

# U.S. Department of Commerce Initiates Antidumping and Countervailing Duty Cases Against Imports of Solar Cells and Modules from China

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November 9, 2011

The United States Department of Commerce (Commerce) announced today the formal initiation of two separate investigations into unfairly traded imports of crystalline silicon photovoltaic (c-Si PV) cells and modules from China. This announcement comes 20 days after Wiley Rein filed formal petitions with Commerce and the United States International Trade Commission, seeking these investigations on behalf of the SolarWorld Industries Americas Inc., a fully-integrated producer of c-Si PV cells and modules based on Hillsboro, Oregon, and the entire U.S. industry.

Commerce's announcement reflects its official determination that the petitions provide sufficient evidence that the Chinese c-Si PV cell and module industry is being massively and illegally subsidized by the Chinese government, and that Chinese imports are being sold in the United States at prices that are "dumped," or unfairly low, to warrant full investigations. Indicating the strength of SolarWorld's case, Commerce announced that the Chinese sales reported by SolarWorld in its petition were dumped by amounts ranging from 50 to 250 percent. Furthermore, Commerce has decided to investigate nearly 30 separate subsidy programs used by all levels of the Chinese government to support its solar industry.

"We are very pleased that Commerce has decided to investigate the predatory pricing practices of the Chinese crystalline PV cell and module industry, as well as the massive subsidies that have made their dumping possible," said Timothy C. Brightbill, lead attorney at

## Related Professionals

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Timothy C. Brightbill  
Partner  
202.719.3138  
tbrightbill@wiley.law

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Wiley Rein. "The magnitude of these illegal practices, and the amount and quality of the evidence documenting them, is unprecedented and demands prompt relief. We greatly appreciate the efforts of the Commerce Department and the International Trade Commission in these early stages of the cases, and look forward to learning a great deal more as Commerce gathers evidence in the cases."

The formal announcement signals the start of two in-depth investigations of the Chinese industry. These investigations can lead to the imposition of duties to offset the amount of unfair subsidies and pricing as early as January, 2012. At the time Commerce issues a preliminary determination in favor of the U.S. industry, importers will be required to pay deposits of estimated duties when they import Chinese cells and modules. For example, if Chinese imports are found to be subsidized at a rate of 50 percent, an importer of Chinese modules valued at \$100,000 will be required to deposit \$50,000 of estimated duties with U.S. Customs and Border Protection.

Importantly, importers could already be at risk of paying duties on imports of Chinese cells and modules. In the petitions, SolarWorld submitted evidence that Chinese imports have surged massively, and that the importers knew or should have known these imports were unfairly traded, giving rise to a condition known as "critical circumstances." By law, if Commerce and the ITC agree that critical circumstances exist, duties on Chinese imports will be imposed retroactively to cover imports in the period 90 days prior to the preliminary determination.

Commerce's preliminary determination in the countervailing duty case currently is due no later than January 12, 2012. In the event critical circumstances is found, Chinese cells and modules imported as early as October 14, 2011 potentially will be subject to countervailing duties.

Commerce's preliminary antidumping determination presently is due no later than March 27, 2012. In the event critical circumstances is found, Chinese cells and modules imported as early as December 28, 2011 will be subject to antidumping duties.