



Billing Code 3290-F8

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR-2018-0001]

Exclusion of Particular Products From the Solar Products Safeguard Measure

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Pursuant to authority provided by the President, the U.S. Trade Representative (Trade Representative) has determined that particular products should be excluded from the safeguard measure applied to certain solar products and is modifying subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTS) as set forth in the Annex of this notice to implement these exclusions.

DATES: The modifications to the HTS set forth in the Annex are applicable with respect to articles entered, or withdrawn from a warehouse for consumption, on or after 12:01 am EST, on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Victor Mroczka, Office of WTO and Multilateral Affairs, at vmroczka@ustr.eop.gov or (202) 395-9450, or Dax Terrill, Office of General Counsel, at Dax.Terrill@ustr.eop.gov or (202) 395-4739.

SUPPLEMENTARY INFORMATION:

I. Background

On November 13, 2017, the U.S. International Trade Commission (ITC) submitted a report to the President under section 201 of the Trade Act of 1974, as amended (19 U.S.C. 2251), finding that crystalline silicon photovoltaic (CSPV) cells and other CSPV products containing these cells are being imported into the United States in

such increased quantities as to be a substantial cause of serious injury to the domestic industry producing an article that is like or directly competitive with the imported products. The scope of this investigation did not cover:

- Thin film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS).

- CSPV cells, not exceeding 10,000 mm² in surface area, that are permanently integrated into a consumer good whose primary function is other than power generation and that consumes the electricity generated by the integrated CSPV cell.

Where more than one CSPV cell is permanently integrated into a consumer good, the surface area for purposes of this exclusion is the total combined surface area of all CSPV cells that are integrated into the consumer good.

- CSPV cells, whether or not partially or fully assembled into other products, if such CSPV cells were manufactured in the United States.

The President, taking into consideration the separate recommendations of the ITC Commissioners on remedy and the recommendation of the Trade Policy Staff Committee, determined to take action and issued Proclamation 9693 on January 23, 2018, to impose a safeguard measure with respect to the imported CSPV products. The President determined to implement the safeguard measure as: (1) a tariff-rate quota on imports of CSPV cells not partially or fully assembled into other products, imposed for a period of 4 years, with unchanging within-quota quantities and annual reductions in the rates of duty applicable to goods entered in excess of those quantities in the second, third, and fourth years, as provided in Annex I to the proclamation; and (2) an increase in duties on imports of CSPV products containing these cells, imposed for a period of 4 years, with

annual reductions in the rates of duty in the second, third, and fourth years, as provided in Annex I to the proclamation.

The proclamation also excluded certain products from application of the safeguard measure. Specifically, the proclamation excluded the following:

- 10 to 60 watt, inclusive, rectangular solar panels, where the panels have the following characteristics: (A) length of 250 mm or more but not over 482 mm or width of 400 mm or more but not over 635 mm, and (B) surface area of 1000 cm² or more but not over 3,061 cm², provided that no such panel with those characteristics shall contain an internal battery or external computer peripheral ports at the time of entry.
- 1 watt solar panels incorporated into nightlights that use rechargeable batteries and have the following dimensions: 58 mm or more but not over 64 mm by 126 mm or more but not over 140 mm.
- 2 watt solar panels incorporated into daylight dimmers that may use rechargeable batteries, such panels with the following dimensions: 75 mm or more but not over 82 mm by 139 mm or more but not over 143 mm.
- Off-grid and portable CSPV panels, whether in a foldable case or in rigid form containing a glass cover, where the panels have the following characteristics: (a) a total power output of 100 watts or less per panel; (b) a maximum surface area of 8,000 cm² per panel; (c) does not include a built-in inverter; and where the panels have glass covers, such panels must be in individual retail packaging (in this context, retail packaging typically includes graphics, the product name, its description and/or features, and foam for transport).

- 3.19 watt or less solar panels, each with length of 75 mm or more but not over 266 mm and width of 46 mm or more but not over 127 mm, with surface area of 338 cm² or less, with one black wire and one red wire (each of type 22 AWG or 24 AWG) not more than 206 mm in length when measured from panel edge, provided that no such panel shall contain an internal battery or external computer peripheral ports.
- 27.1 watt or less solar panels, each with surface area less than 3,000 cm² and coated across the entire surface with a polyurethane doming resin, the foregoing joined to a battery charging and maintaining unit, such unit which is an acrylonitrile butadiene styrene (ABS) box that incorporates a light emitting diode (LED) by coated wires that include a connector to permit the incorporation of an extension cable.

In addition to these exclusions, the proclamation directed the Trade Representative to publish a notice establishing procedures for interested persons to request the exclusion of particular products from the safeguard measure. The proclamation provided that if the Trade Representative, in consultation with the Secretaries of Commerce and Energy, determines that a particular product should be excluded, the Trade Representative can modify the HTS provisions created in Annex I of the proclamation to exclude the particular product from the safeguard measure through publication of the determination in the *Federal Register*.

