

U.S. Customs and Border Protection will continue to collect cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the order will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of the order not later than 30 days prior to the fifth anniversary of the effective date of continuation.

This five-year (sunset) review and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: October 4, 2012.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-570-980]

#### **Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination**

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

**SUMMARY:** The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells) from the People's Republic of China (PRC). The Department further determines that there have been massive imports of subject merchandise over a relatively short period of time by, and therefore critical circumstances do exist.<sup>1</sup> For information on the estimated subsidy rates, see the "Suspension of Liquidation" section of this notice.

**DATES:** *Effective Date:* October 17, 2012.

**FOR FURTHER INFORMATION CONTACT:**

Gene Calvert, Jun Jack Zhao, or Emily Halle, AD/CVD Operations, Office 6, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-3586, (202) 482-1396, or (202) 482-0176, respectively.

<sup>1</sup> See "Critical Circumstances" below.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The petitioner in this investigation is Solar World Industries, America, Inc. (Petitioner). This investigation covers 31 government programs. In addition to the Government of the PRC (GOC), the mandatory respondents in this investigation are: (1) Changzhou Trina Solar Energy Co., Ltd. and its cross-owned affiliated company Trina Solar (Changzhou) Science and Technology Co., Ltd. (collectively, Trina Solar); and (2) Wuxi Suntech Power Co., Ltd. and its cross-owned affiliated companies Luoyang Suntech Power Co., Ltd., Suntech Power Co., Ltd., Yangzhou Rietech Renewal Energy Co., Ltd., Zhenjiang Huantai Silicon Science & Technology Co., Ltd., Kuttler Automation Systems (Suzhou) Co., Ltd., Shenzhen Suntech Power Co., Ltd., Wuxi Sunshine Power Co., Ltd., Wuxi University Science Park International Incubator Co., Ltd., Yangzhou Suntech Power Co., Ltd., and Zhenjiang Rietech New Energy Science & Technology Co., Ltd. (collectively, Wuxi Suntech, unless otherwise indicated).

##### **Period of Investigation**

The period of investigation for which we are measuring subsidies is January 1, 2010, through December 31, 2010.

##### **Case History**

The events that have occurred since the Department published the *Preliminary Determination*<sup>2</sup> on March 26, 2012, are discussed in the Memorandum to Paul Piquado, Assistant Secretary for Import Administration, Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China (Decision Memorandum).<sup>3</sup>

##### **Scope Comments**

The scope-related comments submitted by parties in the companion antidumping duty investigation in their case and rebuttal briefs covered the

<sup>2</sup> See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 77 FR 17439 (March 26, 2012) (*Preliminary Determination*).

<sup>3</sup> Public versions of all business proprietary documents and all public documents are on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). Access to IA ACCESS is available to registered users at <http://iaaccess.trade.gov> and in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building.

same scope arguments and issues that were submitted in the case and rebuttal briefs in this investigation. Petitioner, the GOC, Trina Solar, Wuxi Suntech, Small Steps Solar, Ltd., and SunPower Corporation provided comments on the scope of the investigations and the merchandise that is to be included in the scope.

##### **Scope of Investigation**

The merchandise covered by this investigation are 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. See Appendix I for a complete description of the scope of this investigation.

##### **Critical Circumstances**

In the *Preliminary Critical Circumstances Determination*,<sup>4</sup> the Department concluded that critical circumstances exist with respect to imports of solar cells from the PRC for Wuxi Suntech, Trina Solar, and all other producers or exporters, in accordance with section 703(e)(1) of the Tariff Act of 1930, as amended (Act). Our analysis of the comments submitted by interested parties has not led us to change our findings from the *Preliminary Critical Circumstances Determination*. For a complete discussion that reflects the Department's decisions regarding critical circumstances, see the Decision Memorandum. Therefore, in accordance with section 705(a)(2) of the Act, we continue to find that critical circumstances exist with respect to imports from Wuxi Suntech, Trina Solar and all other producers or exporters of solar cells from the PRC, and we will continue to maintain the suspension of liquidation of imports that entered the United States 90 days before the date of publication of the *Preliminary Determination*, unless the U.S. International Trade Commission (ITC) determines that critical circumstances do not exist.

