

Comment 3: Jiheng's Prior Administrative Review Rate is not Representative of the Current Behavior of Arch China and Zhucheng.

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-979]

#### Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Initiation of Antidumping Duty Investigation

Dates: *Effective Date*: November 16, 2011.

#### FOR FURTHER INFORMATION CONTACT:

Jeffrey Pedersen or Drew Jackson, AD/CVD Operations, Office 4, (202) 482-2769 or (202) 482-4406, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

#### SUPPLEMENTARY INFORMATION: On

October 19, 2011, the Department of Commerce ("Department") received a petition concerning imports of crystalline silicon photovoltaic cells, whether or not assembled into modules ("solar cells") from the People's Republic of China ("PRC") filed in proper form by SolarWorld Industries America Inc. ("Petitioner").<sup>1</sup> On October 21, 24, and 31, and November 4, 2011, the Department issued supplemental questionnaires requesting information and clarification of certain areas of the Petition. Petitioner timely filed additional information on October 25, 2011, ("Supplement I") October 28, 2011, ("Supplement II-A—General Issues" and "Supplement II-B—AD Issues"), November 2, 2011, ("Supplement III"), November 4, 2011 ("Supplement IV"), and November 7,

<sup>1</sup> See Petition for the Imposition of Antidumping and Countervailing Duties: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China dated October 19, 2011 ("Petition").

2011 ("Supplement V-A—AD Issues" and "Supplement V-B—General Issues").

#### Period of Investigation

The period of investigation ("POI") is April 1, 2011, through September 30, 2011.<sup>2</sup>

#### The Petition

In accordance with section 732(b) of the Tariff Act of 1930, as amended ("the Act"), Petitioner alleges that imports of solar cells from the PRC are being, or are likely to be, sold in the United States at less than fair value, within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States. Also, consistent with section 732(b)(1) of the Act, the Petition is accompanied by information reasonably available to Petitioner supporting its allegations.

The Department finds, as an interested party, as defined in section 771(9)(C) of the Act, that Petitioner filed the Petition on behalf of the domestic industry and has demonstrated sufficient industry support with respect to the Petition (see "Determination of Industry Support for the Petition" section below).

#### Scope of Investigation

The products covered by the scope of this investigation are solar cells from the PRC. For a full description of the scope of the investigation, see "Scope of Investigation" in Appendix I of this notice.

#### Comments on Scope of Investigation

During our review of the Petition, we discussed the scope with Petitioner to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Petitioner submitted revised scope language on November 4, 2011, and November 7, 2011. The November 7, 2011, submission included various revisions. Among these revisions was the following substantive provision:

These proceedings cover crystalline silicon PV cells, whether exported directly to the United States or via third countries; crystalline silicon PV modules/panels produced in the PRC, regardless of country of manufacture of the cells used to produce the modules or panels, and whether exported directly to the United States or via third countries, and crystalline silicon PV modules or panels produced in a third country from crystalline silicon PV cells manufactured in the PRC, whether exported directly to the United States or via third countries.

<sup>2</sup> See 19 CFR 351.204(b)(1).

The Department has not adopted this specific revision recommended by Petitioner for the purposes of initiation.<sup>3</sup> Because Petitioner's November 7, 2011, scope submission was filed one day prior to the statutory deadline for initiation, the Department has had neither the time nor the administrative resources to evaluate Petitioner's proposed language regarding merchandise produced using inputs from third-country markets, or merchandise processed in third-country markets. Petitioner's November 7, 2011, scope submission also contained the following language:

Unless explicitly excluded from the scope of these proceedings, crystalline silicon PV cells possessing the physical characteristics of subject merchandise are covered by these proceedings.

The Department has not adopted this specific revision recommended by Petitioner for the purposes of initiation because this language is superfluous, and appears to add no additional clarification as to the description of merchandise covered by the scope of the Petition. However, as discussed in the preamble to the regulations,<sup>4</sup> we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages interested parties to submit such comments by Monday, November 28, 2011, which is 20 calendar days from the signature date of this notice. All comments must be filed on the records of both the PRC antidumping duty investigation as well as the PRC countervailing duty investigation. Comments should be filed electronically using Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System ("IA ACCESS"). The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination.

