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Circumvention Inquiries  
Malaysia 2022, Thailand 2022,  
Cambodia 2022, Vietnam 2022  
Public Document  
E&C/OIV: JDP

**DATE:** December 19, 2022

**MEMORANDUM TO:** All Interested Parties

**THROUGH:** Eric Greynolds *EDG*  
Director  
AD/CVD Operations, Office IV  
Enforcement & Compliance

**FROM:** Jeff Pedersen *JP*  
Senior Import Compliance Analyst  
AD/CVD Operations, Office IV  
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**RE:** Circumvention Inquiry With Respect to the Antidumping and  
Countervailing Duty Orders on Crystalline Silicon Photovoltaic  
Cells, Whether or Not Assembled Into Modules, From the People's  
Republic of China

**SUBJECT:** Clarification of Product Coverage

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Certain parties have requested greater clarity regarding the coverage of the Department of Commerce's (Commerce) preliminary determinations of circumvention of the antidumping and countervailing duty orders on crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells and modules), from the People's Republic of China (China) by solar cells and modules exported from the Kingdom of Cambodia, Malaysia, the Kingdom of Thailand, and the Socialist Republic of Vietnam (inquiry countries) using parts and components produced from China.<sup>1</sup>

Our preliminary determinations of circumvention defined the merchandise subject to the inquiries as follows:

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<sup>1</sup> See, e.g., Maxeon's Letter, "Malaysia 2022 Anti-Circumvention Inquiry for Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China – Follow-Up to *Ex Parte* Meeting," dated December 9, 2022.

These circumvention inquiries cover certain solar cells and modules that have been completed in Cambodia, Malaysia, Thailand, or Vietnam, using parts and components from China, as specified below, *that are then subsequently exported from Cambodia, Malaysia, Thailand, or Vietnam to the United States* (inquiry merchandise) (emphasis added).<sup>2</sup>

Therefore, the definition of “inquiry merchandise,” *i.e.*, the merchandise subject to the preliminary circumvention findings, only includes certain solar cells and modules exported from the four inquiry countries to the United States.

Further, on June 6, 2022, the President of the United States signed Proclamation 10414, “Declaration of Emergency and Authorization for Temporary Extensions of Time and Duty-Free Importation of Solar Cells and Modules from Southeast Asia” (the Proclamation). On September 12, 2022, Commerce added Part 362 to its regulations to implement the Proclamation. As relevant here, 19 CFR 362.102 defined “Southeast Asian-Completed Cells and Modules” as:

crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells and modules), which are completed in the Kingdom of Cambodia, Malaysia, the Kingdom of Thailand, or the Socialist Republic of 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*. These are cells and modules subject to the Solar Circumvention Inquiries (emphasis added).

The *Preliminary Determinations* adopted this same definition of Southeast Asian-Completed Cells and Modules.<sup>3</sup>

Part 362 of our regulations set forth a general exception to the suspension of liquidation rules that normally apply after an affirmative preliminary circumvention determination under 19 CFR 351.226 for “Applicable Entries” of Southeast Asian-Completed Cells and Modules. Accordingly, our *Preliminary Determinations* specified that suspension of liquidation procedures would only apply to “imports of Southeast Asian-Completed solar cells and solar modules that are not ‘Applicable Entries’ that were entered, or withdrawn from warehouse, for consumption on or after April 1, 2022 ... but prior to the Date of Termination of the Proclamation” and that are unaccompanied by certain certifications.<sup>4</sup>

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<sup>2</sup> See *Antidumping and Countervailing Duty Orders on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Preliminary Affirmative Determinations of Circumvention With Respect to Cambodia, Malaysia, Thailand, and Vietnam*, 87 FR 75221, 75222 (December 8, 2022) (*Preliminary Determinations*).

<sup>3</sup> *Id.*, 87 FR at 75223.

<sup>4</sup> *Id.*, 87 FR at 75224.

