



A-570-979, C-570-980
Anti-Circumvention Inquiry
from Malaysia
from Thailand
from Vietnam
Public Document
E&C/OIV: Team

September 29, 2021

American Solar Manufacturers Against Chinese Circumvention
c/o Timothy C. Brightbill, Esq.
Wiley Rein LLP
1776 K Street NW
Washington, DC 20006

Re: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China: Requests for Anti-Circumvention Rulings and Request for Additional Information

Dear Mr. Brightbill:

This letter concerns your August 16, 2021 requests for anti-circumvention rulings filed on behalf of the American Solar Manufacturers Against Chinese Circumvention (A-SMACC) in which you requested that the Department of Commerce (Commerce) determine that certain imports of crystalline silicon photovoltaic cells and modules (solar cells and modules) from Malaysia, Thailand, and Vietnam are circumventing the antidumping duty (AD) and countervailing duty (CVD) *Orders*¹ on solar cells and modules from the People's Republic of China (China).² We have examined your submissions and have determined that we require additional information to address certain threshold issues before we can consider the merits of your requests for anti-circumvention rulings. *See Attachment.*

Commerce accordingly will consider A-SMACC's requests for anti-circumvention rulings once we receive the information requested in the attachment to this letter. The deadline to respond to this questionnaire is October 6, 2021, and the 45-day time period contemplated by 19 CFR

¹ *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order*, 77 FR 73018 (December 7, 2012); *see also Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Countervailing Duty Order*, 77 FR 73017 (December 7, 2012) (collectively, the *Orders*).

² *See A-SMACC's Letter, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China: Request for Circumvention Ruling Pursuant to Section 781(b) of the Tariff Act of 1930,"* dated August 16, 2021 (Malaysia Request); *see also A-SMACC's Letter, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Request for Circumvention Ruling Pursuant to Section 781(b) of the Tariff Act of 1930,"* dated August 16, 2021 (Thailand Request); and A-SMACC's Letter "Request for Circumvention Ruling Pursuant to Section 781(b) of the Tariff Act of 1930," dated August 16, 2021 (Vietnam Request).

351.225(c)(2) for Commerce to issue final rulings or initiate anti-circumvention inquiries will begin on the date that A-SMACC submits its response.

We note that the purpose of this request is to understand certain threshold issues. We may have additional clarification requests regarding the substance of your requests.

If you have any questions on this matter, please contact Jeffrey Pedersen at (202) 482-2769 or Lingjun Wang at (202) 482-2316.

Sincerely,



Abdelali Elouaradia
Director, Office IV
AD/CVD Operations

Enclosed

ATTACHMENT

Requests for Information Concerning Domestic Parties

1. Section 771(9)(F) of the Tariff Act of 1930, as amended (the Act) defines an “interested party” to include “an association, *a majority of whose members* is composed of interested parties described in subparagraph (C), (D), or (E) with respect to a domestic like product” (emphasis added). It is not clear that A-SMACC meets this requirement since A-SMACC did not state in its circumvention allegation that the named companies constituted the entire membership of A-SMACC. Please:
 - a. Demonstrate how A-SMACC is an interested party under section 771(9)(F) of the Act.
 - b. Identify the full name and address of each member of A-SMACC.
 - c. Describe the operations of each member of A-SMACC.
2. Provide evidence that a majority of the A-SMACC members listed in the requests for an anticircumvention inquiry qualify as interested parties within the meaning of either section 771(9)(C), (D) or (E) of the Act.
3. In your submission of August 27, 2021, you claimed that “{g}iven Chinese manufacturers’ current dominance of the solar supply chain from polysilicon to ingot to wafer as well as the vast majority of other raw material inputs, and the pervasive influence of the Government of China, A-SMACC members reasonably believe that they will face retaliation and other forms of harm as a result of their status as members of A-SMACC in requesting a circumvention ruling, and thus that their competitive positions may be harmed, were their identities to be revealed.” A-SMACC claimed that this amounts to “substantial harm to the competitive position” of its members within the meaning of 19 CFR 351.105(c)(11).

To evaluate your claim of “substantial harm,” we require additional information regarding the members of A-SMACC. Please respond to the following requests.

- a. Please explain in more detail why you believe each member of A-SMACC will face retaliation and other forms of harm as a result of its status as a member of A-SMACC. Please provide any reasonably available evidence supporting your claim of potential retaliation with respect to each member of A-SMACC. This can include information and evidence pertaining to each member’s current or potential future business relationships, sourcing patterns, customers, etc.
- b. Since the filing of A-SMACC’s circumvention allegation, please identify whether A-SMACC is aware of any attempts by Chinese entities to determine the identities of the members of A-SMACC, or to determine which U.S. companies are not members of A-SMACC.
- c. Since the filing of A-SMACC’s circumvention allegation, please identify whether A-SMACC is aware of any attempts at retaliation against A-SMACC members.
- d. Please provide any other evidence of substantial harm beyond retaliation relevant to a showing consistent with 19 CFR 351.105(c)(11).

- e. So that we can further assess your claim that “substantial harm” will result if the names of the A-SMACC members become public, please identify any foreign ownership in any of the A-SMACC members.
- f. Further, please identify the country(ies) where the solar cells that are used in the solar modules that A-SMACC members manufacture in the United States were produced.
- g. Please identify whether any member of A-SMACC or any of its members’ affiliates have any sales and/or production operations involving solar cells or solar modules that are located in Malaysia, Thailand, or Vietnam.
 - i. If they do, please report the names of the companies in Malaysia, Thailand, or Vietnam, and describe the nature of their operations.
 - ii. Please identify whether any Chinese persons (individuals or entities) own a portion of any of the companies identified in response to item a above.
 - iii. If they do, please identify the company in which a Chinese person holds an ownership interest, identify the Chinese persons (both individuals and entities (as applicable)) that hold the ownership interest, and identify the percentage owned.
- h. Please identify whether any of the companies identified in response to item g(i) above purchase polysilicon materials (ingots, wafers, *etc.*) or other raw material inputs used to produce solar cells or solar modules from Chinese companies.
 - i. If they do, please identify the items that they purchase.
- i. Please identify whether any member of A-SMACC or any of its members’ affiliates located in the United States purchase polysilicon materials (ingot, wafer, *etc.*) or other raw material inputs used to produce solar cells or solar modules from Chinese companies.
 - i. If they do, please identify the items that they purchase.