



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-570-979
Changed Circumstances Review
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May 20, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Initiation and Preliminary Results of Changed Circumstances
Review: Crystalline Silicon Photovoltaic Cells, Whether or Not
Assembled Into Modules, from the People's Republic of China

Summary

The Department of Commerce (the "Department") analyzed a request for an expedited changed circumstances review ("CCR") submitted by Hangzhou Sunny Energy Science and Technology Co., Ltd. ("Hangzhou Sunny") to establish Hangzhou Sunny as the successor-in-interest to Hangzhou Zhejiang University Sunny Energy Science and Technology Co., Ltd. ("Hangzhou ZU Sunny") for purposes of the antidumping duty ("AD") order on crystalline silicon photovoltaic cells, whether or not assembled into modules, from the People's Republic of China ("solar cells from the PRC"). As a result of our analysis, we recommend that the Department initiate the requested review and preliminarily determine that Hangzhou Sunny is the successor-in-interest to Hangzhou ZU Sunny.

Background

On April 4, 2016, the Department received a request on behalf of Hangzhou Sunny for an expedited CCR to establish Hangzhou Sunny as the successor-in-interest to Hangzhou ZU Sunny for purposes of AD order on solar cells from the PRC.¹ We have received no comments on Hangzhou Sunny's request.

Scope of the Order

The merchandise covered by this order is crystalline silicon photovoltaic cells, and modules,

¹ See Letter from Hangzhou Sunny to the Department regarding, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules: Request for Expedited Changed Circumstances Review," (April 4, 2016) ("CCR Request").



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 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 System of the United States (“HTSUS”) under subheadings 8501.61.0000, 8507.20.80, 8541.40.6020, 8541.40.6030, and 8501.31.8000. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of this order is dispositive.

Issue: Whether to initiate the requested review and preliminarily find Hangzhou Sunny to be the successor-in-interest to Hangzhou ZU Sunny.

Hangzhou Sunny states that it should be treated as the successor-in-interest to Hangzhou ZU Sunny and it summarizes any changes occurring during the transition period as merely a name change. Hangzhou Sunny claims that the controlling ownership and management before and after the name change remain the same. Further, Hangzhou Sunny argues that the name change had no impact on operations and resulted in no material changes to customers and suppliers. Hangzhou Sunny submitted the following in support of its argument:

- On December 6, 2013, by resolution of its board of shareholders, Hangzhou ZU Sunny

authorized a change of name to Hangzhou Sunny.² The stated reason for the name change was that on December 3, 2013 Zhejiang University Science & Technology Venture Capital Co., Ltd. (“Zhejiang University”) transferred its 1 percent ownership in Hangzhou ZU Sunny to Guomei Li. Prior to this transfer, Guomei Li and her husband Xinfu Li,³ owned the other 99 percent of Hangzhou ZU Sunny. Thus, as a result of this transfer of ownership they became the only owners of Hangzhou ZU Sunny.⁴ As Zhejiang University was no longer one of the owners Hangzhou ZU Sunny’s board of shareholders determined that it was no longer appropriate to continue to include the appellation “Zhejiang University” in the company name.

