



August 1, 2022

Via eRulemaking Portal

Lisa W. Wang
Assistant Secretary for Enforcement and Compliance
U.S. Department of Commerce
International Trade Administration
Enforcement & Compliance
Room 1870
1401 Constitution Ave., N.W.
Washington, D.C. 20230

**Re: Rulemaking, Docket No. 220629–0144; RIN 0625–AB21;
*Procedures Covering Suspension of Liquidation, Duties
and Estimated Duties in Accord with Presidential
Proclamation 10414***

Dear Assistant Secretary Wang:

The American Council on Renewable Energy (ACORE) is pleased to provide comments to the U.S. Department of Commerce (“the Department”) with respect to the proposed rule, *Procedures Covering Suspension of Liquidation, Duties and Estimated Duties in Accord with Presidential Proclamation 10414* (“*Proposed Rule*”).¹ ACORE is strongly supportive of the *Proposed Rule*. However, as discussed below, ACORE believes that the Department needs to update the rule to clarify that duty free treatment applies to the identified solar cells from the subject countries even if shipped through, or assembled into modules in an intermediary country before importation into the United States.

ACORE is a national nonprofit organization that unites key stakeholders with the aim of accelerating the transition to a renewable energy economy. ACORE is the focal point for collaborative advocacy across the renewable energy sector, with membership spanning renewable energy technologies and constituencies, including developers, manufacturers, top financial institutions, major corporate renewable energy buyers, grid technology providers, utilities, professional service firms, academic institutions, and allied nonprofit groups.²

¹ 87 Fed. Reg. 39,426 (July 1, 2022).

² See *Mission & History*, ACORE, <https://acore.org/mission-history/> (last visited July 21, 2022).

ACORE commends the Department for recognizing the unprecedented crisis the U.S. solar industry has experienced because of the threat of an expansion of antidumping (“AD”) and countervailing duty (“CVD”) orders to include solar cells and modules from Cambodia, Malaysia, Thailand, and Vietnam as a potential result of the circumvention inquiries on these products.³ The mere threat of this expansion of AD/CVD duties froze or substantially delayed solar energy projects in the United States, significantly threatening U.S. electricity generation needs and clean energy goals.⁴

On June 6, 2022, President Biden issued a “*Declaration of Emergency and Authorization for Temporary Extensions of Time and Duty-Free Importation of Solar Cells and Modules from Southeast Asia*” pursuant to 19 U.S.C. § 1318(a).⁵ This declaration empowered the Department to promulgate new regulations to eliminate any new AD/CVD duties on solar cells and modules from Cambodia, Malaysia, Thailand, and Vietnam imported until the end of the emergency period in order to create stability and “ensure . . . that the United States has access to a sufficient supply of solar modules” to meet the country’s needs.⁶ Shortly thereafter, the Department published the *Proposed Rule*, which would permit solar cells and modules from these Southeast Asian countries to be imported into the United States until the end of the emergency period free of any new AD/CVD duties regardless of the determination reached by the Department in the circumvention inquiries.

ACORE and its members welcome the Department’s *Proposed Rule*, which demonstrates that the U.S. Government does not intend for solar cells and modules from Cambodia, Malaysia, Thailand, and Vietnam to be subject to new AD/CVD duties until the end of the emergency period, if at all. To the extent that these solar cells and modules are able to enter the United States without the threat of new AD/CVD duties, ACORE believes that this moratorium on duties will permit solar projects to resume unimpeded and the U.S. solar industry to continue its vital work of increasing the amount of energy generated through solar power to meet the U.S. electricity generation needs and clean energy goals.

In contrast, if the *Proposed Rule* were not adopted and the prospect of new AD/CVD duties once again were to threaten solar cells and panels from Cambodia, Malaysia, Thailand, and Vietnam, solar projects in the United States would face an existential crisis, and the United

³ *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China: Initiation of Circumvention Inquiry on the Antidumping Duty and Countervailing Duty Orders*, 87 Fed. Reg. 19,071 (Apr. 1, 2022) (“*Initiation Inquiry*”).

⁴ Evan Halper, *White House Takes Steps to Spur Solar Industry*, WASH. POST (June 6, 2022), <https://www.washingtonpost.com/business/2022/06/06/solar-panel-white-house-tariffs/>

⁵ WHITE HOUSE, DECLARATION OF EMERGENCY AND AUTHORIZATION FOR TEMPORARY EXTENSIONS OF TIME AND DUTY-FREE IMPORTATION OF SOLAR CELLS AND MODULES FROM SOUTHEAST ASIA (June 6, 2022) <https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/06/declaration-of-emergency-and-authorization-for-temporary-extensions-of-time-and-duty-free-importation-of-solar-cells-and-modules-from-southeast-asia/>; see also *Proposed Rule*, 87 Fed. Reg. at 39,430 (noting that the uncertainty surrounding AD/CVD duty liability created by the circumvention inquiry may be a cause of the insufficient imports of solar modules from Southeast Asia to meet the U.S. electricity generation needs).

