

IN THE UNITED STATES COURT OF INTERNATIONAL TRADE

AUXIN SOLAR INC. AND CONCEPT CLEAN ENERGY, INC.,

Plaintiffs,

v.

UNITED STATES; UNITED STATES DEPARTMENT OF COMMERNCE; GINA M. RAIMONDO, SECRETARY OF COMMERCE; UNITED STATES CUSTOMS AND BORDER PROTECTION; AND TROY A. MILLER, UNITED STATES CUSTOMS AND BORDER PROTECTION ACTING COMMISSIONER,

Defendants.

Court. No. 23-00274

Non-Confidential Version

Business Proprietary Information Removed from Brackets at Pages i, 26, and 28.

PLAINTIFFS’ MOTION FOR PRELIMINARY INJUNCTION

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Table of Authorities

	<u>Page(s)</u>
<u>Statutes</u>	
19 U.S.C. § 1318.....	18
19 U.S.C. § 1318(a)	<i>passim</i>
19 U.S.C. § 1504(a)(1)	14
19 U.S.C. § 1581(c)	10
19 U.S.C. § 1677j.....	1-2, 29
28 U.S.C. § 1581(i)	9, 14-16
<u>Regulations</u>	
19 C.F.R. § 101.1	21
19 C.F.R. § 159.11(a).....	26
19 C.F.R. § 351.226	9, 11, 14, 29
19 C.F.R. § 351.226(l)	2, 3, 10
19 C.F.R. § 351.226(l)(2)	6
19 C.F.R. § 351.226(l)(2)(ii)	11, 22
19 C.F.R. § 351.226(l)(3).....	1, 6, 22
19 C.F.R. § 358.103(c)	21
19 C.F.R. § 358.103(c).....	23-24
19 C.F.R. § 358.103(d)	23-24
19 C.F.R. § 361.103(b)(i).....	25
19 C.F.R. § 361.103(b)(ii)	25
19 C.F.R. § 362.102	23-25
19 C.F.R. § 362.103(a)	21, 23, 25
19 C.F.R. § 362.103(b)(1)(iii)	25

NON-CONFIDENTIAL VERSION

19 C.F.R. § 362.103(b)(2)	23
19 C.F.R. § 362.104.....	25
<u>Court Decisions</u>	
<i>Ali v. Federal Bureau of Prisons</i> , 552 U.S. 214 (2008)	20
<i>Aluminum Extrusions Fair Trade Comm. v. United States</i> , 607 F. Supp. 3d 1332 (Ct. Int’l Trade 2022).....	9
<i>Am. Signature, Inc. v. United States</i> , 598 F.3d 816 (Fed. Cir. 2010)	15-16, 30
<i>AM/NS Calvert LLC v. United States</i> , 654 F. Supp. 3d 1324 (Ct. Int’l Trade 2023)	9, 15-16
<i>Biden v. Nebraska</i> , 143 S. Ct. 2355 (2023)	18-19
<i>Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.</i> , 467 U.S. 837 (1984)	18
<i>City of Waukesha v. EPA</i> , 320 F.3d 228 (D.C. Cir. 2003)	24
<i>Deacero S.A. De C.V. v. United States</i> , 817 F.3d 1332 (Fed. Cir. 2016)	2
<i>Guangdong Wireking Housewares & Hardware Co. v. United States</i> , 745 F.3d 1194 (Fed. Cir. 2014)	28
<i>In re Section 301 Cases</i> , 524 F. Supp. 3d 1355 (Ct. Int’l Trade 2021)	<i>passim</i>
<i>Kisor v. Wilkie</i> , 139 S. Ct. 2400 (2019)	18
<i>Nat. Res. Def. Council, Inc. v. Ross</i> , 331 F. Supp. 3d 1338 (Ct. Int’l Trade 2018)	3, 27-28
<i>Neo Solar Power Corp. v. United States</i> , Slip Op. 16-58, 2016 WL 3247553 (Ct. Int’l Trade June 9, 2016)	31
<i>Nielsen v. Preap</i> , 139 S. Ct. 954 (2019)	19
<i>Nken v. Holder</i> , 556 U.S. 418 (2009)	26
<i>Perrin v. United States</i> , 444 U.S. 37 (1979).....	19
<i>Qingdao Taifa Grp. Co. v. United States</i> , 581 F.3d 1375 (Fed. Cir. 2009).....	8
<i>Severstal Export GMBH v. United States</i> , No. 18-057, 2018 WL 1705298 (Ct. Int’l Trade Apr. 5, 2018)	31
<i>Shinyei Corp. of America v. United States</i> , 355 F.3d 1297 (Fed. Cir. 2004)	15-16

NON-CONFIDENTIAL VERSION

<i>Silfab Solar, Inc. v. United States</i> , 892 F.3d 1340 (Fed. Cir. 2018)	8, 17, 26
<i>Sumecht NA, Inc. v. United States</i> , 923 F.3d 1340 (Fed. Cir. 2019)	9, 15-16
<i>Sw. Airlines Co. v. Saxon</i> , 142 S. Ct. 1783 (2022)	19-20
<i>Tung Mung Dev. Co. v. United States</i> , 216 C.I.T. 969 (2002)	2
<i>Ugine & Alz Belg. v. United States</i> , 452 F.3d 1289 (Fed. Cir. 2006)	15-16
<i>Univ. of Tex. v. Camenisch</i> , 451 U.S. 390 (1981)	31
<i>Wind Tower Trade Coal. v. United States</i> , 741 F.3d 89 (Fed. Cir. 2014)	17
<i>Winter v. Natural Res. Def. Council, Inc.</i> , 555 U.S. 7 (2008)	8, 26
<i>Wisconsin Cent. Ltd. v. United States</i> , 138 S. Ct. 2067 (2018)	19
<i>Zenith Radio Corp. v. United States</i> , 710 F.2d 806 (Fed. Cir. 1983)	8, 14
<u>Administrative Determinations</u>	
<i>Final Scope Determination and Final Affirmative Determinations of Circumvention With Respect to Cambodia, Malaysia, Thailand, and Vietnam</i> , 88 Fed. Reg. 57,419 (Aug. 23, 2023)	<i>passim</i>
<i>Preliminary Affirmative Determinations of Circumvention With Respect to Cambodia, Malaysia, Thailand, and Vietnam</i> , 87 Fed. Reg. 75,221 (Dec. 8, 2022)	<i>passim</i>
<u>Other Administrative Materials</u>	
<i>Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Initiation of Circumvention Inquiry on the Antidumping Duty and Countervailing Duty Orders</i> , 87 Fed. Reg. 19,071 (Apr. 1, 2022)	<i>passim</i>
<i>Procedures Covering Suspension of Liquidation, Duties and Estimated Duties in Accord with Presidential Proclamation 10414</i> , 87 Fed. Reg. 56,868 (Sept. 16, 2022) (Final Rule)	<i>passim</i>
<i>Procedures for Importation of Supplies for Use in Emergency Relief Work</i> , 71 Fed. Reg. 63,230 (Oct. 30, 2006) (Final Rule)	29
<i>Proclamation 10414: Declaration of Emergency and Authorization for Temporary Extensions of Time and Duty-Free Importation of Solar Cells and Modules From Southeast Asia</i> , 87 Fed. Reg. 35,067 (June 9, 2022)	<i>passim</i>
<i>Regulations To Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws</i> , 86 Fed. Reg. 52,300 (Sept. 20, 2021) (Final Rule)	2, 29

Other Legislative Materials

H. Doc. 15 (May 9, 1929).....20

S. Rept. 37 (Sept. 4, 1929)20

S. Rep. No. 100-71, 100th Cong., 1st Sess. (1987)2, 29

The Trade Act of 2002, Pub. L. 107-210, § 342 (2002)18

The Trade Facilitation and Trade Enforcement Act of 2015,
Pub. L. 114-125, § 842(d)(2) (2015).....18

The Tariff Act of 1930, Pub. L. 71-361, § 318 (1930)..... 18-19

Court Rules

U.S. Court of International Trade Rule 56.2(a)(4)(A).....9

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

A preliminary injunction is warranted to suspend liquidation of entries of unfairly traded crystalline silicon photovoltaic (“CSPV”) cells and modules that are entering the United States market duty free because of an unlawful and unprecedented regulation specifically promulgated to deny the relief to which U.S. manufacturers of CSPV cells and modules are entitled under law and to provide a tariff holiday to China-linked circumventers operating from Malaysia, Thailand, Vietnam, and Cambodia. *See Final Scope Determination and Final Affirmative Determinations of Circumvention With Respect to Cambodia, Malaysia, Thailand, and Vietnam*, 88 Fed. Reg. 57,419 (Aug. 23, 2023) (“*Final Circumvention Determinations*”). Without a preliminary injunction that suspends liquidation, domestic solar manufacturers may be denied any relief if they prevail in this challenge because, according to Defendants’ recent arguments, entries of unfairly traded CSPV cells and modules will be liquidated and final. Given record levels of import penetration by these unfairly traded imports, the situation facing U.S. CSPV manufacturers is existential.

Under normal operation of law, the U.S. Department of Commerce’s (“Commerce”) finding of unlawful circumvention by Southeast Asian export platforms of existing antidumping and countervailing duty orders on CSPV cells and modules from the People’s Republic of China (“PRC”) *should have* led Commerce to immediately “direct the Customs Service to begin the suspension of liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product not yet suspended, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of initiation of the inquiry until appropriate liquidation instructions are issued.” 19 C.F.R. § 351.226(l)(3); *see also* 19 U.S.C. § 1677j. This would have leveled the playing field for U.S. manufacturers, as Congress intended.

See, e.g., Tung Mung Dev. Co. v. United States, 216 C.I.T. 969, 979 (2002) (paraphrasing Commerce’s recognition that it “has a duty to avoid the evasion of antidumping duties”); S. Rep. No. 100-71, 100th Cong., 1st Sess. (1987) at 99 (“aggressive implementation of {the circumvention statute} by the Commerce Department can foreclose these practices.”). This is because there are existing antidumping and countervailing duty orders on CSPV cells and modules from China, and affirmative circumvention findings constitute confirmation that any merchandise found to be circumventing falls within the scope of those orders. *Regulations To Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*, 86 Fed. Reg. 52,300, 52,338 (Sept. 20, 2021) (“If Commerce ultimately finds that the merchandise is circumventing the order, such merchandise will be determined to be covered by the scope of the order for AD/CVD purposes despite not falling within the physical description of the subject merchandise of the scope of the order.”); *see also, e.g., Deacero S.A. De C.V. v. United States*, 817 F.3d 1332, 1337 (Fed. Cir. 2016) (“In order to effectively combat circumvention of antidumping duty orders, Commerce may determine that certain types of articles are within the scope of a duty order, even when the articles do not fall within the order’s literal scope.”). But Commerce did no such thing. *See Procedures Covering Suspension of Liquidation, Duties and Estimated Duties in Accord with Presidential Proclamation 10414*, 87 Fed. Reg. 56,868 (Sept. 16, 2022) (“*Final Solar Duty Holiday Rule*”). Rather, and as a direct consequence of Defendants’ embrace of Chinese-funded circumvention, Solar Plaintiffs have been, and continue to be, denied relief that is otherwise due by operation of law based upon Commerce’s affirmative *Final Circumvention Determinations*, 19 C.F.R. § 351.226(l), and 19 U.S.C. § 1677j.

Pursuant to Rule 65(a) of the Rules of the U.S. Court of International Trade (“CIT Rules”), Auxin Solar Inc. (“Auxin Solar”) and Concept Clean Energy, Inc. (“CCE”) (hereinafter

collectively “Solar Plaintiffs”), hereby move this Court to enjoin Defendants to preserve the status quo with respect to the products subject to Commerce’s affirmative circumvention determinations until the Court can render its final judgment with respect to the legality of the *Final Solar Duty Holiday Rule*. To be sure, Solar Plaintiffs are not requesting that the Court enjoin the tariff holiday itself, but rather request only a limited injunction against final liquidation. In this regard, Solar Plaintiffs’ request for a limited injunction is like the “statutory injunction” on liquidation entered as a matter of course in appeals of trade remedies determinations. *See* U.S. Court of International Trade Form 24.

Specifically, Solar Plaintiffs move for an injunction suspending liquidation of CSPV cells and modules that should have been subject to suspension of liquidation by operation of 19 C.F.R. § 351.226(l) in connection with Commerce’s circumvention inquiries. *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Initiation of Circumvention Inquiry on the Antidumping Duty and Countervailing Duty Orders*, 87 Fed. Reg. 19,071 (Apr. 1, 2022) (“*Notice of Initiation*”). In the alternative, were this Court to perceive no barrier to ordering the reliquidation of such entries pursuant to a judgment on the merits for Solar Plaintiffs, Solar Plaintiffs instead request that the Court require Defendants to collect data on entries covered by Commerce’s affirmative circumvention determination but not subject to the suspension of liquidation or payment of cash deposits due to the operation of the *Final Solar Duty Holiday Rule*. At present, gaps exist in Commerce’s recordkeeping that will need to be filled in order to preserve this Court’s ability to order effective reliquidation.

Because the law obligates Commerce to suspend liquidation and collect cash deposits in response to an affirmative circumvention determination and the challenged *Final Solar Duty*

Holiday Rule is the only reason Commerce refuses to do so, the present circumstances vis-à-vis liquidation and cash deposits resemble those of an ordinary appeal from an affirmative Commerce determination in an administrative review. By contrast, this situation is entirely distinct from an appeal of a negative determination by either the Commerce Department or U.S. International Trade Commission in an original investigation. There, unlike here, the agency's determination does not trigger automatic suspension liquidation or cash deposit obligations, and an injunction to enjoin liquidation would change the status quo of normal liquidation of entries of imports that the agency had found non-injurious to a domestic industry.

In compliance with CIT Rule 7(f), Solar Plaintiffs contacted counsel for Defendants on December 29, 2023, concerning this motion. On January 5, 2024, Doug Edelschick, counsel for Defendants, indicated that Defendants oppose this motion.

As explained below, Solar Plaintiffs satisfy the standard for issuing a preliminary injunction, insofar as Solar Plaintiffs will suffer irreparable harm absent the requested injunction and are likely to succeed on the merits of their claims. Moreover, the balance of equities and public interest favor Solar Plaintiffs. As such, Solar Plaintiffs respectfully request that this Court issue the requested preliminary injunction.

I. Background

After antidumping and countervailing duty orders were imposed on CSPV cells and modules from the PRC, CSPV cells and modules from Cambodia, Malaysia, Thailand, and Vietnam completely replaced imports from the PRC, increasing from a total value of \$578 million in 2011 to \$5.6 billion in 2021. The ability of CSPV imports from these countries to increase so significantly and so quickly was not just happenstance; rather, it was caused by concerted efforts by Chinese multinationals funded by the PRC to use these countries as export platforms. Yet, because final assembly operations were the only part of the production process

that the Chinese offshored, nearly 100% of the inputs used to assemble CSPV products in these countries were still of Chinese origin.

