

Administration of Joseph R. Biden, Jr., 2024

Proclamation 10790—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)

August 12, 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. 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.

3. 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.

4. 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 TRQ on imports of solar cells not partially or fully assembled into other products imposed by Proclamation 9693, as described in paragraph 1 of Proclamation 10339 and paragraph 1 of this proclamation, for an additional period of 4 years, with unchanging within-quota quantities of 5.0 gigawatts (GW) for each year and annual reductions in the rates of duty applicable to goods entered in excess of those quantities of cells in the fifth, sixth, seventh, and eighth years, as described in Annex I to Proclamation 10339; and

(b) continuation of the safeguard tariff on imports of modules imposed by Proclamation 9693, as described in paragraph 1 of Proclamation 10339 and paragraph 1 of this proclamation, 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.

5. 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.

6. On February 6, 2024, the USITC issued its 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 extension 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.

7. On September 19, 2023, 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 eliminating the TRQ and providing for tariff-free treatment of all imports of CSPV cells, or alternatively to increase the TRQ from 5 GW to 20 GW annually. The petition explains how the domestic industry has continued to make a positive adjustment to import competition. It also explains that expected domestic module production coupled with current lack of sufficient domestic cell production will require domestic module producers to rely on imports in the near term, in excess of the current 5 GW within-quota TRQ amount.

8. 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.

9. After taking into account the information provided in the USITC's midterm report, and after receiving a petition from a majority of the representatives of the domestic industry requesting expansion or elimination of the TRQ on imports of certain CSPV cells, 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 expected domestic module production and associated imports of CSPV cells have increased such that it is necessary to modify the action taken in Proclamation 9693, as extended by Proclamation 10339, by expanding the TRQ to unchanging within-quota quantities of 12.5 GW.

10. The in-quota quantity in each year of the TRQ described in paragraph 9 of this proclamation shall be allocated among all countries except those countries the products of which are excluded from such TRQ pursuant to clause (4) of Proclamation 10339 or paragraph 10 of Proclamation 9693.

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 on August 1, 2024, and shall continue in effect as provided in Annex I to this proclamation, unless such actions are earlier expressly reduced, modified, or terminated.

(3) CSPV products that are subject to the modifications described in clause (1) of this proclamation, and which are entered into the United States above the prior TRQ limit of 5 GW on or after August 1, 2024, shall be included within the modified TRQ limit of 12.5 GW and shall not be assessed safeguard tariffs unless they enter into the United States above the modified TRQ limit of 12.5 GW.

(4) U.S. Customs and Border Protection shall take such actions as are necessary to ensure proper application of clauses (1), (2), and (3) of this proclamation.

(5) 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.

(6) 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 twelfth day of August, 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-ninth.

JOSEPH R. BIDEN, JR.

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NOTE: This proclamation and its attached annex were published in the *Federal Register* on August 15.

Categories: Proclamations : Crystalline silicon photovoltaic cells (whether partially or fully assembled into other products), positive adjustments to competition from U.S. imports.

Subjects: Free and fair trade; Manufacturing industry, domestic investment; Solar and wind energy, promotion efforts.

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