



[Billing Code 3290-F9]

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. USTR–2018–0001]

Exclusion of Particular Products from the Solar Products Safeguard Measure

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of product exclusions.

SUMMARY: On January 23, 2018, the President imposed a safeguard measure on imports of certain solar products pursuant to a Section 201 investigation. On February 14, 2018, the United States Trade Representative (Trade Representative) established a procedure to request product-specific exclusions from application of the safeguard measure. On September 19, 2018, the Trade Representative granted certain of those exclusion requests. This notice announces the Trade Representative’s determination to grant additional exclusion requests, as specified in the Annex to this notice. The Trade Representative will not further consider exclusion requests that were not granted in this or the September 19 notices. This action is without prejudice to the Trade Representative’s authority to grant exclusions if there is another round of requests for exclusion.

DATES: The product exclusions announced in this notice will apply as of **[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:

A. Background

On January 23, 2018, the President, issued Proclamation 9693 (83 FR 3541) to impose a safeguard measure with respect to certain crystalline silicon photovoltaic (CSPV) cells and other products (CSPV products) containing these cells. The Proclamation directed the Trade Representative to establish procedures for interested persons to request the exclusion of particular products from the safeguard measure. It also authorized the Trade Representative, in consultation with the Secretaries of Commerce and Energy, to exclude particular products and modify the Harmonized Tariff Schedule of the United States (HTSUS) upon publication of a determination in the *Federal Register*.

On February 14, 2018, the Trade Representative issued a notice setting out the procedure to request product exclusions, and opened a public docket. *See* 83 FR 6670 (the February 14 notice). Under the February 14 notice, requests for exclusion were to identify the particular product in terms of its 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 provided that the 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. It also noted that the Trade Representative would only grant exclusions that did not undermine the objectives of the safeguard measure.

The February 14 notice provided for consideration of submissions requesting an exclusion that were filed no later than March 16, 2018. The Office of the U.S. Trade Representative (USTR) received 48 product exclusion requests and 213 subsequent

comments responding to various requests. The exclusion requests generally fell 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.

On September 19, 2018, the Trade Representative granted certain product exclusion requests with a determination in the *Federal Register* (83 FR 47393).

B. Determination to Grant Certain Exclusions

Based on an evaluation of the factors set out in the February 14 notice, which are summarized above, the Trade Representative has determined to grant the product exclusions set out in the Annex to this notice.

C. Remaining Requests Not Addressed in This Notice

USTR has completed review of all exclusion requests received in response to the February 14 notice. The Trade Representative will not further consider exclusion requests that were not granted in this or the September 19 notices. This action is without prejudice to the Trade Representative's authority to grant exclusions if USTR initiates another round of requests for exclusion.

D. Future Exclusion Requests

The Trade Representative is not entertaining additional exclusion requests at this time. However, 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.

ANNEX

Effective with respect to articles entered, or withdrawn from a warehouse for consumption, on or after 12:01 am eastern daylight time on **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**, U.S. note 18 to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified by inserting the following new subdivisions in numerical sequence at the end of 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;

(16) flexible fiberglass solar panels without glass components other than fiberglass, such panels having power outputs ranging from 250 to 900 watts;

(17) solar panels consisting of solar cells arranged in rows that are laminated in the panel and that are separated by more than 10 mm, with an optical film spanning the gaps between all rows that is designed to direct sunlight onto the solar cells, and not including panels that lack said optical film or only have a white or other backing layer that absorbs or scatters sunlight.”

Jeffrey Gerrish,

Deputy United States Trade Representative,

Office of the U.S. Trade Representative.

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