

**Alert | Energy Project Finance & Development/
International Trade**



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Commerce Department Delays Auxin Preliminary Determination on Solar Trade Imports

The Department of Commerce announced Aug. 23 it is delaying the issuance of the preliminary determination in the Auxin circumvention investigation until Nov. 28, 2022. The date had been set for Aug. 29, 2022. The decision is in response to a request by the petitioner, Auxin Solar, Inc., to allow Commerce more time to develop and analyze the questionnaire responses and comments from interested parties.

If an affirmative determination is made, Commerce will direct Customs to suspend liquidation for merchandise subject to the investigation and require cash deposits equal to the amount of the anti-dumping and countervailing duty (AD/CVD) rates pursuant to the order on Chinese merchandise which will be collected at entry to the United States.

On April 1, 2022, Commerce published [notice of its initiation of circumvention inquiry](#) into whether imports of solar cells and modules from Cambodia, Malaysia, Thailand, and Vietnam are circumventing the AD/CVD orders on crystalline silicon photovoltaic cells, whether or not assembled into modules, from China. Pursuant to the countrywide anti-circumvention inquiries, Commerce is considering whether solar cells and modules that have been completed in those four countries using Chinese parts and components are covered by the scope of the existing AD/CVD orders against China.

Specifically, Auxin is alleging that silicon wafers and other Chinese parts are being shipped to Cambodia, Malaysia, Thailand, and Vietnam, where they undergo minor processing operations prior to export to the

United States. The anti-circumvention statute provides that merchandise completed or assembled in third countries may be subject to AD/CVDs if the process of assembly or completion in the third county is minor or insignificant, among other requirements.

As a reprieve to importers while the investigation continues, on June 6, 2022 President Biden issued the [Declaration of Emergency and Authorization for Temporary Extensions of Time and Duty-Free Importation of Solar Cells and Modules from Southeast Asia](#), which provides for the importation of solar panels and cells from Cambodia, Malaysia, Thailand, and Vietnam free of certain duties for a two-year period to ensure “the United States has access to a sufficient supply of solar modules to assist in meeting our electricity generation needs.” See [GT Alert, Biden Uses Emergency Powers to Pause New Solar Import Tariffs—Frequently Asked Questions](#). Accordingly, even if the preliminary determination is affirmative at the end of November, cash deposits on AD/CVDs would not be collected.

The final determination in this matter is also likely to be delayed until March or early April 2023.

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