

Commerce Department Issues High Antidumping Rates in Preliminary Determination in Solar Cells from China

May 18, 2012

Attorney Articles

The Commerce Department on May 17, 2012 announced its preliminary antidumping determination in the Solar Cells from China investigation, more specifically in the Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China. The Commerce Department determined that the antidumping rates for Wuxi Suntech Power Co., Ltd. are 31.22%, Changzhou Trina Solar Energy Co., Ltd. 31.14% and a Chinese companies that applied for their own antidumping rate at 31.18%. A number of Chinese companies did not apply for their own rate and were issued an antidumping rate of 249.49%, which is the China wide rate. The Federal Register notice specifying the individual company rates is available upon request.

These rates mean that if a US company imports solar cells from China right now, it will have to post a bond or cash deposit at a rate of a minimum of 31% of the entered value and possibly as high as 250% of the entered value. In addition to the antidumping duty rate, US importers are also responsible for an additional Countervailing cash deposit rate of about 3.6%. According to many Chinese companies, the 31% antidumping rate is a shut out rate, which means that many US importers simply will not be able to afford to import solar cells from China.

Many US importers of solar cells are also very concerned because the Commerce Department has made a critical circumstances determination, which exposes them to retroactive liability back 90 days prior to the preliminary determination. In the antidumping case, that means US Customs will require US importers to post a bond or cash deposit for the 31% on all imports since the middle of February, 90 days prior to the antidumping preliminary determination.

To win this case, the Petitioners must show dumping and subsidization at the Commerce Department and injury to the US industry at the US International Trade Commission ("ITC"). There is still hope that the Commerce Department will find lower rates in its final antidumping determination. In addition, there is a possibility that the ITC will reach a no injury determination or at a minimum a no critical circumstances determination in the final injury investigation. The ITC reaches no critical circumstances determinations in approximately 80% of the cases so there is still hope that there will be no 90 day retroactive liability if the respondent companies fight the case at the ITC.

© 2012 Dorsey & Whitney LLP. This article is intended for general information purposes only and should not be construed as legal advice or legal opinions on any specific facts or circumstances. An attorney-client relationship is not created or continued by reading this article. Members of the Dorsey & Whitney LLP group issuing this communication will be pleased to provide further information regarding the matters discussed therein.

Authors

William Perry

Related Services

[Antitrust and Competition Law](#)

[International Trade](#)