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DEPARTMENT OF COMMERCE

International Trade Administration

A-570-979

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2012-2013

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

SUMMARY: The Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on crystalline silicon photovoltaic cells, whether or not assembled into modules ("solar cells"), from the People's Republic of China ("PRC"). The period of review ("POR") is May 25, 2012, through November 30, 2013. The administrative review covers two mandatory respondents, Yingli Energy (China) Company Limited and Wuxi Suntech Power Co., Ltd. The Department preliminarily finds that the mandatory respondent Yingli Energy (China) Company Limited sold subject merchandise in the United States at prices below normal value ("NV") during the POR and that Wuxi Suntech Power Co., Ltd., is not eligible for a separate rate. Interested parties are invited to comment on these preliminary results.

DATES: Effective Date: Insert date of publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander or Drew Jackson, AD/CVD Operations, Office IV, Enforcement & Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0182 or (202) 482-4406, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise covered by the order 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.¹ Merchandise covered by this review is classifiable under subheading 8501.61.0000, 8507.20.80, 8541.40.6020, 8541.40.6030, and 8501.31.8000 of the Harmonized Tariff Schedule of the United States (“HTSUS”). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Preliminary Determination of No Shipments

Based on an analysis of U.S. Customs and Border Protection (“CBP”) information, and comments provided by a number of companies, the Department preliminarily determines that 23 of the companies that claimed no shipments during this POR did not have any reviewable transactions during the POR.² We found that two companies which claimed no exports, sales or entries of subject merchandise during the POR did, in fact, sell subject merchandise to the United States during the POR. Neither of these companies filed a separate rate application or certification and thus they have not established their entitlement to a separate rate in this review.

¹ For a complete description of the scope of the order, see “Decision Memorandum for the Preliminary Results of the 2012-2013 Antidumping Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China” from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, issued concurrently with and hereby adopted by this notice (“Preliminary Decision Memorandum”).

² We treated two companies which reported making no shipments during the POR, Luoyang Suntech Power Co., Ltd. and Suntech Power Co., Ltd., as part of a single entity together with the mandatory respondent, Wuxi Suntech Power Co., Ltd. See the “Preliminary Affiliation and Single Entity Determination” section of this notice.

For additional information regarding this determination, see the Preliminary Decision Memorandum.

Consistent with an announced refinement to its assessment practice in non-market economy (“NME”) cases, the Department is not rescinding this review, in part, but intends to complete the review with respect to the companies for which it has preliminarily found no shipments and issue appropriate instructions to CBP based on the final results of the review.³

Preliminary Affiliation and Single Entity Determination

Based on record evidence, the Department preliminarily finds that the mandatory respondent Yingli Energy (China) Company Limited is affiliated with the following seven companies pursuant to section 771(33)(F) of the Tariff Act of 1930, as amended (“the Act”): (1) Baoding Tianwei Yingli New Energy Resources Co., Ltd.; (2) Tianjin Yingli New Energy Resources Co., Ltd.; (3) Hengshui Yingli New Energy Resources Co., Ltd.; (4) Lixian Yingli New Energy Resources Co., Ltd.; (5) Baoding Jiasheng Photovoltaic Technology Co., Ltd.; (6) Beijing Tianneng Yingli New Energy Resources Co., Ltd.; and (7) Hainan Yingli New Energy Resources Co., Ltd. (collectively “Yingli”). Furthermore, the Department preliminarily finds that the mandatory respondent Wuxi Suntech Power Co., Ltd. is affiliated with the following three companies pursuant to section 771(33)(F) of the Act: (1) Luoyang Suntech Power Co., Ltd.; (2) Suntech Power Co., Ltd.; and (3) Wuxi Sunshine Power Co., Ltd. (collectively, “Wuxi Suntech Single Entity”). In addition, based on the information presented in this review, we preliminarily find that each of the mandatory respondents and the respective companies listed above should be treated as a single company for the purposes of this review pursuant to 19 CFR 351.401(f). For additional information, see the Preliminary Decision Memorandum.

³ See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties, 76 FR 65694, 65694-95 (October 24, 2011) and the “Assessment Rates” section, below.

