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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; 2013-2014

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 December 1, 2013 through November 30, 2014. The administrative review covers two mandatory respondents, (1) Yingli Energy (China) Company Limited ("Yingli"), and (2) Changzhou Trina Solar Energy Co., Ltd. and Trina Solar (Changzhou) Science & Technology Co., Ltd. ("Trina"). The Department preliminarily finds that both mandatory respondents sold subject merchandise in the United States at prices below normal value ("NV") during the POR. 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: Jeff Pedersen and Thomas Martin, AD/CVD Operations, Office IV, Enforcement & Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2769 or (202) 482-3936, 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.<sup>1</sup> Merchandise covered by this order 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 Jiangsu Sunlink PV Technology Co., Ltd. and Shanghai JA Solar Technology Co., Ltd. each had no shipments during the POR. 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.<sup>2</sup>

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<sup>1</sup> For a complete description of the scope of the order, see “Decision Memorandum for Preliminary Results of the 2013-2014 Antidumping Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or not Assembled into Modules, From the People’s Republic of China” from Christian Marsh, 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”).

<sup>2</sup> See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties, 76 FR 65694, 65694-95 (October 24, 2011) and the “Assessment Rates” section, below.

### Preliminary Affiliation and Single Entity Determination

Based on record evidence, the Department preliminarily finds that the mandatory respondent Yingli is affiliated with the following eight 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.; (7) Hainan Yingli New Energy Resources Co., Ltd.; (8) Shenzhen Yingli New Energy Resources Co., Ltd. Furthermore, the Department preliminarily finds that the mandatory respondent Trina is affiliated with the following four companies pursuant to section 771(33)(F) of the Act: (1) Yancheng Trina Solar Energy Technology Co., Ltd.; (2) Changzhou Trina Solar Yabang Energy Co., Ltd.; (3) Turpan Trina Solar Energy Co., Ltd.; (4) Hubei Trina Solar Energy Co., Ltd. In addition, based on the information presented in this review, we preliminarily find that each of the mandatory respondents and their affiliates should be treated, respectively, as a single entity for the purposes of this review pursuant to 19 CFR 351.401(f). For additional information, see the Preliminary Decision Memorandum and Yingli and Trina Collapsing Memoranda.<sup>3</sup>

### Use of Partial Facts Available (“FA”) and Partial Adverse Facts Available (“AFA”)

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)

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<sup>3</sup> See the December 18, 2015 Memoranda from Jeff Pedersen to Abdelali Elouaradia concerning “Affiliation and Single Entity Status” (“Yingli Collapsing Memorandum”), and the December 18, 2015 Memoranda from Thomas Martin to Abdelali Elouaradia concerning “Affiliation and Single Entity Status” (“Trina Collapsing Memorandum”).

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 (i.e., AFA) 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.

Yingli was unable to obtain factor of production (“FOP”) data from its unaffiliated processors and its unaffiliated suppliers of solar cells. Pursuant to section 776(a) of the Act, the Department finds that it is appropriate to use FA in valuing the missing FOP data. For details regarding these determinations, see the Preliminary Decision Memorandum and the Yingli Unreported FOP Memorandum.<sup>4</sup>

Trina was also unable to obtain FOPs from all but one of its unaffiliated toll processors and its unaffiliated suppliers of solar cells. Because the unreported FOPs for solar cells represented a significant quantity of missing information, the Department subsequently issued a questionnaire to the largest five of Trina’s suppliers of solar cells, by quantity. In response, these suppliers stated that they would not respond to the Department’s questionnaire. 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 the FOPs from the unaffiliated tollers. However, we have determined that it is appropriate to apply AFA, pursuant to section 776(b) of the Act, to the unreported FOPs for purchased solar cells. For details regarding this

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<sup>4</sup> See the memorandum from Jeff Pedersen to Abdelali Elouaradia entitled “Unreported Factors of Production,” dated concurrently with these preliminary results (“Yingli Unreported FOP Memorandum”).

determination, see the Preliminary Decision Memorandum and the Trina Unreported FOP Memorandum.<sup>5</sup>

### Separate Rates

The Department preliminarily determines that information placed on the record by the mandatory respondents Trina and Yingli, as well as by 15 other separate rate applicants, demonstrates that these companies are entitled to separate rate status. For additional information, see the Preliminary Decision Memorandum.

