

*Jinko Solar Co., Ltd. v. United States*  
Court No. 15-00080, Slip Op. 17-62 (Court of International Trade May 18, 2017)  
FINAL RESULTS OF REDETERMINATION  
PURSUANT TO COURT REMAND

**I. SUMMARY**

The Department of Commerce (Department) prepared these final results of redetermination (Final Results) pursuant to the remand order of the U.S. Court of International Trade (CIT or the Court), issued on May 18, 2017, in *Jinko Solar Co., Ltd. et al. v. United States*, Court No. 15-00080, Slip Op. 17-62 (CIT 2017) (*Jinko v. U.S.*). The remand concerns the final determination in the less-than-fair-value investigation of certain crystalline silicon photovoltaic products (certain solar products) from the People’s Republic of China (PRC) covering the period April 1, 2013, through September 30, 2013 (POI).<sup>1</sup> The Court sustained, in part, and remanded, in part, certain aspects of the *Final Determination*. Specifically, on remand, the Court directed the Department to reconsider or further explain its decision to collapse Renesola Jiangsu Ltd. (Renesola Jiangsu) and Renesola Zhejiang Ltd. (Renesola Zhejiang) (collectively, Renesola Group) with Jinko Solar Co. Ltd. (Jinko Solar) and Jinko Solar Import and Export Co., Ltd. (Jinko I&E) (collectively, Jinko Group), and treat these companies as a single entity for purposes

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<sup>1</sup> See *Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 76970 (December 23, 2014) (*Final Determination*) and accompanying Issues and Decision Memorandum (IDM); see also *Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Antidumping Duty Order; and Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 80 FR 8592 (February 18, 2015).

of calculating an antidumping duty margin.<sup>2</sup> The Court also directed the Department to reconsider or further explain its decision to use South African import data under Harmonized Tariff Schedule (HTS) classification subheading 8548.10 to value Changzhou Trina Solar Energy Co. Ltd.'s (Trina Solar) offset for scrapped solar cells when calculating normal value.<sup>3</sup>

As set forth in detail below, the Department has provided additional explanation with respect to its decision to collapse the Renesola Group and Jinko Group. In particular, the Department has clarified its analysis regarding whether there is a significant potential for manipulation of price or production between the two affiliated groups (*i.e.*, Renesola Group and Jinko Group) pursuant to 19 CFR 351.401(f)(2)(ii) and (iii). The Department has also provided additional explanation regarding its decision to use South African import data under HTS 8548.10 to value Trina Solar's scrap offset. Based on the additional explanations provided, the dumping margin calculations for the Renesola Group and Jinko Group or Trina Solar remain unchanged.

## **II. BACKGROUND**

On January 29, 2014, the Department published in the *Federal Register* a notice of initiation of an antidumping duty investigation of certain solar products from the PRC.<sup>4</sup> Subsequently, the Department selected Renesola Jiangsu and Trina Solar for individual examination as mandatory respondents.<sup>5</sup> On June 6, 2014, the Department preliminarily determined that the Renesola Group and Jinko Group were affiliated, pursuant to section

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<sup>2</sup> See *Jinko v. U.S.* at 4.

<sup>3</sup> *Id.*

<sup>4</sup> See *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China and Taiwan: Initiation of Antidumping Duty Investigations*, 79 FR 4661 (January 29, 2014).

<sup>5</sup> See Memorandum from Abdelali Elouaradia to Christian Marsh, regarding "Antidumping Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Respondent Selection," dated March 21, 2014.

771(33)(A),(E), and (F) of the Tariff Act of 1930, as amended (the Act), and should be treated as a single entity pursuant to 19 CFR 351.401(f).<sup>6</sup> On July 31, 2014, the Department published an affirmative preliminary determination.<sup>7</sup> In the *Preliminary Determination*, the Department treated the Renesola Group and the Jinko Group as a single entity and selected HTS 8548.10 to value scrap solar cells.<sup>8</sup> Subsequently, after its review of the affirmative briefs and rebuttal briefs, the Department's decisions regarding these two matters remained unchanged in the *Final Determination*, which the Department published on December 23, 2014.<sup>9</sup> The antidumping duty order was published on February 18, 2015.<sup>10</sup>

On March 18, 2016, and March 21, 2016, the Jinko Group and Solar World Americas, Inc. (Solar World), respectively, challenged certain aspects of the *Final Determination* before the CIT. On May 18, 2017, the CIT sustained, in part, and remanded, in part, the Department's *Final Determination*.

### **III. REMAND OPINION AND ORDER**

#### **A. Single Entity Treatment**

As explained above, the Court remanded to the Department for reconsideration or further explanation its determination to collapse and treat as a single entity the Renesola Group and Jinko Group. Pursuant to 19 CFR 351.401(f)(1), the Department's regulations provide that the

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<sup>6</sup> See Memorandum from Thomas Martin, International Trade Analyst, AD/CVD Operations, Office IV, to Abdelali Elouaradia Director, AD/CVD Operations, Office IV, regarding "Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Affiliation and Single Entity Status," dated June 6, 2014 (Single Entity Memorandum).

<sup>7</sup> See *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 79 FR 44399 (July 31, 2014) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM).

<sup>8</sup> See PDM at 17-19; see also letter from Jeff Pedersen, International Trade Compliance Analyst, AD/CVD Operations, Office IV through Howard Smith, Program Manager, AD/CVD Operations, Office IV to the File "Antidumping Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Factor Valuation Memorandum," dated July 24, 2014 (Preliminary SV Memorandum).

<sup>9</sup> See *Final Determination* and accompanying IDM at Comments 10 and 16.

<sup>10</sup> See *Order*.

agency may:

treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order restructure manufacturing priorities . . . and [ ] concludes that there is a significant potential for the manipulation of price or production.

Furthermore, section 19 CFR 351.401(f)(2) lists the following non-exhaustive list of factors the Department may consider in assessing whether there is a “significant potential for manipulation of price or production:”

- (i) The level of common ownership;
- (ii) The extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and
- (iii) Whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.

In accordance with these provisions, the Department, determined to collapse the Renesola Group and Jinko Group on the basis of several considerations.<sup>11</sup> First, the Department found that the Li family grouping held the largest ownership interest in the Renesola Group and Jinko Group by virtue of its ownership in the Renesola Group and Jinko Group parent companies.<sup>12</sup> Second, the Department found that Li family members served on the boards of, and held management positions with, Jinko Solar, Jinko Solar I&E, Renesola Jiangsu, and Renesola Zhejiang.<sup>13</sup> Third, Commerce found that the four companies had intertwined operations, based upon evidence that: (a) the Jinko Group parent company and its affiliates sold goods and services to, purchased raw materials from, had accounts receivable from, and had accounts payable to, Renesola Ltd. and its

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<sup>11</sup> See *Final Determination* and accompanying IDM at Comment 16.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

affiliates; and (b) Renesola Ltd. and its affiliates sold goods to, purchased raw materials from, had accounts receivable from, and had accounts payable to, the Jinko Group parent company and its affiliates.<sup>14</sup> In view of this evidence, Commerce determined to collapse the two groups.

