



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-570-979
Investigations
Public Document
IA/AD Office 4

Date: March 29, 2012

MEMORANDUM TO: The File

FROM: Jeff Pedersen
International Trade Compliance Analyst
Office 4, AD/CVD Operations
Import Administration

SUBJECT: Antidumping and Countervailing Duty Investigations of
Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled
Into Modules, from the People's Republic of China

RE: Response to Letter Received

On February 23, 2012, the Department of Commerce (the Department) received a letter from John Hepple, V.P. Operations at Solar Power Industries, Inc. of Mt Pleasant, Pennsylvania. The Department responded to this letter today. Both the letter received from Mr. Hepple and the Department's response is attached.

Attachment



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

MAR 29 2012

John Hepple
Vice President Operations
Solar Power Industries Inc.
1001 Technology Drive
Mt. Pleasant, PA 15666

Dear Mr. Hepple:

Thank you for your letter to Secretary John Bryson regarding the scope determination in the ongoing antidumping duty (AD) and countervailing duty (CVD) investigations of imports of crystalline silicon photovoltaic cells (solar cells) from the People's Republic of China (China). As Import Administration is the agency within the Department of Commerce (Department) responsible for administering and enforcing the AD and CVD laws, Secretary Bryson asked me to address your concerns.

I appreciate the impact these investigations and the breadth of the scope in these cases may have on you and your business. On March 19, 2012, after careful consideration and analysis of the comments received from interested parties on this matter, the Department issued a scope clarification in both the AD and CVD investigations. I have attached to this letter a public version of the memorandum containing the clarification.

Specifically, the Department conducted a substantial transformation analysis to determine whether the processes performed in a third country are of such significance as to require the resulting merchandise to be considered the product of the country in which the processing occurred. The Department found that solar module assembly does not substantially transform solar cells such that it changes the country of origin. As a result, the Department determined that solar module/panels produced in a third-country from cells produced in the PRC are covered by the scope of the investigations; however, modules/panels produced in the PRC from cells produced in a third-country are not covered by the scope of the investigations. Although the scope clarification request sought to cover both types of assembly scenarios, to do so would have reflected a country of origin analysis based on internally inconsistent, if not conflicting standards.

The Department recently announced its preliminary CVD determination on March 20, and is currently due to announce its preliminary AD determination on May 17. Interested parties have the opportunity to submit case briefs on the scope clarification and all other issues in the preliminary determinations, and to request a hearing.

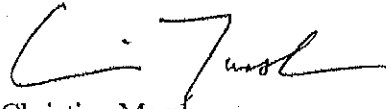
The Obama Administration is committed to vigorously enforcing our trade laws in accordance with our statutes, regulations, and obligations in order to help ensure that U.S. firms and workers have the opportunity to compete on a level playing field. I assure you that these investigations are being conducted in an open and transparent manner and that we will carefully consider parties' comments before making our final determinations.



Mr. John Hepple
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If you have any further questions or concerns, please feel free to contact me at
(202) 482-5497.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Marsh". The signature is fluid and cursive, with a large initial "C" and a long horizontal stroke extending to the right.

Christian Marsh
Deputy Assistant Secretary for AD/CVD Operations



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-570-979

C-570-978

Proprietary Document
AD/CVD 04: JDP

March 19, 2012

MEMORANDUM TO: Gary Tayerman
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

THROUGH: Abdelali Elouaradia
Director, Office 4
AD/CVD Operations

Howard Smith
Program Manager, Office 4
AD/CVD Operations

FROM: Jeff Pedersen
Case Analyst
AD/CVD Operations, Office 4

SUBJECT: Scope Clarification: Antidumping and Countervailing Duty
Investigations of Crystalline Silicon Photovoltaic Cells, Whether
or Not Assembled Into Modules, from the People's Republic of
China

Summary

One day prior to the initiation of the above-referenced investigations, Petitioner¹ submitted proposed scope language stating that the scope covers modules/panels produced in the People's Republic of China ("PRC") regardless of where the cells in the modules/panels were manufactured and covers modules/panels produced in a third-country from cells manufactured in the PRC. The Department did not include this proposed language in the scope because it did not have sufficient time to evaluate the language prior to initiation. Since that time we have evaluated Petitioner's proposed language and, for the reasons noted below, recommend clarifying the scope of these investigations to state that modules/panels produced in a third-country from cells produced in the PRC are covered by the scope; however, modules/panels produced in the PRC from cells produced in a third-country are not covered by the scope.