PRC-Wide Entity

Several companies for which the Department initiated this review failed to respond to the Department's request for quantity and value information. Therefore, these companies are not eligible for separate rate status.⁴ Accordingly, the Department preliminarily finds that the PRC-wide entity includes these companies. Furthermore, because necessary information is not available on the record and the PRC-wide entity withheld requested information, failed to provide information in a timely manner and in the form requested, and significantly impeded this proceeding, the Department relied on facts otherwise available ("FA") to determine the PRC-wide rate.⁵

Additionally, the Department finds that the PRC-wide entity failed to cooperate by not acting to the best of its ability to comply with a request for information. Therefore, pursuant to section 776(b) of the Act, the Department is using an adverse inference when selecting from among the facts otherwise available. Thus, the Department is relying on adverse facts available ("AFA") in order to determine a margin for the PRC-wide entity, pursuant to sections 776(a)(1), 776(a)(2)(A), (B), (C) and 776(b) of the Act. For additional information, see the Preliminary Decision Memorandum.

Verification

As provided in section 782(i) of the Act, the Department verified information provided by Yingli. The Department conducted the verification using standard verification procedures including the examination of relevant sales and financial records and the selection and review of

⁴ See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 79 FR 6147 (February 3, 2014) ("Furthermore, firms to which the Department issues a Quantity and Value ("Q&V") questionnaire in the antidumping duty administrative review of solar cells and modules from the PRC must submit a timely and complete response to the Q&V questionnaire, in addition to a timely and complete Separate Rate Application or Certification in order to receive consideration for separate-rate status.").

⁵ See Section 776(a) of the Act.

original documentation containing relevant information. The results of the verification are outlined in the public version of the verification reports. The verification reports will be on file electronically via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (“ACCESS”).⁶ ACCESS is available to registered users at <https://access.trade.gov>, and is available to all parties in the Department’s Central Records Unit, located in room 7046 of the main Department of Commerce building.

Use of Partial Facts Available and Adverse Facts Available

Section 776(a) of the Act provides that the Department shall apply 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 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.

Based on findings at verification, pursuant to sections 776(a) and (b) of the Act, we are applying partial AFA to a portion of Yingli’s U.S. sales. Moreover, Yingli did not report FOP data from certain suppliers or tollers based on the specific facts on the record of this review.

⁶ On November 20, 2014, Enforcement and Compliance changed the name of the Import Administration AD and CVD Centralized Electronic Service System (“IA ACCESS”) to AD and CVD Centralized Electronic Service System (“ACCESS”). The website location was changed from <http://iaaccess.trade.gov> to <http://access.trade.gov>. See Enforcement and Compliance: Change of Electronic Filing System Name, 79 FR 69046 (November 20, 2014).

Thus, because necessary information is not available on the record, and in accordance with section 776(a)(1) of the Act, the Department is applying FA with respect to these unreported FOP data. For details regarding these determinations, see the Preliminary Decision Memorandum.

The Wuxi Suntech Single Entity's Separate Rate Status

Wuxi Sunshine, an exporter and member of the Wuxi Suntech Single Entity, reported that certain shareholders are state-owned companies.⁷ Because of the level of government ownership in Wuxi Sunshine, and the control or potential to exercise control that such ownership establishes, we preliminarily conclude that Wuxi Sunshine, and thus the Wuxi Suntech Single Entity, does not satisfy the criteria demonstrating an absence of de facto government control over export activities.⁸ Consequently, we preliminarily determine that the Wuxi Suntech Single Entity is ineligible for a separate rate.

Rate for Separate-Rate Companies Not Individually Examined

The statute and the Department's regulations do not address the establishment of a rate to be applied to individual respondents not selected for examination when the Department limits its examination in an administrative review pursuant to section 777A(c)(2)(B) of the Act. Generally, the Department looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents which we did not examine in an administrative review. Section 735(c)(5)(A) of the Act articulates a preference that we are not to calculate an all-others rate using rates which are

⁷ See Wuxi Sunshine's April 4, 2014 Separate-Rate Application at 11. The details regarding Wuxi Sunshine's ownership by the PRC government is business proprietary information and may not be publically disclosed. For further information regarding the Department's separate rate analysis, see Memorandum to Abdelali Elouaradia, Director, Office IV, AD/CVD Operations from Drew Jackson, International Trade Analyst, Office IV, AD/CVD Operations, regarding, "Antidumping Duty Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Wuxi Suntech Single Entity Separate Rate Analysis," dated December 31, 2014 ("Wuxi Suntech Separate Rate Memorandum").

⁸ Id.

zero, de minimis or based entirely on facts available. Accordingly, the Department's usual practice has been to average the weighted-average dumping margins for the selected companies, excluding rates that are zero, de minimis, or based entirely on facts available.⁹ Because we preliminarily determine that the Wuxi Suntech Single Entity is ineligible for a separate rate, the Department assigned to the companies that it did not individually examine, but which demonstrated their eligibility for a separate rate, a margin calculated for mandatory respondent Yingli.

