A-570-979
Sunset Review
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March 5, 2018

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: Issues and Decision Memorandum for the Expedited First Sunset Review of the Antidumping Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China

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Summary

In this first sunset review of the antidumping duty order covering crystalline silicon photovoltaic cells, whether or not assembled into modules (CSPV cells) from the People's Republic of China (China), SolarWorld Americas, Inc. (SolarWorld), a domestic producer of CSPV cells, submitted an adequate and timely notice of intent to participate as well as a substantive response. No respondent interested party submitted a substantive response. Accordingly, we conducted an expedited (120-day) sunset review pursuant to section 751(c)(3)(B) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.218(e)(1)(ii)(C)(2).[1] In accordance with our analysis of SolarWorld's adequate substantive response, we recommend that you approve the positions described in the instant memorandum. The following is a complete list of issues in the instant sunset review for which we received a substantive response:

1. Likelihood of continuation or recurrence of dumping; and
2. Magnitude of the dumping margin likely to prevail.

[1] *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).

Background

On November 1, 2017, the Department of Commerce (Commerce) published the notice of initiation of the first sunset review of the antidumping duty order on CSPV cells from China, pursuant to section 751(c) of the Act.[2] On November 13, 2017, pursuant to 19 CFR 351.218(d)(1), Commerce received a timely and complete notice of intent to participate in the sunset review from SolarWorld.[3] SolarWorld claimed interested party status pursuant to section 771(9)(C) of the Act. On December 1, 2017, pursuant to 19 CFR 351.218(d)(3), SolarWorld filed a timely and adequate substantive response.[4] Commerce did not receive substantive responses from any respondent interested party. As a result, 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 antidumping duty order on CSPV cells from China. Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through 22, 2018. If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the final results is now March 5, 2018.[5]

Scope of the Order

The merchandise covered by the order are 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.

The 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,

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[2] *See Initiation of Five-Year (Sunset) Review*, 82 FR 50612 (November 1, 2017).
[3] *See* Letter from SolarWorld to Commerce re, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Notice of Intent to Participate in Sunset Review," dated November 13, 2017.
[4] *See* Letter from SolarWorld re, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Substantive Response to Notice of Initiation of Sunset Review," dated December 1, 2017 (SolarWorld Substantive Response).
[5] *See* Memorandum for The Record from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government" (Tolling Memorandum), dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

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 the orders.

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 crystalline silicon photovoltaic cells, not exceeding 10,000 mm^2 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.

Additionally, excluded from the scope of this order are panels with surface area from 3,450 mm^2 to 33,782 mm^2 with one black wire and one red wire (each of type 22 AWG or 24 AWG not more than 206 mm in length when measured from panel extrusion), and not exceeding 2.9 volts, 1.1 amps, and 3.19 watts. For the purposes of this exclusion, no panel shall contain an internal battery or external computer peripheral ports.

Modules, laminates, and panels produced in a third-country from cells produced in China are covered by the orders; however, modules, laminates, and panels produced in China from cells produced in a third-country are not covered by the 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 the order is dispositive.

History of the Proceeding

Investigation and Order

The following summarizes the history of the decisions that led to the *Order*. On October 17, 2012, Commerce published its final affirmative determination in the less than fair value (LTFV), investigation of CSPV cells from China in the *Federal Register*.[6] Following the publication of Commerce's final determination, the International Trade Commission (ITC) found that the U.S. industry was materially injured by reason of imports of subject merchandise.[7] On December 7,

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[6] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part*, 77 FR 63791 (October 17, 2012) (*Final Determination*).

[7] *See Crystalline Silicon Photovoltaic Cells and Modules from China (Investigation Nos. 701-TA-481 and 731-TA-*

2012, Commerce published the antidumping duty order on CSPV cells from China.[8] Commerce determined dumping margins ranging from 18.32 percent to 249.96 percent. Moreover, on August 4, 2015, the U.S. Trade Representative (USTR) instructed Commerce to implement its determinations under section 129 of the Uruguay Round Agreements Act (URAA) regarding the antidumping duty investigation of CSPV cells from China.[9] Accordingly, Commerce revised the antidumping cash deposit rates to account for double remedies, reflecting rates ranging from 6.68 percent to 238.88 percent.[10]

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

Since the issuance of the *Order*, Commerce has completed three administrative reviews.[11] The fourth administrative review is ongoing.[12] The calculated dumping margins in the first, second, and third administrative reviews ranged from 0.79 percent to 33.08 percent, 6.12 percent to 12.19 percent and 5.82 percent to 13.07 percent, respectively. The China-wide rate in the first administrative review is 238.95 percent, which continued to be the China-wide rate across the second and the third administrative reviews.[13] Commerce also completed five changed

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1190 (Final), USITC Publication 4360, November 2012).

