

Presidential Documents

Proclamation 9693 of January 23, 2018

To Facilitate Positive Adjustment to Competition From Imports of Certain Crystalline Silicon Photovoltaic Cells (Whether or Not Partially or Fully Assembled Into Other Products) and for Other Purposes

By the President of the United States of America

A Proclamation

1. On November 13, 2017, the United States International Trade Commission (ITC) transmitted to the President a report (the “ITC Report”) on its investigation under section 202 of the Trade Act of 1974, as amended (the “Trade Act”) (19 U.S.C. 2252), with respect to imports of certain crystalline silicon photovoltaic (CSPV) cells, whether or not partially or fully assembled into other products (including, but not limited to, modules, laminates, panels, and building-integrated materials) (“CSPV products”). These products exclude certain products described in the ITC Notice of Institution, 82 *FR* 25331 (June 1, 2017), and listed in subdivision (c)(ii) of Note 18 in Annex I to this proclamation.

2. The ITC reached an affirmative determination under section 202(b) of the Trade Act (19 U.S.C. 2252(b)) that CSPV products are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or threat of serious injury, to the domestic industry producing a like or directly competitive article.

3. Pursuant to section 311(a) of the North American Free Trade Agreement Implementation Act (the “NAFTA Implementation Act”) (19 U.S.C. 3371(a)), the ITC made findings as to whether imports from Mexico and Canada, considered individually, account for a substantial share of total imports and contribute importantly to the serious injury, or threat thereof, caused by imports. The ITC made affirmative findings of contribution to injury with respect to imports of CSPV products from Mexico but made negative findings with respect to imports of CSPV products from Canada.

4. On November 27, 2017, the United States Trade Representative (USTR) requested additional information from the ITC under section 203(a)(5) of the Trade Act (19 U.S.C. 2253(a)(5)). On December 27, 2017, the ITC provided a response that identified unforeseen developments that led to the importation of CSPV products into the United States in such increased quantities as to be a substantial cause of serious injury (the “supplemental report”).

5. The ITC commissioners transmitted to the President their individual recommendations with respect to the actions that each of them considered would address the serious injury, or threat of serious injury, to the domestic industry and be most effective in facilitating the efforts of the industry to make a positive adjustment to import competition. The ITC did not recommend an action within the meaning of section 202(e) of the Trade Act (19 U.S.C. 2252(e)).

6. Pursuant to section 203 of the Trade Act (19 U.S.C. 2253), and after taking into account the considerations specified in section 203(a)(2) of the Trade Act (19 U.S.C. 2253(a)(2)), the ITC Report, and the supplemental report, I have determined to implement action of a type described in section 203(a)(3) of the Trade Act (19 U.S.C. 2252(a)(3)) (a “safeguard measure”), with regard to the following CSPV products:

(a) solar cells, whether or not assembled into modules or made up into panels provided for in subheading 8541.40.60 in Annex I to this proclamation;

(b) parts or subassemblies of solar cells provided for in subheadings 8501.31.80, 8501.61.00, and 8507.20.80 in Annex I to this proclamation;

(c) inverters or batteries with CSPV cells attached provided for in subheadings 8501.61.00 and 8507.20.80 in Annex I to this proclamation; and

(d) DC generators with CSPV cells attached provided for in subheading 8501.31.80 in Annex I to this proclamation.

7. Pursuant to section 312(a) of the NAFTA Implementation Act (19 U.S.C. 3372(a)), I have determined after considering the ITC Report that imports of CSPV products from each of Mexico and Canada, considered individually, account for a substantial share of total imports and contribute importantly to the serious injury or threat of serious injury found by the ITC.

8. Pursuant to section 203 of the Trade Act, the action I have determined to take shall be a safeguard measure in the form of:

(a) a tariff-rate quota on imports of solar cells not partially or fully assembled into other products as described in paragraph 6 of this proclamation, imposed for a period of 4 years, with unchanging within-quota quantities and annual reductions in the rates of duty applicable to goods entered in excess of those quantities in the second, third, and fourth years, as provided in Annex I to this proclamation; and

(b) an increase in duties on imports of modules, imposed for a period of 4 years, with annual reductions in the rates of duty in the second, third, and fourth years, as provided in Annex I to this proclamation.

I have determined to exclude from this action the products listed in subdivision (c)(ii) and (c)(iii) of Note 18 in Annex I to this proclamation.

9. This safeguard measure shall apply to imports from all countries, except as provided in paragraph 10 of this proclamation.

