



SML 2020 ER

OTTAWA, October 30, 2020

STATEMENT OF REASONS

Concerning an expiry review determination
under paragraph 76.03(7)(a) of the *Special Import Measures Act* respecting

THE DUMPING AND SUBSIDIZING OF PHOTOVOLTAIC MODULES AND LAMINATES FROM CHINA

DECISION

On October 16, 2020, pursuant to paragraph 76.03(7)(a) of the *Special Import Measures Act*, the Canada Border Services Agency determined that the expiry of the finding made by the Canadian International Trade Tribunal on July 3, 2015, in Inquiry No. NQ-2014-003:

- i. is likely to result in the continuation or resumption of dumping of certain photovoltaic modules and laminates originating in or exported from China; and
- ii. is likely to result in the continuation or resumption of subsidizing of certain photovoltaic modules and laminates originating in or exported from China.

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EXECUTIVE SUMMARY

[1] On May 21, 2020, the Canadian International Trade Tribunal (CITT), pursuant to subsection 76.03(3) of the *Special Import Measures Act* (SIMA), initiated an expiry review of its finding made on July 3, 2015 in Inquiry No. NQ-2014-003, concerning the dumping and subsidizing of certain photovoltaic modules and laminates originating in or exported from China.

[2] As a result of the CITT's notice, the Canada Border Services Agency (CBSA) initiated an expiry review investigation on May 22, 2020, to determine, pursuant to paragraph 76.03(7)(a) of SIMA, whether the expiry of the finding is likely to result in the continuation or resumption of dumping and/or subsidizing of the goods to Canada.

[3] The CBSA received two responses to its Canadian Producer Expiry Review Questionnaire (ERQ). Namely, the CBSA received ERQ responses from Silfab Solar Inc. (Silfab)¹ and Heliene Inc. (Heliene)². These companies collectively are referred to as “the Canadian producers” in this Statement of Reasons. The submissions made by the Canadian producers included information supporting their position that continued or resumed dumping and subsidizing of photovoltaic modules and laminates from China is likely if the CITT's finding is rescinded.

[4] The CBSA received two responses to the Importer ERQ: from Elemental Energy Inc.³, and Saturn Power Inc.⁴. The importers did not express an opinion as to the likelihood of continued or resumed dumping and subsidizing of photovoltaic modules and laminates from China if the CITT's finding is rescinded.

[5] The CBSA did not receive any responses to the Exporter ERQ nor did it receive a response to the Foreign Government ERQ from the Government of China (GOC).

[6] In addition to responding to the ERQ, the Canadian producers submitted supplementary information prior to the closing of the record.⁵ The CBSA also received a joint case brief on behalf of the Canadian producers.⁶ The case brief submitted by the Canadian producers included arguments supporting their position that continued or resumed dumping and subsidizing of photovoltaic modules and laminates from China is likely if the CITT's finding is rescinded.

[7] No importers in Canada, nor exporters or producers located in the subject countries, provided a case brief or reply submission.

¹ Exhibit 29 (PRO) & 30 (NC) – ERQ Response of Silfab Solar Inc.

² Exhibit 31 (PRO) & 31 (NC) – ERQ Response of Heliene Inc.

³ Exhibit 19 (PRO) & 20 (NC) – ERQ Response of Elemental Energy Inc.

⁴ Exhibit 25 (PRO) & 26 (NC) – ERQ Response of Saturn Power Inc.

⁵ Exhibit 33 (PRO) & 34 (NC) - Close of record documents from the Canadian Producers

⁶ Exhibit 35 (PRO) & 26 (NC) - Case Briefs Filed on Behalf of the Canadian Producers

[8] Analysis of information on the administrative record indicates a likelihood of continued or resumed dumping into Canada of certain photovoltaic modules and laminates originating in or exported from China should the CITT's finding be rescinded. This analysis relied upon:

- The GOC's involvement and influence in the solar industry – Section 20 conditions;
- production, capacity and demand for photovoltaic modules and laminates;
- conditions in the photovoltaic module industry;
- export orientation of Chinese photovoltaic module producers;
- trade measures in other jurisdictions;
- continued presence of Chinese photovoltaic module products in Canada; and
- The competitive conditions in the Canadian photovoltaic module market.

[9] In addition, analysis of information on the administrative record in respect of the continued subsidizing of photovoltaic module producers in China, and the countervailing measures in Canada and in other jurisdictions, indicates a likelihood of continued or resumed subsidizing of certain photovoltaic module and laminates originating in or exported from China should the CITT's finding be rescinded.

[10] For the forgoing reasons, the CBSA, having considered the relevant information on the record, determined on October 16, 2020, pursuant to paragraph 76.03(7)(a) of SIMA that the expiry of the finding in respect of certain photovoltaic modules and laminates originating in or exported from China is likely to result in:

- i. the continuation or resumption of dumping of the goods into Canada, and
- ii. the continuation or resumption of subsidizing of the goods exported to Canada.

BACKGROUND

[11] On December 5, 2014, pursuant to subsection 31(1) of SIMA, the CBSA initiated investigations respecting the dumping and subsidizing of photovoltaic modules and laminates from China. The investigation followed a properly documented complaint received from Eclipsall Energy Corporation (Eclipsall) of Toronto, Ontario, Heliene Inc. (Heliene) of Sault Ste. Marie, Ontario, Silfab Ontario Inc. (Silfab) of Mississauga, Ontario, and Solgate Inc. (Solgate) of Woodbridge, Ontario (the complainants).

[12] On June 3, 2015, the CBSA made final determinations⁷ of dumping and subsidizing in accordance with subsection 41(1) of SIMA in respect of photovoltaic modules and laminates originating in or exported from China.

⁷ CBSA – *Statement of Reasons* – Certain Photovoltaic Modules and Laminates - Final Determination; June 18, 2015

[13] On July 3, 2015, the Canadian International Trade Tribunal (CITT) found that the dumping and subsidizing of the goods originating in or exported from China threatened to cause injury to the Canadian domestic industry for photovoltaic modules and laminates pursuant to subsection 43(1) of SIMA⁸.

[14] On April 1, 2020, pursuant to subsection 76.03(3) of SIMA, the CITT issued a notice⁹ concerning the expiry of its finding, which was scheduled to occur on July 3, 2020. Based on the information filed during the expiry process, the CITT decided that a review of the finding was warranted. On May 21, 2020, the CITT initiated an expiry review of its finding pursuant to subsection 76.03(3) of SIMA.¹⁰

[15] On May 22, 2020, the CBSA commenced an expiry review investigation to determine whether the expiry of the finding is likely to result in continued or resumed dumping and/or subsidizing of the goods from China.

PRODUCT DEFINITION

[16] The goods subject to this expiry review investigation are defined as:

“Photovoltaic modules and laminates consisting of crystalline silicon photovoltaic cells, including laminates shipped or packaged with other components of photovoltaic modules, and thin-film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS), originating in or exported from the People's Republic of China.”

Products excluded from the CITT’s finding:

- modules, laminates or thin-film products with a power output not exceeding 100W;
- 195W monocrystalline photovoltaic modules made of 72 monocrystalline cells, each cell being no more than 5 inches in width and height; and
- modules, laminates or thin-film products incorporated into electrical goods where the function of the electrical goods is other than power.

