

is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.¹²

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, which will include the results of our analysis of all issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results of this review, Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise covered by this review.¹³ We intend to instruct CBP to liquidate entries containing subject merchandise exported by the companies under review that we determine in the final results to be part of the China-wide entity at the China-wide entity rate of 90.83 percent. Commerce intends to issue assessment instructions to CBP 15 days after the date of publication of this notice in the **Federal Register**.¹⁴

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) For companies that have a separate rate, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis*, then zero cash deposit will be required); (2) for previously investigated or reviewed Chinese and non-Chinese exporters that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the China-wide entity (*i.e.*, 90.83 percent); and (4) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese

exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a reminder to importers of their responsibility under 19 CFR 315.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.213.

Dated: December 19, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Discussion of the Methodology
- V. Recommendation

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-979]

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Notice of Court Decision

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On September 6, 2019, the Court of International Trade (CIT) entered its final judgment in *Sumecht NA, Inc. v. United States*, Court No. 17-00244, finding that the United States Department of Commerce (Commerce) erred in setting the effective date of its *Notice of Court Decision Not in Harmony with a Final Determination and Notice of Amendment Final Determination of Investigation Pursuant to Court Decision (Timken Notice)* pertaining to the antidumping duty (AD) investigation of certain crystalline silicon photovoltaic cells, whether or not assembled into modules (certain

solar cells), from the People's Republic of China (China). Pursuant to the CIT's final judgment, the effective date of Commerce's *Timken Notice* relative to certain entries of subject merchandise exported by Sumech Hardware Tools Co., Ltd.'s (Sumech Hardware) is November 23, 2015, which is the date of publication of the *Timken Notice* in the **Federal Register**. Accordingly, Commerce intends to instruct U.S. Customs and Border Protection (CBP) to liquidate entries of subject merchandise exported by Sumech Hardware and produced by Phono Solar Technology Co., Ltd., and imported by Sumech NA, doing business as Sumech North America (Sumech), which were entered, or withdrawn from warehouse, for consumption on or after October 15, 2015, which is ten days after the CIT's decision, through November 22, 2015, which is the day before the date of publication of Commerce's *Timken Notice* in the **Federal Register**, at the separate rate of 13.18 percent.

DATES: Applicable December 30, 2019.

FOR FURTHER INFORMATION CONTACT: Krishna Hill, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-4037.

SUPPLEMENTARY INFORMATION:

Background

Commerce initiated an AD investigation of certain solar cells from China on November 16, 2011.¹ In the investigation, Commerce assigned a separate AD rate of 24.48 percent to Sumech Hardware,² and determined a China-wide rate of 249.96 percent for exporters that did not demonstrate eligibility for separate-rate status. Commerce amended the *Final Determination* on December 7, 2012, which it published along with the AD order.

The U.S. domestic producers challenged the *Final Determination* before the CIT, including Sumech Hardware's separate-rate status. The CIT

¹ 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).

² 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); see also *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 7,018 (December 7, 2012).

¹² See 19 CFR 310(d).

¹³ See 19 CFR 351.212(b)(1).

¹⁴ For a full discussion of this practice, see *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011).

remanded the *Final Determination*, at Commerce's request, to re-examine the separate rates assigned to four respondents, including Sumec Hardware.³ On remand, Commerce determined that Sumec Hardware did not meet the criteria for a separate rate and found it to be part of the China-wide entity.⁴

While that litigation was pending before the CIT, in response to World Trade Organization (WTO) dispute settlement findings, and at the direction of the United States Trade Representative, Commerce implemented final determinations under Section 129 of the Uruguay Round Agreements Act (URAA) in several investigations, including the AD investigation of certain solar cells from China.⁵ Pursuant to the Section 129 Implementation, Commerce revised Sumec Hardware's cash deposit rate to 13.18 percent for entries made on or after August 2, 2015, the effective date of the Section 129 Implementation. Commerce issued corresponding cash deposit instructions to CBP in October 2015.

On October 5, 2015, the CIT issued a confidential opinion sustaining Commerce's Remand Results in the *Jiangsu Jiasheng* litigation, including Commerce's determination assigning Sumec Hardware the China-wide rate.⁶ Commerce published the *Timken* Notice following the final CIT judgment in *Jiangsu Jiasheng III* on November 23, 2015.⁷ In the amended final determination, Commerce set the cash deposit rate for Sumec Hardware, now part of the China-wide entity, at 238.95 percent.⁸ Commerce set the effective date for the *Timken* Notice as October 15, 2015, which was the tenth day after the CIT's decision.⁹

³ *Jiangsu Jiasheng Photovoltaic Tech. Co. v. United States*, 28 F. Supp. 3d 1317, 1338–43 (Ct. Int'l Trade 2014) (*Jiangsu Jiasheng*).

