

Presidential Documents

Proclamation 10101 of October 10, 2020

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)

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), I issued Proclamation 9693, which imposed 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 8541.40.6025 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 imports of other CSPV products, including modules provided for in subheading 8541.40.6015 of the HTS. I exempted imports from certain designated beneficiary countries under the Generalized System of Preferences from the application of the safeguard measure.
2. On February 7, 2020, the United States International Trade Commission (ITC) issued its report pursuant to section 204(a)(2) of the Trade Act (19 U.S.C. 2254(a)(2)), on the results of its monitoring of developments with respect to the domestic solar industry (ITC, 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)). In its report, the ITC found that, following imposition of the safeguard measure, prices for CSPV cells and modules declined in a manner consistent with historical trends but were higher than they would have been without the safeguard measure.
3. With respect to CSPV cells, the ITC found that imports increased following imposition of the safeguard measure and that major domestic CSPV cell producers ceased production, leading to declines in domestic CSPV cell production capacity and production.
4. With respect to CSPV modules, imports initially declined but rose in the first half of 2019 compared with the first half of 2018. Additionally, the ITC found that multiple CSPV module producers opened production facilities in the United States, particularly in the first half of 2019, leading to increases in domestic CSPV module production capacity, production, and market share.
5. On March 6, 2020, the ITC issued an additional report pursuant to a request from the United States Trade Representative under section 204(a)(4) of the Trade Act (19 U.S.C. 2254(a)(4)), regarding the probable economic effect on the domestic CSPV cell and module manufacturing industry of modifying the safeguard measure to increase the level of the TRQ on CSPV cells from the current 2.5 gigawatts (GW) to 4.0, 5.0, or 6.0 GW (ITC, 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)). In its report, the ITC advised that increasing the TRQ would

help to continue growth in solar module production but that expanded access to imported cells not subject to safeguard duties would put downward pressure on prices for United States cells.

6. The ITC also found that the exclusion of bifacial modules from the safeguard measure will likely result in substantial increases in imports of bifacial modules if such exclusion remains in effect, and that such modules will likely compete with domestically produced CSPV products in the United States market. Furthermore, the ITC found that the benefits to domestic CSPV module producers from an increase in the TRQ would likely be limited if the bifacial module exclusion remained in place. According to the ITC, bifacial modules are likely to account for a greater share of the market in the future and can substitute for monofacial products in the various market segments, such that exempting imports of bifacial modules from the safeguard tariff would apply significant downward pressure on prices of domestically produced CSPV modules.

7. Section 204(b)(1)(B) of the Trade Act (19 U.S.C. 2254(b)(1)(B)) authorizes the President, upon 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.

8. Section 204(c)(1) of the Trade Act (19 U.S.C. 2254(c)(1)) authorizes the President to request that the ITC investigate whether action under section 203 of the Trade Act continues to be necessary to prevent or remedy serious injury and whether there is evidence that the domestic industry is making a positive adjustment to import competition. Section 204(c)(3) of the Trade Act (19 U.S.C. 2254(c)(3)) establishes the date by which the ITC will transmit the report on its investigation, unless the President specifies a different date.

9. After taking into account the information provided in the ITC's reports, and after receiving a petition from a majority of the representatives of the domestic industry with respect to each of the following modifications, I have determined that the domestic industry has begun to make positive adjustment to import competition, shown by the increases in domestic module production capacity, production, and market share. In addition, I have made the following further determinations:

(a) that the exclusion of bifacial panels from application of the safeguard tariff has impaired and is likely to continue to impair the effectiveness of the action I proclaimed in Proclamation 9693 in light of the increased imports of competing products such exclusion entails, and that it is necessary to revoke that exclusion and to apply the safeguard tariff to bifacial panels;

(b) that the exclusion of bifacial panels from application of the safeguard tariffs has impaired the effectiveness of the 4-year action I proclaimed in Proclamation 9693, and that to achieve the full remedial effect envisaged for that action, it is necessary to adjust the duty rate of the safeguard tariff for the fourth year of the safeguard measure to 18 percent.

10. Section 604 of the Trade Act (19 U.S.C. 2483) authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to sections 203, 204, and 604 of the Trade Act, do proclaim that:

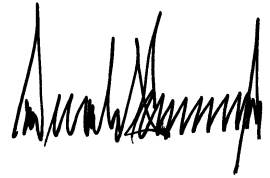
(1) In order to modify the action applicable to imports of CSPV cells under HTS subheading 8541.40.6025 and other CSPV products such as modules under HTS subheading 8541.40.6015, subchapter III of chapter 99 of the HTS is modified as set forth in the Annex to this proclamation.

(2) The United States Trade Representative is authorized to exercise my authority under section 204(c)(1) and (3) of the Trade Act to request that the ITC investigate whether action under section 203 of the Trade Act continues to be necessary to prevent or remedy serious injury and whether there is evidence that the domestic industry is making a positive adjustment to import competition, and to specify a different date for the ITC to transmit its report.

(3) 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.

(4) The modifications to the HTS made by this proclamation, including the Annex 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 15 days after the date of this proclamation, and shall continue in effect as provided in the Annex to this proclamation, unless such actions are earlier expressly reduced, modified, or terminated. One year from the termination of the safeguard measure established in this proclamation, the U.S. note and tariff provisions established in the Annex to this proclamation shall be deleted from the HTS.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of October, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fifth.



ANNEX

TO MODIFY CERTAIN PROVISIONS OF CHAPTER 99 OF THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

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 October 25, 2020, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified as provided herein:

1. U.S. note 18 to such subchapter III is modified by deleting 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;” and by redesignating current subdivisions (c)(iii)(16) and (c)(iii)(17) as subdivisions (c)(iii)(15) and (c)(iii)(16), respectively.

2. U.S. note 18 to subchapter III is further modified by revising subdivisions (f) and (h) to read as follows:

“(f) For purposes of subheading 9903.45.22 to this subchapter, the duty rate in the Rates of Duty 1-General subcolumn and the Rates of Duty 2 column for all goods entered under such subheading, and not the product of a country enumerated in subdivision (b) of this note, shall be as follows, with the duty rates set forth herein applied in addition to those applicable under subheading 8541.40.60:

If entered during the period from	
February 7, 2018 through February 6, 2019.....	30%
If entered during the period from	
February 7, 2019 through February 6, 2020.....	25%
If entered during the period from	
February 7, 2020 through February 6, 2021	20%
If entered during the period from	
February 7, 2021 through February 6, 2022	18%”

“(h) For purposes of subheading 9903.45.25 to this subchapter, the duty rate in the Rates of Duty 1-General subcolumn and the Rates of Duty 2 column in any of the periods enumerated below shall be as follows, with the duty rates set forth herein applied in addition to those applicable under subheading 8541.40.60:

If entered during the period from	
February 7, 2018 through February 6, 2019.....	30%
If entered during the period from	
February 7, 2019 through February 6, 2020.....	25%
If entered during the period from	
February 7, 2020 through February 6, 2021	20%
If entered during the period from	
February 7, 2021 through February 6, 2022	18%”