⁸ Canadian International Trade Tribunal; Finding and Reasons, Photovoltaic Modules and Laminates; Inquiry No. NQ-2014-003, July 20, 2015

⁹ CITT; Notice of Expiry of Finding; Photovoltaic Modules and Laminates; Expiry No. LE-2020-001; April 1, 2020

¹⁰ CITT, Notice of Expiry Review; Photovoltaic Modules and Laminates, Expiry No. RR-2020-001

Additional Product Information

[17] The final assembled product sold to end consumers is referred to as a solar module. A laminate refers to the consolidation of various raw materials, including strung-together solar cells, a cover glass and an encapsulant (such as EVA, or ethylene vinyl acetate) which are encapsulated (i.e. consolidated) into a more solid and durable product and most often made into a solar module by affixing to it additional solar module components such as a frame and/or a junction box. The subject goods include both modules and laminates, whether or not the laminate is attached to an electrical junction box or a protective frame or other components, or whether or not the laminate is packaged with any such products or components.

[18] For further clarity, a laminate included in a package of goods or shipped alongside other products serving to create a module (e.g. aluminum extrusions for the frame, and/or an electrical junction box, and/or batteries for electrical storage) falls within the definition of subject goods.

[19] The production of subject goods is measured in watts (W) or megawatts (MW). One megawatt is equivalent to one million watts. Canadian production is also measured in W or MW. Watts are synonymous with peak-watts, which are defined as the direct current (DC) watts output under specified laboratory settings.

[20] As noted above, the definition of subject goods excludes both “modules, laminates or thin-film products with a power output not exceeding 100W” and “modules, laminates or thin-film products where the function of the electrical goods is other than power generation and where these electrical goods consume the electricity generated by the photovoltaic product”. These exclusions serve to exclude small portable modules as well as consumer products and small appliances which use solar modules. For example, items ranging from solar garden lights to calculators, to parking meters, as well as portable modules used as camping equipment, would be excluded from the product definition by virtue of power output, or by virtue of the fact that these goods consume the electricity generated by the product.

CLASSIFICATION OF IMPORTS

[21] The subject goods are usually classified under the following Harmonized System (HS) classification number: 8541.40.00.22.

[22] This listing of tariff classification numbers is for convenience of reference only. The tariff classification number provided may include goods that are not subject goods and subject goods may be imported into Canada under tariff classification numbers other than those provided.

PERIOD OF REVIEW

[23] The period of review (POR) for the CBSA’s expiry review investigation is from January 1, 2017 to March 31, 2020.

CANADIAN INDUSTRY

[24] The CBSA received two responses to the ERQ sent to the domestic producers of photovoltaic modules and laminates. Silfab and Heliene were the only domestic producers of photovoltaic modules and laminates that provided a response to the CBSA's ERQ.

[25] Information on the administrative record of this expiry review investigation indicates that the two responding Canadian producers, Silfab and Heliene, are the only companies producing like goods in Canada for consumption in the domestic market. Canadian Solar, potentially the largest producer of photovoltaic modules and laminates in Canada, did not respond to the CBSA's ERQ and has not provided any information concerning their sales in Canada of domestically produced goods.¹¹ There is no evidence on the record that Canadian Solar sold domestically produced photovoltaic modules in Canada.

[26] Information on the administrative record indicates that the remaining companies which were considered part of the domestic industry at the time of the original finding are no longer in business or are no longer producing photovoltaic modules and laminates.¹²

[27] As such, based on the information on the record, the CBSA has based its estimates of domestic production on the combined production of Silfab and Heliene.

[28] The two Canadian producers, Silfab and Heliene, made submissions to the CITT as part of the notice of expiry proceeding (LE-2020-001). Canadian Solar, potentially the largest producer of photovoltaic modules and laminates in Canada, also made submissions to the CITT. These submissions were provided to the CBSA as part of the CITT's confidential record. In addition to the ERQ responses provided to the CBSA by Silfab and Heliene, this information represents the only updated data concerning the domestic production of photovoltaic modules and laminates in Canada.

[29] Heliene operates in a 30,000 sq. ft. manufacturing facility located in Sault Ste. Marie, Ontario, and has been manufacturing photovoltaic modules since 2010. Silfab operates in a 100,000 sq. ft. manufacturing facility in Mississauga, Ontario, and has been manufacturing photovoltaic modules since 2011.¹³

¹¹ Exhibit 1 (PRO) – CITT's Administrative Record Number RR-2020-001 - Confidential Case Brief of the Canadian Producers

¹² Exhibit 1 (PRO) – CITT's Administrative Record Number RR-2020-001 - Confidential Case Brief of the Canadian Producers

¹³ CBSA – *Statement of Reasons* – Certain Photovoltaic Modules and Laminates - Final Determination; June 18, 2015

CANADIAN MARKET

[30] The imports of certain photovoltaic modules and laminates during the POR are presented in **Table 1** and **Table 2** below. The CBSA cannot release specific quantitative data respecting the value and volume of Canadian production of photovoltaic modules and laminates sold for domestic consumption as it would lead to the disclosure of confidential information.

Table 1
Imports of Photovoltaic Modules and Laminates for the POR¹⁴
(Quantity in Watts (W))

Source	2017	2018	2019	January 1 - March 31, 2020
	Volume (W)	Volume (W)	Volume (W)	Volume (W)
China	2,924**	22,565**	34,536	3,665
All Other Countries	271,243,253	381,690,157	306,822,918	62,116,392
Total Imports	271,246,177	381,712,722	306,857,454	62,120,057

Table 2
Imports of Photovoltaic Modules and Laminates for the POR¹⁵
(Value in CAD)

Source	2017	2018	2019	January 1 - March 31, 2020
	Value	Value	Value	Value
China	\$350,290	\$663,638	\$240,275	\$38,231
All Other Countries	\$129,593,492	\$182,362,362	\$146,592,599	\$29,677,715
Total Imports	\$129,943,782	\$183,026,000	\$146,832,874	\$29,715,947

*Import and compliance statistics for non-subject countries are estimated based on sampling customs documents and information collected during the review.

** Volume of goods is an assortment of units of measurement (WATTS, KGM, LBS, NMB)

Quantity W = Watts

Canadian Production

[31] The Canadian producers' domestic sales from domestic production decreased each year of the POR. Between 2017 and 2019 the Canadian producers' domestic sales from domestic production decreased in terms of value and volume. This decrease is most notable between 2017 and 2018, where the total apparent Canadian market increased significantly and the Canadian producers' domestic sales from domestic production decreased by a significant amount.

¹⁴ Exhibit 28 (NC) – Compliance statistics - day 50

¹⁵ Exhibit 28 (NC) – Compliance statistics - day 50

Imports

[32] Total imports also followed a pattern similar to the total apparent Canadian market during the POR, with an increase between 2017 and 2018 in terms of value and volume, and a similar decrease from 2018 to 2019. Total imports captured an additional 8.0% of market share during the period of 2017 to 2019. Subject imports, on the other hand, dropped by over 31.4% in terms of value from 2017 to 2019¹⁶. As such, the increase in imports was evidently from other countries, and at the expense of both exporters from China and the Canadian industry.

[33] Since the period of investigation (POI) of the original investigation (October 2013 to September 2014), subject imports dropped by over 99.9% in terms of volume, from 57 mega watts (MW) during the POI, to just .035 MW in 2019. This decrease coincided with a 60.5% decrease in the size of the apparent market between the POI and 2019.

[34] The volume of subject imports dropped by 99.9% between the POI (i.e. prior to the finding) and 2019. Subject imports also dropped during the POR, with a reduction of 31.4% between 2017 and 2019. In terms of market share, subject imports represented 7.2% of the Canadian market during the POI, prior to the finding. The market share of photovoltaic modules and laminates from China was reduced to less than 1% of the market in 2017 and further reduced in 2019.