#### Comments on Product Characteristics for Antidumping Duty Questionnaires

We are requesting comments from interested parties regarding the appropriate physical characteristics of solar cells to be reported in response to the Department's antidumping questionnaires. This information will be used to identify the key physical characteristics of the merchandise under consideration in order to more

<sup>3</sup> We note that the Department has independent authority to determine the scope of its investigations. See *Diversified Products Corp. v. United States*, 572 F. Supp. 883, 887 (CIT 1983).

<sup>4</sup> See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

accurately report the relevant factors of production, as well as to develop appropriate product comparison criteria.

Interested parties may provide information or comments that they believe are relevant to the development of an accurate listing of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use in defining unique products. We note that it is not always appropriate to use all product characteristics to define products. We base product comparison criteria on meaningful commercial differences among products. In other words, while there may be some physical product characteristics utilized by manufacturers to describe solar cells, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics.

In order to consider the suggestions of interested parties in developing and issuing the antidumping duty questionnaires, we must receive comments filed electronically using IA ACCESS by November 28, 2011. Additionally, rebuttal comments must be received by December 5, 2011.

#### Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the industry.

Section 771(4)(A) of the Act defines the “industry” as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the

domestic like product. The U.S. International Trade Commission (“ITC”), which is responsible for determining whether “the domestic industry” has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (see section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department’s determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.<sup>5</sup>

Section 771(10) of the Act defines the domestic like product as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.” Thus, the reference point from which the domestic like product analysis begins is “the article subject to an investigation” (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that solar cells constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product.<sup>6</sup>

In determining whether Petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the “Scope of Investigation” section above. To establish industry support, Petitioner provided its production volume of the domestic like product in 2010, and compared this to the estimated total

<sup>5</sup> See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff’d* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

<sup>6</sup> For a discussion of the domestic like product analysis in this case, see Antidumping Duty Investigation Initiation Checklist: Crystalline Silicon Photovoltaic Cells from the People’s Republic of China (“Initiation Checklist”), at Attachment II, Analysis of Industry Support for the Petitions Covering Solar Cells from the People’s Republic of China, on file in the Central Records Unit (CRU), Room 7046 of the main Department of Commerce building.

production volume of the domestic like product for the entire domestic industry.<sup>7</sup> Petitioner estimated 2010 production volume of the domestic like product by non-petitioning companies based on production data published by an industry source, Photon International, along with affidavits of support for the petition, and its knowledge of the industry. We have relied upon data Petitioner provided for purposes of measuring industry support.<sup>8</sup>

On November 2, 2011, in consultations with the Department held with respect to the companion countervailing duty case, the Government of China raised the issue of industry support.<sup>9</sup> In addition, on November 8, 2011, we received two submissions on behalf of Chinese producers/exporters and affiliated importers of Solar Cells, interested parties to this proceeding as defined in section 771(9)(A) of the Act, questioning the industry support calculation.<sup>10</sup>

Based on information provided in the Petition, supplemental submissions, and other information readily available to the Department, we determine that the Petitioner has met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product. Because the Petition did not establish support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product, the Department was required to take further action in order to evaluate industry support.<sup>11</sup> In this case, the Department was able to rely on other information, in accordance with section 732(c)(4)(D)(i) of the Act, to determine industry support.<sup>12</sup> Based on information provided in the Petition, supplemental submissions, and additional information obtained by the Department, the domestic producers and workers have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the

<sup>7</sup> See Initiation Checklist at Attachment II.

<sup>8</sup> For further discussion, see Initiation Checklist at Attachment II.

<sup>9</sup> See Memorandum to the File from Meredith Rutherford, dated November 8, 2011, titled “Placing Consultations Memorandum on the AD Record”; see also Initiation Checklist at Attachment II.

<sup>10</sup> For further discussion of these submissions see Initiation Checklist at Attachment II.

<sup>11</sup> See section 732(c)(4)(D) of the Act.