In reviewing the Department’s decision to collapse the Renesola Group and Jinko Group, the Court held that “{the Department’s} decision to collapse the Renesola entities with the Jinko entities is not supported by substantial evidence because the common ownership, the shared management of these companies, and intertwined operations is insufficient to reasonably support Commerce’s conclusion.”<sup>15</sup> Specifically, the Court faulted two aspects of the Department’s reasoning. First, with respect to 19 CFR 351.401(f)(2)(ii) (*i.e.*, the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm), the Court held that,

“{a}lthough Commerce purports to conclude that managerial employees or board members of the Renesola entities sit on the board of directors of the Jinko entities, or vice versa, the evidence relied upon by Commerce only demonstrates that members of the Li family grouping sat on the boards of both entities.”<sup>16</sup>

The Court noted that, although the Department “found that there is overlap in the directors and management of the Renesola entities and the Jinko entities when the Li family is viewed as a single person,” “the regulation explicitly calls upon the agency to assess the extent to which *individual* managerial employees or board members of one firm sit on the board of directors of an affiliated firm.”<sup>17</sup> The Court also stated, however, that “{t}he factors enumerated in 19 CFR 351.401(f)(2) are non-exhaustive, and nothing

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<sup>14</sup> *Id.*

<sup>15</sup> *See Jinko v. U.S.* at 14.

<sup>16</sup> *Id.*, at 14-15; *see also* Single Entity Memorandum at 6.

<sup>17</sup> *Id.*, at 15 n.12 (emphasis added).

precludes Commerce from considering that members of a family unit sit on the boards of two sets of entities as reflecting a potential for manipulation.”<sup>18</sup> “On remand,” the Court explained, “if Commerce wishes to rely upon board memberships and management positions held by a family grouping, it must so state and explain how this factor creates a significant potential for the manipulation of price or production or reconsider its determination.”<sup>19</sup>

Second, regarding 19 CFR 351.401(f)(2)(iii) (*i.e.*, whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers), the Court found that the Department has not “sufficiently explained how the raw material purchases, accounts receivable, and other transactions between the Renesola entities and the Jinko entities support Commerce’s conclusion that the companies had intertwined operations during the POI.”<sup>20</sup> Specifically, the Court observed that “the values of the sales, purchases of raw materials, and accounts receivable between the Renesola entities and the Jinko entities [ ] from 2012, prior to the POI, to 2013”<sup>21</sup> and reasoned that the Department “d{id} not explain why the change in level of transactions between the two entities does not affect its determination that the two entities’ operations were intertwined.”<sup>22</sup> The Court also observed that

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<sup>18</sup> *Id.*, at 14-15.

<sup>19</sup> *Id.*, at 18-19.

<sup>20</sup> *See Jinko v. U.S.* at 14.

<sup>21</sup> *Id.*, at 16.

<sup>22</sup> *Id.*, at 17. In the underlying investigation, the Department found that the fiscal year 2012 and 2013 financial statements of Renesola Ltd. reported significant raw material purchases and accounts receivables from “Jinko and its subsidiaries,” and the fiscal year 2012 financial statements of JinkoSolar Holding reported significant sales and accounts payable to, and raw material purchases and accounts receivable from, Renesola Ltd. and its subsidiaries (as noted above, the POI is April 1, 2013 through September 30, 2013). Renesola Ltd. reported that during the years ending December 31, 2010, 2011, 2012, and 2013, purchased \$0, \$4.5 million, \$85.1 million, and \$[ ] million of raw materials from “Jinko and its subsidiaries,” respectively. Furthermore, Renesola Ltd. reported that during the years ending December 31, 2010, 2011, 2012, and 2013, it sold \$0, \$6.8 million, \$59.5 million, and \$[ ] million worth of goods to “Jinko Solar and its subsidiaries,” respectively. *See* IDM at Comment 16; *see also* Renesola

the Department did not respond to Jinko Solar’s claim that Renesola’s reported raw material purchases and accounts receivables with Jinko entities “only account for a *de minimis* level of activity relative to the companies’ overall operations.”<sup>23</sup> The Court explained that “if {the Department} relied upon {past transactions to infer future potential manipulation, it} must say so and explain why such an inference is reasonable based on the record before it.”<sup>24</sup>

## **B. Valuing Scrap Modules**

As explained above, the Court also remanded to the Department for reconsideration or further explanation its decision to value scrap using HTS subheading 8548.10, which covers “waste and scrap of primary cells, primary batteries and electrical accumulators; spent primary cells, spent primary batteries, and spent electrical accumulators.” In the original investigation, the Department explained that because the record appeared to include no surrogate value data for an HTS category that covered only scrap solar cells, Commerce sought to value the respondents’ factors of production with the best information available on the record. Commerce selected HTS subheading 8548.10 to value scrapped solar cells because this category “contains only scrapped materials, including scrapped solar cells.”<sup>25</sup> The Department declined to use HTS category 2804.69, which covers silicon of less than 99.99 percent purity, because “solar cells consist of many more raw materials than silicon,” and the HTS category containing polysilicon is “only specific to one raw material contained in the solar cell – silicon – and is not specific to scrap materials.”<sup>26</sup>

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Section A Questionnaire Response at Exhibit A.11 (Notes to 2012 Renesola Ltd. consolidated financial statement at page F-34); Renesola CEP Verification Report at Exhibit II-2 (Notes to 2013 Renesola Ltd. consolidated financial statement at page F-36) and Jinko Solar SRA at Exhibit 5, JinkoSolar Holding Co. Ltd. consolidated financial statement) at F-33, F-34.

<sup>23</sup> See *Jinko v. U.S.* at 18.

<sup>24</sup> *Id.*, at 19.

<sup>25</sup> See *Final Determination* and accompanying IDM at Comment 10.