### 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 respondents not selected for individual 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 individually examine in an administrative review. Section 735(c)(5)(A) of the Act articulates a preference that we not calculate an all-others rate using rates which are 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 examined companies, excluding rates that are zero, de minimis, or based entirely on facts available.<sup>6</sup> In this administrative review both mandatory respondents, Yingli and Trina, have estimated weighted-average dumping margins which are not zero or de minimis and which are not based entirely on facts available. Because there are only two relevant weighted-average dumping

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<sup>5</sup> See the memorandum from Thomas Martin to Abdelali Elouaradia entitled "Unreported Factors of Production," dated concurrent with these preliminary results ("Trina Unreported FOP Memorandum").

<sup>6</sup> 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.

margins for these preliminary results, using a weighted-average of these two rates risks disclosure of business proprietary data. Therefore, the Department assigned a weighted-average dumping margin to the separate rate companies as described in the Separate Rate Calculation Memorandum.<sup>7</sup> The separate rate companies are listed in the “Preliminary Determination” section of this notice.

### PRC-Wide Entity

The Department’s change in policy regarding conditional review of the PRC-wide entity applies to this administrative review.<sup>8</sup> Under this policy, the PRC-wide entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity. Because no party requested a review of the PRC-wide entity in this review, the entity is not under review and the entity’s rate (i.e., 238.95 percent) is not subject to change.<sup>9</sup> Aside from the companies with no shipments, the separate rate companies discussed above, and the companies for which the review was previously rescinded,<sup>10</sup> the Department considers all other companies for which a review was requested<sup>11</sup> to be part of the PRC-wide entity. For additional information, see the Preliminary Decision Memorandum.

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<sup>7</sup> See the memorandum from Jeff Pedersen to Howard Smith entitled “2013-2014 Administrative Review of the Antidumping Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or not Assembled into Modules, from the People’s Republic of China: Calculation of the Margin for Respondents Not Selected for Individual Examination,” dated concurrently with this notice.

<sup>8</sup> See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings, 78 FR 65963 (November 4, 2013).

<sup>9</sup> See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2012-2013, 80 FR 40998, 41002 (July 14, 2015) (“AR1 Final Results”).

<sup>10</sup> See Crystalline Silicon Photovoltaic Cells, Whether or not Assembled into Modules from the People’s Republic of China: Partial Rescission of Antidumping Duty Administrative Review, 80 FR 46245 (August 4, 2015).

<sup>11</sup> See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 80 FR 6041 (February 4, 2015) (“Initiation Notice”).

## Methodology

The Department conducted this review in accordance with section 751(a)(1)(B) of the Act. The Department calculated 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 Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS"). ACCESS is available to registered users at <http://access.trade.gov>, and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. 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:

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./ Shenzhen Yingli New Energy Resources Co., Ltd.	11.47
Changzhou Trina Solar Energy Co., Ltd./ Trina Solar (Changzhou) Science and Technology Co., Ltd./Yancheng Trina Solar Energy Technology Co., Ltd./Changzhou Trina Solar Yabang Energy Co., Ltd./Turpan Trina Solar Energy Co., Ltd./Hubei Trina Solar Energy Co., Ltd.	4.53
BYD (Shangluo) Industrial Co., Ltd.	7.27
Canadian Solar International Limited	7.27
Canadian Solar Manufacturing (Changshu) Inc.	7.27
Canadian Solar Manufacturing (Luoyang) Inc.	7.27
Dongguan Sunworth Solar Energy Co., Ltd.	7.27
ERA Solar Co., Ltd.	7.27
ET Solar Energy Limited	7.27
JA Solar Technology Yangzhou Co., Ltd.	7.27
Jiangsu High Hope Int'l Group	7.27

JingAo Solar Co., Ltd.	7.27
Ningbo Qixin Solar Electrical Appliance Co., Ltd.	7.27
Shanghai BYD Co., Ltd.	7.27
Shenzhen Glory Industries Co., Ltd.	7.27
Shenzhen Topray Solar Co., Ltd.	7.27
Wuxi Suntech Power Co., Ltd. /Luoyang Suntech Power Co., Ltd.	7.27

### 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 the Federal Register in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review.<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup>

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.<sup>15</sup> 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

<sup>12</sup> See 19 CFR 351.309(c)(ii).

