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DEPARTMENT OF COMMERCE

International Trade Administration

A-570-979

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Notice of Court Decision Not in Harmony with Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On December 13, 2018, the United States Court of International Trade (the Court) sustained the second remand redetermination pertaining to the 2013-2014 antidumping duty (AD) administrative review of crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells) from the People's Republic of China (China). The Department of Commerce (Commerce) is notifying the public that the final judgment in this case is not in harmony with Commerce's final results in the AD administrative review of solar cells from China and that Commerce is amending the final results with respect to AD margins assigned, as detailed below.

DATES: Applicable December 23, 2018.

FOR FURTHER INFORMATION CONTACT: Jeff Pedersen, AD/CVD Operations, Office IV, Enforcement and Compliance – International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC, 20230; telephone (202) 482-2769.

SUPPLEMENTARY INFORMATION:

[Background](#)

On June 13, 2016, Commerce published its Final Results of the 2013-2014 AD administrative review of solar cells from China.¹ On October 18, 2017, the Court remanded the Final Results to Commerce to further explain or reconsider its determination to value Yingli Green Energy Holding Co., Ltd.'s² tempered glass inputs with import data from Thailand, in light of evidence that Hong Kong import data has a disproportionate impact on the Thai surrogate value.³ In addition, the Court remanded for further explanation or consideration Commerce's determination to value Changzhou Trina Solar Energy Co. Ltd.'s⁴ broken and scrapped polysilicon cells and modules using Thai import data under Harmonized Tariff Schedule (HTS) subheading 8548.10.⁵ The Court requested Commerce explain why its selection is reasonable given that Thai HTS subheading 8549.10 is not specific to solar cells or modules and results in a value for the scrapped cell and module byproduct that is higher than the value of the input itself.⁶

In its First Remand Redetermination, Commerce continued to value Yingli's tempered glass inputs using Thai import data, again determining that the import data, in the aggregate, are

¹ 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*; 2013-2014, 81 FR 39905 (June 20, 2016) and accompanying Issues & Decision Memorandum (IDM) (collectively Final Results).

² In the *Final Results* Commerce determined to treat the mandatory respondent Yingli Energy (China) Company Limited and the following eight companies as a single entity: (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. (collectively Yingli).

³ *SolarWorld Americas, Inc., et al. v. United States*, 273 F. Supp. 3d 1254, 1261-65 (CIT 2017) (*SolarWorld I*).

⁴ In the Final Results Commerce determined to treat the mandatory respondent Changzhou Trina Solar Energy Co., Ltd. and Trina Solar (Changzhou) Science & Technology Co., Ltd. and the following four companies as a single entity: (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. (collectively Trina).

⁵ *Id.* at 1267 -1268.

⁶ *Id.* at 1268.

not aberrational.⁷ Commerce also continued to value scrapped solar cells and modules using Thai HTS subheading 8528.10 (which covers scrap primary cells and batteries), finding that the subheading represents the best available information on the record with which to value scrapped solar cells and modules, given the similarity in manufacturing processes and raw materials.⁸

On May 18, 2018, the Court remanded both issues to Commerce a second time.⁹ The Court found that Commerce failed to explain why it is reasonable to value tempered glass using Thai import data when imports of tempered glass from Hong Kong have a disproportionate impact on the overall average unit value (AUV) of tempered glass.¹⁰ With regard to Commerce's valuation of Trina's scrapped solar cells and modules, the Court held that Commerce's determination remained unsupported by substantial evidence, finding that Commerce had not provided an adequate explanation as to why the selection of a category covering scrapped electrical batteries accurately values the respondent's scrapped solar cells and modules byproduct.¹¹

In its Second Remand Redetermination, pursuant to the Court's holding in *SolarWorld II*, Commerce determined, under protest, to value Yingli's tempered glass inputs using import data from Bulgaria, avoiding the data-quality concerns regarding the Thai import data.¹² With regard to valuing scrapped solar cells and modules, under protest, Commerce reconsidered its selection

⁷ See Final Results of Redetermination: *SolarWorld Americas, Inc. v. United States*, Court No. 16-00134, Slip. Op. 17-143 (Court of International Trade October 18, 2017), dated January 18, 2018 (First Remand Redetermination).

⁸ See First Remand Redetermination at 53-64.

