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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-979]

Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (the "Department") is simultaneously initiating, and issuing the preliminary results, of a changed circumstances review of the antidumping duty ("AD") order on crystalline silicon photovoltaic cells, whether or not assembled into modules, ("solar cells") from the People's Republic of China ("PRC") regarding whether Zhejiang ERA Solar Technology Co., Ltd ("Zhejiang ERA") is the successor-in-interest to Era Solar Co., Ltd ("Era Solar"). Based on the information on the record, we preliminarily determine that Zhejiang ERA is the successor-in-interest to Era Solar for purposes of the AD order on solar cells from the PRC and, as such, is entitled to Zhejiang ERA's cash deposit rate with respect to entries of subject merchandise. Interested parties are invited to comment on these preliminary results.

DATES: Effective (INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER.)

FOR FURTHER INFORMATION CONTACT: Jeff Pedersen or Eli Lovely, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-2769 and (202) 482-1593, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 7, 2012, the Department published the AD order on solar cells from the PRC in the Federal Register.¹ On August 31, 2016, Zhejiang ERA requested that the Department initiate an expedited changed circumstances review to determine that Zhejiang ERA is the successor-in-interest to Era Solar for AD purposes.² On September 12, 2016, Zhejiang ERA responded to a request for additional information from the Department issued on September 9, 2016.³ We have received no comments on Zhejiang ERA's CCR Request.

Scope of the Order

The merchandise covered by the Order is crystalline silicon photovoltaic cells, whether or not assembled into modules, subject to certain exclusions.⁴

Imports of the subject merchandise are provided for under the following subheadings of the Harmonized Tariff Schedule of the United States ("HTSUS"): 8501.61.0000, 8507.20.80, 8541.40.6020, 8541.40.6030, and 8501.31.8000. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the subject merchandise is dispositive.

¹ See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order, 77 FR 73018 (December 7, 2012) ("Order").

² See Letter from Zhejiang ERA to the Department regarding, "Re. Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China: Request for Expedited Changed Circumstances Review" (August 31, 2016) ("CCR Request").

³ See Letter from Hangzhou Sunny to the Department, regarding "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules: Response to Supplemental Questionnaire of Zhejiang ERA Solar Technology Co., Ltd" (September 12, 2016) ("Supplemental Response").

⁴ For a complete description of the Scope of the Order, see Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Initiation and Preliminary Results of Changed Circumstances Review: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China" ("Preliminary Decision Memorandum"), dated concurrently with, and adopted by, this notice.

Initiation of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended, (the “Act”) and 19 CFR 351.216(d), the Department will conduct a changed circumstances review of an order upon receipt of information concerning, or of a request from an interested party for a review of, an order which shows changed circumstances sufficient to warrant a review of the order. In the past, the Department has used changed circumstances reviews to address the applicability of cash deposit rates after there have been changes in the name or structure of a respondent, such as a merger or spinoff (“successor-in-interest,” or “successorship,” determinations). Thus, consistent with Department practice, the information submitted by Zhejiang ERA, which includes information regarding a name change, demonstrates changed circumstances sufficient to warrant a review.⁵

Therefore, in accordance with section 751(b)(1) of the Act and 19 CFR 351.216(d), the Department is initiating a changed circumstances review to determine whether Zhejiang ERA is the successor-in-interest to Era Solar.

Preliminary Determination

When it concludes that expedited action is warranted, the Department may publish the notice of initiation and preliminary results for a changed circumstances review concurrently.⁶ The Department has combined the notice of initiation and preliminary results in successor-in-interest cases when sufficient documentation has been provided supporting the request to make a preliminary determination.⁷ In this instance, because we have determined that the information necessary to support the request for a preliminary determination is on the record, we find that

⁵ See 19 CFR 351.216(d).

⁶ See 19 CFR 351.221(c)(3)(ii).

⁷ See, e.g., Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada, 70 FR 50299 (August 26, 2005).

expedited action is warranted, and we are combining the notice of initiation and the notice of preliminary results in accordance with 19 CFR 351.221(c)(3)(ii).