<sup>26</sup> *Id.*

In reviewing this determination, the Court held that the Department did not sufficiently address the argument made by the petitioner<sup>27</sup> that “the language of heading 8548, HTS, evidences that the products imported under that heading are specific to electrical batteries and ‘are produced using a significantly different manufacturing process with completely different raw material inputs than are solar cells.’”<sup>28</sup> The Court also found that the government made two *post hoc* rationalizations in its brief to the Court: (1) that using Thai HTS 2804.69 to value the scrap undervalues it because this HTS category only covers one material in the scrap, silicon;<sup>29</sup> and (2) that the scrap materials are more similar to parts of electric machinery which are covered by Chapter 85 of the HTS).<sup>30</sup> In light of the foregoing, the Court explained that “{i}f either of these rationalizations informed {the Department’s selection of subheading 8548.10, HTS, on remand {the Department} must make these rationalizations explicit and identify the record evidence that supports them.”<sup>31</sup>

#### **IV. ANALYSIS**

##### **A. Single Entity Treatment**

Consistent with the Court’s decision, we have revised our analysis to clarify the Li family members’ board memberships and management positions and to explain further our analysis under 19 CFR 351.401(f)(2)(iii) regarding the intertwined operations of the Renesola Group and the Jinko Group. As an initial matter, we find that the board memberships and management positions held by members of the Li family evidence a significant potential for the manipulation of price or production across the Renesola Group and the Jinko Group. While this consideration

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<sup>27</sup> SolarWorld Industries America, Inc. (petitioner)

<sup>28</sup> As noted above, the petitioner’s arguments focus on scrap solar cells. However, the record indicates that the offset is for module scrap.

<sup>29</sup> See *Jinko v. U.S.* at 32.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*, at 33.

may not be explicitly specified in the non-exhaustive list of factors for collapsing contained in the Department's regulations, we may consider other factors as well. This is one such factor that we are considering.

The record shows that the founder and CEO of Renesola Ltd. and Renesola Zhejiang, Mr. Li Xianshou, and Mr. Li Xiande, Mr. Li Xianhua, and Mr. Chen Kangping, who are the Chairman of the Board, Vice President, and CEO, respectively, of Jinko Solar and Jinko Solar I&E, are members of the same family.<sup>32</sup> Mr. Li Xianshou, Mr. Li Xiande, and Mr. Li Xianhua are brothers.<sup>33</sup> Mr. Chen Kangping is a brother-in-law of Mr. Li Xianshou.<sup>34</sup> These facts demonstrate the prominent role that the Li family plays in the management of these company groups by way of the board memberships and management positions held by members of that family,<sup>35</sup> and this consideration is probative of the significant potential for the manipulation of price or production across the two company groups via the Li family.<sup>36</sup>

When affiliation is based upon control, as here, there may be substantial overlap between evidence relied upon to determine affiliation and that relied upon to determine whether there is a significant potential for the manipulation of price or production. Here, the family relationship

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<sup>32</sup> See Letter from Renesola to the Honorable Penny Pritzker, Secretary of Commerce, regarding, "Certain Crystalline Silicon Photovoltaic Products from China: Section A Response," dated April 24, 2013 (Section A Response) at Exhibits A.7 (Articles of Association showing Mr. Li Xianshou as the legal representative of Renesola Zhejiang) and A.11 (Renesola Ltd. SEC Annual Report at 82, stating that Mr. Li Xianshou is the founder and CEO of Renesola Ltd.); see also letter from Jinko Solar to the Secretary of Commerce "Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China - Separate Rate Application," dated March 28, 2014 (Jinko Solar SRA) at 14-15.

<sup>33</sup> See Jinko Solar SRA at 14-15.

<sup>34</sup> *Id.*

<sup>35</sup> Moreover, these members of the Li family either individually, in the case of the Renesola Group, or collectively, in the case of the Jinko Group, indirectly hold that largest ownership interests in the companies collapsed by the Department. See Section A Response at Exhibit A.13, and Jinko Solar SRA at Exhibit 6.

<sup>36</sup> With respect to the Department's affiliation analysis, the Court held that the Department "adequately support {ed} its determination that the role of members of the Li family grouping in both the Jinko entities and the Renesola entities creates a potential for the family to act in concert with respect to manipulating pricing, production, and cost of subject merchandise." *Jinko v. US* at 8. We believe our analysis here is consistent with the Court's reasoning as to that issue.

amongst the Li family members provides a basis for making decisions based on considerations beyond normal commercial considerations, and provides the potential for coordination by the Li family across the Renesola Group and the Jinko Group, via positions its members hold in these two groups. Those positions enable the family members to direct outcomes across the companies, and the Li family is positioned to coordinate its actions to direct the Renesola Group and the Jinko Group to act in concert or out of common interest.<sup>37</sup> We find that this evidence weighs in favor of finding a significant potential for the manipulation of price or production in accordance with 19 CFR 351.401(f)(1).

In addition, we address the Court's concerns regarding our analysis of the intertwined operations of the Renesola Group and the Jinko Group. First, we explain why the change in the level of transactions between the Renesola and JinkoSolar Holding Co. Ltd. (JinkoSolar Holding)<sup>38</sup> entities from 2012 (before the POI) to 2013 does not affect our determination that the two entities' operations were intertwined. The reported raw material purchases by Renesola Ltd. of \$[ ], \$[ ], and \$[ ] from "Jinko and its subsidiaries" in the 2011, 2012, and 2013 (respectively) account for 0.50, 8.5, and 1.3 percent of the \$[ ], \$[ ], and \$[ ] total cost of sales reported by Renesola Ltd. in the years 2011, 2012, and 2013. Although there is a [ ] in purchases from 2012 to 2013, the record shows that the level of purchases from year to year fluctuates, such that an increase or decrease in one year does not necessarily predict a continuing trend in the level of activity between these companies. Thus, the Department cannot assume that the change in the level of transactions between these companies

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<sup>37</sup> See *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results and Rescission in Part of Antidumping Duty Administrative Review*, 69 FR 26361 (May 12, 2004) (*Steel Plate from Korea*), and accompanying Issues and Decision Memorandum at Comment 1.

<sup>38</sup> JinkoSolar Holding is the ultimate owner of Jinko Solar in which Mr. Li Xiande, Mr. Li Xianhua and Mr. Chen Kangping are the largest shareholders

between 2012 and 2013 indicates a [ ] trend in transactions [ ]. What is evident from this time line is that these companies have an ongoing commercial relationship.