[8] *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) (*Order*).

[9] *See Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act: Citric Acid and Citrate Salts from the People's Republic of China; Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China; Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China; High Pressure Steel Cylinders from the People's Republic of China; Multilayered Wood Flooring from the People's Republic of China; Certain Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China; Utility Scale Wind Towers from the People's Republic of China,* 80 FR 48812 (August 14, 2015).

[10] *Id*.

[11] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2012-2013,* 80 FR 40998 (July 14, 2015) (*First Administrative Review*); *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2013-2014,* 81 FR 39905 (June 20, 2016); and *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014-2015,* 82 FR 29033 (June 27, 2017) and *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review; 2014-2015,* 82 FR 40560 (August 25, 2017).

[12] *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2015-2016,* 83 FR 1018 (January 9, 2018).

[13] Note, the China-wide entity rate in the *First Administrative Review* equals the China-wide entity rate of 249.96 percent adjusted for export subsidies and estimated domestic subsidy pass-through. *See* 80 FR 41002 (July 14, 2015). Commerce subsequently eliminated the conditional review of the non-market economy (NME) entity. With respect to AD administrative reviews for which the notice of opportunity to request an administrative review is published on or after December 4, 2013, the review of the China-wide entity is now no longer conditional but subject to request. Further, the "inclusion of initiated companies within the NME entity does not result in a review of the NME entity or in a change of the NME entity rate." *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the*

circumstances reviews,[14] and rescinded a new shipper review.[15] Commerce has not conducted circumvention inquiries in connection with the *Order*.

Scope Rulings

Commerce has issued the following scope rulings regarding merchandise covered by this *Order*:

- On February 3, 2014, Commerce found that OYAMA Life Impact Energy Co., Ltd.'s OY340-XA Hybrid Solar Tablet Charger is covered by the scope of the *Order*.[16]
- On May 29, 2014, Commerce found that solar modules assembled in Malaysia from CSPV cells manufactured in Taiwan and imported by NVT LLC (d/b/a/ SunEdison), were outside the scope of the *Order*.[17]
- On August 5, 2015, Commerce found that solar chargers imported by Outdoor Tactical Enterprises are not covered by the scope of the *Order*.[18]
- On May 13, 2016, Commerce found that Goal Zero's Torch 250 flashlight was covered by the scope of the *Order*.[19]
- On June 17, 2016, Commerce determined that Triex photovoltaic cells produced by SolarCity Corporation and Silevo LLC, are covered by the scope of the *Orders.*[20]

Nonmarket Economy Entity in NME Antidumping Duty Proceedings, 78 Fed. Reg. 65,963 (November 4, 2013). This change in policy did not apply to the *First Administrative Review*, because an opportunity to request an administrative review was published prior to that date. *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 78 Fed. Reg. 72,636 (December 3, 2013).

[14] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China*, 81 FR 9,427 (February 25, 2016)*; Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of Changed Circumstances Review,* 81 FR 43582 (July 5, 2016); *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of Changed Circumstances Review*, 81 FR 91909 (December 19, 2016); *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); and *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Results of Changed Circumstances Reviews, and Revocation of Antidumping and Countervailing Duty Orders, in Part*, 83 FR 2617 (January 18, 2018).

[15] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Rescission of Antidumping Duty New Shipper Review 2013–2014*, 80 FR 55090 (September 14, 2015).

[16] *See Notice of Scope Rulings*, 79 FR 6,165, 6,166 (February 3, 2014).

[17] *See Notice of Scope Rulings*, 79 FR 30,821, and 30,821-22 (May 29, 2014).

[18] *See* Memorandum from Mark Hoadley, Program Manager, *AD/CVD* Operations, Off VII, to Edward C. Yang, Director, *AD/CVD* Operations, Office VII, "Antidumping and Countervailing Duty Orders on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China; Final Scope Ruling for the Scope Request from Outdoor Tactical Enterprises," dated August 5, 2015.

[19] *See Notice of Scope Rulings*, 82 FR 26,454 (June 7, 2017).

[20] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Edward Yang, Senior Director, AD/CVD Operations, Office VII, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Ruling in the Triex Photovoltaic Cell Scope Inquiry," dated June 17, 2016.