10. This safeguard measure shall not apply to imports of any product described in paragraph 6 of this proclamation of a developing country that is a Member of the World Trade Organization (WTO), as listed in subdivision (b) of Note 18 in Annex I to this proclamation, as long as such a country's share of total imports of the product, based on imports during a recent representative period, does not exceed 3 percent, provided that imports that are the product of all such countries with less than 3 percent import share collectively account for not more than 9 percent of total imports of the product. If I determine that a surge in imports of a product described in paragraph 6 of this proclamation of a developing country that is a WTO Member results in imports of that product from that developing country exceeding either of the thresholds described in this paragraph, the safeguard measure shall be modified to apply to such product from such country.

11. The in-quota quantity in each year under the tariff-rate quota described in paragraph 8 of this proclamation shall be allocated among all countries except those countries the products of which are excluded from such tariff-rate quota pursuant to paragraph 10 of this proclamation.

12. Pursuant to section 203(a)(1)(A) of the Trade Act (19 U.S.C. 2253(a)(1)(A)), I have determined that this safeguard measure will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs. If I determine that further action is appropriate and feasible to facilitate efforts by the domestic industry to make a positive adjustment to import competition and to provide greater economic and social benefits than costs, or if I determine that the conditions under section 204(b)(1) of the Trade Act (19 U.S.C. 2254(b)(1)) are met, I shall reduce, modify, or terminate the action established in this proclamation accordingly. In addition, if I determine within 30 days of the date of this proclamation, as a result of consultations between the United States and other WTO Members pursuant to Article

12.3 of the WTO Agreement on Safeguards, that it is necessary to reduce, modify, or terminate the safeguard measure, I shall proclaim the corresponding reduction, modification, or termination of the safeguard measure within 40 days.

13. Section 502 of the Trade Act (19 U.S.C. 2462) authorizes the President to designate countries as beneficiary developing countries for purposes of the Generalized System of Preferences (GSP).

14. Proclamation 9687 of December 22, 2017, ended the suspension of Argentina's designation as a GSP beneficiary developing country. That proclamation made corresponding modifications to the Harmonized Tariff Schedule of the United States (HTS). Those modifications included technical errors, and I have determined that modifications to the HTS are necessary to correct them.

15. Section 604 of the Trade Act (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to sections 203, 502, and 604 of the Trade Act, and section 301 of title 3, United States Code, do proclaim that:

(1) In order to establish increases in duty and a tariff-rate quota on imports of the CSPV products described in paragraph 6 of this proclamation (other than excluded products), subchapter III of chapter 99 of the HTS is modified as provided in Annex I to this proclamation. Any merchandise subject to the safeguard measure that is admitted into U.S. foreign trade zones on or after 12:01 a.m. eastern standard time on February 7, 2018, must be admitted as "privileged foreign status" as defined in 19 CFR 146.41, and will be subject upon entry for consumption to any quantitative restrictions or tariffs related to the classification under the applicable HTS subheading.

(2) Except as provided in clause (3) below, imports of CSPV products of WTO Member developing countries, as listed in subdivision (b) of Note 18 in Annex I to this proclamation, shall be excluded from the safeguard measure established in this proclamation. Imports of solar cells of those countries that are not partially or fully assembled into other products shall not be counted toward the tariff-rate quota limits that trigger the over-quota rates of duties.

(3) If, after the safeguard measure established in this proclamation takes effect, the USTR determines that:

(a) the share of total imports of the product of a country listed in subdivision (b) of Note 18 in Annex I to this proclamation exceeds 3 percent,

(b) imports of the product from all listed countries with less than 3 percent import share collectively account for more than 9 percent of total imports of the product, or

(c) a country listed in subdivision (b) of Note 18 in Annex I to this proclamation is no longer a developing country for purposes of this proclamation;

the USTR is authorized, upon publication of a notice in the *Federal Register*, to revise subdivision (b) of Note 18 in Annex I to this proclamation to remove the relevant country from the list or suspend operation of that subdivision, as appropriate.

(4) Within 30 days after the date of this proclamation, the USTR shall publish in the *Federal Register* procedures for requests for exclusion of a particular product from the safeguard measure established in this proclamation. If the USTR determines, after consultation with the Secretaries

of Commerce and Energy, that a particular product should be excluded, the USTR is authorized, upon publishing a notice of such determination in the *Federal Register*, to modify the HTS provisions created by Annex I to this proclamation to exclude such particular product from the safeguard measure described in paragraph 8 of this proclamation.