[35] Imports from other countries increased faster than the market increased during the POR. In this regard, imports from countries other than China increased by 13.1% between 2017 and 2019 in terms of volume (vs 3.8% for the total market), and by 13.1% in terms of value (vs 0.3% for the total market).

ENFORCEMENT DATA

[36] In the enforcement of the CITT's finding during the POR, as detailed in **Table 3** below, the total amount of anti-dumping and countervailing duty collected on subject imports from China was just over CAD \$700,000. As a percentage of the total value for duty, the combined anti-dumping and countervailing duties assessed during the POR were equal to 54.6%.

¹⁶ As mentioned earlier, volume estimates for subject goods are not accurate due to the use of various units of measure. As such, the comparison has been made based on value.

Table 3
Enforcement data for the period of review¹⁷
(Quantity in Watts and SIMA duties in CAD)

	2017	2018	2019	January 1, 2020 - March 31, 2020
Volume of subject goods*	2,924	22,565	34,536	3,665
Value for Duty of Subject Goods (\$)	\$350,290	\$663,638	\$240,275	\$38,231
SIMA Duty Assessed (\$)	\$240,480	\$301,968	\$134,420	\$29,179

* Volume of goods is an assortment of units of measurement (WATTS, KGM, LBS, and NMB)

PARTIES TO THE PROCEEDINGS

[37] On May 22, 2020, a notice concerning the CBSA’s initiation of the expiry review investigation and the ERQs were sent to all known Canadian producers, potential importers, and exporters of the subject goods. The Government of China (GOC) was also sent an ERQ regarding the subsidizing of the subject goods. The CBSA also offered the opportunity to participate in the expiry review investigation to any other interested parties.

[38] The ERQ requested information relevant to the consideration of the expiry review factors, as listed in subsection 37.2(1) of the *Special Import Measures Regulations* (SIMR).

[39] Two Canadian producers, Silfab and Heliene, participated in the expiry review investigation and provided ERQ responses. Additional documents were also filed on behalf of the Canadian producers prior to the closing of the record. Two importers, Elemental Energy and Saturn Power, also participated in the expiry review investigation and provided an ERQ response.

[40] A case brief was received from counsel on behalf of the Canadian producers. No Reply submissions were filed.

[41] No exporter provided a response to the ERQ or otherwise participated in the expiry review. The GOC did not provide a response to the CBSA’s ERQ nor did it submit a case brief or reply submission.

¹⁷ Exhibit 28 (NC) – Compliance statistics - day 50

INFORMATION CONSIDERED BY THE CBSA

Administrative Record

[42] The information considered by the CBSA for purposes of this expiry review investigation is contained in the administrative record. The administrative record includes the information on the CBSA's exhibit listing, which is comprised of the CITT's administrative record relating to the initiation of the expiry review, the CBSA's exhibits and information submitted by interested parties, including information which the interested parties feel is relevant to the decision as to whether dumping and subsidizing are likely to continue or resume, if the CITT's finding is allowed to expire. This information may consist of expert analysts' reports, excerpts from trade magazines and newspapers, orders and findings issued by authorities of Canada or of a country other than Canada, documents from international trade organizations such as the World Trade Organization and responses to the ERQs submitted by the Canadian producers, exporters and importers.

[43] For purposes of an expiry review investigation, the CBSA sets a date after which no new information submitted by interested parties will be placed on the administrative record or considered as part of the CBSA's investigation. This is referred to as the "closing of the record date." This allows participants time to prepare their case briefs and reply submissions based on the information that is on the administrative record as of the closing of the record date. For this investigation, the administrative record closed on July 27, 2020.

POSITION OF THE PARTIES – DUMPING

Parties Contending that Continued or Resumed Dumping is Likely

[44] The participating Canadian producers made representations as part of their submissions to the CITT in LE-2020-001, in their ERQ responses, and in their case brief supporting their position that the dumping of photovoltaic modules and laminates from China is likely to continue or resume should the CITT's finding expire. Therefore, they argued that the anti-dumping measures should remain in place.

[45] The main arguments made by the Canadian producers can be summarized as follows:

- Global production, overcapacity and slowing demand
- Producers in China selling subject goods below the cost of production
- Overcapacity of photovoltaic module and laminate production in China
- China's economic slowdown and its affect on the PV industry
- Export orientation of producers of subject goods in China
- Continued presence in Canada, low-priced import competition in Canada and expected pricing of subject goods
- Inability for exporters of subject goods to sell at normal values
- Trade measures in other jurisdictions

Global production, overcapacity and slowing demand

[46] The Canadian producers alleged that the global market for photovoltaic modules and laminates is heavily influenced by the demand and production of photovoltaic modules and laminates in China. The Canadian producers submit that China is the largest producer and consumer of photovoltaic modules and laminates in the world and that GOC policy concerning the control of PV development projects has impacted supply and demand and led to oversupply and price reductions across the global photovoltaic value chain.

[47] The Canadian producers allege that other countries such as South Korea, Malaysia and India have consistently increased photovoltaic module production capacity. They further allege that oversupply conditions have been exacerbated by increases in the global production of input materials used in manufacture of photovoltaic modules, increases in product efficiency and an overall decrease in the utilization rate of global PV producers.

[48] The Canadian producers argued that global demand for photovoltaic modules is decreasing, as demand remained flat from 2017 to 2018 and is expected to be severely impacted by the economic effects of the COVID-19 pandemic.

Producers in China selling subject goods below the cost of production

[49] The Canadian producers argued that if the finding were rescinded exporters of subject goods in China would resume shipping dumped goods to Canada. To support this argument, they provide information from Bloomberg concerning spot prices and costs of production for photovoltaic modules and laminates.

[50] The Canadian producers argue that based on the Bloomberg data, the costs of production for photovoltaic modules and laminates in China are higher than the spot prices. For example, they provided a cost of production build up based on a combination of data from Bloomberg as well as the publicly available financial statements of a large producer of subject goods in China. Based on this information, the cost of production of the goods was higher than the spot price that was provided.

Overcapacity of photovoltaic module and laminate production in China

[51] According to the Canadian producers, China is the largest producer of photovoltaic modules and laminates in the world. Based on estimates from the international energy agency, the Canadian producers submitted that China accounted for 73% of global production of photovoltaic modules and laminates in 2018. The Canadian producers submitted that China leads the world in terms of capacity for production of photovoltaic modules and laminates and input material such as polysilicon, wafers and solar cells.

[52] The Canadian producers provided information concerning the production and capacity of the photovoltaic industry in China and argued that based on this information, production and capacity of photovoltaic modules and laminates has been increasing, and is likely to continue.

China's economic slowdown and its affect on the PV industry

[53] The Canadian producers contended that economic trends in China present a threat to the Canadian market if anti-dumping measure are not in place. The Canadian producers argue that production of PV modules in China is rebounding after the COVID-19 crises but that demand in China remains stagnant.

[54] The Canadian producers argued that the Chinese economy was significantly impacted by the COVID-19 pandemic and as the economy in China begins to recover, Chinese producers will likely begin a push to ramp up exports to make up for shortfalls in early 2020. In addition, they point to GOC measures which focus on boosting foreign trade.

[55] Based on information provided in their submissions, the Canadian producers argue that the COVID-19 pandemic has not limited the production of photovoltaic modules and laminates in China and that over production of photovoltaic modules and laminates in China continues to threaten other markets, including Canada.

Export orientation of producers of subject goods in China

[56] The Canadian producers alleged that Chinese photovoltaic module producers dominate export markets and are global price leaders and as such, they argue that they will resume shipping subject goods to Canada at dumped and subsidized prices if the finding were to expire.