Furthermore, raw materials purchased from Renesola Ltd. and its subsidiaries by JinkoSolar Holding [ ] Renminbi (RMB) in the calendar year end 2013. Additionally, the audit report for JinkoSolar Holding for the year 2013 states that, “{f}or the transaction {sic} with Renesola during 2013, we entered into processing services agreements with subsidiaries of Renesola ... .”<sup>39</sup> Agreements such as these provide an indication of a continuing operational relationship between the two affiliated groups, *i.e.*, Renesola Group and Jinko Group. Hence, we do not find that a [ ] in certain transaction levels between the Renesola and JinkoSolar Holding entities from 2012 (before the POI) to 2013 undermines the Department’s determination that the two entities’ operations were intertwined.

Additionally, the year-end consolidated financial statements from JinkoSolar Holding and Renesola Ltd. do not necessarily provide a full picture of the financial interactions between the Renesola and Jinko Groups during the POI. For example, in the year ending December 31, 2013, JinkoSolar Holding had accounts receivable from Renesola Ltd. and its subsidiaries of [ ] RMB and accounts payable to Renesola Ltd. and its subsidiaries of [ ] RMB; whereas, at September 20, 2013 (the end of the POI), the accounts receivable from Renesola Ltd. and its subsidiaries was [ ] RMB, and the accounts payable to Renesola Ltd. and its subsidiaries was [ ] RMB.<sup>40</sup> Hence, for the POI, the accounts receivable and accounts payable

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<sup>39</sup> See Jinko Solar June Response at Exhibit A-19.

<sup>40</sup> See Letter from Jinko Solar Co., Ltd., Jinko Solar Import and Export Co., Ltd. and JinkoSolar (U.S.) Inc. to the Secretary of Commerce “Certain Crystalline Silicon Photovoltaic Products from the People's

balances related to Renesola Ltd. and its subsidiaries were over three and 11 times, respectively, the balances of those accounts as of December 31, 2013. Furthermore, JinkoSolar Holding's interim consolidated financial statements for the nine months ending September 30, 2013 (the end of the POI) show a [ ] that is not reported in JinkoSolar Holding's year ending December 31, 2013, consolidated financial statements.<sup>41</sup> This indicates that the nature of the transactions between the Renesola and Jinko Groups during the POI extended beyond sales and purchases to other financial arrangements, providing further evidence of intertwined operations. Yet, this fact would not surface from simply examining the year-end consolidated financial statements of JinkoSolar Holding and Renesola Ltd.

Second, we address the purported evidence of a *de minimis* level of transactions between Renesola Ltd. and the JinkoSolar Holding entities during the POI. Jinko Solar argues that Renesola Ltd.'s raw material purchases of \$[ ] from "Jinko and its subsidiaries" in the year 2013 only accounts for 0.16 percent of the \$[ ] total cost of sales reported by Renesola Ltd. Further, Jinko Solar claims that Renesola Ltd.'s reported accounts receivable, or revenue, in the amount of \$180,102 from "Jinko and its subsidiaries" during the year 2013 only accounts for 0.01 percent of its total revenue reported in the year 2013.<sup>42</sup>

There are several problems with these comparisons. As an initial matter, the \$[ ] figure cited by Jinko Solar is Renesola Ltd.'s accounts payable balance as of December 31, 2013, not its raw material purchases during 2013. Renesola Ltd.'s actual raw material purchases from "Jinko and its subsidiaries" during the year ending December 31, 2013, were \$[ ], not \$[ ], which accounts for 1.3 percent, not 0.16 percent, of the \$[ ] total cost of

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Republic of China: Jinko Solar's Response to Sections A, C and D Questionnaire," dated June 6, 2014 (JinkoSolar June Response) at Exhibit A-19.

<sup>41</sup> *Id.*

<sup>42</sup> See Jinko Solar Co. Ltd.'s Reply Mem. Further Supp. Mot. Summ. J. Agency R. 4-5, Oct. 26, 2016, ECF No. 66.

sales reported by Renesola Ltd. Irrespective of the actual percentage of the cost of sales represented by these transactions, we do not believe that over \$18 million in purchases is an insignificant level of transactions. Additionally, in evaluating such percentages it is important to take into consideration that there may be a timing difference between when raw material purchases are made and when the cost of those purchases are expensed (and included in the cost of sales) to match the related sales revenue from finished products that were produced from those raw materials.

Furthermore, the comparison showing that Renesola Ltd.'s accounts receivable balance, or revenue, from "Jinko and its subsidiaries" during the year ending December 31, 2013, accounts for 0.01 percent of its total revenue reported is not necessarily meaningful with regard to an analysis of significant transactions. This accounts receivable balance represents the amount of money that "Jinko and its subsidiaries" owed Renesola Ltd. at a single point in time (December 31, 2013). This figure does not necessarily give an indication as to the significance of Renesola Ltd.'s sales to "Jinko and its subsidiaries" during 2013.

Moreover, the ratios provided as evidence of a *de minimis* level of transactions are from consolidated financial statements, even though the actual sales and purchases may have been made by specific subsidiaries. Thus, there is the potential that using the total value of sales and purchases from the consolidated financial statements as the denominator of these ratios may understate the ratios that would have been calculated using financial data from the subsidiaries that executed the transactions.

Finally, the Department has relied upon transactions before the POI to support a finding of future potential for manipulation. In considering the "potential" for manipulation, the Department "... considers both actual manipulation in the past and the possibility of future

manipulation, which does not require evidence of actual manipulation during the period {under consideration}.”<sup>43</sup> Therefore, there is precedent in our practice for considering activities before the period under consideration in deciding how companies may behave in the future. Regardless of the amount of, or relation to, year-end totals of the transactions discussed above, the record provides evidence of a history of transactions between the groups of companies under consideration.

This history of transactions, including over [ ] and [ ] in purchases by Renesola Ltd. from “Jinko and its subsidiaries” in 2012 and 2013, respectively, demonstrate that, immediately prior to the POI, and in the calendar year overlapping the POI, there was a significant level of transactions between the Renesola and Jinko Groups. We clarify here that we are relying upon these transactions to find that the potential for manipulation in the future exists.

Based upon the foregoing, the Department continues to find that the Renesola Group and Jinko Group should be treated as a single entity, in accordance with 19 CFR 351.401(f). We reach this determination based on the level of common ownership by the Li family of the two groups, in accordance with 19 CFR 351.401(f)(2)(i), the board memberships and management positions held by members of the Li family, a consideration not listed in 19 CFR 351.401(f)(2) that we, nevertheless, find probative in analyzing the significant potential for manipulation , and the extent to which operations between the two groups are intertwined, in accordance with 19 CFR 351.401(f)(2)(iii).

