

physical characteristics, such as dimensions, wattage, material composition, or other distinguishing characteristics, that differentiate it from other products that are subject to the safeguard measure. The notice said that the U.S. Trade Representative would not consider requests identifying the product at issue in terms of the identity of the producer, importer, or ultimate consumer, the country of origin, or trademarks or tradenames. The notice also provided that the U.S. Trade Representative would evaluate each request on a case-by-case basis and would grant only those exclusions that did not undermine the objectives of the safeguard measure.

The February 2018 notice indicated that the U.S. Trade Representative would consider exclusion requests filed no later than March 16, 2018. The Office of the U.S. Trade Representative (USTR) received 48 product exclusion requests and 213 comments responding to the various requests. The exclusion requests generally fell into seven categories, one of which concerned bifacial solar panels. Proponents asserted that the volume of bifacial solar panel production available for export to the United States was highly limited, that the products would not compete directly with CSPV products produced in the United States, and that the exclusion would not undermine the objectives of the safeguard measure.

On September 19, 2018, and June 13, 2019 (the June 2019 notice), the U.S. Trade Representative granted certain product exclusion requests in notices published in the *Federal Register* (83 FR 47393 and 84 FR 27684) and modified the HTSUS accordingly. In particular, based on the above assertions, the June 2019 notice specifically excluded from application of the safeguard measure “bifacial solar panels that absorb light and generate electricity on each side of the panel and that consist of only bifacial solar cells that absorb light and generate electricity on each side of the cells.”

B. Further Evaluation of the Bifacial Solar Panel Exclusion

USTR has received multiple inquiries, requests, and other comments from members of the public. Some have asserted that the bifacial solar panels exclusion granted in the June 2019 notice is broader than the category of products described in the exclusion requests submitted as of March 16, 2018. Others have stated that the exclusion will cause a significant increase in imports of bifacial solar panels, with projections that such a surge is imminent.

After evaluating newly available information from these and other sources demonstrating that global production of bifacial solar panels is increasing, that the exclusion will likely result in significant increases in imports of bifacial solar panels, and that such panels likely will compete with domestically produced monofacial and bifacial CSPV products in the U.S. market, the U.S. Trade Representative has determined, after consultation with the Secretaries of Commerce and Energy, that maintaining the exclusion will undermine the objectives of the safeguard measure.

C. Withdrawal of the Bifacial Solar Panel Exclusion

Based on an evaluation of the factors set out in the February 2018 notice, and further consideration of the exclusion granted for bifacial solar panels in the June 2019 notice, the U.S. Trade Representative has determined after consultation with the Secretaries of Commerce and Energy to withdraw that exclusion.

Accordingly, as set out in the Annex to this notice, USTR is modifying subdivision (c)(iii) of U.S. note 18 to subchapter III of chapter 99 of the HTSUS to remove subdivision (c)(iii)(15), which implements the exclusion of bifacial solar panels.

D. Technical Changes to the HTSUS

It has come to the attention of USTR that certain technical clarifications to the Annex will facilitate administration of the safeguard measure. Presidential Proclamation 6969 of January 27, 1997 (62 FR 4415) authorizes the U.S. Trade Representative to exercise the authority provided to the President under section 604 of the Trade Act of 1974 (19 U.S.C. 2483) to embody rectifications, technical or conforming changes, or similar modifications in the HTSUS. Pursuant to this delegated authority, the U.S. Trade Representative modifies the HTSUS to make the technical changes set out in the Annex to this notice.

Annex

Effective with respect to articles entered for consumption, or withdrawn from a warehouse for consumption, on or after 12:01 a.m. eastern daylight time on October 28, 2019, U.S. note 18 to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified by removing the following from subdivision (c)(iii):

“(15) bifacial solar panels that absorb light and generate electricity on each side of the panel and that consist of only bifacial solar cells that absorb light and

generate electricity on each side of the cells;”

U.S. note 18 to subchapter III of chapter 99 of the HTSUS is further modified by redesignating current subdivisions (c)(iii)(16) and (c)(iii)(17) as subdivisions (c)(iii)(15) and (c)(iii)(16), respectively.

U.S. note 18 to subchapter III of chapter 99 of the HTSUS is further modified by striking from subdivision (c)(i) the HTSUS number “8541.40.6030” and by inserting in lieu thereof “8541.40.6025”.

U.S. note 18 to subchapter III of chapter 99 of the HTSUS is further modified by striking from subdivision (g) of such note the HTSUS number “8541.40.6020” and by inserting in lieu thereof “8541.40.6015”.

Jeffrey Gerrish,

*Deputy United States Trade Representative,
Office of the U.S. Trade Representative.*

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OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. USTR-2019-0003]

Notice of Determination and Action Pursuant to Section 301: Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of determinations and action.

SUMMARY: The U.S. Trade Representative has determined that the European Union (EU) and certain member States have denied U.S. rights under the World Trade Organization (WTO) Agreement and have failed to implement WTO Dispute Settlement Body recommendations concerning certain subsidies to the EU large civil aircraft industry. The U.S. Trade Representative has determined to take action in the form of additional duties on products of certain member States of the EU, as specified in Annex A to this notice.

DATES: The additional duties set out in Annex A are applicable with respect to products that are entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on October 18, 2019.

FOR FURTHER INFORMATION CONTACT: For questions about the determinations in this investigation, contact Assistant General Counsel Megan Grimboll, (202) 395-5725, or Director for Europe