- On July 29, 2016, Commerce determined that solar modules containing bifacial thin film cells made with amorphous silicon (bifacial solar products), as imported by Sunpreme Inc., are covered by the scope of the *Order*.[21]

Duty-Absorption

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

Discussion of the Issues

Legal Framework

In accordance with section 751(c)(1) of the Act, Commerce is conducting this sunset review to determine whether revocation of the *Order* would be likely to lead to a continuation or recurrence of dumping. If Commerce determines that revocation of the *Order* would be likely to lead to a continuation or recurrence of dumping, pursuant to section 752(c)(3) of the Act, Commerce shall provide to the ITC with the magnitude of the margin of dumping likely to prevail if the *Order* were revoked.

As explained in the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, Commerce normally determines that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping when: (a) dumping continued at any level above *de minimis* after issuance of the order; (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 significantly.[22] 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 continuation or recurrence of sales at less than fair value.[23]

Alternatively, Commerce normally will determine that revocation of an antidumping duty 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.[24] Consistent with guidance provided in the legislative history accompanying the Uruguay Round Agreements Act

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[21] *See* Memorandum from Mark Hoadley, Program Manager, AD/CVD Operations, Office VII, to Edward C. Yang, Senior Director, AD/CVD Operations, Office VII, "Crystalline Silicon Photovoltaic Cells, Whether or Not assembled into Modules, from the People's Republic of China: Final Ruling in the Sunpreme Scope Inquiry," dated July 29, 2016.

[22] *See* SAA at 889-90, House Report at 63-64, and Senate Report at 52; *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*").

[23] *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) ("*Folding Gift Boxes*") and accompanying Issues and Decision Memorandum at Comment 1.

[24] *See* SAA, H.R. Rep. No. 103-316, Vol. 1 (1994), at 889-90; *see also Sunset Policy Bulletin*.

(*i.e.*, SAA, H.R. Rep. No. 103-316, Vol. 1 (1994);[25] House Report, H. Rep. No. 103-826, pt. 1 (1994) (House Report);[26] and Senate Report, S. Rep. No. 103-412 (1994) (Senate Report)), Commerce will make its likelihood determination on an order-wide, rather than company-specific, basis.[27]

Sections 752(c)(1)(A) and (B) of the Act provide that, in determining whether revocation of the *Order* would be likely to lead to a continuation or recurrence of dumping, Commerce shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews, and the volume of imports of the subject merchandise for the period before, and the period after, the issuance of the antidumping duty order. As a base period for import volume comparison, it is Commerce's practice to use the one-year period immediately preceding the initiation of the investigation, rather than a period after initiation but before issuance of the order, as the initiation of an investigation may dampen import volumes and, thus, skew the comparison.[28]

If Commerce determines that revocation of the *Order* would be likely to lead to a continuation or recurrence of dumping, generally Commerce provides the ITC with the magnitude of the margin of dumping likely to prevail based on the dumping margin(s) 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.[29] However, in certain circumstances, Commerce may determine that a more recently calculated dumping margin may be more representative of a company's behavior in the absence of an order (*e.g.*, where a company increases dumping to maintain or increase market share with an order in place or "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 rates found in a more recent review").[30]

Regarding the margin of dumping likely to prevail, in the *Final Modification for Reviews*, Commerce announced that in five-year (*i.e.*, sunset) reviews, it will not rely on weighted-average dumping margins that were calculated using the methodology determined by the Appellate Body to be World Trade Organization (WTO)-inconsistent, *i.e.*, zeroing/the denial of offsets.[31] Commerce also noted that "only in the most extraordinary circumstances will Commerce rely on margins other than those calculated and published in prior determinations."[32] Commerce further

[25] Reprinted at 1994 U.S.C.C.A.N. 4040 (1994).
[26] Reprinted at 1994 U.S.C.C.A.N. 3773 (1994).
[27] *See* SAA at 879, and House Report at 56.
[28] *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 at Comment 1.
[29] *See* SAA at 890 and *Sunset Policy Bulletin* at section II.B.1. *See, 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 Issues and Decision Memorandum at Comment 2.
[30] *See* SAA at 890-91; *Sunset Policy Bulletin* at section II.B.2.
[31] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101, 8109 (February 14, 2012) ("*Final Modification for Reviews*").
[32] *Id.*; *see also* 19 CFR 351.218(e)(2).

stated that, apart from the "most extraordinary circumstances," it 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 recalculated pursuant to Section 129 proceedings, dumping margins determined based on the use of total adverse facts available (AFA), and dumping margins where no offsets were denied because all comparison results were positive."[33]

Below we address the comments submitted by SolarWorld.

