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COMMISSION IMPLEMENTING DECISION

of 4 December 2013

confirming the acceptance of an undertaking offered in connection with the anti-dumping and anti-subsidy proceedings concerning imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China for the period of application of definitive measures

(2013/707/EU)

(OJ L 325, 5.12.2013, p. 214)

Amended by:

		Official Journal		
		No	page	date
► <u>M1</u>	Commission Implementing Decision (EU) 2016/1060 of 29 June 2016	L 173	99	30.6.2016

Corrected by:

► **C1** Corrigendum, OJ L 104, 8.4.2014, p. 82 (2013/707/EU)



COMMISSION IMPLEMENTING DECISION

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confirming the acceptance of an undertaking offered in connection with the anti-dumping and anti-subsidy proceedings concerning imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China for the period of application of definitive measures

(2013/707/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union ('the Treaty'),

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ ('the basic anti-dumping Regulation'), and in particular Articles 8 and 9 thereof,

Having regard to Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidized imports from countries not members of the European Community ⁽²⁾ ('the basic anti-subsidy Regulation'), and in particular Articles 13 and 15 thereof

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Provisional measures

- (1) By Regulation (EU) No 513/2013 ⁽³⁾, the European Commission ('the Commission') imposed a provisional anti-dumping duty on imports into the Union of crystalline silicon photovoltaic modules and key components (i.e. cells and wafers) originating in or consigned from the People's Republic of China ('PRC').
- (2) The Commission, by Decision 2013/423/EU ⁽⁴⁾ accepted a price undertaking ('the undertaking') from a group of exporting producers together with the China Chamber of Commerce for Import and Export of Machinery and Electronic Products ('CCCME') with regards to the provisional duties. By Regulation (EU) No 748/2013 ⁽⁵⁾ the Commission amended Regulation (EU) No 513/2013 to introduce the technical changes necessary due to the acceptance of the undertaking.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ L 188, 18.7.2009, p. 93.

⁽³⁾ OJ L 152, 5.6.2013, p. 5.

⁽⁴⁾ OJ L 209, 3.8.2013, p. 26.

⁽⁵⁾ OJ L 209, 3.8.2013, p. 1.

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- (3) On 8 November 2012, the Commission initiated an anti-subsidy proceeding with regard to imports into the Union of crystalline silicon photovoltaic modules and key components (i.e. cells and wafers) originating in the People's Republic of China ⁽¹⁾.

2. Subsequent procedure

- (4) Following the adoption of the provisional anti-dumping measures, the Commission continued the investigation of dumping, injury and Union interest, as well as the parallel anti-subsidy proceeding. Wafers have been excluded from the scope of both investigations, hence from the scope of the definitive measures.
- (5) The anti-dumping investigation confirmed the provisional findings of injurious dumping. The definitive findings of the investigation are set out in Council Implementing Regulation (EU) No 1238/13 ⁽²⁾ imposing a definitive anti-dumping duty on imports into the Union of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the PRC.
- (6) By Council Implementing Regulation (EU) No 1239/13 ⁽³⁾, the Council also imposed a definitive countervailing duty on crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the PRC.

B. UNDERTAKING AS AMENDED

1. Amended undertaking offer

- (7) Subsequent to the definitive disclosure of the anti-dumping and anti-subsidy findings, the exporting producers together with the CCCME submitted a notification to amend their initial undertaking offer.
- (8) The exporting producers, together with the CCCME, within the deadline specified in Article 13(2) of the basic anti-subsidy Regulation, requested that the terms of the undertaking be accepted by the Commission to eliminate any injurious effects also of the subsidised imports.
- (9) In addition, a number of additional exporting producers, within the deadline stipulated in Article 8(2) of the basic anti-dumping Regulation and Article 13(2) of the basic anti-subsidy Regulation, requested to participate in the undertaking.
- (10) Furthermore, the CCCME and the exporting producers requested to revise the undertaking to take account of the exclusion of wafers from the scope of the investigation.

