OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. USTR-2020-0001]

Rescission of the October 2019 Withdrawal of the Bifacial Solar Panels Exclusion From the Safeguard Measure on Solar Products

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The U.S. Trade Representative is expressly rescinding the withdrawal, issued in October 2019 (the October Withdrawal), of the exclusion of bifacial solar panels from application of the safeguard measure on imports of certain solar products pursuant to a Section 201 investigation. The October Withdrawal is superseded by the withdrawal determination made by the U.S. Trade Representative in April 2020 that the bifacial solar panel exclusion is undermining the objectives of the safeguard measure (the April Withdrawal).

DATES: Rescission of the October Withdrawal is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Victor Mroczka, Office of WTO and Multilateral Affairs, at vmroczka@ustr.eop.gov or (202) 395-9450, or Dax Terrill, Office of General Counsel, at Dax.Terrill@ustr.eop.gov or (202) 395-4739.

SUPPLEMENTARY INFORMATION:

A. Background

On January 23, 2018, the President issued Proclamation 9693 (83 FR 3541) to impose a safeguard measure under section 201 of the Trade Act of 1974 (19 U.S.C. 2251)
with respect to certain crystalline silicon photovoltaic (CSPV) cells and other
products (CSPV products) containing these cells. The Proclamation directed the
U.S. Trade Representative to establish procedures for interested persons to request
product-specific exclusions from the safeguard measure. He did so in February
2018. See 83 FR 6670. The Proclamation also authorized the U.S. Trade
Representative, after consultation with the Secretaries of Commerce and Energy,
to exclude products upon publication of a notice in the Federal Register
modifying the Harmonized Tariff Schedule of the United States (HTSUS).

Pursuant to the exclusion process, the U.S. Trade Representative excluded
certain bifacial solar panels from application of the safeguard measure in June
2019. See 84 FR 27684. In October 2019 (84 FR 54244), after evaluating newly
available information and consultations with the Secretaries of Commerce and
Energy, the U.S. Trade Representative withdrew the exclusion because it would
undermine the objectives of the safeguard measure. This withdrawal was
challenged by Invenergy, Inc. in the U.S. Court of International Trade. In
response, the U.S. Trade Representative sought comments on whether to
maintain, withdraw, or take some other action concerning the exclusion of bifacial
solar panels from the safeguard measure. See 85 FR 4756.

B. Determination Regarding the Bifacial Exclusion

In April 2020 (85 FR 21497), the U.S. Trade Representative determined, based on
information and comments provided in response to its Federal Register notice, that the
bifacial exclusion is undermining the objectives of the safeguard measure. After
consultation with the Secretaries of Commerce and Energy, the U.S. Trade
Representative issued the April Withdrawal, which was a determination that the bifacial exclusion is undermining the objective of the safeguard measure on solar products, does not meet the criteria for a legitimate exclusion, and should be withdrawn.

C. The Effect of this Notice and the April Withdrawal on the October Withdrawal

This notice confirms that the findings and determination in the April Withdrawal supersede the findings and determination in the October Withdrawal. With publication of the April Withdrawal, USTR no longer seeks to take any action with regard to the bifacial exclusion based upon the findings and determination in the October Withdrawal. The October Withdrawal is rescinded.

Jeffrey Gerrish,
Deputy United States Trade Representative,
Office of the United States Trade Representative.
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