[57] To support the allegations mentioned above, the Canadian producers provided information concerning the increase in export volumes of photovoltaic modules and laminates from China. Further, they provided information concerning the export sales of certain large scale producers of PV modules in China, and discussed how major export markets may be impacted by the COVID-19 pandemic.

Continued presence in Canada, low-priced import competition in Canada and expected pricing of subject goods

[58] The Canadian producers submit that the Canadian market is now the target of low priced imports from countries such as South Korea, Vietnam and Thailand. They argued that to regain market share, and to compete with these low priced imports, Chinese producers would need to offer low prices. Further, the Canadian producers submitted that the continued presence of these low priced imports from the countries mentioned above have already forced domestic producers to reduce prices to maintain market share.

Inability for exporters of subject goods to sell at normal values

[59] The Canadian producers submitted that although import quantities for subject goods have remained low, Chinese exporters of photovoltaic modules and laminates remain interested in the Canadian market. The producers argued that exporters have continued to sell subject goods to Canada to maintain relationships with Canadian importers, but based on the duties paid, they have been unable to do so at, or above, normal values. As such, they argue that these exporters would continue to ship dumped and subsidized imports if the finding were to expire.

Trade Measures in Other Jurisdictions

[60] The Canadian producers noted that there are anti-dumping and countervailing measures with respect to photovoltaic modules and laminates from China in place in the United States and Turkey. The Canadian producers also identified safeguard measures in place in India. The Canadian producers argued that the existence of these trade measures demonstrates a propensity for exporters in China to dump subject goods. Further, they argued that the presence of these measures will lead exporters to find new markets for these goods, such as Canada.

Parties Contending That Continued or Resumed Dumping is Unlikely

[61] None of the parties contended that continued or resumed dumping of subject goods from China is unlikely if the finding is rescinded.

CONSIDERATION AND ANALYSIS - DUMPING

[62] In making a determination under paragraph 76.03(7)(a) of SIMA whether the expiry of the finding is likely to result in the continuation or resumption of dumping of the goods, the CBSA may consider factors identified in subsection 37.2(1) of the SIMR, as well as any other factors relevant in the circumstances.

[63] Guided by the aforementioned factors and having considered the information on the administrative record, the following list represents a summary of the CBSA's analysis conducted in this expiry review investigation with respect to dumping:

- GOC's Involvement in and Influence on the Solar Industry – Section 20 Conditions
- Production, Capacity and Demand for Photovoltaic Modules and Laminates
- Conditions in the Photovoltaic Module and Laminate Industry
- Export Orientation of Chinese Photovoltaic Module and Laminate Producers
- Trade Measures in Other Jurisdictions
- Continued Presence of Chinese Photovoltaic Modules and Laminates in Canada
- Competitive Conditions in the Canadian Market for Photovoltaic Modules and Laminates

[64] As mentioned earlier in this report, the CBSA received ERQ responses from two Canadian producers and two importers. The CBSA did not receive ERQ responses from any exporters or producers of subject goods or the GOC. Two Canadian producers submitted supplementary information prior to the closing of the record as well as a joint case brief. The CBSA relied on the ERQ responses and information submitted by these parties, as well as the other information on the administrative record for purposes of this expiry review investigation.

GOC's Involvement in and Influence on the Solar Industry – Section 20 Conditions

[65] Section 20 of SIMA may be applied to determine the normal value of goods where certain conditions prevail in the domestic market of the exporting country. In the case of a prescribed country, under paragraph 20(1)(a) of SIMA, it is applied where, in the opinion of the CBSA, domestic prices are substantially determined by the government of that country and there is sufficient reason to believe that they are not substantially the same as they would be if they were determined in a competitive market. Where section 20 is applicable, normal values for the goods are not determined based on domestic prices or costs in that country.

[66] For the purposes of the final determination¹⁸, the CBSA was of the opinion that domestic prices in the solar sector in China are substantially determined by the GOC and there is sufficient reason to believe that the domestic prices are not substantially the same as they would be in a competitive market.

[67] When section 20 conditions are found to exist, the CBSA normally determines normal values using the selling price, or the total cost and profit, of like goods sold by producers in a surrogate country designated by the CBSA pursuant to paragraph 20(1)(c) of SIMA. Alternately, normal values may be determined under paragraph 20(1)(d) of SIMA, on a deductive basis starting with an examination of the prices of imported goods sold in Canada, from a surrogate country designated by the CBSA. During the investigation, none of the producers from any of the surrogate countries provided information. Furthermore, suitable information on imported goods sold in Canada from a surrogate country was not provided in the importers' responses to the questionnaires. Therefore, sufficient information was not available to the CBSA in order to determine normal values using either of these two methods.¹⁹

[68] As a result, throughout the enforcement period, the normal values for the exporters that provided a complete and reliable response to the questionnaires have been determined using an alternate methodology under a Ministerial Specification, pursuant to section 29 of SIMA. The methodology set out in the Ministerial Specification closely resembles the methodology set out in subparagraph 20(1)(c)(ii), that is, the aggregate of the cost of production, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits, in a surrogate country.

¹⁸ CBSA – *Statement of Reasons* – Certain Photovoltaic Modules and Laminates - Final Determination; June 18, 2015

¹⁹ CBSA – *Statement of Reasons* – Certain Photovoltaic Modules and Laminates - Final Determination; June 18, 2015

[69] The CBSA determined normal values based on information provided in *Bloomberg New Energy Finance* reports for the period of December 2013 to July 2014. These reports contained the prevailing price data and cost components of photovoltaic modules and laminates from major suppliers and customers in the industry. The CBSA used the monthly cost build-up information, including an amount for profits, for the purposes of determining the normal values of the subject goods.²⁰

[70] Evidence on the administrative record does not indicate any significant change in the GOC's level of involvement in the solar sector in China such that it would change the CBSA's opinion issued at the time of the Final Determination concerning the conditions of Section 20 in the solar sector in China. Information on the administrative record indicates that the GOC still maintains influence in the solar sector through policies and guidelines which may determine the structure and composition of the solar sector in China, and influence the balance of supply and demand for photovoltaic modules and laminates.²¹

[71] Based on information available to the CBSA, the GOC has introduced measures in 2020 which will restrict production capacity²² and set minimum efficiency standards for photovoltaic modules²³. According to industry analysts, these measures may lead to the consolidation of photovoltaic module and laminate producers, and may impact the production and capacity of these producers. Further, based on information on the administrative record, the GOC has also influenced the price of photovoltaic modules and laminates through its subsidization of solar energy production.²⁴

[72] As neither the GOC, nor any exporters or producers of photovoltaic modules and laminates in China provided a response to the CBSA's ERQ, the CBSA has based this opinion on the evidence available on the administrative record.

[73] As such, for the purposes of this expiry review investigation, the CBSA finds that there is no information on the administrative record which would cause the CBSA to change its opinion formed at the conclusion of the original investigation. Further, the CBSA finds that, based on the information on the administrative record, the CBSA would reasonably determine that the domestic prices in the solar sector in China are substantially determined by the GOC and there is sufficient reason to believe that the domestic prices are not substantially the same as they would be in a competitive market.