Given the dire situation this surge of low-priced CSPV imports presented to the U.S. solar manufacturing base, a petition for circumvention inquiries was filed with Commerce. But just two months after Commerce initiated circumvention inquiries, *Notice of Initiation*, 87 Fed. Reg. at 19,071 (Apr. 1, 2022), President Biden took the unprecedented step of declaring an “emergency” to exist under 19 U.S.C. § 1318(a) “with respect to the threats to the availability of sufficient electricity generation capacity to meet expected consumer demand,” *Proclamation 10414: Declaration of Emergency and Authorization for Temporary Extensions of Time and Duty-Free Importation of Solar Cells and Modules From Southeast Asia*, 87 Fed. Reg. 35,067, 35,068 (June 9, 2022) (“*Proclamation 10414*”). Acting out of prescience or just convenience, the President foreordained that the “emergency” would endure for specifically two years, until June 6, 2024. *See id.* Glaringly, despite the ostensible breadth of the “emergency” for electricity generation capacity, the “emergency authority” was limited exclusively to enabling Commerce to “consider taking appropriate action” to permit duty-free imports of “solar cells and modules, exported from the Kingdom of Cambodia, Malaysia, the Kingdom of Thailand, and the Socialist Republic of Vietnam”—*i.e.*, the specific products subject to these circumvention inquiries. *See id.*

Acting in response to *Proclamation 10414*, Commerce quickly prepared a regulation which would broadly absolve CSPV cells and modules imported from Cambodia, Malaysia, Thailand, and Vietnam of any AD/CVD duty liability were Commerce to render affirmative circumvention determinations—the *Final Solar Duty Holiday Rule*. *See* 87 Fed. Reg. at 56,868. Consequently, despite (1) Commerce issuing affirmative *Preliminary Affirmative Circumvention*

NON-CONFIDENTIAL VERSION

Determinations on December 8, 2022, finding that CSPV cells and modules from all four countries were circumventing the antidumping and countervailing duty orders on products from the PRC, and (2) Commerce regulations, 19 C.F.R. § 351.226(l)(2), obligating Commerce to instruct CBP to suspend liquidation and collect cash deposits for such entries, Commerce instead cited the *Final Solar Duty Holiday Rule* as justification for refusing to do so. See *Preliminary Affirmative Determinations of Circumvention With Respect to Cambodia, Malaysia, Thailand, and Vietnam*, 87 Fed. Reg. 75,221, 75,221-27 (Dec. 8, 2022) (“*Preliminary Affirmative Circumvention Determinations*”). Liquidation was not suspended and AD/CVD cash deposits were not collected on any unfairly traded CSPV cells or modules from Cambodia, Malaysia, Thailand, and Vietnam that the *Final Solar Duty Holiday Rule* deemed “Applicable Entries,” essentially any such entries that were certified to be “utilized” within 180 days after the expiration of the purported “emergency.”

Commerce ultimately finalized its circumvention findings on August 23, 2023, reaffirming its basic preliminary conclusion that CSPV cells and modules from Cambodia, Malaysia, Thailand, and Vietnam were, on a countrywide basis, circumventing the antidumping and countervailing duty orders on PRC products. See *Final Circumvention Determinations*, 88 Fed. Reg. at 57,419.¹ Again, Commerce’s regulations obliged it to instruct CBP to suspend liquidation and collect AD/CVD cash deposits on such entries. 19 C.F.R. § 351.226(l)(3). But again, Commerce relied upon the *Final Solar Duty Holiday Rule* in refusing to take these

¹ Commerce identified three companies “found not to be circumventing,” two in Malaysia and one in Vietnam. *Final Circumvention Determinations*, 88 Fed. Reg. at 57,425. Those determinations have been challenged in other actions. See USCIT Ct. Nos. 23-00224, 23-00226. However, because the instant litigation is limited to Commerce’s *Final Solar Duty Holiday Rule*, Solar Plaintiffs do not herein request suspension of liquidation with respect to entries of products completed by the three companies found not to be circumventing.

mandatory steps and perpetuating its unlawful “certification” regime. *See Final Circumvention Determinations*, 88 Fed. Reg. at 57,419-23. Consequently, despite existing antidumping and countervailing duty orders, affirmative findings of circumvention thereof, and Defendants’ clear regulatory obligation to suspend liquidation and collect cash deposits vis-à-vis such entries, this is not being done and domestic CSPV module producers are being denied the protection of the AD/CVD statute, to the detriment of America’s ability to produce solar energy products that could redress the specific “emergency” cited in *Proclamation 10414*. Indeed, after *Proclamation 10414* and the *Final Solar Duty Holiday Rule*, U.S. imports of CSPV cells and modules from the circumventing countries reached unprecedented levels in 2022— \$7.37 billion. And through just 10 months of 2023,² for which official import data are presently available, U.S. imports from the circumventing countries exceeded \$12 billion —double the value that precipitated the filing of the circumvention inquiries in the first place.

Beyond the dire implications of the substantial and significant increase in import volumes precipitated by the *Final Solar Duty Holiday Rule* for the U.S. solar manufacturing base, the *Final Solar Duty Holiday Rule* suffers from legal and procedural infirmities. It exceeds both the bounds of the statute on which *Proclamation 10414* is based, as well as the terms of *Proclamation 10414* itself. Moreover, Commerce’s rushed and untransparent process for promulgating the *Final Solar Duty Holiday Rule* failed to address material comments raised during the notice and comment period, rendering it procedurally flawed. Solar Plaintiffs have a very high likelihood of success in this challenge to Commerce’s embrace of unlawfully traded PRC-linked CSPV cell and module imports. Because no suspension of liquidation is currently

² At the time of filing, official import data published by the U.S. Census Bureau are not presently available for months after October 2023. Data inclusive of November 2023 will be released this week.

occurring and entries are liquidating as final in the normal course, as well as a lack of recordkeeping by Commerce and CBP to permit orderly re-liquidation if Solar Plaintiffs were to prevail, a preliminary injunction enjoining liquidation is needed to maintain the status quo pending judicial review of the *Final Solar Duty Holiday Rule*, and Commerce's acts pursuant thereto.

II. Legal Standard

The Court has discretion to grant a preliminary injunction if (1) plaintiffs are “likely to succeed on the merits,” (2) plaintiffs are “likely to suffer irreparable harm in the absence of preliminary relief,” (3) “the balance of equities tips in {plaintiffs’} favor,” and (4) the provision of interim relief “is in the public interest.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). In assessing these factors, the Court has traditionally employed “a sliding-scale approach: the more the balance of irreparable harm inclines in plaintiff’s favor, the smaller the likelihood of prevailing on the merits he need show in order to get the injunction.” *Qingdao Taifa Grp. Co. v. United States*, 581 F.3d 1375, 1378-79 (Fed. Cir. 2009) (internal quotation marks omitted); see *Silfab Solar, Inc. v. United States*, 892 F.3d 1340, 1345 (Fed. Cir. 2018) (assuming, without deciding, that “sliding-scale jurisprudence remains good law after *Winter*”); *In re Section 301 Cases*, 524 F. Supp. 3d 1355, 1362 (Ct. Int’l Trade 2021) (applying sliding scale approach).³

³ Insofar as this motion is being filed prior to Defendants’ filing an Answer, Solar Plaintiffs are not aware of what defenses Defendants might raise in response to this motion. Plaintiffs reserve their right to seek leave of this Court to file a reply.

III. A Limited Preliminary Injunction Enjoining Liquidation Is Necessary to Preserve the Status Quo Pending Resolution of Solar Plaintiffs' Challenges

A. Solar Plaintiffs Will Suffer Irreparable Harm Absent an Injunction, as Circumventing Entries Will Otherwise Liquidate Duty-Free and Commerce and CBP Lack the Tracing Ability to Ensure Re-liquidation if Solar Plaintiffs Prevail

Irreparable harm is a “viable threat of serious harm which cannot be undone.” *Zenith Radio Corp. v. United States*, 710 F.2d 806, 809 (Fed. Cir. 1983). Solar Plaintiffs launched this action to ultimately obtain a Court Order vacating Commerce’s unlawful *Final Solar Duty Holiday Rule* and enjoining Defendants to implement the actions mandated by 19 C.F.R. § 351.226, including the suspension of liquidation and collection of cash deposits with respect to all entries covered by Commerce’s affirmative preliminary and final circumvention determinations. At present, such entries continue to liquidate with the benefit of unlawful duty-free treatment. In recent cases before this Court brought under 28 U.S.C. § 1581(i), Defendants have challenged this Court’s authority to order reliquidation. *See, e.g., In Re Section 301 Cases*, USCIT Ct. No. 21-52; *AM/NS Calvert LLC v. United States*, USCIT Consol. Ct. No. 21-5. Although Solar Plaintiffs consider Defendant’s position meritless, the breadth of the U.S. Court of International Trade’s authority to order reliquidation “is not yet settled law.” *Aluminum Extrusions Fair Trade Comm. v. United States*, 607 F. Supp. 3d 1332, 1341 n.9 (Ct. Int’l Trade 2022) (discussing the availability of reliquidation in challenges to determinations under the Enforce and Protect Act).

“The threat of liquidation is typically sufficient to demonstrate irreparable harm because liquidation may moot further judicial relief in challenges to administrative proceedings.” *Sumecht NA, Inc. v. United States*, 923 F.3d 1340, 1346 (Fed. Cir. 2019). Here, it is sufficient

that the entries implicated by this action are **not** currently protected from liquidation,⁴ and if this Court or an appellate tribunal were to accept Defendant’s position, it would completely preclude relief as concerns all liquidated entries. The threat is “viable,” and the harm would be “serious.” In a similar but more practical vein, Defendants’ *Final Solar Duty Holiday Rule* has created blind spots obscuring the identity of entries otherwise subject to Commerce’s affirmative preliminary and final circumvention findings. This information is completely inaccessible to Solar Plaintiffs and will become harder for Defendants to obtain with the passage of time. There exists a real threat that Defendants would be unable to identify these entries if the matter were left until the ultimate disposition of this action. Indeed, to the extent Defendants may rely on “administrability” concerns in opposing the relief requested by Solar Plaintiffs, any such difficulties only underscore the need for Defendants to plug the holes in their recordkeeping now—not await the conclusion of this litigation before collecting basic identifying documentation of which entries of CSPV cells and modules should have been suspended because of Commerce’s affirmative circumvention determinations.

⁴ Solar Plaintiffs are aware of nine appeals of Commerce’s circumvention determinations brought under 19 U.S.C. § 1581(c). See USCIT Ct. No. 23-221 (brought by BYD (H.K.) Co. Ltd.), 23-222 (brought by Canadian Solar International Limited), 23-223 (brought by Auxin Solar Inc.), 23-224 (brought by Auxin Solar Inc.), 23-225 (brought by Auxin Solar Inc.), 23-226 (brought by Auxin Solar Inc.), 23-227 (brought by Trina Solar Science & Technology (Thailand) Ltd.), 23-228 (brought by Trina Solar (Vietnam) Science & Technology Co., Ltd.), 23-229 (brought by Red Sun Energy Long An Company Limited). As of the date of filing this motion, no party in these cases has filed a motion for a statutory injunction or a Form 24 proposed order for a statutory injunction upon consent. Plaintiffs’ deadline for such filings lapsed on December 18th (for BYD) or December 21 (for all others). See Rule 56.2(a)(4)(A) (30 days after service of complaint). In any event, given that the universe of foreign plaintiffs is narrower than the universe of foreign producers and exporters subject to Commerce’s affirmative circumvention determinations, there is no possibility that narrow injunctions obtained by foreign plaintiffs in Section 1581(c) proceedings could render the broader preliminary injunction sought in this action redundant.

Thus, irreparable harm is sufficiently “likely” to warrant entry of the limited preliminary injunction that Solar Plaintiffs request.

1. *Solar Plaintiffs Will Be Denied Relief if this Court Is Unable to Order Reliquidation or the Affected Entries Are Not Known*

Solar Plaintiffs contest Defendants’ unlawful failure to abide by the terms of Commerce’s circumvention regulation, 19 C.F.R. § 351.226(l), which requires Commerce to instruct CBP to suspend liquidation and collect cash deposits on entries concerning which Commerce has rendered affirmative circumvention determinations, whether final or preliminary. Although Commerce issued affirmative preliminary **and** final circumvention determinations with respect to CSPV cells and modules completed in Cambodia, Malaysia, Thailand, and Vietnam using parts and components produced in the PRC, *see Final Circumvention Determinations*, 88 Fed. Reg. at 57,419; *Preliminary Affirmative Determinations of Circumvention With Respect to Cambodia, Malaysia, Thailand, and Vietnam*, 87 Fed. Reg. 75,221 (Dec. 8, 2022) (“*Prelim. Circumvention Determinations*”), Commerce declined to take the actions required by 19 C.F.R. § 351.226, stating that its failure to do so is “{p}ursuant to” the *Final Solar Duty Holiday Rule*, *see Final Circumvention Determinations*, 88 Fed. Reg. at 57,421.

Thus, whereas Commerce’s regulations provide that, upon an affirmative preliminary circumvention determination, Commerce will order CBP to suspend liquidation and apply cash deposits to all unliquidated products subject to the circumvention inquiry that were entered on or after the *Notice of Initiation* (April 1, 2022), 19 C.F.R. § 351.226(l)(2)(ii), Commerce never took this step, opting to instead create the patchwork of duty avoidance detailed below. *See Prelim. Circumvention Determinations*, 87 Fed. Reg. at 75,223-25 (*effectuated via ACE Message No. 3041408* (Feb. 10, 2023), attached as **Exhibit 4** to Solar Plaintiffs’ Complaint). Commerce’s *Final Circumvention Determinations* carry forward essentially the same scheme.

There are essentially three paths to duty-free treatment under Commerce’s scheme. In “Group 1,” entries between the date of the *Notice of Initiation* (Apr. 1, 2022) and fourteen days after the *Prelim. Circumvention Determinations* (Dec. 22, 2022) that have finally liquidated enter duty-free without any additional action. *See* ACE Message No. 3041408 at ¶9; *Prelim. Circumvention Determinations*, 87 Fed. Reg. at 75,225; *Final Circumvention Determinations*, 88 Fed. Reg. at 57,422-23.⁵ Notably, a portion of “Group 1” entries entered prior to *Proclamation 10414*’s effective date and well prior to Commerce’s *Final Solar Holiday Rule*.

In “Group 2,” entries between the date of the *Notice of Initiation* (Apr. 1, 2022) and fourteen days after the *Prelim. Circumvention Determinations* (Dec. 22, 2022) that have not finally liquidated should either “complete{} and sign{}” but (but not file) “certifications” that the CSPV products would be used by June 2024, or file a Post Summary Correction to be treated as AD/CVD type entries. *See Prelim. Circumvention Determinations*, 87 Fed. Reg. at 75,225; *Final Circumvention Determinations*, 88 Fed. Reg. at 57,423. Again, a portion of “Group 2” entries entered prior to *Proclamation 10414*’s effective date and well prior to Commerce’s *Final Solar Holiday Rule*. Importantly, neither Commerce’s *Federal Register* publications nor its instructions to CBP appear to clearly specify a date by which *liquidation* must have occurred to qualify for Group 1 rather than Group 2.⁶

⁵ The cutoff date changed from the date of the *Prelim. Circumvention Determinations*, as specified in that decision, *see* 87 Fed. Reg. at 75,225, to fourteen days after the date of the *Prelim. Circumvention Determinations*, as specified in the *Final Circumvention Determinations*, *see* 88 Fed. Reg. at 57,423. No explanation was provided for the change, although the text of the *Final Solar Duty Holiday Rule* certifications appended to both publications references fourteen days after the date of the *Prelim. Circumvention Determinations*. *See, e.g.*, 87 Fed. Reg. at 75,227 (¶N); *Final Circumvention Determinations*, 88 Fed. Reg. at 57,426 (¶N).

⁶ Commerce’s instructions to CBP were not issued until February 10, 2023—over two months after the *Prelim. Circumvention Determinations*. *See* ACE Message No. 3041408 at p.1. The Post Summary Correction provision of Commerce’s instructions simply references “entr{ies
(footnote continued on next page)

Finally, in “Group 3,” entries after the Group 1 and Group 2 cutoff date and before the expiration of the *Final Solar Duty Holiday Rule* provisions (June 5, 2024) must either file “certifications” that CSPV products would be used by June 2024, whereupon they “will not be subject to suspension of liquidation, or...cash deposit requirements...,” or declare as AD/CVD entries.⁷ *See Prelim. Circumvention Determinations*, 87 Fed. Reg. at 75,225; *Final Circumvention Determinations*, 88 Fed. Reg. at 57,422-23. Solar Plaintiffs summarize this complicated patchwork below:

Group	Entry Date	Status of Entry as of Some Indefinite Time⁸	What Happens
1	April 1, 2022 – Dec. 22, 2022	Liquidated	Liquidation by operation of law; no certification requirement
2	April 1, 2022 – Dec. 22, 2022	Unliquidated	Liquidation by operation of law and maintain (not file) certification of use by Jan. 22, 2023; otherwise, AD/CVD applies.
3	Dec. 23, 2022 – June 5, 2024	Irrelevant	Liquidation by operation so long as certification of use filed with CBP as part of entry package; otherwise, AD/CVD applies

that} ha{ve} not been liquidated (and entries for which liquidation has not become final).” *Id.* at ¶9. Although it would be entirely arbitrary, this wording seems to make the message date the cutoff for liquidation in order to qualify for Group 1.