<sup>13</sup> See 19 CFR 351.309(d).

<sup>14</sup> See 19 CFR 351.309(c)(2), (d)(2).

<sup>15</sup> See 19 CFR 351.310(c).

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.<sup>16</sup> 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.<sup>17</sup> 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 18022 and stamped with the date and time of receipt by 5 p.m. ET on the due date.<sup>18</sup>

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.<sup>19</sup> 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 not zero or *de minimis* (*i.e.*, less than 0.5 percent), the Department intends to calculate importer-specific assessment rates, in

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<sup>16</sup> See 19 CFR 351.310(d).

<sup>17</sup> See generally 19 CFR 351.303.

<sup>18</sup> See 19 CFR 351.303 (for general filing requirements); Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures, 76 FR 39263 (July 6, 2011).

<sup>19</sup> See 19 CFR 351.212(b)(1).

accordance with 19 CFR 351.212(b)(1).<sup>20</sup> Where the respondent reported reliable entered values, the Department intends to calculate importer-specific ad valorem assessment rates by aggregating the amount of dumping calculated for all U.S. sales to the importer and dividing this amount by the total entered value of the sales to the importer.<sup>21</sup> Where the importer did not report entered values, the Department calculates an importer-specific assessment rates by dividing the amount of dumping for reviewed sales to the importer- by the total sales quantity associated with those transactions. In addition, the Department will calculate an estimated *ad valorem* importer-specific assessment rate to determine whether this rate is de minimis, however, the Department will direct CBP to assess importer-specific assessment rates based on the resulting per-unit rates.<sup>22</sup> Where an importer-specific ad valorem is not zero or de minimis, the Department will instruct CBP to collect the appropriate duties at the time of liquidation. Where either the respondent's weighted average dumping margin is zero or de minimis, or an importer-specific ad valorem assessment rate is zero or de minimis, the Department will instruct CBP to liquidate appropriate entries without regard to antidumping duties.<sup>23</sup>

On October 24, 2011, the Department announced a refinement to its assessment practice in NME antidumping duty proceedings.<sup>24</sup> 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 rate for the PRC-wide entity. Additionally, pursuant to this refinement, if the Department determines that an exporter under review had no shipments of the subject merchandise, any

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<sup>20</sup> 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”).

<sup>21</sup> See 19 CFR 351.212(b)(1).

<sup>22</sup> Id.

<sup>23</sup> See Final Modification, 77 FR at 8103.

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

suspended entries that entered under that exporter's CBP case number will be liquidated at the rate for the PRC-wide entity.

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 antidumping duties, where applicable.

#### Cash Deposit Requirements

The Department will instruct CBP to require a cash deposit for antidumping duties 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 de minimis (i.e., less than 0.5 percent), 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 (i.e., 238.95 percent<sup>25</sup>) 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.

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<sup>25</sup> See AR1 Final Results, 80 FR at 41002.

### 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 and/or countervailing 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 and/or countervailing duties has occurred, and the subsequent assessment of double antidumping duties and/or increase the amount of antidumping duties by the amount of the countervailing duties.

### Notification to Interested Parties

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 and 351.221(b)(4).

Dated: December 18, 2015.

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Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

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

1. Summary
2. Background
3. Scope of the Order
4. Duty Absorption
5. Preliminary Determination of No Shipments
6. Selection of Respondents
7. Single Entity Treatment
8. Discussion of the Methodology
  - a. NME Country
  - b. Separate Rates
  - c. Application of Partial FA and AFA
  - d. Surrogate Country
  - e. Date of Sale
  - f. Fair Value Comparisons
  - g. U.S. Price
  - h. Normal Value
  - i. Section 777A(f) of the Act
  - j. Currency Conversion
9. Conclusion

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