⁽¹⁾ OJ C 340, 8.11.2012, p. 13.

⁽²⁾ See page 1 of this Official Journal.

⁽³⁾ See page 66 of this Official Journal.

▼B**2. Comments of interested parties**

- (11) The undertaking offer as amended has been made available to interested parties. In the following the Commission addresses the main comments submitted by interested parties following the receipt of the undertaking offer.

2.1. Access to confidential information

- (12) Numerous parties requested access to information on minimum import prices ('MIP'), the annual level or in general different terms of the undertaking. One party complained that it was not timely informed about the initial undertaking offer. The Commission notes that the non-confidential version of the initial undertaking offer was included in the file open for inspection by interested parties directly upon its receipt as foreseen in Article 8(4) of the basic anti-dumping Regulation.
- (13) MIPs and annual level are subject to professional secrecy pursuant to Article 339 of the Treaty and confidential according to Articles 19 of the basic anti-dumping Regulation and Article 29 of the basic anti-subsidy Regulation. Therefore, in line with the Commission's practice, they are not disclosed to third parties. In the current case, upon parties' requests, the Commission requested CCCME whether some more information related to MIP and annual level could be disclosed. CCCME agreed to disclose an approximation of the MIP (defined as 'below' a specific value). Interested parties could consult that information on the non-confidential file. The Commission considers that such information, in this specific case, strikes an appropriate balance between the requirements of confidentiality and right of defence.
- (14) The Commission has also considered the requests relating to different terms of the undertaking. It has come to the conclusion that by revealing the information requested, it would increase the risk of price manipulation and gaming on the market for solar panels. In order not to unduly distort the functioning of the market for solar panels, the Commission considers that the information requested should not be available to buyers and competitors of the companies that have offered the undertaking. Those considerations apply as well to MIP and annual level, which should not be disclosed at a greater level of detail.

2.2. Transition period

- (15) One interested party requested the Commission to allow for a transition period (and exemption from anti-dumping duties) when goods were ordered prior to the entry into force of the undertaking but presented for customs clearance after that date without an undertaking invoice. In order to be exempted from anti-dumping duties, goods presented for customs clearance have to fulfil the conditions set out in the Regulation (EU) No 748/2013. The argument therefore has to be rejected.

▼B**3. Evaluation of the undertaking offer as amended**

- (16) The Commission evaluated the undertaking offer as amended. First, it noted that the technical revision of the undertaking is necessary to reflect the definitive findings of the anti-dumping and anti-subsidy investigations (i.e. the exclusion of wafers from the scope of the investigation).
- (17) Second, the Commission concluded that, based on the investigation period data, the trade volume of the additional companies in total Chinese exports to the EU is very limited and thus does not change the Commission's provisional assessment that the undertaking removes the injurious effect of dumping, with the MIP and within the annual level as initially offered.
- (18) The Commission also assessed whether the inclusion of the additional exporting producers would be likely to jeopardize the effective monitoring of the undertaking or to increase the risk of circumvention. In this context, the Commission noted that the CCCME demonstrated its active role in the practical implementation of the undertaking. In addition, the inclusion of the additional exporting producers will not change the terms of the undertaking. Therefore, the Commission concluded that the inclusion of the additional producers does not alter its initial findings on the effective monitoring of the undertaking and on the limited risk of circumvention.
- (19) Third, anti-subsidy and anti-dumping investigations were carried out in parallel in the current case. As per the lesser duty a rule, a definitive countervailing duty rate was set at the level of the subsidy margin and a definitive anti-dumping duty at the injury elimination level. Hence, the combined anti-dumping and countervailing duty rate will be equal to the injury elimination level (countervailing duty topped-up with anti-dumping duty up to injury elimination level). Therefore, the Commission concluded that the undertaking still removes the injurious effects of both dumping and subsidization, thereby no change to the MIP is needed.
- (20) Fourth, one party contested the fact that the Commission had relied in Decision 2013/423/EU on post-IP data in order to assess whether the undertaking removed the injurious effect of dumping, relying on Article 6(1) of the basic anti-dumping Regulation and Article 11(1) of the basic anti-subsidy Regulation. Article 6(1) of the basic anti-dumping Regulation stipulates that ‘information relating to a period subsequent to the investigation period shall, normally [emphasis added], not be taken into account.’ Similar wording can be found in Article 11(1) last sentence of the basic anti-subsidy Regulation. Recital 3 of Decision 2013/423/EU sets out the circumstances which led the Commission to rely on post-IP data in the present case. The party has not contested the factual accurateness of those circumstances. The argument is therefore rejected.

