

SolarWorld Wins Two Key Court Decisions in Trade Cases Against China, Taiwan

COURT UPHOLDS SCOPE OF SOLAR PRODUCTS ANTIDUMPING AND COUNTERVAILING DUTY ORDERS

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Washington, DC – SolarWorld Americas Inc. won two critically important trade case appeals on Friday, July 21, as the U.S. Court of International Trade (CIT) upheld the scope of cases that SolarWorld brought against China and Taiwan and won in 2015.

The Court issued decisions affirming the scope of the antidumping (AD) and countervailing duty (CVD) orders on China in Court No. 15-00067, *Sunpower Corporation et al v. United States*, brought by Sunpower Corporation and four of the largest Chinese producers of solar cells and modules, and affirming the scope of the 2015 AD order on Taiwan in Court No. 15-00081, *Kyocera Solar, Inc. and Kyocera Mexicana S.A. de C.V. v. United States*. SolarWorld participated in both appeals as a Defendant-Intervenor, and argued that the court should uphold the U.S. Department of Commerce’s final scope determinations in 2015 (“Solar II”).

After initially remanding the Department’s scope definitions for reconsideration or further explanation, the Court upheld the additional reasoning provided by Commerce to support its scope definitions. The Court’s recent decisions confirm that the AD/CVD orders will continue to cover Chinese and Taiwanese products.

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Specifically, the Court upheld the Department's determination that the Solar II China AD/CVD orders apply to all solar modules assembled in China from cells produced in any country other than China. (The earlier AD/CVD orders issued in 2012 ("Solar I"), already covered solar modules assembled in any country from cells produced in China.) Thus, the Solar II China AD/CVD orders closed the loophole in the Solar I scope and ensure that all cells and all modules from China are covered by dumping and subsidy duties. The Court also upheld the Department's determination that the Solar II Taiwan AD order cover all Taiwanese solar cells made into solar panels in Taiwan or any other country except for China. (Modules made in China from Taiwanese cells are already covered by the scope of the Solar II China orders.)

"SolarWorld is extremely pleased with the Court's decision to affirm the scopes of the 2014 China and Taiwan AD/CVD orders," said Timothy C. Brightbill, a partner in Wiley Rein's International Trade Practice and lead counsel to SolarWorld. "These broad-scope definitions were necessary to address the injury to U.S. solar manufacturers caused by the unfair trade practices of solar producers and exporters from China and Taiwan and, in particular, from Chinese producers' attempts to change their operations and sourcing patterns in order to evade duties imposed by the Solar I AD/CVD orders."

Judge Claire R. Kelly's opinions in these cases also set a potentially important precedent by upholding Commerce's determination not to use its typical "substantial transformation" test to determine the country of origin of a product in a trade case context. It is believed to be the first time that Commerce has used a different test, which should allow it additional flexibility to address dumping and subsidies in future AD and CVD cases.

The parties will have 30 days to file any appeal.

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