

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: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: (Insert date of publication in the *Federal Register*.)

SUMMARY: On May 25, 2012, the Department of Commerce ("Department") published its preliminary determination of sales at less than fair value ("LTFV"), postponement of final determination and affirmative preliminary determination of critical circumstances in the antidumping investigation of crystalline silicon photovoltaic cells, whether or not assembled into modules ("solar cells"), from the People's Republic of China ("PRC").¹ On June 25, 2012, the Department published its *Preliminary Determination Correction* in this antidumping investigation.² The Department invited interested parties to comment on the *Preliminary Determination*. Based on the Department's analysis of the comments received, the Department has made changes from the *Preliminary Determination*. The Department determines that solar cells from the PRC are being, or are likely to be, sold in the United States at LTFV, as provided in section 735 of the Tariff Act of 1930, as amended (the "Act"). The final dumping margins for this investigation are listed in the "Final Determination" section below.

¹ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Affirmative Preliminary Determination of Critical Circumstances*, 77 FR 31309 (May 25, 2012) ("*Preliminary Determination*").

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SUPPLEMENTARY INFORMATION:

Background

The Department published its *Preliminary Determination* on May 25, 2012.³ On May 22 and 25, 2012, Delsolar Co., Ltd./DelSolar (Wujiang) Ltd. and JinkoSolar International Limited, respectively submitted requests that the Department correct errors in their company names that appeared in the *Preliminary Determination*.⁴ The Department made the requested corrections and published its *Preliminary Determination Correction* notice on June 25, 2012.

Between May 28, 2012 and June 25, 2012, the Department conducted verifications of the mandatory respondents Wuxi Suntech Power Co. Ltd., Suntech America, Inc., Suntech Arizona, Inc. (collectively, “Wuxi Suntech”), Changzhou Trina Solar Energy Co., Ltd. (“Trina”), and certain of their affiliates.⁵

Between July 9, 2012, and July 26, 2012, Wuxi Suntech, Trina, and Petitioner submitted surrogate value and rebuttal surrogate value comments.

² See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Determination Correction*, 77 FR 37877 (June 25, 2012) (“*Preliminary Determination Correction*”).

³ See *Preliminary Determination*.

⁴ See Letter from JinkoSolar International Limited to the Department regarding, “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China; Ministerial Error in Preliminary Determination,” dated May 25, 2012. See also Letter from DelSolar Co., Ltd. and DelSolar (Wujiang) Ltd. to the Department regarding, “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Request for Correction,” dated May 22, 2012.

⁵ See the “Verification” section below.

On July 24, 2012, and July 23, 2012, respectively, Wuxi Suntech and Trina submitted revised U.S. sales and FOP databases per the Department's request to provide updated databases reflecting the results of verification.

On July 30, 2012, Wuxi Suntech Power Co., Ltd., Trina, SolarWorld Industries America, Inc. ("Petitioner"), Yingli Green Energy Holding Company Limited and Yingli Green Energy Americas, Inc. (collectively, "Yingli"), Jiangsu Jiasheng Photovoltaic Technology Co., Ltd. ("Jiasheng"); Shanghai Chaori Solar Energy Science & Technology Co., Ltd. and Shanghai Chaori International Trading Corporation Ltd. (collectively, "Chaori"), and the Government of China ("GOC") submitted case briefs. On July 31, 2012, Small Steps Solar, Ltd. submitted a case brief, which the Department rejected because it was untimely filed.⁶ Subsequently, the Department rejected Yingli's case brief because it contained certain new factual information.⁷ Yingli resubmitted its redacted case brief on August 3, 2012.⁸ On August 6, 2012, Wuxi Suntech Power Co., Ltd., Trina, Petitioner, tenKsolar (Shanghai) Co., Ltd. and tenKsolar, Inc. (collectively "tenKsolar"), SunPower Corporation, and Sumec Hardware & Tools Co., Ltd. *et al.*⁹ submitted rebuttal briefs. Further, Wuxi Suntech, Trina Solar and Trina Solar (U.S.), Inc., and Yingli jointly submitted a rebuttal brief on August 6, 2012.

⁶ See Letter from the Department to Small Steps Solar, Ltd., regarding "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Small Steps Solar, Ltd.'s July 31, 2012 Submission," dated August 3, 2012.

⁷ See Letter from the Department to Yingli, regarding "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: July 30, 2012 Case Brief of Yingli Green Energy Holding Company Limited and Yingli Green Energy Americas, Inc.," dated August 2, 2012.

⁸ See Letter from Yingli to the Department, regarding "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Resubmission of Yingli's Case Brief," dated August 3, 2012.

