

INSIGHTS

## A Bright Spot in the Solar Market: Commerce Rejects Anonymous Petitions Requesting Anti-Circumvention Investigation and Tariffs

November 12, 2021

By: [Danielle M. Varnell](#)

The U.S. Department of Commerce this week declined to launch an investigation into alleged circumvention of anti-dumping and countervailing duties (AD/CVD) by Chinese solar panel companies. The decision was a response to a petition filed with the agency on August 16, 2021 by an anonymous group of solar manufacturers calling themselves the “American Solar Manufacturers Against Chinese Circumvention” (A-SMACC).

In its petition, A-SMACC requested an investigation and the imposition of circumvention tariffs against certain Chinese solar panel producers operating out of Thailand, Vietnam, and Malaysia, alleging that in doing so they unlawfully avoid AD/CVD tariffs. Specifically, A-SMACC alleged that Chinese producers divert solar cells and modules—which are subject to the AD/CVD tariffs applicable to Chinese solar manufacturers since 2012—to Southeast Asia to finish processing in only a minor capacity so that they may then be exported to the United States without any AD/CVD tariffs attached.

Commerce’s response to A-SMACC’s August 16 petition, through which it was expected to either initiate an investigation or reject the petitions, was originally due on September 30. However, on September 29, the Agency extended its deadline in light of the need for additional information about the motivations behind the filing. In particular, Commerce sought an explanation for the A-SMACC members’ decision to file anonymously and pointedly asked the petitioners what business ties they had to China or the Southeast Asian countries involved, indicating that the petition may have been an attempt to gain a competitive advantage in the industry. A-SMACC continued its refusal to publicly reveal the identities of its members, citing “extraordinary risks” of “potentially crippling retaliation” that China’s leverage in the solar market and its control over the supply chain pose to them.

This week Commerce announced its decision rejecting the anonymous petitions. In its response, the agency reiterated its concerns about the petitioners’ insistence on anonymity, which played a significant role in the decision to reject the request. Commerce advised that “not disclosing A-SMACC members’ names publicly hampers interested parties from fully commenting on the requests for circumvention inquiries and may hamper them from commenting on certain issues that could arise if Commerce were to initiate circumvention inquiries.”

This decision was met with a sigh of relief from solar developers and utilities alike. Not only would an investigation have likely lasted into the fall of 2022, but the imposition of circumvention tariffs would have exacerbated the chilling effect that the petition had on the solar industry's already-struggling supply chain and almost certainly would have resulted in numerous canceled or significantly delayed solar projects. Thus, while Commerce's decision not to initiate the investigation may not resolve all of the current uncertainty plaguing the solar market, it was undoubtedly a step in the right direction.