²⁰ CBSA – *Statement of Reasons* – Certain Photovoltaic Modules and Laminates - Final Determination; June 18, 2015

²¹ Exhibit 27 (NC) – Articles, Reports and CBSA Research – Article: Restrictions on Solar Producers China

²¹ Exhibit 27 (NC) – Articles, Reports and CBSA Research – Article: GOC Product Standards

²¹ Exhibit 27 (NC) – Articles, Reports and CBSA Research – Article: Solar Panel Prices Canada, Article: Solar Installations China

²² Exhibit 27 (NC) – Articles, Reports and CBSA Research – Article: Restrictions on Solar Producers China

²³ Exhibit 27 (NC) – Articles, Reports and CBSA Research – Article: GOC Product Standards

²⁴ Exhibit 27 (NC) – Articles, Reports and CBSA Research – Article: Solar Panel Prices Canada, Article: Solar Installations China

[74] For the reasons discussed above, the CBSA believes that the normal values for subject goods are likely to continue to be determined on the basis of a surrogate methodology (i.e. pursuant to section 20 or 29 or SIMA) in the foreseeable future. Given the production overcapacity situation in China, the CBSA finds that it is likely that exporters of subject goods will continue to sell goods to Canada at prices lower than the normal values determined on the basis of a surrogate methodology.

Production, Capacity and Demand for Photovoltaic Modules and Laminates

[75] China is the largest global producer of photovoltaic modules and laminates by a large margin. In 2018, the total global production of photovoltaic modules and laminates was estimated at approximately 116 GW, up nearly 11 GW from 2017. In 2018, China accounted for 72% of global production, producing approximately 83-84 GW of photovoltaic modules and laminates. This represents an approximate increase of 10.6% from 2017 production of 75 GW. Further, in the first half of 2019, production of photovoltaic modules and laminates in China rose to 51 GW, a 31% increase from the first half of 2018. In 2014, prior to the finding, China produced an estimated 32 GW of photovoltaic modules and laminates.²⁵

[76] China also has the largest production capacity in the world, again by a very significant margin. In 2018 China had an estimated production capacity of approximately 130 GW per year, which represents approximately 71% of global production capacity (183.8 GW). From 2017 to 2018 China's PV module production capacity increased by 25 GW, or 23.8%, the highest increase in the world and the largest increase to date.²⁶

[77] As a result, China had an excess production capacity of approximately 46 GW in 2018, which, based on the Canadian market data for 2018, is enough to supply the Canadian market more than one hundred times over.²⁷

[78] Further, between 2016 and 2018, production capacity in China grew at a faster rate than actual production. This is consistent with global trends as the global utilization rate decreased from 74% in 2016 to 63%. Meanwhile, growth in domestic demand for PV modules in China had decreased. In May 2018, a policy decision by the GOC had significant negative impact on the demand for photovoltaic modules and laminates in China. As a result, the gap between global demand and supply grew from 2017 to 2018 as global production and capacity has increased at a faster pace than global demand.²⁸ This trend is expected to continue into 2020 as demand is expected to stagnate before potential growth in 2021.²⁹

²⁵ Exhibit 27 (NC) – Articles, Reports and CBSA Research – Report: International Energy Agency 2019 PV, pg 66; Exhibit 1 (PRO) – CITT's Administrative Record Number RR 2020 001 - Confidential Case Brief of the Canadian Producers: Public Attachment 6, pg I-26.

²⁶ Exhibit 27 (NC) – Articles, Reports and CBSA Research – Report: International Energy Agency 2019 PV, pg 67; Exhibit 1 (PRO) – CITT's Administrative Record Number RR 2020 001 - Confidential Case Brief of the Canadian Producers: Public Attachment 6, pg I-26.

²⁷ Based on 2018 total market demand

²⁸ Exhibit 27 (NC) – Articles, Reports and CBSA Research – Report: International Energy Agency 2019 PV, pg 66

²⁹ Exhibit 29 (PRO) & 30 (NC) – ERQ Response of Silfab Solar Inc., Confidential attachment Q28

[79] China also leads the world in the production of input materials used in the production of photovoltaic modules and laminates. In 2018, China reported production of 85 GW of solar cells and a production capacity of approximately 128 GW per year. This accounted for 74% of global solar cell production.³⁰ According to the International Energy Agency, some of the world's largest producers of photovoltaic modules and laminates which are based in China have continued to expand their capacity to produce input materials such as ingots and wafers. As such, the ability for these large producers to increase production will not be limited by the availability of input materials.³¹

[80] The COVID 19 pandemic appears to have had little impact on the production of photovoltaic modules and laminates in China. Producers in China reported production of 59 GW in first half of 2020, an increase of 15.7% from 2019.³² The impact on the demand for these products is more uncertain. The global economic contraction and significant decreases in the cost of oil may have negative effects on the demand for photovoltaic modules and laminates in the near term.³³ Further, Jinko Solar, one of the largest producers of photovoltaic modules and laminates in China, noted in their 2019 annual report that demand for photovoltaic modules and laminates is substantially dependent on the availability of government incentives.³⁴ The availability of these incentives remains a significant risk factor for photovoltaic module producers.

[81] The issue of overcapacity in the photovoltaic module industry appears to have been confirmed by the GOC, as they have introduced measures which may restrict investments in projects which would increase production capacity for photovoltaic modules and laminates.³⁵

[82] Given the significant existing production capacity of producers in China, along with the demand uncertainty caused by the COVID 19 pandemic³⁶, the CBSA is of the opinion that the conditions in the photovoltaic module and laminate industry in China are conducive to continued downward pressure on the prices of photovoltaic modules and laminates in China.

[83] In the opinion of the CBSA, the combination of the factors described above will likely result in further overproduction and continued overcapacity. In addition, based on the information on the administrative record it appears that demand in China may remain stagnant in the near term. As supply continues to grow at a faster pace than demand, the CBSA is of the opinion that this is likely to result in lower prices for photovoltaic modules and laminates in China, and will also result in Chinese exporters more aggressively pursuing export markets.

³⁰ Exhibit 27 (NC) – Articles, Reports and CBSA Research – Report: International Energy Agency 2019 PV, pg 62

³¹ Exhibit 27 (NC) – Articles, Reports and CBSA Research – Report: International Energy Agency 2019 PV

³² Exhibit 33 (PRO) & 34 (NC) – Close of record - Attachments from Heliene Inc., Public Attachment 11 – China's first half solar panel output.

³³ Exhibit 1 (PRO) – CITT's Administrative Record Number RR-2020-001 - Confidential Case Brief of the Canadian Producers: Public Attachment 9.

³⁴ Exhibit 27 (NC) – Articles, Reports and CBSA Research – Jinko Solar 2019 Annual Report, pg. 8

³⁵ Exhibit 27 (NC) – Articles, Reports and CBSA Research – Article: Restrictions on Solar Producers China

³⁶ Exhibit 1 (PRO) – CITT's Administrative Record Number RR-2020-001 - Confidential Case Brief of the Canadian Producers: Public Attachment 9

Conditions in the Photovoltaic Module and Laminate Industry

[84] Based on information on the administrative record, a decision by the GOC in May 2018, to control the development of photovoltaic projects, and to reduce the subsidies available to photovoltaic projects, has had a significant effect on the price of photovoltaic modules and laminates in China and the rest of the world. These measures had a significant negative impact on domestic demand for these products and led to price reductions across the photovoltaic value chain. These effects have extended to the entire photovoltaic value chain as the price of input materials has also dropped. These price concerns may only be exacerbated by the COVID-19 pandemic as production has recovered but demand remains uncertain.³⁷

[85] The Canadian producers submitted that global prices for crystalline photovoltaic modules have been on a downward trend since 2016. They further noted that prices appear to have stabilized in 2019 but that the trend of decreasing prices and increasing production would continue, and that this would likely lead to further oversupply issues.

[86] The complainant submitted information from Bloomberg with respect to the average cost of production for photovoltaic modules and laminates in China. This information was based on data collected by Bloomberg. For the purposes of the final determination of dumping, the CBSA relied on information from this publication in determining normal values pursuant to section 29 of SIMA. As such, the CBSA has found, and continues to find, that this publication is a reasonably reliable source of information with respect to the photovoltaic module and laminate sector.