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- (21) Fifth, the undertaking ensures stability of supply for the Union at a sustainable price level. Therefore, there are no reasons of general policy for not accepting the undertaking.
- (22) One party has considered that the MIP is set too high, one party has considered that it is set too low. As set out in recital 7 of Decision 2013/423/EU, in order to assess whether that price undertaking removes the injurious effect of dumping, the Commission has analysed, inter alia, the current export prices and the level of provisional duty. After having analysed the additional information provided by parties, the information available on the current and expected evolution of production costs, and price developments since the adoption of Decision 2013/423/EU, the Commission confirms the finding in recital 7 of Decision 2013/423/EU.
- (23) In the absence of other comments, the findings in recitals 3 to 9 of Decision 2013/423/EU, as complemented by the findings set out above in recitals 16 to 22 are confirmed.

4. Changes in companies' names and changes to the list of related companies in the EU

- (24) The inclusion of new companies in the undertaking triggers changes to the list of related companies in the EU as submitted in the initial undertaking offer. In addition, one exporting producer requested inclusion of a new related company in the EU to replace another company.
- (25) Finally, one company changed its name.

C. ACCEPTANCE OF THE UNDERTAKING AS AMENDED

- (26) In the view of the above, the undertaking as amended is acceptable. Interested parties have been informed of the essential facts, considerations and obligations upon which the acceptance is based. The Commission did not receive any comments.

HAS ADOPTED THIS DECISION:

Article 1

The undertaking offered by the exporting producers listed in the Annex of this Decision together with the China Chamber of Commerce for Import and Export of Machinery and Electronic Products (CCCME), in connection with the anti-dumping and anti-subsidy proceedings concerning imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China, is hereby accepted.

Article 2

This Decision shall enter into force on 6 December 2013.

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ANNEX

List of companies:

Name of the company	TARIC additional code
Jiangsu Aide Solar Energy Technology Co. Ltd	B798
Alternative Energy (AE) Solar Co. Ltd	B799
Anhui Chaoqun Power Co. Ltd	B800
Anji DaSol Solar Energy Science & Technology Co. Ltd	B802
Anhui Schutten Solar Energy Co. Ltd Quanjiao Jingkun Trade Co. Ltd	B801
Anhui Titan PV Co. Ltd	B803
Xi'an SunOasis (Prime) Company Limited TBEA SOLAR CO. LTD XINJIANG SANG'O SOLAR EQUIPMENT	B804
CSI Solar Power (China) Inc. Canadian Solar Manufacturing (Changshu) Inc. Canadian Solar Manufacturing (Luoyang) Inc. CSI Cells Co. Ltd	B805
Changzhou NESL Solartech Co. Ltd	B806
Changzhou Shangyou Lianyi Electronic Co. Ltd	B807
Changzhou Trina Solar Energy Co. Ltd Trina Solar (Changzhou) Science & Technology Co. Ltd Changzhou Youze Technology Co. Ltd Trina Solar Energy (Shanghai) Co. Ltd Yancheng Trina Solar Energy Technology Co. Ltd	B791
CHINALAND SOLAR ENERGY CO. LTD	B808
ChangZhou EGing Photovoltaic Technology Co. Ltd	B811
CIXI CITY RIXING ELECTRONICS CO. LTD. ANHUI RINENG ZHONGTIAN SEMICONDUCTOR DEVELOPMENT CO. LTD. HUOSHAN KEBO ENERGY & TECHNOLOGY CO. LTD.	B812
CNPV Dongying Solar Power Co. Ltd	B813
CSG PVtech Co. Ltd	B814
China Sunergy (Nanjing) Co. Ltd CEEG Nanjing Renewable Energy Co. Ltd CEEG (Shanghai) Solar Science Technology Co. Ltd China Sunergy (Yangzhou) Co. Ltd China Sunergy (Shanghai) Co. Ltd	B809