⁹ The following separate rate companies jointly submitted a rebuttal brief: Sumec Hardware & Tools Co., Ltd., Ningbo Etdz Holdings Ltd., LDK Solar Hi-Tech (Nanchang) Co., Ltd., LDK Solar Hi-Tech (Suzhou) Co., Ltd., Ningbo Qixin Solar Electrical Appliance Co., Ltd., Ningbo Komaes Solar Technology Co., Ltd., Zhejiang Jiutai New Energy Co., Ltd., ET Solar Industry Limited, JingAo Solar Co., Ltd., Dongfang Electric (Yixing) MAGI Solar Power Technology Co., Ltd., Shanghai JA Solar Technology Co., Ltd., Jiangsu Sunlink PV Technology Co., Ltd., and JA Solar Technology Yangzhou Co., Ltd.

On June 25, 2012, Wuxi Suntech, Trina, Petitioner, and Yingli requested a hearing. Based on these hearing requests, on August 14, 2012, the Department held a public hearing limited to issues raised in case briefs and rebuttal briefs.

On September 7, 2012, Petitioner requested that the Department re-open the record to consider new recently available public information which indicates that Wuxi Suntech submitted potentially fraudulent financial statements to the Department.¹⁰ On September 11, 2012, the Department reopened the record for parties to comment on Petitioner's allegation of fraud. On September 14, 2012 and September 18, 2012, Wuxi Suntech and Petitioner filed comments and rebuttal comments, respectively, regarding the fraud issue raised by Petitioner.

Period of Investigation

The period of investigation ("POI") is April 1, 2011, through September 30, 2011. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, which was October 2012.¹¹

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation, as well as comments received pursuant to the Department's requests are addressed in the Issues and Decisions Memorandum. A list of the issues which the parties raised and to which the Department responded in the Issues and Decision Memorandum is attached to this notice as Appendix I. The Issues and Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at

¹⁰ See Letter from Petitioner to the Department, regarding "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Request to Reopen the Records to New Factual Information," dated September 7, 2012.

¹¹ See 19 CFR 351.204(b)(1).

<http://iaaccess.trade.gov> and in the Central Records Unit (“CRU”), room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at <http://www.trade.gov/ia/>. The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Determination

Changes Applicable to Multiple Companies

- Updated surrogate values for certain direct materials.
- Used an additional financial statement to calculate surrogate financial ratios.

Changes Specific to Wuxi Suntech

- Excluded all purchases of inputs from suppliers located in South Korea from the calculation of Wuxi Suntech’s weighted-average market economy purchase prices.
- Accepted the minor corrections submitted by Wuxi Suntech at verification and calculated its final margin using the revised sales and FOP databases that reflect these minor corrections.
- Adjusted Wuxi Suntech’s claimed offset for broken wafers based on verification findings.
- Adjusted cell consumption based on verification findings.
- Valued two additional FOP based on verification findings and post-preliminary submissions.
- Excluded two FOP based on a determination that these inputs are properly classified as overhead items.
- Treated certain silicon wafers reportedly obtained from tollers as silicon wafer purchases.

- Classified Wuxi Suntech's recycled silicon input as a direct material and its recycled silicon byproduct as an offset.
- Excluded certain transactions from the final margin calculations.
- Revised Wuxi Suntech's indirect selling expenses and applied them to a price that is net of certain adjustments.
- Revised warranty expenses.
- Revised the net price calculation based on verification findings to account for additional expenses and revenue items.
- Revised the unit-of-measure conversion factor used to value one input based on verification findings.
- Uncapped certain per-unit expense amounts.
- Found that critical circumstances do not exist with respect to Wuxi Suntech.

Changes Specific to Trina

- Calculated Trina's dumping margin using the invoice or rated quantity in watts rather than the maximum rated quantity in watts.
- Updated warranty expenses, rebates, and other minor corrections based on verification findings.
- Valued Trina's back sheets using Thai imports under the HTS categories that correspond to the primary materials which comprise the back sheet.
- Excluded two inputs that would be classified as overhead in the calculation of surrogate financial ratios.
- Did not apply the *Sigma cap* to certain suppliers' distances where the surrogates used to value the input are not based on import statistics.

- Updated the surrogate values for ocean freight and applied them to all sales on which Trina paid ocean freight.

For detailed information concerning all of the changes made, including those listed above, see the company-specific analysis and surrogate value memoranda.

Scope of the Investigation

The merchandise covered by this investigation is crystalline silicon photovoltaic cells, and modules, laminates, and panels, consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including, but not limited to, modules, laminates, panels and building integrated materials.

This investigation covers crystalline silicon photovoltaic cells of thickness equal to or greater than 20 micrometers, having a p/n junction formed by any means, whether or not the cell has undergone other processing, including, but not limited to, cleaning, etching, coating, and/or addition of materials (including, but not limited to, metallization and conductor patterns) to collect and forward the electricity that is generated by the cell.

Merchandise under consideration may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, modules, laminates, panels, building-integrated modules, building-integrated panels, or other finished goods kits. Such parts that otherwise meet the definition of merchandise under consideration are included in the scope of this investigation.

Excluded from the scope of this investigation are thin film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS).

Also excluded from the scope of this investigation are crystalline silicon photovoltaic cells, not exceeding 10,000mm² in surface area, that are permanently integrated into a consumer good whose function is other than power generation and that consumes the electricity generated by the integrated crystalline silicon photovoltaic cell. Where more than one cell is permanently integrated into a consumer good, the surface area for purposes of this exclusion shall be the total combined surface area of all cells that are integrated into the consumer good.

Modules, laminates, and panels produced in a third-country from cells produced in the PRC are covered by this investigation; however, modules, laminates, and panels produced in the PRC from cells produced in a third-country are not covered by this investigation.

Merchandise covered by this investigation is currently classified in the Harmonized Tariff System of the United States (“HTSUS”) under subheadings 8501.61.0000, 8507.20.80, 8541.40.6020, 8541.40.6030, and 8501.31.8000.¹² These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of this investigation is dispositive.

Scope Comments

The Department received comments regarding the scope of the investigation from a number of interested parties. After analyzing the comments, the Department has made no changes to the scope of this investigation. For a complete discussion of scope issues, *see* the Issues and Decision Memorandum at Comment 1.

¹² U.S. Customs and Border Protection (“CBP”) provided notification that HTSUS number 8501.31.8000 should be added to the scope of the investigation, as certain articles under this number may fall within the scope. *See* Memorandum from Gene H. Calvert through Mark Hoadley to the File, “ACE Case Reference File Update,” dated May 16, 2012.

Critical Circumstances

In the *Preliminary Determination*, we determined that critical circumstances exist for Wuxi Suntech, Trina, the separate rate respondents, and the PRC-wide entity, based on two comparisons. We examined two comparison periods starting either September 2011 or October 2011 based on imputing knowledge that a proceeding was likely in either early or late September 2011. Due to data availability in the *Preliminary Determination* we ended both comparison periods in March 2012. Specifically, we compared imports during a base period of February 2011 through August 2011 to imports from September 2011 through March 2012, and imports during a base period of April 2011 through September 2011 to imports from October 2011 through March 2012. For the final determination we have shipment data for both Wuxi Suntech and Trina for April 2012 and May 2012. Based on our practice, we have included data in our comparison period through the month of the *Preliminary Determination*, May 2012. For the final determination, we have determined that critical circumstances do not exist for Wuxi Suntech. However, critical circumstances continue to exist for Trina, the separate rate respondents, and the PRC-wide entity. For a complete discussion of critical circumstances issues see the Issues and Decision Memorandum at Comment 10.

Targeted Dumping

The statute allows the Department to employ an alternative dumping margin calculation methodology in an AD investigation under the following circumstances: (1) there is a pattern of EPs or CEPs for comparable merchandise that differ significantly among purchasers, regions, or periods of time; and (2) the Department explains why such differences cannot be taken into account using the standard average-to-average or transaction-to-transaction methodology.¹³ On

¹³ See section 777A (d)(1)(B) of the Act.

February 13, 2012, Petitioner alleged targeted dumping with respect to Wuxi Suntech's¹⁴ and Trina's¹⁵ sales to certain U.S. customers and regions, and in certain time periods. In order to determine whether the respondents engaged in targeted dumping, the Department conducted a targeted dumping analysis established in *Steel Nails*.¹⁶ The methodology employed involves a two-stage test; the first stage addresses the pattern requirement and the second stage addresses the significant-difference requirement.¹⁷ We made all price comparisons in the test using prices for comparable merchandise (*i.e.*, by control number or CONNUM). The test procedures are the same for targeted-dumping allegations involving customers, regions, and time periods. We based all of our targeted-dumping calculations on the net U.S. price that we determined for U.S. sales by Wuxi Suntech and Trina in our margin calculations.

As a result of our analysis, we have determined that for both Wuxi Suntech and Trina there is a pattern of prices for U.S. sales of comparable merchandise that differ significantly among certain purchasers, regions, and time periods in accordance with section 777A(d)(1)(B)(i) of the Act and our practice, as discussed in *Steel Nails* and as modified in *Wood Flooring*. We find, however, that the pattern of price differences can be taken into account using the standard average-to-average methodology because, based on the data before us, the average-to-average methodology does not mask differences in the patterns of prices between the targeted and non-targeted groups. Here, we determine that the standard average-to-average methodology takes

¹⁴ See Letter from Petitioner to the Department, regarding "Crystalline Silicon Photovoltaic ("CPSV") Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Targeted Dumping Allegation for Suntech," dated February 13, 2012.

¹⁵ See Letter from Petitioner to the Department, regarding "Crystalline Silicon Photovoltaic ("CPSV") Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Targeted Dumping Allegation for Trina," dated February 13, 2012.

¹⁶ See *Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value*, 73 FR 33985 (June 16, 2008) ("*Steel Nails*") and accompanying Issues and Decision Memorandum at Comments 1-9.

¹⁷ See section 777A(d)(1)(B)(i) of the Act and *Steel Nails*, and accompanying Issues and Decision Memorandum at Comment 2.

into account the price differences because the alternative average-to-transaction methodology yields a difference in the margin that is not meaningful relative to the size of the resulting margin.¹⁸ Accordingly, we have applied the standard average-to-average methodology to all of Wuxi Suntech's and Trina's U.S. sales.¹⁹

Verification

As provided in section 782(i) of the Act, the Department verified the information submitted by Wuxi Suntech and Trina for use in the final determination. The Department used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by the respondents.

Nonmarket Economy Country

The Department considers the PRC to be a nonmarket economy ("NME") country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. The Department continues to treat the PRC as an NME for purposes of this final determination.

Surrogate Country

In the *Preliminary Determination*, the Department stated that it selected Thailand as the appropriate surrogate country to use in this investigation pursuant to section 773(c)(4) of the Act based on the following: (1) it is at a similar level of economic development; (2) it is a significant producer of comparable merchandise; and (3) we have reliable data from Thailand that we can use to value the factors of production. In their case briefs, Wuxi Suntech and Trina state that

¹⁸ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) at 843 ("SAA").

¹⁹ See e.g., *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From Indonesia: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 24885, 24888 (May 6, 2010) unchanged in *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From Indonesia: Final Determination of Sales at Less Than Fair Value*, 75 FR 59223

India should be selected as surrogate country because India's solar cell industry and population resembles that of the PRC, Thai surrogate value data are deficient for certain inputs, and the record lacks financial statements for Thai producers of identical merchandise. Petitioner argues that India is not economically comparable to the PRC, and that the Department should continue to use Thailand as the surrogate country. As discussed in the Issues and Decision Memorandum, the Department continues to find that Thailand is the appropriate surrogate country for this investigation. For a complete discussion of surrogate country issues, *see* the Issues and Decision Memorandum at Comment 4.

Separate Rate Companies

In proceedings involving NME countries, the Department holds a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of the subject merchandise in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

In the instant investigation, the Department received timely-filed separate rate applications from 68 companies ("Separate Rate Applicants"). Interested parties have submitted a number of comments regarding some of the companies applying for separate rate status. After considering the comments, the Department has not changed its position from the *Preliminary Determination* with respect to the companies seeking separate rate status.

The Department continues to find that the evidence placed on the record of this investigation by the Separate Rate Applicants that were granted separate rate status in the *Preliminary Determination* demonstrates both *de jure* and *de facto* absence of government

(September 27, 2010) and *Polyethylene Retail Carrier Bags From Indonesia: Final Determination of Sales at Less Than Fair Value*, 75 FR 16431 (April 1, 2010) and accompanying Issues and Decision Memorandum at Comment 1.

control with respect to each company's respective exports of the merchandise under investigation. Further, the Department has continued to deny certain companies separate rate status as was the case in the *Preliminary Determination*. For a complete discussion of separate rate issues, see the Issues and Decision Memorandum at Comment 6.

The separate rate is normally determined based on the weighted-average of the estimated dumping margins established for exporters and producers individually investigated, excluding zero and *de minimis* margins or margins based entirely on adverse facts available ("AFA").²⁰ In this investigation, both Wuxi Suntech and Trina have estimated weighted-average dumping margins which are above *de minimis* and which are not based on total AFA. Because there are only two relevant weighted-average dumping margins for this final determination, using a weighted-average of these two margins risks disclosure of business proprietary information ("BPI") data. Therefore, the Department has calculated both a simple average and a weighted-average of the two final dumping margins calculated for the mandatory respondents using public values for sales of subject merchandise reported by respondents and used the average that provides a more accurate proxy for the weighted-average margin of both companies calculated using BPI data, which in this investigation is 25.96 percent.²¹

Use of Facts Available and Adverse Facts Available

Section 776(a) of the Act provides that the Department shall apply facts available ("FA") if (1) necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to

²⁰ See section 735(c)(5)(A) of the Act.

²¹ See the October 9, 2012, memorandum from Jeff Pedersen to the File entitled "Calculation of the Final Margin for Separate Rate Recipients."

subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying FA when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

PRC-Wide Entity

In the *Preliminary Determination*, the Department determined that certain PRC exporters/producers did not respond to the Department's requests for information and did not establish that they were separate from the PRC-wide entity. Thus, the Department has found that these PRC exporters/producers are part of the PRC-wide entity and the PRC-wide entity has not responded to our requests for information. Because the PRC-wide entity did not provide the Department with requested information, pursuant to section 776(a)(2)(A) of the Act, the Department continues to find it appropriate to base the PRC-wide rate on FA.

The Department determines that, because the PRC-wide entity did not respond to our request for information, the PRC-wide entity has failed to cooperate to the best of its ability. Therefore, pursuant to section 776(b) of the Act, the Department finds that, in selecting from among the FA, an adverse inference is appropriate for the PRC-wide entity.

Because the Department begins with the presumption that all companies within an NME country are subject to government control, and because only the mandatory respondents and certain Separate Rate Applicants have overcome that presumption, the Department is applying a

single antidumping rate to all other exporters of subject merchandise from the PRC. Such companies have not demonstrated entitlement to a separate rate.²²

Selection of the Adverse Facts Available Rate for the PRC-Wide Entity

In determining a rate for AFA, the Department's practice is to select a rate that is sufficiently adverse "as to effectuate the purpose of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner."²³ Further, it is the Department's practice to select a rate that ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."²⁴ Thus, it is the Department's practice to select as AFA the higher of the (a) highest margin alleged in the petition or (b) the highest calculated rate of any respondent in the investigation.²⁵ In order to determine the probative value of the margins in the petition for use as AFA for purposes of this final determination, we analyzed the U.S. prices and normal values for each of the individually investigated parties. Based on this analysis, we determined that the price and normal value used to derive the highest margin contained in the petition are within the range of the U.S. prices and normal values for the respondents in this investigation.²⁶ Thus the highest petition margin has probative value. Accordingly, we have corroborated the petition margin to the extent practicable within the meaning of section 776(c) of the Act.

²² See, e.g., *Notice of Final Determination of Sales at Less Than Fair Market Value: Synthetic Indigo From the People's Republic of China*, 65 FR 25706, 25707 (May 2, 2000).

²³ See *Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

²⁴ See *Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review*, 70 FR 69937, 69939 (November 18, 2005)(quoting the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong., 2d Session at 870 (1994)).

²⁵ See, e.g., *Seamless Refined Copper Pipe and Tube From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 60725, 60729 (October 1, 2010).

²⁶ See Wuxi Suntech and Trina Solar Analysis Memoranda.

The dumping margin for the PRC-wide entity applies to all entries of the merchandise under investigation except for entries of merchandise under investigation from the exporter/producer combinations listed in the chart in the “Final Determination” section below.

Combination Rates

In the *Initiation Notice*, the Department stated that it would calculate combination rates for respondents that are eligible for a separate rate in this investigation. This practice is described in Policy Bulletin 05.1, available at <http://www.trade.gov/ia/>.

Final Determination

The Department determines that the following weighted-average dumping margins exist for the period April 1, 2011, through September 30, 2011.

Exporter	Producer	Weighted-Average Percent Margin
Changzhou Trina Solar Energy Co., Ltd. and Trina Solar (Changzhou) Science & Technology Co., Ltd.	Changzhou Trina Solar Energy Co., Ltd.	18.32
	Trina Solar (Changzhou) Science & Technology Co., Ltd.	18.32
Wuxi Suntech Power Co., Ltd., Luoyang Suntech Power Co., Ltd., Suntech Power Co., Ltd. and Wuxi Sun-shine Power Co., Ltd.	Wuxi Suntech Power Co., Ltd	31.73
	Luoyang Suntech Power Co., Ltd.	31.73
	Suntech Power Co., Ltd.	31.73
	Wuxi Sun-shine Power Co., Ltd.	31.73
Baoding Tianwei Yingli New Energy Resources Co., Ltd.	Baoding Tianwei Yingli New Energy Resources Co., Ltd.	25.96
	Yingli Energy (China) Company Limited	25.96
Tianwei New Energy (Chengdu) PV Module Co., Ltd.	Tianwei New Energy (Chengdu) PV Module Co., Ltd.	25.96
Canadian Solar International Limited	Canadian Solar Manufacturing (Changshu) Inc.	25.96

	Canadian Solar Manufacturing (Luoyang) Inc.	25.96
Canadian Solar Manufacturing (Changshu) Inc.	Canadian Solar Manufacturing (Changshu), Inc.	25.96
Canadian Solar Manufacturing (Luoyang) Inc.	Canadian Solar Manufacturing (Luoyang), Inc.	25.96
Hanwha Solarone (Qidong) Co., Ltd.	Hanwha Solarone (Qidong) Co., Ltd.	25.96
CEEG (Shanghai) Solar Science Technology Co., Ltd.	CEEG (Shanghai) Solar Science Technology Co., Ltd.	25.96
	CEEG Nanjing Renewable Energy Co., Ltd.	25.96
CEEG Nanjing Renewable Energy Co., Ltd.	CEEG Nanjing Renewable Energy Co., Ltd.	25.96
Jiawei Solarchina Co., Ltd.	Jiawei Solarchina (Shenzhen) Co., Ltd.	25.96
Yingli Energy (China) Company Limited	Yingli Energy (China) Company Limited	25.96
	Baoding Tianwei Yingli New Energy Resources Co., Ltd.	25.96
LDK Solar Hi-tech (Nanchang) Co., Ltd.	LDK Solar Hi-tech (Nanchang) Co., Ltd.	25.96
LDK Solar Hi-tech (Suzhou) Co., Ltd.	LDK Solar Hi-tech (Suzhou) Co., Ltd.	25.96
Jiawei Solarchina (Shenzhen) Co., Ltd.	Jiawei Solarchina (Shenzhen) Co., Ltd.	25.96
Changzhou NESL Solartech Co., Ltd	Changzhou NESL Solartech Co., Ltd	25.96
China Sunergy (Nanjing) Co., Ltd.	China Sunergy (Nanjing) Co., Ltd.	25.96
Chint Solar (Zhejiang) Co., Ltd.	Chint Solar (Zhejiang) Co., Ltd.	25.96
Suzhou Shenglong PV-Tech Co., Ltd.	Suzhou Shenglong PV-TECH Co., Ltd.	25.96
tenKsolar (Shanghai) Co., Ltd.	tenKsolar (Shanghai) Co., Ltd.	25.96
Upsolar Group, Co., Ltd.	HC Solar Power Co., Ltd.	25.96
	Zhiheng Solar Inc.	25.96
	Zhejiang Leye Photovoltaic Science & Technology Co., Ltd.	25.96
	Tianwei New Energy (Chengdu) PV Module Co., Ltd.	25.96
	Zhejiang ZG-Cells Co., Ltd.	25.96
	Zhejiang Xinshun Guangfu Science and Technology Co., Ltd.	25.96
	Zhejiang Jiutai New Energy Co., Ltd.	25.96

Wanxiang Import & Export Co., Ltd.	Zhejiang Wanxiang Solar Co., Ltd	25.96
Jinko Solar Import and Export Co., Ltd.	Jinko Solar Co., Ltd.	25.96
JinkoSolar International Limited	Jinko Solar Co., Ltd.	25.96
CNPV Dongying Solar Power Co., Ltd	CNPV Dongying Solar Power Co., LTD	25.96
CSG PVTech Co., Ltd.	CSG PVTech Co., Ltd.	25.96
Delsolar Co., Ltd.	DelSolar (Wujiang) Ltd.	25.96
Dongfang Electric (Yixing) MAGI Solar Power Technology Co., Ltd.	Dongfang Electric (Yixing) MAGI Solar Power Technology Co., Ltd.	25.96
Eoply New Energy Technology Co., Ltd.	Eoply New Energy Technology Co., Ltd.	25.96
ERA Solar Co., Ltd.	ERA Solar Co., Ltd.	25.96
ET Solar Energy Limited	ET Solar Industry Limited	25.96
Hangzhou Zhejiang University Sunny Energy Science and Technology Co., Ltd.	Hangzhou Zhejiang University Sunny Energy Science and Technology Co., Ltd.	25.96
Himin Clean Energy Holdings Co., Ltd.	Himin Clean Energy Holdings Co., Ltd.	25.96
JA Solar Technology Yangzhou Co., Ltd.	JingAo Solar Co., Ltd.	25.96
Jetion Solar (China) Co., Ltd.	Jetion Solar (China) Co., Ltd.	25.96
Jiangsu Green Power PV Co., Ltd.	Jiangsu Green Power PV Co., Ltd.	25.96
Jiangsu Sunlink PV Technology Co., Ltd.	Jiangsu Sunlink PV Technology Co., Ltd.	25.96
JingAo Solar Co., Ltd.	JingAo Solar Co., Ltd.	25.96
Konca Solar Cell Co., Ltd.	Konca Solar Cell Co., Ltd.	25.96
Leye Photovoltaic Co., Ltd.	Leye Photovoltaic Co., Ltd.	25.96
Lightway Green New Energy Co., Ltd.	Lightway Green New Energy Co., Ltd.	25.96
Motech (Suzhou) Renewable Energy Co., Ltd.	Motech (Suzhou) Renewable Energy Co., Ltd.	25.96
Ningbo ETDZ Holdings, Ltd	Hangzhou Zhejiang University Sunny Energy Science and Technology Co., LTD	25.96
Ningbo Komaes Solar Technology Co., Ltd	Ningbo Komaes Solar Technology Co., Ltd	25.96
Ningbo Qixin Solar Electrical Appliance Co., Ltd	Ningbo Qixin Solar Electrical Appliance Co., Ltd	25.96
Ningbo Ulica Solar Science & Technology Co., Ltd.	Ningbo Ulica Solar Science & Technology Co., Ltd.	25.96

Perlight Solar Co., Ltd.	Perlight Solar Co., Ltd.	25.96
Risen Energy Co., Ltd.	Risen Energy Co., Ltd.	25.96
Shanghai BYD Company Limited	Shanghai BYD Company Limited	25.96
Shanghai JA Solar Technology Co., Ltd.	Shanghai JA Solar Technology Co., Ltd.	25.96
Shanghai Solar Energy Science & Technology Co., Ltd.	Shanghai Solar Energy Science & Technology Co., Ltd.	25.96
Shenzhen Topray Solar Co., Ltd.	Shenzhen Topray Solar Co., Ltd.	25.96
Solarbest Energy-Tech (Zhejiang) Co., Ltd.	Solarbest Energy-Tech (Zhejiang) Co., Ltd.	25.96
Sopray Energy Co., Ltd.	Sopray Energy Co., Ltd.	25.96
Sumec Hardware & Tools Co., Ltd.	Phono Solar Technology Co., Ltd	25.96
Sun Earth Solar Power Co., Ltd.	Sun Earth Solar Power Co., Ltd.	25.96
Yuhuan Sinosola Science & Technology Co., Ltd	Yuhuan Sinosola Science & Technology Co., Ltd	25.96
Yuhuan Solar Energy Source Co., Ltd.	Yuhuan Solar Energy Source Co., Ltd.	25.96
Zhejiang Jiutai New Energy Co., Ltd.	Zhejiang Topoint Photovoltaic Co., Ltd.	25.96
Zhejiang Shuqimeng Photovoltaic Technology Co., Ltd.	Zhejiang Shuqimeng Photovoltaic Technology Co., Ltd.	25.96
Zhejiang Sunflower Light Energy Science & Technology Limited Liability Company	Zhejiang Sunflower Light Energy Science & Technology Limited Liability Company	25.96
PRC-Wide Rate		249.96

Disclosure

We intend to disclose to parties the calculations performed in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

As noted above, the Department found that critical circumstances exist with respect to imports of merchandise under consideration from Trina, the Separate Rate Recipients (“SR Recipients”), and the PRC-wide entity. In accordance with section 735(c)(1)(B) of the Act, the Department will instruct CBP to continue to suspend liquidation of all appropriate entries of

subject merchandise, as described in the “Scope of Investigation” section of this notice, from Trina, the SR Recipients, and the PRC-wide entity that were entered, or withdrawn from warehouse for consumption on or after the date 90 days prior of the publication of the *Preliminary Determination* in the *Federal Register*. Since critical circumstances do not exist for Wuxi Suntech, the Department will instruct CBP to suspend liquidation of all appropriate entries of subject merchandise from Wuxi Suntech that were entered, or withdrawn from warehouse for consumption on or after May 25, 2012, the publication date of the *Preliminary Determination* in the *Federal Register*. We will also instruct CBP to issue a refund for all appropriate entries of subject merchandise from Wuxi Suntech that were suspended up to 90 days prior to the publication date of the *Preliminary Determination*.

Further, the Department will instruct CBP to require a cash-deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds U.S. price, adjusted where appropriate for export subsidies, as follows: (1) the rate for the exporter/producer combinations listed in the table above will be the rate we have determined in this final determination; (2) for all PRC exporters of merchandise under consideration which have not received their own rate, the cash-deposit rate will be the PRC-wide rate; and (3) for all non-PRC exporters of merchandise under consideration which have not received their own rate, the cash-deposit rate will be the rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter.

Certification Requirements

As noted above, the scope of both the AD and CVD investigations of solar cells cover modules, laminates, and panels produced in a third-country from solar cells produced in the PRC; however, modules, laminates, and panels produced in the PRC from solar cells produced in

a third-country are not covered by the investigations. If an importer imports solar panels/modules that it claims do not contain solar cells that were produced in the PRC, the importer is required to maintain the importer certification in Appendix II to this notice. The importer and exporter are also required to maintain the exporter certification in Appendix II to this notice if the exporter of the panels/modules for which the importer is making the claim is located in the PRC. We note that while importers and PRC-exporters will be required to maintain the aforementioned certifications and documentation, they will not have to provide this information to CBP as part of the entry documents, unless the certification or documentation is specifically requested by CBP.

If it is determined that the certification or documentation requirements noted in the certification have not been met, the Department intends to instruct CBP to suspend all unliquidated entries for which these requirements were not met and require the posting of a cash deposit or bond on those entries equal to the PRC-wide rate in effect at the time of the entry. If a solar panel/module contains some solar cells produced in the PRC, but the importer is unable or unwilling to identify the total value of the panel/module subject to the order, the Department intends to instruct CBP to suspend all unliquidated entries for which the importer has failed to supply this information and require the posting of a cash deposit or bond on the total entered value of the panel/module equal to the PRC-wide rate in effect at the time of the entry.²⁷

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (“ITC”) of the final affirmative determination of sales at LTFV. As the Department’s final determination is affirmative, in accordance with section 735(b)(2) of the Act,

²⁷ See memorandum from Maisha Cryor to Christian Marsh regarding “Crystalline Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China: Third-Country Case Numbers and

the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of subject merchandise, or sales (or the likelihood of sales) for importation, of the subject merchandise. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to the parties subject to administrative protective order (“APO”) of their responsibility concerning the disposition of propriety information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation,

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.



Paul Piquado
Assistant Secretary
for Import Administration

9 OCTOBER 2012
(Date)

Appendix I

ISSUES FOR FINAL DETERMINATION

General Issues

- Comment 1: Scope of the Investigation
- Comment 2: Selection of Surrogate Financial Statements
- Comment 3: Date of Sale
- Comment 4: Surrogate Country
- Comment 5: Labor Rate
- Comment 6: Separate Rates
- Comment 7: Overhead Items
- Comment 8: Exclusion of Import Data with Values but Quantities of Zero
- Comment 9: Surrogate Value for Wafers
- Comment 10: Critical Circumstances
- Comment 11: Allegations of Fraud
- Comment 12: Application of *Sigma*
- Comment 13: Double Remedies and Concurrent AD and CVD Investigations
- Comment 14: Collection of Antidumping Duties
- Comment 15: Surrogate Value for Quartz Crucibles
- Comment 16: Surrogate Value for Aluminum Frames
- Comment 17: Surrogate Value for Tin Ribbon
- Comment 18: Surrogate Value for Glass Plate for Wafer Slicing

