “[applicable entries](#)” covered by the President’s emergency declaration. Regarding nonapplicable entries, Commerce instructed Customs to suspend liquidation and collect cash deposits for entries entered on or after April 1, 2022. In an [affirmative final determination](#) issued on August 18, 2023, Commerce determined that five of the eight companies investigated were circumventing AD/CVD orders.

The investigation raised varying views among Members of Congress. During and after the investigation, some Members raised concerns over the impact the affirmative determination may have on the [U.S. solar industry and employment](#) and urged the Biden Administration to [extend the tariff suspension](#) on solar products. Some other Members praised Commerce’s [enforcement of U.S. trade law](#) and suggested [rescinding the proclamation](#).

In March 2023, Representative Bill Posey introduced H.J.Res. 39 (118th Congress) disapproving of Commerce’s September 16 Final Rule under the provisions of the [Congressional Review Act](#). The House and Senate both passed the resolution, which was subsequently [vetoed](#) by President Biden. Congress [did not override](#) the veto.

As an alternative to the Congressional Review Act, Congress could seek to [terminate the emergency under the provisions of the NEA](#).

Table I. Timeline of Actions in Circumvention Investigation

Date	Action
February 8, 2022	Auxin filed a circumvention inquiry request with the Department of Commerce pursuant to 19 C.F.R. §351.226(c) .
April 1, 2022	Commerce initiates its circumvention inquiry and instructs CBP to collect cash deposits that would be applicable if Commerce determines the imported solar cells and modules in question are subject to the scope of the orders.
June 6, 2022	President Biden declares an emergency under Section 318 of the Tariff Act of 1930 (19 U.S.C. §1318) and authorizes the Secretary of Commerce to allow the importation, free of AD/CV duties, of certain solar cells and modules from Cambodia, Malaysia, Thailand, and Vietnam.
August 22, 2022	In response to a request from Auxin, in accordance with 19 C.F.R. §351.302(b) Commerce extends the deadline for issuing its preliminary determination by 90 days to November 28, 2022.

September 16, 2022	Commerce publishes its Final Rule creating procedures in accordance with the declaration of emergency. Commerce directs CBP to liquidate any suspended entries of subject solar cells and modules and to refund the cash deposits that CBP had been collecting since April 1.
November 14, 2022	In response to receiving “extensive comments concerning the upcoming preliminary determinations,” Commerce, in accordance with 19 C.F.R. §351.302(b) , extends the deadline for issuing its preliminary determination by three days, until December 1, 2022.
December 1, 2022	Commerce preliminarily determines that, with some exceptions, solar cells and modules exported from Cambodia, Malaysia, Thailand, and Vietnam are circumventing the AD/CV orders on solar cells and modules from China.
December 8, 2022	Commerce publishes its preliminary determination in the <i>Federal Register</i> .
March 7, 2023	Representative Bill Posey introduces H.J.Res. 39 disapproving of Commerce’s September 16 Final Rule.
April 21, 2023	The House Committee on Ways and Means reports out H.J.Res. 39 favorably.
April 27, 2023	It is reported that Commerce, in response to a flurry of filings by interested parties, extended its deadline for issuing its final determination to August 17.
April 28, 2023	The House of Representatives passes H.J.Res. 39 .
May 3, 2023	The Senate passes H.J.Res. 39 .
May 16, 2023	President Biden vetoes H.J.Res. 39.
May 24, 2023	A vote in the house to override President Biden’s veto fails .
August 23, 2023	Commerce publishes its final determination in the <i>Federal Register</i> .

Notes: Non-hyperlinked actions are available at access.trade.gov.

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