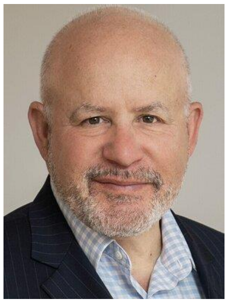
Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Mitigating Import Risks Around Southeast Asian Solar Cells

By **Carl Valenstein, Casey Weaver and Katelyn Hilferty** (May 9, 2025, 5:41 PM EDT)



Carl Valenstein

Casey Weaver

Katelyn Hilferty

On April 21, the U.S. Department of Commerce issued affirmative final determinations in its antidumping and countervailing duty, or AD/CVD, investigations concerning crystalline silicon photovoltaic, or CSPV, cells, whether or not assembled into modules, from Cambodia, Malaysia, Thailand and Vietnam.

The final determination extends the suspension of liquidation and collection of cash deposits announced under the preliminary determinations. The U.S. International Trade Commission needs to complete its investigation and make its own affirmative final determination before any final order may be issued.

The commission is expected to hold final votes on May 20, with its final determination anticipated by June 2 and orders following shortly thereafter.

While the investigation will not be finalized until the commission's determination and issuance of orders, U.S. purchasers can consider risk mitigation strategies for future CSPV cell and module procurement — including by evaluating lower-rated suppliers, modifying supply chains to decrease risk of impact, and ensuring contractual assignment of import risk and responsibility.

Case Background

The scope of the case excludes CSPV panels of certain sizes and certain off-grid CSPV panels. Additionally, the commission has stated that "[m]odules, laminates, and panels produced in a third country from cells produced in a subject country are covered by the investigations; however, modules, laminates, and panels produced in a subject country from cells produced in a third-country are not covered by the investigations."

In other words, a module produced in Indonesia from Vietnamese-origin cells would be subject to AD/CVD, but a module produced in Vietnam from cells produced in Indonesia would not be subject to AD/CVD.

Below are the case numbers as well as countrywide and all-others rates imposed.

Country	AD Case	AD Rate	CVD Case	CVD Rate
Cambodia	A-555-003	125.37%	C-555-004	534.67%
Malaysia	A-557-830	8.59%	C-557-831	32.49%
Thailand	A-549-851	111.45%	C-549-852	263.74%
Vietnam	A-552-841	271.28%	C-552-842	124.57%

Certain identified producers have lower rates. But others have astronomical rates, reaching 3,403.96% for certain Cambodian producers that did not participate in the investigation, and against whom Commerce imposed adverse facts available.

Cash deposit rates may be slightly lower than the identified margins after adjustments for subsidy offsets. A list of producer-specific rates may be found on the International Trade Administration website.[1]

This investigation represents the first time U.S. petitioners have alleged foreign producers were receiving transnational subsidies — i.e., subsidies from the government of China for production occurring in third countries. A rule restricting transnational subsidy cases was lifted in 2024, and this case was filed shortly thereafter.

These duties are imposed in addition to other tariff measures. Those measures include rates of 14% imposed pursuant to Section 201, although Cambodia is excepted from that program, and the program is scheduled to expire in February 2026.

The reciprocal tariffs, currently paused at the 10% baseline rate, will also apply on top of any AD/CVD through July 8. If increased to the previously announced rates, those country-specific tariffs would amount to 49% for Cambodia, 24% for Malaysia, 36% for Thailand and 46% for Vietnam.

However, to the extent any CSPV cells and modules are already captured by active anticircumvention proceedings, additional duties under these cases will not be owed. Those proceedings impose rates based on the underlying orders on Chinese CSPV cells and modules, which impose a countrywide AD rate of 238.95% and an all-others CVD rate of 9.07%.

Mitigation Strategies

Evaluating Producers with Separate Rates

Approximately 77% of solar cells and modules imported into the U.S. in 2024 came from the four Southeast Asian countries. While production in additional countries is increasing, purchasing from the affected countries may need to continue, at least in the near term.

Certain producers that participated in the investigation demonstrated to Commerce that they were not dumping equipment into the U.S. at prices below fair value, or at least not to the extent that other producers were found to be doing so, or were not receiving governmental subsidies in a manner that would allow for reduced-price exports.

Reviewing suppliers that may have received a lower separate rate can mitigate the impacts of those countrywide and all-others AD/CVD rates.

Supply Chain Management

While domestic solar production has increased in recent years, the U.S. remains heavily reliant on foreign solar modules. Non-U.S. producers and exporters have been, and will continue, evaluating options for adjusting supply chains to avoid the duties, either through the sourcing of critical components or the further processing of merchandise that is ultimately imported into the U.S.

Following the challenges to Chinese CSPV cell and module production and the initial AD/CVD affirmative determinations, the circumvention challenges, and subsequent investigations into Southeast Asian production, manufacturers again began seeking alternative production locations. U.S. purchasers may seek short-term relief from those alternative supply chains, though increased demand on those sources will undoubtedly lead to increased prices.

Purchasers should also be mindful of future expansion of similar actions. Production of solar cells and modules in India, Indonesia and Laos is expanding, which could increase the likelihood that those countries could be targeted by a new AD/CVD investigation, much like how we saw Cambodia, Malaysia, Thailand and Vietnam targeted after the movement of production facilities from China to them.

Risk Management

Solar cell and module purchasers and project developers can further manage risks presented by the final determination by conducting diligence on prospective producers and exporters. They can do this by determining their involvement in the investigations, as well as their involvements in the previously determined circumvention inquiries.

Purchasers can further mitigate import-related risks by procuring merchandise on a delivered duty-paid basis, whereby the seller would be responsible for declaring and entering the imported merchandise.

Negotiation of appropriate representations, warranties and covenants in procurement agreements also allocates risks among the parties, and can shift responsibility for the merchandise to those that are producing or exporting.

Remaining Global Sourcing Risks

Despite the mitigation options available, there remain other global sourcing considerations that affect imported solar cells and modules.

Section 201 tariffs of 14% remain in effect through February 2026 on most countries, though India and Indonesia are notably excluded from that program. It remains to be seen whether that program will be extended beyond that expiration date.

Producers also need to consider the designated country-specific reciprocal tariffs, which are currently paused for 90 days through July 8.

If those tariff rates take effect as published, some producing countries may be subject to very high tariff rates for all imported merchandise, including solar cells and modules. Consider the following rates:

- India: 26%
- Indonesia: 32%
- Laos: 48%
- South Korea: 25%
- Thailand: 36%
- Vietnam: 46%

Despite the language of these AD/CVD orders, and other orders considering affecting solar cells and modules, U.S. Customs and Border Protection has historically considered the addition of a p-n junction, turning a wafer into a solar cell, to be a substantial transformation for country of origin purposes, even when those cells are further processed into modules or panels.

Producers thus have various determinations to consider in the context of general country of origin for broader tariff purposes, and the scope of these orders for application of AD/CVD. Thoughtful supply chain management and contractual allocation of risk and responsibility are critical to managing these risks.

Carl Valenstein is a partner and co-chair of the ESG and sustainability advisory practice at Morgan Lewis & Bockius LLP.

Casey Weaver is an associate at the firm.

Katelyn Hilferty is a partner at the firm.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of their employer, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] See https://www.trade.gov/final-affirmative-determinations-antidumping-and-countervailing-duty-investigations-crystalline.