

## Chinese Green Energy Products in the Crosshairs of the Obama Administration

Recent testimony before the Senate Committee on Energy and Natural Resources revealed that China's capacity to generate clean energy far outstrips its use in China. Although China has made the largest investment of any country in products to produce clean energy, according to the testimony, a massive 95 percent of the production has been exported. In the United States, China's exports of green energy products have been met with two sentiments: the first is that inexpensive Chinese green energy products make renewable energy more competitive with fossil fuels; the second sentiment is that the inexpensive Chinese green energy products are supplanting green energy companies and jobs in the United States.

For better or worse, at the request of affected U.S. producers, the Obama Administration has recently launched investigations to determine whether two green energy products – solar cells and wind towers -- are violating international trade rules by selling those products at unfairly low prices (an antidumping investigation) or receiving unfair governmental subsidies (a countervailing duty investigation), thereby injuring the U.S. industry. Recently, the Department of Commerce (Commerce) announced the results of its antidumping and countervailing duty investigations.

### Solar Cells:

- > **The U.S. Petitioner:** Solar World Industries America Inc., along with six other U.S. solar companies.
- > **Scope of the Investigation:** The scope of the investigation covers crystalline silicon photovoltaic cells, modules, laminates, and panels consisting of crystalline silicon photovoltaic cells, whether partially or fully assembled into other products.
- > **Third-Country Panels:** Modules, laminates and panels produced in a third country from cells produced in China are covered by the investigation. Certain certification requirements exist if an importer and exporter are claiming that the modules are not made in China. Failure to maintain the certification will result in having the entries included in the investigation.

- > **Preliminary Determination:** Commerce calculated dumping margins ranging from 31 percent to 250 percent and countervailing (subsidy) margins ranging from approximately 2.9 percent to 4.73 percent.
- > **Final Determinations:** Commerce is currently scheduled to make its final determinations in both the antidumping and countervailing duty investigations in early October 2012.
- > **Effective Date:** In most antidumping and countervailing duty investigations, liability for importers begins on the dates of Commerce's preliminary countervailing and antidumping duty determination. However, because Commerce found that the Chinese companies were sending massive exports to the United States prior to the preliminary determinations, Commerce imposed potential liability retroactively. As such, U.S. importers of Chinese solar products covered by the scope of the investigation must post bonds or deposit cash equal to the applicable countervailing margin for entries beginning on December 27, 2011, and cash deposits or bonds for antidumping dumping duties for entries beginning on February 25, 2012.
- > **Additional Information:** Given the cries that Chinese companies have received massive subsidies, the subsidy margins, ranging from 2.9 percent to 4.73 percent, are relatively modest. Nevertheless, Commerce states that it will be investigating additional subsidies for the final determination, which will likely increase the countervailing duty margin imposed to offset the subsidies. Also, for both the antidumping and countervailing duty investigations, Commerce has not yet audited the Chinese companies, which may result in increases in antidumping and countervailing duties.
- > **International Trade Commission:** The International Trade Commission (ITC) is concurrently investigating whether the dumped and subsidies imports are causing material injury or threatening to cause material injury. If the ITC finds no material injury or threat of material injury, no duties will be imposed.

#### Wind Towers:

- > **The U.S. Petitioner:** The Wind Tower Trade Coalition, which is comprised of the following member companies: Broadwind Towers, Inc. (Manitowoc, WI); DMI Industries (Fargo, ND); Katana Summit LLC (Columbus, NE); and Trinity Structural Towers, Inc. (Dallas, TX).
- > **Scope of the Investigation:** The scope of the investigation covers utility-scale wind towers, which are the steel towers that support the nacelle (an enclosure for an engine) and rotor blades for use in wind turbines that have electrical power generation capacities in excess of 100 kilowatts.
- > **Preliminary Duty Determination:** Commerce calculated a countervailing duty margin to offset subsidies ranging from 13.74 percent to 26 percent. Commerce has not yet issued its preliminary antidumping determination.
- > **Effective Date:** June 6, 2012. As such, U.S. importers of subject wind towers must deposit cash equal to the applicable countervailing margin for entries beginning on June 6, 2012.

- > **Final Determinations:** Commerce is currently scheduled to make its final countervailing determination in August 2012.
- > **Preliminary Antidumping Determination:** Commerce extended the deadline for the preliminary antidumping determination until July 26, 2012.
- > **Additional Information:** For the countervailing duty investigation, Commerce has not yet audited the responses of the Chinese companies and the Chinese government, which may result in increases in countervailing duty margins.
- > **International Trade Commission:** The ITC is concurrently investigating whether the dumped and subsidized imports are causing material injury or threatening to cause material injury. If the ITC finds no material injury or threat of material injury, no duties will be imposed.

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If you are interested in more information on whether your products may be subject to the AD and CVD orders, or on ways to reduce your potential liability, please contact Doug Heffner at [Douglas.Heffner@dbr.com](mailto:Douglas.Heffner@dbr.com) or at (202) 230-5802 or Chris Berendt at [Christopher.Berendt@dbr.com](mailto:Christopher.Berendt@dbr.com) or at (202) 230-5426.

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