[87] Based on data from Bloomberg, it appears that the decreases in the costs of material inputs have not been as drastic or not substantial enough to offset the decreases in selling prices. For the months April – June 2019, the international spot price for photovoltaic modules was lower than the total cost build up for Chinese photovoltaic modules and laminates.³⁸ This suggests that producers in China are selling subject goods at a loss, and accordingly, that if the finding were to be rescinded, subject goods may be sold to Canada at dumped prices, or below the cost of production.

[88] In their 2019 annual report, Canadian Solar, a Canadian producer of photovoltaic modules and laminates which also has large production capacity in China, noted a sharp decline in its average selling prices of photovoltaic modules, down from USD 0.51 and USD 0.40 in 2016 and 2017 to USD 0.34 and USD 0.29 in 2018 and 2019. This represents a drop of 43% between 2016 and 2019. Canadian Solar explained that the rapid increase in the production of silicon had caused overcapacity in the markets for photovoltaic modules and laminates and the related material inputs, and led to downward pressure on module prices.³⁹

³⁷ Exhibit 27 (NC) – Articles, Reports and CBSA Research – Report: International Energy Agency 2019 PV, pg. 66, Exhibit 1 (PRO) – CITT's Administrative Record Number RR-2020-001 - Confidential Case Brief of the Canadian Producers: Public Attachment 9

³⁸ Exhibit 1 (PRO) – CITT's Administrative Record Number RR-2020-001 - Confidential Case Brief of the Canadian Producers: Confidential Attachment 11 Pgs. 10-12

³⁹ Exhibit 27 (NC) – Articles, Reports and CBSA Research – Canadian Solar 2019 Annual Report, pg. 13

[89] Jinko Solar, one of the largest producers of photovoltaic modules and laminates in China, noted similar price reductions in their 2019 annual report, stating “The global solar module production capacity exceeded demand in 2019, which further intensified competition over pricing. Consequently, the average selling price of our solar modules, which represented 95.8% of our total revenue in 2019, decreased from 2018 to 2019.”⁴⁰

[90] Considering the existing substantial overcapacity and the oversupply of photovoltaic modules and laminates in the global market, as well as the decreases in the cost of inputs and substantial reductions in spot prices for photovoltaic modules and laminates, the CBSA finds that it is reasonable to assume that market conditions may continue to deteriorate such that it is likely that producers in China will continue to increasingly focus on the export market to sell their excess capacity.

Export Orientation of Chinese Photovoltaic Module and Laminate Producers

[91] As discussed above, China is the largest producer of photovoltaic modules and laminates in the world. In addition, China is also the world’s largest exporter of photovoltaic modules and laminates.

[92] Based on information on the administrative record, exports of photovoltaic modules by producers in China increased from 2017 to 2018 and from 2018 to 2019.⁴¹ A significant portion of this increase can be attributed to the removal of trade barriers in the European Union (EU) and the resulting significant increase of exports to that region. In September 2018, the EU terminated the anti-dumping and countervailing measures which were applicable to imports of photovoltaic modules and laminates from China.⁴²

[93] In May 2018, the GOC issued a notice concerning the control of future photovoltaic development projects in China and a reduction in subsidies. These measures had a significant negative impact on domestic demand for these products and led to price reductions across the photovoltaic value chain.⁴³

[94] The reliance on export markets is acknowledged by Jinko Solar, one of China’s largest producers of photovoltaic modules and laminates. In their 2019 Annual Report, Jinko Solar noted “in 2017, 2018 and 2019, we generated 62.8%, 73.6% and 82.5%, respectively, of our total revenue from export sales.” In 2019, one of the world’s largest producers of photovoltaic modules and laminates was almost entirely reliant on export markets for revenue.⁴⁴ Further, this information demonstrates a rapid increase in the financial reliance on export markets, as the portion of revenue from export sales increased each year from 2017 to 2019 by a substantial margin.

⁴⁰ Exhibit 27 (NC) – Articles, Reports and CBSA Research – Jinko Solar 2019 Annual Report, pg. 8

⁴¹ Exhibit 1 (PRO) – CITT’s Administrative Record Number RR-2020-001 - Confidential Case Brief of the Canadian Producers: Confidential Attachment 13, pg. 1

⁴² Exhibit 1 (PRO) – CITT’s Administrative Record Number RR-2020-001 - Confidential Case Brief of the Canadian Producers: Public Attachment 37 and Public Attachment 1, pg. 70

⁴³ Exhibit 27 (NC) – Articles, Reports and CBSA Research – Report: International Energy Agency 2019 PV, pg. 66

⁴⁴ Exhibit 27 (NC) – Articles, Reports and CBSA Research – Jinko Solar 2019 Annual Report, pg. 11

[95] The information on the administrative record demonstrates the export orientation of producers of photovoltaic modules and laminates in China. Further, given the significant differences between production of photovoltaic modules in China and domestic demand for these products, the CBSA finds that producers in China are likely to rely, or to continue to rely, on export markets for a substantial portion of their sales.

Trade Measures in Canada and Other Jurisdictions

[96] In addition to the Canadian measures, several jurisdictions have imposed anti-dumping and other trade measures with respect to photovoltaic modules and laminates from China, as well as other photovoltaic products from China.

[97] The United States currently has two anti-dumping and countervailing measures in place against photovoltaic modules and laminates from China. In addition to anti-dumping and countervailing measures, the United States has also has imposed safeguard measures and additional ad valorem duties under Section 301 of the Trade Act of 1974.⁴⁵

[98] India and Turkey have also implemented trade measure against photovoltaic modules and laminates from China. In April 2017, the Government of Turkey imposed anti-dumping duties on imports of photovoltaic modules from China. In July 2018, the Government of India decided to impose safeguard measures against photovoltaic cells and photovoltaic modules and laminates from China.⁴⁶

[99] The anti-dumping measures in place on photovoltaic modules and laminates from China, and in numerous jurisdictions, are indicative of a propensity of Chinese exporters to dump photovoltaic products. The presence of these anti-dumping measures and the other trade measures that are specific increase the likelihood of dumped subject goods being exported to Canada in light of the trade barriers that exist in these jurisdictions, including such a large and geographically close market as the United States. While the anti-dumping and countervailing measures currently in place in Canada with respect to the subject goods have prevented a diversion of Chinese photovoltaic modules and laminates to Canada, the removal of these measures is likely to result in an increase of shipments to Canada at dumped prices.

Continued Presence of Chinese Photovoltaic Modules and Laminates in Canada

[100] As mentioned above, the volume of subject imports dropped by 99.9% between the POI (i.e. prior to the finding) and 2019. Subject imports also dropped during the POR, with a reduction of 31.4% between 2017 and 2019. In terms of market share, subject imports represented 7.2% of the Canadian market during the POI, prior to the finding. The market share of photovoltaic modules and laminates from China was reduced to 0.23% of the market in 2017 and further reduced to 0.16% of the market in 2019. This significant reduction is indicative of the effect of the measures, and the inability for most exporters to maintain sales at normal values.

⁴⁵ Exhibit 1 (PRO) – CITT's Administrative Record Number RR-2020-001 - Confidential Case Brief of the Canadian Producers: Public Attachment 6

⁴⁶ Exhibit 27 (NC) – Articles, Reports and CBSA Research – Report: International Energy Agency 2019 PV, pg. 70

[101] The total amount of anti-dumping and countervailing duties collected on imports of subject goods from China during the POR was just over \$700,000. As a percentage of the total value for duty, the combined anti-dumping and countervailing duties assessed during the POR were equal to 54.6%. Based on this information, it appears that the remaining Chinese exporters in the Canadian market have continued to dump subject goods into Canada and are still competing on the basis of their cost advantage in order to maintain a presence in Canada, despite the measures in place. The total amount of dumping duty assessed on those goods suggest that many of the exporters that maintained a presence in Canada while the finding is in place are unable to do so at non-dumped prices.