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Name of the company	TARIC additional code
Chint Solar (Zhejiang) Co. Ltd	B810
Delsolar (Wujiang) Ltd	B792
Dongfang Electric (Yixing) MAGI Solar Power Technology Co. Ltd	B816
EOPLLY New Energy Technology Co. Ltd SHANGHAI EBEST SOLAR ENERGY TECHNOLOGY CO. LTD JIANGSU EOPLLY IMPORT & EXPORT CO. LTD	B817
Era Solar Co. Ltd	B818
ET Solar Industry Limited ET Energy Co. Ltd	B819
GD Solar Co. Ltd	B820
Greenway Solar-Tech (Shanghai) Co. Ltd Greenway Solar-Tech (Huaian) Co. Ltd	B821

▼M1

Konca Solar Cell Co. Ltd Suzhou GCL Photovoltaic Technology Co. Ltd Jiangsu GCL Silicon Material Technology Development Co. Ltd Jiangsu Zhongneng Polysilicon Technology Development Co. Ltd GCL-Poly (Suzhou) Energy Limited GCL-Poly Solar Power System Integration (Taicang) Co. Ltd GCL SOLAR POWER (SUZHOU) LIMITED GCL Solar System (Suzhou) Limited GCL System Integration Technology Co., Ltd	B850
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Guodian Jintech Solar Energy Co. Ltd	B822
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Hangzhou Bluesun New Material Co. Ltd	B824
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Hangzhou Zhejiang University Sunny Energy Science and Technology Co. Ltd Zhejiang Jinbest Energy Science and Technology Co. Ltd	B825
Hanwha SolarOne (Qidong) Co. Ltd	B826
Hengdian Group DMEGC Magnetics Co. Ltd	B827
HENGJI PV-TECH ENERGY CO. LTD	B828
Himin Clean Energy Holdings Co. Ltd	B829
Jetion Solar (China) Co. Ltd Junfeng Solar (Jiangsu) Co. Ltd Jetion Solar (Jiangyin) Co. Ltd	B830

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Name of the company	TARIC additional code
Jiangsu Green Power PV Co. Ltd	B831
Jiangsu Hosun Solar Power Co. Ltd	B832
Jiangsu Jiasheng Photovoltaic Technology Co. Ltd	B833
Jiangsu Runda PV Co. Ltd	B834
Jiangsu Sainty Photovoltaic Systems Co. Ltd Jiangsu Sainty Machinery Imp. And Exp. Corp. Ltd	B835
Jiangsu Seraphim Solar System Co. Ltd	B836
Jiangsu Shunfeng Photovoltaic Technology Co. Ltd Changzhou Shunfeng Photovoltaic Materials Co. Ltd Jiangsu Shunfeng Photovoltaic Electronic Power Co. Ltd	B837
Jiangsu Sinski PV Co. Ltd	B838
Jiangsu Sunlink PV Technology Co. Ltd	B839
Jiangsu Zhongchao Solar Technology Co. Ltd	B840
Jiangxi Risun Solar Energy Co. Ltd	B841
Jiangxi LDK Solar Hi-Tech Co. Ltd LDK Solar Hi-Tech (Nanchang) Co. Ltd LDK Solar Hi-Tech (Suzhou) Co. Ltd	B793
Jiangyin Hareon Power Co. Ltd Hareon Solar Technology Co. Ltd Taicang Hareon Solar Co. Ltd Hefei Hareon Solar Technology Co. Ltd Jiangyin Xinhui Solar Energy Co. Ltd Altusvia Energy (Taicang) Co. Ltd	B842
Jiangyin Shine Science and Technology Co. Ltd	B843
JingAo Solar Co.Ltd Shanghai JA Solar Technology Co. Ltd JA Solar Technology Yangzhou Co. Ltd Hefei JA Solar Technology Co. Ltd Shanghai JA Solar PV Technology Co. Ltd	B794
Jinko Solar Co. Ltd Jinko Solar Import and Export Co. Ltd ZHEJIANG JINKO SOLAR CO. LTD ZHEJIANG JINKO SOLAR TRADING CO. LTD	B845
Jinzhou Yangguang Energy Co. Ltd Jinzhou Huachang Photovoltaic Technology Co. Ltd Jinzhou Jinmao Photovoltaic Technology Co. Ltd Jinzhou Rixin Silicon Materials Co. Ltd Jinzhou Youhua Silicon Materials Co. Ltd	B795

