



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

A-570-979

Changed Circumstances Review: Zhejiang ERA  
Public Document  
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October 27, 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") 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"), submitted by Zhejiang ERA Solar Technology Co., Ltd. ("Zhejiang ERA"). Zhejiang ERA requested that the Department conduct an expedited CCR to establish Zhejiang ERA as the successor-in-interest to Era Solar Co., Ltd ("Era Solar") for purposes of the AD order on solar cells. As a result of our analysis, we recommend that the Department initiate the requested review and preliminarily determine that Zhejiang ERA is the successor-in-interest to Era Solar.

### **Background**

On August 31, 2016, the Department received a request on behalf of Zhejiang ERA for an expedited CCR to establish Zhejiang ERA as the successor-in-interest to Era Solar for purposes of the AD order on solar cells from the PRC.<sup>1</sup> On September 12, 2016, the Department received a response on behalf of Zhejiang ERA to a request for additional information from the Department issued on September 9, 2016. We have received no comments on Zhejiang ERA's CCR Request.

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<sup>1</sup> See Letter from Zhejiang ERA to the Department regarding, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules: Request for Expedited Changed Circumstances Review," (August 31, 2016) ("CCR Request").



## **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 10,000mm<sup>2</sup> 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 Zhejiang ERA to be the successor-in-interest to Era Solar.**

Zhejiang ERA states that it should be treated as the successor-in-interest to Era Solar. Zhejiang ERA claims that, as a result of a corporate restructuring, the name of Era Solar changed to Zhejiang ERA. Zhejiang ERA claims that the controlling ownership and management before and after the name change remained essentially the same. Further, Zhejiang ERA argues that the name change had no impact on operations and resulted in no material changes to customers and suppliers. Zhejiang ERA submitted the following in support of its argument:

- On May 27, 2015, by resolution of its shareholder, Era Plastic Industry Group Co., Ltd., Era Solar's name was changed to Zhejiang ERA.<sup>2</sup> The Market Supervision Administration of Taizhou City, Huangyan, approved the name change on June 5, 2015.<sup>3</sup> Zhejiang ERA claims that the name change was required after the ultimate owners implemented a corporate restructuring and resolved to change the legal form of the company from a joint stock company to a limited liability company.<sup>4</sup>
- There was no change to company ownership as a result of the name change. Zhejiang ERA submitted affiliation charts showing that the same two people who owned 100 percent of Era Solar now own 100 percent of Zhejiang ERA.<sup>5</sup> Zhejiang ERA also provided administered company registration status documents before and after the name change verifying that the company's ultimate owners were the owners of Era Solar.<sup>6</sup>
- Associated with this change in legal form, the Board of Directors was changed to Executive Director and the number of directors changed from nine to three.<sup>7</sup> With regard to management, eight of the nine managers maintained their positions after the company name change, which the company ascribed to ordinary changes.<sup>8</sup>
- Zhejiang ERA reported that its production facility is the one previously utilized by Era Solar.<sup>9</sup> The company also reported that no changes were made to the production facility after the name change.<sup>10</sup>
- Zhejiang ERA stated that it had no material changes in the contractual relationships with suppliers of inputs or services previously used by Era Solar related to the production, sale and distribution of subject merchandise.<sup>11</sup> Documentation provided by Zhejiang ERA indicates that several suppliers of the main raw materials used in the production of solar cells changed from 2012 through July 2016, but Zhejiang ERA states that the company's name change did not result in a degree of change of suppliers inconsistent with previous years.<sup>12</sup>
- Zhejiang ERA provided accounts receivable records and stated there have been only small changes between Zhejiang ERA's and Era Solar's customer base. Zhejiang ERA explained that any shrinkage or expansion of customer list was unrelated to the name change but rather was caused by market conditions.<sup>13</sup>

**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

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<sup>2</sup> See CCR Request at Exhibit 2 for the Board of Shareholders' resolution authorizing the change of company name.

<sup>3</sup> *Id.* at Exhibit 3.

<sup>4</sup> *Id.* at 5; Zhejiang ERA's supplemental response dated September 12, 2016, at Question 3.

<sup>5</sup> *Id.* at Exhibit 2 and Exhibit 6.

<sup>6</sup> *Id.* at Exhibit 4 and Exhibit 5 and Zhejiang ERA's supplemental response dated September 12, 2016, Exhibit S-1.

<sup>7</sup> *Id.* at 5, Exhibit 4, and Exhibit 5.

<sup>8</sup> *Id.* at Exhibit 8.

<sup>9</sup> *Id.* at Exhibit 4 and Zhejiang ERA's supplemental response dated September 12, 2016, Exhibit S-1.

<sup>10</sup> See Zhejiang ERA's supplemental response dated September 12, 2016, at Question 4.

<sup>11</sup> See CCR Request at 7 and Exhibit 9.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 7 and Exhibit 11 and Exhibit 12.

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 Zhejiang ERA, which is described above and includes information regarding a name change, demonstrates changed circumstances sufficient to warrant a review.

Moreover, 19 CFR 351.221(3)(ii) permits the Department to combine the notice of initiation of the review and the preliminary results of review if the Department concludes that expedited action is warranted. The Department has combined these determinations in successor-in-interest cases when sufficient documentation has been provided supporting the request to make a preliminary determination.<sup>14</sup> In this instance, because we have determined that the information necessary to support the request for a preliminary determination 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 cash deposit purposes, 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.<sup>15</sup> While no one, or 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.<sup>16</sup> 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.<sup>17</sup>

We find that ownership and management have remained essentially the same. The same two people who wholly owned Era Solar now wholly own Zhejiang ERA. On May 27, 2015, by resolution of its board of shareholders, Era Solar authorized a name change to Zhejiang ERA.<sup>18</sup> This name change was required when Zhejiang ERA changed the legal form of Era Solar from a joint stock company to a limited liability company.<sup>19</sup> Despite this change in corporate form, we find that the ultimate owners of Zhejiang ERA remain the same both pre- and post-name change.