Taken together, these provisions in the *Preliminary Determinations* defining “inquiry merchandise” and “Southeast Asian-Completed Cells and Modules” and setting forth the suspension of liquidation procedures indicate that cells and modules covered by the *Preliminary Determinations* are cells and modules from the four Southeast Asian countries that are exported to the United States from those four countries. Part 362, in discussing the related meaning of “Applicable Entries,” also makes clear that if a cell or module “is further assembled in another country, that merchandise will not be considered ‘exported from Cambodia, Malaysia, Thailand, or Vietnam to the United States.’”<sup>5</sup>

Therefore, we clarify that solar cells made in one of the four Southeast Asian inquiry countries, even if made from wafers from China, that are then exported to a non-inquiry country and further assembled into modules or other products there, are not “inquiry merchandise” or “Southeast Asian-Completed Cells or Modules.” Such products are not subject to our circumvention findings in the *Preliminary Determinations* or the resulting suspension, cash deposit, or certification requirements.<sup>6</sup>

We also clarify that the country of origin rules established earlier in the solar cells and modules proceedings are not binding on these circumvention inquiries. In the investigations, Commerce determined that the country of origin of solar cells and modules was established where the solar cell was manufactured.<sup>7</sup> Accordingly, if a solar cell was manufactured in China and later used in the production of solar modules in a third country, the product was still covered by the *Solar Cells and Modules Orders* because the cell had been made in China.<sup>8</sup>

Circumvention inquiries such as these ones are conducted under section 781(b) of the Tariff Act of 1930, as amended (the Act), and are distinct from scope and country of origin findings. A circumvention inquiry under section 781(b) of the Act can bring within the discipline of an order merchandise that would not be subject to the order under a country of origin analysis.<sup>9</sup> In these circumvention determinations, we have preliminarily determined that solar cells and modules that were produced (*i.e.*, finished) in an inquiry country from, in the case of solar cells, wafers

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<sup>5</sup> See *Procedures Covering Suspension of Liquidation, Duties and Estimated Duties in Accord With Presidential Proclamation 10414*, 87 FR 56868, 56881-82 (September 16, 2022).

<sup>6</sup> If a solar cell or modules is merely transshipped from a Southeast Asian country through another third country, then it may still be covered by the circumvention findings and resulting suspension, cash deposit, and certification requirements.

<sup>7</sup> See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part*, 77 FR 63791 (October 17, 2012) and accompanying Issues and Decision Memorandum (Solar Cells Investigation IDM) at Comment 1. See also *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order*, 77 FR 73018 (December 7, 2012); *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China: Countervailing Duty Order*, 77 FR 73018 (December 7, 2012) (*Solar Cells and Modules Orders*).

<sup>8</sup> See Solar Cells Investigation IDM at Comment 1.

<sup>9</sup> See *Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Determinations*, 86 FR 52300, 52342 (September 20, 2021).

produced in China, or, in the case of solar modules, wafers and three or more specified inputs produced in China, are circumventing the *Solar Cells and Modules Orders*.<sup>10</sup> However, our preliminary finding did not change the country of origin of those cells – they are still products of their respective countries. Thus, the preliminary circumvention findings merely extend the duties under the *Solar Cells and Modules Orders* to cells and modules from the four Southeast Asian inquiry countries. Accordingly, we clarify that Commerce’s preliminary circumvention findings are limited to solar cells and modules that were produced (*i.e.*, finished) in an inquiry country from, in the case of solar cells, wafers produced in China, or, in the case of solar modules, wafers and three or more specified inputs produced in China, and not further processed in another country outside the four Southeast Asian inquiry countries before being exported to the United States. Commerce’s circumvention findings do not cover solar cells and modules produced in countries other than the four inquiry countries.

However, the *Preliminary Determinations* do cover solar cells and modules exported from one of the four inquiry countries to the United States where the process of assembly or completion was conducted in more than one of the four inquiry countries, provided the other requirements for coverage are met. For example, if a solar cell is completed in Thailand from a Chinese wafer, and then the cell is sent to Malaysia for assembly into a module with three or more Chinese components, and the module is then exported to the United States, this product is covered. In other words, regardless of whether the solar cells and modules were produced in one or more of the inquiry countries, they would be covered, provided they meet the additional requirements for coverage. However, solar modules completed in an inquiry country from solar cells produced in a non-inquiry country are not covered by Commerce’s circumvention finding, even when the wafer originated in China.

Finally, to the extent there is confusion regarding the definition of the “Utilization Expiration Date” in part 362 of our regulations, we reiterate the relevant language in the *Preliminary Determinations*, which comes directly from 19 CFR 362.102: “The ‘Utilization Expiration Date’ is ‘the date 180 days after the Date of Termination.’”<sup>11</sup>

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<sup>10</sup> See *Preliminary Determinations*.

<sup>11</sup> *Id.*, 87 FR at 75223. The “Date of Termination” is June 6, 2024, or the date the emergency described in Presidential Proclamation 10414 has been terminated, whichever comes first. See *id.*