

751(c), 752(b), and 777(i)(1) of the Act, and 19 CFR 351.218.

Dated: March 25, 2022.

**Lisa W. Wang,**

*Assistant Secretary for Enforcement and Compliance.*

## Appendix

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[FR Doc. 2022-06926 Filed 3-31-22; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-979, C-570-980]

#### Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Initiation of Circumvention Inquiry on the Antidumping Duty and Countervailing Duty Orders

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** In response to a request from Auxin Solar Inc. (Auxin), the Department of Commerce (Commerce) is initiating country-wide circumvention inquiries to determine whether imports of crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells and modules), which are completed in Cambodia, Malaysia, Thailand, or Vietnam using parts and components from the People's Republic of China (China), are circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on solar cells and modules from China.

**DATES:** Applicable April 1, 2022.

**FOR FURTHER INFORMATION CONTACT:** Jeff Pedersen or Paola Aleman Ordaz (Thailand and Vietnam), Office IV, or Chien-Min Yang (Cambodia and Malaysia), Office VII, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone:

(202) 482-2769, (202) 482-4031, and (202) 482-5484, respectively.

### SUPPLEMENTARY INFORMATION:

#### Background

On February 8, 2022, pursuant to section 781(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.226(c), Auxin filed a circumvention inquiry request alleging that solar cells and modules completed in Cambodia, Malaysia, Thailand, or Vietnam using parts and components manufactured in China are circumventing the *Orders*<sup>1</sup> and, accordingly, should be included within the scope of the *Orders*.<sup>2</sup> Parties have filed numerous letters with Commerce in which they explained their views concerning the requested circumvention inquiries. On March 9, 2022, we extended the deadline to determine whether to initiate these circumvention inquiries by 15 days, in accordance with 19 CFR 351.226(d)(1).<sup>3</sup>

#### Scope of the Orders

The merchandise covered by these *Orders* is crystalline silicon photovoltaic cells, and modules, laminates, and panels, consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including, but not limited to, modules, laminates, panels and building integrated materials. Merchandise covered by these *Orders* is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 8501.71.0000, 8501.72.1000, 8501.72.2000, 8501.72.3000, 8501.72.9000, 8501.80.1000, 8501.80.2000, 8501.80.3000, 8501.80.9000, 8507.20.8010, 8507.20.8031, 8507.20.8041, 8507.20.8061, 8507.20.8091, 8541.42.0010, and 8541.43.0010. Although these HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the *Orders* is dispositive. For a complete

<sup>1</sup> 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) and *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) (*Orders*).

<sup>2</sup> See Auxin's Letter, "Auxin Solar's Request for an Anti-Circumvention Ruling Pursuant to Section 781(b) of the Tariff Act of 1930, As Amended," dated February 8, 2022.

<sup>3</sup> See Memorandum, "Extension of Time to Determine Whether to Initiate Anti-Circumvention Inquiry," dated March 9, 2022.

description of the scope of the *Orders*, see the Initiation Memorandum.<sup>4</sup>

#### Merchandise Subject to the Circumvention Inquiries

The circumvention inquiries cover solar cells and modules that have been completed in Cambodia, Malaysia, Thailand, or Vietnam, using parts and components from China, that are then subsequently exported from Cambodia, Malaysia, Thailand, or Vietnam to the United States.

#### Initiation of Circumvention Inquiries

Section 351.226(d) of Commerce's regulations states that if Commerce determines that a request for a circumvention inquiry satisfies the requirements of 19 CFR 351.226(c), then Commerce "will accept the request and initiate a circumvention inquiry." Section 351.226(c)(1) of Commerce's regulations, in turn, requires that each request for a circumvention inquiry allege "that the elements necessary for a circumvention determination under section 781 of the Act exist" and be "accompanied by information reasonably available to the interested party supporting these allegations." Auxin alleged circumvention pursuant to section 781(b) of the Act (merchandise completed or assembled in other foreign countries).

According to section 781(b)(1) of the Act, after taking into account any advice provided by the U.S. International Trade Commission (ITC) under section 781(e) of the Act, Commerce may find merchandise imported into the United States to be covered by the scope of an order if: (A) Merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is the subject of an AD order or finding or a CVD order; (B) before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which is subject to the order or finding or is produced in the foreign country with respect to which such order or finding applies; (C) the process of assembly or completion in the foreign country referred to in subparagraph (B) is minor or insignificant; (D) the value of the merchandise produced in the foreign country to which the AD (or CVD) order applies is a significant portion of the total value of the merchandise exported to the United

<sup>4</sup> See Memorandum, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China: Initiation of Circumvention Inquiries," dated concurrently with, and hereby adopted by, this notice (Initiation Memorandum).

States; and (E) the administering authority determines that action is appropriate to prevent evasion of such order or finding.

In determining whether the process of assembly or completion in a third country is minor or insignificant under section 781(b)(1)(C) of the Act, section 781(b)(2) of the Act directs Commerce to consider: (A) The level of investment in the foreign country; (B) the level of research and development in the foreign country; (C) the nature of the production process in the foreign country; (D) the extent of production facilities in the foreign country; and (E) whether the value of processing performed in the foreign country represents a small proportion of the value of the merchandise imported into the United States.

