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Administrative Review
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March 11, 2019

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Preliminary Results of Antidumping
Duty Administrative Review: Certain Crystalline Silicon
Photovoltaic Products from the People's Republic of China; 2017-
2018

SUMMARY

In response to requests from interested parties, the Department of Commerce (Commerce) is conducting the third administrative review of the antidumping duty (AD) order on certain crystalline silicon photovoltaic products (solar products) from the People's Republic of China (China) for the period of review (POR) February 1, 2017 through January 31, 2018. The administrative review covers three companies: Sol-lite Manufacturing Company Limited (Sol-lite), Ri Shen Products (SZ) (Ri Shen), and Shenzhen Sungold Solar Co., Ltd. (Sungold). Commerce preliminarily finds that Sol-lite, Ri Shen, and Sungold have not established their entitlement to separate rate status, and therefore, have preliminarily been treated as part of the China-wide entity. We intend to issue the final results of review no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).



BACKGROUND

On February 18, 2015, Commerce published in the *Federal Register* an AD order on solar products from China.¹ On February 1, 2018, Commerce published in the *Federal Register* a notice of opportunity to request an administrative review of orders, findings, or suspended investigations with anniversaries in February 2018, including the AD order on solar products from China.² During February 2018, Commerce received timely requests for administrative reviews of solar products from China from 12 companies or company groupings. On April 16, 2018, Commerce published in the *Federal Register* a notice initiating an AD administrative review of solar products from China covering 12 companies/company groupings for the period February 1, 2017 through January 31, 2018.³ On September 7, 2018, Commerce published a notice rescinding the review with respect to nine companies for which all review requests had been withdrawn.⁴

On October 19, 2018, Commerce postponed the preliminary results of this review until January 29, 2019.⁵ Subsequent to that postponement, Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.⁶ The revised deadline for the preliminary results decision is now March 11, 2019.

RESPONDENT SELECTION

In the *Initiation Notice*, Commerce stated that if it limited the number of respondents for individual examination, it intended to select respondents based on volume data contained in responses to its quantity and value (Q&V) questionnaire.⁷ On April 17, 2018, Commerce issued Q&V questionnaires to the seven companies or company groupings with the largest shipments, by value, according to information gathered from U.S. Customs and Border Protection (CBP).⁸

¹ See *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Antidumping Duty Order; and Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 80 FR 8592 (February 18, 2015).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 83 FR 4639 (February 1, 2018) at <http://enforcement.trade.gov/frn/index.html>.

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 16298 (April 16, 2018) (*Initiation Notice*) at <http://enforcement.trade.gov/frn/index.html>.

⁴ See *Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review; 2017-2018*, 83 FR 45417 (September 7, 2018) (*Partial Rescission Notice*).

⁵ See memorandum to James Maeder Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review" dated October 19, 2018.

⁶ See Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019.

⁷ *Id.* at 16299.

⁸ Commerce explained in the *Initiation Notice* that the units used to measure the imported quantities of solar cells and solar modules are "number" and it would not be meaningful to sum the number of imported solar cells and the

Commerce received Q&V information from all companies listed in the *Initiation Notice*.⁹ Only Sol-lite and Shenzhen Letsolar Technology Co., Ltd. (Letsolar) reported shipment quantities, while the other reporting companies submitted no shipment letters.

Based on Q&V information, on June 12, 2018, we selected Sol-lite as a mandatory respondent and subsequently issued the AD questionnaire to Sol-lite.¹⁰ However, on June 25, 2018, Sol-lite informed Commerce that it “has decided not to participate as a mandatory respondent in the case.”¹¹ Aside from Sol-lite, the only company/company grouping listed in the *Initiation Notice* that reported shipments was Letsolar and, thus, on July 3, 2018, we selected Letsolar as an additional mandatory respondent and issued the AD questionnaire to Letsolar.¹²

However, as noted above, on September 7, 2018, Commerce published a notice rescinding the review with respect to nine companies for which all review requests had been timely withdrawn.¹³ One of those companies was Letsolar. Hence, the only three companies remaining under review are Sol-lite, Ri Shen, and Sungold. As noted below, Sungold reported making no shipments of subject merchandise to the United States during the POR.¹⁴