⁷ Entry documentation provided to CBP must specify an entry “type.” Entries not subject to an AD/CVD order or provisional measures are generally specified as “Type 01.” Entries subject to an AD/CVD order or provisional measures, including products subject to affirmative circumvention determinations, must instead select “Type 03” and identify the relevant AD/CVD case number. Thus, for Type 03 entries, counsel’s understanding is that CBP can easily identify and access entry data with respect to each AD/CVD case number.

⁸ Commerce has never stated by which date liquidation ought to have occurred for an entry to be within Group 1. Logically this date should be the date of the preliminary determination as that is when Commerce published the first iteration of its certification regime, but because Commerce does not say, any importer could ostensibly wait for liquidation to occur and thereby cause their entry to fall into Group 1 rather than Group 2 and avoid recordkeeping requirements.

Commerce's approach presents two problems which occasion Solar Plaintiffs' request for a Preliminary Injunction, due to the threat of irreparable harm. *First*, Group 2 and Group 3 entries will be permitted to liquidate on an ongoing basis. By normal CBP procedures and operation of law, this will occur one year after the date of entry, *see* 19 U.S.C. § 1504(a)(1),⁹ meaning that the vast majority of Group 2 entries have liquidated or are presently liquidating, and Group 3 entries are beginning to liquidate now. If, as Defendants have recently argued in other proceedings before this Court, this Court lacks authority to order reliquidation in connection with this 28 U.S.C. § 1581(i) action, then Solar Plaintiffs will be irreparably harmed by the denial of meaningful judicial review for each entry that liquidates without concomitant duties paid. *See, e.g., Zenith Radio Corp. v. United States*, 710 F.2d 806, 810 (Fed. Cir. 1983) ("liquidation would indeed eliminate the only remedy available to Zenith for an incorrect review determination by depriving the trial court of the ability to assess dumping duties on Zenith's competitors in accordance with a correct margin on entries in the '79-'80 review period.... Zenith's statutory right to obtain judicial review of the determination would be without meaning...").

Second, because Commerce has not collected certifications with respect to any Group 1 or 2 entries, Commerce lacks the data necessary to identify the Group 1 and 2 entries that would, but for Commerce's unlawful *Final Solar Duty Holiday Rule*, be subject to the cash deposit and suspension of liquidation requirements set forth in 19 C.F.R. § 351.226. Without even knowing which entries comprise Group 1 and Group 2, Defendants will be unable to take remedial action with respect to any such entries as may be ordered reliquidated by this Court, and such

⁹ The liquidation period may be extended or truncated in certain circumstances. *See, e.g.,* 19 U.S.C. § 1504(b)(2).

information will become harder to obtain as time marches on during the pendency of this litigation. Insofar as the entries are those of Solar Plaintiffs' competitors, Solar Plaintiffs cannot obtain this information on their own. In addition, insofar as suspension of liquidation is ordered, Defendant must first identify any affected Group 2 entries before adequately suspending liquidation, which it cannot do with its current records. As with the liquidated entries, Solar Plaintiffs will be denied meaningful judicial review of each entry that cannot be identified because of holes in Defendants' recordkeeping. "The denial of judicial review is irreparable harm." *In re Section 301 Cases*, 524 F. Supp. 3d at 1363.

2. *Defendants' Recent Contentions Before this Court that Reliquidation Is Not Available In Actions Like the Case at Bar Makes Irreparable Harm With Respect to Liquidation "Likely"*

Defendants have, in recent actions before this Court, taken the position that reliquidation is unavailable in actions invoking jurisdiction pursuant to 28 U.S.C. § 1581(i). *See In re Section 301 Cases*, 524 F. Supp. 3d at 1362-66 ("the Government fails to meaningfully dispute that liquidation will cause harm that cannot be undone and instead argues that any unlawfully collected duties would be forever unrecoverable"); *AM/NS Calvert LLC v. United States*, 654 F. Supp. 3d 1324, 1340 (Ct. Int'l Trade 2023) ("The government argues that the court lacks authority to order Commerce to instruct Customs to reliquidate entries in all cases brought under this court's residual § 1581(i) jurisdiction").

In these appeals, Defendants' basic contention is that the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit") has taken a strict view of the CIT's statutory authority to order reliquidation through a narrow holding in *Shinyei*, as clarified by subsequent decisions in *Ugine*, *American Signature*, and *Sumecht*. Thus, Defendants have argued, this strict view precludes the CIT from ordering reliquidation in an action, such as this, brought under 28 U.S.C. § 1581(i). *See, e.g., In re Section 301 Cases*, 524 F. Supp. 3d at 1364-65 (discussing the reading

of these cases espoused by the Government); *see also Shinyei Corp. of America v. United States*, 355 F.3d 1297, 1312 (Fed. Cir. 2004), *Ugine & Alz Belg. v. United States*, 452 F.3d 1289, 1297 (Fed. Cir. 2006) (“the question of the scope of *Shinyei* is a difficult one, for which the resolution is not obvious....Rather than deciding the scope of *Shinyei* in a preliminary injunction context,...we conclude that the issue is sufficiently complex that we should resolve it only in a setting in which it has been litigated by the parties and decided by the trial court”); *Am. Signature, Inc. v. United States*, 598 F.3d 816, 829 (Fed. Cir. 2010) (“{T}he possibility of *Shinyei* relief does not defeat {plaintiff}’s claim of irreparable harm....{T}he availability of *Shinyei* relief to {plaintiff} is uncertain.”); *Sumecht NA, Inc. v. United States*, 923 F.3d 1340, 1348 (Fed. Cir. 2019) (“neither {*Ugine* nor *Am. Signature*} is a model of clarity for establishing when *Shinyei* relief may be unavailable in § 1581(i) actions challenging Commerce’s liquidation instructions...”).

This Court has been divided on the substantive merits of Defendant’s arguments. *Compare, e.g., In re Section 301 Cases*, 524 F. Supp. 3d at 1362 (finding “sufficient uncertainty as to the availability of {reliquidation} relief under *Shinyei Corp.*”), *with AM/NS Calvert*, 654 F.Supp.3d at 1348 (“The relevant question under *Shinyei* is...whether some other statute ‘impliedly forbid{s}’ the reliquidation relief sought....{I}n any APA case properly brought under this court's residual § 1581(i) jurisdiction, no other statute can be ‘addressed to the type of grievance which the plaintiff seeks to assert.’”). However, in the only opinion addressing the question in the context of a motion for preliminary injunction, the majority found the question sufficiently serious to constitute irreparable harm. *See In re Section 301 Cases*, 524 F. Supp. 3d at 1363 (“The potential unavailability of reliquidation or refund in this case sufficiently demonstrates irreparable harm.”); *but see id.* at 1372-83 (Barnett, C.J., dissenting) (finding “no

more than a remote chance that the appellate court would find that this court is not empowered to provide relief with respect to any liquidated entries”). Indeed, the fact of such disagreement among the learned Judges of this Court demonstrates the real potential that Solar Plaintiffs could be denied relief vis-à-vis liquidated entries absent an injunction. Thus, while Solar Plaintiffs concur in substance with interpretations finding that this Court *does* possess authority to order reliquidation in connection with Solar Plaintiffs’ action if Solar Plaintiffs prevail, such as that set forth in *AM/NS Calvert*, 654 F.Supp.3d at 1340-49, Solar Plaintiffs nevertheless recognize the existence of Defendants’ competing view, and a meaningful possibility that competing view might be accepted by a Judge of this Court or an appellate tribunal. As such, consistent with the majority opinion in *In re Section 301 Cases*, Solar Plaintiffs submit that the liquidation of entries subject to Solar Plaintiffs’ action poses likely irreparable harm absent a preliminary injunction.

B. Solar Plaintiffs Are Likely to Succeed on the Merits, as the Unprecedented *Final Solar Duty Holiday Rule* Violates the Underlying Statute; Commerce Also Failed to Observe APA Procedures and Otherwise Exceeded the Bounds of the Presidential Proclamation Granting Authority to Commerce to Act

“{T}he party seeking the injunction must be able to ‘demonstrate that it has at least a fair chance of success on the merits for a preliminary injunction to be appropriate.’” *Silfab Solar, Inc. v. United States*, 892 F.3d 1340, 1345 (Fed. Cir. 2018) (quoting *Wind Tower Trade Coal. v. United States*, 741 F.3d 89, 96 (Fed. Cir. 2014)). Solar Plaintiffs bring three main challenges under the Administrative Procedure Act and Declaratory Judgment Act to Commerce’s *Final Solar Duty Holiday Rule*, all of which are likely to succeed on the merits. As such, the preliminary injunction standard is readily met.

To summarize what is detailed in Solar Plaintiffs’ Complaint, Defendants’ duty holiday for circumventing CSPV cells and modules exceeds the authority conferred by 19 U.S.C. § 1318(a), the statute relied upon to promulgate the *Final Solar Duty Holiday Rule*. And even if

CSPV cells and modules were theoretically within the scope of that statute, the *Final Solar Duty Holiday Rule* nevertheless contravenes the statute and the President’s conferral of authority by extending duty relief outside the bounds of “emergency relief.”

1. *CSPV Cells and Modules Are Not Food, Clothing, Medical or Surgical Supplies, or Even Remotely Akin to Such Products, and Thus Fall Outside the Bounds of 19 U.S.C. § 1318(a)*

19 U.S.C. § 1318 became law in 1930 and Congress has never altered the subsection at issue in this appeal.¹⁰ See Tariff Act of 1930, Pub. L. 71-361, § 318, 46 Stat. 590, 696. Thus, since its inception, Section 1318(a) has permitted duty-free importation for “food, clothing, and medical, surgical, and other supplies for use in emergency relief work.” By extending duty-free treatment to CSPV cells and modules — which are neither food, clothing, nor medical, surgical, and other supplies — Commerce’s *Final Solar Duty Holiday Rule* plainly exceeds the bounds of what Section 1318(a) authorizes. Nor is Commerce’s interpretation of CSPV products as food, clothing, or medical supplies due any deference under the Supreme Court’s framework in *Chevron*, because the language of the statute is clearly contrary on its face. See *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 & n.9 (1984). Furthermore, Courts are obliged to exhaust “all the traditional tools of construction” before concluding that “genuine ambiguity” exists in a statute. *Kisor v. Wilkie*, 139 S. Ct. 2400, 2415 (2019). Here, the statute’s plain language and traditional tools of statutory construction admit of no ambiguity that Commerce’s *Final Solar Duty Holiday Rule* departs from Congressional intent.

¹⁰ 19 U.S.C. § 1318 has been amended only twice since originally becoming law in 1930. The Trade Act of 2002 created a new subsection (b) that concerns service hours at customs offices during times of declared emergencies and is not relevant to this action. See Pub. L. 107-210, § 342 (2002). The Trade Facilitation and Trade Enforcement Act of 2015 deemed references to the “Commissioner of Customs” or the “Commissioner of the Customs Service” to designate the Commissioner of U.S. Customs and Border Protection. See Pub. L. 114-125, § 842(d)(2) (2015).

To begin with, as the Supreme Court has recently reaffirmed, the words of a statute must be given their ordinary meaning. *See Biden v. Nebraska*, 143 S. Ct. 2355, 2368 (2023) (“statutory permission to ‘modify’ does not authorize ‘basic and fundamental changes in the scheme’ designed by Congress. Instead, that term carries ‘a connotation of increment or limitation,’ and must be read to mean ‘to change moderately or in minor fashion.’”) (internal citations omitted). Moreover, “it’s a ‘fundamental canon of statutory construction’ that words generally should be ‘interpreted as taking their ordinary, contemporary, common meaning...at the time Congress enacted the statute.’” *Wisconsin Cent. Ltd. v. United States*, 138 S. Ct. 2067, 2074 (2018) (quoting *Perrin v. United States*, 444 U.S. 37, 42 (1979)). It is beyond cavil that the CSPV cells and modules given duty free treatment by Commerce’s *Final Solar Duty Holiday Rule*, see 87 Fed. Reg. at 56,872, are not “food,” nor “clothing,” nor “medical supplies,” nor “surgical supplies” as those terms are ordinarily understood today. And given that CSPV cells and modules, the first practical device for converting solar energy to electricity, would not be invented until 1954, see **Exhibit 1** (E. Chu and D. Tarazano, “A Brief History of Solar Panels,” *Smithsonian Magazine* (2018); A. Chodos, ed., “April 25, 1954: Bell Labs Demonstrates the First Practical Silicon Solar Cell,” *American Physical Society News* (Apr. 2009)), it is impossible that such products could have been commonly understood to meet the definition of “food,” “clothing,” “medical supplies,” or “surgical supplies” in 1930, see *Tariff Act of 1930*, Pub. L. 71-361, § 318, 46 Stat. 590, 696.

It necessarily follows that the general term “other supplies” likewise cannot encompass CSPV cells and modules. *See* 19 U.S.C. § 1318(a). “{T}he rules of grammar govern statutory interpretation unless they contradict legislative intent or purpose.” *Nielsen v. Preap*, 139 S. Ct. 954, 965 (2019). Here, the general term “other supplies” comes at the end of a three-part list set

off by a comma and the word “and”—“medical, surgical, and other supplies.” The *ejusdem generis* canon of interpretation requires that “other supplies” be something akin to medical & surgical supplies. See, e.g., *Sw. Airlines Co. v. Saxon*, 142 S. Ct. 1783, 1789 (2022) (“the *ejusdem generis* canon, which instructs courts to interpret a ‘general or collective term’ at the end of a list of specific items in light of any ‘common attribute{s}’ shared by the specific items.”) (quoting *Ali v. Federal Bureau of Prisons*, 552 U.S. 214, 225 (2008)). There is not even the remotest possibility that Congress in 1930 considered then-nonexistent CSPV cells and modules, see **Exhibit 1**, to share a common attribute with “medical supplies” or “surgical supplies” of the day. And, for the avoidance of doubt, the very limited legislative history merely summarizes the statutory language. See H. Doc. 15 (May 9, 1929) at 334 (House Ways & Means Committee comparative print of H.R. 2667 and Tariff Act of 1922 describes Section 318 as “upon the proclamation by the President of the existence of an emergency....{P}ermit{ting} the free importation of food, clothing and supplies for use in relief work in connection with any such emergency.”); see also generally S. Rept. 37 (Sept. 4, 1929) (Senate Finance Committee report on H.R. 2667 does not discuss Section 318). Therefore, even assuming the legislative history could be construed as anything other than mimicking the statutory text, yet-to-be invented CSPV cells and modules do not constitute “other supplies” within the 1930s meaning of 19 U.S.C. § 1318(a) and Commerce’s efforts to enact a duty holiday for these products falls well outside the bounds of what Congress intended to authorize under 19 U.S.C. § 1318(a).

2. *Commerce’s Final Solar Duty Holiday Rule Violates 19 U.S.C. § 1318(a) and the Explicit Terms of Proclamation 10414 by Granting Duty-Free Treatment to Products Imported Before the Emergency*

The statute permits duty-free “importation” only where certain preconditions are met, including “{w}henever the President shall by proclamation declare an emergency to exist...” 19 U.S.C. § 1318(a). Yet, Commerce’s *Final Solar Duty Holiday Rule* expressly applies to CSPV

cells and modules “that entered the United States both before and after the signing of the Proclamation,” and waives any potential duty liability until “the Date of Termination (defined as June 6, 2024, or the date the emergency described in Presidential Proclamation 10414 has been terminated, whichever occurs first).” 87 Fed. Reg. at 56,869-70 (emphasis supplied); *see also* 19 C.F.R. § 362.103(a). This not only violates an express prerequisite of 19 U.S.C. § 1318(a), it exceeds the terms of Proclamation 10414 itself, which specifically purported to empower Commerce to consider allowing duty-free “importation” of certain CSPV cells and modules from Cambodia, Malaysia, Thailand, and Vietnam “until 24 months after the date of this proclamation or until the emergency declared herein has terminated, whichever occurs first.” 87 Fed. Reg. at 35,068 (emphasis supplied); *see also Final Solar Duty Holiday Rule*, 87 Fed. Reg. at 56,869 (quoting the same). Moreover, duty-free treatment of certain post-emergency entries finds no support in the statute, Commerce’s other Section 318 regulations, 19 C.F.R. §§ 358.103(a), (a)(1), or *Proclamation 10414*.