<sup>12</sup> See Initiation Checklist at Attachment II.

production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.<sup>13</sup>

The Department finds that Petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the antidumping duty investigation that it is requesting the Department initiate.<sup>14</sup>

#### Allegations and Evidence of Material Injury and Causation

Petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (“NV”). In addition, Petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

Petitioner contends that the industry’s injured condition is illustrated by reduced market share, reduced shipments, unused capacity, underselling and price depression or suppression, reduced employment, a decline in financial performance, lost sales and revenue, and an increase in import penetration.<sup>15</sup> We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.<sup>16</sup>

#### Allegations of Sales at Less Than Fair Value

The following is a description of the allegations of sales at less than fair value upon which the Department based its decision to initiate this investigation of imports of solar cells from the PRC. The sources of data for the deductions and adjustments relating to the U.S. price and the factors of production are also discussed in the Initiation Checklist.<sup>17</sup>

<sup>13</sup> See Initiation Checklist at Attachment II.

<sup>14</sup> *Id.*

<sup>15</sup> See Volume I of the Petition, at 1–4, 25–44, and Exhibits I–6, I–8–9, I–14–16, I–17a, I–18a, I–19–20, I–21a, I–21b, I–22 and I–24, and Supplement II–A—General Issues, at 1–2.

<sup>16</sup> See Initiation Checklist at Attachment III, Injury.

<sup>17</sup> See Initiation Checklist, at 5–8.

#### U.S. Price

Petitioner calculated constructed export price (“CEP”) based on sales offers of three types of solar cells to unaffiliated U.S. customers by the U.S. affiliates of three PRC producers of solar cells. Petitioners substantiated the U.S. price quotes with declarations.<sup>18</sup> Petitioners further provided a detailed description of the merchandise corresponding to the price quotes,<sup>19</sup> and an explanation and declaration of why the sales prices should be considered CEPs.<sup>20</sup> Based on stated sales and delivery terms, Petitioner adjusted these CEPs for discounts, freight, credit expenses, domestic brokerage and handling, ocean freight, CEP selling expenses, and CEP profit.<sup>21</sup>

#### Normal Value

Petitioner claims the PRC is a non-market economy (“NME”) country and that this designation remains in effect today.<sup>22</sup> The presumption of NME status for the PRC has not been revoked by the Department and, therefore, in accordance with section 771(18)(C)(i) of the Act, remains in effect for purposes of the initiation of this investigation. Accordingly, the NV of the product for the PRC investigation is appropriately based on factors of production valued in a surrogate market-economy country in accordance with section 773(c) of the Act. In the course of this investigation, all parties, including the public, will have the opportunity to provide relevant information related to the issues of the PRC’s NME status and the granting of separate rates to individual exporters.

Petitioner contends that India is the appropriate surrogate country for the PRC because: (1) It is at a level of economic development comparable to that of the PRC and (2) it is a significant producer of identical merchandise and (3) that the availability and quality of data are good.<sup>23</sup> Based on the information provided by Petitioner, we believe that it is appropriate to use India as a surrogate country for initiation purposes. After initiation of the investigation, interested parties will have the opportunity to submit comments regarding surrogate country

<sup>18</sup> See Volume II of the Petition, at Exhibits II–1 and II–2.

<sup>19</sup> See Volume II of the Petition, at Exhibit II–3.

<sup>20</sup> See Volume II of the Petition, at 1 and Exhibit II–1.

<sup>21</sup> See Initiation Checklist at 5–6; see also Volume II of the Petition, at 2–16, and Exhibits II–I through II–15; see also Supplement I, at 19, and Exhibits 19–20, and Supplement II–B—AD Issues, at 1–7 and Exhibits 1, 4–7, and 9–11; see also Supplement V–A—AD Issues, at 1, 4, and Exhibit 1.

<sup>22</sup> See Volume II of the Petition, at 17.

<sup>23</sup> See Volume II of the Petition, at 18–19, and Supplement I, at 1–12.

selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value factors of production within 40 days after the date of publication of the preliminary determination.

Petitioner calculated NV and the dumping margins using the Department’s NME methodology as required by 19 CFR 351.202(b)(7)(i)(C) and 19 CFR 351.408. In calculating NV, Petitioner based the quantity of each of the inputs used to manufacture the domestic like product on reasonably available information, which Petitioner asserts that, to the best of its knowledge, is similar to the consumption of PRC producers.<sup>24</sup>

