

Administration of Joseph R. Biden, Jr., 2024

Proclamation 10779—To Further Facilitate Positive Adjustment to Competition From Imports of Certain Crystalline Silicon Photovoltaic Cells (Whether or Not Partially or Fully Assembled Into Other Products)

June 21, 2024

By the President of the United States of America

A Proclamation

1. On January 23, 2018, pursuant to section 203 of the Trade Act of 1974, as amended (the "Trade Act") (19 U.S.C. 2253), the President issued Proclamation 9693, imposing a safeguard measure for a period of 4 years that included both a tariff-rate quota (TRQ) on imports of certain crystalline silicon photovoltaic (CSPV) cells, not partially or fully assembled into other products, provided for in subheading 8541.40.60 (currently 8541.42.00) of the Harmonized Tariff Schedule of the United States (HTS), and an increase in duties (safeguard tariff) on imports of CSPV cells exceeding the TRQ and all imports of other CSPV products, including modules provided for in subheading 8541.40.60 (currently 8541.43.00) of the HTS. Proclamation 9693 exempted imports from certain designated beneficiary countries under the Generalized System of Preferences from the application of the safeguard measure.

2. Clause (4) and Annex I of Proclamation 9693 directed the United States Trade Representative (USTR) to establish procedures for interested persons to request the exclusion of particular products from the safeguard measure. Pursuant to the procedures that the USTR enacted, effective June 13, 2019, the USTR excluded 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 both sides of the cells (bifacial modules). Exclusion of Particular Products From the Solar Products Safeguard Measure, 84 FR 27684 (June 13, 2019).

3. After taking into account the United States International Trade Commission's (USITC) report on the results of its monitoring of developments with respect to the domestic solar industry (USITC, Crystalline Silicon Photovoltaic Cells, Whether or Not Partially or Fully Assembled Into Other Products: Monitoring Developments in the Domestic Industry, No. TA–201–075 (Monitoring)) and the USITC's report regarding the probable economic effect on the domestic CSPV cell and module manufacturing industry of modifying the safeguard measure (USITC, Crystalline Silicon Photovoltaic Cells, Whether or Not Partially or Fully Assembled Into Other Products: Advice on the Probable Economic Effect of Certain Modifications to the Safeguard Measure, No. TA–201–075 (Modification)), and after receiving a petition from a majority of the representatives of the domestic industry with respect to each of the following modifications, on October 10, 2020, the President issued Proclamation 10101 under section 204(b)(1)(B) of the Trade Act (19 U.S.C. 2254(b)(1)(B)). In Proclamation 10101, the President determined that the domestic industry had begun to make a positive adjustment to import competition, as shown by the increases in domestic module production capacity, production, and market share. Proclamation 10101 also:

(a) revoked the exclusion of bifacial modules from application of the safeguard measure on the basis that it had impaired and was likely to continue to impair the effectiveness of the safeguard action; and

(b) adjusted the safeguard tariff for the fourth year of the safeguard measure from 15 percent to 18 percent on the basis that the exclusion of bifacial modules from application of the safeguard

tariff had impaired the remedial effectiveness of the 4-year action proclaimed in Proclamation 9693, and to achieve the full remedial effect envisaged in that action.

4. On November 16, 2021, the United States Court of International Trade (CIT) held in *Solar Energy Industries Association et al. v. United States* that the President acted outside of his statutory authority in issuing Proclamation 10101, and enjoined the Government from enforcing that proclamation. However, in November 2023, a panel of the United States Court of Appeals for the Federal Circuit reversed the CIT's decision.

5. After receiving the USITC's December 8, 2021, determination and report pursuant to section 204(c) of the Trade Act (19 U.S.C. 2254(c)), which found that the safeguard action continues to be necessary to prevent or remedy the serious injury to the domestic industry and that there was evidence that the domestic industry was making a positive adjustment to import competition (USITC, Crystalline Silicon Photovoltaic Cells, Whether or Not Partially or Fully Assembled Into Other Products, Investigation No. TA–201–75 (Extension)), and after taking into account the information provided in the USITC's report and the information received from the public through the process published in the *Federal Register* on September 30, 2021 (86 FR 54279), pursuant to section 203(e)(1)(B) of the Trade Act (19 U.S.C. 2253(e)(1)(B)), I issued Proclamation 10339 on February 4, 2022. In Proclamation 10339, I determined that the safeguard action on imports of CSPV cells, whether or not partially or fully assembled into other products, continued to be necessary to prevent or remedy the serious injury to the domestic industry, and that there was evidence that the domestic industry was making a positive adjustment to import competition. I further determined to extend the safeguard measure proclaimed in Proclamation 9693, as modified by Proclamation 10101, in relevant part, as follows:

(a) continuation of the increase in duties on imports of modules described in paragraph 1 of Proclamation 10339 for an additional period of 4 years, with annual reductions in the fifth, sixth, seventh, and eighth years, as described in Annex I to Proclamation 10339; and

(b) exclusion of bifacial panels from the extension of duties proclaimed in paragraph 9 of Proclamation 10339.

6. If an extension of an action taken under section 203 of the Trade Act (19 U.S.C. 2253) exceeds 3 years, section 204(a)(2) of the Trade Act (19 U.S.C. 2254(a)(2)) requires the USITC to issue a report to the President and the Congress on its monitoring of developments with respect to the domestic industry, including the progress and specific efforts made by workers and firms in the domestic industry to make a positive adjustment to import competition, no later than the midpoint of the period of the extension.