With respect to the board of directors, pursuant to the change in legal structure from a joint stock company to a limited liability company, the nine-person board of directors was reduced to

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<sup>14</sup> See, e.g., *Notice of Final Results of Antidumping Duty Administrative Review and Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products From Canada*, 69 FR 75921, (December 20, 2004).

<sup>15</sup> See, e.g., *Pressure Sensitive Plastic Tape from Italy: Preliminary Results of Antidumping Duty Changed Circumstances Review*, 75 FR 8925, 8925 (February 26, 2010), unchanged in *Pressure Sensitive Plastic Tape From Italy: Final Results of Antidumping Duty Changed Circumstances Review*, 75 FR 27706 (May 18, 2010).

<sup>16</sup> *Id.*

<sup>17</sup> 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).

<sup>18</sup> See CCR Request at Exhibit 2 for the Board of Shareholders' resolution authorizing the change of company name.

<sup>19</sup> *Id.* at 5; Zhejiang ERA's supplemental response dated September 12, 2016, at Question 3.

three.<sup>20</sup> However, two of the three directors, who have continued on the board, were also directors of Era Solar, including the Chairman of the Board. Further, as with Era Solar, the two ultimate owners (which, as noted above, remain the same pre- and post-name change) continue to serve on the board of directors.<sup>21</sup> Meanwhile, management stayed virtually the same, as eight of the nine Era Solar managers maintained their positions at Zhejiang ERA.<sup>22</sup>

Notwithstanding certain changes in the Board of Directors, we find the continuity of management, ownership, and key positions on the board of directors to be key factors indicating Zhejiang ERA's operation is essentially the same as that of its predecessor. The Department has taken a similar position in prior cases. 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.<sup>23</sup> 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.<sup>24</sup> 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 successor company.<sup>25</sup> Similar to *Polyester Staple Fiber from Korea*, while certain changes to the board of directors occurred, management for Zhejiang ERA mostly stayed the same and key directors remained on the board. Furthermore, while *Lined Paper from India* involved a change of ownership, here, the owners stayed the same and these two owners retained board positions before and after the name change. Further, as stated above, eight of the nine managers of Era Solar retained their positions with Zhejiang ERA.

With respect to production facilities, Zhejiang ERA reported that it uses the same facilities used by Era Solar, that no changes were made to the facility, and that the company is producing the subject merchandise on the same equipment used by Era Solar.<sup>26</sup> Furthermore, the business scopes of Zhejiang ERA and Era Solar are nearly identical.<sup>27</sup>

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<sup>20</sup> See CCR Request at 5, Exhibit 4, and Exhibit 5.

<sup>21</sup> *Id.* at Exhibit 4, Exhibit 5, Exhibit 6, and Zhejiang ERA's supplemental response dated September 12, 2016, Exhibit S-1.

<sup>22</sup> *Id.* at Exhibit 8.

<sup>23</sup> 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).

<sup>24</sup> *Id.*

<sup>25</sup> 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.

<sup>26</sup> See Zhejiang ERA's supplemental response dated September 12, 2016, at Question 4 and Exhibit S-1.

<sup>27</sup> See CCR Request at Exhibit 4 and Zhejiang ERA's supplemental response dated September 12, 2016, Exhibit S-1.

Regarding raw material suppliers and customers, the record contains a list of the suppliers of the most significant raw material inputs of Era Solar and Zhejiang ERA covering the period from three years before the name change to over one year after the name change. The degree to which the group of companies making up the 10 largest suppliers in the year immediately before Era Solar became Zhejiang ERA changed in the year immediately after the name change was not significantly greater than the change in the 10 largest suppliers between the first and second years prior to the name change.<sup>28</sup> Further, Zhejiang ERA certified that any change of suppliers after the name change were not attributable to the name change, but rather attributable to changes in pricing or availability of raw materials.<sup>29</sup> 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.<sup>30</sup> Zhejiang ERA certified that changes in customer base were not attributable to the name change, but rather to market conditions.<sup>31</sup> 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.

In a CCR, we generally consider a company to be the successor to another company for cash deposit purposes if the operations of the successor are not materially dissimilar from those of its predecessor. Based on the totality of the circumstances, we preliminarily find that the operations of Zhejiang ERA are not materially dissimilar to the operations of Era Solar. Principal ownership of the companies is identical, management has remained essentially the same, and the production facilities remain unchanged. Further, for reasons explained above, 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 Zhejiang ERA's CCR Request, we recommend that the Department preliminarily determine that Zhejiang ERA is the successor-in-interest to Era Solar for purposes of the AD order on solar cells from the PRC.

Agree \_\_\_\_\_

Disagree \_\_\_\_\_

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Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

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(Date)

<sup>28</sup> See CCR Request at Exhibit 9.

<sup>29</sup> *Id.* Request at 7 and Zhejiang ERA's supplemental response dated September 12, 2016 at Question 6.

<sup>30</sup> *Id.* at Exhibit 10.

<sup>31</sup> *Id.* at 7-8 and Zhejiang ERA's supplemental response dated September 12, 2016, at Question 5.