⁶ *Id.*

States would not be able to meet its electricity generation needs while also achieving the crucial clean energy goals required to address the climate crisis.

In response to Commerce's request for public comment on the impacts to the solar industry from the uncertainty concerning these potential new duties, below is a summary of recent surveys of ACORE members as reported in ACORE's *Expectations for Renewable Energy Finance in 2022-2025*.⁷ These data provide not only the perspective of renewable energy developers but also the investors providing the finance for these resources.

Prior to the Commerce inquiry, surveyed investors and developers reported, on average, confidence in the renewable energy and energy storage sectors over the next three years. However, average confidence levels slipped from last year for both renewable energy and energy storage, from two to six points across sectors. **In our follow-up survey about the Commerce inquiry, a high proportion of respondents — 86 percent of investors and 81 percent of developers — indicate the inquiry has either moderately or significantly decreased their outlook on the growth of the solar sector over the next three years.**

Additionally, more than three-quarters of surveyed investors reported plans to increase their renewable energy investment by five percent or more in 2022 than their investment level in 2021. Notably, companies that invest \$100 million or more annually comprised 79 percent of the respondents planning to increase their renewable energy investments in 2022. **However, according to the follow-up survey, investor companies representing \$100 million or more of annual renewable energy investment report that the Commerce inquiry could put, on average, 71 percent of their planned U.S. solar investments “at risk.”**

Similarly, developers planned to increase their activity in 2022 compared to 2021, before the announcement of the Commerce inquiry. More than one-third of the companies that intended to “Significantly increase” their development activity in 2022 have total revenues of \$500 million or more. **However, developer respondents that developed 100 MW to 1 GW of solar installations over the past three years report, on average, that 86 percent of their planned solar installations are now “at risk” due to the Commerce inquiry.**

There is one aspect of the *Proposed Rule* that ACORE respectfully submits the Department should clarify. In the definition of “Southeast Asian-Completed Cells and Modules,” the *Proposed Rule* provides for duty free treatment of cells (whether or not assembled into modules) completed in Cambodia, Malaysia, Thailand, or Vietnam using “parts and components manufactured in the People’s Republic of China, and **subsequently exported from Cambodia, Malaysia, Thailand or Vietnam to the United States.**”⁸ ACORE is concerned that in the context of the *Proposed Rule* this definition might be misconstrued to erroneously provide that duty free treatment is inapplicable to such cells (or modules containing them) if they are shipped to the United States through an intermediary country, because they

⁷ American Council on Renewable Energy, *Expectations for Renewable Energy Finance in 2022-2025* (June 2022), at 4-5, <https://acore.org/wp-content/uploads/2022/06/Expectations-for-Renewable-Energy-Finance-2022-2025-ACORE.pdf>

⁸ 87 Fed. Reg. at 39,431.

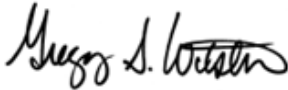
would not be “exported from” one of the Southeast Asian countries “to the United States.”⁹ Additionally, this definition could also be misconstrued to provide that duty free treatment is inapplicable to modules assembled in a third country containing the cells at issue completed in Cambodia, Malaysia, Thailand or Vietnam. The goal of the Presidential Declaration and the *Proposed Rule* is to provide duty free treatment for solar cells from Cambodia, Malaysia, Thailand, or Vietnam until the end of the emergency period — regardless of whether the cells are shipped through, or incorporated into modules in an intermediary country before they are imported into the United States.

Because of these potential ambiguities in the identified definition, ACORE respectfully urges the Department to clarify in the final rule that the definition of “Southeast Asian-Completed Cells and Modules” covers the relevant cells exported from the Southeast Asian countries even if shipped through, or assembled into modules in an intermediary country.

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ACORE thanks the Department for this opportunity to comment on the *Proposed Rule*, and for its efforts to eliminate the threat of new AD/CVD duties on impacted solar cells and modules until the end of the emergency period.

Sincerely,



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⁹ ACORE recognizes that this “Southeast Asian-Completed Cells and Modules” definition mirrors the language used to describe the merchandise subject to the circumvention inquiry. *Initiation Inquiry*, 87 Fed. Reg. at 19,071. However, neither the Presidential Declaration nor the Department’s rulemaking is limited by the circumvention inquiry.