Insofar as the *Final Solar Duty Holiday Rule* attempts to grant duty-free treatment to products imported before June 6, 2022, the *Final Solar Duty Holiday Rule* violates the plain text of 19 U.S.C. § 1318(a) and is *ultra vires* of *Proclamation 10414*. The “Date of Importation” is defined for customs purposes as “the date on which the vessel arrives within the limits of a port in the United States with intent then and there to unlade such merchandise.” 19 C.F.R. § 101.1; *see also id.* §§ 101.1, 141.68 (defining “Date of Entry” by reference to various post-arrival activities); *Final Solar Duty Holiday Rule*, 87 Fed. Reg. at 56,877 & n.58 (quoting 19 C.F.R. § 351.212(a)) (Commerce’s own Preamble quoting a regulation stating that duty assessment occurs “after merchandise is imported”).

Commerce's *ultra vires* action has consequences for several months of entries. Because Commerce published notice of its initiation of anti-circumvention inquiries on April 1, 2022, *see Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Initiation of Circumvention Inquiry on the Antidumping Duty and Countervailing Duty Orders*, 87 Fed. Reg. 19,071, 19,071 (Apr. 1, 2022), Commerce's issuance of affirmative preliminary circumvention determinations *should have* occasioned by operation of law "the suspension of liquidation and require a cash deposit of estimated duties...for each unliquidated entry of the product...on or after the date of the publication of the notice of initiation of the circumvention inquiry." 19 C.F.R. § 351.226(l)(2)(ii); *see also id.* § 351.226(l)(3) (same following final affirmative circumvention determinations). Only Commerce's unlawful and unilateral expansion of duty-free treatment to pre-emergency dates in its *Final Solar Duty Holiday Rule* prevented it from implementing its regulatory obligation. Thus, products imported before June 6, 2022, and entered on or after April 1, 2022, were unlawfully given duty-free treatment.

3. *Commerce's Final Solar Duty Holiday Rule Violates 19 U.S.C. § 1318(a) by Granting Duty Free Treatment to Products Not Actually Used In Emergency Relief Work.*

Even assuming CSPV cells and modules come within the ambit of 19 U.S.C. § 1318(a), a point Solar Plaintiffs contest, duty-free importation applies only to certain specified products "for use in emergency relief work." Thus, if a product is not "use{d} in emergency relief work," duty free importation thereof is not authorized by 19 U.S.C. § 1318(a). Commerce's *Final Solar Duty Holiday Rule* violates this prerequisite in three major respects. *First*, it permits products granted duty-free treatment to be utilized after the conclusion of the purported emergency. *Second*, it unreasonably defines "utilization" in emergency relief work in terms that afford no actual relief for the emergency specifically identified in *Proclamation 10414*. And *third*,

Commerce's preclusion of suspension of liquidation and its weak *post-hoc* "certification" regime are unreasonable means of ensuring that products are used in emergency relief, as the statute requires. Any one of these faults renders the *Final Solar Duty Holiday Rule* unlawful.

Turning to the first of these, Commerce's *ad hoc* rule fixes the "Date of Termination" of the emergency as a deadline for all entries, and then provides an additional 180 days *after the emergency has ended* for those products to be used. See *Final Solar Duty Holiday Rule*, 87 Fed. Reg. at 56,869; 19 C.F.R. §§ 362.102, 362.103(a) (definition of "Applicable Entries" and "Utilization Expiration Date"). Commerce essentially rewrites *Proclamation 10414* to extend the length of the emergency by at least 25% beyond the two years specified by President Biden in *Proclamation 10414*. Indeed, if President Biden were to declare the "emergency" to be over today, Commerce's regulations then provide that duty-free treatment may nevertheless apply "after the Date of Termination." See 19 C.F.R. § 362.103(b)(2).

Commerce's *ad hoc* rule unlawfully grants duty-free treatment intended for products "for use in emergency relief work" to products that are not put to use until *after* the emergency has already been relieved, *i.e.*, ended. By definition, "emergency relief work", is only possible during an "emergency." And 19 U.S.C. § 1318(a) commits "declar{ation of} an emergency to exist" to the President's sole discretion. Commerce itself acknowledged as much. See *Final Solar Duty Holiday Rule*, 87 Fed. Reg. at 56,872 ("declaration of {an} emergency is committed by section 318 to the President's discretion"). Thus, Commerce's attempt to extend the emergency period beyond its termination and thereby override the President is *ultra vires* and unlawful. In addition, Commerce's extension is inconsistent with Commerce's Preamble to the *Final Solar Duty Holiday Rule* itself, insofar as Commerce acknowledges that "section 318 extends to any duty that may result from {circumvention} inquiries that would otherwise apply

NON-CONFIDENTIAL VERSION

before the period of emergency concludes.” *Final Solar Duty Holiday Rule*, 87 Fed. Reg. at 56,871 (emphasis supplied). Notably, Commerce’s preexisting regulations governing duty-free treatment under 19 U.S.C. § 1318(a) set forth a default requirement that goods benefiting from a duty waiver enter the United States within 60 days of approval and be used in emergency relief work. *See* 19 C.F.R. § 358.103(c)–(d). The *Final Solar Duty Holiday Rule* unlawfully jettisons this requirement contrary to statute and *Proclamation 10414* without any analysis or reasoned rulemaking.

Regarding the second fundamental shortcoming, *Proclamation 10414* defines the “emergency” as U.S. “electricity generation capacity,” 87 Fed. Reg. at 35,068. Yet, Commerce’s new regulations and its certifications define emergency “utilization” as CSPV cells or modules simply being “used or installed in the United States.” 19 C.F.R. § 362.102 (definition of “Utilization”); Message No. 3041408 (Feb. 10, 2023) at ¶14a(F)5. This definition is inadequate as a matter of law, insofar as a CSPV cell or module could easily be “installed” without actually contributing anything to U.S. “electricity generation capacity to serve expected consumer demand,” *e.g.*, by being fixed into place but not connected to the electricity grid and thus unusable by any “consumer.” This is a very real concern, insofar as Commerce was informed that import duties were far less of an impediment to solar energy deployment than the lack of infrastructure needed to connect solar panels to the grid such that electricity could be generated and transmitted to consumers through the grid. *See, e.g.*, Auxin Solar Comments in Opposition to Proposed Solar Duty Holiday Rule at 41 (Exhibit 2). That Commerce failed to account for the foregoing aspect of the declared “emergency” is arbitrary, renders its definition of “use in emergency relief work” inconsistent with both *Proclamation 10414* and 19 U.S.C. § 1318(a),

and constitutes an unlawful failure to “respond in a reasoned manner to {comments} that raise significant problems.” *City of Waukesha v. EPA*, 320 F.3d 228, 257 (D.C. Cir. 2003).

As for the third fundamental issue, Commerce’s *Final Solar Duty Holiday Rule* is notably silent as to how it would meaningfully enforce the requirement on importers that duty-free CSPV cell and module imports be “utilized” in relief of the declared “emergency” before a certain date, *see* 19 C.F.R. § 362.102 (definitions of “Utilization” and “Applicable Entry”); *id.* § 362.103(a), while also precluding CBP from suspending liquidation of those CSPV cells and modules, *see id.* § 361.103(b)(i)-(ii). Insofar as CBP is supposedly instructed to suspend liquidation of CSPV cells and modules that are “not Applicable Entries,” *i.e.*, not yet “Utilized,” then it would appear that CBP must suspend all entries until their qualifying use has been confirmed in some form or fashion, *see* 19 C.F.R. § 362.103(b)(1)(iii). But Commerce’s new regulations require no such confirmation. *See id.* § 362.104 (permitting “certifications,” but providing no detail). All that Commerce’s certification regime actually requires is a vague promise by the importer that the duty-free CSPV cells or modules will be “utilized” by Commerce’s unlawful, post-“emergency” deadline. *See Preliminary Affirmative Determinations of Circumvention*, 87 Fed. Reg. at 75,227 (¶(F)5); *Final Affirmative Determinations of Circumvention*, 88 Fed. Reg. at 57,426 (¶(F)6) (same); Message No. 3041408 (Feb. 10, 2023) at ¶¶14a(F)5. But importers are often not installers, a disconnect between the party Commerce is requiring to certify (importers) and the party who actually determines end use (installers) that Commerce has failed to grapple with at all.

It is telling that Commerce claims merely “encouraging imports” somehow “provide{s} relief to this emergency.” *Final Solar Duty Holiday Rule*, 87 Fed. Reg. at 56,872. Given the putative length of this “emergency” (plus Commerce’s unlawful 180-day add-on), a CSPV cell

or module could enter the United States in December 2022, liquidate by operation of law one year later, *see* 19 C.F.R. § 159.11(a), never be “use{d} in emergency relief work,” 19 U.S.C. § 1318(a), but instead sit stockpiled in a warehouse well after the expiration of the “emergency.” Such a CSPV cell or module would thus benefit from duty-free treatment in contravention of the requirements of 19 U.S.C. § 1318(a) and neither Commerce nor CBP would have any way to redress the failure of the importer to pay duties. Indeed, in this scenario, the U.S. importer would not have any reason to know that its certification of timely use would end up being untrue.

The only justification Commerce provides for its haphazard and unworkable rulemaking is a supposed need for “market certainty,” *see Final Solar Duty Holiday Rule*, 87 Fed. Reg. at 56,878, but this is wholly speculative and outside the bounds of any lawful consideration under 19 U.S.C. § 1318(a), which was designed to facilitate “emergency relief work,” not for Commerce to intervene in the U.S. market to Commerce’s liking and provide a windfall for unfairly traded imports.

In sum, the claims set forth above and the additional claims detailed in Solar Plaintiffs’ Complaint establish “at least a fair chance” that Solar Plaintiffs will succeed on the merits in this action. *Silfab Solar*, 892 F.3d at 1345. As such, the narrow preliminary injunction sought by Solar Plaintiffs is appropriate.

C. The Balance of Equities and the Public Interest Favor Solar Plaintiffs, Who Will Otherwise Be Left to Suffer the Consequences of Unmitigated Circumvention, Including CSPV Modules Being Dumped []

“Once an applicant satisfies the first two {*Winter*} factors, the traditional stay inquiry calls for assessing the harm to the opposing party and weighing the public interest. These factors merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009). This Court has found that a request for “narrow relief, the suspension of liquidation” reduces the

Government's burden because it "will not lose any revenue" and "the court can fashion an injunction which allows the Government to minimize {any administrative} burden." *See In re Section 301 Cases*, 524 F. Supp. 3d at 1370. These observations apply with even greater force to Solar Plaintiffs' motion. The requested injunction is narrowly tailored to preserve the status quo pending litigation, and/or to safeguard government revenue by requiring Defendants to collect information necessary to identify entries that should have been assessed cash deposits because of Commerce's affirmative circumvention determinations.

Moreover, Defendants will suffer no harm beyond "routine administrative costs" associated with their compliance with any order to suspend liquidation of the entries at issue and gather data with respect to Group 1 and Group 2 entries; routine tasks that Defendants regularly undertake. *See Nat. Res. Def. Council, Inc. v. Ross*, 331 F. Supp. 3d 1338, 1369, 1371 n.22 (Ct. Int'l Trade 2018). The volume of entries at issue is far less, for example, than the entries implicated by *In re Section 301 Cases*. *See* 524 F. Supp. 3d at 1358 (noting "approximately 3,600 cases" and "millions of entries"). Moreover, the products at issue fall within a narrow group of just sixteen HTSUS subheadings. *See, e.g., Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Antidumping Administrative Review, and Preliminary Determination of No Shipments; 2021-2022*, 89 Fed. Reg. 457, 458 (Jan. 4, 2024) (listing HTSUS subheadings implicated by the AD order).

By contrast, absent the requested injunction Solar Plaintiffs would lose the ability to correct the immense economic harm wrought by Defendants' ongoing failure to mitigate large-scale circumvention of the antidumping and countervailing duty orders on certain CSPV cells and modules from the PRC. Because of Defendants' failure to suspend liquidation and assess cash deposits on these entries, circumventing CSPV modules imported from Cambodia,

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Malaysia, Thailand, and Vietnam are presently entering the United States at prices per kilowatt []. *See* Complaint at Exhibits 5-6.

According to the most recent import data available from the U.S. Census Bureau at the time of filing, the volume of circumventing CSPV modules being imported is larger than ever before, with Cambodia, Malaysia, Thailand, and Vietnam having significantly exceeded their full-year 2022 import volume in the first ten months of 2023 and more than doubled their volume when compared to the prior year-to-date period.¹¹ *See Exhibit 2*. The acute market pressure caused by the [] low CSPV module prices and rampant increase in volumes during 2023 led Solar Plaintiffs to conclude that they had no choice but to challenge the unlawful *Final Solar Duty Holiday Rule* before this Court. Suspension of liquidation would signal that any unlawful act by Defendants can ultimately be remedied. Conversely, absent an injunction, foreign producers and importers will be able to circumvent with impunity, so long as their entry liquidates. The timing of Solar Plaintiffs' motion coincides with the commencement of liquidation by normal operation of law for those imports that started the 2023 surge of circumventing CSPV cells and modules (*i.e.*, one-year after entry). Official import data through October 2023 corroborated the anecdotal pain of having recent orders rejected in favor of artificially low import prices, which precipitated Solar Plaintiffs' filing of this action.

As this Court has recognized, “when weighing the factors for a preliminary injunction, {it} should be guided by Congress’ purpose in enacting the underlying statute.” *Nat. Res. Def.*

¹¹ 17,198,906,001 watts of CSPV modules were imported from these four countries between January and October 2022, as compared to 36,122,558,937 watts from these four countries between January and October 2023. These four countries accounted for 79.72% of all CSPV module import volumes between January and October 2023. *See Exhibit 2*. Neither CBP nor the U.S. Census Bureau make company-specific import data available to the public, precluding a more detailed analysis.

Council, 331 F. Supp. 3d at 1369 (citing *Tennessee Valley Auth. v. Hill*, 437 U.S. 153, 184-88 (1978)). The Federal Circuit has confirmed that, as part of their remedial nature, the AD and CVD laws serve the “specific purpose... to level the playing field for particular American manufacturers.” *Guangdong Wireking Housewares & Hardware Co. v. United States*, 745 F.3d 1194, 1206 (Fed. Cir. 2014). More specifically, the purpose of the circumvention statute, 19 U.S.C. § 1677j, is “to prevent certain forms of circumvention and diversion that are being practiced by foreign producers to avoid antidumping and countervailing duties” and Congress specifically stated that “aggressive implementation of {the circumvention statute} by the Commerce Department can foreclose these practices.” S. Rep. No. 100-71, 100th Cong., 1st Sess. (1987) at 99, 101. In promulgating its implementing regulation, 19 C.F.R. § 351.226, Commerce expressly recognized that “effect{ing} foreign exporters’ behavior” was a matter of “having to pay additional cash deposits and duties on those {circumventing} exports when they are imported,” and characterized the purpose of its new regulation as “to create new enforcement tools for Commerce to address circumvention and evasion of trade remedies...allow {ing} Commerce to better fulfill the Congressional intent behind the AD/CVD laws—namely, to remedy the injurious effects of unfairly traded imports.” See *Regulations To Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*, 86 Fed. Reg. 52,300, 52,303, 52,338 (Sept. 20, 2021) (Final Rule). Notably, these statements were published less than six months before Commerce initiated the very circumvention inquiries whose cash deposits were neutralized by the *Final Solar Duty Holiday Rule*. Compare *id.* at 52,300 (Sept. 20, 2021), with *Notice of Initiation*, 87 Fed. Reg. 19,071 (Apr. 1, 2022).