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Name of the company	TARIC additional code
Juli New Energy Co. Ltd	B846
Jumao Photonic (Xiamen) Co. Ltd	B847
King-PV Technology Co. Ltd	B848
Kinve Solar Power Co. Ltd (Maanshan)	B849
Lightway Green New Energy Co. Ltd Lightway Green New Energy (Zhuozhou) Co. Ltd	B851
MOTECH (SUZHOU) RENEWABLE ENERGY CO. LTD	B852
Nanjing Daqo New Energy Co. Ltd	B853
NICE SUN PV CO. LTD LEVO SOLAR TECHNOLOGY CO. LTD	B854
Ningbo Huashun Solar Energy Technology Co. Ltd	B856
Ningbo Jinshi Solar Electrical Science & Technology Co. Ltd	B857
Ningbo Komaes Solar Technology Co. Ltd	B858
Ningbo Osda Solar Co. Ltd	B859
Ningbo Qixin Solar Electrical Appliance Co. Ltd	B860
Ningbo South New Energy Technology Co. Ltd	B861
Ningbo Sunbe Electric Ind Co. Ltd	B862
Ningbo Ulica Solar Science & Technology Co. Ltd	B863
Perfectenergy (Shanghai) Co. Ltd	B864
Perlight Solar Co. Ltd	B865
Phono Solar Technology Co. Ltd Sumec Hardware & Tools Co. Ltd	B866
RISEN ENERGY CO. LTD	B868
SHANDONG LINUO PHOTOVOLTAIC HI-TECH CO. LTD	B869
SHANGHAI ALEX SOLAR ENERGY SCIENCE & TECHNOLOGY CO. LTD SHANGHAI ALEX NEW ENERGY CO. LTD	B870
Shanghai BYD Co. Ltd BYD(Shangluo)Industrial Co.Ltd	B871
▼M1 Shanghai Chaori Solar Energy Science & Technology Co. Ltd	B872
▼B Propsolar (Zhejiang) New Energy Technology Co. Ltd Shanghai Propsolar New Energy Co. Ltd	B873