Petitioner valued most of the factors of production based on reasonably available, public surrogate country data, specifically, Indian import data from the Global Trade Atlas (“GTA”).<sup>25</sup> In addition, Petitioner made currency conversions, where necessary, based on the POI-average rupees/U.S. dollar exchange rate based on Federal Reserve exchange rates.<sup>26</sup> The Department determines that the surrogate values used by Petitioner are reasonably available and, thus, acceptable for purposes of initiation. With regard to the main input, Petitioner contends that solar grade polysilicon is a specialized product and used world market prices to value the input. Petitioner contends that Indian import data from the GTA did not adequately reflect the uniqueness of the input. Also, Petitioner valued silicon wafers using world market prices. The use of these data raises significant issues that the Department believes are better addressed in the context of the investigation. Therefore, for the purposes of this initiation, the Department finds that it is more appropriate to rely on our standard methodology and use Indian import data to value polysilicon and solar wafers. During the course of the investigation, the Department will consider record information to determine the most appropriate surrogate value for polysilicon, solar wafers, and all other factors of production used to produce solar cells.

Petitioner determined energy costs using reasonably available information. Petitioner valued electricity using the Indian electricity rate for small,

<sup>24</sup> See Volume II of the Petition, at 20.

<sup>25</sup> See Initiation Checklist; see also Volume II of the Petition, at Exhibit II–21; see also Supplement V, at Exhibit 3.

<sup>26</sup> See Initiation Checklist; see also Volume II of the Petition, at Exhibit II–11; see also Supplement II–B—AD Issues at Exhibit 9.

medium, and large companies reported by the Central Electric Authority of the Government of India.<sup>27</sup>

Petitioner determined labor consumption, in hours, using reasonably available information. Petitioner valued labor using data collected by the International Labor Organization (“ILO”) and disseminated in Chapter 6A of the ILO Yearbook of Labor Statistics.<sup>28</sup> Petitioner adjusted labor costs using consumer price index data published by the International Monetary Fund.

Petitioner determined packing material consumption using reasonably available information and valued the relevant factors using data from GTA.<sup>29</sup>

Petitioner calculated factory overhead, selling, general and administrative expenses, and profit by using data from the 2009–2010 financial statement of Bharat Heavy Electricals Ltd., an Indian producer of solar cells.<sup>30</sup>

#### Fair Value Comparisons

Based on the data provided by Petitioner, there is reason to believe that imports of solar cells from the PRC are being, or are likely to be, sold in the United States at less than fair value. Based on a comparison of U.S. prices and NV calculated in accordance with section 773(c) of the Act, as described above, the estimated CEP dumping margins range from 49.88 percent and 249.96 percent.<sup>31</sup>

#### Initiation of Antidumping Duty Investigation

Based upon our examination of the Petition on solar cells from the PRC, the Department finds the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of solar cells from the PRC are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

<sup>27</sup> See Initiation Checklist; see also Volume II of the Petition, at 31, and Exhibit II-25.

<sup>28</sup> See Initiation Checklist; see also Volume II of the Petition, at 31 and Exhibit II-26.

<sup>29</sup> See Initiation Checklist; see also Volume II of the Petition, at Exhibit II-21; Supplement V-A—AD Issues at Exhibit 6.

<sup>30</sup> See Initiation Checklist; see also Supplement I, at 19, and Exhibit 20; see also Supplement V-A—AD Issues, at Exhibit AD Supp—3–3.

<sup>31</sup> See Initiation Checklist; see also Supplement V-A—AD Issues, at Exhibit AD—Supp—3–2.

#### Critical Circumstances

Petitioner alleges, based on trade statistics since August 2010 and prior knowledge of an impending trade case, that there is a reasonable basis to believe or suspect that critical circumstances exist with regard to imports of solar cells from the PRC.<sup>32</sup>

Section 733(e)(1) of the Act states that if a petitioner alleges critical circumstances, the Department will find that such circumstances exist, at any time after the date of initiation, when there is a reasonable basis to believe or suspect that under, subparagraph (A)(i), there is a history of dumping and there is material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h) of the Department’s regulations defines “massive imports” as imports that have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration. Section 351.206(i) of the Department’s regulations states that a relatively short period will normally be defined as the period beginning on the date the proceeding begins and ending at least three months later. But if the Department finds that importers, or exporters and producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, then the regulation permits the Department to consider a period of not less than three months from that earlier time.

