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Sunset Review
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May 1, 2020

MEMORANDUM TO: Joseph A. Laroski Jr.
Deputy Assistant Secretary
for Policy and Negotiations

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Expedited First Sunset
Reviews of the Antidumping Duty Orders on Crystalline Silicon
Photovoltaic Products from the People's Republic of China and
Taiwan

I. SUMMARY

In accordance with section 751(c)(1) of the Tariff Act of 1930, as amended, (the Act) the Department of Commerce (Commerce) conducted these sunset reviews in order to determine whether revocation of the antidumping duty (AD) orders¹ covering crystalline silicon photovoltaic products from the People's Republic of China (China) and Taiwan would be likely to lead to continuation or recurrence of dumping. After analyzing the substantive responses² of domestic interested parties,³ we recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum finding that revocation of the *Orders* would likely lead to continuation or recurrence of dumping at weighted-average dumping margins up to 165.04 percent for China and 27.55 percent for Taiwan.

¹ See *Antidumping Duty Order: Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China*, 80 FR 8592 (February 18, 2015) and *Antidumping Duty Order: Certain Crystalline Silicon Photovoltaic Products from Taiwan*, 80 FR 8596 (February 18, 2015) (*Orders*).

² See Domestic Interested Parties' Letter, "*Crystalline Silicon Photovoltaic Products from China and Taiwan Sunset Reviews: Substantive Response of SPMOR*," dated February 3, 2020 and "Certain Crystalline Silicon Photovoltaic Products from China and Taiwan, Inv. Nos. 701-TA-511 and 731-TA-1246 and 1247 (1st Sunset Review); Hanwha Q CELLS USA, Inc.'s Substantive Response," dated February 3, 2020 (Substantive Responses).

³ The domestic interested parties are: SunPower Manufacturing Oregon, LLC (SPMOR) and Hanwha Q CELLS USA, Inc. (Hanwha)



II. BACKGROUND

On January 2, 2020, Commerce published the notice of initiation of sunset reviews of the *Orders* in the *Federal Register* pursuant to section 751(c) of the Act.⁴ On January 13, 2020 and on January 17, 2020, Commerce received timely and complete notices of intent to participate in these sunset reviews from domestic interested parties within the deadline specified in 19 CFR 351.218(d)(1)(i).⁵ The domestic interested parties claimed interested party status pursuant to section 771(9)(C) of the Act as a manufacturer in the United States of the domestic like product.⁶ On February 3, 2020, pursuant to 19 CFR 351.218(d)(3)(i), the domestic interested parties filed timely and adequate substantive responses for both of these sunset reviews.⁷

Commerce did not receive a substantive response from any respondent interested party. On January 22, 2020 and on February 25, 2020, Commerce notified the U.S. International Trade Commission (ITC) that it received a notice of intent to participate from domestic interested parties and that it did not receive an adequate substantive response from respondent interested parties, respectively.⁸ Accordingly, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of the *Orders*.⁹

III. SCOPE OF THE *ORDERS*

China

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 this order, 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.

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.

⁴ See *Initiation of Five-Year (Sunset) Reviews*, 85 FR 67 (January 2, 2020).

⁵ See Domestic Interested Parties' Letter, "Crystalline Silicon Photovoltaic Products from China and Taiwan: Intent to Participate in Sunset Reviews," dated January 13, 2020; see also "Crystalline Silicon Photovoltaic Products from People Republic of China and Taiwan: Hanwha Q CELLS USA, Inc.'s Notice of Intent to Participate in Sunset Reviews," dated January 17, 2020.

⁶ *Id.* at 1-2.

⁷ See Substantive Responses.

⁸ See Commerce's Letters, "Sunset Reviews Initiated on January 2, 2020" dated January 22, 2020 and February 25, 2020.

⁹ See *Procedures for Conducting Five-year (Sunset) Reviews of Antidumping and Countervailing Duty Orders*, 70 FR 62061 (October 28, 2005) (Commerce normally will conduct an expedited sunset review where respondent interested parties provide an inadequate response).

