



A-570-979, C-570-980
Circumvention Inquiries from
Malaysia, Thailand, and Vietnam
~~Business Proprietary~~
Public Version
E&C/OIV: Team

November 10, 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 Circumvention Inquiries

Dear Mr. Brightbill:

On August 16, 2021, we received the American Solar Manufacturers Against Chinese Circumvention (A-SMACC)'s requests that the Department of Commerce (Commerce) determine that imports of crystalline silicon photovoltaic cells and modules from the People's Republic of China (China) that are completed by certain companies in Malaysia, Thailand, or Vietnam prior to exportation to the United States are circumventing the antidumping duty (AD) and countervailing duty (CVD) orders¹ on crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells and modules), from China.² In A-SMACC's requests for circumvention rulings, A-SMACC claimed that business proprietary treatment of its members' identities was warranted under 19 CFR 351.105(c)(11) because of the potential for retaliation from certain Chinese companies and government entities and other actions that could cause substantial harm to the competitive positions of its members.

On September 29, 2021, Commerce requested additional information from A-SMACC regarding certain threshold issues, including information concerning its claim of "substantial harm" should

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).

² See A-SMACC's Letters, "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.

its members' names be made public.³ On October 13, 2021, A-SMACC submitted its response to Commerce's request for additional information.⁴

We have reviewed A-SMACC's response to Commerce's request for additional information and have determined, for the reasons explained below, that A-SMACC's designation of its members' names as business proprietary information is unwarranted and that those names should be publicly disclosed in A-SMACC's requests for circumvention inquiries.

A-SMACC's request for proprietary treatment relies on 19 CFR 351.105(c)(11), which states that Commerce normally will consider "{a}ny other specific business information the release of which to the public would cause substantial harm to the competitive position of the submitter," to be proprietary information. A-SMACC claimed that business proprietary treatment of its members' identities is warranted because of the potential for retaliation from certain Chinese companies and government entities and other actions that could cause substantial harm to the competitive positions of its members. However, [

].⁵ Furthermore, [

].⁶ [

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A-SMACC claimed that it is an interested party because [

]. However,

[

]. The ITC noted in its final injury determination for the original 2012 solar cells and modules investigation that [

³ See Commerce's Letters, "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," dated September 29, 2021.

⁴ See A-SMACC's Letters, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Response to Request for Additional Information," dated October 13, 2021.

⁵ See, e.g., [

] and [

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⁶ See, e.g., [

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] ⁷

In order for all interested parties to comment fully on these requests for circumvention inquiries, including, should they wish to do so, A-SMACC members' status as interested parties and their status as [], we have determined that the names of A-SMACC's members should be publicly identified. It is important for interested parties with knowledge of the solar industry to know the identity of the members of A-SMACC because they may be in a position to comment on the nature of A-SMACC's members' []

such that A-SMACC should be considered an interested party.

Although attorneys for other interested parties have access to the names of A-SMACC's members under administrative protective order, their ability to comment, or provide evidence regarding the members' interested party status, should they wish to do so, is hampered by the proprietary designation. Due to the proprietary designation, counsel for other interested parties cannot consult with their clients about the A-SMACC members' role in the U.S. market and their operations. Such consultation is particularly important in this case, because, as described above, the solar industry is characterized by a large degree of []

[]. Thus, the proprietary designation prevents parties with industry knowledge from commenting on the A-SMACC members' operations and their status as interested parties. Hence, the proprietary designation of members' names may prevent Commerce from obtaining and considering information relevant to the decision of whether to initiate the requested circumvention inquiries.

Finally, there is a history of companies shifting production of solar cells from China to other countries. The AD order on certain crystalline silicon photovoltaic products from Taiwan⁸ was the result of a Petition that was filed to address such a shift to Taiwan. Now A-SMACC has identified a potential shift in production to other countries by multiple companies. Under such circumstances, if Commerce conducts a circumvention proceeding, it may consider conducting the proceeding on a country-wide basis. A-SMACC has not requested that Commerce conduct country-wide circumvention proceedings, but rather, it has indicated a preference for initiating the requested circumvention inquiries on a company-specific basis. Other interested parties with knowledge of the industry may wish to comment on A-SMACC's preference for initiating the requested circumvention inquiries only with respect to certain companies located in the countries at issue. Any business relationships between A-SMACC's members and companies that may have facilities in the countries at issue should not play a role in determining the companies covered by any circumvention proceedings. We believe other interested parties may be in a unique position to comment on such relationships. The proprietary designation of members' names may prevent Commerce from obtaining and considering such information.

⁷ See USITC Publication 4360, "Crystalline Silicon Photovoltaic Cells and Modules From China: Investigation Nos. 701-TA-481 and 731-TA-1190 (Final)," (November 2012).

⁸ See *Certain Crystalline Silicon Photovoltaic Products from Taiwan: Antidumping Duty Order*, 80 FR 8596 (February 18, 2015).

According to section 777(b)(2) of the Tariff Act of 1930, as amended (the Act), if, after providing a party with an opportunity to explain a proprietary designation, Commerce finds the designation is unwarranted, and the party has not withdrawn the designation, Commerce shall return the information to the party. Moreover, pursuant to 19 CFR 351.304 (d)(1) Commerce “will reject a submission that does not meet the requirements of section 777(b) of the Act and this section with a written explanation.”

We have provided the written explanation identified in 19 CFR 351.304 (d)(1) above. Thus, pursuant to 777(b)(2) of the Act and 19 CFR 351.304(d)(1), we will not consider, and we are rejecting, A-SMACC’s August 16, 2021, requests for circumvention inquiries. As noted above, not disclosing A-SMACC members’ names publicly hampers interested parties from fully commenting on the requests for circumvention inquiries and may hamper them from commenting on certain issues that could arise if Commerce were to initiate circumvention inquiries. Pursuant to 19 CFR 351.104(a)(2)(ii)(C), we will retain a copy of these requests on the record solely for purposes of establishing and documenting the basis for rejecting them. Within two business days of receiving this letter, A-SMACC may take the action described in 19 CFR 351.304(d)(1)(ii).

If you have any questions on this matter, please contact Jeff Pedersen at 202-482-2769.

Sincerely,



Abdelali Elouaradia
Director, Office IV
AD/CVD Operations