

Wiley Files Critical Circumstances Allegations Against Solar Imports from Vietnam and Thailand

FILING RESPONDS TO SURGE IN IMPORTS FOLLOWING AD/CVD PETITIONS FILED IN APRIL 2024

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Washington, DC – The American Alliance for Solar Manufacturing Trade Committee, represented by Wiley Rein LLP, filed critical circumstances allegations with the U.S. Department of Commerce today regarding surges of solar imports from Vietnam and Thailand that are injuring the U.S. solar industry. The Trade Committee based its allegations on a 39% increase in imports from Vietnam and a 17% increase from Thailand between April 2024 and June 2024, when compared to January 2024 through March 2024.

Notably, import levels from the two countries between April 2024, when Wiley filed antidumping and countervailing duty petitions on behalf of the Alliance Trade Committee, and June 2024, were higher than the average recorded import levels in the preceding six months. For instance, monthly imports from Vietnam surged to an all-time record high of over 2.5 gigawatts (GW) in June 2024. In addition, imports from the country averaged approximately 2.3 GW per month between April 2024 and June 2024, in contrast to less than 1.5 GW per month in the preceding six months.

“When we submitted our petitions a few months ago, several China-based companies operating in Thailand and Vietnam appear to have actively accelerated their U.S. solar exports, likely to evade impending duties. We were therefore compelled to file these critical circumstances allegations in response to these new surges of imports,” said Tim Brightbill, co-chair of Wiley’s International Trade Practice and lead counsel to the petitioners. “We cannot allow these

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countries – and Chinese-owned companies – to continue harming the U.S. market unabated.”

Background: On May 14, 2024, the U.S. Department of Commerce opened its investigation into the arguments in the petitions filed on April 24, 2024, by the Alliance. On June 7, 2024, the U.S. International Trade Commission (USITC) made a unanimous affirmative preliminary determination that dumped and subsidized imports from Vietnam, Cambodia, Malaysia, and Thailand are currently injuring U.S. solar cell and module manufacturers (or in the case of subsidized Cambodian imports, threaten such injury). The data so far presents a strong case that Vietnam and Thailand quickly increased their solar panel exports to the United States following the petitions filed by the Alliance to avoid any duties that could follow an affirmative determination.

Critical Circumstances: Critical circumstances occur when the Department of Commerce determines that imports are rapidly increasing into the U.S. market of a product that is subject to an Antidumping and Countervailing Duties (AD/CVD) investigation.

June 2024 solar import data available below document the increase in imports from Thailand and Vietnam. Here are the relevant import trends:

Analysis of Critical Circumstances Trends for Certain Countries Subject to AD/CVD Investigations into c-SiPV Products

Source Country:

Import Volume (Watts)

% Increase

Jan. – Mar. 2024

Apr. – June 2024

Vietnam

5,073,199,937

7,061,187,436

39.19%

Thailand

3,570,039,944

4,179,096,803

17.06%

A critical circumstances finding can help offset import surges during an investigation. If the Secretary finds critical circumstances, duties can be imposed retroactively on merchandise entered up to 90 days before the preliminary determinations. For those duties to be finalized, the USITC must also find that the surge in imports undermines the relief to which the domestic industry is entitled.

Antidumping and Countervailing Duties: Antidumping duties are intended to offset the amount by which a product is sold at less than fair value, or “dumped,” in the United States. The margin of dumping is calculated by the Department of Commerce. Countervailing duties are intended to offset unfair subsidies that are provided by foreign governments and benefit the production of a particular good. After affirmative preliminary determinations by the Department of Commerce, estimated duties in the amount of the dumping and subsidies will be collected from importers at the time of importation. The USITC will determine whether the domestic industry is materially injured or threatened with material injury by reason of the unfairly traded imports.

Next Steps: The Department of Commerce will investigate and make preliminary and final determinations of whether critical circumstances exist. The entire AD/CVD investigation will take approximately one year, with preliminary determinations due in late September 2024 for countervailing duties and late November 2024 for antidumping duties. Final determinations of dumping, subsidization, and injury will likely occur in spring 2025.

This action comes less than a year after the Department of Commerce made its final determination that Chinese solar manufacturers were circumventing tariffs on solar cells and solar panels by shipping their products through Cambodia, Malaysia, Thailand, and Vietnam.

Product Description: The products subject to the critical circumstances petitions are crystalline silicon photovoltaic cells, whether or not assembled into modules, from Vietnam and Thailand.

Petitioners: The petitioner is the American Alliance for Solar Manufacturing Trade Committee, a coalition of seven member and supporter companies Convalt, First Solar, Meyer Burger, Mission Solar, Qcells, REC Silicon, and Swift Solar. The petitioner is represented by Wiley Rein LLP.

For more information on this petition, visit AmericanSolarTradeCmte.org.

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About The Alliance

The American Alliance for Solar Manufacturing Trade Committee is a coalition of seven member and supporter companies calling for trade law enforcement against foreign entities engaging in illegal practices to protect jobs, ensure fair prices, and foster a strong American solar industry for generations to come.