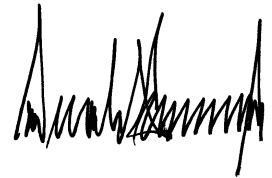
(5) In order to make technical corrections necessary to reflect the end of the suspension of Argentina's designation as a GSP beneficiary developing country, the HTS is modified as set forth in Annex II to this proclamation.

(6) Any provision of previous proclamations and Executive Orders that is inconsistent with the actions taken in this proclamation is superseded to the extent of such inconsistency.

(7) Except as provided in clause (8) of this proclamation, the modifications to the HTS made by this proclamation, including Annex I, shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern standard time on February 7, 2018, and shall continue in effect as provided in Annex I to this proclamation, unless such actions are earlier expressly reduced, modified, or terminated. Any modifications to the HTS made pursuant to clause (3) or (4) of this proclamation shall take effect as indicated in a *Federal Register* notice published in accordance with those clauses. One year from the termination of the safeguard measure established in this proclamation, the U.S. note and tariff provisions established in Annex I to this proclamation shall be deleted from the HTS.

(8) The modifications to the HTS set forth in Annex II to this proclamation shall be effective with respect to the articles entered, or withdrawn from warehouse for consumption, on or after the dates set forth in the relevant sections of Annex II.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of January, in the year of our Lord two thousand eighteen, and of the Independence of the United States of America the two hundred and forty-second.



ANNEX I

MODIFICATIONS TO CHAPTER 99 OF THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern standard time on February 7, 2018, and through 11:59 p.m. eastern standard time on February 6, 2022, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTS) is hereby modified by inserting in numerical sequence the following new U.S. note and provisions:

- “18. (a) Subheadings 9903.45.21 through 9903.45.25 and any superior texts thereto establish temporary modifications applicable to entries of goods described herein and classified in the enumerated provisions of chapter 85 of the tariff schedule. Whenever any such subheading specifies that the annual aggregate quantity of such goods shall not exceed the quantity established under the terms of this note, when such goods are not the product of a country enumerated in subdivision (b) of this note, any entry of such goods that is in excess of the quantity specified for such provision shall be entered under the over-quota subheading set forth herein for such goods. All such goods shall be subject to duty as provided herein; and such duties shall be cumulative and imposed in addition to the rate of duty established for any such goods in chapter 85 of the tariff schedule, except as may be specified for duties imposed under the Rates of Duty 2 column.
- (b) For the purposes of this note and the application of subheadings 9903.45.21 through 9903.45.25, inclusive, the following developing countries that are members of the World Trade Organization shall not be subject to the rates of duty and tariff-rate quotas provided for therein:
- Afghanistan, Albania, Algeria, Angola, Armenia, Azerbaijan, Belize, Benin, Bhutan, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Burkina Faso, Burma, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo (Brazzaville), Congo (Kinshasa), Côte d’Ivoire, Djibouti, Dominica, Ecuador, Egypt, Eritrea, Ethiopia, Fiji, Gabon, The Gambia, Georgia, Ghana, Grenada, Guinea, Guinea-Bissau, Guyana, Haiti, India, Indonesia, Iraq, Jamaica, Jordan, Kazakhstan, Kenya, Kiribati, Kosovo, Kyrgyzstan, Lebanon, Lesotho, Liberia, Macedonia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mauritius, Moldova, Mongolia, Montenegro, Mozambique, Namibia, Nepal, Niger, Nigeria, Pakistan, Papua New Guinea, Paraguay, Rwanda, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Sao Tomé and Príncipe, Senegal, Serbia, Sierra Leone, Solomon Island, Somalia, South Africa, South Sudan, Sri Lanka, Suriname, Swaziland, Tanzania, Timor-Leste, Togo, Tonga, Tunisia, Turkey, Tuvalu, Uganda, Ukraine, Uzbekistan, Vanuatu, Yemen (Republic of), Zambia and Zimbabwe.
- (c) (i) For the purposes of subheadings 9903.45.21 and 9903.45.22, except as otherwise provided herein, the term “crystalline silicon photovoltaic cells” (“CSPV cells”) means crystalline silicon photovoltaic cells of a thickness equal to or greater than 20 micrometers, having a p/n junction (or variant thereof)

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formed by any means, whether or not the cell (or subassemblies thereof provided for in subheading 8541.40.60 and imported under statistical reporting number 8541.40.6030) 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. Such cells include photovoltaic cells that contain crystalline silicon in addition to other photovoltaic materials. This includes, but is not limited to, passivated emitter rear contact cells, heterojunction with intrinsic thin-layer cells, and other so-called hybrid cells. Subheadings 9903.45.21 and 9903.45.22 include goods presented in cell form and which at the time of importation are not presented assembled into circuits, laminates or modules or made up into panels.