## **B. Valuing Scrap Solar Modules**

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<sup>43</sup> See *Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Antidumping Duty Administrative Review*, 74 FR 65518, 65518 (December 10, 2009) and accompanying Issues and Decision Memorandum at Comment 1; *Freshwater Crawfish Tail Meat from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind Review in Part*, 73 FR 58115, 58120 (October 6, 2008); and *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews*, 71 FR 40064 (July 14, 2006) and accompanying Issues and Decision Memorandum at Comment 18.

Consistent with the Court’s decision, we have reviewed our original determination to value scrap using HTS 8548.10, which covers “waste and scrap of primary cells, primary batteries and electrical accumulators; spent primary cells, spent primary batteries, and spent electrical accumulators” and further explain here our decision to do so. In the underlying investigation, the Department valued the scrap solar modules offset (*i.e.*, a deduction from costs) based on the value of South African imports under HTS 8548.10.<sup>44</sup> The petitioner argued in the underlying investigation, as also argued before the Court, that the appropriate HTS category for valuing scrap solar cells is Thai HTS 2804.69, which covers the raw material input of polysilicon of less than 99.9 percent purity. However, Trina Solar reported that the scrap, accumulated during its assembly of solar modules, was related to its “module scrap,” which was comprised of “completely broken modules,” not raw polysilicon.<sup>45</sup> Although the petitioner and the Department have previously referred to the offset as an offset for scrap solar cells, we clarify here that the offset in question is *module* scrap and should be valued as such.<sup>46</sup>

Section 773(c)(1)(B) of the Act directs the Department to determine normal value for subject merchandise from non-market economy countries by valuing each respondent’s factors of production using the “best available information.” In so doing, the Department relies on ME countries that are economically comparable to the NME country at issue and significant producers of the merchandise at issue.<sup>47</sup> In accordance with the “best available information” standard, the Department is required to evaluate the information on the record, as the parties

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<sup>44</sup> See Final Determination and accompanying IDM at Comment 10.

<sup>45</sup> See letter from Trina Solar to the Secretary of Commerce “*Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China*; Section D Questionnaire Response,” dated May 15, 2014 (Trina Solar Section D Response) at D-21 and Exhibits D- 10.1 and D-10.2 (“Trina Solar generates module scrap in its production of modules under consideration. Such module scrap comprises of {sic} completely broken modules that were sold or discarded.”)

<sup>46</sup> *Id.*

<sup>47</sup> See section 773(c)(4)(A)-(B) of the Act; see also 19 CFR 351.408(b).

have chosen to develop it,<sup>48</sup> and select what it considers to be the best available information for valuing the factor. Here, the only two potential values for scrap solar modules on the record are the import values for “waste and scrap of primary cells, primary batteries and accumulators; spent primary cells, spent primary batteries, and spent electrical accumulators” and silicon of less than 99.9 percent purity. Neither of these categories explicitly covers scrap solar modules.

Faced with these imperfect options, we continue to find that HTS subheading 8548.10, which covers “waste and scrap of primary cells, primary batteries and electrical accumulators; spent primary cells, spent primary batteries, and spent electrical accumulators,” provides the best available information. The scrap solar modules to be valued are more similar to the scrap battery materials covered under HTS 8548.10 than the raw polysilicon material covered under HTS 2804.69. Solar modules consist of many more raw materials than just polysilicon. Record information demonstrates that a variety of chemical compounds (*e.g.*, nitride), metals (incorporated on both sides of the cell), special solar glass, junction boxes, and aluminum frames are introduced into solar modules at various stages of production.<sup>49</sup> HTS 8548 covers waste and scrap of primary batteries, electrical accumulators, spent primary batteries and spent electrical accumulators. These items are engineered products that similarly include metal components and chemicals which, although not identical to the metal and chemical components in solar modules, are nonetheless metals and chemicals used in an engineered product designed to generate electricity that is no longer usable because “of breakage, cutting up, wear, or other reasons . . . .”<sup>50</sup>

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<sup>48</sup> *Cf. QVD Food Co. v. United States*, 658 F.3d 1318, 1324 (Fed. Cir. 2011) (“{T}he burden of creating an adequate record lies with {interested parties} and not with Commerce.”).

<sup>49</sup> See the December 31, 2013 Petition at 15.

<sup>50</sup> See letter from the petitioner to the Secretary of Commerce “Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Submission of Surrogate Values, dated June 24, 2014, at Exhibit 6 (showing Thai HTS subcategories under HTS 8548.10 that include “Lead acid scrap storage batteries”, “Waste and scrap containing mainly iron: Primary cells and primary batteries or electric accumulators for use in aircraft”, and “Waste and scrap containing mainly copper: Primary cells and primary batteries or electric accumulators of a kind used in

There is no evidence that similar engineered products with metal and electrical components are covered under HTS 2804.69.

In addition, were we to rely on HTS 2804.69, as the petitioner advocates we should, we would likely undervalue the respondents' scrap, as this category covers only one material contained in the scrap, polysilicon, as explained above. The petitioner has argued throughout this proceeding that purchasers of scrap solar modules purchase this scrap only for purposes of recovering the polysilicon, but have not supported this claim with record evidence. It is the responsibility of the petitioner to develop a record adequate to support its arguments.<sup>51</sup> Solar modules consist of significantly more material than just polysilicon, and we are unpersuaded by the petitioner's claim, absent record evidence to substantiate it.

The Department therefore chose HTS 8548.10 to value solar module scrap, because it covers scrapped and spent materials and those materials are more akin to scrap solar module materials, whereas HTS 2804.69 covers only silicon; thus, its use would not fully value the scrap module materials, and it is not a subheading at all specific to scrap materials. HTS 8548.10 more closely reflects the material composition of scrap solar modules, which include wire, metals, glass, and chemical compounds. Therefore, we continue to find that South African import data under HTS 8548.10 provide the best available information on the record with which to value scrap solar modules.

## **V. SUMMARY AND ANALYSIS OF LITIGANTS' COMMENTS**

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aircraft.”). *See also* Petition for the Imposition of Antidumping and Countervailing Duties: Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China and Taiwan at Exhibit I-9 (note 9 of the notes for Chapter 85 of the Harmonized Tariff Schedule of the United States states that “{f}or the purposes of heading 8548, “spent primary cells, spent primary batteries and spent electric storage batteries” are those which are neither usable as such because of breakage, cutting up, wear or other reasons, nor capable of being recharged.” Although we did not rely on Thai import data to value module scrap these data evidence the fact that batteries imported under HTS 8548.10 include metal components and acid.

<sup>51</sup> *See QVD Food Co. v. United States*, 658 F.3d 1318, 1324 (Fed. Cir. 2011) (“{T}he burden of creating an adequate record lies with {interested parties} and not with Commerce.”).