Background

On November 8, 2011, the Department of Commerce (the "Department") initiated antidumping duty ("AD") and countervailing duty ("CVD") investigations of crystalline silicon photovoltaic

¹ The petitioner is SolarWorld Industries America Inc. ("Petitioner").



cells (“solar cells”), whether or not assembled into solar modules, from the PRC.² In the AD and CVD Initiation Notices the Department noted that Petitioner submitted revised scope language one day before initiation. The revised language included, among other things, the following substantive provision:

These proceedings cover ... crystalline silicon PV modules/panels produced in the PRC, regardless of country of manufacture of the cells used to produce the modules or panels, ... and crystalline silicon PV modules or panels produced in a third country from crystalline silicon PV cells manufactured in the PRC ...

See AD Initiation Notice, 76 FR at 70960; CVD Initiation Notice, 76 FR at 70967; see also Standing Analysis and Revised Scope Language: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China dated November 7, 2011 at Attachment 2.

The Department stated in the AD and CVD Initiation Notices that it has not adopted this specific revision recommended by Petitioner for the purposes of initiation. The Department explained that because the recommendation was filed one day prior to the statutory deadline for initiation the Department did not have sufficient time nor the administrative resources to evaluate Petitioner’s proposed language regarding merchandise produced using inputs from third-country markets, or merchandise processed in third-country markets.³

The AD and CVD Initiation Notices set aside a period for interested parties to raise issues regarding product coverage. On November 28, 2011, we received comments from Petitioner, and the following interested parties: SolarOne Solutions; Yingli Green Energy Holding Company Limited and Yingli Green Energy Americas, Inc. (collectively, “Yingli”); Canadian Solar Inc. (“Canadian Solar”); Wuxi Suntech Power Co., Ltd., Suntech America, Inc. and Suntech Arizona, Inc. (collectively, “Suntech”); Changzhou Trina Solar Energy Co. Ltd. (“Trina Solar”); DelSolar Co. Ltd. and DelSolar (Wujiang) Ltd. (collectively, “DelSolar”); tenKsolar (Shanghai) Co., Ltd. (“tenK”); Jiangsu Green Power PV Co., Ltd. (“Jiangsu Green”); Transform Solar; Suniva; Q-Cells North America; Hanwha SolarOne (“Qidong”) Co., Ltd. (“SolarOne”); Shanghai BYD Company Limited (“Shanghai BYD”); and Konca Solar Cell Co., Ltd. On December 1, 2011, SunPower Corporation submitted rebuttal comments, as did Yingli, Canadian Solar, Suntech, and Trina Solar on December 5, 2011, and Petitioner on December 13, 2011.⁴

² See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China: Initiation of Antidumping Duty Investigation, 76 FR 70960 (November 16, 2011) (“AD Initiation Notice”); Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China: Initiation of Countervailing Duty Investigation, 76 FR 70966 (November 16, 2011) (“CVD Initiation Notice”) (collectively “AD and CVD Initiation Notices”).

³ See AD Initiation Notice, 76 FR at 70960; CVD Initiation Notice, 76 FR at 70967.

⁴ SolarOne, Shanghai BYD, tenK, Jiangsu Green, Zamp Solar, LLC, and Petitioner also submitted additional comments on the scope of this investigation but they were not applicable to the issue covered in this memorandum, country-of-origin.

Scope

The scope from the AD and CVD Initiation Notices is as follows:

The merchandise covered by this investigation are 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.

This investigation covers crystalline silicon photovoltaic cells of thickness equal to or greater than 20 micrometers, having a p/n junction formed by any means, whether or not the cell has undergone other processing, including, but not limited to, cleaning, etching, coating, and/or addition of materials (including, but not limited to, metallization and conductor patterns) to collect and forward the electricity that is generated by the cell.

Subject merchandise may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, modules, laminates, panels, building-integrated modules, building-integrated panels, or other finished goods kits. Such parts that otherwise meet the definition of subject merchandise are included in the scope of this investigation.

Excluded from the scope of this investigation are thin film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS).