Indeed, even with respect to the statute underpinning the *Final Solar Duty Holiday Rule*, 19 U.S.C. § 1318(a), Commerce previously reaffirmed its commitment “to strong enforcement of

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the U.S. trade laws” and pledged to “do everything within the parameters prescribed by Congress to ensure that domestic industries obtain effective relief from dumped and subsidized imports.” *Procedures for Importation of Supplies for Use in Emergency Relief Work*, 71 Fed. Reg. 63,230, 63,230 (Oct. 30, 2006) (Final Rule). Defendants’ across-the-board duty holiday for circumventing CSPV cells and modules from Cambodia, Malaysia, Thailand, and Vietnam directly undercuts these purposes, and underscores the importance of maintaining the status quo pending judicial review of the lawfulness of Defendants’ actions.

Any administrability concerns raised by Defendants should be dismissed because Defendants are empowered to collect information to comply with a Court order to suspend liquidation of circumventing CSPV cells and modules that are entering duty-free because of the *Final Solar Duty Holiday Rule*. Specifically, CSPV cells and modules enter the United States under specific subheadings in the Harmonized Tariff Schedule of the United States (“HTSUS”). In addition to the HTSUS tariff classification, importers must also provide on every CBP Form 7501 the country of origin and manufacturer identification. Each “entry package” includes additional information on the commercial invoice, bill of lading, and packing list. Thus, for each entry of CSPV cells and modules correctly classified under a specific HTSUS subheading, Defendants know the country of origin and the manufacturer. Using the Automated Commercial Environment (“ACE”), Defendants can easily generate a list of all entries of CSPV cells and modules; then filter by country of origin to only include entries from Cambodia, Malaysia, Thailand, and Vietnam; and then filter by manufacturer identification to exclude the three manufacturers found not to be circumventing by Commerce (*i.e.*, Jinko Solar Technology Sdn. Bhd. / Jinko Solar (Malaysia) Sdn. Bhd., Hanwha Q CELLS Malaysia Sdn. Bhd., and Boviet Solar Technology Co., Ltd.). This information is uniquely possessed by Defendants. Solar

Plaintiffs do not have access to it. But this approach would allow Defendants to promptly suspend liquidation of any entries if so ordered by this Court, or to compile a list of entries that would be affected if this Court were to rule in favor of Solar Plaintiffs.

Finally, “{t}he public interest is served by ensuring that governmental bodies comply with the law, and interpret and apply trade statutes uniformly and fairly.” *Am. Signature*, 598 F.3d at 830; *see also Severstal Export GMBH v. United States*, No. 18-057, 2018 WL 1705298 at *11 (Ct. Int’l Trade Apr. 5, 2018) (“the rule of law . . . {is} foundational to the public good.”). Relatedly, “{s}hort-circuiting judicial review violates the public interest.” *In re Section 301 Cases*, 524 F. Supp. 3d at 1372 (citing *Neo Solar Power Corp. v. United States*, Slip Op. 16-58, at 5–6, 2016 WL 3247553 (Ct. Int’l Trade June 9, 2016)). As explained, the limited injunction requested by Solar Plaintiffs simply preserves the status quo pending full litigation of Solar Plaintiffs’ claims. As such, even assuming that Defendants espouse some policy interest underlying their unlawful acts, the requested injunction “does not undermine that interest.” *See id.* Rather, Solar Plaintiffs’ request serves “the purpose of a preliminary injunction {which} is to preserve the relative positions of the parties until a trial on the merits can be held.” *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981).

IV. Conclusion and Request for Relief

As explained above, Solar Plaintiffs have clearly established a likelihood of irreparable harm, a likelihood of success, and that the equities and public interest tip in Solar Plaintiffs’ favor. Solar Plaintiffs therefore request that this court issue a narrow preliminary injunction as set forth in the Proposed Order attached to this motion which would direct Defendants to:

- (1) Suspend liquidation of all unliquidated entries of CSPV cells and modules completed in Cambodia, Malaysia, Thailand, and Vietnam using parts and components produced in the PRC by companies other than those that Commerce

NON-CONFIDENTIAL VERSION

- found not to be circumventing (*i.e.*, Jinko Solar Technology Sdn. Bhd. / Jinko Solar (Malaysia) Sdn. Bhd., Hanwha Q CELLS Malaysia Sdn. Bhd., and Boviet Solar Technology Co., Ltd.), and entered on or after April 1, 2022; and
- (2) Identify which CSPV cells and modules completed in Cambodia, Malaysia, Thailand, and Vietnam using parts and components produced in the PRC by companies other than those that Commerce found not to be circumventing (*i.e.*, Jinko Solar Technology Sdn. Bhd. / Jinko Solar (Malaysia) Sdn. Bhd., Hanwha Q CELLS Malaysia Sdn. Bhd., and Boviet Solar Technology Co., Ltd.), and entered between April 1, 2022, and December 22, 2022, were permitted to enter duty free due to the *Final Solar Duty Holiday Rule* and related instructions issued in connection with Commerce's *Prelim. Circumvention Determinations* and *Final Circumvention Determinations*.

* * *

Respectfully submitted,

/s/ Thomas M. Beline

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James E. Ransdell
Chase J. Dunn

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*Counsel for Auxin Solar Inc. and
Concept Clean Energy, Inc.*

January 9, 2024

EXHIBIT 1

PART A



APS News

April 2009 (Volume 18, Number 4)

This Month in Physics History

April 25, 1954: Bell Labs Demonstrates the First Practical Silicon Solar Cell

Solar cells, which convert sunlight into electrical current, had their beginnings more than a hundred years ago, though early solar cells were too inefficient to be of much use. In April, 1954, researchers at Bell Laboratories demonstrated the first practical silicon solar cell.



Calvin S. Fuller at work diffusing boron into silicon to create the world's first solar cell

The story of solar cells goes back to an early observation of the photovoltaic effect in 1839. French physicist Alexandre-Edmond Becquerel, son of physicist Antoine Cesar Becquerel and father of physicist Henri Becquerel, was working with metal electrodes in an electrolyte solution when he noticed that small electric currents were produced when the metals were exposed to light, but he couldn't explain the effect.

Several decades later, in 1873, Willoughby Smith, an English engineer, discovered the photoconductivity of selenium while testing materials for underwater telegraph cables. In 1883, American inventor Charles Fritts made the first solar cells from selenium. Though Fritts had hoped his solar cells might compete with Edison's coal-fired power plants, they were less than one percent efficient at converting sunlight to electricity and thus not very practical.

April 2009 (Volume 18, Number 4)

[APS News Home](#)

[Issue Table of
Contents](#)

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Articles in this Issue

Some research on selenium photovoltaics continued for the next several decades, and a few applications were found, but they were not put to widespread use.

The next major advance in solar cell technology was made in 1940 by Russell Shoemaker Ohl, a semiconductor researcher at Bell Labs. He had been investigating some silicon samples, one of which had a crack in the middle. He noticed that in this particular sample, current flowed through this sample when it was exposed to light. This crack, which had probably formed when the sample was made, actually marked the boundary between regions containing different levels of impurities, so one side was positively doped and the other side negatively doped. Ohl had inadvertently made a p-n junction, the basis of a solar cell. Excess positive charge builds up on one side of the p-n barrier, and excess negative charge builds up on the other side of the barrier, creating an electric field. When the cell is hooked up in a circuit, an incoming photon that hits the cell can then give an electron a kick and start current flowing. Ohl patented his solar cell, which was about one percent efficient.

The first practical silicon solar cell was created thirteen years later by a team of scientists working together at Bell Labs.

In 1953, engineer Daryl Chapin, who had previously been working on magnetic materials at Bell Labs, was trying to develop a source of power for telephone systems in remote humid locations, where dry cell batteries degraded too quickly. Chapin investigated several alternative energy sources, and settled on solar power as one of the most promising. He tried selenium solar cells, but found them too inefficient.

Meanwhile, Calvin Fuller, a chemist, and Gerald Pearson, a physicist, were working on controlling the properties of semiconductors by introducing impurities. Fuller gave Pearson a piece of silicon containing gallium impurities. Pearson dipped it in lithium, creating a p-n junction. Pearson then hooked up an ammeter to the piece of silicon and shined a light on it. The ammeter jumped significantly, to their surprise.

Pearson, who was aware of Chapin's work, went and told his friend not to waste any more time on selenium solar cells, and Chapin immediately switched to silicon.

The three then worked for several months on improving the properties of their silicon solar cells. One problem was the

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[The Back Page](#)

[Members in the Media](#)

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difficulty in making good electrical contacts with the silicon cells. Another problem was that at room temperature, lithium migrated through the silicon over time, moving the p-n junction farther away from the incoming sunlight. To solve that problem, they tried different impurities, and eventually settled on arsenic and boron, which created a p-n junction that stayed near the surface. They also found they were able to make good electrical contacts with the boron-arsenic silicon cells. After making some other improvements to the design, they linked together several solar cells to create what they called a "solar battery."

Bell Labs announced the invention on April 25, 1954 in Murray Hill, New Jersey. They demonstrated their solar panel by using it to power a small toy Ferris wheel and a solar powered radio transmitter.

Those first silicon solar cells were about 6 percent efficient at converting the energy in sunlight into electricity, a huge improvement over any previous solar cells.

The New York Times wrote that the silicon solar cell "may mark the beginning of a new era, leading eventually to the realization of one of mankind's most cherished dreams—the harnessing of the almost limitless energy of the sun for the uses of civilization."

The first silicon solar cells were expensive to produce, and early efforts at commercialization were not initially a huge success. But within a few years solar cells were commonly used to power satellites, and other applications followed.

Chapin soon simplified the process of making silicon solar cells and even developed a solar cell science experiment for high school students. Chapin, Fuller, and Pearson were inducted into the National Inventors Hall of Fame in 2008.

Solar cells today are used in all sorts of devices, from handheld calculators to rooftop solar panels. Improved designs and advanced materials have made it possible to build solar cells that reach over 40 percent efficiency, and research and development continues with the goal of bringing the cost down and raising the efficiency to make solar power more competitive with fossil fuels.

Physics History

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Editor: Alan Chodos

PART B

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A Brief History of Solar Panels

Inventors have been advancing solar technology for more than a century and a half, and improvements in efficiency and aesthetics keep on coming



Elizabeth Chu and D. Lawrence Tarazano, U.S. Patent and Trademark Office

Long before the first Earth Day was celebrated on April 22, 1970, generating awareness about the environment and support for environmental protection,

scientists were making the first discoveries in solar energy. It all began with Edmond Becquerel, a young physicist working in France, who in 1839 observed and discovered the photovoltaic effect— a process that produces a voltage or electric current when exposed to light or radiant energy. A few decades later, French mathematician Augustin Mouchot was inspired by the physicist's work. He began registering patents for solar-powered engines in the 1860s. From France to the U.S., inventors were inspired by the patents of the mathematician and filed for patents on solar-powered devices as early as 1888.



Charles Fritts installed the first solar panels on New York City rooftop in 1884. Courtesy of John Perlin

Take a *light* step back to 1883 when New York inventor Charles Fritts created the first solar cell by coating selenium with a thin layer of gold. Fritts reported that the selenium module produced a current “that is continuous, constant, and of considerable force.” This cell achieved an energy conversion rate of 1 to 2 percent. Most modern solar cells work at an efficiency of 15 to 20 percent. So,

Fritts created what was a low impact solar cell, but still, it was the beginning of photovoltaic solar panel innovation in America. Named after Italian physicist, chemist and pioneer of electricity and power, Alessandro Volta, photovoltaic is the more technical term for turning light energy into electricity, and used interchangeably with the term photoelectric.

(No Model.)

E. WESTON.

APPARATUS FOR UTILIZING SOLAR RADIANT ENERGY.

No. 389,124.

Patented Sept. 4, 1888.

Fig. 1.

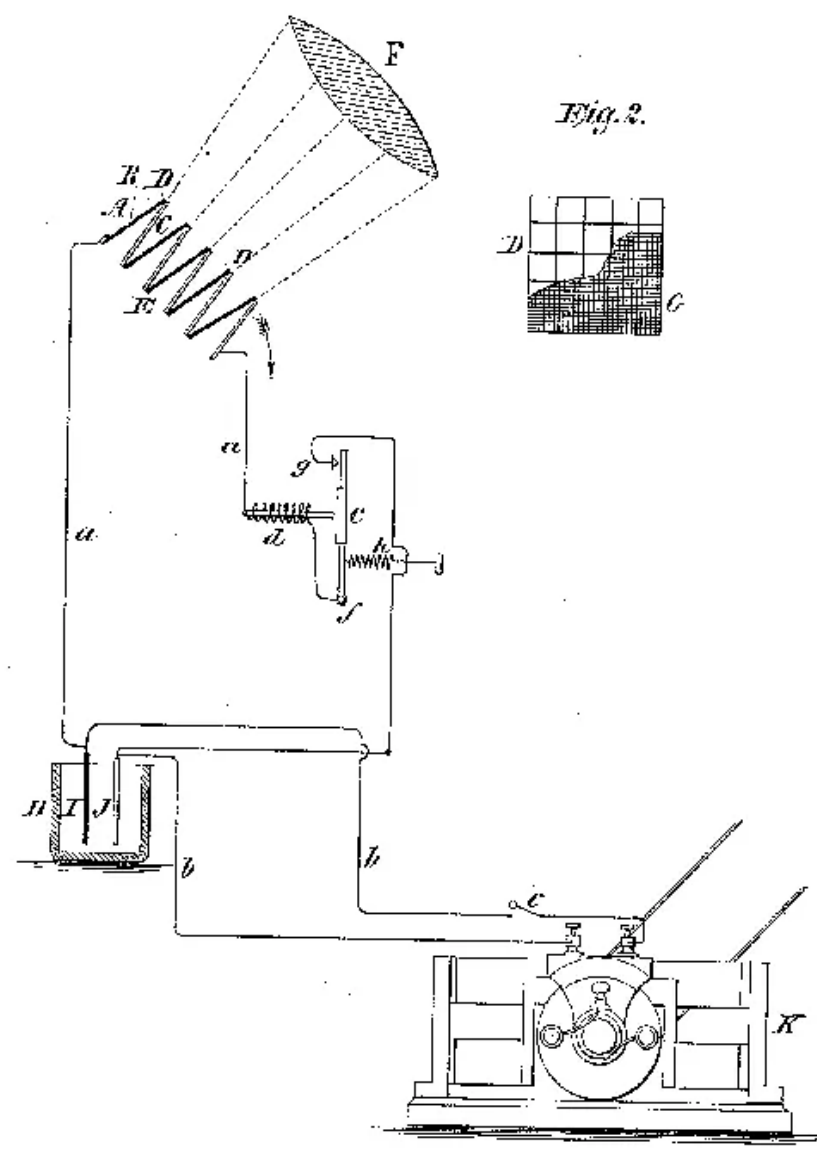
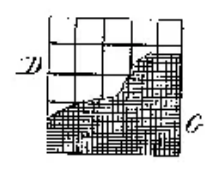
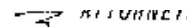


Fig. 2.



WITNESSES:
Gustav Dietrich
Edgar Goodwin

INVENTOR.
Edward Weston.
BY *Levi Benjamin.*
his ATTORNEY



N. PETERSEN, Patent-Lithographer, Washington, D. C.

Edward Weston's "Apparatus for Utilizing Solar Radiant Energy," patented September 4, 1888. U.S. Patent 389,124

Only a few years later in 1888, inventor Edward Weston received two patents for solar cells – U.S. Patent 389,124 and U.S. Patent 389,425. For both patents, Weston proposed, “to transform radiant energy derived from the sun into electrical energy, or through electrical energy into mechanical energy.” Light energy is focused via a lens (f) onto the solar cell (a), “a thermopile (an electronic device that converts thermal energy into electrical energy) composed of bars of dissimilar metals.” The light heats up the solar cell and causes electrons to be released and current to flow. In this instance, light creates heat, which creates electricity; this is the exact reverse of the way an incandescent light bulb works, converting electricity to heat that then generates light.