⁹ *SolarWorld Americas, Inc. v. United States*, 320 F. Supp. 3d 1341 (CIT 2018) (*SolarWorld II*).

¹⁰ *Id.* at 1350-55.

¹¹ *Id.* at 1355-58.

¹² See Results of Second Remand Redetermination Pursuant to Court Order: *SolarWorld Americas, Inc. v. United States*, Court No. 16-00134, Slip. Op. 18-53 (Court of International Trade June 18, 2017), dated July 31, 2018 (Second Remand Redetermination).

and decided to use Thai HTS subheading 2804, which covers silicon of less than 99.9 percent purity.¹³ On December 13, 2018, the Court sustained the Second Remand Redetermination.¹⁴

Timken Notice

In its decision in *Timken*,¹⁵ as clarified by *Diamond Sawblades*,¹⁶ the United States Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a court decision that is not “in harmony” with a Commerce determination and must suspend liquidation of entries pending a “conclusive” court decision. The Court’s December 13, 2018 final judgment sustaining Commerce’s Second Remand Redetermination constitutes a final decision of the Court that is not in harmony with Commerce’s Final Results. This notice is published in fulfillment of the publication requirements of *Timken*.

Amended Final Results

Because there is now a final court decision, Commerce is amending its Final Results. Commerce finds that the revised AD dumping margin for the respondents are as follows:

¹³ *Id.*

¹⁴ See *SolarWorld Americas, Inc. et al v. United States*, 2018 WL 6584942, (CIT December 13, 2018) (*SolarWorld III*).

¹⁵ See *Timken Co. v. United States*, 893 F.2d 337, 341 (Fed. Cir. 1990)

¹⁶ See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010)

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.	0.00
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.	6.55
BYD (Shangluo) Industrial Co., Ltd.	3.96
Canadian Solar International Limited	3.96
Canadian Solar Manufacturing (Changshu) Inc.	3.96
Canadian Solar Manufacturing (Luoyang) Inc.	3.96
Dongguan Sunworth Solar Energy Co., Ltd.	3.96
ERA Solar Co., Ltd.	3.96
ET Solar Energy Limited	3.96
JA Solar Technology Yangzhou Co., Ltd.	3.96

Jiangsu High Hope Int'l Group ¹⁷	3.96
JingAo Solar Co., Ltd.	3.96
Ningbo Qixin Solar Electrical Appliance Co., Ltd.	3.96
Shanghai BYD Co., Ltd.	3.96
Shenzhen Glory Industries Co., Ltd.	3.96
Shenzhen Topray Solar Co., Ltd.	3.96
Wuxi Suntech Power Co., Ltd. /Luoyang Suntech Power Co., Ltd.	3.96

Accordingly, Commerce will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. In the event the Court's ruling is not appealed or, if appealed, upheld by the CAFC, Commerce will instruct U.S. Customs and Border Protection to assess antidumping duties on unliquidated entries of subject merchandise exported by the respondents using the assessment rates calculated by Commerce listed above.

Cash Deposit Requirements

Because cash deposit rate for all of the respondents listed above, with the exception of BYD (Shangluo) Industrial Co., Ltd., Dongguan Sunworth Solar Energy Co., Ltd., and Shenzhen

¹⁷ In the fourth administrative review, Commerce determined that Jiangsu High Hope Int'l Group failed to demonstrate its entitlement to a separate rate. See *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; 2015-2016*, 83 FR 1018 (January 9, 2018), unchanged at final, *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; 2015-2016*, 83 FR 35616 (July 27, 2019). The cash deposit rate applicable to this firm was revised accordingly. See cash deposit instruction message number 8214308.

Glory Industries Co., Ltd., have been superseded by cash deposit rates calculated in intervening administrative reviews of the AD order on solar cells from China, we will not alter the cash deposit rate currently in effect for these respondents based on these amended final results.

Effective December 23, 2018, the cash deposit rate applicable to entries of subject merchandise exported by BYD (Shangluo) Industrial Co., Ltd., Dongguan Sunworth Solar Energy Co., Ltd., and Shenzhen Glory Industries Co., Ltd. is 3.96 percent.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e), 751(a)(1), and 777(i)(1) of the Act.

Dated: December 21, 2018

P. Lee Smith
Deputy Assistant Secretary
for Policy and Negotiations

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