

October 2, 2024

CEA Statement on Preliminary CVD Rates and Critical Circumstances

On Tuesday, October 1, 2024, the U.S. Department of Commerce issued the Preliminary Determination in its countervailing duty (CVD) investigation against PV cells, whether or not assembled into modules, from Cambodia, Malaysia, Thailand, and Vietnam. This included both preliminary CVD rates on all four countries, and a finding of critical circumstances for some but not all companies exporting from Thailand and Vietnam.

The rates assigned were generally lower than CEA's base case forecast for the four countries. Based on our analysis of underlying market dynamics, we do not believe that these rates by themselves present a barrier to continued exports to the U.S. market for most large, tier 1 PV makers. The partial findings of critical circumstances and higher rates on many Thai PV module makers impose a competitive disadvantage, except for Trina which received a very low rate.

Details: rates

Commerce's October 1 Preliminary Determination only covered CVD rates. Anti-dumping (AD) rates will be set at Commerce's AD Preliminary Determination, which we expect on either Wednesday November 27 or Monday, December 2, 2024. AD and CVD rates are additive.

CVD rates assigned varied from 0.14% (Trina Solar, Thailand) to 292.61% for four smaller PV makers in Vietnam. Commerce issued rates based on a finding of adverse facts available (AFA) to at least one supplier in each of the four countries under investigation, and this resulted in the highest rates (34.52% to 292.61%). None of the larger, Tier 1 suppliers received AFA rates.

Six of the seven mandatory respondents for the CVD investigation received rates between 0.14% (Trina Solar, Thailand) and 14.75% (QCells, Malaysia). The highest non-AFA rate was the country-wide rate for Thailand, which was set at 23.06%.

For Trina Solar (Thailand) and Boviet Solar (Vietnam) rates were set below 1%, which is a "de minimis" level. This means that these suppliers will not have to pay cash deposits going forward. If they can maintain this de minimis level through the CVD Final Determination, they will not be liable for duties.

A table with CVD preliminary rates follows at the end of this notice.

Details: critical circumstances

Commerce did not find critical circumstances for mandatory respondents Trina Solar (Thailand), JA Solar (Vietnam), and Boviet Solar (Vietnam). It did find critical circumstances for all other producers in Thailand and Vietnam. This means Customs will collect cash deposits on PV cells and modules that were entered into the United States 90 days or fewer before the publication of the Preliminary Determination in the Federal Register from PV manufacturers and exporters in Thailand and Vietnam except these three.

CEA expects the Preliminary Determination to be published in the Federal Register on October 3, 2024. This means that duties may apply to applicable product from Thailand and Vietnam that was entered into the United States starting on July 5, 2024.

For critical circumstances to apply, the International Trade Commission (ITC) must also make an affirmative finding of critical circumstances in its Final Determination scheduled for May 29, 2025. If the ITC produces a negative finding, Commerce must refund cash deposits for goods entered before the date of the Preliminary Determination.

For cell and module imports not subject to critical circumstances findings, which includes PV cells and modules by JA Solar, and all manufacturers in Cambodia and Malaysia, CVD duties will apply for product that arrives in port upon the day that the CVD Preliminary Determination is published in the Federal Register (expected date: October 3, 2024).

As Trina and Boviet both received “de minimis” CVD rates below 1%, cells and modules from these producers are not subject to any retroactive actions at present and are not required to post cash deposits going forward. However, if those companies receive higher CVD rates in the Final Determination, Commerce can revisit the issue of critical circumstances.

Please refer to the table at the end of this notice for which suppliers are subject to critical circumstances.

Analysis of Market Impacts

Based on our analysis of existing market conditions, CEA believes these rates by themselves will not present a barrier to continued exports to the U.S. market for most of the larger, Tier 1 module makers. Smaller companies that received the higher AFA rates will likely be forced to withdraw from the U.S. market, although the limited scale of those exports will have a minimal impact on U.S. module availability.

Additionally, uncertainty will remain around rates and timelines for duty application until Commerce publishes its Preliminary Determination for the anti-dumping portion of these cases, including a second ruling on critical circumstances.

As anti-dumping rates are additive to CVD rates, there is a risk that combined duties for some companies and countries will be high enough to create a meaningful barrier to continued exports to the United States.

CEA expects the finding of critical circumstances in Thailand to impact Canadian Solar, Runergy, and other Thai PV makers given the 23.06% country-wide CVD rate. But both the Thai and Vietnamese rulings also have implications for developers, EPCs, and other module buyers.

The importer of record is ultimately responsible for CVD duties. But who is affected depends on whether this liability is shared in contractual agreements. Large module makers often have U.S. subsidiaries that act as importers of record. However, developers, EPCs, and other module buyers may be fully or partially liable for duties if they were the importer of record or agreed to cover all or part of the cost of duties in their contracts. Going forward for new contracts, duties are expected to be passed on to module buyers.

Financial consequences will be particularly severe for any buyers that are liable for duties applied to PV cells and modules from the four smaller Vietnamese producers: GEP New Energy, HT Solar, Shengtian New Energy Vina, and Vietnam Green Energy, due to the high CVD duty rates applied.

Preliminary CVD Rate and Critical Circumstances Table

*Indicates an AFA rate

Cambodia C-555-004	Prelim CVD rate	Critical Circumstances
Solarspace	8.25%	No
Jintek PV	68.45%*	
ISC Cambodia	68.45%*	
All others	8.25%	

Malaysia C-557-831	Prelim CVD rate	Critical circumstances
Hanwha Qcells	14.72%	No
Jinko Solar	3.47%	
Baojia New Energy	123.94%*	
Pax Union Resources	123.94%*	
SunMax Energy	123.94%*	
All others	9.13%	

Thailand C-549-852	Prelim CVD rate	Critical circumstances
Trina Solar	0.14% (de minimis)	No
Sunshine electrical	34.52%*	Yes
Taihua New Energy	34.52%*	
All others	23.06%	

Vietnam C-552-842	Prelim CVD rate	Critical circumstances
Boviet Solar	0.81% (de minimis)	No
JA Solar	2.85%	No
GEP New Energy	292.61%*	Yes
Vietnam Green Energy	292.61%*	
Shengtian New Energy	292.61%*	
HT Solar	292.61%*	
All others	2.85%	

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