

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN SHINGLED SOLAR MODULES,
COMPONENTS THEREOF, AND
METHODS FOR MANUFACTURING THE
SAME**

Investigation No. 337-TA-1223

**NOTICE OF COMMISSION DETERMINATION TO REVIEW AN INITIAL
DETERMINATION (ORDER NO. 14) EXTENDING THE TARGET DATE FOR
COMPLETION OF THE INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that, on February 18, 2022, the presiding chief administrative law judge (“CALJ”) issued an initial determination (“ID”) (Order No. 14) extending the target date for completion of the investigation to April 20, 2022. The Commission has determined to review the subject ID. The target date for completion of the investigation is extended to June 6, 2022.

FOR FURTHER INFORMATION CONTACT: Richard P. Hadorn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3179. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: On October 21, 2020, the Commission instituted this investigation based on a complaint filed by The Solaria Corporation (“Solaria”) of Fremont, California. 85 FR 67010-11 (Oct. 21, 2020). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), based on the importation into the United States, the sale for importation, or the sale within the United States after importation of certain shingled solar modules, components thereof, and methods for manufacturing the same by reason of infringement of certain claims of U.S. Patent Nos. 10,522,707 (“the ’707 patent”); 10,651,333 (“the ’333 patent”); and 10,763,388 (“the ’388

patent”). *Id.* at 67011. The complaint further alleges that a domestic industry exists. *Id.* The notice of investigation named two respondents: Canadian Solar Inc. of Guelph, Ontario, Canada and Canadian Solar (USA) Inc. of Walnut Creek, California (collectively, “Canadian Solar”). *Id.* The Office of Unfair Import Investigations is not named as a party. *Id.*

On July 15, 2021, the Commission determined to terminate the investigation as to the ’707 patent based on Solaria’s withdrawal of the allegations in the complaint as to that patent. Order No. 9 (June 28, 2021), *unreviewed by* Comm’n Notice (July 15, 2021). On October 13, 2021, the Commission determined to terminate the investigation as to asserted claims 18-20 of the ’333 patent and asserted claims 6, 7, and 10 of the ’388 patent based on Solaria’s withdrawal of the allegations in the complaint as to those claims. Order No. 13 (Sept. 14, 2021), *unreviewed by* Comm’n Notice (Oct. 13, 2021).

On October 22, 2021, the CALJ issued a combined ID on violation and a recommended determination (“RD”) on remedy and bonding. The ID finds violations of section 337 with respect to all asserted claims still at issue—*i.e.*, asserted claims 1-5, 8, 9, 11, 15-17, 19, and 20 of the ’388 patent and asserted claims 1, 8, 9, and 12-17 of the ’333 patent. The RD recommends that, should the Commission determine that violations of section 337 occurred, the Commission: (i) issue a limited exclusion order against Canadian Solar’s infringing products; (ii) not issue a cease and desist order against Canadian Solar; and (iii) set a 100 percent bond for any importations of infringing products during the period of Presidential review.

On November 5, 2021, Canadian Solar filed a petition for review of the ID on violation, including the ID’s findings concerning standing, claim construction, infringement, invalidity, unenforceability, and satisfaction of the technical prong of the domestic industry requirement. On November 15, 2021, Solaria filed a response to Canadian Solar’s petition.

On November 22, 2021, Canadian Solar filed a notice of supplemental authority to inform the Commission that a claim construction order issued in a related district court litigation (“district court order”) involving the same parties and patents at issue in this investigation.

On November 23, 2021, Canadian Solar filed a submission on the public interest pursuant to Commission Rule 210.50(a)(4) (19 CFR 210.50(a)(4)). The Commission did not receive such a submission from Solaria. The Commission also did not receive any submissions on the public interest from members of the public in response to the Commission’s *Federal Register* notice. 86 FR 62845-46 (Nov. 12, 2021).

On February 4, 2022, the Commission determined to review in part and remand in part the ID on violation. 87 FR 7867-70 (Feb. 10, 2022). Specifically, the Commission determined to review: (i) the ID’s construction of the claim term “ablation” of the ’388 and ’333 patents in light of the district court order’s construction of that term; (ii) the ID’s allocation of the burden of proof regarding the asserted claims’ entitlement to claim priority to the filing date of U.S. Provisional Application No. 62/349,547 (“the ’547 provisional application”); (iii) the ID’s finding that claim 19 of the ’388 patent and claim 8 of the ’333 patent find written description

support in the '547 provisional application; (iv) the ID's findings on validity for the '388 patent; and (v) the ID's finding concerning secondary considerations with respect to the '333 patent. *Id.* at 7868. The Commission requested that the parties submit responses to certain questions pertaining to the issues under review. *Id.*

The Commission also determined to remand the ID on violation to the CALJ to address, in the first instance, Canadian Solar's on-sale bar defenses as to the asserted claims of the '333 patent based on alleged sales and offers for sale of Solaria's BIPV and GIPV products. *Id.* The Commission stated in its Remand Order, which issued on February 4, 2022, that the remand ID "shall become final 45 days after issuance absent Commission review." Remand Order at 4.

On February 18, 2022, the CALJ issued the subject ID (i) extending the target date for completion of the investigation from February 22, 2022, to April 20, 2022, and (ii) stating that the remand ID "will issue no later than March 4, 2022." The remand ID subsequently issued on that date.

No petitions for review of the subject ID extending the target date were filed.

The Commission has determined to review the subject ID. Specifically, the new target date set by the CALJ coincides with the date by which the Commission must determine whether to review the remand ID. Accordingly, the target date for completion of the investigation is extended to June 6, 2022, which is 90 days after the remand ID is scheduled to issue.

The Commission vote for this determination took place on March 18, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: March 18, 2022