



[Billing Code 3290-F0]

**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 The October Withdrawal is superseded by the withdrawal determination made by the U.S. Trade Representative in April 2020 that the bifacial solar panel exclusion is undermining the objectives of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](mailto:vmroczka@ustr.eop.gov) or (202) 395-9450, or Dax Terrill, Office of General Counsel, at [Dax.Terrill@ustr.eop.gov](mailto: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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