- Hangzhou Sunny provided a capital verification report demonstrating that prior to the ownership transfer, Zhejiang University owned 1 percent of Hangzhou ZU Sunny and that Guomei Li and Xinfu Li together owned the remaining 99 percent of the entity.⁵ Hangzhou Sunny also provided the ownership transfer agreement from Zhejiang University to Guomei Li.⁶
- On December 11, 2013, Hangzhou Administration for Industry and Commerce Binjiang branch issued a business license to Hangzhou Sunny that reflected the name change from Hangzhou ZU Sunny to Hangzhou Sunny.⁷
- Hangzhou Sunny reported that subsequent to the name change, Hangzhou Sunny added external financial investors in preparation of listing the company on the National Equities Exchange and Quotations where the shares could be publicly traded. Hangzhou Sunny provided a capital verification report demonstrating that despite the additional owners, Xinfu Li and Guomei Li together retained majority ownership after the listing and continue to do so.⁸
- Before the name change, Xinfu Li was both the sole board member and manager of Hangzhou ZU Sunny. However, during the ownership transition (late December 2013 to January 2014) Guomei Li replaced Xinfu Li as chairperson of the board and as general manager. However, this situation lasted less than two months and as of February 21, 2014, Xinfu Li was chairperson of the board and general manager. Also, from late December 2013, 7 additional board members were added to the board (one of which was Guomei Li). Since September 26, 2014 the board has remained unchanged. With regard to management, in addition to Xinfu Li being general manager, Sheng Jianfu became financial officer on February 21, 2014. In May 20, 2015 three additional managers joined Sheng Jianfu and Xinfu Li. Since then the 5 managers and their positions have

² See CCR Request at Exhibit 1 for the Board of Shareholders' resolution authorizing the change of company name.

³ Hangzhou Sunny stated that Xinfu Li and Guomei Li are husband and wife in its May 4, 2016 supplemental response at 1.

⁴ See CCR Request at Exhibit 4 for Capital Verification Report identifying ownership by Ms. Guomei Li and Mr. Xinfu Li of 99 percent of Hangzhou ZU Sunny and the subsequent transfer of Zhejiang University’s 1 percent ownership to Ms. Guomei Li. In its CCR Request, Hangzhou Sunny referred to Xinfu Li several times as Goufu Li. Hangzhou Sunny stated in its May 4, 2016 supplemental response that Xinfu Li and Goufu Li refer to the same person and that the legal name is Xinfu Li.

⁵ See CCR Request at Exhibit 4.

⁶ *Id.*

⁷ See *id.* at Exhibit 2.

⁸ See *id.* at 7 and Exhibit 7 which identify Xinfu Li and Guomei Li’s ownership as between 99 percent of Hangzhou ZU Sunny prior to the name change, 100 percent of Hangzhou Sunny after the name change, and then gradually falling to 56 percent after listing the company on the National Equities Exchange and Quotations. The ownership of Hangzhou Sunny by Xinfu Li and Guomei Li has been at this level since June 29, 2015.

remained unchanged.⁹ Xinfu Li remains the general manager.

- Hangzhou Sunny reported that its production facility is the one previously utilized by Hangzhou ZU Sunny, and it is located at the same address.¹⁰
- Hangzhou Sunny has stated that it had no material changes in the contractual relationships with suppliers of inputs or services previously used by Hangzhou ZU Sunny related to the production, sale and distribution of subject merchandise. Documentation provided by Hangzhou Sunny indicates that the suppliers of the main raw materials (e.g., solar cells, back boards, aluminum extrusions, EVA, boxes, etc.) changed slightly from 2012 through 2015, but that the suppliers of the most significant quantities of raw materials remained the same.¹¹
- Hangzhou Sunny provided documentation of its accounts receivable and stated there have been only small changes between Hangzhou Sunny's and Hangzhou ZU Sunny's customer base. Hangzhou Sunny explained that any shrinkage or expansion of the list of customers was unrelated to the name change but rather was caused by market conditions.¹²

Department's Position: The Department has the authority, pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended ("the Act"), and 19 CFR 351.216(d), to conduct a changed circumstances review of an order whenever it receives information concerning, or a request from an interested party for a review of, an order which shows changed circumstances sufficient to warrant a review of such order. In the past, the Department has used changed circumstances reviews to consider the applicability of cash deposit rates after there have been changes in the name or structure of a respondent, such as a merger or spinoff ("successor-in-interest," or "successorship," determinations). Thus, consistent with Department practice, the information submitted by Hangzhou Sunny, which is described above and includes information regarding a name change, demonstrates changed circumstances sufficient to warrant a review.