## **Comment 1: Single Entity Treatment**

### *A. Significant Potential for Manipulation of Price and Production through a Familial Relationship*

#### **Petitioner's Comments:**

According to the petitioner, the Department has sufficiently explained its finding that the board membership and management positions in both the Jinko and Renesola Groups that were held by members of the Li family during the POI demonstrate the prominent role that these family members play in the operations of both groups. Specifically, the petitioner believes that the Department correctly determined that the positions held by the family members provided a basis for making decisions beyond normal commercial considerations and allowed for coordination between the companies that could direct Renesola Group and Jinko Group to act in concert or out of common interest.

#### **Jinko Solar's Comments:**

Jinko Solar first claims that the Department failed to explain how common board memberships and management positions held by a family grouping creates a significant potential for the manipulation of price or production. According to Jinko Solar, the Department's conclusory statements that the family relationship "provides a basis for making decisions based on considerations beyond normal commercial considerations" and provides an opportunity "to act in concert or out of common interest," are insufficient to establish the level of potential cross-operational control required to justify a collapsing determination. Jinko Solar states that any influence the shareholders may exercise over their own companies does not necessarily imply that the familial relationship between Mr. Li Xianshou, Mr. Li Xiande, Mr. Li Xianhua and Mr. Chen Kangping will result in Mr. Li Xiande, Mr. Li Xianhua and Mr. Chen Kangping having

control over operations within the Renesola Group (companies in which they hold no shares) or Mr. Li Xianshou having control over operations within the Jinko Group (in which he holds no shares).

Jinko Solar also claims that there is no ownership or managerial overlap between the two sides of the Li family with respect to the Jinko and Renesola Groups. Mr. Li Xiande, Mr. Li Xianhua and Mr. Chen Kangping, Jinko Solar contends, are shareholders and hold positions only within the Jinko Group, and Mr. Li Xianshou is a shareholder and holds positions only within the Renesola Group. Jinko Solar further states that no Li family member or any other individual holds a position in both company groups such that they could exercise operational control to impact decisions regarding subject merchandise production, pricing or cost. In order to “act in concert” or “out of common interest,” these shareholders would effectively have to conspire together to manipulate the activities of their companies. Jinko Solar argues that there is no evidence supporting the inference that the Jinko and Renesola Groups, through these shareholders, would share sales information, become involved in each other’s production or pricing decisions, or overlap or share facilities or employees.

Finally, Jinko Solar claims that the Department did not dispute that there is neither common ownership nor management within the meaning of 19 CFR 351.401(f)(2)(i) and (ii), respectively.

**Department’s Position:**

We continue to disagree with Jinko Solar’s position. Jinko Solar essentially argues that it is inappropriate to treat the Renesola and Jinko Groups as a single entity because separate individuals in the Li family directly or indirectly own shares and hold management positions in one, but not both, of the company groupings (there is no overlap in individual ownership or

management) and these individuals cannot exercise any control over the companies in which they do not own shares or hold management positions. While no single individual in the Li family may be directing the activities of both the Renesola Group and the Jinko Group, or hold management or board membership in companies within both of these groups, the family grouping directly and indirectly owns, and holds controlling positions in, companies in both the Renesola Group and the Jinko Group. We find it appropriate to consider the control factors of individual members of a family group (*e.g.*, stock ownership, management positions, board membership) in the aggregate because the potential exists for individual family members to be influenced by the interests of other family members when making decisions that could affect companies owned or managed by those other family members. The CIT recognized that the Li Family grouping could potentially exercise restraint or direction over both the Renesola and Jinko Groups, albeit in the context of considering affiliation in this case, when it stated:

{w}here there is a family grouping at issue, Commerce’s practice is to ‘consider ... the control factors of individual members of the group (*e.g.*, stock ownership, management positions, board membership) in the aggregate.’ ...Even if no individual member of the Li family controls both the Renesola entities and the Jinko entities, the aggregated shareholding, management positions, and board memberships are sufficient to support a reasonable inference that these relationships allow the Li family grouping to potentially exercise restraint or direction over both sets of entities.<sup>52</sup>

We also disagree with Jinko Solar’s claim that the Department’s analysis is conclusory and fails to demonstrate how board memberships and management positions held by the Li

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<sup>52</sup> See *Jinko v. U.S.* at 12-13.

family grouping creates a significant potential for the manipulation of price or production. The Li family has a high level of ownership of the companies within the Renesola and Jinko Groups, positions on the boards of directors of companies within these groups, and controlling positions within management of the companies. Specifically, Mr. Li Xianshou is the CEO of Renesola Ltd. and Renesola Zhejiang, and Mr. Li Xiande, Mr. Li Xianhua, and Mr. Chen Kangping, are the Chairman of the Board, Vice President, and CEO, respectively, of Jinko Solar and Jinko Solar I&E. These positions provide the Li Family Grouping the authority to direct pricing and production of the subject merchandise within the Jinko and Renesola Groups. Board appointments and management positions held by members of the Li family with respect to the Renesola and Jinko Groups provide the opportunity for the Li family to coordinate its actions and to direct the Renesola Group and the Jinko Group to act in concert or out of common interest.<sup>53</sup> Thus, we continue to find that this consideration weighs in favor of a finding that a significant potential for manipulation of pricing or production exists. This is consistent with the CIT's evaluation of the Department's analysis of the Li family grouping in the context of the Department's affiliation determination. Specifically, the CIT held that:

Commerce reasonably concluded based on the Li family grouping's large shareholdings and numerous senior management positions in the Renesola and Jinko entities during the POI that the Renesola and Jinko entities are under common control. Commerce likewise reasonably concluded that those shareholding and management positions create the potential to impact decisions concerning the production, pricing, or cost of subject merchandise.<sup>54</sup>

The CIT also found that "Commerce adequately supports its determination that the role

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<sup>53</sup> See *Steel Plate from Korea*, Issues and Decision Memorandum at Comment 1.

<sup>54</sup> See *Jinko v. US* at 10.

of members of the Li family grouping in both the Jinko entities and the Renesola entities creates a potential for the family to act in concert with respect to manipulating pricing, production, and cost of subject merchandise.”<sup>55</sup> Further, the CIT stated that “{i}t is reasonably discernible that Commerce concludes that the notion that companies may compete does not detract from the potential for the Li family grouping to impact decisions concerning pricing, production, and cost of subject merchandise. Commerce’s conclusion is reasonable.”<sup>56</sup>

Finally, we disagree with Jinko Solar’s claim that the Department did not dispute that there is neither common ownership nor management within the meaning of 19 CFR 351.401(f)(2). As we explained in the Draft Remand Redetermination, the Department continues to find that the Renesola Group and Jinko Group should be treated as a single entity, in accordance with 19 CFR 351.401(f), based on the level of common ownership by the Li family of the two groups, the board memberships and management positions held by members of the Li family, and the extent to which operations between the two groups are intertwined. Thus, the Department’s collapsing determination is based in part on common ownership and management.

#### *B. Intertwined Operations*

##### **Petitioners’ Comments:**

The petitioner states that the Department points to record evidence of intertwined operations between the Renesola Group and the Jinko Group, including significant transactions between the two groups that demonstrate an ongoing commercial relationship. According to the petitioner, the Department has sufficiently explained that the common familial relationship between the Renesola Group and the Jinko Group, as well as their intertwined operations, create

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<sup>55</sup> *Id.*, at 8.

<sup>56</sup> *See Jinko v. U.S.* at 11 n.9.

a strong potential for price and product manipulation.

### **Jinko Solar's Comments**

Jinko Solar states that the Department did not explain why the change in level of transactions ([ ] from 2012 to 2013) between the two entities does not affect its determination that the two entities' operations were intertwined. Rather, the Department introduced raw material purchase data from 2011, which are [ ] of Renesola's cost of sales for that year and establish that the [ ] from 2012 to 2013 was in keeping with earlier purchase trends.

Jinko Solar argues that the Department's finding of a 'significant' volume of transactions and its determination that the Renesola and Jinko Groups have an "ongoing commercial relationship" do not satisfy the level of "intertwined operations" that 19 CFR 351.401(f)(iii) contemplates. The Department has not provided any basis for such a determination that the transactions are so significant as to justify a determination that the companies' operations are "intertwined."

### **Department's Position:**

We disagree with Jinko Solar that the Department did not provide an adequate explanation as to why the change in level of transactions between the Renesola and Jinko Groups from 2012 to 2013 does not negatively affect its determination that the two entities' operations were intertwined. We directly addressed the Court's concern, stating that although there was a [ ] in purchases from 2012 to 2013, the record shows that the level of purchases from year to year fluctuates such that an increase or decrease in one year does not necessarily predict a continuing trend in the level of activity between these companies. Specifically, we pointed to raw material purchases by Renesola Ltd. from "Jinko and its subsidiaries" of \$[ ],

\$[ ], and \$[ ] in the 2011, 2012, and 2013, respectively, that do not illustrate the trend as Jinko Solar would have it. These data indicate that transactions between the Renesola and Jinko Groups [ ] from 2011 to 2012 and [ ] from 2012 to 2013. As such, we find that [ ] from 2012 to 2013 does not necessarily indicate a permanent decline in the level of activity between the groups nor does it preclude, as Jinko Solar would have it, a finding that operations are intertwined. Moreover, as we explained in the Draft Remand Redetermination and reiterate above, the year-end consolidated financial statements do not necessarily provide a complete picture of the scope of relevant transactions.

Furthermore, we disagree with Jinko Solar's claims that our finding of a significant level of transactions between the Renesola and Jinko Groups and our determination that the Renesola and Jinko Groups have an "ongoing commercial relationship" do not satisfy the level of "intertwined operations" that 19 CFR 351.401(f)(iii) contemplates. Jinko Solar states that the Department has not provided any basis for finding that the transactions are so significant as to justify a determination that the companies' operations are "intertwined." Although raw material purchases fluctuate between the Renesola and Jinko Groups year over year, in 2012, Renesola Ltd. purchased \$[ ] in raw materials from "Jinko and its subsidiaries," which accounts for 8.5 percent of the total cost of sales reported by Renesola Ltd. in the same year. Moreover, in 2013, Renesola Ltd. purchased \$[ ] in raw material from "Jinko and its subsidiaries." Over 100 million dollars in purchases over two years, regardless of the percentage that this figure represents of total purchases, indicates a significant level of transactions between the two groups. Further, the nature and breadth of the transactions between these groups go beyond the purchase and sale of raw materials. Specifically, not only do the Renesola and Jinko Groups buy and sell

raw materials to and from each other, the audit report for JinkoSolar Holding for the year 2013 states that, “{f} or the transaction {sic} with Renesola during 2013, we entered into processing services agreements with subsidiaries of Renesola ... ,”<sup>57</sup> and JinkoSolar Holding’s interim consolidated financial statements show a [ ].

As stated in the Draft Remand Redetermination, this indicates that the nature of the transactions between the Renesola and Jinko Groups during the POI extended beyond sales and purchases of raw materials to other financial arrangements, such as [ ] and service agreements, which provides further evidence of intertwined operations.

## **Comment 2: Valuing Scrap Solar Modules**

### **Petitioner’s Comments**

The petitioner states that in the Draft Results of Redetermination, the Department stated that it was clarifying that the offset in question is actually for scrap solar modules, rather than scrap solar cells, as the Department had previously stated. Regardless of whether the relevant offset is for solar cells or solar modules, the petitioner contends, valuation of the offset with HTS 8548.10 is inappropriate.

The Department insists that scrap solar modules, which include wires, aluminum and other metals, glass, junction boxes, and chemical compounds, more closely resemble the scrap battery materials covered under HTS 8548.10 (waste and scrap of primary batteries and electrical accumulators, items that, according to the Department, similarly include metal components and components treated with chemical compounds) than the raw polysilicon material covered under HTS 2804.69. However, the petitioner states, there is no record evidence to support this assertion. For example, there is no record evidence that batteries utilize glass, junction boxes or

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<sup>57</sup> See JinkoSolar June Response at Exhibit A-19.

chemical compounds that are in any way similar to those utilized in the production of solar cells and modules.

The petitioner claims that the record does indicate, however, that solar cells and modules consist primarily of polysilicon, which is not included in primary batteries or electrical accumulators of the sort covered by HTS 8548.10. The petitioner further contends that the Department unreasonably continues to reject HTS 2804.69 because it is specific to one (*i.e.*, the primary) raw material contained in solar cells, yet it utilizes HTS 8548.10, referencing no evidence that products under HTS8548.10 had any raw materials whatsoever in common with solar cells.

In addition, the Department continues to state that it is valuing solar cells/modules with HTS 8548.10 because it covers scrapped materials, whereas HTS 2804.69 is not specific to scrapped materials. The Department, the petitioner claims, ignores the fact that HTS 2804.69 captures polysilicon of less than 99.9 percent purity, which accounts for the “scrap” nature of the scrap solar cells/modules. Polysilicon initially introduced in solar production must have greater than 99.99 percent purity.