Likelihood of Continuation or Recurrence of Dumping

Domestic Interested Parties' Comments

- Revocation of the *Order* would likely result in continuation or recurrence of dumping of CSPV cells from China in the United States.[34] The continuing dumping margins applicable to subject imports demonstrate that Chinese producers and exporters of subject merchandise are unable to sell CSPV cells and modules in the U.S. market without dumping.
- Since the *Order* was issued, dumping of CSPV cells from China continued at above *de minimis* levels in each administrative review period.[35] Accordingly, because margins have existed and presently exist for every producer/exporter, Commerce should find that above *de minimis* margins of dumping continue to exist on a country-wide basis.[36]
- Moreover, imports of CSPV cells from China declined by value since the imposition of the *Order*. In 2011, the last full year before the imposition of AD duties, imports of Chinese solar cells and modules into the United States totaled US$2.8 billion.[37] In 2013, the first full year after the order went into effect, subject imports from China fell to US$1.14 billion. Since then, import values have fluctuated, but remained well below the 2011 level.[38]
- In addition to the continued above *de minimis* margins and the decline in the value and volume of imports, there are other factors that suggest that dumping is likely to continue or recur in the event of revocation.
  - First, in administrative reviews of the *Order*, certain significant Chinese exporters failed to provide Commerce with information necessary to calculate the normal value, resulting in Commerce's application of partial adverse facts available.[39] The fact that Chinese exporters declined to provide essential information to Commerce is highly

[33] *Id.* at 8109.
[34] *See* SolarWorld Substantive Response at 4-8.
[35] *Id*.
[36] *Id*.
[37] *Id*. at 9 and Exhibit 1.
[38] *Id*.
[39] *Id*. at 10-11.

probative of the fact that Chinese exporters will resume dumping and will increase shipment volumes if the dumping order is revoked.

- Second, the U.S. market is highly price-sensitive. Accordingly, dumping presents an effective tool for Chinese producers to increase their market share. Moreover, China's currency policies facilitate the ability of Chinese exporters to rapidly increase their shipments to the United States.[40]
- Third, while imports of Chinese CSPV cells and modules have declined since the *Order*, Chinese producers have continued to export substantial quantities of subject merchandise to the United States. Accordingly, given the Chinese producers' and exporters' current presence in the U.S. market, it is inevitable that, if the *Order* are revoked, they will make every effort to return their sales in the U.S. market to their pre-order levels.[41]

<u>Commerce's Position</u>

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 investigation and subsequent reviews in this proceeding. In the investigation and all subsequent administrative reviews of the *Order*, Commerce found dumping above *de minimis* levels, with dumping rates reaching as high as 249.96 percent.[42] All of the dumping margins under this *Order* are post *Final Modification for Review*, such that none of the rates calculated in this proceeding involved zeroing/the denial of offsets. 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."[43]

Pursuant to section 752(c)(1)(B) of the Act, we also considered the level of imports of the subject merchandise in determining whether revocation of the *Order* is likely to lead to continuation or recurrence of dumping. As noted above, when analyzing import levels for the first sunset review, Commerce's practice is to compare the one-year period immediately preceding the initiation of the investigation (*i.e.*, 2011, as the underlying investigation was initiated in November 2011) to imports since the issuance of the *Order* (*i.e.*, 2012-2016).

U.S. imports of CSPV cells from China under the applicable HTSUS number listed in the scope of the *Order* in the period since the issuance of the *Order* have significantly declined compared to imports in the year immediately preceding the initiation of the investigation (*i.e.*, 2011) and remain below pre-investigation levels. We analyzed import values for four years following the issuance of the order using U.S. Bureau of Census import statistics which SolarWorld obtained

[40] *Id*. at 10-13.
[41] *Id*.
[42] As indicated on pages 3 and 4 above, the determination pursuant to section 129 of the URAA, which resulted in a reduction to the cash deposit rate for the China-wide entity (*i.e.*, a cash deposit rate of 238.88 percent), did not affect the weighted-average dumping margin of 249.96 percent for the China-wide entity as reflected in the *Final Determination*.
[43] *See* SAA at 889; *see also* House Report at 63-64.