7. On February 6, 2024, the USITC issued its second midterm report pursuant to section 204(a)(2) of the Trade Act (19 U.S.C. 2254(a)(2)) on its monitoring of developments within the industry producing CSPV products since the President's imposition of the safeguard measure (USITC, Crystalline Silicon Photovoltaic Cells, Whether or Not Partially or Fully Assembled Into Other Products: Monitoring Developments in the Domestic Industry, No. TA–201–075 (Second Monitoring)). In its report, the USITC found that the safeguard measure has resulted in positive adjustments from the domestic industry in light of increased actual and planned module production; various announcements of planned domestic cell production; and improvements in several of the domestic industry's financial, trade, and employment indicators. The USITC's report also noted a shift in imports from non-bifacial CSPV cells and panels toward primarily bifacial CSPV cells and modules from 2020–2022 and, when comparing the first half of 2023 with the first half of 2022, with bifacial cells and panels increasingly used in traditionally non-bifacial applications.

8. On February 23, 2024, a majority of the representatives of the domestic industry submitted a petition under section 204(b) of the Trade Act (19 U.S.C. 2254(b)(1)(B)) to modify the safeguard measure by revoking the exclusion of bifacial products from safeguard relief proclaimed in Proclamation 10339, thus subjecting bifacial modules to the remedy under section 201 of the Trade Act (19 U.S.C. 2251). The petition explains how the domestic industry has continued to make a positive adjustment to import competition. It also explains how the exclusion of bifacial panels has led to large import volumes of bifacial modules competing in all sectors of the United States market, thus negatively impacting the domestic industry's efforts to increase substantially its market share notwithstanding the increase in apparent United States consumption.

9. Section 204(b)(1)(B) of the Trade Act (19 U.S.C. 2254(b)(1)(B)) authorizes the President, upon submission of a petition from a majority of the representatives of the domestic industry, to reduce, modify, or terminate an action taken under section 203 of the Trade Act when the President determines that the domestic industry has made a positive adjustment to import competition.

10. After taking into account the information provided in the USITC's second midterm report, and after receiving a petition from a majority of the representatives of the domestic industry with respect to the aforementioned modification, I have determined that the domestic industry has been making and is continuing to make a positive adjustment to import competition, shown by increased actual and planned module production; various announcements of planned domestic cell production; and improvements in several of the domestic industry's financial, trade, and employment indicators. Furthermore, I have determined that imports of bifacial panels have surged in recent years, such that the exclusion of bifacial panels proclaimed in Proclamation 10339 has impaired the effectiveness of the action taken in Proclamation 9693, as extended by Proclamation 10339, and that to achieve the full remedial effect envisaged for that action, it is necessary to modify the section 201 action by revoking the exclusion of bifacial panels and applying the safeguard tariff to bifacial panels.

Now, Therefore, I, Joseph R. Biden Jr., President of the United States of America, by the authority vested in me by the Constitution and the laws of the United States, including sections 203, 204, and 604 of the Trade Act, do proclaim that:

(1) In order to modify the action applicable to imports of CSPV cells under HTS subheading 8541.42.0010 and other CSPV products, such as modules under HTS subheading 8541.43.0010, subchapter III of chapter 99 of the HTS is modified as set forth in Annex I to this proclamation.

(2) The modifications to the HTS made by this proclamation, including Annex I hereto, shall be effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time 5 days after the date of this proclamation, and shall continue in effect as provided in Annex I to this proclamation, unless such actions are earlier expressly reduced, modified, or terminated.

(3) Bifacial panels that are subject to the modifications described in clause (1) of this proclamation shall be exempt from the safeguard tariff, provided that:

(i) the imported bifacial panels are fulfilling in whole or in part a contract for sale, purchase, or delivery in the United States that was in effect and dated as executed prior to May 17, 2024, that provides for importation to or delivery within the United States within 90 days after the effective date of this proclamation, and that has not been modified on or later than May 17, 2024, with regard to importation or delivery date;

(ii) the bifacial panels are entered into the United States within 90 days after the effective date of this proclamation;

(iii) the bifacial panels are declared and entered under heading 9903.45.29 of the HTS, and meet the conditions thereof; and

(iv) the importer completes the certification in Annex II to this proclamation and provides the completed certification as part of the importer's electronic entry summary to U.S. Customs and Border Protection (CBP) by uploading it to the Document Imaging System in the Automated Commercial Environment at the time that classification is declared under heading 9903.45.29 of the HTS.

(4) Where bifacial panels that are subject to the modifications described in clause (1) of this proclamation are entered for consumption, or withdrawn from warehouse for consumption, on or after the effective date of this proclamation and do not satisfy the requirements specified in clause (3) of this proclamation, such bifacial panels shall be subject to the safeguard tariff.

(5) CBP shall take such actions as are necessary to ensure compliance with the requirements in clauses (3) and (4) of this proclamation. Such actions may include requiring the provision of any additional information deemed necessary by CBP, including a copy of the pre-existing contract described in subsection (i) of clause (3) of this proclamation, in order to verify such compliance.

(6) One year from the termination of the safeguard measure referenced in this proclamation, as modified by this proclamation, the U.S. note and tariff provisions established in Annex I to this proclamation shall be deleted from the HTS.

(7) Any provision of previous proclamations and Executive Orders that is inconsistent with the actions taken in this proclamation is superseded to the extent of such inconsistency.

In Witness Whereof, I have hereunto set my hand this twenty-first day of June, in the year of our Lord two thousand twenty-four, and of the Independence of the United States of America the two hundred and forty-eighth.

JOSEPH R. BIDEN, JR.

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NOTE: This proclamation and its attached annexes were published in the *Federal Register* on June 26.

Categories: Proclamations : Crystalline silicon photovoltaic cells, positive adjustments to competition from imports into the U.S.

Subjects: Manufacturing industry, domestic investment; Photovoltaic cells, U.S. tariffs; Renewable energy sources and technologies; U.S. Customs and Border Protection.

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