With regard to the criteria of massive imports over a relatively short period of time, Petitioner argues that the Department should evaluate the level of imports during a period prior to the filing of the petition because importers and foreign exporters and producers had reason to believe that a dumping or countervailing duty proceeding was likely.<sup>33</sup> Petitioner contends that there were newspaper articles beginning in August 2009 that discussed unfair pricing on behalf of Chinese product.<sup>34</sup> Petitioner further notes that the very

<sup>32</sup> See Volume IV of the Petition, at 1, 7, and 10.

<sup>33</sup> See Volume IV of the Petition, at 3–9, and Exhibits IV–1 through IV–16; see also 19 CFR 351.206(i).

<sup>34</sup> See Volume IV of the Petition, at 4, and Exhibits IV–1 and IV–2.

widely publicized closure of a large solar cell producer resulted in much media discussion of the effects of unfair trade in January 2011. Therefore, Petitioner states that “the effects of any behavioral shifts of Chinese producers would be likely to manifest themselves in February 2011 as shipments of goods ordered in the days immediately following Evergreen’s demise in January 2011 would not have reached the United States until February.”<sup>35</sup> Thus, Petitioner demonstrates massive imports over a relatively short period of time by comparing imports of subject merchandise between the six-month period of August 2010 and January 2011 (base period) and the six-month period of February 2011 and July 2011 (comparison period). Based on Petitioner’s calculation, imports surged 220 percent between base period and comparison period, which is greater than the 15 percent threshold defined in the Department’s regulations.<sup>36</sup>

With regard to the requirement of history or knowledge of dumping, Petitioner alleges that importers knew, or should have known, that solar cells were being sold at less than fair value. While there have been no determinations of dumping of solar cells by the Chinese in any foreign markets, Petitioner’s claim that the margins being calculated in the dumping allegation are at a level high enough to impute importer knowledge that merchandise was being sold at less than its fair value. The estimated dumping margins range between 49.88 and 249.96 percent.<sup>37</sup> These margins exceed the 25 percent threshold used by the Department to impute knowledge of dumping.<sup>38</sup> In addition, Petitioner references the media coverage discussing unfair pricing in the industry which indicates that importers had knowledge that Chinese companies were most likely selling at less than fair value.<sup>39</sup> With regard to injury, Petitioner acknowledges that there is no preliminary determination by the ITC at this time, however, Petitioner argues that in the past the Department “has considered the extent of the increase in the volume of imports of the subject

<sup>35</sup> See Supplement II—A—General Issues, at 6.

<sup>36</sup> See Volume IV of the Petition, at 10–11; see also 19 CFR 351.206(h).

<sup>37</sup> See Volume IV of the Petition, at 11–12, and Volume II of the Petition; see also Initiation Checklist; see also Supplement V, at Exhibit 2.

<sup>38</sup> See e.g., *Final Determination of Sales at Less than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People’s Republic of China*, 74 FR 2049 (Jan. 14, 2009) and accompanying Issue and Decisions Memorandum at Issue 4.

<sup>39</sup> See Volume IV of the Petition, at 12, and Exhibits IV–1 and IV–3.

merchandise, as well as the magnitude of the dumping margins, in determining whether a reasonable basis exists to impute knowledge that material injury was likely.”<sup>40</sup> Petitioner alleges that because imports have increased by 220 percent from base period to comparison period, and because the margins alleged in the Petition exceed the 25 percent threshold used by the Department to impute knowledge of dumping, there is therefore, adequate basis to determine that importers knew or should have known that material injury was likely due to the unfairly traded sales.<sup>41</sup>

Petitioner requests that the Department examine the information it has provided and make a preliminary finding of critical circumstances on an expedited basis, within 45 days of the filing of the Petition.<sup>42</sup> Section 732(e) of the Act states that when there is a reasonable basis to believe or suspect (1) there is a history of dumping in the United States or elsewhere of the subject merchandise, or (2) the person by whom, or for whose account, the merchandise was imported knew, or should have known, that the exporter was selling the subject merchandise at less than its fair value, the Department may request Customs and Border Protection (CBP) to compile information on an expedited basis regarding entries of the subject merchandise.