##### **Analysis of Subsidy Programs and Comments Received**

The subsidy programs under investigation and the issues raised in

<sup>4</sup> See *Countervailing Duty Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Preliminary Determination of Critical Circumstances*, 77 FR 5487 (February 3, 2012) (*Preliminary Critical Circumstances Determination*).

the case and rebuttal briefs by parties in this investigation are discussed in the Decision Memorandum, which is hereby adopted by this notice. A list of the subsidy programs and the issues that parties raised and to which we responded in the Decision Memorandum is attached to this notice as Appendix II. The Decision Memorandum is a public document and is on file electronically via IA ACCESS. IA ACCESS is available to registered users at <http://iaaccess.trade.gov> and in the CRU, room 7046 of the main Department of Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at <http://www.trade.gov/ia/>. The signed Decision Memorandum and the electronic versions of the Decision Memorandum are identical in content.

**Use of Facts Otherwise Available, Including Adverse Inferences**

For purposes of this final determination, we have continued to rely on facts available and have continued to apply adverse inferences in accordance with sections 776(a) and (b) of the Act with regard to: (1)

Whether the polysilicon producers at issue are “authorities” that provide polysilicon for less than adequate remuneration (LTAR); (2) whether the provision of polysilicon is specific in accordance with section 771(5A) of the Act; (3) whether the land provided to Trina Solar is countervailable; (4) whether the grants discovered during the course of this investigation are countervailable; and (5) the GOC’s provision of electricity for LTAR. In addition, for the purposes of this final determination, we are also applying adverse facts available (AFA) to (1) find the export buyer’s credit program to be used and countervailable, and to determine the countervailing duty (CVD) rate to be applied for the export buyer’s credit program, and (2) determine that certain land provided to Wuxi Suntech is countervailable. A full discussion of our decision to apply AFA is presented in the Decision Memorandum under the section “Use of Facts Otherwise Available and Adverse Inferences.”

**Suspension of Liquidation**

In accordance with section 705(c)(1)(B)(i) of the Act, we have

calculated a rate for each individually investigated producer/exporter of the subject merchandise. Section 705(c)(5)(A)(i) of the Act states that for companies not investigated, we will determine an “all-others” rate equal to the weighted average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates determined entirely under section 776 of the Act.

Notwithstanding the language of section 705(c)(5)(A)(i) of the Act, we have not calculated the “all others” rate by weight averaging the rates of Trina Solar and Wuxi Suntech, because doing so risks disclosure of proprietary information. Therefore, we have calculated an average rate using other information on the record.<sup>5</sup> Since both Trina Solar and Wuxi Suntech received countervailable export subsidies and the “all others” rate is an average based on the individually investigated exporters and producers, the “all others” rate includes export subsidies.

We determine the total countervailable subsidy rates to be as follows.

Company	Subsidy rate
Changzhou Trina Solar Energy Co., Ltd., Trina Solar (Changzhou) Science and Technology Co., Ltd. (collectively, Trina Solar).	15.97 percent <i>ad valorem</i> .
Wuxi Suntech Power Co., Ltd., Luoyang Suntech Power Co., Ltd., Suntech Power Co., Ltd., Yangzhou Rietech Renewal Energy Co., Ltd., Zhenjiang Huantai Silicon Science & Technology Co., Ltd., Kuttler Automation Systems (Suzhou) Co., Ltd., Shenzhen Suntech Power Co., Ltd., Wuxi Sunshine Power Co., Ltd., Wuxi University Science Park International Incubator Co., Ltd., Yangzhou Suntech Power Co., Ltd., and Zhenjiang Rietech New Energy Science & Technology Co., Ltd (collectively, Wuxi Suntech).	14.78 percent <i>ad valorem</i> .
All Others Rate .....	15.24 percent <i>ad valorem</i> .

As a result of our *Preliminary Critical Circumstances Determination* and our *Preliminary Determination* and pursuant to section 703(e)(2) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of subject merchandise from the PRC which were entered or withdrawn from warehouse, for consumption on or after December 27, 2011, the date 90 days prior to the date of the publication of the *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, we later issued instructions to CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered, or withdrawn from warehouse, on or after July 24, 2012, but to continue the suspension of liquidation of all entries from December 27, 2011, through July 23, 2012.

We will issue a CVD order and reinstate the suspension of liquidation under section 706(a) of the Act if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated CVDs for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, exists, but that critical circumstances do not exist, the Department will order the refund of all cash deposits and the cancellation of all securities posted from December 27, 2011, to March 26, 2012. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

**ITC Notification**

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Import Administration.

**Return or Destruction of Proprietary Information**

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder

<sup>5</sup> See Memorandum to the File from Emily Halle, “Calculation of the All-Others Rate,” dated October

9, 2012, providing the precise calculation relying on public information.

to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/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 violation which is subject to sanction.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act.

Dated: October 9, 2012.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

## Appendix I

### 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 10,000 mm<sup>2</sup> 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.<sup>6</sup> These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of this investigation is dispositive.

## Appendix II

### Decision Memorandum

#### I. Summary

#### II. Subsidy Valuation Information

- A. Period of Investigation
- B. Attribution of Subsidies
- C. Allocation Period
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#### III. Use of Facts Otherwise Available and Adverse Inferences

Polysilicon Producers Are Authorities

Provision of Land for LTAR

Provision of Electricity for LTAR

Export Buyer's Credits

Subsidies Discovered During the

Investigation

"Bonus for Employees From Government"

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  2. Preferential Policy Lending
  3. Provision of Polysilicon for LTAR
  4. Provision of Land for LTAR
  5. Provision of Electricity for LTAR
  6. "Two Free, Three Half" Program for Foreign-Invested Enterprises (FIEs)
  7. Preferential Tax Program for High or New Technology Enterprises (HNTEs)
  8. Enterprise Income Tax Law, Research and Development (R&D) Program
  9. Import Tariff and Value Added Tax (VAT) Exemptions for Use of Imported Equipment
  10. VAT Rebates on FIE Purchases of Chinese-Made Equipment
  11. Discovered Grants
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- B. Programs Determined To Be Not Used by the Respondents During the POI or To Not Provide Benefits During the POI
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  2. Subsidies for Development of "Famous Brands" and "China World Top Brands"
  3. Sub-Central Government Subsidies for Development of "Famous Brands" and "China World Top Brands"

<sup>6</sup> 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.

4. Special Energy Fund (Established by Shandong Province)
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6. Government Provision of Aluminum for LTAR
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#### VII. Analysis of Comments

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Comment 6: Whether Polysilicon

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Comment 18: Export Buyer's Credits

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Comment 29: Suntech's Minor Corrections

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*Scope*

Comment 32: Scope of the Investigation

VIII. Recommendation

[FR Doc. 2012-25564 Filed 10-16-12; 8:45 a.m.]

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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: 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

**DATES:** Effective Date: October 17, 2012.

**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").<sup>1</sup> On June 25, 2012, the Department published its *Preliminary Determination Correction* in this antidumping investigation.<sup>2</sup> 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.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Pedersen, Krishna Hill, or Drew Jackson, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-2769, (202) 482-4037, or (202) 482-4406, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Department published its *Preliminary Determination* on May 25, 2012.<sup>3</sup> 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*.<sup>4</sup> The Department made the requested corrections and published its *Preliminary Determination Correction* notice on June 25, 2012.

<sup>1</sup> 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*").

<sup>2</sup> 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*").

<sup>3</sup> See *Preliminary Determination*.

<sup>4</sup> 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.

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.<sup>5</sup>

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

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.<sup>6</sup> Subsequently, the Department rejected Yingli's case brief because it contained certain new factual information.<sup>7</sup> Yingli resubmitted its redacted case brief on August 3, 2012.<sup>8</sup> 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.*<sup>9</sup> submitted rebuttal briefs. Further,

<sup>5</sup> See the "Verification" section below.

<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> 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.

<sup>9</sup> 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

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