Moreover, the Department has combined the notice of initiation and preliminary results in successor-in-interest cases when sufficient documentation has been provided supporting the request.¹³ In this instance, because we have determined that the information necessary to support the request is on the record, we find that expedited action is warranted, and are combining the notice of initiation and the notice of preliminary results in accordance with 19 CFR 351.221(c)(3)(ii).

In determining whether one company is the successor to another for purposes of AD liability, the Department examines a number of factors including, but not limited to, changes in: (1) management, (2) production facilities, (3) suppliers, and (4) customer base.¹⁴ While no one, or

⁹ All information concerning the board and managers is in the CCR Request at Exhibit 7.

¹⁰ See CCR Request at 7 and Hangzhou Sunny's May 4, 2016 supplemental response at 1.

¹¹ See CCR Request at 8 and Exhibit 8 and Hangzhou Sunny's May 4, 2016 supplemental response at Exhibits CCRS-1 and CCRS-2.

¹² See CCR Request at 8 and Exhibit 9 and Hangzhou Sunny's May 4, 2016 supplemental response at Exhibits CCRS-3 and CCRS-4.

¹³ See, e.g., *Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada*, 70 FR 50299 (August 26, 2005).

¹⁴ See, e.g., *Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review: Polychloroprene Rubber From Japan*, 69 FR 61796, 61797 (October 21, 2004).

several of these factors, will necessarily provide a dispositive indication of succession, the Department will generally consider one company to be the successor to another company if its resulting operation is essentially the same as that of its predecessor.¹⁵ Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as essentially the same business entity as the prior company, the Department will assign the new company the cash deposit rate of its predecessor.¹⁶

With respect to management, while the sole manager and board member of Hangzhou ZU Sunny was Xinfu Li and the manager of Hangzhou Sunny was Xinfu Li's wife, Guomei Li, for the two months immediately following the name change, Xinfu Li resumed his duties as general manager and chairperson of the board of Hangzhou Sunny approximately two months after the name change and remains to this day the general manager and chairperson of the board of Hangzhou Sunny. While new managers were hired after additional companies purchased shares in Hangzhou Sunny and new members of the board of directors added, we find the continuity in the general manager and head of the board of directors significant, particularly given that the individual holding these positions before and after the name and ownership change, Xinfu Li, is one of the principal owners of both the predecessor company and the successor company. Moreover, record evidence shows that the only change in ownership associated with the name change was the transfer of Zhejiang University's 1 percent ownership to Guomei Li. While several new parties purchased shares in Hangzhou Sunny after the transfer of Zhejiang University's 1 percent ownership, Guomei Li and Xinfu Li remained the majority owners of Hangzhou Sunny.

In two recent determinations, despite significant changes in ownership and changes in management similar to what is seen in the case of Hangzhou Sunny, the Department found the succeeding entity to be the successor-in-interest to the former entity. In *Polyester Staple Fiber from Korea*, the Department found that, although the successor company's board of directors was significantly different from that of the predecessor as a result of a merger, its key officers and management related to the production, marketing, and sale of subject merchandise were virtually identical to the predecessor company's officers and management.¹⁷ Moreover, in *Polyester Staple Fiber from Korea*, the Department also found that the two members of the board of directors most involved in day-to-day activities maintained their positions on the board of directors and continued to hold managerial positions after the relevant ownership changes.¹⁸ In *Lined Paper from India*, the Department found that the successor company's entire ownership differed from that of the predecessor company, but that the two former owners of the predecessor company both continued to be employed in their prior management positions of CEO and president with the successor company and continued to oversee the day-to-day operations of the

¹⁵ *Id.*

¹⁶ See, e.g., *Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Initiation of Antidumping Duty Changed Circumstance Review*, 70 FR 17063, 17064 (April 4, 2005); *Fresh and Chilled Atlantic Salmon from Norway: Final Results of Changed Circumstances Antidumping Administrative Review*, 64 FR 9979, 9980 (March 1, 1999).