That same year, a Russian scientist by the name of Aleksandr Stoletov created the first solar cell based on the photoelectric effect, which is when light falls on a material and electrons are released. This effect was first observed by a German physicist, Heinrich Hertz. In his research, Hertz discovered that more power was created by ultraviolet light than visible light. Today, solar cells use the photoelectric effect to convert sunlight into power. In 1894, American inventor Melvin Severy received patents 527,377 for an "Apparatus for mounting and operating thermopiles" and 527,379 for an "Apparatus for generating electricity by solar heat." Both patents were essentially early solar cells based on the discovery of the photoelectric effect. The first generated “electricity by the action of solar heat upon a thermo-pile” and could produce a constant electric current during the daily and annual movements of the sun, which alleviated anyone from having to move the thermopile according to the sun’s movements. Severy’s second patent from 1889 was also meant for using the sun’s thermal energy to produce electricity for heat, light and power. The “thermos piles,” or solar cells as we call them today, were mounted on a standard to allow them to be controlled in the vertical direction as well as on a turntable, which enabled them to move in a horizontal plane. “By the combination of these two movements, the face of the pile can be maintained opposite the sun all times of the day and all seasons of the year,” reads the patent.

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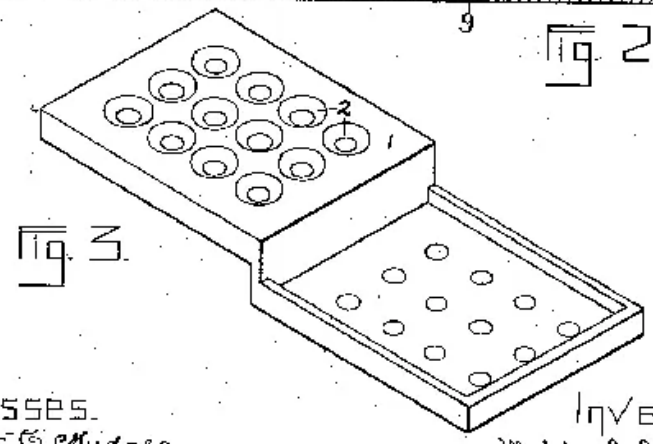
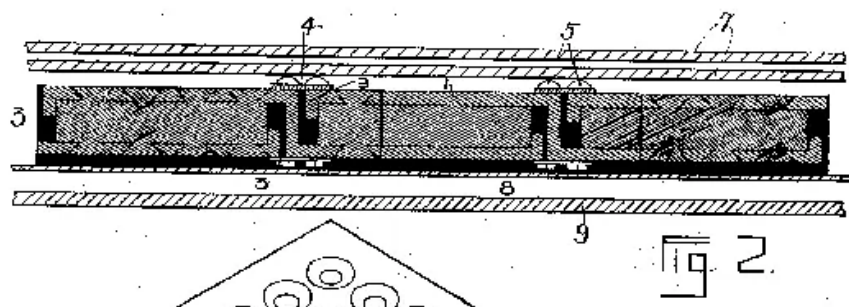
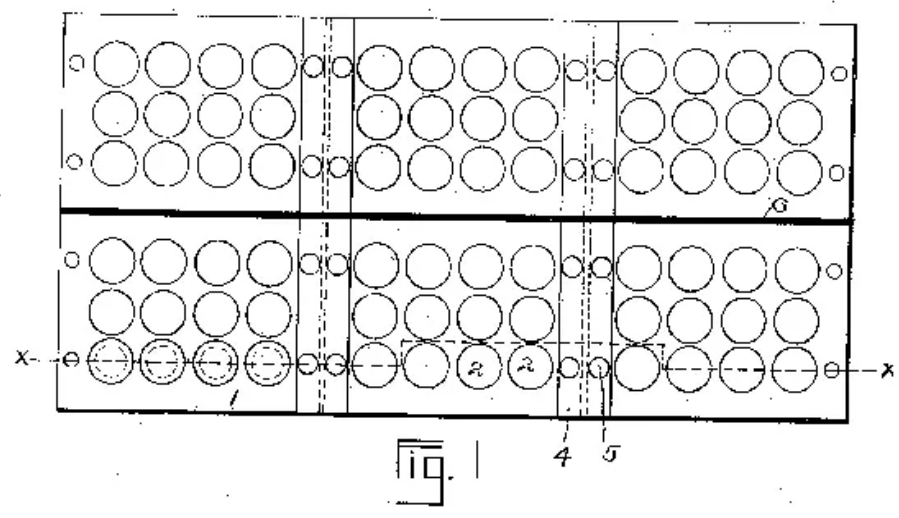
2 Sheets—Sheet 1.

M. L. SEVERY.

APPARATUS FOR GENERATING ELECTRICITY BY SOLAR HEAT.

No. 527,379.

Patented Oct. 9, 1894.



Witnesses.
Arthur B. Fildes
J. H. Robinson

Inventor
Melvin L. Severy
by *Howe & Kellogg*

1 / 2

Melvin L. Severy's "Apparatus for Generating Electricity by Solar Heat," patented October 9, 1894 U.S. Patent 527,379

(No Model.)

2 Sheets—Sheet 1.

M. L. SEVERY.

APPARATUS FOR MOUNTING AND OPERATING THERMOPILES.

No. 527,377.

Patented Oct. 9, 1894.

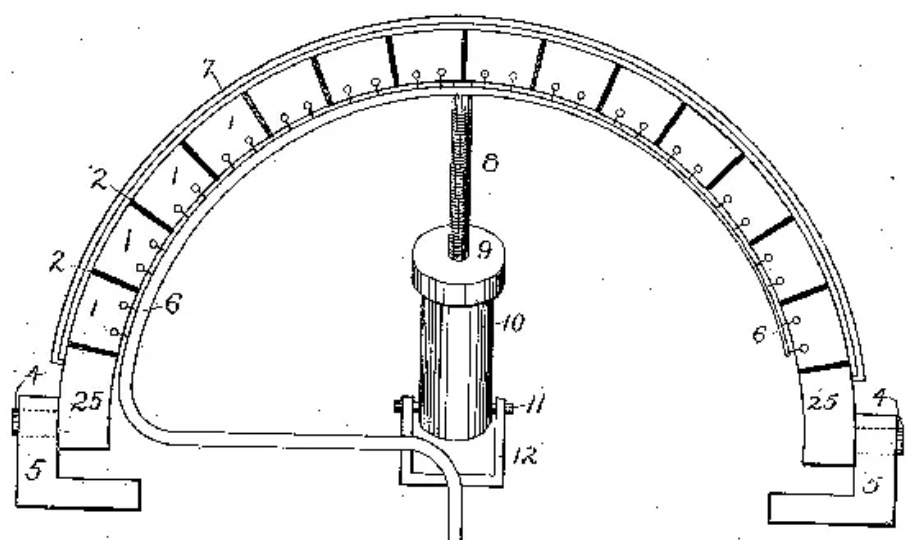


Fig. 1

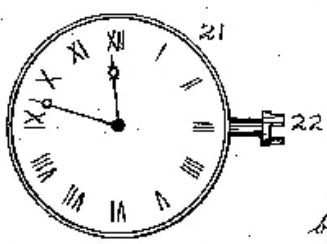
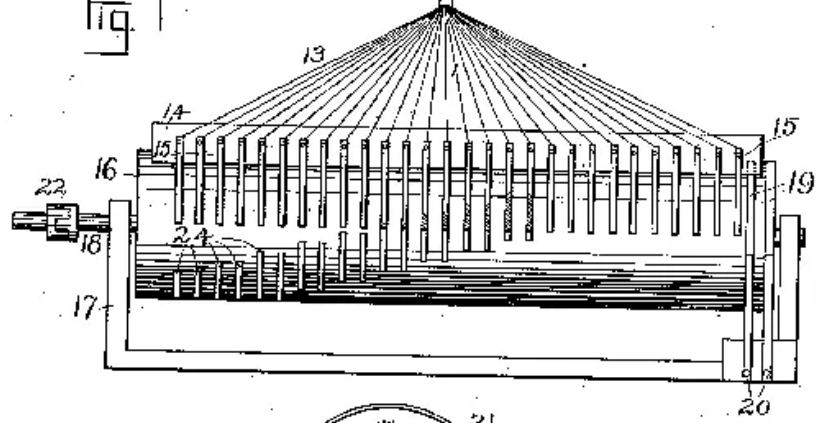


Fig. 2

Witnesses.
Arthur C. Mudge
J. H. Robinson

Inventor.
Malvin L. Severy
 by *Howe & Kellogg*
 Attorneys.

2 / 2

Melvin L. Severy's "Apparatus for Mounting and Operating Thermopiles," patented October 9, 1894 U.S. Patent 527,377

Almost a decade later, American inventor Harry Reagan received patents for thermal batteries, which are structures used to store and release thermal energy. The thermal battery was invented to collect and store heat by having a large mass that can heat up and release energy. It does not store electricity but "heat," however, systems today use this technology to generate electricity by conventional turbines. In 1897, Reagan was granted U.S. patent 588,177 for an "application of solar heat to thermo batteries." In the claims of the patent, Reagan said his invention included "a novel construction of apparatus in which the sun's rays are utilized for heating thermo-batteries, the object being to concentrate the sun's rays to a focus and have one set of junctions of a thermo-battery at the focus of the rays, while suitable cooling devices are applied to the other junctions of said thermo-battery." His invention was a means to collecting, storing and distributing solar heat as needed.

(No Model.)

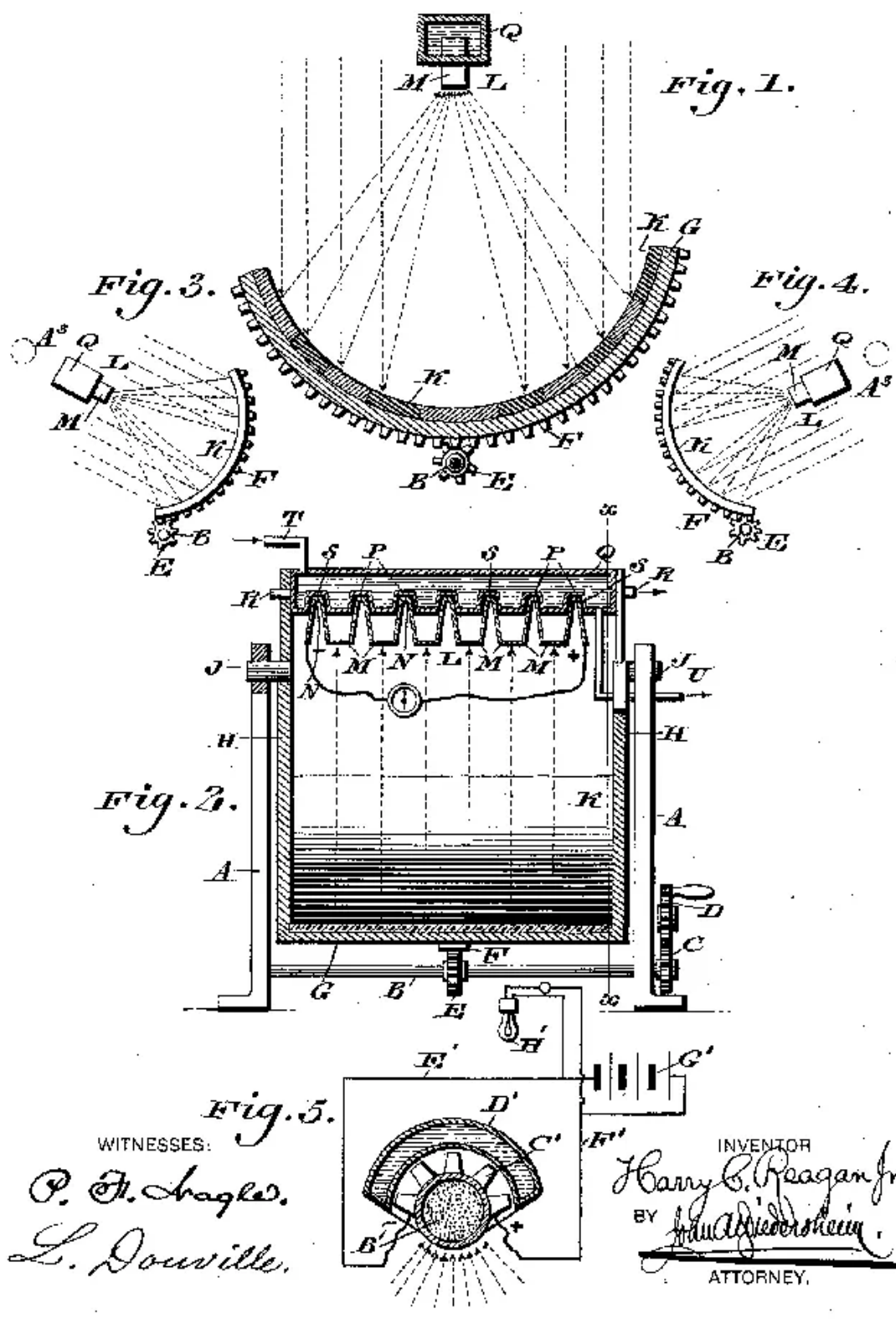
2 Sheets—Sheet 1.

H. C. REAGAN, Jr.

APPLICATION OF SOLAR HEAT TO THERMO BATTERIES.

No. 588,177.

Patented Aug. 17, 1897.



WITNESSES:
P. H. Ingle,
L. Douville,

INVENTOR
Harry C. Reagan Jr.
 BY *Paul Wiedersheim*
 ATTORNEY.

H.C. Reagan's "Application of Solar Heat to Thermo Batteries," patented August 17, 1897 U.S. Patent 588,177

In 1913, William Coblentz, of Washington, D.C., received patent 1,077,219 for a "thermal generator," which was a device that used light rays "to generate an electric current of such a capacity to do useful work." He also meant for the invention to have cheap and strong construction. Although this patent was not for a solar panel, these thermal generators were invented to either convert heat directly into electricity or to transform that energy into power for heating and cooling.

W. W. COBLENTZ.
THERMAL GENERATOR.
APPLICATION FILED AUG. 8, 1913.

1,077,219.

Patented Oct. 28, 1913.

Fig. 1.

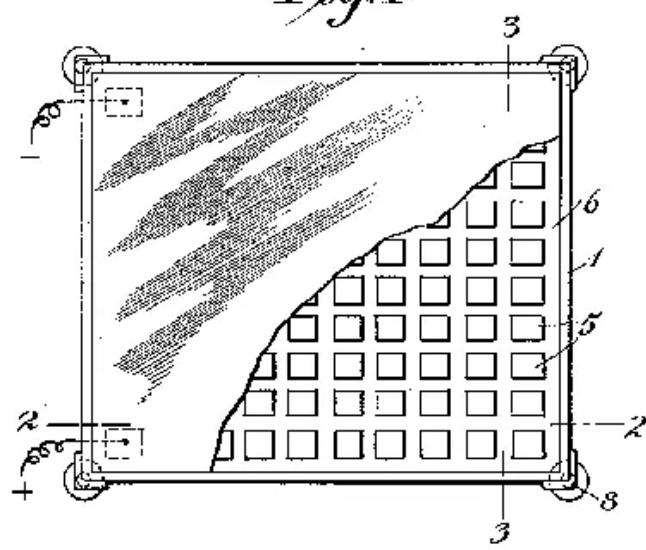


Fig. 2.