Issues Relating To Trina

- Comment 19: Unreported FOPs by Cell Suppliers and Tollers
- Comment 20: Ocean Freight Expenses
- Comment 21: Errors Identified at Trina U.S.'s Verification
- Comment 22: Source for Barge Freight
- Comment 23: Whether to Apply NME Freight Charges to All of Trina's Sales
- Comment 24: Surrogate Value for Polysilicon
- Comment 25: Surrogate Value for Suspension
- Comment 26: Surrogate Value for Trina's Back Sheet

Issues Relating To Wuxi Suntech

- Comment 27: Whether Partial AFA Should be Used in Place of Unreported FOPs for Modules Assembled Under Back-to-Back Agreements
- Comment 28: Whether Suntech America's Product Recall Expenses Should be Included In Indirect Selling Expenses
- Comment 29: Exclusion of South Korean MEP Data
- Comment 30: Acceptance of Minor Corrections Submitted at Verification
- Comment 31: Exclusion of Sample Sales from the Margin Calculation

- Comment 32: Valuing Inputs from NME Suppliers When the Inputs Were Used in Further Manufacturing
- Comment 33: Whether Partial AFA Should be Applied to Value Labor and Energy for Tolloed Modules
- Comment 34: Whether the ISE Rate Should be Applied to Gross Unit Price Less Billing Adjustments and Early Payment Discounts
- Comment 35: Suntech Arizona Financial Expense Rate
- Comment 36: Whether Suntech America's Bad Debt Expense Should be Included
- Comment 37: Verification Findings
- Comment 38: Whether Certain Reported Market Economy Purchases Were Purchased from a Market Economy Supplier
- Comment 39: Surrogate Value for PEG
- Comment 40: Surrogate Value for Silica Purge of Liquid (IPA)
- Comment 41: Surrogate Value for Hydrochloric Acid
- Comment 42: Diamond Wire Saw Blade Surrogate Value
- Comment 43: Whether Back-to-Back Arrangements Should be Considered Purchases or Tolling

Issues Relating To Other Respondents

- Comment 44: Voluntary Respondent Treatment of Yingli
- Comment 45: Treatment of Jiasheng's Separate Rate Application
- Comment 46: Treatment of Chaori's Separate Rate Application

Appendix II

Importer Certification

I hereby certify that I am an official of insert name of company importing solar panels/modules, that I have knowledge of the facts regarding the importation of the solar panels/modules or other products containing solar panels/modules that entered under entry number(s) insert entry number(s) covered by the certification, and that these solar panels/modules do not contain solar cells produced in the People's Republic of China. By signing this certificate, I also hereby certify that insert name of company importing solar panels/modules maintains sufficient documentation supporting this certification for all solar cells used to produce the solar panels/modules imported under the above-referenced entry number(s). I understand that agents of the importer, such as brokers, are not permitted to make this certification. Also, I am aware that records pertaining to this certification may be requested by CBP. I understand that this certification should be completed at the time of the entry. Also, I understand that failure to maintain the required certification or failure to substantiate the claim that the panels/modules do not contain solar cells produced in the People's Republic of China will result in suspension of all unliquidated entries for which these requirements were not met and the requirement that the importer post an AD cash deposit or, where applicable, a bond, on those entries equal to the PRC-wide rate in effect at the time of the entry and a CVD cash deposit, or where applicable, a bond rate equal to the all-others rate in effect at the time of the entry.

Name of Company Official

Title

Date

Exporter Certification

I hereby certify that I am an official of insert name of company exporting solar panels/modules, that I have knowledge of the facts regarding the exportation of the solar panels/modules or other products containing solar panels/modules identified below, and that these solar panels/modules do not contain solar cells produced in the People's Republic of China. By signing this certificate, I also hereby certify that insert name of company exporting solar panels/modules maintains sufficient documentation supporting this certification for all solar cells used to produce the solar panels/modules identified below. I am aware that records pertaining to this certification may be subject to verification by Department of Commerce officials and I consent to verification with respect to this certification and these records. I understand that this certification should be completed at the time of shipment. I also understand that failure to maintain the

required certification or failure to substantiate the claim that the panels/ modules do not contain solar cells produced in the People's Republic of China will result in suspension of all unliquidated entries for which these requirements were not met and the requirement that the importer post an AD cash deposit or, where applicable, a bond, on those entries equal to the PRC-wide rate in effect at the time of the entry and a CVD cash deposit, or where applicable, a bond rate equal to the all-others rate in effect at the time of the entry.

The exports covered by this certification are insert invoice numbers, purchase order numbers, export documentation, etc. to identify the exports covered by the certification.

Name of Company Official

Title

Date