- (ii) Subheadings 9903.45.21 and 9903.45.22 shall not cover—
 - (1) thin film photovoltaic products produced from amorphous silicon (“a-Si”), cadmium telluride (“CdTe”), or copper indium gallium selenide (“CIGS”);
 - (2) CSPV cells, not exceeding 10,000 mm² in surface area, that are permanently integrated into a consumer good whose primary function is other than power generation and that consumes the electricity generated by the integrated CSPV cell. Where more than one CSPV 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 CSPV cells that are integrated into the consumer good; and
 - (3) CSPV cells, whether or not partially or fully assembled into other products, if such CSPV cells were manufactured in the United States.
- (iii) Subheadings 9903.45.21 and 9903.45.22 shall likewise not cover the following goods, whether or not separate statistical reporting numbers therefor may appear in chapters 1 through 97 of the tariff schedule:
 - (1) 10 to 60 watt, inclusive, rectangular solar panels, where the panels have the following characteristics: (A) length of 250 mm or more but not over 482 mm or width of 400 mm or more but not over 635 mm, and (B) surface area of 1000 cm² or more but not over 3,061 cm²), provided that no such panel with those characteristics shall contain an internal battery or external computer peripheral ports at the time of entry;
 - (2) 1 watt solar panels incorporated into nightlights that use rechargeable batteries and have the following dimensions: 58 mm or more but not over 64 mm by 126 mm or more but not over 140 mm;
 - (3) 2 watt solar panels incorporated into daylight dimmers, that may use rechargeable batteries, such panels with the following dimensions:

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- 75 mm or more but not over 82 mm by 139 mm or more but not over 143 mm;
- (4) off-grid and portable CSPV panels, whether in a foldable case or in rigid form containing a glass cover, where the panels have the following characteristics:
- (A) a total power output of 100 watts or less per panel;
 - (B) a maximum surface area of 8,000 cm² per panel;
 - (C) do not include a built-in inverter;
 - (D) where the panels have glass covers, such panels must be in individual retail packaging (for purposes of this provision, retail packaging typically includes graphics, the product name, its description and/or features, and foam for transport);
- (5) 3.19 watt or less solar panels, each with length of 75 mm or more but not over 266 mm and width of 46 mm or more but not over 127 mm, with surface area of 338 cm² or less, 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 edge, provided that no such panel shall contain an internal battery or external computer peripheral ports;
- (6) 27.1 watt or less solar panels, each with surface area less than 3,000 cm² and coated across the entire surface with a polyurethane doming resin, the foregoing joined to a battery charging and maintaining unit, such 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.
- (d) Any goods covered by this note may also be excluded from the application of relief if they are covered by a determination by the United States Trade Representative (“USTR”) published in the *Federal Register* that such goods should be exempt from the application of any rate of duty or tariff-rate quota otherwise imposed on goods described in the provisions of this note. Such a determination by the USTR under this subdivision may exempt specific additional CSPV cells or modules when entered from all countries or when entered from enumerated countries only, or may modify the product descriptions in subdivision (c) of this note. The USTR is authorized to modify or terminate any such determination during the effective period of the subheadings specified in the first sentence of subdivision (a) of this note and to specify, subsequent to the effective date specified in this note, that such CSPV cells and modules will be considered “goods excluded from the application of relief” upon publication by the USTR of a notice in the *Federal Register*. Such “goods excluded from the application of relief” shall not be counted toward any tariff-rate quota quantities specified for any quota period.

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- (e) (i) For purposes of subheading 9903.45.21, the aggregate annual quantity of goods eligible to enter during any period enumerated herein shall not exceed the volume level set forth in such subheading, where 1 gigawatt equals 1,000 megawatts.
- (ii) Any importer entering CSPV cells under subheading 9903.45.21 shall report the electricity power output attributable to such cells to the satisfaction of U.S. Customs and Border Protection (“Customs”) and shall provide such information as Customs may require in order to permit the administration of this subheading. Such an entry shall constitute a certification by that importer of the power output attributable to the CSPV cells described therein. Importers are likewise directed to report the electricity power output attributable to CSPV cells entered under subheading 9903.45.22 to the extent that and in such form as Customs may require.
- (f) For purposes of subheading 9903.45.22 to this subchapter, the duty rate in the Rates of Duty 1-General subcolumn and the Rates of Duty 2 column for all goods entered under such subheading, and not the product of a country enumerated in subdivision (b) of this note, shall be as follows, with the duty rates set forth herein applied in addition to those applicable under subheading 8541.40.60:

If entered during the period from
February 7, 2018 through February 6, 2019 30%

If entered during the period from
February 7, 2019 through February 6, 2020 25%

If entered during the period from
February 7, 2020 through February 6, 2021 20%

If entered during the period from
February 7, 2021 through February 6, 2022 15%.