¹⁷ See *Certain Polyester Staple Fiber From the Republic of Korea: Preliminary Results of Changed Circumstances Review*, 79 FR 62595 (October 20, 2014) ("*Polyester Staple Fiber from Korea*"), and accompanying Preliminary Decision Memorandum at 3-5, unchanged in *Certain Polyester Staple Fiber From the Republic of Korea: Final Results of Changed Circumstances Review*, 79 FR 76301 (December 22, 2014).

¹⁸ *Id.*

successor company.¹⁹ Similar to both *Polyester Staple Fiber from Korea* and *Lined Paper from India*, while certain changes to management occurred, the general manager in charge of Hangzhou ZU Sunny and Hangzhou Sunny was the same person before and after the name change. Further, while *Polyester Staple Fiber from Korea* involved a significant change in the board of directors²⁰ and in *Lined Paper from India*, the entire ownership changed, here, the majority owners and the director of the board have remained the same before and after the name change.

With respect to production facilities, Hangzhou Sunny reported that its production facility is the same as that of Hangzhou ZU Sunny.

Regarding raw material suppliers and customers, the record contains a list of the suppliers of the most significant raw material inputs and the largest customers of Hangzhou ZU Sunny and Hangzhou Sunny covering the period two years before and two years after the name change. Four of the five largest suppliers of the most significant inputs in the year after the name change were the largest suppliers of the same input one or two years prior to the name change.²¹ With regard to customers, five of the 10 largest customers in the year after the name change were also among the 10 largest customers one or two years prior to the name change.²² Further, the two largest customers in the year after the name change were also individually the largest customers one and two years prior to the name change.²³ Also, the change in the 10 largest customers in the year immediately before and immediately after the name change was no greater than the change in the 10 largest customers between the first and second years prior to the name change.²⁴ Based on these facts we preliminarily find that the suppliers of the most significant raw material inputs and the largest customers did not change significantly or materially.²⁵

In a CCR, we generally consider a company to be the successor to another company for purposes of antidumping duty cash deposits if the operations of the successor are not materially dissimilar to those of its predecessor. Based on the totality of the circumstances, we preliminarily find that the operations of Hangzhou Sunny are not materially dissimilar to the operations of Hangzhou ZU Sunny. Not only is top management and the majority owners of the two entities identical, but the production facilities remain the same. Further, the evidence indicates a lack of material changes to the supplier relationships and customer base resulting from the name change.

Recommendation: Based on our analysis of the information contained in Hangzhou Sunny's CCR Request, we recommend that the Department preliminarily determine that Hangzhou Sunny is the successor-in-interest to Hangzhou ZU Sunny for purposes of the AD order on crystalline silicon photovoltaic cells, whether or not assembled into modules, from the PRC.

¹⁹ See *Certain Lined Paper Products From India: Notice of Final Results of Antidumping Duty Changed Circumstances Review*, 80 FR 18373 (April 6, 2015) ("*Lined Paper from India*"), and accompanying Issues and Decision Memorandum at 7-8.

²⁰ See *Polyester Staple Fiber from Korea* and accompanying Preliminary Decision Memorandum at 3-5.

²¹ See Hangzhou Sunny's May 4, 2016 supplemental response at Exhibit CCRS-3.

²² See *id.* at Exhibit CCRS-4.

²³ *Id.*

²⁴ *Id.*

²⁵ See CCR Request at 8 and Exhibit 9 and Hangzhou Sunny's May 4, 2016 supplemental response at Exhibits CCRS-3 and CCRS-4.

Recommendation: Based on our analysis of the information contained in Hangzhou Sunny's CCR Request, we recommend that the Department preliminarily determine that Hangzhou Sunny is the successor-in-interest to Hangzhou ZU Sunny for purposes of the AD order on crystalline silicon photovoltaic cells, whether or not assembled into modules, from the PRC.

Agree ✓

Disagree _____

Paul Piquado
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

20 MAY 2016
(Date)