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.¹⁰

Additionally, excluded from the scope of this order 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, 8541.40.6015, 8541.40.6020, 8541.40.6030, 8541.40.6035 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.

Taiwan

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

Subject merchandise includes 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.

¹⁰ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order*, 77 FR 73018 (December 7, 2012); *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Countervailing Duty Order*, 77 FR 73017 (December 7, 2012).

Modules, laminates, and panels produced in a third-country from cells produced in Taiwan are covered by this order. However, modules, laminates, and panels produced in Taiwan from cells produced in a third-country are not covered by 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 cells. 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.

Further, also excluded from the scope of this order are any products covered by the existing antidumping and countervailing duty orders on crystalline silicon photovoltaic cells, whether or not assembled into modules, from the People's Republic of China (China).¹¹

Also excluded from the scope of this order are modules, laminates, and panels produced in China from crystalline silicon photovoltaic cells produced in Taiwan that are covered by an existing proceeding on such modules, laminates, and panels from China.

Additionally, excluded from the scope of this order 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 HTSUS under subheadings 8501.61.0000, 8507.20.8030, 8507.20.8040, 8507.20.8060, 8507.20.8090, 8541.40.6015, 8541.40.6020, 8541.40.6030, 8541.40.6035, 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.

¹¹ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order*, 77 FR 73018 (December 7, 2012); *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Countervailing Duty Order*, 77 FR 73017 (December 7, 2012).

IV. HISTORY OF THE PROCEEDINGS

Investigation and Order

The following summarizes the history of the decisions that led to the *Orders*. On December 23, 2014, Commerce published its final affirmative determinations in the less than fair value (LTFV) investigations of solar products from China and Taiwan in the *Federal Register*.¹² Following the publication of Commerce's final determinations, the International Trade Commission (ITC) found that the U.S. industry was materially injured by reason of imports of subject merchandise.¹³ On February 18, 2015, Commerce published the *Orders* in the *Federal Register*.¹⁴ Commerce determined dumping margins ranging from 26.71 percent to 165.04 percent for China and from 11.45 percent to 27.55 percent for Taiwan.¹⁵

Subsequent Administrative, New Shipper, Changed Circumstances, and Circumvention Reviews

Commerce conducted four administrative reviews of each of these orders. In the China proceeding, Commerce calculated a dumping margin, as amended,¹⁶ of 3.42 percent in the first review,¹⁷ rescinded the second review,¹⁸ found that no respondents qualified for a separate rate in the third review,¹⁹ and rescinded the fourth administrative review.²⁰ Commerce has not changed the China-wide entity rate from the rate determined in the investigation. In the Taiwan proceeding, Commerce calculated dumping margins ranging from 3.56 percent to 4.20 percent in the first review,²¹ 1.33 percent in the second review,²² 1.00 percent to 7.77 percent in the third review,²³ and 2.57 percent in the fourth review.²⁴

¹² See *Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 76970 (December 23, 2014) and *Certain Crystalline Silicon Photovoltaic Products From Taiwan: Final Determination of Sales at Less Than Fair Value*, 79 FR 76966 (December 23, 2014) (collectively *Final Determinations*).

¹³ See *Certain Crystalline Silicon Photovoltaic Products From China and Taiwan*, 80 FR 7495 (February 10, 2015).

¹⁴ See *Orders*.

¹⁵ See *Final Determinations*.

¹⁶ See *Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results of Antidumping Duty Administrative Review and Notice of Amended Final Results of Antidumping Duty Administrative Review*, 84 FR 50386 (September 25, 2019).

¹⁷ See *Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014-2016*, 82 FR 32170 (July 12, 2017).

¹⁸ See *Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Rescission of Antidumping Duty Administrative Review*, 82 FR 39111 (August 17, 2017).

¹⁹ *Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 27764 (June 14, 2019).

²⁰ See *Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2018-2019*, 84 FR 48328 (September 13, 2019).

²¹ See *Certain Crystalline Silicon Photovoltaic Products From Taiwan: Final Results of Antidumping Duty Administrative Review; 2014-2016*, 82 FR 31555 (July 7, 2017).