The petitioner concludes that the Department’s Draft Results of Redetermination do not justify the Department’s reliance on HTS 8548.10 to value scrapped solar cells/modules nor does it address the Court’s concerns, and that the Department should instead rely on HTS 2804.69 to value the scrap in question in its Final Results of Redetermination.

No other party commented on this issue.

### **Department’s Position**

The Department continues to find that HTS 8548.10 is the appropriate source with which to value scrap solar modules for several reasons. First, of the two potential surrogate values on

the record for scrap modules, HTS 8548.10 is the only category that specifically covers scrapped materials associated with apparatuses used to generate electricity. Conversely, HTS 2804.69 is not a scrap category. While the petitioner contends that HTS 2804.69 captures polysilicon of less than 99.9 percent purity, and this fact accounts for the “scrap” nature of the polysilicon found in scrap solar cells/modules, the description of this HTS category does not indicate that it covers scrap materials, only that it covers lower-quality silicon.<sup>58</sup> Furthermore, evidence indicates that items covered by HTS 2804.69 include fully manufactured products, such as silicon metal, as opposed to scrap products. Hence, given the two potential surrogate sources on the record, we find HTS 8548.10 to be a better source for valuing scrap than HTS 2804.69.

Second, HTS 2804.69 only accounts for polysilicon, which is merely one of the many raw materials in a solar module. Although the petitioner continues to refer to the offset as an offset for scrap solar cells, the offset in question is for module scrap. The petitioner neglects to recognize that module scrap comprises “completely broken modules,” containing aluminum and other metals (tin ribbon), glass, junction boxes, and back sheets in addition to polysilicon.<sup>59</sup> The petitioner disregards these other scrap components because it claims that there is no record evidence that batteries utilize glass, junction boxes or chemical compounds that are in any way similar to those utilized in the production of solar cells and modules. However, the Department is not claiming that batteries utilize glass, junction boxes, or the exact same materials found in

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<sup>58</sup> See letter from the petitioner to the Secretary of Commerce, “Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Submission of Surrogate Values, dated June 24, 2014, at Exhibit 6 (which shows that HTS 2804.69.00 covers “Silicon: Other” with no mention of scrap or waste).

<sup>59</sup> See letter from Trina Solar to the Secretary of Commerce “Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China; Section D Questionnaire Response” dated May 15, 2014, at D-21 (“{s} such module scrap comprises of completely broken modules”). See also letter from Trina Solar to the Secretary of Commerce “Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Post-Verification Supplemental Response” dated October 7, 2014 and letter from Trina Solar to the Secretary of Commerce “Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China; Comments on Surrogate Country and Surrogate Values” dated May 23, 2014, at Exhibit 15 (showing various chemicals).

scrap solar modules. Rather, we are examining the record in search of the best available information for valuing the array of components in scrap modules. Using a surrogate value from polysilicon of less than 99.9 percent purity would fail to reflect that there are an assortment of components in scrap solar modules. On the other hand, primary cells and batteries contain metal and chemical components.<sup>60</sup> Solar modules have, among other components, metal frames and metals printed onto individual cells to “collect and forward” power,<sup>61</sup> and solar cells made from wafers that have been treated with a variety of chemical compounds including, sulfuric acid.”<sup>62</sup> Hence, there are a number of commonalities between the general nature of scrap materials covered by HTS 8548.10 and materials found in scrap modules. Furthermore, photovoltaic modules, batteries, and accumulators are used for the purpose of generating and forwarding energy and, in this respect, are similar. Although the petitioner indicates polysilicon is a main material in modules, the various raw materials in solar modules, including aluminum frames, backsheets, glass, and junction boxes, all outweigh, in terms of weight, the silicon content in solar modules.<sup>63</sup> Given that the scrap offset is based on weight, we find it is more appropriate to value the scrap using a source more closely related to the predominate materials, by weight.

In addition, relying on HTS 2804.69 would likely undervalue respondents’ scrap, as this

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<sup>60</sup> See letter from the petitioner to the Secretary of Commerce “Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Submission of Surrogate Values, dated June 25, 2014, at Exhibit 6 (showing Thai HTS subcategories under HTS 8548.10 that include “Lead acid scrap storage batteries”, “Waste and scrap containing mainly iron: Primary cells and primary batteries or electric accumulators for use in aircraft”, and “Waste and scrap containing mainly copper: Primary cells and primary batteries or electric accumulators of a kind used in aircraft.”).

<sup>61</sup> See the December 31, 2013 Petition, Volume 1, at Exhibit I-8.

<sup>62</sup> See letter to the Secretary of Commerce “Second Supplement to Petition for the Imposition of Antidumping Duties: Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China” dated January 9, 2014 at Exhibit II-Supp2-1. See also letter from Trina Solar to the Secretary of Commerce “Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Post-Verification Supplemental Response” dated October 7, 2014 and letter from Trina Solar to the Secretary of Commerce “Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China; Comments on Surrogate Country and Surrogate Values” dated May 23, 2014, at Exhibit 15 (showing various chemicals).

<sup>63</sup> See letter from Trina Solar to the Secretary of Commerce “Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China; Section D Questionnaire Response” dated May 15, 2014, at Exhibit D-7.

category covers only one material: silicon. The petitioner has argued throughout this proceeding that purchasers of scrap solar modules purchase this scrap only for purposes of recovering the polysilicon, but have not supported this claim with record evidence. Solar modules consist of significantly more material than just silicon, and we are unpersuaded by the petitioner's claim absent record evidence to substantiate it.

Although the Department is faced with two imperfect options for valuing scrap modules, we believe, for the reasons described above, that HTS 8548.10, which covers scrap from batteries and electrical accumulators, more closely reflects the material composition of scrap modules than does HTS 2804.69, which is not a scrap category and accounts for silicon alone. We continue to find that South African import data under HTS subheading 8548.10 provides the best available information on the record with which to value scrap solar modules.

## **VI. CONCLUSION**

In accordance with the Court's remand instructions, the Department has reconsidered its decision to collapse the Renesola Group and Jinko Group and continue to determine that there was a significant potential for manipulation. The Department has also further explained and supported its selection of the South African HTS classification for Trina Solar's scrap offset. Because the Department has not made any changes with respect to these two issues, there are no changes to the dumping margins for any respondent pursuant to this redetermination.

8/2/2017

X *Carole Showers*

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Signed by: CAROLE SHOWERS

Carole Showers  
Executive Director, Office of Policy,  
performing the duties of  
Deputy Assistant Secretary for Enforcement and Compliance