Competitive Conditions in the Canadian Market

[102] The Canadian market appears to be an attractive target for imports from other countries. During the POR, imports from countries other than China increased at a faster rate than the growth of the total apparent Canadian market. Imports from countries other than China increased by 13.1% between 2017 and 2019 in terms of volume (vs 3.8% for the total market), and by 13.1% in terms of value (vs 0.3% for the total market).

[103] With respect to demand for photovoltaic modules and laminates in Canada, generally speaking, the information on the administrative record is mixed, with projections ranging from limited to negative growth from 2019 to 2020. There appears to be a consistent projection of year over year growth in 2021.⁴⁷

[104] On the supply side, the producers expect increased competitive pressure in the foreseeable future⁴⁸. Domestically, it was noted that there was ample capacity available to satisfy the expected growth in demand.⁴⁹ Based on the data available, the increase in domestic capacity was in line with the growth in market demand.

[105] The Canadian producers noted an increase in low price imports from certain Asian countries. This trend is confirmed by the CBSA's statistical data on volume, which shows an increase of 13.1% in imports from countries other than China between 2017 and 2019, compared to 3.8% for the total market.

[106] With respect to the average price of photovoltaic modules and laminates in Canada, the Canadian producers argued that the presence of low priced imports from other countries has forced domestic producers to decrease their prices in order to maintain market share. The information on the administrative record indicates a decrease in the average price per watt offered by the Canadian producers from 2017 to 2019. The Canadian producers have attributed this decrease to reductions in costs as well as increased pressure from imports.

⁴⁷ Exhibit 29 (PRO) & 30 (NC) – ERQ Response of Silfab Solar Inc., Q27

⁴⁸ Exhibit 29 (PRO) & 30 (NC) – ERQ Response of Silfab Solar Inc., Q24-29

⁴⁹ Exhibit 29 (PRO) & 30 (NC) – ERQ Response of Silfab Solar Inc., Q28

[107] It was already noted that the Chinese producers of photovoltaic modules and laminates are increasingly export focused, with ample capacity available and a propensity to dump subject goods. As such, if the CITT's finding was no longer in place, it is likely that the Chinese exporters would be competing with the reported new low priced sources of imports on the basis of price. It was also established that to the extent that the conditions of section 20 of SIMA continue to apply to the Chinese solar sector in China, the normal values for Chinese producers of photovoltaic modules and laminates are not based on the domestic prices or costing data, but rather on the pricing and costing structure in a surrogate country, where competitive conditions exist. As discussed above, the normal values under section 20 are likely to be higher, and hence, the subject goods are more likely to be dumped.

Determination Regarding Likelihood of Continued or Resumed Dumping

[108] Based on the evidence on the record in respect of: the GOC's involvement in and influence on the solar industry – Section 20 conditions; the production, capacity, and demand for photovoltaic modules and laminates; the conditions in the photovoltaic module industry; the export orientation of Chinese photovoltaic module producers; the trade measures in other jurisdictions; the continued presence of Chinese photovoltaic module products in Canada; along with the competitive conditions in the Canadian photovoltaic module market, the CBSA determined that the expiry of the finding is likely to result in the continuation or resumption of dumping of certain photovoltaic modules and laminates, originating in or exported from China, into Canada.

POSITION OF THE PARTIES - SUBSIDIZING

Parties Contending that Continued or Resumed Subsidizing is Likely

[109] The Canadian producers, having made certain representations in their case briefs, argued that the subsidizing of certain photovoltaic modules and laminates from China is likely to continue or resume should the CITT's finding expire. Therefore, they indicated that the countervailing measures should remain in place.

[110] The main argument made by the Canadian producers is that China has continued to subsidize producers of photovoltaic modules and laminates in China.

China Continues to Subsidize Producers of Photovoltaic Modules and Laminates

[111] In the case arguments provided as part of the CBSA's expiry review investigation, the Canadian producers noted that there are currently 21 measures in force against Chinese imports into Canada where countervailing duties may apply. Further, the producers note that since the final determination of the original investigation concerning photovoltaic modules and laminates from China, the CBSA has conducted seven additional subsidy investigations involving goods from China. The Canadian producers also identified recent decisions where the CBSA had found that the GOC has continued to support various producers in China.

[112] In their submission to the CITT, the Canadian producers referred to recent findings from the United States International Trade Commission (US ITC) concerning the availability of countervailable subsidy programs to producers of photovoltaic modules and laminates in China. Specifically, they noted that the US ITC has found countervailable programs applicable to producers of photovoltaic modules and laminates through three administrative reviews since the 2012 finding.

[113] To further support their arguments the Canadian producers provided estimated margins of subsidization applicable to producers of photovoltaic modules and laminates in China. The Canadian producers estimated the margin of subsidization by comparing the costs of production associated with producing photovoltaic modules and laminates in China and the selling price of the goods. The Canadian producers argued that it is commercially unfeasible to sell goods below the cost of production and, accordingly, it is reasonable to conclude that these producers continue to receive subsidies from the GOC.

[114] Based on the information discussed above, the Canadian producers argue that it is likely that the subject goods shipped to Canada would continue to be subsidized.

Parties Contending that Continued or Resumed Subsidizing is Unlikely

[115] None of the parties contended that continued or resumed subsidizing of subject goods from China is unlikely should the CITT's finding expire.

CONSIDERATION AND ANALYSIS - SUBSIDIZING

[116] In making a determination under paragraph 76.03(7)(a) of SIMA whether the expiry of the finding in respect of goods from China is likely to result in the continuation or resumption of subsidizing of these goods, the CBSA may consider factors identified in subsection 37.2(1) of the SIMR, as well as any other factors relevant in the circumstances.

[117] No Chinese exporters provided a response to the ERQ, nor did they file case briefs or reply submissions. No importers provided an opinion on the likelihood of continued or resumed subsidizing. Further, no case briefs or reply submissions were received from any of the importers that imported subject goods during the POR. The GOC did not provide a response to the ERQ, nor did the GOC provide a case brief or reply submission.

[118] In the absence of participation from Chinese exporters and the GOC and only having received ERQ responses from importers of subject goods that did not express an opinion on the likelihood of continued or resumed subsidizing, the CBSA relied on other information in assessing the likelihood of continued or resumed subsidization should the CITT's finding be rescinded.

[119] Guided by the aforementioned factors and having considered the information on the administrative record, the following represents a summary of the CBSA's analysis conducted in this expiry review investigation with respect to subsidizing.

[120] In the original photovoltaic modules and laminates subsidy investigation, the CBSA investigated 349 subsidy programs. Information concerning these programs is available in the CBSA's Statement of Reasons for the original investigation concerning photovoltaic modules and laminates.⁵⁰

[121] The GOC provided a response to the government subsidy RFI that was sent to them as part of the original investigation. As noted in the CBSA's Final Determinations Statement of Reasons, in general, the GOC's response was limited in scope, questions were answered only in reference to responding exporters and the GOC did not provide information for subsidy programs which were not already identified by exporters who provided sufficient information in response to the exporter subsidy RFI. This significantly impeded the CBSA's investigation as the required information, relating to the financial contribution, benefit and specificity, was not provided to enable the determination of the amount of subsidy in the prescribed manner, pursuant to subsection 30.4(1) of SIMA. It also limited the CBSA's ability to determine whether solar producers, or other suppliers of goods and services, including the providers of financial services, are public bodies.