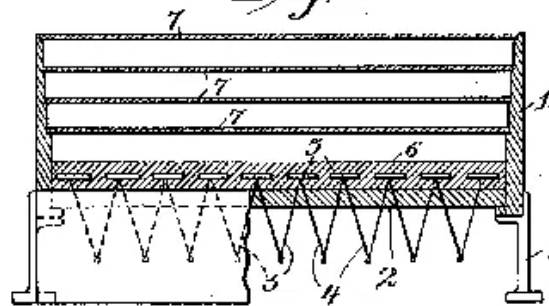
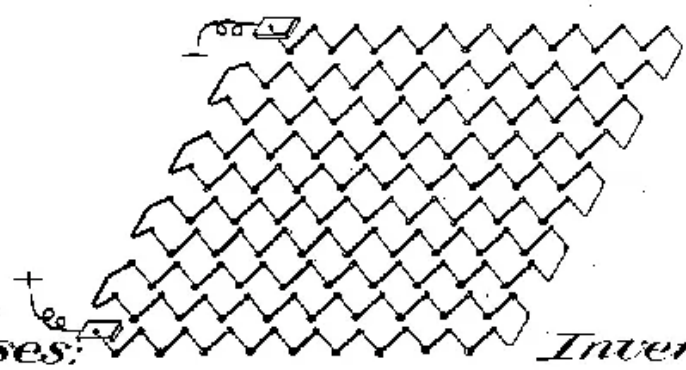
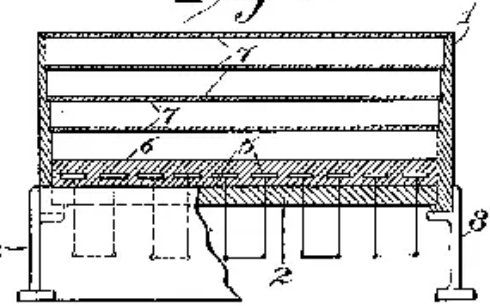


Fig. 3.



Witnesses:
Walter B. Emmons.
Philip Vanuren Wells

Fig. 4.

Inventor:
Wm. W. Coblentz

W.W. Coblentz's "Thermal Generator," patented October 28, 1913 U.S. Patent 1,077,219

By the 1950s, Bell Laboratories realized that semiconducting materials such as silicon were more efficient than selenium. They managed to create a solar cell that was 6 percent efficient. Inventors Daryl Chapin, Calvin Fuller, and Gerald Pearson (inducted to the National Inventors Hall of Fame in 2008) were the brains behind the silicon solar cell at Bell Labs. While it was considered the first practical device for converting solar energy to electricity, it was still cost prohibitive for most people. Silicon solar cells are expensive to produce, and when you combine multiple cells to create a solar panel, it's even more expensive for the public to purchase. University of Delaware is credited with creating one of the first solar buildings, "Solar One," in 1973. The construction ran on a combination of solar thermal and solar photovoltaic power. The building didn't use solar panels; instead, solar was integrated into the rooftop.

Feb. 5, 1957

D. M. CHAPIN ET AL.

2,780,765

SOLAR ENERGY CONVERTING APPARATUS

Filed March 5, 1954

FIG. 1

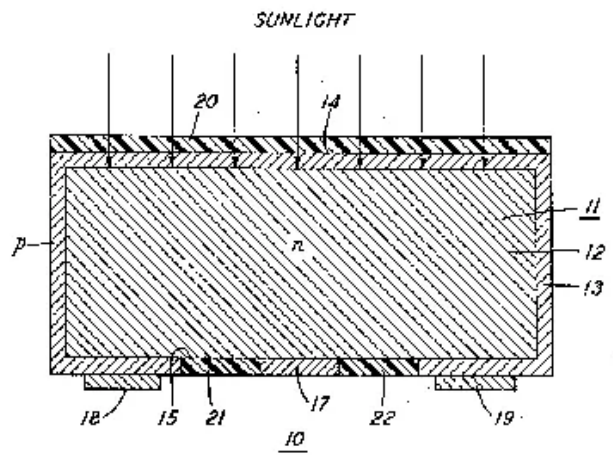
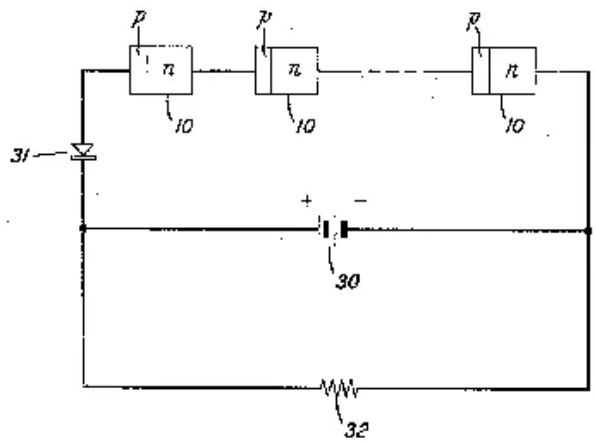


FIG. 2



D. M. CHAPIN
INVENTORS: C. S. FULLER
G. L. PEARSON
BY
Arthur J. Tomiglion
ATTORNEY

D. M. Chapin et al's "Solar Energy Converting Apparatus," patented February 5, 1957 U.S. Patent 2,780,765

It was around this time in the 1970s that an energy crisis emerged in the United States. Congress passed the Solar Energy Research, Development and Demonstration Act of 1974, and the federal government was committed more than ever “to make solar viable and affordable and market it to the public.” After the debut of “Solar One,” people saw solar energy as an option for their homes. Growth slowed in the 1980s due to the drop in traditional energy prices. But in the next decades, the federal government was more involved with solar energy research and development, creating grants and tax incentives for those who used solar systems. According to Solar Energy Industries Association, solar has had an average annual growth rate of 50 percent in the last 10 years in the United States, largely due to the Solar Investment Tax Credit enacted in 2006. Installing solar is also more affordable now due to installation costs dropping over 70 percent in the last decade.

That said, at least until recently, the means to find a viable and affordable energy solution is more important than making solar cells aesthetically pleasing or beautiful. Traditional solar panels on American rooftops aren't exactly subtle or pleasing to the eye. They've been an eyesore for neighbors at times, and surely a pain for homeowners associations to deal with, but the benefits to the environment are substantial. So, where's the balance? Today, companies are striving towards better looking and advanced solar technology, such as building-applied photovoltaic (BAPV). This type of discreet solar cell is integrated into existing roof tiles or ceramic and glass facades of buildings.

Solus Engineering, Enpulz, Guardian Industries Corporation, SolarCity Corporation, United Solar Systems, and Tesla (after their merger with SolarCity) have all been issued patents for solar cells that are much more discreet than the traditional solar panel. All of the patents incorporate photovoltaic systems, which transform light into electricity using semiconducting materials such as silicon. Solar panels and solar technology has come a long way, so these patented inventions are proof that the technology is still improving its efficiency *and* aesthetics.

