

## 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 the Results of Antidumping Administrative Review; Notice of Amended Final Results**

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

**SUMMARY:** On December 20, 2022, the U.S. Court of International Trade (CIT) issued its final judgment in *Risen Energy Co., Ltd. et al. v. United States*, Consol. Court No. 20-03743, sustaining the U.S. Department of Commerce (Commerce)'s first remand results pertaining to the administrative review of the antidumping duty (AD) order on crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells), from the People's Republic of China (China) covering the period December 1, 2017, through November 30, 2018. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final results of the administrative review, and that Commerce is amending the final results with respect to the dumping margin assigned to: (1) the mandatory respondents Risen Energy Co., Ltd., Risen (Wuhai) New Energy Co., Ltd., Zhejiang Twinsel Electronic Technology Co., Ltd., Risen (Luoyang) New Energy Co., Ltd., Jiujiang Shengchao Xinye Technology Co., Ltd., Jiujiang Shengzhao Xinye Trade Co., Ltd., Ruichang Branch, Risen Energy (Hong Kong) Co., Ltd., and Risen Energy (Changzhou) Co., Ltd. (collectively, Risen) (2) Trina Solar Co., Ltd., Trina Solar (Changzhou) Science and Technology Co., Ltd., Yancheng Trina Guoneng Photovoltaic Technology Co., Ltd (formerly, 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., Trina Solar (Hefei) Science and Technology Co., Ltd. (THFT), and Changzhou Trina Hezhong Photoelectric Co., Ltd. (collectively, Trina), and (3) certain separate rate respondents.

**DATES:** Applicable December 30, 2022.

**FOR FURTHER INFORMATION CONTACT:** Paola Aleman Ordaz, 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) 482-4031.

**SUPPLEMENTARY INFORMATION:****Background**

On October 2, 2020, Commerce published its *Final Results* in the 2017-2018 AD administrative review of solar cells and modules from China.<sup>1</sup> Risen,<sup>2</sup> Trina,<sup>3</sup> JA Solar Technology Yangzhou Co., Ltd. (JA Solar), JingAo Solar Co., Ltd., Shanghai JA Solar Technology Co., Ltd., Wuxi Tianran Photovoltaic Co., Ltd. (Wuxi), Anji DaSol Solar Energy Science & Technology Co., Ltd. (Anji DaSol), Shenzhen Sungold Solar Co., Ltd. (Shenzhen), Canadian Solar International Ltd. (Canadian Solar), Yingli Energy (China) Co., Ltd. (Yingli), and Shanghai BYD Co., Ltd. (Shanghai) challenged Commerce's final results (CIT case numbers 20-03743, 20-03757, 20-03761, 20-03797, 20-03802, 20-03804). On April 4, 2020, the court sustained Commerce's *Final Results* with respect to Commerce's primary surrogate country selection and calculation of the surrogate financial ratios.<sup>4</sup> However, the CIT remanded the *Final Results* to Commerce to reconsider, or further explain: (1) Commerce's decision to rely on the Malaysian import value for silver paste; (2) Commerce's application of partial facts otherwise available with an adverse inference to value missing factor of production information; (3)

Commerce's surrogate value selections for backsheets and ethyl vinyl acetate (EVA); and (4) Commerce's calculation of the separate rate for separate rate respondents.<sup>5</sup>

In its final remand redetermination, issued in July 2022, Commerce: (1) valued silver paste using Malaysian import data for HS 7106.92.00 rather than HS 7115.90.1000; (2) under respectful protest, applied partial neutral facts available to value missing factor of production information instead of an adverse inference when selecting facts otherwise available when calculating Risen and Trina's dumping margins; (3) continued to value backsheets using import data from Malaysia HS 3920.62.1000 and EVA using import data from Malaysia HS 3920.10.1900; and (4) revised the weighted-average dumping margins assigned to the separate rate respondents that participated in the litigation.<sup>6</sup> On December 20, 2022, the CIT sustained Commerce's final redetermination.<sup>7</sup>

**Timken Notice**

In its decision in *Timken*,<sup>8</sup> as clarified by *Diamond Sawblades*,<sup>9</sup> the U.S. 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 court decision that is not "in harmony" with a Commerce determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's December 20, 2022, judgment constitutes a final decision of the CIT that is not in harmony with Commerce's *Final Results*. Thus, this notice is published in fulfillment of the publication requirements of *Timken*.

**Amended Final Results**

Because there is now a final court judgment, Commerce is amending its *Final Results* and *Amended Final Results* as follows:

<sup>1</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; 2017-2018*, 85 FR 62275 (October 2, 2020) (*Final Results*), and accompanying Issues and Decision Memorandum, as amended in *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Notice of Correction to the Final Results of the 2017-2018 Antidumping Duty Administrative Review*, 85 FR 79165 (December 9, 2020) (*Amended Final Results*).

<sup>2</sup> In the *Final Results*, Commerce determined that Risen (Wuhai) New Energy Co., Ltd.; Zhejiang Twinsel Electronic Technology Co., Ltd.; Risen (Luoyang) New Energy Co., Ltd.; Jiujiang Shengchao Xinye Technology Co., Ltd.; Jiujiang Shengzhao

Xinye Trade Co., Ltd.; Ruichang Branch; Risen Energy (Hong Kong) Co., Ltd.; and Risen Energy (Changzhou) Co., Ltd. are affiliated and treated them as a single entity for the purpose of the dumping margin calculation.

<sup>3</sup> *Id.* In the *Final Results*, Commerce determined that Trina Solar Co., Ltd. (TCZ); Trina Solar (Changzhou) Science and Technology Co., Ltd. (TST); Yancheng Trina Guoneng Photovoltaic Technology Co., Ltd (formerly, Yancheng Trina Solar Energy Technology Co., Ltd.) (TYC); Changzhou Trina Solar Yabang Energy Co., Ltd. (TYB); Turpan Trina Solar Energy Co., Ltd. (TLF); Hubei Trina Solar Energy Co., Ltd. (THB); Trina Solar (Hefei) Science and Technology Co., Ltd. (THFT); and Changzhou Trina Hezhong Photoelectric Co., Ltd. (THZ) are affiliated and

treated them as a single entity for the purpose of the dumping margin calculation.

<sup>4</sup> See *Risen Energy Co. v. United States*, 569 F. Supp. 3d 1315 (CIT 2022).

<sup>5</sup> *Id.*

<sup>6</sup> See *Final Results of Redetermination Pursuant to Court Remand, Risen Energy Co., Ltd. et al.*, Consol. Court No. 20-03743, Slip Op. 22-33 (CIT 2022), dated July 5, 2022.

<sup>7</sup> See *Risen Energy Co., Ltd. et al. v. United States*, Consol. Court No. 20-03743, Slip Op. 22-148 (CIT 2022).

<sup>8</sup> See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

<sup>9</sup> See *Diamond Sawblades Manufacturers Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

Exporter	Weighted-average dumping margin (percent)
Trina Solar Co., Ltd./Trina Solar (Changzhou) Science and Technology Co., Ltd./Yancheng Trina Guoneng Photovoltaic Technology Co., Ltd./Changzhou Trina Solar Yabang Energy Co., Ltd./Turpan Trina Solar Energy Co., Ltd./Hubei Trina Solar Energy Co., Ltd./Trina Solar (Hefei) Science and Technology Co., Ltd./Changzhou Trina Hezhong Photoelectric Co., Ltd. ....	19.20
Risen Energy Co. Ltd./Risen (Wuhai) New Energy Co., Ltd./Zhejiang Twinsel Electronic Technology Co., Ltd./Risen (Luoyang) New Energy Co., Ltd./Jiujiang Shengchao Xinye Technology Co., Ltd./Jiujiang Shengzhao Xinye Trade Co., Ltd./Ruichang Branch, Risen Energy (HongKong) Co., Ltd./Risen Energy (Changzhou) Co., Ltd. ....	25.18
Anji DaSol Solar Energy Science & Technology Co., Ltd. ....	23.02
Canadian Solar International Limited/Canadian Solar Manufacturing (Changshu), Inc./Canadian Solar Manufacturing (Luoyang) Inc./CSI Cells Co., Ltd./CSI-GCL Solar Manufacturing (YanCheng) Co., Ltd./CSI Solar Power (China) Inc. ....	23.02
JA Solar Technology Yangzhou Co., Ltd. ....	23.02
JingAo Solar Co., Ltd. ....	23.02
Shanghai BYD Co., Ltd. ....	23.02
Shanghai JA Solar Technology Co., Ltd. ....	23.02
Shenzhen Sungold Solar Co., Ltd. ....	23.02
Wuxi Tianran Photovoltaic Co., Ltd. ....	23.02
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. ....	23.02

### Cash Deposit Requirements

Because Risen, Trina, Anji DaSol Solar Energy Science & Technology Co., Ltd.; Canadian Solar International Limited, Canadian Solar Manufacturing (Changshu), Inc., Canadian Solar Manufacturing (Luoyang) Inc., CSI Cells Co., Ltd., CSI-GCL Solar Manufacturing (YanCheng) Co., Ltd., and CSI Solar Power (China) Inc.; JA Solar Technology Yangzhou Co., Ltd.; Shanghai JA Solar Technology Co., Ltd.; Shenzhen Sungold Solar Co., Ltd.; Wuxi Tianran Photovoltaic Co. Ltd.; 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., and Shenzhen Yingli New Energy Resources Co., Ltd. have a superseding cash deposit rate, *i.e.*, there have been final results published in a subsequent administrative review, we will not issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP). Thus, this notice will not affect the current cash deposit rate for these exporters. For JingAo Solar Co., Ltd., Shanghai BYD Co., Ltd., and exporters that do not have a superseding cash deposit rate, Commerce will issue revised cash deposit instructions to CBP.

### Liquidation of Suspended Entries

At this time, Commerce remains enjoined, by orders of the CIT, from

liquidating entries that: (1) were exported by Risen Energy Co. Ltd., Risen (Wuhai) New Energy Co., Ltd., Zhejiang Twinsel Electronic Technology Co., Ltd., Risen (Luoyang) New Energy Co., Ltd., Jiujiang Shengzhao Xinye Technology Co., Ltd., Jiujiang Shengzhao Xinye Trade Co., Ltd., Ruichang Branch, Risen Energy (HongKong) Co., Ltd., or Risen Energy (Changzhou) Co., Ltd.; Trina Solar Co., Ltd., Trina Solar (Changzhou) Science and Technology Co., Ltd., Yancheng Trina Guoneng Photovoltaic Technology Co., Ltd., Changzhou Trina Solar Yabang Energy Co., Ltd., Turpan Trina Solar Energy Co., Ltd., Hubei Trina Solar Energy Co., Ltd., Trina Solar (Hefei) Science and Technology Co., Ltd., and Changzhou Trina Hezhong Photoelectric Co., Ltd.; Anji DaSol Solar Energy Science & Technology Co., Ltd.; Canadian Solar International Limited, Canadian Solar Manufacturing (Changshu), Inc., Canadian Solar Manufacturing (Luoyang) Inc., and CSI Cells Co., Ltd. and imported by Canadian Solar (USA) Inc.;<sup>10</sup> JA Solar Technology Yangzhou Co., Ltd., Shanghai JA Solar Technology Co., Ltd., or JingAo Solar Co., Ltd.; Shenzhen Sungold Solar Co., Ltd.; Wuxi Tianran Photovoltaic Co. Ltd.; Shanghai BYD Co., Ltd.; Yingli Energy (China)

<sup>10</sup> In the *Final Results*, Commerce treated Canadian Solar International Limited, Canadian Solar Manufacturing (Changshu), Inc., Canadian Solar Manufacturing (Luoyang) Inc., CSI Cells Co., Ltd., CSI-GCL Solar Manufacturing (YanCheng) Co., Ltd., and CSI Solar Power (China) Inc. as a collapsed entity. In the event the CIT's ruling is not appealed, or, if appealed, upheld by a final and conclusive court decision, we intend to liquidate all the entries in the collapsed entity by the rate specified in this notice.

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., or Shenzhen Yingli New Energy Resources Co., Ltd. (2) that were subject of the United States Department of Commerce's final determination in Final Results of Antidumping Duty Administrative Review; 2017–2018, 85 FR 62275 (Oct. 2, 2020); (3) that were entered, or withdrawn from warehouse, for consumption during the period December 1, 2017, through November 30, 2018. These entries will remain enjoined pursuant to the terms of the injunctions during the pendency of any appeals process.

In the event the CIT's ruling is not appealed, or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct CBP to assess antidumping duties on any unliquidated entries described in the preceding paragraph, in accordance with 19 CFR 351.212(b). We will instruct CBP to assess antidumping duties on all appropriate entries covered by the review when the importer-specific *ad valorem* assessment rate is not zero or *de minimis*. Where an import-specific *ad valorem* assessment rate is zero or *de minimis*,<sup>11</sup> we will instruct CBP to liquidate the appropriate

<sup>11</sup> See 19 CFR 351.106(c)(2).

entries without regard to antidumping duties.

#### Notification to Interested Parties

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

Dated: December 29, 2022.

**Lisa W. Wang,**

*Assistant Secretary for Enforcement and Compliance.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-831]

#### Fresh Garlic From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review

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

**SUMMARY:** The U.S. Department of Commerce (Commerce) has determined that a request for a new shipper review (NSR) of the antidumping duty order on fresh garlic from the People's Republic of China (China) meets the statutory and regulatory requirements for initiation. The period of review (POR) for the NSR is November 1, 2021, through October 31, 2022.

**DATES:** Applicable January 5, 2023.

**FOR FURTHER INFORMATION CONTACT:** Charles DeFilippo, AD/CVD Operations Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-3797.

#### SUPPLEMENTARY INFORMATION:

##### Background

Commerce published the antidumping duty order on fresh garlic on November 16, 1994.<sup>1</sup> On November 30, 2022, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.214(c), Commerce received a timely NSR request from Jining Huahui International Co., Ltd. (Huahui).<sup>2</sup>

In its submission, Huahui certified that it is the exporter, but not the

producer of the subject merchandise subject to this NSR request.<sup>3</sup> Pursuant to section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(ii)(A), Huahui and its producer certified that it did not export fresh garlic to the United States during the period of investigation (POI).<sup>4</sup> Additionally, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), Huahui and its producer certified that, since the initiation of the investigation, it has not been affiliated with any producer or exporter that exported fresh garlic to the United States during the POI, including those not individually examined during the investigation.<sup>5</sup> As required by 19 CFR 351.214(b)(2)(iii)(B), Huahui and its producer also certified that its export activities are not controlled by the central government of China.<sup>6</sup>

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2)(iv), Huahui submitted documentation establishing the following: (1) the date on which it first shipped subject merchandise for export to the United States; (2) the volume of its first shipment; and (3) the date of its first sale to an unaffiliated customer in the United States.<sup>7</sup>

Commerce conducted a query of U.S. Customs and Border Protection (CBP) data and confirmed that Huahui's subject merchandise entered the United States for consumption and that liquidation of such entries had been properly suspended for antidumping duties. The CBP data that Commerce examined are consistent with information provided by Huahui in its NSR request. In particular, the CBP data confirms the price and quantity reported by Huahui for the sales that forms the basis of its NSR request.<sup>8</sup>

##### Period of Review

In accordance with 19 CFR 351.214(g)(1)(i)(A), the POR for an NSR initiated in the month immediately following the anniversary month will be the twelve-month period immediately preceding the anniversary month. Therefore, the POR for this NSR is November 1, 2021, through October 30, 2022.

<sup>3</sup> *Id.* at Exhibits 1-2.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at Exhibit 4.

<sup>8</sup> *Id.*; see also Memorandum, "Fresh Garlic from the People's Republic of China: Initiation Checklist for Antidumping Duty New Shipper Review of Jining Huahui International Co., Ltd.," dated concurrently with this notice.

##### Initiation of NSR

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(b), and based on the information on the record, we find that Huahui's NSR request meets the threshold requirements for initiation of an NSR of its shipment(s) of fresh garlic to the United States.<sup>9</sup> However, if the information supplied by Huahui is later found to be incorrect or insufficient during the course of this NSR, Commerce may rescind the review or apply adverse facts available, pursuant to section 776 of the Act, as appropriate. Pursuant to 19 CFR 351.221(c)(1)(i), Commerce will publish the notice of initiation of an NSR no later than the last day of the month following the anniversary or semiannual anniversary month of the order. Commerce intends to issue the preliminary results of this review no later than 180 days from the date of initiation, and the final results of this review no later than 90 days after the date the preliminary results are issued.<sup>10</sup>

It is Commerce's practice in cases involving non-market economies to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate (*i.e.*, separate rate) provide evidence of *de jure* and *de facto* absence of government control over the company's export activities.<sup>11</sup> Accordingly, Commerce will issue questionnaires to Huahui requesting, *inter alia*, information regarding its export activities for the purpose of determining whether it is eligible for a separate rate. The review of the exporter will proceed if the response provides sufficient indication that the exporter is not subject to either *de jure* or *de facto* government control with respect to its exports of fresh garlic.

We intend to conduct this NSR in accordance with section 751(a)(2)(B) of the Act.<sup>12</sup> Because Huahui certified that it exported subject merchandise, the sale of which is the basis for its NSR request, Commerce will instruct CBP to continue to suspend liquidation of all

<sup>9</sup> See generally NSR Request.

<sup>10</sup> See section 751(a)(2)(B)(iii) of the Act.

<sup>11</sup> See Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, "Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries," dated April 15, 2005, available at <https://access.trade.gov/Resources/policy/bull05-1.pdf>.

<sup>12</sup> The Act was amended by the Trade Facilitation and Trade Enforcement Act of 2015 which removed from section 751(a)(2)(B) of the Act the provision directing Commerce to instruct CBP to allow an importer the option of posting a bond or security in lieu of a cash deposit during the pendency of an NSR.

<sup>1</sup> See *Antidumping Duty Order: Fresh Garlic from the People's Republic of China*, 59 FR 59209 (November 16, 1994).

<sup>2</sup> See Huahui's Letter, "Fresh Garlic from the People's Republic of China: Request for New Shipper Review," dated November 30, 2022 (NSR Request).