Also excluded from the scope of this investigation are crystalline silicon photovoltaic cells, not exceeding 10,000mm² in surface area, that are permanently integrated into a consumer good whose function is other than power generation and that consumes the electricity generated by the integrated crystalline silicon photovoltaic cell. Where more than one cell is permanently integrated into a consumer good, the surface area for purposes of this exclusion shall be the total combined surface area of all cells that are integrated into the consumer good.

Merchandise covered by this investigation is currently classified in the Harmonized Tariff System of the United States ("HTSUS") under subheadings 8501.61.0000, 8507.20.80, 8541.40.6020 and 8541.40.6030. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of this investigation is dispositive.

Parties' Comments

Petitioner:

- o The only way to address the material injury caused by Chinese cells and modules/panels is to include both modules/panels produced in the PRC regardless of

cell origin and Chinese cells incorporated into modules/panels produced in third-countries in the scope of the investigations.

- Not including language specifically covering third-country solar modules/panels made from PRC solar cells and PRC solar modules/panels made from third-country solar cells creates an unenforceable scope that can be easily circumvented.
- Solar cell production and solar module assembly are equally import steps in producing a finished solar module.
- Nearly all solar cell production is dedicated to producing solar modules/panels and all solar module/panel assembly relies on solar cells.
- Some countervailable subsidies are specific to the production of solar modules/panels and other subsidies are available to production of both solar cells and solar modules/panels. Both types of subsidies demonstrate that module assembly, in addition to cell production, is an important stage of production.

Other Interested Parties:

- The Department should reject Petitioner's attempt to expand the scope and not accept actions that would serve to evade the statutory standing requirements and the possibility of polling.
- Petitioner has asked the Department to adopt two conflicting country-of-origin tests for purposes of these investigations.
- The scope should be limited to solar cells made in the PRC or at most products containing solar cells made in the PRC.
- The scope should not include solar modules/panels made from cells not manufactured in the PRC because a substantial transformation analysis indicates that assembling solar cells into solar modules/panels does not change the country-of-origin.
- Solar module/panel assembly does not constitute substantial transformation because:
 - Solar cells represent the majority of the total cost of solar modules/panels.
 - The manufacture of solar cells is the technologically-critical portion of the production of solar modules/panels. Solar module/panel assembly is a low-tech final assembly requiring relatively unskilled labor.
 - Solar module power output is determined by the solar cells in the solar module/panel and not solar module/panel assembly.
 - Solar cells and solar modules/panels have the same end-use.
- Including scope language to capture solar modules assembled in the PRC, regardless of where the cells were manufactured and solar modules assembled in third countries from cells manufactured in the PRC, would ignore judicial precedent stating that the scope of an antidumping duty order is "defined by the type of merchandise and the country-of-origin."⁵

⁵ See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, 58 FR 37062, 37065 (July 9, 1993) ("Cold-Rolled from Argentina") and noting that this statement was quoted by the Court of International Trade ("CIT") twice in Advanced Tech & Materials Co., Ltd. v. United States, No. 09-511, 2011 Ct. Intl. Trade LEXIS 136, *11 (CIT Oct. 12, 2011) ("Advanced Tech.") and Ugine and ALZ Belgium, N.V. v. United States, 517 F. Supp. 2d 1333, 1345 (CIT 2007) ("Ugine").

On March 7, 2012, and March 14, 2012, Petitioner and tenK, respectively submitted further comments concerning product coverage. Due to the timing of the submissions, we have been unable to consider these comments in this decision. We will consider these comments at a later date.

Legal Framework

The scope of these investigations and the International Trade Commission final determination will determine the scope of any resulting AD and CVD orders. **Because AD and CVD orders apply to merchandise from particular countries, determining the country where the merchandise is produced is fundamental to proper administration and enforcement of the AD and CVD statute.** The scope of an AD or CVD order is limited to merchandise that originates in the country covered by the order.⁶ The Department has explicitly stated that the scope of an antidumping duty order is “defined by the type of merchandise and the country-of-origin.”⁷

In determining the country-of-origin of a product, the Department’s practice has been to conduct a substantial transformation analysis.⁸ The CIT has upheld the Department’s “substantial transformation” analysis as a means to carry out its country-of-origin analysis.⁹ The CIT stated that “{t}he ‘substantial transformation’ rule provides a yardstick for determining whether the processes performed on merchandise in a country are of such significance as to require that the resulting merchandise be considered the product of the country in which the transformation occurred.”¹⁰ Because the Petitioner’s proposed scope language addresses modules/panels assembled, and cells produced, in a third country we have used a substantial transformation analysis to determine whether one or both of the scenarios described by Petitioner should be covered by the scope of these investigations.