Taking into consideration the foregoing, we will analyze this matter further. We will monitor imports of solar cells from the PRC and we will request that CBP compile information on an expedited basis regarding entries of subject merchandise.<sup>43</sup> If, at any time, the criteria for a finding of critical circumstances are established, we will issue a critical circumstances finding at the earliest possible date.<sup>44</sup>

### Targeted Dumping Allegations

On December 10, 2008, the Department issued an interim final rule for the purpose of withdrawing 19 CFR 351.414(f) and (g), the regulatory provisions governing the targeted dumping analysis in antidumping duty investigations, and the corresponding regulation governing the deadline for targeted dumping allegations, 19 CFR

351.301(d)(5).<sup>45</sup> The Department stated that “{w}ithdrawal will allow the Department to exercise the discretion intended by the statute and, thereby, develop a practice that will allow interested parties to pursue all statutory avenues of relief in this area.”<sup>46</sup>

In order to accomplish this objective, if any interested party wishes to make a targeted dumping allegation in this investigation pursuant to section 777A(d)(1)(B) of the Act, such allegation is due no later than 45 days before the scheduled date of the preliminary determination.

### Respondent Selection

Petitioner identified 75 PRC producers/exporters of solar cells. The Department will issue quantity and value questionnaires to each of the 75 producers/exporters of solar cells named in the Petition, and will make its respondent selection decision based on the responses to the questionnaires it receives. Parties that do not receive a quantity and value questionnaire from the Department may file a quantity and value questionnaire by the applicable deadline if they wish to be included in the pool of companies from which the Department will select mandatory respondents.

The Department requires that the respondents submit a response to both the quantity and value questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. On the date of the publication of this initiation notice in the **Federal Register**, the Department will post the quantity and value questionnaire along with the filing instructions on the Import Administration Web site at <http://ia.ita.doc.gov/ia-highlights-and-news.html>. A response to the quantity and value questionnaire is due no later than November 29, 2011.<sup>47</sup>

Interested parties must submit applications for disclosure under administrative protective order (“APO”) in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on the Department’s Web site at <http://ia.ita.doc.gov/apo>.

### Separate-Rate Application

In order to obtain separate-rate status in NME investigations, exporters and producers must submit a separate-rate status application.<sup>48</sup> The specific requirements for submitting the separate-rate application in this investigation are outlined in detail in the application itself, which will be available on the Department’s Web site at <http://ia.ita.doc.gov/ia-highlights-and-news.html> on the date of publication of this initiation notice in the **Federal Register**. The separate-rate application will be due 60 days after publication of this initiation notice. For exporters and producers who submit a separate-rate status application and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for consideration for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents. As noted in the “Respondent Selection” section above, the Department requires that respondents submit a response to both the quantity and value questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. The quantity and value questionnaire will be available on the Department’s Web site at <http://ia.ita.doc.gov/ia-highlights-and-news.html> on the date of the publication of this initiation notice in the **Federal Register**.

### Use of Combination Rates in an NME Investigation

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. The Policy Bulletin states:

While continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of “combination rates” because such rates apply to specific combinations of exporters and one or more

<sup>40</sup> See Volume IV of the Petition, at 12; see also *Final Determination of Sales at Less than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People’s Republic of China*, 62 FR 61964, 61967 (Nov. 20, 1997).

<sup>41</sup> See Volume IV of the Petition, at 13.

<sup>42</sup> See Volume IV of the Petition, at 1, 2, and 16; see also 19 CFR 351.206(c)(2)(iii).

<sup>43</sup> See Section 732(e) of the Act.

<sup>44</sup> See Policy Bulletin 98/4, 63 FR 55364 (Oct. 15, 1998).

<sup>45</sup> See *Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations*, 73 FR 74930 (December 10, 2008).

<sup>46</sup> *Id.* at 74931.

<sup>47</sup> See *Circular Welded Austenitic Stainless Pressure Pipe From the People’s Republic of China: Initiation of Antidumping Duty Investigation*, 73 FR 10221, 10225 (February 26, 2008); *Initiation of Antidumping Duty Investigation: Certain Artist Canvas From the People’s Republic of China*, 70 FR 21996, 21999 (April 28, 2005).

<sup>48</sup> See Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries, dated April 5, 2005 (“Policy Bulletin”), available on the Department’s Web site at <http://ia.ita.doc.gov/policy/bull05-1.pdf>.

producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.<sup>49</sup>

#### *Distribution of Copies of the Petition*

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public versions of the Petition have been provided to the representatives of the Government of the PRC. Because of the large number of producers/exporters identified in the Petition, the Department considers the service of the public version of the Petition to the foreign producers/exporters satisfied by the delivery of the public version to the Government of the PRC, consistent with 19 CFR 351.203(c)(2).

