

Importers Face Uncertainty As Court Stays Solar Tariff Ruling

By **Carl Valenstein, Raechel Anglin and Casey Weaver** (October 14, 2025, 1:48 PM EDT)

A recent U.S. Court of International Trade ruling — now on appeal to the U.S. Court of Appeals for the Federal Circuit — threatens to impose retroactive duties on importers of solar cells and modules from Cambodia, Malaysia, Thailand and Vietnam that were imported in the moratorium period between June 2022 and June 2024.[1]

In late August, the U.S. Court of International Trade overturned a U.S. Department of Commerce rule that allowed duty-free entry of solar cells and modules during that period.

Auxin Solar Inc., a U.S. solar producer, and Concept Clean Energy Inc., a U.S. solar structure designer, challenged the rule, claiming adverse effect — Auxin Solar because it could not make cells and panels to compete with imported merchandise, and Concept Clean because it would not be able to obtain crystalline silicon photovoltaic, or CSPV, products domestically for domestic use.

The Court of International Trade's decision overturning the Commerce Department rule has been appealed to the Federal Circuit, and the CIT's order has been stayed pending appeal, meaning no additional duties are being collected at this time.

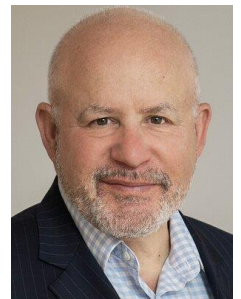
If the CIT's decision is affirmed, importers may face significant additional duties on products that were imported during the specified time period with the understanding that those products would receive duty-free treatment.

More broadly, the landscape for imported solar cells and modules remains in flux while U.S. producers continue to rely on imported modules to meet demand for solar installations.

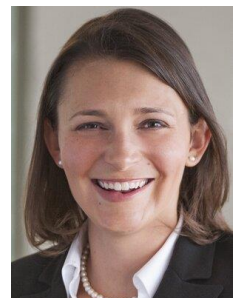
Background

Since 2012, the Commerce Department has administered antidumping and countervailing duty, or AD/CVD, orders on Chinese-origin CSPV cells and modules.[2]

At Auxin Solar's request, the Commerce Department opened an inquiry in April 2022 to determine whether imports of CSPV cells and modules produced in Cambodia, Malaysia, Thailand and Vietnam circumvented the existing China AD/CVD orders by incorporating parts and components from China.



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At that time, imports from subject countries accounted for approximately 80% of supply in the U.S., and upon initiation of the circumvention inquiry the market ground to a halt.

Then-President Joe Biden issued a presidential proclamation in June 2022, declaring a public emergency pursuant to Title 19 of the U.S. Code, Section 1318(a), due to the threat of insufficient electricity generation capacity available to meet expected domestic demand.[3]

Section 1318(a) provides that the president may authorize the secretary of the treasury to regulate "the importation free of duty of food, clothing, and medical, surgical, and other supplies for uses in emergency relief work."

The proclamation found that a "robust and reliable electric power system is ... not only a basic human necessity, but ... also critical to national security and national defense." It further found an "acute shortage of solar modules and module components" and determined that "[i]mmediate action is needed to ensure ... access to a sufficient supply of solar modules to assist in meeting our electricity generation needs."

The proclamation authorized the Commerce Department to take action to provide relief from the emergency by allowing the duty-free importation of CSPV cells and modules from the subject countries.

In September 2022, the Commerce Department implemented the proclamation in a final rule that suspended the duty on imports of CSPV cells and modules from the subject countries as of June 2022.[4]

The Commerce Department instructed U.S. Customs and Border Protection to discontinue the suspension of liquidation and the collection of cash deposits, and liquidate applicable entries of cells and modules.

The declared emergency expired on June 6, 2024, at which point the relevant imports of CSPV cells and modules once again became subject to duties pursuant to AD/CVD orders. The rule also included a requirement that the imported CSPV cells and modules be utilized by Dec. 6, 2024, in an effort to prevent stockpiling cells and modules from the subject countries.

In December 2022, the Commerce Department issued an affirmative preliminary determination, finding circumvention of the existing China AD/CVD orders in each of the subject countries.[5]

However, pursuant to the duty suspension rule, the Commerce Department directed CBP to discontinue the suspension of liquidation and collection of cash deposits for certain entries, provided that importers and exporters could make appropriate certifications.

In light of the proclamation, AD/CVD-free entry proceeded under the broad applicable entry certification, as defined in Appendix IV.

The Commerce Department also provided a certification related to the component content of the merchandise, as defined in Appendix VI, effectively certifying that the imported cells and modules were outside the scope of the circumvention order.

An additional certification provided for certain producers and exporters found not to have been circumventing the China AD/CVD orders. Importers could file one certification as a stand-alone or in

combination with other certifications.

The Commerce Department issued its final determination in the circumvention proceeding in August 2023, concluding that the CSPV cells and modules were circumventing the AD/CVD orders, but allowing importers to file certain certifications to avoid the imposition of AD/CVD.

In its final determinations, the Commerce Department continued the certification process for applicable entries as well as for component content and for identified producers and exporters.

Entries for which one or more valid certifications were submitted were not subject to AD/CVD pursuant to the circumvention proceeding.

