

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC

Investigation No. TA-201-75

Crystalline Silicon Photovoltaic Cells
(Whether or Not Partially or Fully Assembled into Other Products)

Institution and Scheduling of Safeguard Investigation and Determination that the Investigation is Extraordinarily Complicated.

AGENCY: United States International Trade Commission.

ACTION: Notice of institution of investigation and scheduling of public hearings.

SUMMARY: Following receipt of a petition for import relief, as amended and properly filed on May 17, 2017, the Commission has instituted investigation No. TA-201-75 pursuant to section 202 of the Trade Act of 1974 (“the Act”) (19 U.S.C. § 2252) to determine whether crystalline silicon photovoltaic (“CSPV”) cells (whether or not partially or fully assembled into other products) are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported articles. The Commission has deemed the petition, as amended, to have been properly filed on May 17, 2017. The Commission has determined that this investigation is “extraordinarily complicated” within the meaning of section 202(b)(2)(B) of the Act (19 U.S.C. § 2252(b)(2)(B)), and will make its injury determination within 128 days after the petition was filed, or by September 22, 2017. The Commission will submit to the President the report required under section 202(f) of the Act (19 U.S.C. § 2252(f)(1)) within 180 days after the date on which the petition was filed, or by November 13, 2017.

EFFECTIVE DATE: May 17, 2017.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202-205-3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission’s TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background. – This investigation is being instituted, pursuant to section 202 of the Act (19 U.S.C. § 2252), in response to a petition, as amended and properly filed on May 17, 2017, by Suniva, Inc. (“Suniva”), a producer of CSPV cells and CSPV modules in the United States. Suniva seeks relief on CSPV cells (whether or not partially or fully assembled into other products).

The articles covered by this investigation are CSPV cells, whether or not partially or fully assembled into other products, including, but not limited to, modules, laminates, panels, and building-integrated materials. The investigation covers crystalline silicon photovoltaic cells of a thickness equal to or greater than 20 micrometers, having a p/n junction (or variant thereof) 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.

Included in the scope of the investigation are photovoltaic cells that contain crystalline silicon in addition to other photovoltaic materials. This includes, but is not limited to, passivated emitter rear contact (“PERC”) cells, heterojunction with intrinsic thin-layer (“HIIT”) cells, and other so-called “hybrid” cells.

Articles under consideration also may be described at the time of importation as components for final finished products that are assembled after importation, including, but not limited to, modules, laminates, panels, and building-integrated materials.

Excluded from the investigation are CSPV cells, whether or not partially or fully assembled into other products, if the CSPV cells were manufactured in the United States.

Also excluded from the investigation 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 investigation 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 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.

For Customs purposes, the CSPV cells covered by the investigation are provided for under Harmonized Tariff Schedule of the United States (“HTSUS”) subheading 8541.40.60. Within that 8-digit subheading, CSPV cells that are assembled into modules or panels are

imported under HTSUS statistical reporting number 8541.40.6020, while CSPV cells that are not assembled into modules and are presented separately are imported under statistical reporting number 8541.40.6030. Inverters or batteries with CSPV cells attached can be imported under HTSUS subheadings 8501.61.00 and 8507.20.80, respectively. In addition, CSPV cells covered by the investigation may also be classifiable as DC generators of subheading 8501.31.80, when such generators are imported with CSPV cells attached. While HTSUS provisions are provided for convenience, the written description of the scope is dispositive.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 206, subparts A and B (19 CFR part 206).

Determination to institute this investigation. – Suniva initially submitted a petition on April 26, 2017. On May 1, 2017, Commission staff issued a letter requesting that Suniva clarify its description of the imported articles intended to be covered by the petition, provide more details concerning whether Suniva was “representative of an industry” within the meaning of section 202(a)(1) of the Act (19 U.S.C. § 2252(a)(1)), and supply additional data on the performance indicators for the industry producing an article like or directly competitive with the imported article. On May 12, 2017, Suniva provided additional information to support its allegations. On May 17, 2017, Suniva further amended its petition and provided a revised description of the imported articles. The Commission determined that the petition, as amended, was properly filed as of May 17, 2017.