#### **ITC Notification**

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

#### **Preliminary Determinations by the ITC**

The ITC will preliminarily determine, no later than December 5, 2011, whether there is a reasonable indication that imports of solar cells from the PRC are materially injuring, or threatening material injury to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

#### **Notification to Interested Parties**

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures, 73 FR 3634. Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (e.g., the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

Any party submitting factual information in an antidumping duty or countervailing duty proceeding must certify to the accuracy and completeness of that information.<sup>50</sup> Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all segments of any antidumping duty or countervailing duty proceedings initiated on or after

March 14, 2011.<sup>51</sup> The formats for the revised certifications are provided at the end of the Interim Final Rule. The Department intends to reject factual submissions in any proceeding segments initiated on or after March 14, 2011, if the submitting party does not comply with the revised certification requirements.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: November 8, 2011.

**Paul Piquado**

*Assistant Secretary for Import Administration.*

#### **Appendix I**

##### **Scope of the Investigation**

The merchandise covered by this investigation are crystalline silicon photovoltaic cells, and modules, laminates, and panels, consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including, but not limited to, modules, laminates, panels and building integrated materials.

This investigation covers crystalline silicon photovoltaic cells of thickness equal to or greater than 20 micrometers, having a p/n junction formed by any means, whether or not the cell has undergone other processing, including, but not limited to, cleaning, etching, coating, and/or addition of materials (including, but not limited to, metallization and conductor patterns) to collect and forward the electricity that is generated by the cell.

Subject merchandise may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, modules, laminates, panels, building-integrated modules, building-integrated panels, or other finished goods kits. Such parts that otherwise meet the definition of subject merchandise are included in the scope of this investigation.

Excluded from the scope of this investigation are thin film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS).

Also excluded from the scope of this investigation are crystalline silicon photovoltaic cells, not exceeding 10,000mm<sup>2</sup> in surface area, that are permanently integrated into a consumer good whose function is other than power generation and that consumes the electricity generated by the integrated crystalline silicon photovoltaic cell. Where more than one cell is permanently integrated into a consumer good, the surface area for purposes of this exclusion shall be the total combined surface area of all cells that are integrated into the consumer good.

<sup>51</sup> See Certification of Factual Information to Import Administration during Antidumping and Countervailing Duty Proceedings: Interim Final Rule, 76 FR 7491 (February 10, 2011) (“Interim Final Rule”) amending 19 CFR 351.303(g)(1) and (2).

Merchandise covered by this investigation is currently classified in the Harmonized Tariff System of the United States (“HTSUS”) under subheadings 8501.61.0000, 8507.20.80, 8541.40.6020 and 8541.40.6030. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of this investigation is dispositive.

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## **DEPARTMENT OF COMMERCE**

### **International Trade Administration**

[A-549-821]

#### **Polyethylene Retail Carrier Bags From Thailand: Correction to the Amended Final Results of Antidumping Duty Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On November 3, 2011, the Department of Commerce (the Department) published in the **Federal Register** the amended final results of the administrative review of the antidumping duty order on polyethylene retail carrier bags from Thailand for the period August 1, 2009, through July 31, 2010. The notice did not include the names and margins of two companies subject to the amended final results of the review. The names and the respective margins are indicated below.

**FOR FURTHER INFORMATION CONTACT:** Bryan Hansen, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; *telephone:* (202) 482-3683.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On November 3, 2011, the Department of Commerce (the Department) published the amended final results of the administrative review of the antidumping duty order on polyethylene retail carrier bags from Thailand. See *Polyethylene Retail Carrier Bags From Thailand: Amended Final Results of Antidumping Duty Administrative Review*, 76 FR 68137 (November 3, 2011) (*Amended Final Results*). The period of review is August 1, 2009, through July 31, 2010.

Subsequent to the publication of the *Amended Final Results* we identified an inadvertent error in the notice. The names and margins of the following two

<sup>49</sup> See Policy Bulletin at 6 (emphasis added).

<sup>50</sup> See section 782(b) of the Act.