A Challenge to the Duty Suspension Rule

In December 2023, Auxin Solar and Concept Clean filed a complaint in the CIT, alleging that Section 1318(a) does not authorize the duty-free importation of CSPV cells and modules.

The complaint further alleged that the Commerce Department and CBP unlawfully failed to suspend liquidation and require a cash deposit of estimated duties following a preliminary determination of circumvention for imports from the subject countries.

The plaintiffs alleged, among other things:

- CSPV cells and modules do not fall under the statutory categories of goods eligible for duty-free treatment — food and clothing, and medical, surgical and other supplies.
- The Commerce Department exceeded its authority by extending duty-free treatment to goods that had been imported prior to the proclamation.
- The Commerce Department exceeded its authority by granting duty-free treatment to goods based on certifications that the goods would be used within 180 days of termination of the emergency.

In July 2024, the plaintiffs filed a motion for judgment on the agency record, which the court granted in August 2025.

The court held that Section 1318(a) does not authorize the duty-free importation of CSPV cells and modules because those items do not constitute "food, clothing, and medical, surgical, and other supplies for use in emergency relief work," as the language "other supplies" should be read narrowly to mean other supplies that are similar in nature to, or share common attributes with, medical or surgical supplies.

The court declined to reach the plaintiffs' additional claims. It then vacated the duty suspension rule, ordering defendants to publish notice of the rule's vacatur in the Federal Register within 20 days.

The court also granted the plaintiffs injunctive relief, and ordered the defendants to liquidate and collect AD/CVD duties on unliquidated entries circumventing the duty orders on CSPV products from China.

The court further provided for the reliquidation of any entries liquidated prior to the judgment, directing

the government to collect any associated AD/CVD duties.

On Sept. 5 of this year, the defendants moved the CIT to alter or amend the judgment, requesting a 47-day extension of the deadline to publish notice of the rule's vacatur in the Federal Register. This was granted on Sept. 8, extending the deadline to publish notice of the vacatur to Oct. 28.

The private defendant-intervenors appealed the decision to the Federal Circuit and moved to stay the CIT's order pending appeal.

The defendant-intervenors also seek suspension of liquidation for any unliquidated entries covered by the CIT's judgment.

While the U.S. government did not join the private defendant-intervenors in their appeal or request for stay, the motion is unopposed, and the government consented to a stay pending appeal.

This is perhaps unsurprising, given the moratorium was initiated by a prior administration, and the collection of tariffs has been a cornerstone of the current administration's trade policy.

Takeaways

The CIT ruling threatens to impose retroactive duties on importers of solar cells and modules from Cambodia, Malaysia, Thailand and Vietnam that were imported in the moratorium period between June 2022 and June 2024.

The economic impact could be substantial, with estimates of duty impact exceeding \$53 billion.

Importers who relied on the moratorium to file applicable entry certifications, under Appendix IV, will not be affected by the ruling if they also filed certifications that the producer or exporter was not circumventing, as defined in Appendix V, or that the component content was outside the identified scope, as defined in Appendix VI.

It remains unclear whether the Commerce Department will allow for any process for those who could have submitted additional certifications but did not at the time, because they relied on the moratorium certification.

For now, companies are advised to coordinate with their producers and exporters to file certifications and monitor the liquidation status of their entries to ensure any products that are outside the scope of the orders are not subject to AD/CVD.

Parties should also review their contracts for imports affected by the moratorium and this case, to be prepared for possible disputes regarding tariff liability should the CIT's ruling be affirmed.

Provisions that specify allocation of risk and responsibility for taxes, duties, tariffs and fees will be informative, as well as any specific tariff payment obligations and indemnification for tariff payments.

U.S. producers remain dependent on imported modules to meet demand for U.S. solar installation. Between the CIT decision and the ongoing litigation around the U.S. administration's tariff strategy, the landscape for imported solar cells and modules remains in flux.

It continues to be important for parties to understand the allocation of risk and responsibility when importing merchandise to be best positioned in this uncertain trade climate.

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[1] See <https://www.cit.uscourts.gov/sites/cit/files/25-111.pdf>.

[2] CSPVs, Whether or Not Assembled Into Modules, From China, 77 Fed. Reg. 73,018 (Dep't of Commerce Dec. 7, 2012); CSPVs, Whether or Not Assembled Into Modules, From China, 77 Fed. Reg. 73,017 (Dep't of Commerce Dec. 7, 2012) (China AD/CVD orders).

[3] Proclamation 10414: Declaration of Emergency and Authorization for Temporary Extensions of Time and Duty-Free Importation of Solar Cells and Modules From Southeast Asia, 87 Fed. Reg. 35,067, 35,068 (June 9, 2022).

[4] Procedures Covering Suspension of Liquidation, Duties and Estimated Duties in Accord with Presidential Proclamation 10414, 87 Fed. Reg. 56,868, 56,886-87 (Dep't of Commerce Sept. 16, 2022) (Duty Suspension Rule); 19 C.F.R. § 362.103(a).

[5] CSPVs, Whether or Not Assembled Into Modules, From China, 87 Fed. Reg. 75,221, 75,222 (Dep't of Commerce Dec. 8, 2022) (Preliminary Circumvention Determinations).