²² See *Certain Crystalline Silicon Photovoltaic Products From Taiwan: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 30401 (June 28, 2018).

²³ See *Certain Crystalline Silicon Photovoltaic Products From Taiwan: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 84 FR 39802 (August 12, 2019).

²⁴ See *Certain Crystalline Silicon Photovoltaic Products From Taiwan: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018-2019*, 85 FR 16615 (March 24, 2020).

Commerce conducted two changed circumstances reviews in both the China²⁵ and Taiwan proceedings.²⁶

Commerce has not conducted any new shipper or anticircumvention reviews in these proceedings.

Scope Rulings

Commerce issued the following scope rulings with respect to these *Orders*:

- On November 12, 2015, Commerce found that Aireko Construction LLC's China-origin solar modules composed of solar cells produced in the United States are within the scope of the China *Order*.²⁷
- On January 23, 2020, Commerce found that solar cells and panels/modules imported into the United States by SunSpark Technology Inc. that were produced in Vietnam from inputs imported into Vietnam as unprocessed wafers are not subject to the scope of the *Orders*.²⁸

Duty-Absorption

There have been no duty absorption findings concerning the *Orders*.

V. LEGAL FRAMEWORK

Sections 752(c)(1)(A) and (B) of the Act provide that, in making a determination as to whether revocation of an AD order is likely to lead to continuation or recurrence of dumping, Commerce shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews, and the volume of imports of the subject merchandise for the periods before and after, the issuance of the AD order. Commerce normally will determine that revocation of an AD order is likely to lead to continuation or recurrence of dumping where: (a) dumping continued at any level above *de minimis* after the issuance of the order (however, pursuant to section 752(c)(4)(A) of the Act, a dumping margin of zero or *de minimis* shall not, by itself, require Commerce to determine that revocation of an AD order would not be likely to lead to a

²⁵ See *Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China and From Taiwan: Final Results of Changed Circumstances Reviews, and Revocation of Antidumping Duty Orders and Countervailing Duty Order, in Part*, 82 FR 16573 (April 5, 2017) (*SolarPulse CCR*) and *Antidumping Duty Orders on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China and Antidumping Duty Orders on Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Final Results of Changed Circumstances Reviews*, 82 FR 17797 (April 13, 2017).

²⁶ See *SolarPulse CCR* and *Certain Crystalline Silicon Photovoltaic Products From Taiwan: Notice of Final Results of Antidumping Duty Changed Circumstances Review*, 84 FR 37836 (August 2, 2019).

²⁷ See Commerce Memorandum, "Crystalline Silicon Photovoltaic Products from People's Republic Of China: Scope Ruling on Aireko Construction LLC's Solar Modules Composed of U.S.-origin Cells," dated November 12, 2015.

²⁸ See Commerce Memorandum, "Antidumping and Countervailing Duty Orders on Crystalline Silicon Photovoltaic Products from the People's Republic of China: SunSpark Technology Inc. Scope Ruling," dated January 23, 2020.

continuation or recurrence of sales at LTFV);²⁹ (b) imports of the subject merchandise ceased after issuance of the order; or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined.³⁰ Alternatively, Commerce normally will determine that revocation of an AD order is not likely to lead to continuation or recurrence of dumping where dumping was eliminated after issuance of the order and import volumes remained steady or increased.³¹

When examining import levels after issuance of the order, Commerce's practice is to use the one-year period immediately preceding the initiation of the investigation, rather than the level of pre-order import volumes, in its comparisons because initiation of an investigation may dampen import volumes and, thus, skew comparisons.³²

In accordance with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (URAA), specifically the Statement of Administrative Action, (SAA), the House Report, and the Senate Report, Commerce's likelihood determinations will be made on an order-wide, rather than company-specific, basis.³³