SCOPE OF THE ORDER¹⁵

The merchandise covered by the order is modules, laminates and/or panels consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including building integrated materials. For purposes of these orders, subject merchandise includes modules, laminates and/or panels assembled in China consisting of crystalline silicon photovoltaic cells produced in a customs territory other than China.

number of imported solar modules in attempting to determine the largest Chinese exporters of subject merchandise by volume. Therefore, Commerce stated that it would limit the number of Q&V questionnaires issued based on the import values in CBP data, which would serve as a proxy for imported quantities. The CBP data was placed on the record in the April 30, 2018 memorandum entitled Release of Customs and Border Protection Data. We issued questionnaires to BYD (Shangluo) Industrial Co., Ltd. (Shangluo), Changzhou Trina Solar Energy Co., Ltd./Trina Solar (Changzhou) Science and Technology Co., Ltd./Yangcheng Trina Solar Energy Co., Ltd./Turpan Trina Solar Energy Co., Ltd./Hubei Trina Solar Energy Co., Ltd. (Trina), Perlight Solar Co., Ltd., Shenzhen Letsolar Technology Co., Ltd., Shenzhen Sungold Solar Co., Ltd., Sol-lite Manufacturing Company Limited, and Sunny Apex Development Ltd.

⁹ In addition to receiving responses from the seven companies to which Commerce sent Q&V questionnaires, Commerce received Q&V responses from the following four additional companies: Chint Solar (Zhejiang) Co., Ltd., Hefei JA Solar Technology Co., Ltd., Shanghai BYD Co., Ltd. and Wuxi Suntech Power Co., Ltd.

¹⁰ See June 12, 2018 memorandum entitled “Respondent Selection.”

¹¹ See Sol-lite’s June 25, 2018 submission.

¹² See July 3, 2018 memorandum entitled “Respondent Selection.”

¹³ See *Certain Crystalline Silicon Photovoltaic Products From the People’s Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review; 2017-2018*, 83 FR 45417 (September 7, 2018) (*Partial Rescission Notice*).

¹⁴ See Sungold’s April 27, 2018 submission.

¹⁵ On July 20, 2018, Commerce received a request from CBP that it add Harmonized Tariff Schedule (HTS) numbers 8541.40.60.15 and 8541.40.60.35 to the scope description for this order to reflect the 2018 updates to the HTS.¹⁵ We have added these numbers to the scope description in this memorandum.

Subject merchandise includes modules, laminates and/or panels assembled in China consisting of 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.

Excluded from the scope of the 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 the order are modules, laminates and/or panels assembled in China, consisting of 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 cells. Where more than one module, laminate and/or panel is permanently integrated into a consumer good, the surface area for purposes of this exclusion shall be the total combined surface area of all modules, laminates and/or panels that are integrated into the consumer good. Further, also excluded from the scope of the order are any products covered by the existing antidumping and countervailing duty orders on crystalline silicon photovoltaic cells, whether or not assembled into modules, laminates and/or panels, from China. Additionally, excluded from the scope of these orders are solar panels that are: (1) less than 300,000 mm² in surface area; (2) less than 27.1 watts in power; (3) coated across their entire surface with a polyurethane doming resin; and (4) joined to a battery charging and maintaining unit (which is an acrylonitrile butadiene styrene (ABS) box that incorporates a light emitting diode (LED)) by coated wires that include a connector to permit the incorporation of an extension cable. The battery charging and maintaining unit utilizes high-frequency triangular pulse waveforms designed to maintain and extend the life of batteries through the reduction of lead sulfate crystals. The above-described battery charging and maintaining unit is currently available under the registered trademark “SolarPulse.”

Merchandise covered by the order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 8501.61.0000, 8507.20.8030, 8507.20.8040, 8507.20.8060, 8507.20.8090, 8541.40.60.15, 8541.40.6020, 8541.40.6030, 8541.40.60.35 and 8501.31.8000. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of the order is dispositive.