from the ITC Dataweb.[44] The data show that the value of U.S. imports of CSPV cells from China during calendar years 2012 through 2016 ranged from USD $1,143,700,077 to $1,687,245,627, as compared to $2,803,830,639 in 2011. Imports in each of the years examined were approximately 41 to 60 percent of the pre-initiation import value. This indicates that exporters may not be able to maintain pre-investigation import levels without selling 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] Record evidence shows significantly lower import values during the years covering this sunset review compared to the pre-initiation import period. This indicates that Chinese exporters may not be able to maintain pre-initiation import levels without selling subject merchandise at dumped prices.[47] Therefore, pursuant to section 752(c)(1) of the Act, because we found lower levels of imports in each of the years covered by this sunset review compared to the year before initiation, accompanied by the continued existence of dumping after issuance of the *Order*, we recommend finding that dumping is likely to continue or recur if the *Order* is revoked.

Section 752(c)(2) of the Act provides that Commerce shall also consider "other factors" 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 we find that the continued above *de minimis* margins and the decline in the value and volume of imports alone support the statutory test for determining if likelihood of dumping would continue or recur in the event of revocation of the *Order*. Therefore, we have not considered the other factors raised by the petitioner in support of its argument that dumping is likely to continue or recur in the event of revocation.

Magnitude of the Dumping Margin Likely to Prevail

<u>Domestic Interested Parties' Comments</u>

- Commerce should report to the ITC the China-wide rate of 249.96 percent as the magnitude of dumping likely to prevail because this rate: (1) is the only rate that reflects

[44] *See* SolarWorld Substantive Response at Exhibit 1. The LTFV investigation was initiated in November 2011. *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Initiation of Antidumping Duty Investigation*, 76 FR 70960 (November 16, 2011). The units used to measure the imported quantities of solar cells and solar modules are "number." Because we find it would not be meaningful to compare import volumes across years for the combined HTSUS numbers for solar cells and solar modules, we compared import values.

[45] *See e.g., Circular Welded Carbon-Quality Steel Line Pipe from the People's Republic of China: Final Results of the Expedited First Sunset Review of the Antidumping Duty Order*, 79 FR 19052 (April 7, 2014) and accompanying Issues and Decision Memorandum.

[46] *See* SAA at 889, the House Report at 63, and the Senate Report at 52.

[47] *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 Issues & Decision Memorandum at Comment 1.

> the behavior of exporters without the discipline of an order; (2) is in accordance with the Act and the *Sunset Policy Bulletin*; and (3) import volumes have decreased dramatically as a result of the *Order*.

<u>Commerce's Position</u>

Pursuant to section 752(c)(3) of the Act, Commerce shall provide to the ITC the magnitude of the margin of dumping that is likely to prevail if the *Order* were revoked. Normally, Commerce will select a weighted-average dumping margin from the investigation to report to the ITC.[48] Commerce's preference is to select a weighted-average dumping margin from the LTFV investigation because it is the only calculated rate 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 rate to report to the ITC. Finally, 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]

Because dumping continued following the issuance of the *Order* and given the absence of argument and evidence to the contrary, Commerce finds that the margins calculated in the original investigation are probative of the behavior of producers and exporters of subject merchandise from China if this *Order* were revoked. Consistent with section 752(c) of the Act, Commerce will report to the ITC the margins up to the highest rate from the investigation concerning subject merchandise from China, as indicated below. This margin, which is based on the petition, is the rate Commerce assigned to the China-wide entity in the *Final Determination*. Thus, the margin is WTO-consistent because it does not involve zeroing.

<u>Final Results of Review</u>

We determine that revocation of the *Order* on CSPV cells from China would be likely to lead to continuation or recurrence of dumping and that the magnitude of the margin likely to prevail would be weighted-average dumping margins up to 249.96 percent.[51]

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[48] *See SAA* at 890; *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 Issues and Decision Memorandum at Comment 2.
[49] *Id*.
[50] *See Final Modification for Reviews*, 77 FR at 8103.
[51] As indicated on pages 3 and 4 above, the determination pursuant to section 129 of the URAA, which resulted in a reduction to the cash deposit rate for the China-wide entity (*i.e.*, a cash deposit rate of 238.88 percent), did not affect the weighted-average dumping margin of 249.96 percent for the China-wide entity as reflected in the *Final Determination*.

Recommendation

Based on our analysis of the substantive response received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of this sunset review in the *Federal Register* and notify the ITC of Commerce's determination.

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Agree Disagree

3/5/2018

X

Signed by: GARY TAVERMAN

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