Further, section 752(c)(3) of the Act requires that Commerce provide the ITC with the magnitude of the margin of dumping likely to prevail if the order were revoked. Generally, Commerce reports to the ITC the dumping margin from the final determination in the investigation because this is the only calculated dumping margin that reflects the behavior of exporters without the discipline of an order in place.³⁴ However, in certain circumstances, a more recently calculated dumping margin may be more appropriate (e.g., if dumping margins have declined over the life of an order and imports have remained steady or increased, Commerce may conclude that exporters are likely to continue dumping at the lower more recently calculated rates).³⁵

In February 2012, Commerce announced it was modifying its practice in sunset reviews such that it will not rely on weighted-average dumping margins that were calculated using the methodology found to be World Trade Organization (WTO)-inconsistent.³⁶ In the *Final*

²⁹ See *Folding Gift Boxes from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 72 FR 16765 (April 5, 2007), and accompanying IDM at Comment 1.

³⁰ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I (1994) at 889-90 (SAA); House Report at 63-64; and Senate Report at 52 for a description of our practice; see also *Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871, 18872 (April 16, 1998) (*Sunset Policy Bulletin*).

³¹ See SAA at 889-90, H.R. Rep. No. 103-316, Vol. I (1994).

³² See, e.g., *Stainless Steel Bar from Germany: Final Results of the Sunset Review of the Antidumping Duty Order*, 72 FR 56985 (October 5, 2007), and accompanying Issues and Decision Memorandum (IDM) at Comment 1.

³³ See SAA at 879; see also House Report H. Rep. No. 103-826, pt. 1 (1994) at 56 and Senate Report, S. Rep. No. 103-412 (1994).

³⁴ See SAA at 890; and *Sunset Policy Bulletin* at section II.B.1; see also, e.g., *Persulfates from the People's Republic of China: Notice of Final Results of Expedited Second Sunset Review of Antidumping Duty Order*, 73 FR 11868 (March 5, 2008), and accompanying IDM at Comment 2.

³⁵ See SAA at 890-91; and *Sunset Policy Bulletin* at section II.B.2.

³⁶ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101, 8103 (February 14, 2012) (*Final Modification for Reviews*).

Modification for Reviews, Commerce stated that “only in the most extraordinary circumstances” would it rely on dumping margins in sunset reviews other than those calculated and published in prior determinations.³⁷ Commerce further stated that apart from the “most extraordinary circumstances,” it did not anticipate the need to recalculate dumping margins in the vast majority of future sunset determinations and, instead would “limit its reliance to margins determined or applied during the five-year sunset period that were not determined in a manner found to be WTO-inconsistent” and that it “may also rely on past dumping margins that were not affected by the WTO-inconsistent methodology, such as dumping margins recalculated pursuant to Section 129 proceedings, dumping margins determined based on the use of total adverse facts available, and dumping margins where no offsets were denied because all comparison results were positive.”³⁸

Below we address the comments submitted by the domestic interested parties.

VI. DISCUSSION OF THE ISSUES

One of the domestic interested parties that provided a substantive response, Hanwha, reported that it “is related to a foreign producer or to a foreign exporter of the subject merchandise, Hanwha Q CELLS (Qidong) Co., Ltd., through common ownership, under section 771(4)(B) of the Act.” We reviewed Hanwha’s substantive response and decided that it is acting in a manner consistent with the interests of the domestic industry. Therefore, consistent with Commerce’s practice, we have not disregarded this response.³⁹ Thus, the summaries of domestic interested parties’ comments below reflect Hanwha’s comments.

1. Likelihood of Continuation or Recurrence of Dumping

Domestic Interested Parties’ Comments:

- Commerce must find that if the *Orders* were revoked, dumping by Chinese and Taiwanese exporters would likely continue or recur because import volumes have declined significantly since issuance of the *Orders*.