On February 14, 2018, the Office of the United States Trade Representative (USTR) published a notice establishing procedures to consider requests for exclusion of particular products from the safeguard measure. The notice provided that requests for exclusion should identify the particular product in terms of the physical characteristics (e.g., dimensions, wattage, material composition, or other distinguishing characteristics)

that distinguish it from other products that are subject to the safeguard measures. USTR noted that it would not consider requests that identify the product at issue in terms of the identity of the producer, importer, or ultimate consumer; the country of origin; or trademarks or tradenames. Furthermore, USTR confirmed that it only would grant those exclusions that do not undermine the objectives of the safeguard measure.

Pursuant to that notice, USTR received 48 product exclusion requests and 213 subsequent comments responding to various requests. The types of products for which USTR received an exclusion request generally fall into seven categories: (1) products that consist of attachments or other parts that can be mounted to solar products; (2) products that constitute 72-cell or greater panels; (3) products with particular configurations for additional performance; (4) products with specialized functions; (5) consumer and specialty products; (6) bifacial panels and bifacial solar cells; and (7) solar cells without busbars or gridlines and panels containing these solar cells.

II. Exclusions From the Safeguard Measure

USTR has considered certain requests for exclusion of particular products and determined that exclusion of the CSPV products described in subdivisions (c)(iii)(7) through (c)(iii)(14) of U.S. note 18 to subchapter III of chapter 99 of the HTS, as amended in the Annex to this notice, from the safeguard measure established in Proclamation 9693 would not undermine the objectives of the safeguard measure. Therefore, USTR finds that these CSPV products should be excluded from the safeguard measure. Accordingly, under the authority vested in the Trade Representative by Proclamation 9693, the Trade Representative modifies the HTS provisions created by the Annex to Proclamation 9693 as set forth in the Annex to this notice.

III. Past Requests Not Addressed in This Notice

The Trade Representative has not at this time made a determination with respect to the requests for exclusion, received as of March 16, 2018, that are not addressed in the Annex to this notice. USTR will continue to evaluate those requests and the Trade Representative will make the appropriate determination in due course.

IV. Future Requests

At this time, USTR is not considering additional requests for exclusion beyond those received as of March 16, 2018. USTR will monitor developments in the U.S. market for CSPV products and, if warranted, provide an opportunity to submit additional requests for exclusion at a future date.

V. Annex

The following provisions supersede those currently in the HTS and are effective with respect to articles entered, or withdrawn from a warehouse for consumption, on or after 12:01 a.m., EST, on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The HTS is modified as follows:

(1) U.S. note 18 to subchapter III of chapter 99 of the HTS is modified:

(a) By inserting the following new subdivisions in numerical sequence at the end of subdivision (c)(iii):

“(7) off-grid, 45 watt or less solar panels, each with length not exceeding 950 mm and width of 100 mm or more but not over 255 mm, with a surface area of 2,500 cm² or less, with a pressure-laminated tempered glass cover at the time of entry but not a frame, electrical cables or connectors, or an internal battery;

(8) 4 watt or less solar panels, each with a length or diameter of 70 mm or more but not over 235 mm, with a surface area not exceeding 539 cm², and not exceeding 16 volts, provided that no such panel with these characteristics shall contain an internal battery or external computer peripheral ports at the time of entry;

(9) solar panels with a maximum rated power of equal to or less than 60 watts, having the following characteristics, provided that no such panel with those characteristics shall contain an internal battery or external computer peripheral ports at the time of entry: (A) length of not more than 482 mm and width of not more than 635 mm or (B) a total surface area not exceeding 3,061 cm²;

(10) flexible and semi-flexible off-grid solar panels designed for use with motor vehicles and boats, where the panels range in rated wattage from 10 to 120 watts, inclusive;

(11) frameless solar panels in a color other than black or blue with a total power output of 90 watts or less where the panels have a uniform surface without visible solar cells or busbars;

(12) solar cells with a maximum rated power between 3.4 and 6.7 watts, inclusive, having the following characteristics: (A) a cell surface area between 154 cm² and 260 cm², inclusive, (B) no visible busbars or gridlines on the front of the cell, and (C) more than 100 interdigitated fingers of tin-coated solid copper adhered to the back of the cell, with the copper portion of the metal fingers having a thickness of greater than 0.01 mm;

(13) solar panels with a maximum rated power between 320 and 500 watts, inclusive, having the following characteristics: (A) length between 1,556 mm and 2,070 mm inclusive, and width between 1,014 mm and 1,075 mm, inclusive, (B) where the solar cells comprising the panel have no visible busbars or gridlines on the front of the cells,

and (C) the solar cells comprising the panel have more than 100 interdigitated fingers of tin-coated solid copper adhered to the back of the cells, with the copper portion of the metal fingers having thickness greater than 0.01 mm;

(14) modules (as defined in note 18(g) to this subchapter) incorporating only CSPV cells that are products of the United States and not incorporating any CSPV cells that are the product of any other country.”

Jeffrey Gerrish,

Deputy U.S. Trade Representative.

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