- (g) For purposes of subheading 9903.45.25 to this subchapter, the term “modules” shall include the following goods provided for in subheading 8541.40.60 of the tariff schedule: a module is a joined group of CSPV cells, as such cells are defined in subdivision (c) of this note, regardless of the number of cells or the shape of the joined group, that are capable of generating electricity. Also included as a “module” are goods each known as a “panel” comprising a CSPV cell that has undergone any processing, assembly, or interconnection (including, but not limited to, assembly into a laminate). Such CSPV cells assembled into modules or made up into panels include goods of a type reported for statistical purposes under statistical reporting number 8541.40.6020. Such goods also include (i) CSPV cells which are presented attached to inverters or batteries of subheading 8501.61.00 or 8507.20.80, respectively; and (ii) CSPV cells classifiable as DC generators of subheading 8501.31.80.

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- (h) For purposes of subheading 9903.45.25 to this subchapter, the duty rate in the Rates of Duty 1-General subcolumn and the Rates of Duty 2 column in any of the periods enumerated below shall be as follows, with the duty rates set forth herein applied in addition to those applicable under subheading 8541.40.60:

If entered during the period from
February 7, 2018 through February 6, 2019 30%

If entered during the period from
February 7, 2019 through February 6, 2020 25%

If entered during the period from
February 7, 2020 through February 6, 2021 20%

If entered during the period from
February 7, 2021 through February 6, 2022 15%.

Such duty shall be imposed on the declared value of such modules, including the cost or value of the non-cell portions thereof (such as aluminum frames), as Customs in its regulations or instructions may require.

Heading/ Subheading	Article description	Rates of Duty		
		1		2
		General	Special	
9903.45.21	Crystalline silicon photovoltaic cells, as defined in note 18(c) to this subchapter, when the product or originating good of a country other than a country described in note 18(b) to this subchapter: If entered in an annual aggregate quantity not exceeding 2.5 gigawatts, under the terms of such note.....	No change	No change	No change
9903.45.22	Other.....	The duty rate provided in note 18(f) to this subchapter		The duty rate provided in note 18(f) to this subchapter + 35%

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Heading/ Subheading	Article description	Rates of Duty		
		1		2
		General	Special	
9903.45.25	Modules as defined in note 18(g) to this subchapter, when the product or originating good of a country other than a country described in note 18(b) to this subchapter.....	The duty rate provided in note 18(h) to this subchapter		The duty rate provided in note 18(h) to this subchapter".

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ANNEX II

**MODIFICATIONS ON THE ELIGIBILITY OF CERTAIN ARTICLES THE
PRODUCT OF ARGENTINA FOR PURPOSES OF THE GENERALIZED
SYSTEM OF PREFERENCES**

Section A. Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 2018, general note 4(d) to the HTS is modified by:

(1) adding, in numerical sequence, the following subheading numbers and country set out opposite such subheading numbers:

0202.30.10	Argentina	1901.20.45	Argentina
0711.20.18	Argentina	2007.99.48	Argentina
1007.10.00	Argentina	2008.30.37	Argentina
1007.90.00	Argentina	2305.00.00	Argentina
1202.30.40	Argentina	2306.30.00	Argentina
1202.42.40	Argentina	4107.11.80	Argentina
1702.60.22	Argentina		

(2) deleting from the numerical sequence, the following subheading number and country set out opposite such subheading number:

8523.29.50 Argentina

(3) adding, in alphabetical order, the country set out opposite the following subheadings:

1602.50.08	Argentina
1702.30.22	Argentina
2008.50.20	Argentina
3824.99.41	Argentina
3826.00.10	Argentina

Section B. Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 2018, the HTS is modified as provided in this section. For each of the following subheadings, the Rates of Duty 1-Special subcolumn is modified by deleting the symbol "A" and inserting the symbol "A*" in lieu thereof:

0202.30.10	1901.20.45
0711.20.18	2007.99.48
1007.10.00	2008.30.37
1007.90.00	2305.00.00
1202.30.40	2306.30.00
1202.42.40	4107.11.80
1702.60.22	