In determining whether one company is the successor to another for purposes of applying the AD law, the Department examines a number of factors including, but not limited to, changes in: (1) management, (2) production facilities, (3) suppliers, and (4) customer base.⁸ While no one or several of these factors will necessarily provide a dispositive indication of succession, the Department will generally consider one company to be the successor to another company if its resulting operation is essentially the same as that of its predecessor.⁹ Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the prior company, the Department will assign the new company the cash deposit rate of its predecessor.¹⁰

In its CCR Request and its Supplemental Response, Zhejiang ERA provided evidence demonstrating that it is essentially the same company as Era Solar.¹¹ According to the information provided, the principal owners remained the same both pre- and post-name change. Further, although the nine-person board of directors was reduced from nine directors to three directors as a result of changes to Era Solar's legal form, the ultimate owners continued to occupy positions on the board after the name change. With regard to management, eight of the nine managers maintained their positions after the company name change.¹² Regarding its

⁸ See, e.g., Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Multilayered Wood Flooring From the People's Republic of China, 79 FR 48117, 48118 (August 15, 2014), unchanged in Multilayered Wood Flooring From the People's Republic of China: Final Results of Changed Circumstances Review, 79 FR 58740 (September 30, 2014).

⁹ Id.

¹⁰ See Notice of Final Results of Changed Circumstances Review: Polychloroprene Rubber from Japan, 69 FR 67890 (November 22, 2004) citing, Brass Sheet and Strip from Canada: Notice of Final Results of Antidumping Duty Administrative Review, 57 FR 20460 (May 13, 1992); and, Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Initiation of Antidumping Duty Changed Circumstance Review, 70 FR 17063 (April 4, 2005).

¹¹ See, generally, CCR Request and Supplemental Response.

¹² Id.

production of the subject merchandise, Zhejiang ERA stated that its production facility is the same as that of Era Solar.¹³ Zhejiang ERA also provided documentation showing that there has been no material changes in suppliers of inputs or services related to the production, sale and distribution of the subject merchandise¹⁴ or in the customer base as a result of the name change.¹⁵ Based on the foregoing, which is explained in greater detail in the Preliminary Decision Memorandum, we preliminarily determine that Zhejiang ERA is the successor-in-interest to Era Solar and, as such, that it is entitled to Zhejiang ERA's AD cash deposit rate with respect to entries of subject merchandise.

Should our final results remain the same as these preliminary results, effective the date of publication of the final results, we will instruct U.S. Customs and Border Protection to suspend liquidation of entries of subject merchandise exported by Zhejiang ERA at the AD cash deposit rate applicable to Era Solar.

Public Comment

Interested parties may submit case briefs not later than 14 days after the date of publication of this notice.¹⁶ Rebuttal briefs, which must be limited to issues raised in case briefs, may be filed not later than seven days after the due date for case briefs.¹⁷ Parties who submit case briefs or rebuttal briefs in this changed circumstances review are requested to submit with each argument: (1) a statement of the issue and (2) a brief summary of the argument with an electronic version included.¹⁸

¹³ Id.

¹⁴ Id.

¹⁵ Id.

¹⁶ The Department is exercising its discretion under 19 CFR 351.309(c)(1)(ii) to alter the time limit for the filing of case briefs.

¹⁷ The Department is exercising its discretion under 19 CFR 351.309(d)(1) to alter the time limit for the filing of rebuttal briefs.

¹⁸ See 19 CFR 351.309(c)(2) and (d)(2).

Any interested party may request a hearing within 14 days of publication of this notice.¹⁹ Hearing requests should contain the following information: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230 in a room to be determined.²⁰

All submissions, with limited exceptions, must be filed electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS").²¹ An electronically filed document must be received successfully in its entirety by 5 p.m. Eastern Time ("ET") on the due date. Documents excepted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with the APO/Dockets Unit in Room 18022 and stamped with the date and time of receipt by 5 p.m. ET on the due date.²²

Unless extended, consistent with 19 CFR 351.216(e), we intend to issue the final results of this changed-circumstances review no later than 270 days after the date on which this review was initiated or within 45 days if all parties agree to the outcome of the review.

¹⁹ The Department is exercising its discretion under 19 CFR 351.310(c) to alter the time limit for requesting a hearing.

²⁰ See 19 CFR 351.310(d).

²¹ ACCESS is available to registered users at <https://access.trade.gov> and available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building.

²² See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures: Administrative Protective Order Procedures, 76 FR 39263 (July 6, 2011).

We are issuing and publishing this initiation and preliminary results notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216 and 351.221(c)(3).

Dated: October 27, 2016.

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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