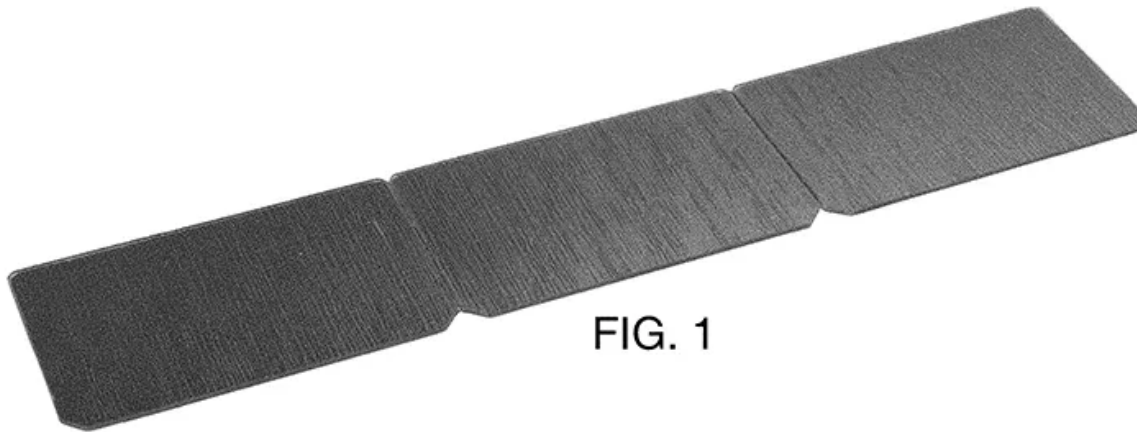


FIG. 1

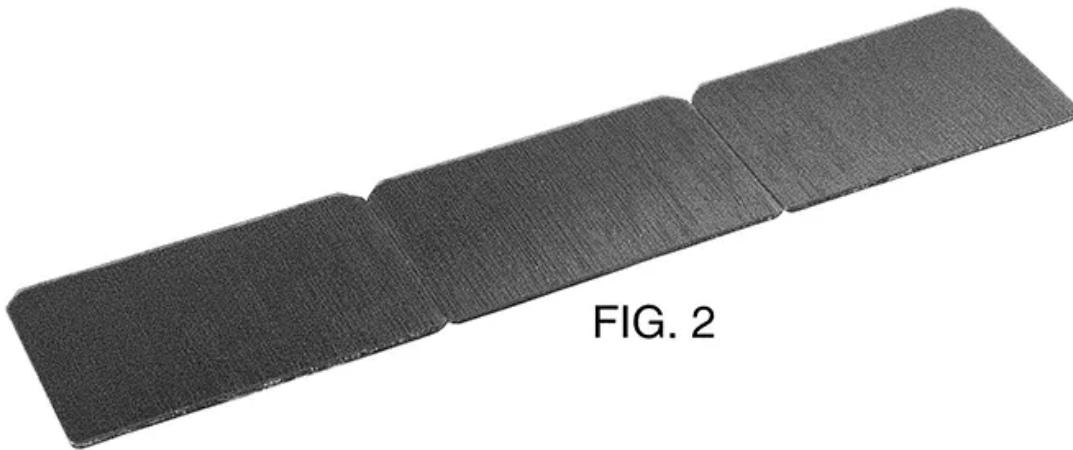


FIG. 2

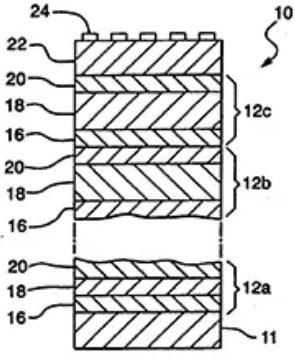


FIG - 1

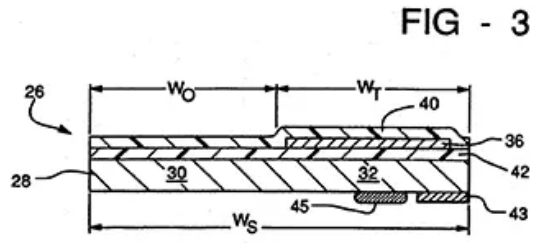


FIG - 3

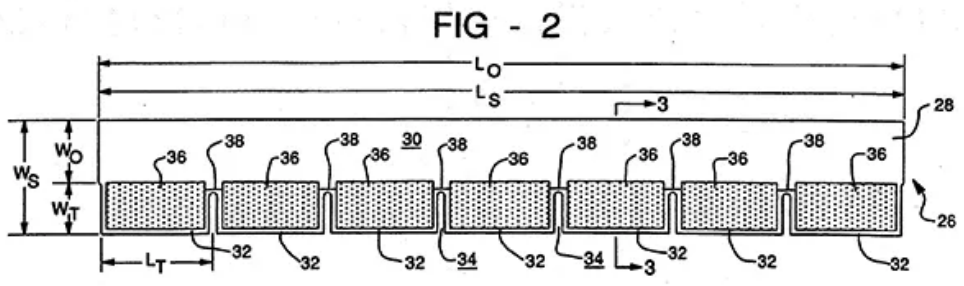
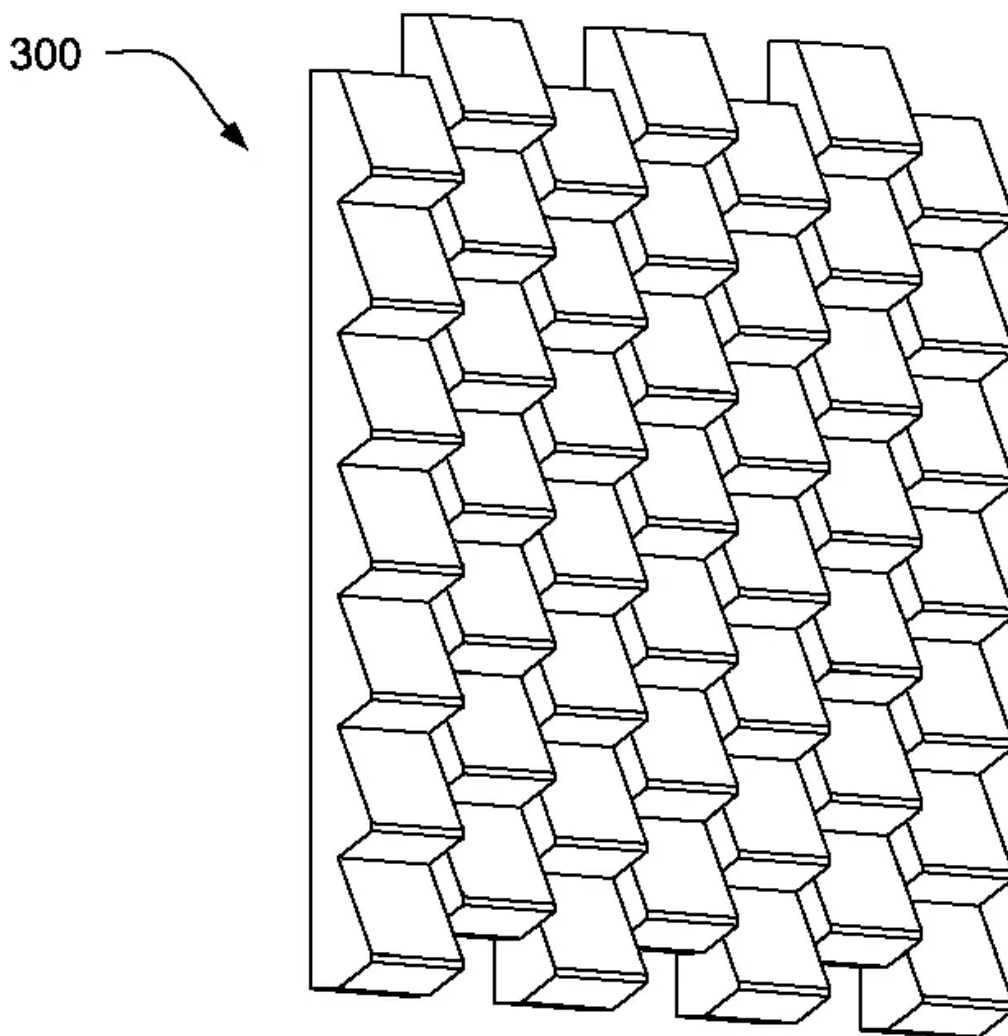
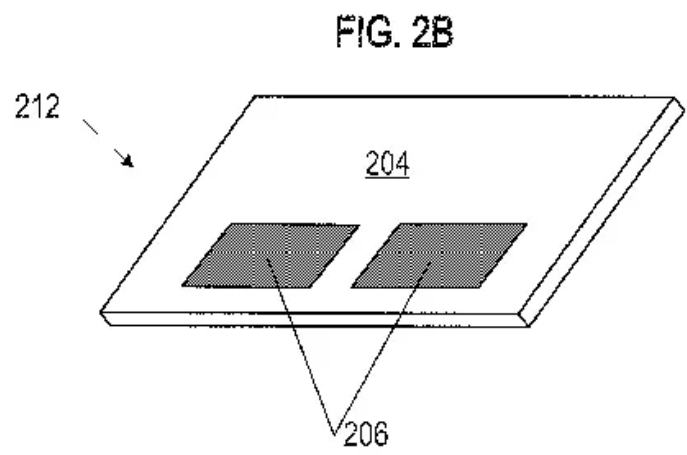
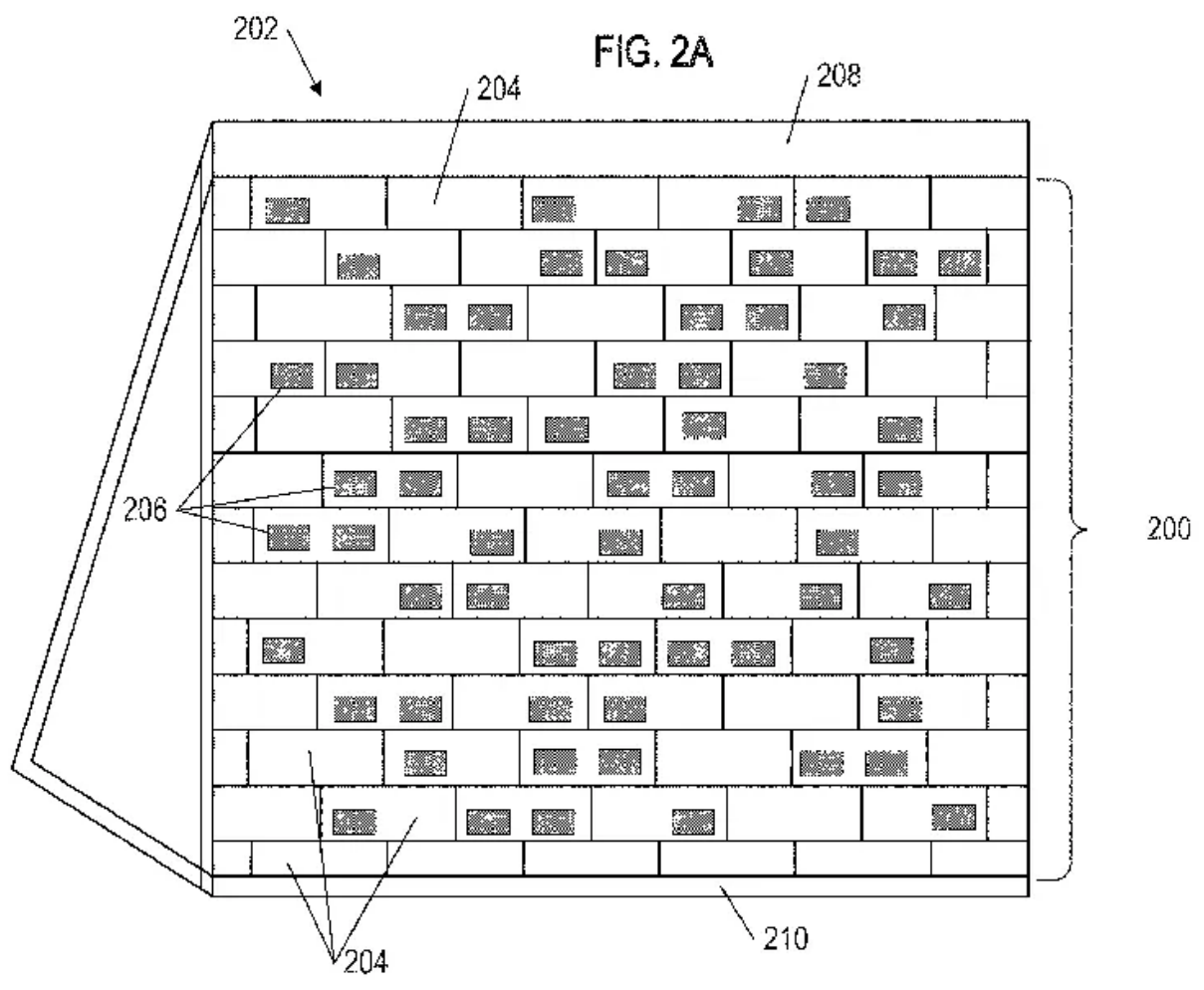
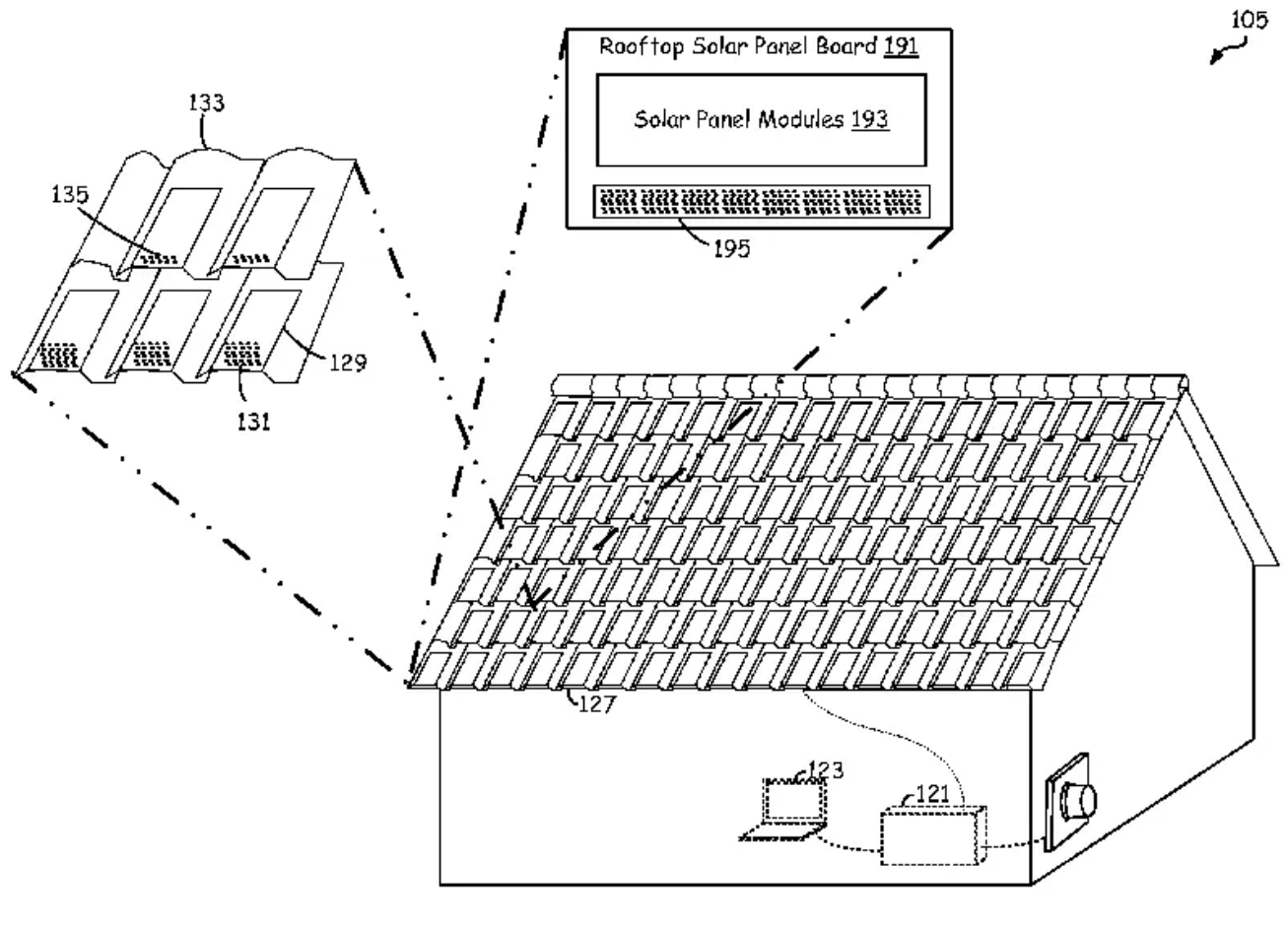


FIG - 2

U.S. Patent
Aug. 1, 1995
Sheet 1 of 5
5,437,735

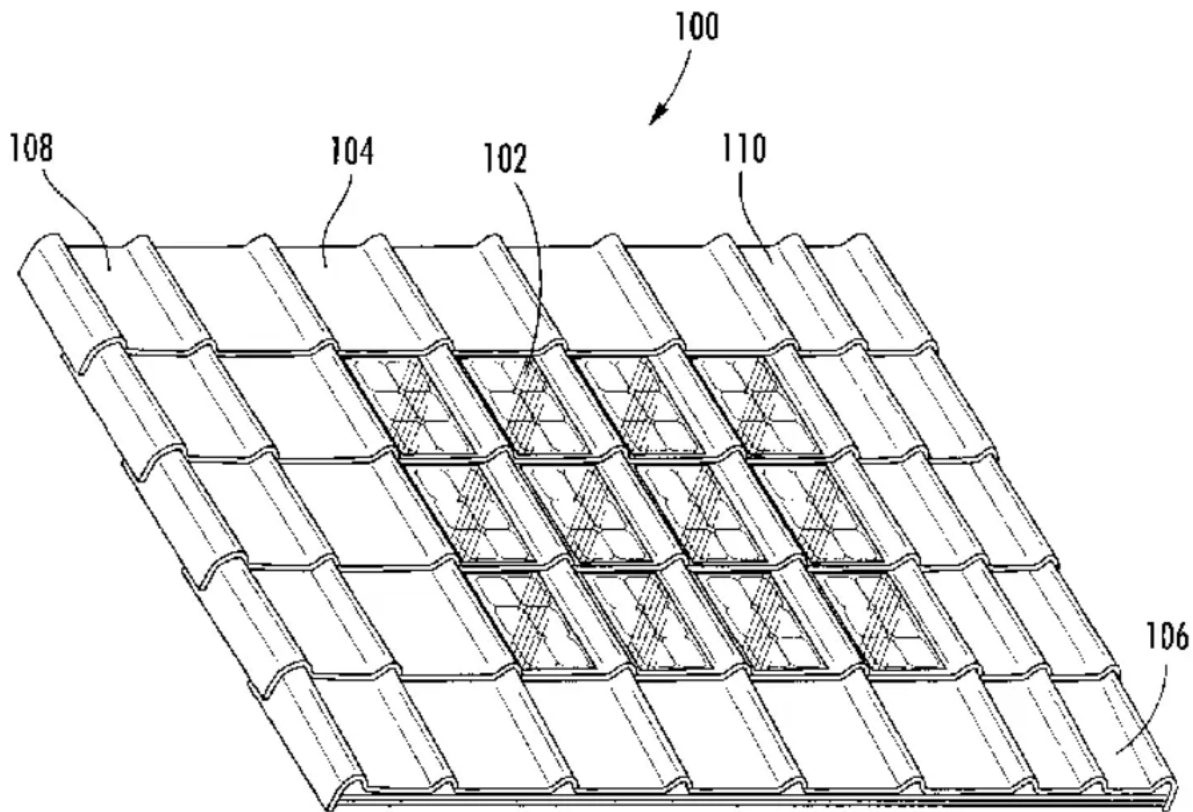






5 / 6

Enpulz, LLC's "Solar Panel Light Indicator/Decorative System," patented January 1, 2013 U.S. Patent 8,344,240



6 / 6

Solus Engineering's "Roof Tiles and Related Systems," patented May 6, 2014 U.S. Patent 8,713,861

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The Editorial Staff of *Smithsonian* magazine had no role in this content's preparation.

EXHIBIT 2

CSPV Cell & Module Import Data (Value in USD) (Source: U.S. Census Bureau HTSUS Subheadings 8541.40.60.15, 8541.40.60.25, 8541.40.60.35, 8541.40.60.45, 8541.42.00.10, 8541.42.00.80, 8541.43.00.10, 8541.43.00.80¹)

	Units	Country	2021 Annual Total	2022 Annual Total	2022 Pct of Total	2022 YTD thru OCT	2023 YTD thru OCT	% Increase 22 to 23 YTD	% of 2023 YTD Total
TOTAL	\$		6,827,658,387	10,028,257,357	.	7,364,416,292	16,352,734,552		
SUB-TOTAL	\$		5,565,690,429	7,372,290,549	73.5%	5,538,758,022	12,085,487,958	118.2%	73.90%
	\$	CAMBODIA	218,702,920	768,866,128	7.7%	476,457,937	2,034,795,570	327.1%	12.44%
	\$	MALAYSIA	2,172,152,853	1,667,237,892	16.6%	1,391,658,374	2,677,637,387	92.4%	16.37%
	\$	THAILAND	1,138,682,671	1,608,479,271	16.0%	1,229,790,790	3,438,799,618	179.6%	21.03%
	\$	VIETNAM	2,036,151,985	3,327,707,258	33.2%	2,440,850,921	3,934,255,383	61.2%	24.06%

CSPV Module Import Data (Qty in Watts) (Source: U.S. Census Bureau HTSUS Subheadings 8541.43.00.10 and 8541.43.00.80¹)

	Units	Country	2021 Annual Total	2022 Annual Total	2022 Pct of Total	2022 YTD thru OCT	2023 YTD thru OCT	% Increase 22 to 23 YTD	% of 2023 YTD Total
TOTAL	Watts		23,538,866,372	28,940,120,798	.	21,984,956,491	45,312,419,953	106.1%	.
SUB-TOTAL	Watts		19,853,120,349	22,434,524,235	77.5%	17,198,906,001	36,122,558,937	110.0%	79.72%
	Watts	CAMBODIA	800,573,145	2,364,722,642	8.2%	1,502,986,862	5,729,760,563	281.2%	12.65%
	Watts	MALAYSIA	7,332,190,331	4,643,125,106	16.0%	3,957,840,491	8,303,669,873	109.8%	18.33%
	Watts	THAILAND	4,199,716,688	4,842,945,028	16.7%	3,801,369,985	9,285,747,328	144.3%	20.49%
	Watts	VIETNAM	7,520,640,185	10,583,731,459	36.6%	7,936,708,663	12,803,381,173	61.3%	28.26%

¹ The data in these tables reflect that the relevant HTSUS subheadings for CSPV modules were 8541.40.60.15 and 8541.40.60.35 in 2021, but changed to 8541.43.00.10 and 8541.43.00.80 beginning in 2022. Similarly, the relevant HTSUS subheadings for CSPV cells were 8541.40.60.25 and 8541.40.60.45 in 2021, but changed to 8541.42.00.10 and 8541.42.00.80 beginning in 2022.

IN THE UNITED STATES COURT OF INTERNATIONAL TRADE

AUXIN SOLAR, INC. AND CONCEPT CLEAN
ENERGY, INC.,

Plaintiffs,

v.

UNITED STATES; UNITED STATES
DEPARTMENT OF COMMERCE; GINA M.
RAIMONDO, SECRETARY OF COMMERCE;
UNITED STATES CUSTOMS AND BORDER
PROTECTION; AND TROY A. MILLER, UNITED
STATES CUSTOMS AND BORDER PROTECTION
ACTING COMMISSIONER,

Defendants.

Court. No. 23-00274

ORDER

The Court, after due deliberation, having considered Plaintiffs’ Motion for Preliminary Injunction, ECF Doc. ____, and all responses thereto, it is hereby:

ORDERED that Defendants shall suspend liquidation of all unliquidated entries of CSPV cells and modules completed in Cambodia, Malaysia, Thailand, and Vietnam using parts and components produced in the PRC by companies other than those that Commerce found not to be circumventing (*i.e.*, Jinko Solar Technology Sdn. Bhd. / Jinko Solar (Malaysia) Sdn. Bhd., Hanwha Q CELLS Malaysia Sdn. Bhd., and Boviet Solar Technology Co., Ltd.), and entered on or after April 1, 2022, until further order of this Court; and

ORDERED that Defendants shall, no later than 120 days after the date of this Order, identify which CSPV cells and modules completed in Cambodia, Malaysia, Thailand, and Vietnam using parts and components produced in the PRC by companies other than those that

Commerce found not to be circumventing (*i.e.*, Jinko Solar Technology Sdn. Bhd. / Jinko Solar (Malaysia) Sdn. Bhd., Hanwha Q CELLS Malaysia Sdn. Bhd., and Boviet Solar Technology Co., Ltd.), and entered between April 1, 2022, and December 22, 2022, were permitted to enter duty free due to the operation of the procedures set forth in *Procedures Covering Suspension of Liquidation, Duties and Estimated Duties in Accord with Presidential Proclamation 10414*, 87 Fed. Reg. 56,868 (Sept. 16, 2022), and related procedures set forth in Commerce's *Preliminary Affirmative Determinations of Circumvention With Respect to Cambodia, Malaysia, Thailand, and Vietnam*, 87 Fed. Reg. 75,221 (Dec. 8, 2022) and *Final Scope Determination and Final Affirmative Determinations of Circumvention With Respect to Cambodia, Malaysia, Thailand, and Vietnam*, 88 Fed. Reg. 57,419 (Aug. 23, 2023).

SO ORDERED.

Dated: _____
New York, New York

JUDGE