Methodology

The Department conducted this review in accordance with section 751(a)(1)(B) of the Act. The Department calculated export prices and constructed export prices in accordance with section 772 of the Act. Given that the PRC is a NME country, within the meaning of section 771(18) of the Act, the Department calculated NV in accordance with section 773(c) of the Act.

For a full description of the methodology underlying the preliminary results of this review, see the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is made available to the public via ACCESS. In addition, a complete version of the Preliminary Decision Memorandum can be found at <http://enforcement.trade.gov/frn/>. The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

The Department preliminarily determines that the following weighted-average dumping margins exist for the POR:

⁹ See Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part, 73 FR 52823, 52824 (September 11, 2008), and accompanying Issues and Decision Memorandum at Comment 16.

Exporter	Weighted-Average Dumping Margin (Percent)
Yingli Energy (China) Company Limited/Baoding Tianwei Yingli New Energy Resources Co., Ltd./Tianjin Yingli New Energy Resources Co., Ltd./Hengshui Yingli New Energy Resources Co., Ltd./Lixian Yingli New Energy Resources Co., Ltd./Baoding Jiasheng Photovoltaic Technology Co., Ltd./Beijing Tianneng Yingli New Energy Resources Co., Ltd./Hainan Yingli New Energy Resources Co., Ltd.	1.82
Canadian Solar International Limited	1.82
Canadian Solar Manufacturing (Changshu) Inc.	1.82
Canadian Solar Manufacturing (Luoyang) Inc.	1.82
Changzhou Trina Solar Energy Co., Ltd./ Trina Solar (Changzhou) Science and Technology Co., Ltd. ¹⁰	1.82
Chint Solar (Zhejiang) Co., Ltd.	1.82
De-Tech Trading Limited HK	1.82
Eoply New Energy Technology Co., Ltd.	1.82
Hangzhou Zhejiang University Sunny Energy Science and Technology Co., Ltd.	1.82
Jinko Solar Import and Export Co., Ltd.	1.82
LDK Solar Hi-tech (Nanchang) Co., Ltd.	1.82

¹⁰ In the investigation in this proceeding, the Department treated Changzhou Trina Solar Energy Co., Ltd. and Trina Solar (Changzhou) Science & Technology Co., Ltd. as a single entity. See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part, 77 FR 63791 (October 17, 2012). Absent information to the contrary, the Department has continued to treat these companies as a single entity for purposes of this review.

Ningbo Qixin Solar Electrical Appliance Co., Ltd.	1.82
Renesola Jiangsu Ltd.	1.82
Shanghai BYD Co., Ltd.	1.82
Shenzhen Topray Solar Co. Ltd.	1.82
Sopray Energy Co., Ltd.	1.82
Star Power International Limited	1.82
Sun Earth Solar Power Co., Ltd.	1.82
Yingli Green Energy Holding Company Limited	1.82
Yingli Green Energy International Trading Company Limited	1.82
Zhejiang Sunflower Light Energy Science & Technology Limited Liability Company	1.82
PRC-Wide Entity ¹¹	238.56 ¹²

Disclosure and Public Comment

The Department intends to disclose to parties the calculations performed for these preliminary results of review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs no later than 30

¹¹ The PRC-wide entity includes the following companies: (1) Changzhou NESL Solartech Co., Ltd.; (2) CSG PVTech Co., Ltd. (3) Era Solar Co., Ltd.; (4) Innovosolar; (5) Jiangsu Sunlink PV Technology Co., Ltd.; (6) Jiawei Solarchina Co., Ltd.; (7) Jinko Solar Co., Ltd.; (8) LDK Solar Hi-tech (Suzhou) Co., Ltd.; (9) Leye Photovoltaic Co., Ltd.; (10) Magi Solar Technology; (11) Ningbo ETDZ Holdings, Ltd.; (12) ReneSola; (13) Shanghai Machinery Complete Equipment (Group) Corp., Ltd.; (14) Shenglong PV-Tech; (15) Solarbest Energy-Tech (Zhejiang) Co., Ltd.; (16) Suzhou Shenglong PV-TECH Co., Ltd.; (17) Zhejiang Shuqimeng Photovoltaic Technology Co., Ltd.; (18) Zhejiang Xinshun Guangfu Science and Technology Co., Ltd.; (19) Zhejiang ZG-Cells Co., Ltd.; (20) Zhiheng Solar Inc.; (21) Wuxi Suntech Power Co., Ltd./Luoyang Suntech Power Co., Ltd./Suntech Power Co., Ltd./Wuxi Sunshine Power Co. Ltd. In addition, the PRC-wide entity includes the companies listed in Appendix II of the notice Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules From the People's Republic of China: Amended Partial Rescission of Antidumping Duty Administrative Review, 79 FR 43713 (July 28, 2014).

