



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: Notice of Court Decision Not in Harmony with the Final Results of Countervailing Duty Administrative Review; Notice of Amended Final Results

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

SUMMARY: On February 29, 2024, the U.S. Court of International Trade (CIT) issued its final judgment in *Risen Energy Co. v. United States*, Consol. Court no. 22-00231, sustaining the U.S. Department of Commerce's (Commerce) first remand results pertaining to the administrative review of the countervailing duty (CVD) 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 January 1, 2019 through, December 31, 2019. 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 countervailable subsidy rates assigned to JA Solar Technology Yangzhou Co., Ltd. (JA Solar) and Risen Energy Co., Ltd. (Risen).

DATES: Applicable March 10, 2024.

FOR FURTHER INFORMATION CONTACT: Lingjun Wang, 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) 482-3642.

SUPPLEMENTARY INFORMATION:

Background

On July 7, 2022, Commerce published its final results in the 2019 CVD administrative review of solar cells from China,¹ in which Commerce: (1) found that JA Solar and Risen used the Export Buyer's Credit program (EBCP);² (2) determined that the Tax Exemptions Under the Article 26(2) of the Enterprise Income Tax Law Program (Article 26(2) Tax Program) is *de jure* specific;³ (3) relied on an average of Thai and Malaysian data as a tier three benchmark for the provision of land for less than adequate remuneration (LTAR);⁴ and (4) relied on an average of Xeneta and Descartes datasets as a tier two benchmark for ocean freight for several LTAR subsidy calculations.⁵

On August 15 and September 12, 2022, Commerce published the *Amended Final Results*⁶ and *Corrections*,⁷ respectively, correcting certain ministerial errors and inadvertent errors in the *Final Results*.

Risen and JA Solar appealed Commerce's *Final Results/Amended Final Results*. On October 11, 2023, the CIT remanded the *Final Results/Amended Final Results* to Commerce.⁸ The CIT ordered Commerce to: (1) consider Risen's untimely non-use certification, and to attempt to verify the Risen's and JA Solar's non-use certifications to the extent that verification does not overly burden voluntary participants;⁹ (2) remove the Article 26(2) Tax Program from

¹ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2019*, 87 FR 40491 (July 7, 2022) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

² *Id.* at Comment 1.

³ *Id.* at Comment 20.

⁴ *Id.* at Comment 17.

⁵ *Id.* at Comment 7.

⁶ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Notice of Amended Final Results Countervailing Duty Administrative Review; 2019*, 87 FR 50069 (August 15, 2022) (*Amended Final Results*).

⁷ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2019 and Notice of Amended Final Results of Countervailing Duty Review, 2019; Corrections*, 87 FR 55782 (September 12, 2022) (*Corrections*).

⁸ See *Remand Order*, 658 F. Supp. 3d at 1371-79.

⁹ *Id.*, 658 F. Supp. 3d at 1372.

its subsidy rate for Risen;¹⁰ (3) reconsider Commerce’s land for LTAR calculation consistent with the CIT’s holdings in *Risen II*, in which the CIT found that the use of the Thai data is insufficiently explained to meet the substantial evidence standard;¹¹ and (4) reconsider whether it remains appropriate to use Descartes data for purposes of this review.¹²

On remand, Commerce requested that Risen submit on the record the non-use certification which was found to be untimely in the underlying review.¹³ Risen complied with Commerce’s request.¹⁴ On December 12, 2023, Commerce issued its Draft Remand Results;¹⁵ only JA Solar submitted comments.¹⁶

In its remand redetermination, issued in January 2024,¹⁷ for both companies, Commerce: (1) removed the EBCP from its overall subsidy rate calculations; (2) removed Article 26(2) Tax program from its overall subsidy rate calculations; (3) used the Malaysian data as the tier three benchmark for the provision of land for LTAR given it is more contemporaneous to the acquisition years of the land-use rights; and in so doing, did not disturb the benefit streams calculated in the 2017 administrative review and carried forward to this review (*i.e.*, 2019 administrative review); and (4) excluded Descartes data and relied solely on Xeneta data as a tier two benchmark for ocean freight. Consequently, Commerce has revised the subsidy benefit calculations for Risen and JA Solar. The CIT sustained Commerce’s final redetermination.¹⁸

¹⁰ See *Remand Order*, 658 F. Supp. 3d at 1373.

¹¹ *Id.* at 1375 (citing *Risen Energy Co. v. United States*, Consol. Court No. 20-03912, Slip Op. 23-48 (CIT April 11, 2023) (*Risen II*)).

¹² See *Remand Order*, 658 F. Supp. 3d at 1378.

¹³ See Commerce’s Letter, “Supplemental Questionnaire,” dated November 27, 2023.

¹⁴ See Risen’s Letter, “Supplemental Questionnaire Response,” dated November 29, 2023.

¹⁵ See Draft Results of Remand Redetermination Pursuant to Court Remand, *Risen Energy Co., Ltd., et al. v. United States*, Consol. Court No. 22-00231, Slip Op. 23-148 (CIT October 11, 2023), dated December 12, 2023 (Draft Remand Results).

¹⁶ See JA Solar’s Letter, “Comments on Draft Remand Redetermination,” dated December 21, 2023 (JA Solar Comments).

¹⁷ See *Final Results of Redetermination Pursuant to Court Remand, Risen Energy Co., Ltd., et al. v. United States*, Consolidated Court No. 22-00231, Slip Op. 23-148 (CIT October 11, 2023), dated January 9, 2024 (*Final Remand*), available at <https://access.trade.gov/resources/remands/23-148.pdf>.

¹⁸ See *Risen Energy Co., Ltd., et al. v. United States*, Slip Op. 24-25 (CIT 2024).

Timken Notice

In its decision in *Timken*,¹⁹ as clarified by *Diamond Sawblades*,²⁰ the U.S. Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) 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 February 29, 2024 judgment constitutes a final decision of the Court that is not in harmony with Commerce’s *Final Results* and *Amended 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* and *Amended Final Results* with respect to Risen and JA Solar as follows:

Producer/Exporter	Subsidy Rate (percent <i>ad valorem</i>)
Risen Energy Co., Ltd. ²¹	7.22
JA Solar Technology Yangzhou Co., Ltd. ²²	10.04

¹⁹ See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

²⁰ See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

²¹ Risen is cross-owned with the following 12 companies: (1) Risen (Luoyang) New Energy Co., Ltd.; (2) Risen (Wuhai) New Energy Co., Ltd.; (3) Risen Energy (Changzhou) Co., Ltd.; (4) Risen Energy (Yiwu) Co., Ltd.; (5) Zhejiang Boxin Investment Co., Ltd.; (6) Zhejiang Twinsel Electronic Technology Co., Ltd. (7) JiuJiang Shengchao Xinye Technology Co., Ltd. (including JiuJiang Shengshao Xinye Technology Co., Ltd. Ruichang Branch); (8) Jiangsu Sveck New Material Co., Ltd.; (9) Changzhou Sveck Photovoltaic New Material Co., Ltd.; (including Changzhou Sveck Photovoltaic New Material Co., Ltd. Jintan Danfeng Road Branch); (10) Changzhou Sveck New Material Technology Co., Ltd. (including Changzhou Sveck Photovoltaic New Material Co., Ltd. Jintan Danfeng Road Branch); (11) Ninghai Risen Energy Power Development Co., Ltd.; and (12) Risen (Ningbo) Electric Power Development Co., Ltd. See *Final Results* IDM at 10-11.

²² JA Solar is cross-owned with the following 34 companies: (1) Shanghai JA Solar Technology Co., Ltd.; (2) JA (Hefei) Renewable Energy Co., Ltd.; (3) Hefei JA Solar Technology Co., Ltd.; (4) JA Solar Investment China Co., Ltd.; (5) Jing Hai Yang Semiconductor Material (Donghai) Co., Ltd.; (6) Donghai JingAo Solar Energy Science and Technology Co., Ltd. (JA Donghai); (7) Solar Silicon Valley Electronic Science and Technology Co., Ltd.; (8) Beijing Jinfeng Investment Co., Ltd.; (9) JingAo Solar Co., Ltd.; (10) Ningjin Songgong Electronic Materials Co., Ltd.; (11) Jinglong Industry and Commerce Group Co., Ltd.; (12) Ningjin County Jingyuan New Energy Investment Co., Ltd.; (13) Hebei Jinglong New Materials Technology Group Co., Ltd.; (14) Hebei Jinglong Sun Equipment Co., Ltd.; (15) Hebei Jingle Optoelectronic Technology Co., Ltd.; (16) Ningjin Jingxing Electronic Material Co., Ltd.; (17) Ningjin Saimei Ganglong Electronic Materials Co., Ltd.; (18) Hebei Ningtong Electronic Materials Co., Ltd.; (19) JA Solar (Xingtai) Co., Ltd.; (20) Xingtai Jinglong Electronic Material Co., Ltd.; (21) Xingtai Jinglong PV Materials Co., Ltd.; (22) JA PV Technology Co., Ltd.; (23) Ningjin Jinglong PV Industry Investment Co., Ltd.; (24) Baotou JA Solar Technology Co., Ltd.; (25) Xingtai Jinglong New Energy Co., Ltd.; (26) Ningjin County Jing Tai Fu Technology Co., Ltd.; (27) JA Solar Technology Co., Ltd.; (28) Jinglong Technology Holdings Co., Ltd.; (29) Ningjin Guiguang Electronics Investment Co., Ltd.; (30) Ningjin Longxin Investment Co., Ltd.; (31) Beijing JA Solar PV Technology Co., Ltd.; (32) Solar Silicon Peak Electronic Science and Technology Co., Ltd.; (33) Jingwei Electronic Materials Co., Ltd.; and (34) Taicang Juren PV Material Co., Ltd. See *Final Results* IDM at 9-10.

Cash Deposit Requirements

Because Risen and JA Solar have a superseding cash deposit rate, *i.e.*, there have been final results published in a subsequent administrative review, Commerce will not issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP). This notice will not affect the current cash deposit rates.

Liquidation of Suspended Entries

At this time, Commerce remains enjoined by the CIT order from liquidating entries that were produced and/or exported by Risen and JA Solar, and were entered, or withdrawn from warehouse, for consumption during the period January 1, 2019, through December 31, 2019. These entries will remain enjoined pursuant to the terms of the injunction 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 countervailing duties on unliquidated entries of subject merchandise produced and/or exported by Risen and JA Solar in accordance with 19 CFR 351.212(b). We will instruct CBP to assess countervailing duties on all appropriate entries covered by this review when the *ad valorem* rate is not zero or *de minimis*. Where an *ad valorem* subsidy rate is zero or *de minimis*,²³ we will instruct CBP to liquidate the appropriate entries without regard to countervailing duties.

Notification to Interested Parties

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

Dated: March 5, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations,

²³ See 19 CFR 351.106(c)(2).

performing the non-exclusive functions and duties

of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024-05066 Filed: 3/8/2024 8:45 am; Publication Date: 3/11/2024]