In addition, section 781(b)(3) of the Act sets forth additional factors to consider in determining whether to include merchandise assembled or completed in a third country within the scope of an AD or CVD order. Specifically, Commerce shall take into account such factors as: (A) The pattern of trade, including sourcing patterns; (B) whether the manufacturer or exporter of the merchandise that was shipped to the third country for completion or assembly is affiliated with the person in the third country who assembles or completes the merchandise that is subsequently imported into the United States; and (C) whether imports of the merchandise into the third country that was completed or assembled have increased after the initiation of the investigation which resulted in the issuance of the order or finding.

Based on our analysis of Auxin's circumvention request, we determined that Auxin satisfied the criteria under 19 CFR 351.226(c), and thus, pursuant to 19 CFR 351.226(d)(1)(ii), we have accepted the request and are initiating the requested circumvention inquiries of the *Orders*. For a full discussion of the basis for our decision to initiate the requested circumvention inquiries, see the Initiation Memorandum.<sup>5</sup> Moreover, as explained in the Initiation Memorandum, based on the information provided by Auxin, we have initiated country-wide circumvention inquiries. Commerce has taken this approach in prior circumvention inquiries where the facts warranted initiation on a country-wide basis.<sup>6</sup>

<sup>5</sup> See Initiation Memorandum.

<sup>6</sup> See, e.g., *Certain Corrosion-Resistant Steel Products from the Republic of Korea and Taiwan: Initiation of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders*, 83 FR 37785 (August 2, 2018); *Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of*

China: Initiation of Anti-Circumvention Inquiry on the Antidumping Duty Order, 82 FR 40556, 40560 (August 25, 2017) (stating at initiation that Commerce would evaluate the extent to which a country-wide finding applicable to all exports might be warranted); and *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Initiation of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders*, 81 FR 79454, 79458 (November 14, 2016) (stating at initiation that Commerce would evaluate the extent to which a country-wide finding applicable to all exports might be warranted).

### Respondent Selection

Commerce intends to base respondent selection on responses to quantity and value questionnaires. Commerce intends to identify the companies to which it will issue the quantity and value questionnaire, in part, based on CBP data. Parties to which Commerce does not issue the quantity and value questionnaire may also respond to the quantity and value questionnaire, which will be available in ACCESS, by the applicable deadline. Commerce intends to place the CBP data on the record within five days of publication of the initiation notice. Comments regarding the CBP data and respondent selection should be submitted within seven days after placement of the CBP data on the record of the relevant inquiry.

### Suspension of Liquidation

Pursuant to 19 CFR 351.226(l)(1), Commerce will notify U.S. Customs and Border Protection (CBP) of its initiation of the requested circumvention inquiries and direct CBP to continue the suspension of liquidation of entries of products subject to the circumvention inquiries that were already subject to the suspension of liquidation and to apply the cash deposit rate that would be applicable if the products were determined to be covered by the scope of the *Orders*. Should Commerce issue preliminary or final circumvention determinations, Commerce will follow the suspension of liquidation rules under 19 CFR 351.226(l)(2)–(4).

*China: Initiation of Anti-Circumvention Inquiry on the Antidumping Duty Order*, 82 FR 40556, 40560 (August 25, 2017) (stating at initiation that Commerce would evaluate the extent to which a country-wide finding applicable to all exports might be warranted); and *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Initiation of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders*, 81 FR 79454, 79458 (November 14, 2016) (stating at initiation that Commerce would evaluate the extent to which a country-wide finding applicable to all exports might be warranted).

### Notification to Interested Parties

In accordance with 19 CFR 351.226(d) and section 781(b) of the Act, Commerce has determined that the Auxin' request for circumvention inquiries satisfies the requirements of 19 CFR 351.226(c). Accordingly, Commerce is notifying all interested parties of the initiation of circumvention inquiries to determine whether U.S. imports of solar cells and modules that have been completed in, and exported from, Cambodia, Malaysia, Thailand, or Vietnam using parts and components manufactured in China, are circumventing the *Orders*. We included a description of the products that are subject to the circumvention inquiries, and an explanation of the reasons for Commerce's decision to initiate these inquiries, in the accompanying Initiation Memorandum.<sup>7</sup> In accordance with 19 CFR 351.226(e)(2), Commerce intends to issue its preliminary determination in these circumvention proceedings no later than 150 days from the date of publication of this notice in the **Federal Register**.

This notice is published in accordance with section 781(b) of the Act and 19 CFR 351.226(d)(1)(ii).

Dated: March 25, 2022.

**Lisa W. Wang,**

*Assistant Secretary for Enforcement and Compliance.*

### Appendix

#### List of Topics Discussed in the Circumvention Initiation Memo

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- II. Background
- III. Scope of the Orders
- IV. Merchandise Subject to the Circumvention Inquiry
- V. Statutory and Regulatory Framework for Circumvention Inquiries
- VI. Statutory Analysis for the Circumvention Inquiry
- VII. Comments Opposing the Initiation of a Circumvention Inquiry
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- IX. Recommendation

[FR Doc. 2022-06827 Filed 3-31-22; 8:45 am]

**BILLING CODE 3510-DS-P**

<sup>7</sup> See Initiation Memorandum.