Analysis

The Department has applied, as appropriate, the following analyses in determining whether substantial transformation occurs, thereby changing a product’s country-of-origin. These have

⁶ See Stainless Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review, 69 FR 74495 (December 14, 2004) and the accompanying Issues and Decision Memorandum at Comment 4 (“SSPC Belgium”).

⁷ In Cold-Rolled from Argentina, 58 FR at 37065, the Department stated that “{t}he scope of an antidumping or countervailing duty order is defined by the type of merchandise and by the country of origin (e.g., widgets from Ruritania). For merchandise to be subject to an order it must meet both parameters, *i.e.*, product type and country of origin. In determining country of origin for scope purposes, the Department applies a ‘substantial transformation’ rule.” As noted above, this language was quoted by the CIT twice in Advanced Tech. at *11 and Ugine, 517 F. Supp. 2d at 1345.

⁸ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Glycine from India, 73 FR 16640 (March 28, 2008), and accompanying Issues and Decision Memorandum at Comment 5; see also SSPC Belgium, and accompanying Issues and Decision Memorandum at Comment 4.

⁹ See E.I. DuPont De Nemours & Company, v. United States, 8 F. Supp. 2d 854, 858 (CIT 1998) (“Dupont”).

¹⁰ See Dupont (referencing Smith Corona Corp. v. United States, 811 F. Supp. 692, 695 (CIT 1993) as “noting that in determining if merchandise exported from an intermediate country is covered by an antidumping order, Commerce identified the country of origin by considering whether the essential component is substantially transformed in the country of exportation”).

included: 1) whether the processed downstream product falls into a different class or kind of product when compared to the upstream product; 2) whether the essential component of the merchandise is substantially transformed in the country of exportation; or 3) the extent of processing.¹¹ We have examined these criteria in conducting our substantial transformation analysis:

Class or Kind

The Department “has generally found that substantial transformation has taken place when the upstream and downstream products fall within two different ‘classes or kinds’ of merchandise.... Conversely, the Department almost invariably determines substantial transformation has not taken place when both products are within the same ‘class or kind’ of merchandise.”¹² The merchandise subject to an investigation, i.e., the class or kind of merchandise to be investigated, is described in the scope. The scope of these investigations covers both solar cells and solar modules/panels.¹³ Thus solar cells and solar modules/panels are within the same “class or kind” of product. We further note that the International Trade Commission (“ITC”) in its companion preliminary determination defined solar cells and solar modules/panels as one domestic like product.¹⁴

Essential Component

In examining whether the essential component of the merchandise is substantially transformed in the country of exportation, the Department considers whether processing in the exporting country changes the important qualities or use of the component.¹⁵ The essential component of solar modules/panels is the solar cell since the purpose of solar modules/panels is to convert sunlight into electricity and this process occurs in the solar cells.¹⁶ Thus, in this case, the Department is considering whether the processing of solar cells into solar modules/panels changes the nature or use of the solar cells.

Module/panel assembly does not change the important qualities, i.e., the physical or chemical characteristics, of the solar cell itself. As stated in the original petition, solar cells are made from crystalline silicon wafers. A dopant, which is a trace impurity element diffused into a thin layer of the wafers’ surface to impart an opposite electrical orientation to the cell surface, creates the positive/negative junction that is needed for the conversion of sunlight into electricity, which is the purpose of solar cells. Solar cells are normally coated with silicon nitride to increase light

¹¹ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Glycine from India, 73 FR 16640 (March 28, 2008), and accompanying Issues and Decision Memorandum at Comment 5.

¹² See Notice of Final Determination of Sales at Less Than Fair Value: Wax and Wax/Resin Thermal Transfer Ribbons from France, 69 FR 10674, 10675-10676 (March 8, 2004).

¹³ See AD Initiation Notice, 76 FR at 70965 and CVD Initiation Notice, 76 FR at 70970.

¹⁴ See Crystalline Silicon Photovoltaic Cells and Modules from China: Investigation Nos. 701-TA-481 and 731-TA-1190 (Preliminary), USITC Publication 4295 (December 2011) (“ITC Solar Cells and Modules Prelim”) at 11.

¹⁵ See also Erasable Programmable Read Only Memories (EPROMs) From Japan: Final Determination of Sales at Less Than Fair Value, 51 FR 39680, 39691-39692 (October 30, 1986) (“EPROMs”).

¹⁶ See Petition at Exhibit II-19 at 3.

absorption (this results in a blue-purple color) and undergo a screening process where conductive metal is printed into the cell. Metal conduits or busbars channel electricity generated by the cell into electricity collection points.¹⁷ None of these characteristics are changed during module/panel assembly. Petitioner, Trina Solar, a mandatory respondent, and the ITC all describe module assembly as stringing together 60 or 72 solar cells, laminating them, and fitting them in a glass-covered aluminum frame.¹⁸ These processes do not change the basic nature of a solar cell. Moreover, the function of a solar cell is not changed when assembled into modules/panels; the cell still functions to convert sunlight into electricity. The ITC also noted that “the physical characteristics and functions of cells and solar modules essentially are the same.”¹⁹ The purpose of both solar cells and solar modules/panels is to convert sunlight into electricity. Thus, neither the physical qualities nor the function of solar cells are changed when they are assembled into modules/panels.

The instant case is similar to EPROMs.²⁰ In EPROMs, the scope of the investigation included processed wafers and dice. In that case, the issue was whether processed wafers and dice that were produced in Japan, yet encapsulated in a third country, became a product of the country where the encapsulation occurred. The Department determined that the processed wafers or dice were not just a major component of the finished device, rather they were “the essential active component{s} which define{d} the merchandise under investigation.”²¹ The Department further found that the assembly process in the third country was not a sophisticated process.²² Accordingly, the encapsulation of processed wafers or dice in a third country did not qualify as substantial transformation for purposes of determining country-of-origin. Similarly, solar module assembly connects cells into their final end-use form but does not change the “essential active component,” the solar cell, which defines the module/panel.

Extent of Processing

When considering the extent of processing, we examine whether the processing was substantial and/or sophisticated.²³ As noted above, module/panel assembly consists of stringing together solar cells, laminating them, and fitting them in a glass-covered aluminum frame for protection. Thus, this stage of production is principally an assembly process. Numerous interested parties, aside from Petitioner, argued that solar module/panel assembly is relatively insubstantial in terms of number of steps, inputs, research and development required, and time.²⁴ Consistent with these arguments, Trina Solar identified six stages of production when manufacturing solar

¹⁷ See Petition for the Imposition of Antidumping and Countervailing Duties: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China, dated October 19, 2011 (“Petition”) at Exhibit II-19 at 3.

¹⁸ See Petition at Exhibit A-26. See also ITC Solar Cells and Modules Prelim at 6 and 10.

¹⁹ See ITC Solar Cells and Modules Prelim at 10.

²⁰ See EPROMs.

²¹ See EPROMs, 51 FR at 39692.

²² See id.

²³ See, e.g., Notice of Final Determination of Sales at Not Less Than Fair Value: Wax and Wax/Resin Thermal Transfer Ribbon from the Republic of Korea, 69 FR 17645, 17647 (April 5, 2004).

²⁴ See November 28, 2011 scope comments submitted by tenK, Transform Solar, Suniva, and Q-Cells North America.

modules/panels, five of which were dedicated to solar cell production and only one pertained to solar module/panel assembly.²⁵ Petitioner and the ITC also indicated that solar module assembly is one stage of production.²⁶ Petitioner and Trina Solar also reported consuming many more types of inputs in cell production compared with module assembly.²⁷ Further, Trina Solar reported a production time for solar cells that is [] of module assembly.²⁸ Accordingly, the assembly of solar cells into solar modules does not rise to the level of changing the country-of-origin of the subject merchandise.

Based on our analysis of the foregoing factors we find that solar module assembly does not substantially transform solar cells such that it changes the country-of-origin. Solar cells and solar modules/panels are within the same class of merchandise. Further, module assembly does not substantially alter the essential nature of solar cells nor does it constitute significant processing such that it changes the country-of-origin of the cell, as it is an assembly process that only strings cells together, adding a protective covering and an aluminum base. Therefore, we believe the scope should be clarified to state that modules/panels produced in a third-country from solar cells produced in the PRC are covered by the scope; however, modules/panels produced in the PRC from solar cells produced in a third-country are not covered by the scope.