Commerce’s Position:

Consistent with the legal framework laid out above and section 752(c)(1)(A) of the Act, we first considered the weighted-average dumping margins determined in the investigations and subsequent reviews. As stated above, in the *LTFV Investigation of Solar Products from China*, Commerce found weighted-average dumping margins ranging from 26.71 percent to 165.04

³⁷ *Id.*

³⁸ *Id.*

³⁹ See *Lemon Juice from Mexico: Preliminary Results of Full Sunset Review of the Suspended Antidumping Duty Investigation*, 77 FR 75998 (December 26, 2012) and accompanying Issues and Decision Memorandum at Issue 3, unchanged in *Lemon Juice from Mexico: Final Results of Full Sunset Review of the Suspended Antidumping Duty Investigation*, 78 FR 38944 (June 28, 2013) and accompanying Issues and Decision Memorandum at Issue 3; see also *Brake Rotors from the People’s Republic of China: Notice of Final Results of Expedited Second Sunset Review of Antidumping Duty Order*, 73 FR 1319, (January 8, 2008) and accompanying Issues and Decision Memorandum at Issue 2.

percent while in the *LTFV Investigation of Solar Products from Taiwan* Commerce found weighted-average dumping margins ranging from 11.45 percent to 27.55 percent.⁴⁰ Commerce found above *de minimis* dumping margins in all subsequent reviews of the *Orders*. Therefore, the evidence indicates that dumping has continued after issuance of the *Orders*.

Additionally, we considered the level of imports of the subject merchandise after issuance of the *Orders* in determining whether revocation of the *Orders* is likely to lead to continuation or recurrence of dumping. Although the SAA and section 752(c)(1)(B) of the Act describe an analysis of import volumes, some of the HTSUS numbers used in our analysis are for solar modules while other HTSUS numbers are for solar cells. Each solar module comprises multiple solar cells. Because the quantity of imports for both solar modules and solar cells were reported in number of units, and the mixture of products imported from year to year may change, we do not find it meaningful to compare import volumes for these HTSUS numbers across years. Therefore, we have compared import values in our analysis.

The total value of U.S. imports from Taiwan classified under the HTSUS numbers in the scope is less in each of the years considered in this sunset review (2015 through 2018) than the total value of U.S. imports from Taiwan classified under those HTSUS numbers in the year immediately preceding the initiation of the investigation (*i.e.*, 2013). In the most recent year under consideration, 2018, the total value of U.S. imports from Taiwan classified under the relevant HTSUS numbers is 4.59% of the corresponding value in 2013.⁴¹

While the total values for 2015 and 2016 of U.S. imports from China classified under the HTSUS numbers in the scope are not less than the total value of U.S. imports from China classified under those HTSUS numbers in 2013, the total values of such imports in 2017 and 2018 are less than the total value of corresponding U.S. imports in 2013.⁴² In the most recent year under consideration, 2018, the value of U.S. imports from China classified under the relevant HTSUS numbers is 5.79% of the corresponding value in 2013.⁴³

Moreover, since issuance of the *Orders* on February 18, 2015, the value of U.S. imports from China and Taiwan classified under the HTSUS numbers in the scopes has declined each year from 2015 to 2018. From 2015 through 2018, the value of U.S. imports from China and Taiwan classified under these HTSUS numbers declined approximately 96% and 93%, respectively,⁴⁴ while Commerce continued to find dumping in the administrative reviews that it conducted during that period.

The weight of the evidence discussed above indicates that the levels of U.S. imports from both China and Taiwan have declined throughout the period under consideration in this sunset review and that the levels of U.S. imports from both countries as of the end of the sunset review period

⁴⁰ See *Final Determination*.

⁴¹ See Attachment I.

⁴² See Attachment I.

⁴³ *Id.*

⁴⁴ See Substantive Responses at 7 (SPMOR) and 8 (Hanwha), citing import data from the ITC's Trade Dataweb. These import volumes are based on the following HTSUS numbers: 8501.61.0000, 8507.20.8030, 8507.20.8040, 8507.20.8060, 8507.20.8090, 8541.40.6020, 8541.40.6030 and 8501.31.8000

are significantly less than the pre-initiation import levels. This indicates that Chinese and Taiwanese exporters may not be able to maintain pre-initiation import levels without selling subject merchandise at dumped prices.⁴⁵

As noted in the SAA, “declining import volumes accompanied by the continued existence of dumping margins after the issuance of an order may provide a strong indication that, absent an order, dumping would be likely to continue, because the evidence would indicate that the exporter needs to dump to sell at pre-order volumes.”⁴⁶ Furthermore, according to the SAA and the House Report, “if companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline were removed.”⁴⁷ Therefore, because we found declining levels of imports accompanied by the continued existence of dumping after issuance of the *Orders*, we recommend finding that dumping is likely to continue or recur if the *Orders* were revoked.