¹² This PRC-wide entity rate equals the PRC-wide entity rate of 249.96% adjusted for export subsidies and estimated domestic subsidy pass-through.

days after the date of publication of these preliminary results of review.¹³ Rebuttal briefs may be filed no later than five days after case briefs are due and may respond only to arguments raised in the case briefs.¹⁴ A table of contents, list of authorities used, and an executive summary of issues should accompany any briefs submitted to the Department. The summary should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice.¹⁵ Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. Oral argument presentations will be limited to issues raised in the briefs. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a date and time to be determined.¹⁶ Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

All submissions, with limited exceptions, must be filed electronically using ACCESS.¹⁷ An electronically filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS, by 5 p.m. Eastern Time ("ET") on the due date. Documents excepted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with the APO/Dockets Unit in Room 1870 and stamped with the date and time of receipt by 5 p.m. ET on the due date.¹⁸

¹³ See 19 CFR 351.309(c)(ii).

¹⁴ See 19 CFR 351.309(d).

¹⁵ See 19 CFR 351.310(c).

¹⁶ See 19 CFR 351.310(d).

¹⁷ See generally 19 CFR 351.303.

¹⁸ See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures, 76 FR 39263 (July 6, 2011).

Unless otherwise extended, the Department intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any briefs, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results of this review, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.¹⁹ The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. For each individually examined respondent in this review whose weighted-average dumping margin in the final results of review is above de minimis (i.e., greater than or equal to 0.5 percent), the Department intends to calculate importer- (or customer)-specific assessment rates, in accordance with 19 CFR 351.212(b)(1).²⁰ Where the respondent reported reliable entered values, the Department intends to calculate importer- (or customer)-specific ad valorem rates by aggregating the dumping margins calculated for all U.S. sales to the importer- (or customer) and dividing this amount by the total entered value of the sales to the importer- (or customer).²¹ Where the Department calculates an importer- (or customer)-specific weighted-average dumping margin by dividing the total amount of dumping for reviewed sales to the importer- (or customer) by the total sales quantity associated with those transactions, the Department will direct CBP to assess importer- (or customer)-specific assessment rates based on the resulting per-unit rates.²² Where an importer- (or customer)- specific ad valorem or per-unit rate is greater than de minimis, the Department will instruct CBP to collect the appropriate duties

¹⁹ See 19 CFR 351.212(b)(1).

²⁰ See Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification, 77 FR 8101 (February 14, 2012) (“Final Modification”).

²¹ See 19 CFR 351.212(b)(1).

²² Id.

at the time of liquidation. Where either the respondent's weighted average dumping margin is zero or de minimis, or an importer (or customer-) specific ad valorem or per-unit rate is zero or de minimis, the Department will instruct CBP to liquidate appropriate entries without regard to antidumping duties.²³

On October 24, 2011, the Department announced a refinement to its assessment practice in NME antidumping duty cases.²⁴ Pursuant to this refinement in practice, for entries that were not reported in the U.S. sales database submitted by an exporter individually examined during this review, the Department will instruct CBP to liquidate such entries at the PRC-wide rate. Additionally, pursuant to this refinement, if the Department determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number will be liquidated at the PRC-wide rate.

In accordance with section 751(a)(2)(C) of the Act, the final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

The Department will instruct CBP to require a cash deposit equal to the weighted-average amount by which the normal value exceeds U.S. price. The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice, as provided by section 751(a)(2)(C) of the Act: (1) for the exporters listed above, the cash deposit rate will be equal to the weighted-average dumping margin established in the final results of this review (except, if the rate is zero

²³ See Final Modification at 8103.

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

or de minimis, then the cash deposit rate will be zero for that exporter); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recently completed segment of this proceeding; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the PRC-wide entity and (4) for all non-PRC exporters of subject merchandise that have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

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

Dated:
December 31, 2014.

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

Appendix -- List of Topics Discussed in the Preliminary Decision Memorandum

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