



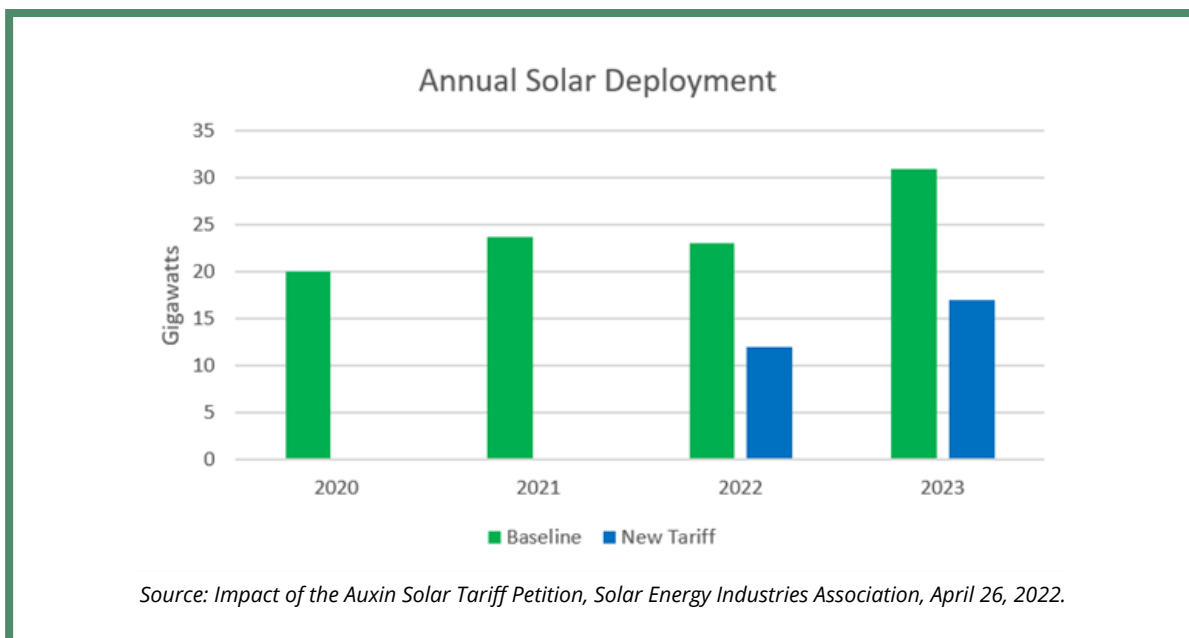
Department of Commerce AD/CVD Circumvention Inquiry

On March 25, the Department of Commerce (“Commerce”) initiated an [inquiry](#) of possible circumvention of current antidumping duty (AD) and countervailing duty (CVD) tariffs on crystalline silicon photovoltaic (CSPV) solar cells and modules completed in Cambodia, Malaysia, Thailand, or Vietnam, and using parts from China. Commerce initiated this inquiry in response to a [petition](#) from a single company - Auxin Solar, Inc., a California-based manufacturer of CSPV modules.

Current CSPV tariffs apply only to China, and if Commerce makes an affirmative decision, tariffs reaching 250 percent or higher could be applied to imports from those four countries retroactive to at least the date of the initiation of the investigation, but possibly months earlier. This decision is already having a severe adverse impact on the solar industry and threatens the achievement of the Biden Administration’s decarbonization goals.

Harm Resulting from Commerce Action

- The four countries at issue here currently account for 84 percent of the imported solar panels and half of the imported cells.
- The impacts of this investigation are already being felt. Surveys of the renewable energy industry by ACORE and the Solar Energy Industries Association (SEIA) reveal that:
 - Over 80 percent of companies already have had or expect delays or cancellations of product shipments.
 - More than two-thirds of the ACORE survey respondents report that 80 percent or more of their solar installations are at risk.
- More than 230,000 Americans work in solar at more than 10,000 companies in every U.S. state. Because solar is often paired with storage, the storage industry is also likely to suffer. Almost one-third of solar and storage companies surveyed by SEIA report that their entire workforce is at risk.
- This inquiry adds further uncertainty to the industry amidst supply chain constraints and increasing costs. This is reflected in an unprecedented [18 percent increase](#) in solar power purchase agreement prices over the past year before taking this inquiry into account.
- A [recent in-depth academic analysis](#) found little evidence that tariffs have worked to increase domestic renewable energy manufacturing. The authors conclude that continued global trade will be essential to meeting carbon reduction goals.
- Meanwhile, the U.S. continues to engage in robust exports and imports of fossil fuels, including petroleum, liquified natural gas and coal.
- Through this investigation, the Administration is directly impeding its own decarbonization goals. The Department of Energy [found that](#) rapid solar growth will be necessary to achieve a decarbonized grid by 2035. More specifically, DOE concludes that solar capacity will need to increase from [about 92 GW at the end of 2021](#) to 550 GW by 2030 and 1,000 GW by 2035.
- [SEIA projects](#) that these new tariffs would decrease solar deployment by 34 GW over the next four years, including a 48 percent decline in 2022 alone, as shown in the figure below. Similarly, the American Clean Power Association [expects that](#) 24 GW of solar projects will be delayed or cancelled over the next two years.



Why the Circumvention Inquiry is Inappropriate and Should End Immediately

Commerce has provided inadequate substantiation of the initiation of this inquiry. The Initiation Memorandum relies only on the complaint of one company – Auxin, a small U.S. manufacturer of solar modules [reported to have](#) 35 employees, annual revenue of \$9.7 million and 150 megawatts of annual manufacturing capacity. By contrast, domestic solar development is a \$10 billion, 20-gigawatt industry. Commerce has made no attempt to verify data from this single complaining company or to evaluate other sources of information. The Department comments in their [March 25 memorandum](#) initiating the investigation that “Auxin does not have access to the confidential data of companies that produce/process solar cells and modules in the third countries at issue,” and then concludes “that the information provided by Auxin regarding third-country processing provides a basis for initiation.” Therefore, the inquiry is apparently based on the predictable lack of access to data of a single company.

Senior Commerce officials have refused to meet with renewable industry representatives, citing the so-called “quasi-judicial” nature of the inquiry. However, this misleading label provides scant justification for the agency’s apparent effort to insulate itself from the feedback of impacted parties. The key term here is “quasi,” as no truly judicial process would allow a government entity to impose so much economic harm without any evidence of wrongdoing or opportunity for concerns to be fairly heard by decision-makers.

On the merits, the inquiry falls short of the statutory test for circumvention. Even from Auxin’s assertions, it is clear the manufacturing process in the countries at issue here is not “minor” or “insignificant” as the statute requires for circumvention. Indeed, Auxin submitted a [BloombergNEF report](#) with the statement that “70% of the actual value of that equipment {i.e., solar modules imported into the United States from Southeast Asia} accrues to China where key, pre-assembly steps in the making of the equipment take place.” The remaining 30 percent of value, therefore, comes from the exporting countries. A figure of this magnitude, nearly one-third of the value, hardly seems to meet any reasonable definition of “minor and insignificant.”

In fact, both [Auxin](#) and [Commerce](#) have previously stated that the conversion of wafers to cells, which is occurring in these four countries, is a significant part of the process – which undermines the basis for conducting this damaging inquiry. ACORE and many allies have called on the Commerce Department to bring the inquiry to a prompt end with a finding that there has not been circumvention.