Section 752(c)(2) of the Act provides that Commerce shall also consider factors other than those listed in section 752(c)(1) of the Act if “good cause is shown.” We have concluded that no such “good cause” exists in this case because the above *de minimis* dumping margins and the decline in the volume of U.S. imports of subject merchandise from China and Taiwan after issuance of the *Orders* satisfy the statutory test for determining the likelihood of whether dumping would continue or recur if the *Orders* were revoked.

2. Magnitude of the Margin of Dumping Likely to Prevail

Domestic Interested Parties’ Comments:

- Commerce should determine that dumping would continue if the *Orders* were revoked, at a rate equal to, or higher than, the dumping margins from the investigations in these proceedings.

Commerce’s Position:

Pursuant to section 752(c)(3) of the Act, Commerce shall provide the ITC with the magnitude of the margin of dumping that is likely to prevail if an AD order were revoked. Normally, Commerce will base the magnitude of the margin of dumping that is likely to prevail if an AD order were revoked on the weighted-average dumping margins from the LTFV investigation.⁴⁸ Commerce’s preference is to select a weighted-average dumping margin from the LTFV investigation for this purpose because it is the only calculated dumping margin that reflects the behavior of the producers and exporters without the discipline of an order or suspension agreement in place.⁴⁹ Under certain circumstances, however, Commerce may select a more recent dumping margin to report to the ITC.

⁴⁵ See, e.g., *Certain Activated Carbon from the People’s Republic of China: Final Results of Expedited Sunset Review of the Antidumping Duty Order*, 77 FR 33420 (June 6, 2012), and accompanying IDM at Comment 1.

⁴⁶ See SAA at 889; see also House Report at 63; and the Senate Report at 52.

⁴⁷ See SAA at 889; see also House Report at 63-64.

⁴⁸ See SAA at 890.

⁴⁹ *Id.*

As explained above, in accordance with the *Final Modification for Reviews*, Commerce will not rely on weighted-average dumping margins that were calculated using the zeroing methodology found to be WTO-inconsistent.⁵⁰ Here, Commerce finds that the magnitude of the margins of dumping likely to prevail if the *Orders* were revoked is the range of weighted-average dumping margins up to 165.04 percent for China and up to 27.55 percent for Taiwan. These dumping margins were not calculated using zeroing and, thus, these dumping margins are consistent with the practice stipulated in the *Final Modification for Reviews*.

VII. FINAL RESULTS OF SUNSET REVIEWS

We determine that revocation of the *Orders* would likely lead to continuation or recurrence of dumping and that the magnitude of the margins of dumping likely to prevail if the *Orders* were revoked is the range of weighted-average dumping margins up to 165.04 percent for China and 27.55 percent for Taiwan.

VIII. RECOMMENDATION

Based on our analysis of the substantive responses received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of these expedited sunset reviews in the *Federal Register* and notify the ITC of our determinations.

☒

☐

Agree

Disagree

5/1/2020

X



Signed by: JOSEPH LAROSKI

Joseph A. Laroski Jr.

Deputy Assistant Secretary
for Policy and Negotiations

⁵⁰ See *Final Modification for Reviews*, 77 FR at 8103.

Attachment I

U.S. Annual Imports of CSPV Products from China and Taiwan, in Values, for HTSUS:
8501.61.0000, 8507.20.8030, 8507.20.8040, 8507.20.8060, 8507.20.8090,
8541.40.6020, 8541.40.6030 and 8501.31.8000

Country	Year 2013
China	\$ 1,494,531,348
Taiwan	\$ 656,777,086

Source: U.S. Census Bureau imports statistics as reported by USITC Dataweb