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Name of the company	TARIC additional code
SHANGHAI SHANGHONG ENERGY TECHNOLOGY CO. LTD	B874
SHANGHAI SOLAR ENERGY S&T CO. LTD Shanghai Shenzhou New Energy Development Co. Ltd Lianyungang Shenzhou New Energy Co. Ltd	B875
Shanghai ST-Solar Co. Ltd Jiangsu ST-Solar Co. Ltd	B876
Shenzhen Sacred Industry Co. Ltd	B878
Shenzhen Topray Solar Co. Ltd Shanxi Topray Solar Co. Ltd Leshan Topray Cell Co. Ltd	B880
Sopray Energy Co. Ltd Shanghai Sopray New Energy Co. Ltd	B881
SUN EARTH SOLAR POWER CO. LTD NINGBO SUN EARTH SOLAR POWER CO. LTD Ningbo Sun Earth Solar Energy Co. Ltd	B882
SUZHOU SHENGLONG PV-TECH CO. LTD	B883
TDG Holding Co. Ltd	B884
Tianwei New Energy Holdings Co. Ltd Tianwei New Energy(Chengdu) PV Module Co. Ltd Tianwei New Energy (Yangzhou) Co. Ltd	B885
Wenzhou Jingri Electrical and Mechanical Co. Ltd	B886
Shanghai Topsolar Green Energy Co. Ltd	B877
Shenzhen Sungold Solar Co. Ltd	B879
Wuhu Zhongfu PV Co. Ltd	B889
Wuxi Saijing Solar Co. Ltd	B890
Wuxi Shangpin Solar Energy Science and Technology Co. Ltd	B891
Wuxi Solar Innova PV Co. Ltd	B892
Wuxi Suntech Power Co. Ltd Suntech Power Co. Ltd Wuxi Sunshine Power Co. Ltd Luoyang Suntech Power Co. Ltd Zhenjiang Rietech New Energy Science Technology Co. Ltd Zhenjiang Ren De New Energy Science Technology Co. Ltd	B796

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Name of the company	TARIC additional code
Wuxi Taichang Electronic Co. Ltd Wuxi Machinery & Equipment Import & Export Co. Ltd Wuxi Taichen Machinery & Equipment Co. Ltd	B893
Xi'an Huanghe Photovoltaic Technology Co. Ltd State-run Huanghe Machine-Building Factory Import and Export Corporation Shanghai Huanghe Fengjia Photovoltaic Technology Co. Ltd	B896
Xi'an LONGi Silicon Materials Corp. Wuxi LONGi Silicon Materials Co. Ltd	B897
Years Solar Co. Ltd	B898
Yingli Energy (China) Co. Ltd Baoding Tianwei Yingli New Energy Resources Co. Ltd Hainan Yingli New Energy Resources Co. Ltd Hengshui Yingli New Energy Resources Co. Ltd Tianjin 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 Yingli Energy (Beijing) Co. Ltd	B797
Yuhuan BLD Solar Technology Co. Ltd Zhejiang BLD Solar Technology Co. Ltd	B899
Yuhuan Sinosola Science & Technology Co. Ltd	B900
Zhangjiagang City SEG PV Co. Ltd	B902
Zhejiang Fengsheng Electrical Co. Ltd	B903
Zhejiang Global Photovoltaic Technology Co. Ltd	B904
Zhejiang Heda Solar Technology Co. Ltd	B905
Zhejiang Jiutai New Energy Co. Ltd Zhejiang Topoint Photovoltaic Co. Ltd	B906
Zhejiang Kingdom Solar Energy Technic Co. Ltd	B907
Zhejiang Koly Energy Co. Ltd	B908
Zhejiang Mega Solar Energy Co. Ltd Zhejiang Fortune Photovoltaic Co. Ltd	B910
Zhejiang Shuqimeng Photovoltaic Technology Co. Ltd	B911
Zhejiang Shinew Photoelectronic Technology Co. Ltd	B912
Zhejiang Sunflower Light Energy Science & Technology Limited Liability Company Zhejiang Yauchong Light Energy Science & Technology Co. Ltd	B914

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Name of the company	TARIC additional code
Zhejiang Sunrupu New Energy Co. Ltd	B915
Zhejiang Tianming Solar Technology Co. Ltd	B916
Zhejiang Trunsun Solar Co. Ltd Zhejiang Beyondsun PV Co. Ltd	B917
Zhejiang Wanxiang Solar Co. Ltd WANXIANG IMPORT & EXPORT CO LTD	B918
Zhejiang Xiongtai Photovoltaic Technology Co. Ltd	B919
ZHEJIANG YUANZHONG SOLAR CO. LTD	B920
RENESOLA ZHEJIANG LTD RENESOLA JIANGSU LTD	B921
Zhongli Talesun Solar Co. Ltd	B922
ZNSHINE PV-TECH CO. LTD	B923