Determination that investigation is extraordinarily complicated. – The Commission has determined that this investigation is “extraordinarily complicated” within the meaning of section 202(b)(2)(B) of the Act (19 U.S.C. § 2252(b)(2)(B)). The Commission's decision to designate this investigation “extraordinarily complicated” is based on the complexity of the issues, including the existence of antidumping and/or countervailing duty orders on certain imports covered by this investigation and the global supply chains for the imported articles under investigation. Ordinarily, the Commission would have been required to make its injury determination within 120 days after the petition was filed, or by September 14, 2017. The statute permits the Commission to take up to 30 additional days to make its injury determination in an investigation where it determines that the investigation is extraordinarily complicated. In this instance, the Commission intends to take eight extra days and make its injury determination by September 22, 2017.

Participation in the investigation and public service list. – Persons (other than petitioner) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than 21 days after publication of this notice in the *Federal Register*. The Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing

entries of appearance.

Limited disclosure of confidential business information (CBI) under an administrative protective order (APO) and CBI service list. – Pursuant to section 206.17 of the Commission’s rules, the Secretary will make CBI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 C.F.R. § 206.17(a)(3)(iii)) under the APO issued in the investigation, provided that the application is made not later than 21 days after the publication of this notice in the *Federal Register*. A separate service list will be maintained by the Secretary for those parties authorized to receive CBI under the APO.

The Commission may include CBI in the reports it sends to the President and to the U.S. Trade Representative. Additionally, all information, including CBI, submitted in this investigation may be disclosed to and used by (i) the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel for cybersecurity purposes. The Commission will not otherwise disclose any CBI in a manner that would reveal the operations of the firm supplying the information.

Hearings on injury and remedy. – The Commission has scheduled separate hearings in connection with the injury and remedy phases of this investigation. The hearing on injury will be held beginning at 9:30 a.m. on August 15, 2017, at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. In the event that the Commission makes an affirmative injury determination or is equally divided on the question of injury in this investigation, a hearing on the question of remedy will be held beginning at 9:30 a.m. on October 3, 2017. Requests to appear at the hearings should be filed in writing with the Secretary to the Commission on or before August 9, 2017 for the injury hearing, and September 27, 2017 for the remedy hearing. A nonparty who has testimony that may aid the Commission’s deliberations may request permission to present a short statement at the hearings. All parties and nonparties desiring to appear at the hearings and make oral presentations should participate in prehearing conferences to be held on August 11, 2017 for the injury hearing and September 28, 2017 for the remedy hearing, if deemed necessary. Oral testimony and written materials to be submitted at the public hearings are governed by sections 201.6(b)(2) 201.13(f), and 206.5 of the Commission’s rules. Parties must submit any request to present a portion of their hearing testimony **in camera** no later than 7 business days prior to the date of the respective hearings.

Written submissions. – Each party who is an interested party may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of sections 201.8, 206.7, and 206.8 of the Commission’s rules. The deadline for filing prehearing briefs on injury is August 8, 2017; that for filing prehearing briefs on remedy, including any commitments

pursuant to 19 U.S.C. § 2252(a)(6)(B), is September 27, 2017. Parties may also file written testimony in connection with their presentation at the hearing, as provided in sections 201.13, 206.5, and 206.8 of the Commission's rules, and posthearing briefs, which must conform with the provisions of sections 201.8, 201.13, 206.7, and 206.8 of Commission's rules. The deadline for filing posthearing briefs for the injury phase of the investigation is August 22, 2017; the deadline for filing posthearing briefs for the remedy phase of the investigation, if any, is October 10, 2017. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the consideration of injury on or before August 22, 2017, and pertinent to the consideration of remedy on or before October 10, 2017. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain CBI must also conform with the requirements of sections 201.6 and 206.17 of the Commission's rules. The Commission's *Handbook on E-Filing*, available on the Commission's website at https://www.usitc.gov/secretary/documents/handbook_on_filing_procedures.pdf, elaborates upon the Commission's rules with respect to electronic filing.

Any additional written submission to the Commission, including requests pursuant to section 201.12 of the Commission's rules, will not be accepted unless good cause is shown for accepting such a submission, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with section 201.16(c) of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

AUTHORITY: This investigation is being conducted under authority of Section 202 of the Act; this notice is published pursuant to section 203(b)(3) of the Act.

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton'.

Lisa R. Barton
Secretary to the Commission

Issued: May 23, 2017