[122] Due to this lack of information, subsidy amounts for all exporters were determined under a ministerial specification, pursuant to subsection 30.4(2) of SIMA based on the best information available to the CBSA.

[123] For each of the nine exporters that provided sufficient information in response to the RFI, an individual amount of subsidy was determined under ministerial specification, based on the information provided in response to the RFI and obtained during the on-site verification or desk audit.

[124] It was found that 100% of the goods exported from China were subsidized during the original investigation. Since the CITT's finding, the CBSA has not conducted any re-investigations to update amounts of subsidy for photovoltaic modules and laminates.

[125] Since the CITT's findings concerning photovoltaic modules and laminates have been in place, the CBSA has conducted five additional subsidy investigations involving China, which brings the current total to 23 countervailing measures in force applicable to Chinese goods sold to Canada. In each of these cases the CBSA has identified a significant number of potentially actionable subsidy programs including preferential tax policies, and grants involving: development assistance, property tax exemptions, research and development, reimbursement of patent fees and reimbursement of loan interest that may also be available to producers of photovoltaic modules and laminates. Detailed descriptions of the programs and explanations as to why they were regarded as countervailable subsidies are contained in the CBSA's Statement of Reasons issued at the final determination for each investigation.⁵¹

⁵⁰ CBSA – *Statement of Reasons* – Certain Photovoltaic Modules and Laminates - Final Determination; June 18, 2015

⁵¹ See CBSA website at: <http://www.cbsa.gc.ca/sima-lmsi/i-e/menu-eng.html>

[126] A number of recent expiry review investigations conducted by the CBSA concerning goods imported from China have determined that the expiry of the respective finding is likely to result in the continued subsidizing of the goods if the findings were rescinded. Specifically, a recent expiry review investigation concluded by the CBSA on July 3, 2020 regarding oil country tubular goods from China determined that there was a likelihood of continued subsidizing if the finding were to be rescinded.⁵² Another recent expiry review investigation concluded by the CBSA on May 7, 2020 regarding concrete reinforcing bar from China determined that there was a likelihood of continued subsidizing if the finding were to be rescinded.⁵³

[127] While these recent CBSA expiry review decisions do not act as evidence that the subsidizing of subject goods will continue or resume if the finding concerning photovoltaic modules and laminates were to be rescinded, they do speak to the fact that the GOC, in general, continues to provide a variety of support measures to manufacturers, including financial contributions to producers exporting to Canada.

[128] Due to the non-participation in this expiry review investigation by the GOC or any producers or exporters in China of photovoltaic modules and laminates, there is limited information available with respect to current subsidy programs specifically applicable to producers and exporters of photovoltaic modules and laminates in China. However, the administrative record does include evidence of the continued availability of subsidy programs for producers of photovoltaic modules and laminates in China.

[129] As discussed in the dumping section of this report, photovoltaic modules and laminates from China are also subject to countervailing measures in the United States. This finding has been in place since 2012. The US International Trade Administration (US ITA) has conducted a number of administrative reviews and has consistently found that producers of photovoltaic modules and laminates in China are receiving subsidies. Most recently, in a memorandum published in March 2018, as part of a sunset review, the US ITA noted:

In the three administrative reviews completed since the issuance of the CVD Order, Commerce found that respondents continued to receive countervailable subsidies. Commerce found no information indicating changes in the programs found countervailable during the investigation. In addition, in the first administrative review, Commerce identified additional countervailable subsidy programs. Finally, no party submitted evidence to demonstrate that the countervailable programs have expired or been terminated. Moreover, neither the GOC nor other respondent interested parties participated in this sunset review. Based on the above considerations, Commerce determines that there is a likelihood of continuation or recurrence of countervailable subsidies.⁵⁴

⁵² *Ibid*

⁵³ *Ibid*

⁵⁴ Exhibit 1 (PRO) – CITT's Administrative Record Number RR-2020-001 - Confidential Case Brief of the Canadian Producers: Public Attachment Public Attachment 50 – pg. 9

[130] Jinko Solar, one of the largest producers of photovoltaic modules and laminates in China confirmed receipt of subsidies from the GOC in their 2019 annual report. Jink Solar noted:

*We received government grants totaling RMB147.9 million, RMB52.2 million and RMB63.0 million (US\$9.1 million) for 2017, 2018 and 2019, respectively, which included government grants for our production scale expansion, technology upgrades, export market development and solar power project development. We cannot assure you that we will continue to receive government grants and subsidies in future periods at a similar level or at all.*⁵⁵

[131] The downstream market for photovoltaic modules and laminates is also dependant on subsidies from the GOC, Jinko Solar noted the following in their 2019 annual report:

*As a substantial part of our operations are in the PRC, the policies and regulations adopted by the PRC government towards the solar energy industry are important to the continuing success of our business. Although there has been regulatory support for solar power generation such as subsidies, preferential tax treatment and other economic incentives in recent years, future government policies may not be as supportive.*⁵⁶

[132] On the basis of the above, there are strong indications that the GOC will likely continue to subsidize its domestic producers of photovoltaic modules and laminates in the future.

Determination Regarding Likelihood of Continued or Resumed Subsidizing

[133] Based on the information on the administrative record in respect of the continued availability of subsidy programs for producers and exporters of photovoltaic modules and laminates in China and the countervailing measures against Chinese photovoltaic modules and laminates in other jurisdictions, the CBSA determined that the expiry of the finding is likely to result in the continuation or resumption of subsidizing of certain photovoltaic modules and laminates originating in or exported from China.

⁵⁵ Exhibit 27 (NC) – Articles, Reports and CBSA Research – Jinko Solar 2019 Annual Report, pg. 8

⁵⁶ Exhibit 27 (NC) – Articles, Reports and CBSA Research – Jinko Solar 2019 Annual Report, pg. 9

CONCLUSION

[134] For the purpose of making a determination in this expiry review investigation, the CBSA conducted its analysis within the scope of the factors found under subsection 37.2(1) of the SIMR. Based on the foregoing consideration of pertinent factors and analysis of information on the record, on October 16, 2020 the CBSA made a determination pursuant to paragraph 76.03(7)(a) of SIMA that the expiry of the finding made by the CITT on July 3, 2015, in Inquiry No. RR-2014-003, in respect of certain photovoltaic modules and laminates originating in or exported from China:

- i. is likely to result in the continuation or resumption of dumping of the goods into Canada; and
- ii. is likely to result in the continuation or resumption of subsidizing of the goods exported to Canada.

FUTURE ACTION

[135] The CITT has now initiated its inquiry to determine whether the expiry of the finding with respect to the dumping and subsidizing of the goods from China is likely to result in injury. The CITT's Expiry Review schedule indicates that it will make its decision by March 25, 2021.

[136] If the CITT determines that the expiry of the finding with respect to the goods is likely to result in injury, the finding will be continued in respect of those goods, with or without amendment. If this is the case, the CBSA will continue to levy anti-dumping and/or countervailing duties on dumped and/or subsidized importations of the subject goods.

[137] If the CITT determines that the expiry of the finding with respect to the goods is not likely to result in injury, the finding will be rescinded in respect of those goods. Anti-dumping and/or countervailing duties would then no longer be levied on importations of the subject goods, and any anti-dumping and/or countervailing duties paid in respect of goods that were released after the date that the finding was scheduled to expire will be returned to the importer.

INFORMATION

[138] For further information, please contact the officer listed below:

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