While we understand the intent of Petitioner's argument that the scope should cover solar modules/panels produced in the PRC, regardless of the origin of the solar cells, this is not tenable because doing so would either necessitate making inconsistent country-of-origin determinations for a single product,²⁹ or require ignoring the country-of-origin when considering whether merchandise entering the United States is covered by the scope of these investigations. A product can only have one country-of-origin for AD/CVD purposes, and AD and CVD investigations only cover products with a country-of-origin that is the country under investigation.³⁰ Petitioner has not cited any example where the Department has found that a product could have two countries-of-origin. Thus, while the Department is not excluding solar modules/panels from the scope of these investigations, in conjunction with the above described substantial transformation analysis, we are clarifying that where solar cell production occurs in a different country from solar module assembly, the country-of-origin of the solar modules/panels is the country in which the solar cell was produced.

²⁵ See also Trina Solar's January 10, 2012 Section A response at Exhibit A-26.

²⁶ See Petition at Exhibit A-26. See also ITC Solar Cells and Modules Prelim at 11 where the ITC noted in its preliminary determination that the "{p}roduction of the finished product, modules, involves four primary steps – crystallization, wafer production, cell conversion, and module assembly – along with packing and inspection of the final product. {Solar} cells undergo only one additional production step, the assembly into modules, before transformation into the finished product."

²⁷ See Trina Solar's February 6, 2012 Section D response at Exhibit D-4. See also Petition at Exhibits II-19 and II-20.

²⁸ See Trina Solar's February 6, 2012 Section D response at Exhibit D-4.

²⁹ Namely, finding that module assembly in the PRC using solar cells produced in a third-country constitutes substantial transformation and thus the country of origin of the module is the PRC while also finding that module assembly outside the PRC using PRC produced solar cells does not constitute substantial transformation and thus the country of origin of the module is the country where the solar cells were produced, the PRC.

³⁰ See Cold-Rolled from Argentina, 58 FR at 37065.

Petitioner's claim that not adopting their proposed language in the scope creates an unenforceable scope that can be easily circumvented. While we acknowledge that the Department has on occasion explicitly addressed the possibility of circumvention as a consideration in determining the country-of-origin of merchandise under investigation, circumvention is not the sole or controlling factor relied upon in making a country-of-origin determination.³¹ Nonetheless, whether explicitly stated or not, the factors we consider for making country-of-origin determinations inherently reflect the agency's concern that the relief afforded by AD/CVD orders not be eviscerated by moving minor processing outside of the country covered by the order. Thus, circumvention concerns are reflected in the country-of-origin determination. As stated above, adopting the language proposed by Petitioner would result in two inconsistent country-of-origin determinations.

The Department routinely meets with U.S. Customs and Border Protection ("CBP") to ensure that our AD/CVD orders are enforced. Towards that end, and with respect to these cases in particular, the Department has begun an inter-agency dialogue with CBP that is designed to fulfill that goal. Specifically, Import Administration and CBP staff are meeting to develop procedures which will ensure that Chinese solar cells subject to any potential duties are properly identified at the border. Efforts to evade enforcement will be identified and thwarted. While the Department works closely with CBP, if an importer is declaring the wrong country-of-origin for imported merchandise, this is a matter appropriately dealt with by CBP. Lastly, Petitioner has the option of bringing additional petitions to address any dumping concerns it has regarding solar modules/panels assembled from solar cells produced in a third country.

³¹ As demonstrated above, the Department considers various factors in a substantial transformation analysis.

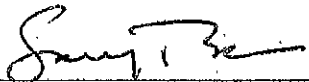
Recommendation

We recommend that the Department find that solar module/panel assembly does not constitute substantial transformation of the solar cells included in the module. We further recommend clarifying the scope of these investigations to state that modules/panels produced in a third-country from cells produced in the PRC are covered by the scope; however, modules/panels produced in the PRC from cells produced in a third-country are not covered by the scope.³²

✓

Agree

Disagree



Gary Taverman
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

3/19/12

Date

³² See Attachment I.