PRELIMINARY DETERMINATION REGARDING NO SHIPMENTS CLAIMS

As noted above, Sungold reported that it made no shipments of subject merchandise to the United States during the POR. We requested information from CBP to test this claim. On April 30, 2018, and September 26, 2018, we placed on the record CBP customs data relating to Sungold’s no shipment claim.¹⁶ On October 3, 2018, Sungold commented on the CBP

¹⁶ See April 30, 2018 memorandum entitled “Release of Customs and Border Protection Data” and September 26, 2018 memorandum entitled “Release of U.S. Customs and Border Protection Information Relating to No Shipment Claims Made in the 2017-2018 Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China” (September 26, 2018 memorandum).

information that we placed on the record.¹⁷ On October 18, 2018 and December 18, 2018, we placed additional CBP information regarding Sungold's no shipment claim on the record and provided interested parties with an opportunity to comment on the information.¹⁸ No other parties commented on this information.

CBP information that we obtained contradicts Sungold's no shipments claim.¹⁹ Sungold did not fully address these contradictions, and in fact, did not comment on the CBP information placed on the record on October 18, 2018 and December 18, 2018. Therefore, we preliminarily find that the evidence on the record contradicts Sungold's claim that it had no shipments, exports or sales of subject merchandise to the United States during the POR.

SEPARATE RATES

In all proceedings involving non-market economy (NME) countries, Commerce maintains a rebuttable presumption that all companies within China are subject to government control and, thus, should be assigned a single antidumping duty rate.²⁰ In the *Initiation Notice*, Commerce notified parties of the application process by which exporters or exporter/producers may obtain separate rate status in NME proceedings.²¹ It is Commerce's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, Commerce analyzes each exporting entity in an NME country under the test established in *Sparklers*,²² as amplified by *Silicon Carbide*.²³ However, if Commerce determines that a company is wholly foreign-owned or located in a market economy (ME) country, then analysis of the *de jure* and *de facto* criteria are not necessary to determine whether the company is independent from government control and eligible for a separate rate.²⁴

¹⁷ See Sungold's October 3, 2018 submission.

¹⁸ See the October 18, 2018 memorandum entitled "Release of U.S. Customs and Border Protection Information Relating to No Shipment Claims Made in the 2017-2018 Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China" (October 18, 2018 memorandum) and the December 18, 2018 memorandum entitled "Release of U.S. Customs and Border Protection Information Relating to No Shipment Claims Made in the 2017-2018 Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China,"

¹⁹ See the September 26, 2018 memorandum at Attachments 3 and 8, and the October 18, 2018 memorandum at Attachment 1.

²⁰ See *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039, 55040 (September 24, 2008); see also *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079, 53082 (September 8, 2006); see also *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303, 29307 (May 22, 2006).

²¹ See *Initiation Notice*, 83 FR 8058.

²² See *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*).

²³ See *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

²⁴ See, e.g., *Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China*, 72 FR 52355, 52356 (September 13, 2007).

With regard to Sol-lite, in our *Initiation Notice*, we stated, “{f}or exporters and producers who submit a separate rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.”²⁵ Sol-lite was selected as a mandatory respondent in the instant review but failed to respond to Commerce’s AD questionnaire. Therefore, we have preliminarily not granted Sol-lite a separate rate.

Ri-Shen did not file a separate rate application and thus failed to demonstrate its eligibility for separate rate status. Therefore, we have preliminarily not granted Ri-Shen a separate rate.

As noted above, with regard to Sungold, contrary to its no-shipment certification, record evidence demonstrates that Sungold made shipments of subject merchandise to the United States during the POR. However, Sungold did not file a separate rate certification, which, as stated in the *Initiation Notice*,²⁶ it was required to do in order to be considered for separate-rate status. Hence, we have preliminarily not granted Sungold a separate rate.

Because Commerce preliminarily determines that all three companies are not eligible for separate rate status, we are preliminarily treating them as part of the China-wide entity. Because no party requested a review of the China-wide entity, the entity is not under review²⁷ and the entity’s rate (*i.e.*, 151.98 percent)²⁸ is not subject to change.

²⁵See *Initiation Notice*, 83 FR at 16300.

²⁶ *Id.*

²⁷ See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963, 65969-70 (November 4, 2013).

²⁸ See *Certain Silicon Photovoltaic Products from the People’s Republic of China: Antidumping Duty Order; and Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 80 FR 8592 (February 18, 2015).

RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

Agree

Disagree

2/28/2019

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Signed by: GARY TAVERMAN