

Summary of ITC's Public Preliminary Determination in Solar III

On June 7, the International Trade Commission made a unanimous affirmative preliminary determination that dumped and subsidized imports from Vietnam, Cambodia, Malaysia, and Thailand are currently injuring (or for Cambodian subsidies, threaten to injure) U.S. solar cell and module manufacturers.

Last week, the Commission released the public version of its Views and Commission report. Below are some highlights from this report: Many of these findings directly refute arguments made by Chinese-owned and -headquartered companies like Trina Solar, Canadian Solar, Longi, JA Solar, and Jinko, as well as arguments of SEIA and ACP.

ITC Views and Commission Report Highlights

The Role of Solar Cells

The Commission defined a single like product, encompassing both solar cells and modules, as requested by petitioners (rather than assessing cells and modules separately, as advocated by the respondents and Chinese-owned companies).

- “When considering only the module segment..., subject **imports undersold the domestic modules and took market share** Furthermore, while we recognize that the domestic industry was dependent on imported cells during the POI, several firms have invested in the construction of domestic cell production facilities, including some that are scheduled to commence production imminently.”

Injury to Domestic Industry

- “Given the reasonable indication that the domestic industry is materially injured by reason of subject imports from Cambodia, Malaysia, Thailand, and Vietnam, and the weaker than expected performance and worsening operating losses experienced by the domestic industry during the period of investigation..., **we find that the domestic industry is in a vulnerable condition.**”

ITC Rebuffs Opposition Arguments

- “ACP argues that subject imports of cells are inherently non-injurious..., given the absence of current U.S. cell production and the corresponding need for U.S. module producers to import the cells they require, and that the Commission should therefore disregard subject imports of cells in its material injury analysis. Because cells are within the scope..., however, **we may not ignore** them in our analysis of the **impact of subject imports on the domestic industry.**”
- “**We are unpersuaded** by respondents' argument that subject imports do not threaten the domestic industry because domestic producers need imports of CSPV cells for use in domestic production of CSPV modules. Although subject producers did supply the domestic industry with CSPV cells, the record... shows that subject producers focused more on shipping CSPV modules to the United States than on supplying the domestic industry with CSPV cells during the POI.”

Sufficient Solar Supply

- “Three fourths (9 of 12) of U.S. producers and two-thirds (28 of 42) of **responding importers reported that they had not experienced supply constraints** since the beginning of the POI.”

Depressed Prices

- “Cumulated subject **imports also depressed domestic prices to a significant degree from 2022 to 2023**. As a consequence, the domestic industry's production, U.S. shipments, and employment-related indicators all increased by less than would have been expected in light of the substantial increase in apparent U.S. consumption of CSPV modules and the industry's operating losses worsened in absolute terms and as share of net sales and net income.”
- The Commission found that **domestic prices “generally declined from the first quarter to the fourth quarter of 2023 despite the substantial increase in U.S. demand in 2023**, as subject imports undersold the domestic like product{.}”
- “{S}ubject imports **depressed prices** for the domestic like product to a significant degree.”
- “The pricing data show that subject **imports undersold the domestic like product** in 86 of 105 quarterly comparisons, or 81.9 percent of the comparisons.”

The Inflation Reduction Act is Not Enough

- “We observe that to the extent the IRA is affecting domestic producers' financial performance, that **would not negate the adverse impact** of subject imports on the domestic industry caused by subject imports gaining market share **at the expense of the domestic industry** and depressing domestic producer prices.”

... And No End in Sight

“We find that the **significant increase** in cumulated subject import volume observed during the period of investigation is **likely to continue** in the imminent future absent relief.”

What's Next?

Commerce has moved to initiate the AD/CVD investigation and the ITC voted in the affirmative for a preliminary injury determination. The final deadlines listed below are estimated from when Commerce published the preliminary determination in the Federal Register, so that can shift by a couple of days in either direction. At both the preliminary determination stage and the final determination stage, both Commerce and the ITC must reach affirmative determinations. If at either stage, one makes a negative determination, the investigation for that country is terminated.

Commerce - Anti-Dumping

1. Preliminary Determination (extended) (Nov. 20, 2024)
2. Final Determination (unextended) (Dec. 16, 2024) (Feb. 3, 2025 with Preliminary Determination extended)
3. Final Determination (fully extended) (Apr. 4, 2025)

Commerce - Countervailing Duties

1. Preliminary Determination (extended) (Sept. 23, 2024)
2. Final Determination (unextended) (Oct. 1, 2024) (Dec. 8, 2024 with Preliminary Determination extended)
3. Final Determination (fully extended) (Mar. 7, 2025) (Apr. 4, 2025 if alignment with AD investigation requested)

International Trade Commission

1. Final Determination (assuming fully extended Final Determinations at Commerce – **May 19, 2025**)

Please let me know if you would like to speak with our lead attorney, Tim Brightbill, to better understand any part of this report or if you have questions related to the investigations process.

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