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April 7, 2015

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh 
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Rescission of the 2013-2014 Antidumping Duty New Shipper Review: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China

SUMMARY

As discussed below, the Department of Commerce (the “Department”) preliminarily determines that Hengdian Group DMEGC Magnetics Co., Ltd. (“DMEGC”) did not make a *bona fide* sale during the period of review (“POR”). As such, the Department is preliminarily rescinding the new shipper review of DMEGC.

If these preliminary results are adopted in our final results, the assessment rate to which DMEGC’s shipments will be subject will not be affected by this review. However, DMEGC’s entry is currently covered by the on-going administrative review of the antidumping duty order on crystalline silicon photovoltaic cells, whether or not assembled into modules, from the PRC covering the period December 1, 2013 through November 30, 2014. If these preliminary results are adopted in our final results, the Department intends to consider the information on the record of that on-going administrative review with respect to DMEGC to arrive at a determination in that administrative review.¹

Interested parties are invited to comment on the preliminary rescission of this review. We intend to issue the final results or final rescission of the review no later than 90 days from the date the

¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 6041, 6042 (February 4, 2015).



preliminary results are issued, pursuant to section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (“the Act”).

Background

In response to a request from DMEGC, the Department initiated a new shipper review of the antidumping duty order on crystalline silicon photovoltaic cells, whether or not assembled into modules, from the People’s Republic of China (“PRC”) covering the period December 1, 2013, through May 31, 2014.² The Department sent an antidumping duty questionnaire to DMEGC, to which the company responded in a timely manner. Between October 2014 and January 2015, the Department issued supplemental questionnaires to DMEGC, to which it also responded in a timely manner. The Department received comments on DMEGC’s responses from interested parties. The Department also received comments from interested parties on surrogate country and surrogate value selection. The Department extended the deadline for issuing the preliminary results of this new shipper review until April 7, 2015.³

Scope of the Order

The merchandise covered by this order is 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 order 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.

Merchandise under consideration 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 merchandise under consideration are included in the scope of this order.

Excluded from the scope of this order 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 order are crystalline silicon photovoltaic cells, not exceeding 10,000mm² 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

² See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China: Initiation of Antidumping Duty New Shipper Review*, 79 FR 43710 (July 28, 2014).

³ See the memoranda to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Jeff Pedersen, International Trade Analyst, Office IV, Antidumping and Countervailing Duty Operations, dated January 13, 2015 and February 11, 2015 and the memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations from Valerie Ellis International Trade Analyst, Office IV, Antidumping and Countervailing Duty Operations dated March 16, 2015.

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.

Modules, laminates, and panels produced in a third-country from cells produced in the PRC are covered by this order; however, modules, laminates, and panels produced in the PRC from cells produced in a third-country are not covered by this order.

Merchandise covered by this order is currently classified in the Harmonized Tariff Schedule of the United States (“HTSUS”) under subheadings 8501.61.0000, 8507.20.80, 8541.40.6020, 8541.40.6030, and 8501.31.8000. Although these HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

DISCUSSION OF THE METHODOLOGY

Bona Fide Analysis

The Department has a practice of examining the *bona fides* of sales in new shipper reviews.⁴ This practice was affirmed by the Court of International Trade (“CIT”) in order that a respondent does not unfairly benefit from an atypical sale and obtain a lower dumping margin than the respondent’s usual commercial practice would dictate.⁵ When examining the *bona fides* of sales in new shipper reviews the Department considers a number of factors, “all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise.”⁶ In *TTPC*, the CIT affirmed the Department’s decision that “any factor which indicates that the sale under consideration is not likely to be typical of those which the producer will make in the future is relevant”,⁷ and found that “the weight given to each factor investigated will depend on the circumstances surrounding the sale.”⁸ In evaluating whether a sale in a new shipper review is commercially reasonable or typical of normal business practices, and therefore a *bona fide* sale, the Department often considers, *inter alia*, such factors as (a) the timing of the sale, (b) the price and quantity of the sale, (c) the expenses arising from the transaction, (d) whether the goods were resold at a profit, and (e) whether the transaction was made on an arm’s length basis.⁹ Where the Department finds that a sale is not *bona fide*, the Department will exclude the sale from its export price calculations.¹⁰ When the new shipper review is based on only one sale and the Department finds that transaction atypical, “exclusion of that sale as non-*bona fide* necessarily must end the

⁴ See, e.g., *Honey from the People’s Republic of China: Rescission and Final Results of Antidumping Duty New Shipper Reviews*, 71 FR 58579 (October 4, 2006) and accompanying Issues and Decision Memorandum at Comment 1b.

⁵ See *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1344 (CIT 2005) (“*New Donghua*”) (citing *Fresh Garlic from the People’s Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002)).

⁶ See *New Donghua*, 374 F. Supp. 2d 1333, 1342 (CIT 2005).

⁷ See *Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246, 1250 (CIT 2005) (“*TTPC*”).

⁸ *Id.*, at 1263.

⁹ *Id.*, at 1249-1250.

¹⁰ *Id.*, at 1249.