⁴ See *Final Results of Redetermination Pursuant to Court Order, Jiangsu Jiasheng Photovoltaic Technology Co., Ltd. v. United States*, Consol. Court No. 13–00012 (April 20, 2015) (Remand Results).

⁵ See *Implementation of Determinations Under Section 129 of the URAA*, 80 FR 48812 (August 14, 2015) (Section 129 Implementation).

⁶ *Jiangsu Jiasheng Photovoltaic Tech. Co. v. United States*, 121 F. Supp. 3d 1263 (Ct. Int'l Trade 2015) (*Jiangsu Jiasheng III*). The CIT issued the public version of its decision on December 22, 2015. See the CIT's website, "Slip Opinions—2015" (<https://www.cit.uscourts.gov/SlipOpinions/SlipOps-2015.html>).

⁷ *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Determination of Investigation and Notice of Amended Final Determination of Investigation Pursuant to Court Decision*, 80 FR 72950 (November 23, 2015) (*Timken* Notice).

⁸ *Id.*; see also Section 129 Implementation, 80 FR at 48818.

⁹ *Id.*; see also section 516A(e) of the Tariff Act of 1930, as amended (the Act).

On December 30, 2015, in accordance with *Jiangsu Jiasheng III* and the associated *Timken* Notice, Commerce issued amended cash deposit instructions to CBP, notifying CBP that Sumec Hardware was no longer eligible for a separate rate. Commerce instructed CBP to collect cash deposits at the China-wide entity rate, 238.95 percent, for shipments of subject merchandise produced by Phono Solar Technology Co., Ltd. and exported by Sumec Hardware that entered, or were withdrawn from warehouse, for consumption on or after "10/15/2015," the tenth day after the Court's October 5, 2015 decision in *Jiangsu Jiasheng III*.

On March 14, 2016, because no party requested a review of the China-wide entity or of Sumec Hardware for the period December 1, 2014 through November 30, 2015, Commerce issued automatic liquidation instructions to CBP. Commerce instructed CBP to liquidate entries during the specified period at the cash deposit in effect on the date of entry. For Sumec Hardware, this rate was 238.95 percent (*i.e.*, the rate that resulted from this Court's decision in *Jiangsu Jiasheng III*).

On September 6, 2019, in a separate challenge—*Sumecht NA, Inc. v. United States*—the CIT held that Commerce erred in setting the effective date of the *Timken* Notice, amended cash deposit instructions, and automatic instructions to thirty-nine days before publication of the *Timken* Notice.¹⁰ The CIT directed Commerce to "reliquidate" Sumec Hardware's entries in a manner consistent with its opinion.¹¹

Implementation of Court Decision

Consistent with the CIT's final judgment in *Sumecht*, Commerce intends to instruct CBP to liquidate shipments of crystalline silicon photovoltaic cells, whether or not assembled into modules, from the China produced by Phono Solar Technology Co., Ltd., exported by Sumec Hardware Tools Co., Ltd., and imported by Sumecht NA, doing business as Sumec North America, which were entered, or withdrawn from warehouse, for consumption on or after October 15, 2015 through November 22, 2015, at the separate rate implemented with respect to the AD investigation, as revised by

¹⁰ *Sumecht NA, Inc. v. United States*, 399 F. Supp. 3d 1370, 1379 (Ct. Int'l Trade 2019) (*Sumecht*).

¹¹ *Id.* CBP has not yet liquidated the affected entries. The liquidation of the entries has been enjoined as a result of an injunction that is in place with respect to litigation before the CIT involving a corresponding countervailing duty proceeding. See *Sumecht Hardware & Tools Co., Ltd. v. United States*, Court No. 18–00186.

the Section 129 Implementation, *i.e.*, 13.18 percent.

Dated: December 17, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

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DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 11–1A001]

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended Export Trade Certificate of Review to Latin American Multichannel Advertising Council, Inc. ("LAMAC"), Application No. 11–1A001.

SUMMARY: The Secretary of Commerce, through the Office of Trade and Economic Analysis ("OTEA"), issued an amended Export Trade Certificate of Review Certificate to LAMAC on December 20, 2019.

FOR FURTHER INFORMATION CONTACT:

Joseph Flynn, Director, OTEA, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or email at etca@trade.gov.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) ("the Act") authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. The regulations implementing Title III are found at 15 CFR part 325. OTEA is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of the certification in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

LAMAC's Export Trade Certificate of Review was amended as follows: