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Administrative Review
05/25/2012 - 11/30/2013

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DATE: December 31, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman 
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results of the 2012-2013 Antidumping Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, From the People's Republic of China

SUMMARY

In response to requests from interested parties, the Department of Commerce ("Department") is conducting an administrative review of the antidumping duty ("AD") order on crystalline silicon photovoltaic cells, whether or not assembled into modules ("solar cells"), from the People's Republic of China ("PRC") covering the period May 25, 2012 through November 30, 2013 (the period of review ("POR")). The administrative review covers 127 exporters of the subject merchandise, including two mandatory respondents, Yingli Energy (China) Company Limited and Wuxi Suntech Power Co., Ltd. The Department preliminarily finds that 29 companies, including the eight companies that we are treating as a single entity with the mandatory respondent Yingli Energy (China) Company Limited, have established their entitlement to separate rate status. In addition, the Department preliminarily finds that Yingli Energy (China) Company Limited sold subject merchandise in the United States at prices below normal value ("NV") during the POR. Further the Department preliminarily finds that Wuxi Suntech Power Co., Ltd. and three other affiliated companies that comprise the Wuxi Suntech Single Entity are not eligible for a separate rate. The Department is preliminarily treating 75 companies as part of the PRC-wide entity. The Department also preliminarily determines that 23 companies made no shipments of subject merchandise during the POR.

If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess AD duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. Unless otherwise extended, we intend to issue final results no later than 120 days from

the date of publication of the accompanying Federal Register notice of preliminary results of review, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the “Act”).

Background

On December 7, 2012, the Department published in the Federal Register the amended final determination and AD order on solar cells from the PRC.¹ On December 3, 2013, the Department notified interested parties of their opportunity to request an administrative review of orders, findings, or suspended investigations with anniversaries in December 2013, including the antidumping duty order on solar cells from the PRC.² In December 2013, SolarWorld Americas Inc. (“Petitioner”) (formerly SolarWorld Industries America, Inc.), as well as various exporters and U.S. importers, requested that the Department conduct an administrative review of certain exporters covering the period May 25, 2012 through November 30, 2013. On February 3, 2014, the Department published a notice initiating an administrative review of the antidumping duty order on solar cells from the PRC covering 145 companies for the period May 25, 2012 through November 30, 2013.³

In the Initiation Notice, the Department stated that if it limited the number of respondents for individual examination, then it intended to select respondents based on volume data contained in responses to its quantity and value (“Q&V”) questionnaire. Further, the Department noted that it intended to limit the number of Q&V questionnaires issued in the review based on data from CBP. On January 30, 2014, the Department issued a Q&V questionnaire to 23 companies. In February 2014, the Department received Q&V questionnaire responses from 27 companies.⁴ On March 14, 2014, the Department selected Yingli Energy (China) Company Limited and Wuxi Suntech Power Co., Ltd. as mandatory respondents based on their status as the two exporters/producers accounting for the largest percentage of exports of subject merchandise, by volume, during the POR.⁵

From February 2014 through April 2014, a number of parties for which the Department initiated this administrative review reported that they made no shipments of subject merchandise to the

¹ See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules From the People’s Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order, 77 FR 73018 (December 7, 2012).

² See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review, 78 FR 72636 (December 3, 2013) (“Opportunity to Request Administrative Review”).

³ See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 79 FR 6147 (February 3, 2014) (“Initiation Notice”).

⁴ Only 19 of the 23 companies to which the Department sent a Q&V questionnaire responded to the questionnaire. The following companies did not respond to the Q&V questionnaire: (1) Changzhou NESL Solartech Co., Ltd.; (2) LDK Solar Hi-tech (Nanchang) Co., Ltd.; (3) LDK Solar Hi-tech (Suzhou) Co., Ltd.; and (4) Yuhuan Solar Energy Source Co., Ltd. Eight companies to which the Department did not send a Q&V questionnaire responded to the questionnaire (the Department stated in the Initiation Notice, 79 FR at 6148, that any party subject to the review could submit a Q&V questionnaire response if it desired to be included in the pool of companies from which the Department would select mandatory respondents).

⁵ See the March 14, 2014 memorandum from Jeff Pedersen, Senior International Trade Compliance Analyst, Office 4, to Abdelali Elouaradia, Director, Office 4, AD/CVD Operations, regarding the “2012-2013 Antidumping Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People’s Republic of China: Respondent Selection” (“Respondent Selection Memorandum”).

United States during the POR. On October 14, 2014, the Department placed on the record entry documentation relating to the no shipment claims which it obtained from CBP.⁶ Interested parties commented on the entry documents that the Department placed on the record during October 2014.

On March 18, 2014, the Department issued its AD questionnaire to Yingli Energy (China) Company Limited and Wuxi Suntech Power Co., Ltd. These companies submitted responses to the Department's initial and supplemental questionnaires from April 2014 through December 2014. During this time period, Petitioner also submitted comments on these companies' questionnaire responses. Moreover, numerous companies submitted separate rate certifications and applications in March and April 2014. In August 2014 and October 2014, the Department issued supplemental questionnaires to a number of companies requesting separate rate status. The Department received responses to its separate rate supplemental questionnaires in August, September, and October 2014.

On May 5, 2014, Petitioner withdrew its requests for the Department to review 70 companies.⁷ On July 28, 2014, the Department rescinded this review with respect to 18 companies and noted that all review requests had been withdrawn for another 52 companies which continue to be subject to the PRC-wide rate, and thus these companies could still be reviewed if the PRC-wide entity comes under review.⁸

In response to the Department's June 3, 2014 request for comments on surrogate country selection and surrogate values ("SVs"),⁹ Petitioner, Yingli Energy (China) Company Limited, and Wuxi Suntech Power Co., Ltd. submitted comments and/or rebuttal comments on surrogate country selection and SVs from June 2014 through November 2014.

On July 18, 2014, the Department issued a questionnaire regarding double remedies to Yingli Energy (China) Company Limited, and Wuxi Suntech Power Co., Ltd. On August 5, 2014, those companies submitted responses to the double remedies questionnaire.

On August 15, 2014, the Department extended the time limit for completing the preliminary results of this review until December 8, 2014.¹⁰ On December 3, 2014, the Department further extended the time limit for completing the preliminary results of this review until December 30,

⁶ See the October 14, 2014 memorandum to the File from Drew Jackson, International Trade Analyst regarding "Release of U.S. Customs and Border Protection Information Relating to No Shipment Claims Made in the 2012-2013 Administrative Review of Crystalline Silicon Photovoltaic Cells from the People's Republic of China" ("Entry Documents Memorandum").

⁷ See Petitioner's submission, "Certain Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Withdrawal of Requests for Administrative Review," dated May 5, 2014.

⁸ See Crystalline Silicon Photovoltaic Cells, Whether or not Assembled into Modules from the People's Republic of China: Amended Partial Rescission of Antidumping Duty Administrative Review, 79 FR 43713 (July 28, 2014).

⁹ See the June 3, 2014 memorandum to "All Interested Parties" regarding the "Antidumping Duty Review of Crystalline Silicon Photovoltaic Cells from the People's Republic of China: Request for Surrogate Country and Surrogate Value Comments and Information."

¹⁰ See the August 15, 2014 memorandum to Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations, from Brandon Farlander, Senior International Trade Compliance Analyst, Office IV regarding "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review."

2014.¹¹ On December 30, 2014, the Department further extended the time limit for completing the preliminary results of this review until December 31, 2014.¹²

In response to the Department's October 1, 2014 request for comments for consideration in these preliminary results of review,¹³ a number of interested parties, including Petitioner, Yingli Energy (China) Company Limited, and Wuxi Suntech Power Co., Ltd., submitted comments in October 2014.

The Department conducted verifications of Yingli Energy (China) Co., Ltd., and one of its suppliers, Baoding Tianwei Yingli New Energy Resources Co., Ltd., in China from October 13, 2014 through October 22, 2014 and Yingli Green Energy Americas, Inc., Yingli Energy (China) Co., Ltd.'s affiliated reseller, in the United States from November 3, 2014 through November 5, 2014.¹⁴

Scope of the Order

The merchandise covered by this order is crystalline silicon photovoltaic cells, and modules, laminates, and panels, consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including, but not limited to, modules, laminates, panels and building integrated materials.

This order covers crystalline silicon photovoltaic cells of thickness equal to or greater than 20 micrometers, having a p/n junction formed by any means, whether or not the cell has undergone other processing, including, but not limited to, cleaning, etching, coating, and/or addition of materials (including, but not limited to, metallization and conductor patterns) to collect and forward the electricity that is generated by the cell.

Merchandise under consideration may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, modules,

¹¹ See the December 4, 2014 memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Drew Jackson, International Trade Compliance Analyst, Office IV regarding "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review."

¹² See the December 30, 2014 memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Brandon Farlander, International Trade Compliance Analyst, Office IV regarding "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty and Countervailing Duty Administrative Reviews."

¹³ See the October 1, 2014 memorandum to All Interested Parties regarding the "Antidumping Duty Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Request for Pre-Preliminary Results Comments."

¹⁴ See "Verification of the Sales and Factors Responses of Yingli Energy (China) Co., Ltd. ("Yingli China") and Baoding Tianwei Yingli New Energy Resources Co., Ltd. ("Tianwei Yingli") in the Antidumping Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules ("solar cells" or "modules"), from the People's Republic of China," dated December 31, 2014; see also "Verification of the Sales Information Provided by Yingli Green Energy Americas, Inc. ("YGEA") in the Antidumping Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, ("solar cells"), from the People's Republic of China," dated December 31, 2014.

laminates, panels, building-integrated modules, building-integrated panels, or other finished goods kits. Such parts that otherwise meet the definition of merchandise under consideration are included in the scope of this order.

Excluded from the scope of this order are thin film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS). Also excluded from the scope of this order are crystalline silicon photovoltaic cells, not exceeding 10,000mm² in surface area, that are permanently integrated into a consumer good whose function is other than power generation and that consumes the electricity generated by the integrated crystalline silicon photovoltaic cell. Where more than one cell is permanently integrated into a consumer good, the surface area for purposes of this exclusion shall be the total combined surface area of all cells that are integrated into the consumer good.

Modules, laminates, and panels produced in a third-country from cells produced in the PRC are covered by this order; however, modules, laminates, and panels produced in the PRC from cells produced in a third-country are not covered by this order.

Merchandise covered by this order is currently classified in the Harmonized Tariff Schedule of the United States (“HTSUS”) under subheadings 8501.61.0000, 8507.20.80, 8541.40.6020, 8541.40.6030, and 8501.31.8000. Although these HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Preliminary Determination of No Shipments

Among the companies under review, 27 companies reported that they made no shipments of subject merchandise to the United States during the POR. These 27 companies are:

1. CSG PVTech Co., Ltd.
2. DelSolar Co., Ltd.
3. Dongfang Electric (Yixing) MAGI Solar Power Technology Co., Ltd.
4. ET Solar Energy Limited
5. Hengdian Group DMEGC Magnetics Co., Ltd.
6. Himin Clean Energy Holdings Co., Ltd.
7. Jiangsu Green Power PV Co., Ltd.
8. Jiangsu Jiasheng Photovoltaic Technology Co., Ltd.
9. Jiangsu Sunlink PV Technology Co., Ltd.
10. JinkoSolar International Limited
11. Konca Solar Cell Co., Ltd.
12. Kuttler Automation Systems (Suzhou) Co., Ltd.
13. Luoyang Suntech Power Co., Ltd.¹⁵
14. Motech (Suzhou) Renewable Energy Co., Ltd.
15. Ningbo Ulica Solar Science & Technology Co., Ltd.
16. Perligh Solar Co., Ltd.

¹⁵ The Department treated this company as part of a single entity with the mandatory respondent Wuxi Suntech Power Co., Ltd.

17. Shenzhen Suntech Power Co., Ltd.
18. ShunFeng PV
19. Sumec Hardware & Tools Co., Ltd.
20. Suntech Power Co., Ltd.¹⁶
21. Tianwei New Energy (Chengdu) PV Module Co., Ltd.
22. Upsolar Group Co., Ltd.
23. Wanxiang Import & Export Co., Ltd.
24. Yangzhou Rietech Renewal Energy Co., Ltd.
25. Yangzhou Suntech Power Co., Ltd.
26. Zhejiang Jiutai New Energy Co., Ltd.
27. Zhenjiang Rietech New Energy Science & Technology Co., Ltd.

To test these claims, the Department queried CBP data, issued a no-shipment inquiry to CBP requesting that it provide any information that contradicted the no-shipment claims, and obtained entry documents from CBP.¹⁷

Based on the certifications of all companies, and our analysis of CBP information, we preliminarily determine that all companies listed above except CSG PVTech Co., Ltd. and Jiangsu Sunlink PV Technology Co., Ltd. did not have any reviewable transactions during the POR.¹⁸ However, the Department finds that consistent with its announced refinement to its assessment practice in non-market economy (“NME”) cases, it is not appropriate to rescind the review with respect to these companies but, rather, it is appropriate to complete the review with respect to these companies and issue instructions to CBP based on the final results of the review.¹⁹

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate an individual weighted-average dumping margin for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion to limit its examination to a reasonable number of exporters and producers if it is not practicable to make individual weighted-average dumping margin determinations because of the large number of exporters and producers involved in the review.

¹⁶ The Department treated this company as part of a single entity with the mandatory respondent Wuxi Suntech Power Co., Ltd.

¹⁷ See Entry Documents Memorandum.

¹⁸ See the memorandum from Patrick O’Connor, International Trade Compliance Analyst, Office IV, to Abdelali Elouaradia Director, Office IV, AD/CVD Operations, regarding the “Antidumping Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or not Assembled into Modules, from the People’s Republic of China: Analysis of No Sales/Shipments Claims Made by Certain Companies,” dated concurrently with this memorandum. Although record evidence supports Luoyang Suntech Power Co., Ltd. and Suntech Power Co., Ltd.’s claims that they had no exports, sales, or entries of subject merchandise during the POR, the Department treated these companies as a single entity with Wuxi Suntech Power Co., Ltd. and this entity did have exports, sales, or entries of subject merchandise during the POR.

¹⁹ See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties, 76 FR 65694 (October 24, 2011).

As noted above, on January 30, 2014, the Department issued a Q&V questionnaire to 23 companies and received Q&V questionnaire responses from 27 companies. On March 14, 2014, the Department determined that it was not practicable to examine all known exporters/producers of subject merchandise because this number of respondents was too large to individually examine given the Department's current resource constraints, pursuant to section 777A(c)(2) of the Act.²⁰ Therefore, in accordance with section 777A(c)(2)(B) of the Act, the Department selected for individual examination the two exporters accounting for the largest volume of subject merchandise exported from the PRC during the POR, Yingli Energy (China) Company Limited and Wuxi Suntech Power Co., Ltd.²¹

Single Entity Treatment

To the extent that the Department's practice does not conflict with section 773(c) of the Act, the Department has, in prior cases, treated certain NME exporters and/or producers as a single entity if the facts of the case supported such treatment.²² Pursuant to 19 CFR 351.401(f)(1), the Department will treat producers as a single entity, or "collapse" them, where: (1) those producers are affiliated; (2) the producers have production facilities for producing similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities; and (3) there is a significant potential for manipulation of price or production.²³ In determining whether a significant potential for manipulation exists, 19 CFR 351.401(f)(2) states that the Department may consider various factors, including: (1) the level of common ownership; (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (3) whether the operations of the affiliated firms 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.²⁴

"Collapsing" starts with a determination as to whether two or more companies are affiliated. Section 771(33)(F) of the Act defines affiliated persons to include "two or more persons directly or indirectly controlling, controlled by, or under common control with, any person." Section 771(33) further provides that a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

The Department has preliminarily determined that the following companies are affiliated pursuant to section 771(33)(F) of the Act and that these companies should be treated as a single

²⁰ See Respondent Selection Memorandum.

²¹ *Id.*

²² See Certain Steel Nails From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances and Postponement of Final Determination, 73 FR 3928, 3932 (January 23, 2008), unchanged in Certain Steel Nails From the People's Republic of China: Amended Preliminary Determination of Sales at Less Than Fair Value, 73 FR 7254 (February 7, 2008) and Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 33977 (June 16, 2008).

²³ See, e.g., Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review, 63 FR 12764, 12774-12775 (March 16, 1998).

²⁴ See also, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From Taiwan, 62 FR 51427, 51436 (October 1, 1997).

entity for AD purposes pursuant to 19 CFR 351.401(f): Yingli Energy (China) Company Limited; Baoding Tianwei Yingli New Energy Resources Co., Ltd.; Tianjin Yingli New Energy Resources Co., Ltd.; Hengshui Yingli New Energy Resources Co., Ltd.; Lixian Yingli New Energy Resources Co., Ltd.; Baoding Jiasheng Photovoltaic Technology Co., Ltd.; Beijing Tianneng Yingli New Energy Resources Co., Ltd.; and Hainan Yingli New Energy Resources Co., Ltd. (collectively “Yingli”).²⁵ The Department finds that these companies are indirectly under common control and, therefore, are affiliated in accordance with section 771(33)(F) of the Act. Further, we find that these companies operate production facilities that produce similar or identical products that would not require substantial retooling of their facilities in order to restructure manufacturing priorities.²⁶ We have also determined that there is a significant potential for the manipulation of price or production among these companies as evidenced by the level of common ownership, the degree of management overlap, and the intertwined nature of the operations of these companies.²⁷ Thus we have preliminarily treated these companies as a single entity.

In addition, the Department preliminarily determines that Wuxi Suntech Power Co., Ltd., Luoyang Suntech Power Co., Ltd., Suntech Power Co., Ltd., and Wuxi Sunshine Power Co., Ltd. (collectively “Wuxi Suntech Single Entity”), are affiliated pursuant to section 771(33)(F) of the Act and that these companies should be treated as a single entity for AD purposes pursuant to 19 CFR 351.401(f).²⁸ The Department finds that these companies are under common control and, therefore, are affiliated in accordance with section 771(33)(F) of the Act. Further, we find that these companies operate production facilities that produce similar or identical products that would not require substantial retooling of their facilities in order to restructure manufacturing priorities.²⁹ We have also determined that there is a significant potential for the manipulation of price or production among these companies as evidenced by the level of common ownership, the degree of management overlap, and the intertwined nature of the operations of these companies.³⁰ Thus we have preliminarily treated these companies as a single entity.

²⁵ See the memorandum from Brandon Farlander, International Trade Analyst, AD/CVD Operations Office IV to Abdelali Elouaradia, Director, Office IV, AD/CVD Operations regarding “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Affiliation and Single Entity Status,” dated concurrently with this memorandum, for a full discussion of the proprietary details of the Department’s analysis.

²⁶ See 19 CFR 351.401(f)(1).

²⁷ See 19 CFR 351.401(f)(2).

²⁸ See the memorandum from Drew Jackson, International Trade Analyst, AD/CVD Operations Office IV to Abdelali Elouaradia, Director, Office IV, AD/CVD Operations regarding “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Affiliation and Single Entity Status of Wuxi Suntech Power Co., Ltd.; Luoyang Suntech Power Co., Ltd.; Suntech Power Co., Ltd.; and Wuxi Sunshine Power Co., Ltd.” dated concurrently with this memorandum, for a full discussion of the proprietary details of the Department’s analysis.

²⁹ See 19 CFR 351.401(f)(1).

³⁰ See 19 CFR 351.401(f)(2).

DISCUSSION OF THE METHODOLOGY

NME Country

The Department considers the PRC to be an NME country.³¹ In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Therefore, the Department will continue to treat the PRC as an NME country for purposes of these preliminary results of review. The Department calculated NV using the factors of production (“FOP”) methodology in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rates

In all proceedings involving NME countries, the Department maintains a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single weighted-average dumping margin.³² In the Initiation Notice, the Department notified parties of the application process by which exporters or exporter/producers may obtain separate rate status in NME proceedings.³³ It is the Department’s policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (de jure) and in fact (de facto), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in Sparklers,³⁴ as amplified by Silicon Carbide.³⁵ However, if the Department determines that a company is wholly foreign-owned, then analysis of the de jure and de facto criteria are not necessary to determine whether the company is independent from government control.³⁶

The Department continues to evaluate its practice with regard to the separate rates analysis in light of the diamond sawblades from China antidumping duty proceeding, and the Department’s determinations therein.³⁷ In particular, we note that in litigation involving the diamond

³¹ See Hardwood and Decorative Plywood From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 58273 (September 23, 2013) and the accompanying Issues and Decision Memorandum at the Background section.

³² See Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 55039, 55040 (September 24, 2008); Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People’s Republic of China, 71 FR 53079, 53082 (September 8, 2006); Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People’s Republic of China, 71 FR 29303, 29307 (May 22, 2006).

³³ See Initiation Notice, 79 FR at 6148–49.

³⁴ See Final Determination of Sales at Less Than Fair Value: Sparklers From the People’s Republic of China, 56 FR 20588 (May 6, 1991) (“Sparklers”).

³⁵ See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People’s Republic of China, 59 FR 22585 (May 2, 1994) (“Silicon Carbide”).

³⁶ See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles From the People’s Republic of China, 72 FR 52355, 52356 (September 13, 2007).

³⁷ See Final Results of Redetermination Pursuant to Remand Order for Diamond Sawblades and Parts Thereof from the People’s Republic of China (May 6, 2013) in Advanced Technology & Materials Co., Ltd., et al. v. United States, 885 F. Supp. 2d 1343 (CIT 2012), affirmed in Advanced Technology & Materials Co., Ltd., et al. v. United

sawblades proceeding, the U.S. Court of International Trade found the Department's existing separate rates analysis deficient in the circumstances of that case, in which a government-controlled entity had significant ownership in the respondent exporter.³⁸ Based on this, we have concluded that where a government entity holds a majority ownership share, either directly or indirectly, in the respondent exporter, the majority ownership holding in and of itself means that the government exercises or has the potential to exercise control over the company's operations generally, which may include control over, for example, the selection of management, a key factor in determining whether a company has sufficient independence in its export activities to merit a separate rate. Consistent with normal business practices, we would expect any majority shareholder, including a government, to have the ability to control, and an interest in controlling, the operations of the company, including the selection of management and the profitability of the company. Accordingly, we have considered the level of government ownership where necessary.

As noted above, the Department initiated this review with respect to 145 companies. Interested parties timely withdrew all of their requests for a review of 70 companies. The Department rescinded this review with respect to 18 of the 70 companies while 51³⁹ of those companies remain under review as part of the PRC-wide entity.⁴⁰ Of the remaining 76 companies, we have preliminarily determined that 23 companies do not have shipments,⁴¹ two companies are mandatory respondents (10 additional companies are preliminarily being treated as a single entity with the mandatory respondents),⁴² 22 companies not selected for individual examination filed

States, 938 F. Supp. 2d 1342 (CIT 2013). This remand redetermination is on the Enforcement and Compliance website at <http://enforcement.trade.gov/remands/12-147.pdf>. See also Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 77098 (December 20, 2013) and accompanying Preliminary Decision Memorandum at 7, unchanged in Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 35723 (June 24, 2014) and accompanying Issues and Decision Memorandum at Comment 1.

³⁸ See, e.g., Advanced Technology & Materials Co., Ltd. v. United States, 885 F. Supp. 2d 1343, 1349 (CIT 2012) ("The court remains concerned that Commerce has failed to consider important aspects of the problem and offered explanations that run counter to the evidence before it."); id. at 1351 ("Further substantial evidence of record does not support the inference that SASAC's [state-owned assets supervision and administration commission] 'management' of its 'state-owned assets' is restricted to the kind of passive-investor de jure 'separation' that Commerce concludes.") (footnotes omitted); id. at 1355 ("The point here is that 'governmental control' in the context of the separate rate test appears to be a fuzzy concept, at least to this court, since a 'degree' of it can obviously be traced from the controlling shareholder, to the board, to the general manager, and so on along the chain to 'day-to-day decisions of export operations,' including terms, financing, and inputs into finished product for export."); id. at 1357 ("AT&M itself identifies its 'controlling shareholder' as CISRI [owned by SASAC] in its financial statements and the power to veto nomination does not equilibrate the power of control over nomination.") (footnotes omitted).

³⁹ The Department listed 52 companies as part of the PRC-wide entity in the rescission notice. However, the Department treated one of these companies, Wuxi Sunshine Power Co., Ltd., as part of a single entity with the mandatory respondent Wuxi Suntech Power Co., Ltd.

⁴⁰ See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules From the People's Republic of China: Amended Partial Rescission of Antidumping Duty Administrative Review, 79 FR 43713 (July 28, 2014).

⁴¹ In the "Preliminary Determination of No Shipments" section of this memorandum above, we identified 27 companies that reported making no shipments, of which, we found that 25 companies made no shipments during the POR. Two of those companies, Luoyang Suntech Power Co., Ltd., and Suntech Power Co., Ltd., are being collapsed with Wuxi Suntech. Thus we have not included these two companies as no shipment companies for purposes of accounting for the total number of companies here.

⁴² In the "Single Entity Treatment" section of this memorandum above, we noted our preliminary decision to treat Yingli Energy (China) Company Limited and seven of its affiliates as a single entity and it treated Wuxi Suntech Power Co., Ltd. and two of its affiliates as a single entity.

separate rate applications or separate rate certifications, and 19 companies did not file a separate rate application (“SRA”) or a separate rate certification (“SRC”). The 10 companies that we have preliminarily treated as a single entity with either Yingli Energy (China) Company Limited or Wuxi Suntech Power Co., Ltd., the two selected mandatory respondents (numbers 1 and 2 below), and the 22 companies which filed SRAs or SRCs are listed below:

1. Yingli Energy (China) Company Limited; Baoding Tianwei Yingli New Energy Resources Co., Ltd.; Tianjin Yingli New Energy Resources Co., Ltd.; Hengshui Yingli New Energy Resources Co., Ltd.; Lixian Yingli New Energy Resources Co., Ltd.; Baoding Jiasheng Photovoltaic Technology Co., Ltd.; Beijing Tianneng Yingli New Energy Resources Co., Ltd.; and Hainan Yingli New Energy Resources Co., Ltd.
2. Wuxi Suntech Power Co., Ltd.; Luoyang Suntech Power Co., Ltd.; Suntech Power Co., Ltd.; Wuxi Sunshine Power Co., Ltd. (i.e., the Wuxi Suntech Single Entity)
3. Canadian Solar International Limited
4. Canadian Solar Manufacturing (Changshu) Inc.
5. Canadian Solar Manufacturing (Luoyang) Inc.
6. Changzhou Trina Solar Energy Co., Ltd.⁴³
7. Chint Solar (Zhejiang) Co., Ltd.
8. De-Tech Trading Limited HK
9. Eoply New Energy Technology Co., Ltd.
10. Hangzhou Zhejiang University Sunny Energy Science and Technology Co., Ltd.
11. Jinko Solar Import and Export Co., Ltd.
12. LDK Solar Hi-tech (Nanchang) Co., Ltd.
13. Ningbo Qixin Solar Electrical Appliance Co., Ltd.
14. Renesola Jiangsu Ltd.
15. Shanghai BYD Co., Ltd.
16. Shanghai Machinery Complete Equipment (Group) Corp., Ltd.
17. Shenzhen Topray Solar Co. Ltd.
18. Sopray Energy Co., Ltd.
19. Star Power International Limited
20. Sun Earth Solar Power Co., Ltd.
21. Trina Solar (Changzhou) Science and Technology Co., Ltd.⁴⁴
22. Yingli Green Energy Holding Company Limited
23. Yingli Green Energy International Trading Company Limited
24. Zhejiang Sunflower Light Energy Science & Technology Limited Liability Company

⁴³ In the investigation in this proceeding, the Department treated Changzhou Trina Solar Energy Co., Ltd. and Trina Solar (Changzhou) Science & Technology Co., Ltd. as a single entity. See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part, 77 FR 63791, 63795 (October 17, 2012) (“Solar Cells Investigation”). Absent record information to the contrary, the Department has continued to treat these companies as a single entity for purposes of this review.

⁴⁴ In the investigation in this proceeding, the Department treated Trina Solar (Changzhou) Science & Technology Co., Ltd. and Changzhou Trina Solar Energy Co., Ltd. as a single entity (“Trina Solar”). See Solar Cells Investigation, 77 FR at 63795. Absent record information to the contrary, the Department has continued to treat these companies as a single entity for purposes of this review.

Applicants That are Joint Ventures between Chinese and Foreign Companies or Wholly Chinese-Owned Companies

Companies 1, 2, 7, 9-18, 20, and 22-24 are either Chinese joint-stock limited companies or wholly Chinese-owned companies. The Department analyzed whether these companies have demonstrated an absence of de jure and de facto government control over their respective export activities.

Absence of De Jure Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) legislative enactments decentralizing control over export activities of companies; and (3) other formal measures by the government decentralizing control over export activities of companies.⁴⁵

The evidence provided by the Chinese owned companies in the above list (companies 1, 2, 7, 9-18, 20, and 22-24) supports a preliminary finding of an absence of de jure government control for each of these companies based on the following: (1) an absence of restrictive stipulations associated with the individual exporters' business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of Chinese companies.

Absence of De Facto Control

Typically, the Department considers four factors in evaluating whether each respondent is subject to de facto government control of its export functions: (1) whether the export prices ("EPs") are set by, or are subject to the approval of, a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.⁴⁶ The Department determined that an analysis of de facto control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from granting a separate rate.

With the exception of Shanghai Machinery Complete Equipment (Group) Corp., Ltd. (company 16 above), and the Wuxi Suntech Single Entity (company 2 above), the evidence provided by the companies in the above list (companies 1, 7, 9-15, 17, 18, 20, and 22-24) supports a preliminary finding of an absence of de facto government control based on record statements and supporting documentation showing that the companies: (1) set their own EPs independent of the government and without the approval of a government authority; (2) have the authority to negotiate and sign contracts and other agreements; (3) maintain autonomy from the government

⁴⁵ See Sparklers, 56 FR at 20589.

⁴⁶ See Silicon Carbide, 59 FR at 22586-87; Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China, 60 FR 22544, 22545 (May 8, 1995).

in making decisions regarding the selection of management; and (4) retain the proceeds of their respective export sales and make independent decisions regarding disposition of profits or financing of losses. See the section below “Companies not Receiving a Separate Rate” for further information regarding Shanghai Machinery Complete Equipment (Group) Corp., Ltd.

Therefore, the evidence placed on the record of this administrative review by the Chinese companies in the above list (numbers 1, 7, 9-15, 17, 18, 20, and 22-24) demonstrates an absence of de jure and de facto government control under the criteria identified in Sparklers and Silicon Carbide. Accordingly, the Department preliminarily grants separate rate status to these companies.

Wholly Foreign-Owned Applicants

Companies 3-6, 8, 19, and 21 in the above list provided evidence that they are wholly owned by a company located in a ME country. Moreover, the Department has no record evidence indicating that these companies are under the control of the government of China (“GOC”). For these reasons, it is not necessary for the Department to conduct a separate rate analysis to determine whether these companies are independent from government control.⁴⁷ Therefore, the Department has preliminarily granted separate rate status to these companies.⁴⁸

Companies Not Receiving a Separate Rate

The Department continues to evaluate its practice with regard to the separate rates analysis in light of the diamond sawblades from the PRC antidumping duty proceeding, and the Department’s determinations therein.⁴⁹ In particular, in litigation involving the diamond sawblades from the PRC proceeding, the U.S. Court of International Trade (“CIT”) found the Department’s existing separate rates analysis deficient in the circumstances of that case, in which a government-owned and-controlled entity had significant ownership in the respondent exporter.⁵⁰ As described below, and in light of the CIT’s decisions in the diamond sawblades

⁴⁷ See, e.g., Seamless Refined Copper Pipe and Tube from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 75 FR 26716, 26720 (May 12, 2010), unchanged in Seamless Refined Copper Pipe and Tube From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 60725 (October 1, 2010).

⁴⁸ See “Preliminary Determination” section below.

⁴⁹ See Final Results of Redetermination Pursuant to Remand Order for Diamond Sawblades and Parts Thereof from the People’s Republic of China (May 6, 2013) in Advanced Technology & Materials Co., Ltd. v. United States, 885 F. Supp. 2d 1343 (CIT 2012) (Advanced Technology I), affirmed in Advanced Technology & Materials Co., Ltd., v. United States, 938 F. Supp. 2d 1342 (CIT 2013), aff’d 581 F. App’x 900 (Fed. Cir. 2014) (Advanced Technology II). This remand redetermination is on the Enforcement and Compliance website at <http://enforcement.trade.gov/remands/12-147.pdf>. See also Diamond Sawblades and Parts Thereof from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 77098 (December 20, 2013) and accompanying Preliminary Decision Memorandum at 7, unchanged in Diamond Sawblades and Parts Thereof from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 35723 (June 24, 2014) and accompanying Issues and Decision Memorandum at Comment 1.

⁵⁰ See, e.g., Advanced Technology I, 885 F. Supp. 2d at 1349 (CIT 2012) (“The court remains concerned that Commerce has failed to consider important aspects of the problem and offered explanations that run counter to the evidence before it.”); id. at 1351 (“Further substantial evidence of record does not support the inference that SASAC’s {state-owned assets supervision and administration commission} ‘management’ of its ‘state-owned assets’

from the PRC litigation, we consider the level of government ownership and the control exercised by the government through such ownership over the operations of the company, including, for example, the selection of management, a key factor in determining whether a company has sufficient independence in its export activities to merit a separate rate.

Wuxi Sunshine, an exporter and company in the Wuxi Suntech Single Entity, reported that two of its three shareholders are state-owned companies.⁵¹ The business licenses of these two companies support Wuxi Sunshine's assertions that these two shareholders are state-owned companies.⁵² The government of the People's Republic of China ("GOC") indirectly, through these two shareholders, owned a significant percentage of Wuxi Sunshine during the POR.⁵³ In this case, we preliminarily determine that the GOC, through its significant ownership interest in Wuxi Sunshine, is in a position to potentially control Wuxi Sunshine's and therefore, the collapsed entities' export activities. Moreover, we find the potential to control the collapsed entities' export activities is further evidenced through the intertwined operations of the companies in the single entity.⁵⁴ Because of the level of government ownership in Wuxi Sunshine, and the control or the potential to exercise control that such ownership establishes, we preliminarily conclude that Wuxi Sunshine, and thus the Wuxi Suntech Single Entity, does not satisfy the criteria demonstrating an absence of de facto government control over export activities.⁵⁵ Consequently, we preliminarily determine that the Wuxi Suntech Single Entity is ineligible for a separate rate.

Additionally, for the reasons explained in the business proprietary memorandum regarding "Companies Not Receiving a Separate Rate"⁵⁶ the Department has not granted a separate rate to company 16 above, Shanghai Machinery Complete Equipment (Group) Corp. Also, while CSG PVTech Co., Ltd. and Jiangsu Sunlink PV Technology Co., Ltd. reported that they had no shipments during the POR, the Department determined that they had shipments. Because these companies made shipments during the POR but have not filed a separate rate application or

is restricted to the kind of passive-investor de jure 'separation' that Commerce concludes.") (footnotes omitted); id. at 1355 ("The point here is that 'governmental control' in the context of the separate rate test appears to be a fuzzy concept, at least to this court, since a 'degree' of it can obviously be traced from the controlling shareholder, to the board, to the general manager, and so on along the chain to 'day-to-day decisions of export operations,' including terms, financing, and inputs into finished product for export."); id. at 1357 ("AT&M itself identifies its 'controlling shareholder' as CISRI {owned by SASAC} in its financial statements and the power to veto nomination does not equilibrate the power of control over nomination.") (footnotes omitted).

⁵¹ See Wuxi Sunshine's April 4, 2014 Separate-Rate Application at 11. For further information regarding the Department's separate rate analysis, see Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for AD/CVD Operations, from Abdelali Elouaradia, Director, Office IV, AD/CVD Operations, regarding, "Antidumping Duty Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Wuxi Suntech Single Entity Separate Rate Analysis," dated December 31, 2014 ("Wuxi Suntech Separate Rate Memorandum").

⁵² See Wuxi Sunshine's April 4, 2014 Separate-Rate Application at Exhibit 5.

⁵³ See Wuxi Suntech Separate Rate Memorandum for information regarding the ownership interest held by the GOC, which may not be publically disclosed.

⁵⁴ Id.

⁵⁵ Id.

⁵⁶ See the memorandum from Jeff Pedersen, Senior International Trade Analyst, Office IV, AD/CVD Operations to Abdelali Elouaradia, Director, Office IV, AD/CVD Operations regarding "Antidumping Duty Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Companies Not Receiving a Separate Rate," dated concurrently with, and adopted by, this memorandum.

certification, they have not established their entitlement to a separate rate and the Department is not granting them a separate rate in this review.⁵⁷ Furthermore, the 17 additional companies listed below, which remain under review, failed to provide SRAs or SRCs necessary to establish their eligibility for a separate rate. Hence, the Department preliminarily determines to treat the following companies as part of the PRC-wide entity:

1. Wuxi Suntech Power Co., Ltd.; Luoyang Suntech Power Co., Ltd.; Suntech Power Co., Ltd.; Wuxi Sunshine Power Co., Ltd. (i.e., the Wuxi Suntech Single Entity)
2. Changzhou NESL Solartech Co., Ltd.
3. CSG PVTech Co., Ltd.
4. Era Solar Co., Ltd.
5. Innovosolar
6. Jiangsu Sunlink PV Technology Co., Ltd.
7. Jiawei Solarchina Co., Ltd.
8. Jinko Solar Co., Ltd.
9. LDK Solar Hi-tech (Suzhou) Co., Ltd.
10. Leye Photovoltaic Co., Ltd.
11. Magi Solar Technology
12. Ningbo ETDZ Holdings, Ltd.
13. ReneSola
14. Shanghai Machinery Complete Equipment (Group) Corp., Ltd.
15. Shenglong PV-Tech
16. Solarbest Energy-Tech (Zhejiang) Co., Ltd.
17. Suzhou Shenglong PV-TECH Co., Ltd.
18. Zhejiang Shuqimeng Photovoltaic Technology Co., Ltd.
19. Zhejiang Xinshun Guangfu Science and Technology Co., Ltd.
20. Zhejiang ZG-Cells Co., Ltd.
21. Zhiheng Solar Inc.

Separate Rate for Applicants Not Individually Examined

The statute and the Department's regulations do not address the establishment of a rate to be applied to individual respondents not selected for individual examination when the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, the Department looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for separate-rate respondents which we did not examine individually in an administrative review. Section 735(c)(5)(A) of the Act articulates a preference that we are not to calculate an all-others rate using rates for individually examined respondents which are zero, de minimis, or based entirely on facts available ("FA"). Accordingly, the Department's usual practice in determining the rate for separate-rate respondents not selected for individual examination has been to average the weighted-average dumping margins for the selected companies, excluding rates that are zero, de minimis, or based entirely on FA.⁵⁸ In this review, we calculated a rate for the one mandatory

⁵⁷ Id.

⁵⁸ See Longkou Haimeng Mach. Co. v. United States, 581 F. Supp. 2d 1344, 1357-60 (Ct. Int'l Trade 2008) (affirming the Department's determination to assign a 4.22 percent dumping margin to the separate rate respondents)

found to be eligible for a separate rate that is not zero, de minimis, or based entirely on FA. Therefore, we assigned this rate to the separate rate applicants not individually examined.

The PRC-Wide Entity

As discussed above, the Wuxi Suntech Single Entity and the other 20 companies listed above failed to establish their eligibility for a separate rate. Because these companies have not demonstrated that they are eligible for separate rate status, the Department considers them part of the PRC-wide entity. Further, the record indicates that there are other PRC exporters and/or producers of the merchandise under consideration during the POR that are part of the PRC-wide entity that did not respond to the Department's requests for information. Specifically, the Department did not receive responses to its Q&V questionnaire from two PRC exporters and/or producers of merchandise under consideration that were named in the Initiation Notice and for which all review requests were not withdrawn.⁵⁹ The Department received confirmation that its issued Q&V questionnaire was delivered.⁶⁰ Because non-responsive PRC companies have not demonstrated that they are eligible for separate rate status, the Department finds that they have not rebutted the presumption of government control and, therefore, considers them to be part of the PRC-wide entity. Furthermore, as explained in the next section, we preliminarily determine to calculate the PRC-wide rate on the basis of adverse facts available ("AFA").

Use of Facts Available and AFA

Section 776(a) of the Act provides that the Department shall apply "facts otherwise available" if: (1) necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

If the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority" if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party

in a segment where the three mandatory respondents received dumping margins of 4.22 percent, 0.03 percent, and zero percent, respectively); see also Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 36656, 36660 (July 24, 2009).

⁵⁹ Those companies are Changzhou NESL Solartech Co., Ltd. and LDK Solar Hi-tech (Suzhou) Co., Ltd.

⁶⁰ See memorandum to the file from Patrick O'Connor, International Trade Analyst, Office IV, AD/CVD Operations on the subject "Delivery of Quantity and Value Questionnaires" dated December 19, 2014.

acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information supplied if it can do so without undue difficulties.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

Application of FA With Respect to Certain FOP Information

Yingli did not report FOP data from certain suppliers and tollers. Based on the specific facts on the record of this review, in accordance with section 776(a)(1) of the Act, the Department is applying FA with respect to these unreported FOP data. Due to the proprietary nature of the factual information concerning these FOP data, we explain the decision to use FA with respect to these FOP data in a separate business proprietary memorandum.⁶¹ As FA, we used FOP data that Yingli was able to obtain from certain tollers or its own FOP information.

Application of Total AFA to the PRC-Wide Entity

In the Initiation Notice, the Department stated that if one of the companies for which this review has been initiated “does not qualify for a separate rate, all other exporters of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of a single PRC entity of which the named exporters are a part.”⁶² As noted above, not all of the companies for which this review was initiated have qualified for a separate rate; as a result, the PRC-wide entity is now under review.⁶³

Certain companies which we are treating as part of the PRC-wide entity did not respond to the Department’s request for Q&V data. We preliminarily determine that these companies withheld information requested by the Department. Thus, because these companies have withheld requested information and significantly impeded this proceeding, the Department has preliminarily based the dumping margin of the PRC-wide entity on the facts otherwise available on the record, consistent with sections 776(a)(2)(A) and (C) of the Act. Furthermore, we

⁶¹ See the memorandum from Brandon Farlander, International Trade Analyst, AD/CVD Operations, Office IV to Abdelali Elouaradia, Director, Office IV, AD/CVD Operations regarding “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Yingli’s Unreported Factors of Production” dated concurrently with this notice.

⁶² See Initiation Notice, 79 FR at 6156.

⁶³ On November 4, 2013, the Department announced a change in practice with respect to the conditional review of the NME entity for antidumping duty administrative reviews for which the notice of opportunity to request an administrative review is published on or after December 4, 2013. See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Proceedings, 78 FR 65963 (November 4, 2013). The opportunity to request this administrative review was published on December 3, 2013; therefore, the Department’s new practice does not apply to this review.

preliminarily determine that based on the PRC-wide entity's refusal to provide the requested information, the PRC-wide entity has failed to cooperate by not acting to the best of its ability. In Nippon Steel, the Court of Appeals for the Federal Circuit ("CAFC") explained that the Department need not show intentional conduct existed on the part of the respondent, but merely that a failure to cooperate to the best of a respondent's ability existed (i.e., information was not provided "under circumstances in which it is reasonable to conclude that less than full cooperation has been shown").⁶⁴ Hence, pursuant to section 776(b) of the Act, the Department has determined that, when selecting from among the facts otherwise available, an adverse inference is warranted with respect to the PRC-wide entity.

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) provide that the Department may rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. The Department's practice is to select an AFA rate that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner"⁶⁵ and that ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."⁶⁶ Specifically, the Department's practice in selecting a total AFA rate in administrative reviews is to use the highest rate on the record of the proceeding which, to the extent practicable, can be corroborated (if the rate is based on secondary information).⁶⁷ The Court of International Trade ("CIT") and the CAFC have affirmed decisions to select the highest margin from any prior segment of the proceeding as the AFA rate on numerous occasions.⁶⁸ The highest dumping margin on the record of this proceeding is 249.96 percent, which is a dumping margin assigned to the PRC-wide entity in the underlying investigation.⁶⁹ The 249.96 percent rate was corroborated in the most recent segment of this proceeding and no party has provided any information to call into question the reliability or relevance of this rate. Therefore, we have continued to assign this rate to the PRC-wide entity.

⁶⁴ See Nippon Steel Corporation v. United States, 337 F.3d 1373, 1383 (Fed. Cir. 2003) ("Nippon Steel").

⁶⁵ See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909, 8911 (February 23, 1998).

⁶⁶ Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review, 70 FR 69937, 69939 (November 18, 2005) and the Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316, at 838, 870 (1994).

⁶⁷ See Glycine from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 74 FR 15930, 15934 (April 8, 2009), unchanged in the final results, 74 FR 41121; see also Fujian Lianfu Forestry Co., Ltd. v. United States, 638 F. Supp. 2d 1325, 1336 (Ct. Int'l Trade 2009) ("Commerce may, of course, begin its total AFA selection process by defaulting to the highest rate in any segment of the proceeding, but that selection must then be corroborated, to the extent practicable.").

⁶⁸ See, e.g., NSK Ltd. v. United States, 346 F. Supp. 2d 1312, 1335 (Ct. Int'l Trade 2004) (affirming a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in the investigation); Kompass Food Trading Int'l v. United States, 24 CIT 678, 683-84 (2000) (affirming a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); and Shanghai Taoen Int'l Trading Co., Ltd. v. United States, 360 F. Supp. 2d 1339, 1348 (Ct. Int'l Trade 2005) (affirming a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

⁶⁹ See Solar Cells Investigation, 77 FR at 63796.

Application of Partial AFA for Yingli

At the verification of Yingli's U.S. affiliate, Yingli Green Energy Americas Inc. ("YGEA"), company officials presented a number of revisions to Yingli's U.S. sales database which they characterized as "minor corrections." These corrections include the identification of unreported U.S. sales of subject merchandise and under reported or over reported sales quantities for previously reported U.S. sales. According to company officials, each of these corrections is needed because they incorrectly identified the country of manufacture of the solar cells contained in certain solar modules, and thus, they either failed to report certain sales of solar modules as sales of subject merchandise or reported certain sales of solar modules which they should not have reported.

As noted above, section 776(a)(2)(B) and (D) of the Act provides that if an interested party fails to provide information within the established deadlines or provides information but the information cannot be verified, the Department shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Moreover, section 776(b) of the Act provides that, if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting the facts otherwise available. In addition, the Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act explains that the Department may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."⁷⁰

In Nippon Steel, the CAFC noted that while the statute does not provide an express definition of the "failure to act to the best of its ability" standard, the ordinary meaning of "best" is "ones maximum effort."⁷¹ Thus, according to the CAFC, the statutory mandate that a respondent act to the "best of its ability" requires the respondent to do the maximum it is able to do. The CAFC indicated that inadequate responses to an agency's inquiries would suffice to find that a respondent did not act to the best of its ability. While the CAFC noted that the "best of its ability" standard does not require perfection, it does not condone inattentiveness, carelessness, or inadequate record keeping.⁷² The "best of its ability" standard recognizes that mistakes sometimes occur; however, it requires a respondent to, among other things, "have familiarity with all of the records it maintains," and "conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of" its ability to do so.⁷³

The antidumping duty questionnaire issued in this review requires respondents to report all of their relevant U.S. sales during the POR. Yingli had multiple opportunities to provide the full universe of sales given that the Department issued multiple supplemental questionnaires to

⁷⁰ See SAA, H.R. Rep. No. 103-316, at 870; see also Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India, 70 FR 54023, 54025-26 (September 13, 2005); Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil, 67 FR 55792, 55794-96 (August 30, 2002).

⁷¹ See Nippon Steel, 337 F.3d at 1382-83.

⁷² Id. at 1382.

⁷³ Id.

Yingli and Yingli made adjustments to reported sales in its responses to the supplemental questionnaires. Thus, section 782(d) was satisfied with respect to the universe of Yingli's sales.

However, Yingli did not provide the Department with the complete universe of its POR sales of subject merchandise in its questionnaire or supplemental questionnaire responses. By not reporting all of its U.S. sales in its questionnaire and supplemental questionnaire responses, Yingli failed to provide information within the deadlines established. The Department has previously declined to accept unreported sales information identified at verification and instead relied upon FA or AFA as appropriate.⁷⁴ In this case, we find it is appropriate to base dumping margins for these unreported sales on FA pursuant to section 776(a) of the Act. Further, as evidenced by its ability at verification to identify the invoices related to these specific unreported U.S. sales, it is clear that Yingli possessed the necessary records to provide a complete U.S. sales database but did not conduct a comprehensive investigation of all relevant records to identify the unreported sales in a timely manner. Therefore, we find that Yingli's failure to report all of its U.S. sales of in-scope products during the POR, using the information over which it maintained control at all times, indicates that Yingli did not act to the best of its ability to comply with our request for information. Hence, we find it is appropriate to base the dumping margins for these unreported sales on AFA. As AFA, we assigned the unreported U.S. sales the highest dumping margin calculated for any reported U.S. sale made by Yingli during the POR.

In addition, with one exception, we have not accepted the modifications to reported sales which officials presented during the verification of YGEA because we find these modifications could not be verified. At the verification of YGEA, officials presented these modifications and explained that they were needed because they incorrectly identified the country of manufacture of the solar cells contained in certain solar modules that were sold in the United States during the POR. During the verification of Yingli in China, the Department's verifiers conducted a number of tests of Yingli's system for tracing solar cells in its modules back to the correct country of manufacture. The tests included examining the database that Yingli developed for tracking the country of manufacture for solar cells as well as tracing entries in that database to source documents. These tests did not reveal discrepancies with respect to the reported country of manufacture for solar cells in modules sold to the United States during the POR. However, after the Department completed its verification in China, and began its verification of YGEA, Yingli's

⁷⁴ See Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Germany, 64 FR 30710 (June 8, 1999) at Comment 10. In this case, the respondent argued that the Department's acceptance, at the verification of the U.S. sales affiliate (KHSP), "of the previously unreported U.S. sales was appropriate ... {T}he new KHSP sales identified at verification were neither significant nor entirely new. ... KHSP had simply misclassified four of the five previously unreported sales as non-subject merchandise and ... only one was entirely new and previously unidentified." Furthermore, the respondent argued that "the sales at issue can hardly be considered significant given the number of U.S. transactions. ... {A}s in Pocket Lighters from the PRC, the Department should accept the new sales presented at verification, as they represent a small percentage of total sales and were neither hidden nor misrepresented." Although the Department noted that KHSP identified the missing sales at the outset of verification and provided a complete packet containing copies of each of the relevant invoices which the Department included on the record as a verification exhibit, the Department noted "that KHSP had three opportunities spread over four months to provide the Department with a complete listing of its U.S. sales. In response to its failure to do so, as adverse facts available, we are applying the highest non-aberrational margin calculated based on {the respondent's} correctly reported CEP transactions to the unreported sales and have included these transactions in our calculation of the overall weighted-average margin." In making this decision, the Department also cited a number of other cases where it applied AFA to unreported sales.

affiliate in the United States, company officials identified certain modifications required to the U.S. sales database due to misidentification of the country of manufacture for solar cells in certain modules. The source documents related to the country of manufacture of solar cells are in China, not the United States. Thus, the verifiers could not test, while in the United States, whether Yingli's source documents supported the modifications. Although Yingli officials characterized the modifications as minor, the sales quantities involved are not minor. Thus, we believe that for these modifications, documented support of the modifications, beyond entries in the tracking database, is required. As noted, such documents are not kept by the U.S. affiliate and thus they were not available on site at the U.S. verification when company officials first identified the sales modifications. As a result, with the exception of one modification for which additional supporting documentation was provided, we find the sales modifications to be unverified. Therefore, with one exception, the Department has not made the modifications to the U.S. sales database requested by YGEA officials.

Surrogate Country

When the Department investigates imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's FOPs, valued in a surrogate ME country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.⁷⁵ Further, pursuant to 19 CFR 351.408(c)(2), the Department will normally value FOP in a single country. On March 28, 2014, the Department issued a memorandum identifying six countries as being at the level of economic development of the PRC for the POR.⁷⁶ The countries identified in that memorandum are Bulgaria, Colombia, Ecuador, Indonesia, South Africa, and Thailand.⁷⁷ Both mandatory respondents, and Petitioner, contend that the Department should select Thailand as the primary surrogate country. Our surrogate country analysis is below.

Economic Comparability

Consistent with Departmental practice, the Department identified a number of countries that are at the level of economic development of the PRC. The Department determined economic comparability based on per capita gross national income, as reported in the most current annual issue of the World Development Report (The World Bank).⁷⁸ The countries identified, namely

⁷⁵ See Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) ("Policy Bulletin").

⁷⁶ See Letter from Howard Smith, Program Manager, AD/CVD Operations, Office IV, to All Interested Parties, "Antidumping Duty Review of Crystalline Silicon Photovoltaic Cells from the People's Republic of China: Request for Surrogate Country and Surrogate Value Comments and Information" dated June 3, 2014 ("Surrogate Country List") at the Attachment.

⁷⁷ *Id.*

⁷⁸ See Policy Bulletin at 2 (endnotes omitted); see, e.g., Utility Scale Wind Towers From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 77 FR 75992 (December 26, 2012) and the accompanying Issues and Decision Memorandum at Comment 1.

Bulgaria, Colombia, Ecuador, Indonesia, South Africa, and Thailand,⁷⁹ are not ranked and are considered equivalent in terms of economic comparability.

Significant Producers of Identical or Comparable Merchandise

While the statute does not define “significant” or “comparable” the Department’s practice is to evaluate whether production is significant based on characteristics of world production of, and trade in, comparable merchandise (subject to the availability of data on these characteristics) and to determine whether merchandise is comparable on a case-by-case basis.⁸⁰ Where there is no production information, the Department has relied upon export data from potential surrogate countries. With respect to comparability of merchandise, in all cases, if identical merchandise is produced in a country, the country qualifies as a producer of comparable merchandise. Where there is no evidence of production of identical merchandise in a potential surrogate country, the Department has determined whether merchandise is comparable to the subject merchandise on the basis of similarities in physical form and the extent of processing or on the basis of production factors (physical and non-physical) and factor intensities. Since these characteristics are specific to the merchandise in question, the standard for “significant producer” will vary from case to case.⁸¹

A comparison of production quantities of the comparable merchandise from each potential surrogate country in relation to world production was not possible because the record does not contain production quantities of comparable merchandise from each potential surrogate country. The Department next sought evidence of production of comparable merchandise in the form of export data, which is one of the factors we consider in determining whether a country is a significant producer of comparable merchandise. The Department obtained export data from the Global Trade Atlas (“GTA”) for Bulgaria, Colombia, Ecuador, Indonesia, South Africa, and Thailand for the six-digit Harmonized Tariff Schedule (“HTS”) sub-headings listed in the scope of the antidumping duty order specific to solar cells and solar modules in this proceeding (i.e., 8541.40).⁸² Based on these data, the Department has found that record evidence demonstrates that Bulgaria, Colombia, Ecuador, Indonesia, South Africa, and Thailand are all significant producers of comparable merchandise. We next examined record SV data with respect to each of these countries which the Department found to be at a level of economic development comparable to that of the PRC and found to be significant producers of identical or comparable merchandise.

⁷⁹ See Surrogate Country List at the Attachment.

⁸⁰ See Xanthan Gum from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 78 FR 2252 (January 10, 2013) and accompanying Preliminary Decision Memorandum at 4-7, unchanged in Xanthan Gum from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 33350 (June 4, 2013).

⁸¹ See Policy Bulletin at 1-2; see also, e.g., Hardwood and Decorative Plywood From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 58273 (September 23, 2013) and the accompanying Issues and Decision Memorandum at Comment 7.

⁸² See Memorandum from Drew Jackson to the File, “Export Data for Solar Cells and Solar Modules, 2012-2013,” dated concurrently with this memorandum.

Data Availability

When evaluating SV data, the Department considers several factors including whether the SVs are publicly available, contemporaneous with the POR, a broad-market average, tax and duty-exclusive, and specific to the input.⁸³ The Department's preference is to satisfy the breadth of these aforementioned selection factors.⁸⁴

Parties have placed on the record SV data from Bulgaria, Colombia, Ecuador, Indonesia, South Africa, and Thailand, but primarily SV data from Thailand.⁸⁵ Thailand is the only potential surrogate country for which we have complete, usable data on the record for valuing direct materials and packing materials. No party submitted complete, or even nearly complete, data for any other potential surrogate country. Further, we find that the Thai data, with the exception of import data for several inputs discussed below, and the Thai financial statements, are of an acceptable quality. The data generally are from GTA, in which case they are publicly available, contemporaneous with the POR, broad-market averages, tax and duty-exclusive, and for imports from HTS categories specific to the inputs being valued.

Given the above facts, the Department selects Thailand as the primary surrogate country for this review. Thailand is at the level of economic development of the PRC, is a significant producer of comparable merchandise, and generally has reliable and usable SV data. A detailed description of the Thai SVs selected by the Department is provided below in the "Normal Value" section of this notice.

Date of Sale

In identifying the date of sale of the merchandise under consideration, the Department will normally, in accordance with 19 CFR 351.401(i), "use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business." Yingli reported the earlier of shipment date or invoice date as the date of sale. This is consistent with Department practice, pursuant to which the Department uses the shipment date as the date of sale when the shipment date predates the invoice date.⁸⁶ Thus, because no record evidence indicates that a different date better reflects the date on which the material terms of sale were established, the Department has preliminarily determined to use shipment date or invoice date, as appropriate, as the date of sale for Yingli's sales.⁸⁷

⁸³ See, e.g., Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2010-2011, 78 FR 17350 (March 21, 2013), and accompanying Issues and Decision Memorandum at Comment I(C).

⁸⁴ Id.

⁸⁵ See generally Petitioner's SV Submissions; Yingli's SV Submissions; Wuxi Suntech's SV Submissions.

⁸⁶ See Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Final Results of the Antidumping Duty Administrative Review, 77 Fed. Reg. 34344 (June 11, 2012) and accompanying Issues and Decision Memorandum at Comment 2 ("the Department has a longstanding practice of finding that, where invoice date is the presumptive date of sale, but shipment date precedes invoice date, shipment date should be used as date of sale.").

⁸⁷ See Submission of Yingli, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Yingli's Response to the Department's Section C Questionnaire, Including Appendices V and XI," dated May 5, 2014, at C-15.

Comparisons to Normal Value

To determine whether Yingli's sales of subject merchandise were made at less than NV, the Department compared the constructed export price ("CEP") or export price ("EP") to NV, as described in the "U.S. Price" and "Normal Value" sections below.⁸⁸

Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates dumping margins by comparing weighted-average NVs to weighted-average EPs (or CEPs) (the average-to-average method) unless the Department determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, the Department examines whether to compare weighted-average NVs to the prices of individual export transactions (the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of administrative reviews, the Department finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in less-than-fair-value investigations.⁸⁹ In recent investigations and reviews, the Department applied a "differential pricing" analysis to determine whether application of average-to-transaction comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.⁹⁰ The Department finds the differential pricing analysis used in those recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review.⁹¹ The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the

⁸⁸ In these preliminary results, the Department applied the assessment rate calculation method adopted in Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification, 77 FR 8101 (February 14, 2012) ("Final Modification for Reviews"). In particular, the Department compared monthly weighted-average U.S. prices with weighted-average NVs and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin; see also section 773(a)(1)(B)(ii) of the Act; 19 CFR 351.414(c)(1) and (d).

⁸⁹ See Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011, 77 FR 73415 (December 10, 2012), and accompanying Issues and Decision Memorandum at Comment 1.

⁹⁰ See Hardwood and Decorative Plywood From the People's Republic of China: Antidumping Duty Investigation, 78 FR 25946 (May 3, 2013), unchanged in Hardwood and Decorative Plywood From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 58273 (September 23, 2013); see also Certain Steel Threaded Rod From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011–2012, FR 78 21101 (April 9, 2013), unchanged in Certain Steel Threaded Rod From the People's Republic of China: Final Results of Third Antidumping Duty Administrative Review; 2011–2012, 78 FR 66330 (November 5, 2013); see also Certain Lined Paper Products From the People's Republic of China: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review; 2011–2012, 78 FR 34640 (June 10, 2013) unchanged in Certain Lined Paper Products From the People's Republic of China: Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review; 2011–2012, 78 FR 65274 (October 31, 2013).

⁹¹ See, e.g., Activated Carbon From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011–2012, 78 FR 26748 (May 8, 2013), unchanged in Certain Activated Carbon From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011–2012, 78 FR 70533 (Nov. 26, 2013), and accompanying Issues and Decision Memorandum at Comment 4.

potential masking of dumping that can occur when the Department uses the average-to-average method in calculating weighted-average dumping margins.

The differential pricing analysis used in these preliminary results requires a finding of a pattern of prices for comparable merchandise that differs significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported customer names. Regions are defined using the reported destination code (*i.e.*, city name, zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is calculated to evaluate the extent to which the net prices to a particular purchaser, region, or in a time period differ significantly from the net prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium or large. Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant, and the sales in the test group were found to have passed the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen’s *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the

results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (*i.e.*, the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, the Department examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if: 1) there is a 25 percent relative change in the weighted-average dumping margin between the average-to-average method and the appropriate alternative method where both rates are above the de minimis threshold, or 2) the resulting weighted-average dumping margin moves across the de minimis threshold.

Interested parties may present arguments in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

Results of the Differential Pricing Analysis

The results of the differential pricing analysis for Yingli demonstrate that less than 33 percent of the company's U.S. sales pass the Cohen's *d* test. As such, the Department finds that these results do not support consideration of an alternative to the average-to-average comparison method. Accordingly, the Department has determined to use the average-to-average method in making comparisons of EP and CEP to NV for Yingli.

U.S. Price

Constructed Export Price

In accordance with section 772(b) of the Act, CEP is "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d)." Yingli reported that during the POR, it made CEP sales through its U.S. affiliate. In accordance with section 772(b) of the Act, we calculated a CEP for Yingli's U.S. sales where the merchandise subject to this review was sold by the U.S. affiliate on behalf of Yingli to unaffiliated purchasers.

We calculated CEP for Yingli based on delivered prices to unaffiliated purchasers in the United States. We adjusted the U.S. sales price by early payment discounts and billing adjustments to

arrive at the price at which the subject merchandise is first sold in the United States to an unaffiliated customer. We made deductions from the U.S. sales price, where applicable, for movement expenses in accordance with section 772(c)(2)(A) of the Act. The movement expenses included expenses such as inland freight from the plant to the port of exportation, insurance and brokerage and handling incurred in the country of export, international freight, marine insurance, U.S. duties, U.S. inland freight from the port to the warehouse, U.S. inland freight to the customer, and other U.S. transportation and warehouse costs. Where movement services were provided by PRC service providers or paid for in renminbi, we based those charges on SV rates from Thailand.⁹² In accordance with section 772(d)(1) and (2) of the Act, we also deducted from the U.S. price, where appropriate, direct and indirect selling expenses, credit, movement expenses, inventory carrying costs, all of which relate to commercial activity in the United States, and further manufacturing expenses. Where applicable, we reduced movement expenses by freight revenue, capped by the amount of movement expenses. We also adjusted U.S. price, where appropriate, by interest revenue. Finally, we deducted CEP profit, in accordance with sections 772(d)(3) and 772(f) of the Act.

Export Price

In accordance with section 772(a) of the Act, EP is “the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States,” as adjusted under section 772(c) of the Act. The Department finds that Yingli made a U.S. sale prior to importation directly to an unaffiliated purchaser in the United States for which a CEP methodology was not otherwise indicated. Thus, we calculated an EP for this U.S. sale reported by Yingli. We calculated EP based on the packed price at which merchandise under consideration was sold to the unaffiliated purchasers in the United States.

Value Added Tax

The Department’s recent practice, in NME cases, is to subtract from CEP or EP the amount of any un-refunded (irrecoverable) Value Added Tax (“VAT”), in accordance with section 772(c)(2)(B) of the Act.⁹³ Where the irrecoverable VAT is a fixed percentage of the U.S. price, the Department makes a tax-neutral dumping comparison by reducing the U.S. price by this percentage.⁹⁴ Thus, the Department’s methodology essentially amounts to performing two basic steps: (1) determining the amount (or rate) of the irrecoverable VAT tax on subject merchandise, and (2) reducing U.S. price by the amount (or rate) determined in step one.

The Chinese VAT schedule placed on the record of this review demonstrates that, the VAT rate is 17 percent and the rebate rate for subject merchandise is 17 percent.⁹⁵ For the purposes of

⁹² See the “Factor Valuations” section below for a discussion of SVs.

⁹³ See Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings, 77 FR 36481, 36483-84 (June 19, 2012).

⁹⁴ Id.

⁹⁵ See Yingli’s June 27, 2014 at 19-20 and Exhibits C-19 and C-36.

these preliminary results of review, therefore, we have not reduced the U.S. price because there is no difference between the rates.⁹⁶

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME country and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV in an NME context on FOPs because the presence of government controls on various aspects of NME countries renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.⁹⁷ Under section 773(c)(3) of the Act, FOPs include, but are not limited to: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. In accordance with section 773(c) of the Act and 19 CFR 351.408(c)(1), we calculated NV by multiplying the reported per-unit FOPs consumption rates by publicly available SVs.⁹⁸

Factor Valuations

As noted above, when selecting from among the available information for valuing FOPs, the Department's practice is to select, to the extent practicable, SVs which are publicly available, broad market averages, contemporaneous with the POR or closest in time to the POR, product-specific, and tax-exclusive.⁹⁹ In those instances where we could not value FOPs using publicly available information contemporaneous with the POR, we adjusted the SVs using inflation indices. In addition, as discussed in more detail below, where appropriate, the Department adjusted input prices by including freight costs to make them delivered prices. An overview of the surrogate values used to calculate weighted-average dumping margins for Yingli is below. A detailed description of all surrogate values used to calculate the weighted-average dumping margins for Yingli can be found in the Preliminary Surrogate Value Memorandum.

Direct and Packing Materials

The record shows that import statistics from the primary surrogate country, Thailand, which we obtained through GTA are generally contemporaneous with the POR, publicly available, product-specific, tax-exclusive, and represent a broad market average.¹⁰⁰ Thus, except as noted

⁹⁶ Id.

⁹⁷ See, e.g., Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products From the People's Republic of China, 71 FR 19695, 19703 (April 17, 2006), unchanged in Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079 (September 8, 2006).

⁹⁸ See Preliminary Surrogate Value Memorandum.

⁹⁹ See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam, 69 FR 42672, 42682 (July 16, 2004), unchanged in Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam, 69 FR 71005 (December 8, 2004).

¹⁰⁰ See Preliminary Surrogate Value Memorandum.

below, we based SVs for Yingli's direct materials and packing materials on these import values and, where appropriate, valued other items, such as certain movement expenses, using other publicly available Thai data on the record.¹⁰¹

We disregarded certain import values when calculating SVs. In accordance with the legislative history of the Omnibus Trade and Competitiveness Act of 1988, we have continued to apply the Department's long-standing practice of disregarding import prices that we have reason to believe or suspect are subsidized or dumped.¹⁰² In this regard, the Department previously found that it is appropriate to disregard prices of imports from India, Indonesia, South Korea, and Thailand because it determined that these countries maintain broadly available, non-industry specific export subsidies.¹⁰³ Further, guided by the legislative history, it is the Department's practice not to conduct a formal investigation to ensure that such prices are not subsidized.¹⁰⁴ Rather, the Department bases its decision on information that is available to it at the time it makes its determination. Based on the existence of these subsidy programs, that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it is reasonable to infer that all exporters in India, Indonesia, and South Korea may have benefitted from these subsidies. Therefore, we have not used prices of Thai imports from India, South Korea and Indonesia in calculating the import-based SVs. Additionally, in selecting import data for SVs, we disregarded prices from NME countries.¹⁰⁵ Finally, we excluded from our calculation of the average import value imports that were labeled as originating from an "unspecified" country, because we could not be certain that they were not from either an NME country or a country with generally available export subsidies.¹⁰⁶

Consistent with the approach taken in the investigation of this proceeding, and after considering comments from both the mandatory respondents and Petitioner, we are valuing polysilicon using international prices from Bloomberg New Energy Finance and GTM Research. In the

¹⁰¹ See Preliminary Surrogate Value Memorandum.

¹⁰² See Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) at 590.

¹⁰³ See, e.g., Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order, 75 FR 13257 (March 19, 2010), and accompanying Issues and Decision Memorandum at 4-5; Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review, 70 FR 45692 (August 8, 2005), and accompanying Issues and Decision Memorandum at 4; Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at 17, 19-20; Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand, 66 FR 50410 (October 3, 2001), and accompanying Issues and Decision Memorandum at 23.

¹⁰⁴ See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988); see also Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China, 72 FR 30758, 30763 (June 4, 2007), unchanged in Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China, 72 FR 60632 (October 25, 2007).

¹⁰⁵ See, e.g., Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 74 FR 9591, 9600 (March 5, 2009), unchanged in Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 36656 (July 24, 2009) and Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Notice of Antidumping Duty Order, 74 FR 46971 (September 14, 2009).

¹⁰⁶ Id.

underlying investigation, we valued polysilicon using international prices from Photon Consulting and Energy Trend because we found that the import data from the potential surrogate countries are not necessarily specific to the polysilicon used by respondents. Polysilicon used to produce solar cells requires extremely precise purity levels (e.g., purity levels as high as 99.999999 percent).¹⁰⁷ Numerous articles demonstrate that there are dramatic price differences between silicon with different purity levels.¹⁰⁸ We determined in the investigation in this proceeding that the dramatic price differences due to purity levels and the purity range of the HTS category that covers polysilicon indicates that this HTS category could include a substantial amount of products that differ significantly from the polysilicon used by the respondents.¹⁰⁹ Thus, consistent with our determination in the investigation, we continue to find it appropriate, given the factors considered in the investigation, to rely on international prices to value polysilicon.

Respondents submitted actual reports/records of international prices for polysilicon which they obtained from Bloomberg New Energy Finance and GTM Research. Petitioner submitted a spreadsheet listing the international prices for polysilicon that it obtained from PVInsights, Energy Trend, and Bloomberg Business. However, Petitioner did not provide any of the reports or source records from which it obtained these prices. Because the source reports for the spreadsheet prices provided by Petitioner are not on the record, we are unable to confirm whether the spreadsheet provided by Petitioner is complete and accurate. Therefore, we are preliminarily valuing polysilicon using equally weighted international contract and spot prices from Bloomberg New Energy Finance and GTM Research. We did not inflate the prices because they are contemporaneous with the POR.¹¹⁰

Similarly, we are valuing wafers using international prices from Bloomberg New Energy Finance and GTM Research. There are a number of factors, which when considered together, weigh in favor of valuing wafers using international prices. First, international prices are more specific to the wafers used than import prices.¹¹¹ Second, there are extreme variations in import values within Thailand, the primary surrogate country, and between Thailand and other potential surrogate countries for imports under the HTS category covering wafers. Third, wafers for solar cells are primarily made of polysilicon. In this review, and in the investigation in this proceeding, we found that differences in silicon purity levels can result in significant price differences. While we used Thai import data to value wafers in the underlying investigation because the import values were comparable to international wafer prices, in this review we

¹⁰⁷ See Preliminary Surrogate Value Memorandum.

¹⁰⁸ *Id.*

¹⁰⁹ See *Solar Cells Investigation*, 77 FR 63791 and accompanying Issues and Decision Memorandum at Comment 24 (“As explained in the *Preliminary Determination*, and reiterated in Comment 9 addressing the surrogate value for wafers, there is substantial evidence on the record leading the Department to question whether the import prices are representative of the price of polysilicon. The purity level required for polysilicon used in manufacturing solar cells is very precise. The import data from the potential surrogate countries are from an HTS category that covers silicon products with various levels of purity. Moreover, record evidence indicates that there are dramatic price differences between silicon with different purity levels. Also, there are extreme variations in the AUVs for the applicable HTS category both between and within potential surrogate countries indicating that that imports may at times primarily consist of lower purity silicon, possibly not of a solar grade, or extremely high purity electronics grade polysilicon, neither of which is the input being valued.”).

¹¹⁰ See Preliminary Surrogate Value Memorandum.

¹¹¹ *Id.*

believe the extreme variations in import prices indicate the wafer import data on the record likely reflect a basket of wafers and/or other products made from silicon (e.g., integrated circuit wafers) that differ significantly with respect to silicon purity level and function. By contrast, we believe the international prices are specific to wafers used in solar products because they are from publications that cover the solar industry. Given this unique combination of extreme price variations observed during the POR, our decision to value the primary input used to make wafers (polysilicon) with international prices, and the fact that international prices are more specific to the wafers used than import prices, we find, for purposes of this review, that it is appropriate to also value wafers using international prices. We valued wafers using international prices from Bloomberg New Energy Finance and GTM Research rather than the international prices from PVInsights, Energy Trend, and Bloomberg Business because none of the reports or source documents that support these prices are on the record.

Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from an ME supplier in meaningful quantities (i.e., not insignificant quantities) and pays in an ME currency, the Department uses the actual price paid by the respondent to value those inputs, except when prices may have been distorted by findings of dumping and/or subsidization.¹¹² Where the Department finds ME purchases to be of significant quantities (i.e., 85 percent or more), in accordance with our statement of policy as outlined in Antidumping Methodologies: Market Economy Inputs,¹¹³ the Department uses the actual purchase prices to value the inputs. Alternatively, when the volume of an NME firm's purchases of an input from ME suppliers during the period is below 85 percent of its total volume of purchases of the input during the period, but where these purchases are otherwise valid and there is no reason to disregard the prices, the Department will weight-average the ME purchase price with an appropriate SV, according to their respective shares of the total volume of purchases, unless case-specific facts provide adequate grounds to rebut the presumption.¹¹⁴ When a firm has made ME input purchases that may have been dumped or subsidized, are not *bona fide*, or are otherwise not acceptable for use in a dumping calculation, the Department will exclude them from the numerator of the ratio to ensure a fair determination of whether valid ME purchases meet the 85 percent threshold.¹¹⁵

Yingli provided evidence of ME purchases of some inputs during the POR that were paid for in ME currency. Thus, consistent with 19 CFR 351.408(c)(1), we applied Yingli's reported ME purchase prices in valuing certain FOPs, either in whole or in part, based upon purchase volume.¹¹⁶

Water

We are valuing water using Thai data from the Board of Investment of Thailand. We did not inflate or deflate the rates because they are contemporaneous with the POR.¹¹⁷

¹¹² See, e.g., Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27366 (May 19, 1997).

¹¹³ See Use of Market Economy Input Prices in Nonmarket Economy Proceedings, 78 FR 46799 (August 2, 2013) ("Market Economy Inputs").

¹¹⁴ Id.

¹¹⁵ Id.

¹¹⁶ See Yingli Analysis Memorandum.

¹¹⁷ See Exhibit 17 of Petitioner's November 10, 2014 submission.

Energy

We are valuing electricity using Thai data from the Board of Investment of Thailand. We did not inflate or deflate the rates because they are contemporaneous with the POR. We are valuing natural gas using Thai import values under HTS subheading 2711.21. We did not inflate or deflate the value because it is contemporaneous with the POR.

Labor

In Labor Methodologies,¹¹⁸ the Department determined that the best methodology to value labor is to use industry-specific labor rates from the primary surrogate country. We are valuing Yingli's labor based on Thailand's National Statistical Office ("NSO") data from surveys taken in 2013. The International Labour Organization ("ILO") cites these data as sources of its labor data. The data are from 2013 for all manufacturing sectors. Because these rates were in effect during the POR, we have not adjusted the calculated rate for inflation/deflation.

Movement Services

As appropriate, we added freight costs to SVs. Specifically, we added surrogate inland freight costs to import values used as SVs using the shorter of the reported distance from the domestic supplier to the factory that produced the subject merchandise or the distance from the nearest port to the factory that produced the subject merchandise, where appropriate. This adjustment is in accordance with the CAFC's decision in Sigma Corp.¹¹⁹

We are valuing truck freight using data from the World Bank's 2014 Doing Business in Thailand and based our calculation on transporting a 20-foot container weighing 10,000 kilograms by truck. We did not inflate or deflate the truck rate because it is contemporaneous with the POR.¹²⁰

We are valuing brokerage and handling expenses using a price list for charges related to exporting and importing a standardized cargo of goods in and out of Thailand as published in the World Bank's 2014 Doing Business in Thailand. This price list was compiled based on a survey of parties to determine costs experienced in trading a standard shipment of goods by ocean transport in Thailand. We did not inflate or deflate the expense because it is contemporaneous with the POR.¹²¹

¹¹⁸ See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, 76 FR 36092 (June 21, 2011) ("Labor Methodologies").

¹¹⁹ See Sigma Corp. v. United States, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997) ("Sigma Corp.").

¹²⁰ See Petitioner's June 24, 2014 submission at Exhibits 7, 8, and 9, Exhibit 9 of Yingli's June 24, 2014 submission, and Exhibit 14 of Wuxi Suntech's June 24, 2014 submission. The data contained in 2014 Doing Business in Thailand is from 2013.

¹²¹ See Petitioner's June 24, 2014 submission at Exhibits 7, 8, and 9, Exhibit 9 of Yingli's June 24, 2014 submission, and Exhibit 14 of Wuxi Suntech's June 24, 2014 submission.

We are valuing marine insurance using a marine insurance rate offered by RJG Consultants. RJG Consultants is an ME provider of marine insurance. The rate is a percentage of the value of the shipment; thus we did not inflate or deflate the rate.¹²²

We are valuing ocean freight using rates from the website <https://my.maerskline.com>, which lists international ocean freight rates offered by Maersk Line. These rates are publicly available and cover a wide range of shipping rates which are reported on a daily basis. We did not inflate or deflate the rates because they are contemporaneous with the POR.¹²³

Overhead and Financial Expenses

Pursuant to 19 CFR 351.408(c)(4), the Department is directed to value overhead, selling, general and administrative (“SG&A”) expenses, and profit using non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country. The record contains financial statements from six Thai companies (Team Precision Public Co. Ltd., Hana Microelectronics Public Co., Ltd., Hitachi Tochigi Electronics (Thailand) Co., Ltd., SIIX EMS (Thailand) Co., Ltd., and Stars Microelectronics (Thailand) Public Co., Ltd.) and from one Indonesian company (PT Len Industri (Persero) (“PT Len”). All of these financial statements show a profit and cover a period contemporaneous with the POR. All but one of the Thai companies manufacture/assemble circuit boards. One Thai company manufactures control boards for electronic systems. The Indonesian company manufactures solar panels (approximately 11 percent of revenue) and electronic equipment for railway systems, navigation systems, and defense.

Although the six Thai companies manufactured merchandise that the Department considers comparable to solar cells, the Department notes that all six Thai financial statements indicate that the companies received subsidies the Department has determined to be countervailable. The Department’s practice is not to rely on financial statements where there is evidence that the company received countervailable subsidies and there are other, more reliable and representative data on the record for purposes of calculating surrogate financial ratios.¹²⁴ The Department preliminarily finds that the PT Len financial statements are more reliable and representative than the six Thai financial statements. First, there is no evidence that the Indonesian company PT Len received countervailable subsidies. Moreover, we find that the Indonesian company PT Len is a producer of both identical and comparable merchandise. Specifically, PT Len reported in its annual report that it produces electrical equipment, including solar modules which generate electricity, and other computer-based electrical equipment (e.g., computer-based systems that regulate equipment in railway lines).¹²⁵ Solar modules, which represent a small portion of PT Len’s operations, are identical to the merchandise under consideration, while record evidence indicates that the other electronic equipment produced by PT Len would include components,

¹²² See Exhibit 15 of Wuxi Suntech’s June 24, 2014 submission and Exhibit 12 of Yingli’s June 24, 2014 submission.

¹²³ See Petitioner’s June 24, 2014 submission at Exhibits 10 and 11.

¹²⁴ See, e.g., Diamond Sawblades and Parts Thereof from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2009-2010, 78 FR 11143 (February 15, 2013) and accompanying Issues and Decision Memorandum at Comment 14.

¹²⁵ See Petitioner’s November 10, 2014, surrogate value filing at 74-77 and 106-119 of Exhibit 24.

such as circuit boards, which the Department has considered to be comparable merchandise in the investigation in this proceeding.¹²⁶

Although the Department prefers to value all FOPs in a single surrogate country, we believe the fact that all of the Thai financial statements indicate the companies received countervailable subsidies and the fact that a portion of the Indonesian company's production includes identical merchandise outweigh those other preferences. Thus, we are preliminarily valuing factory overhead, SG&A expenses, and profit, using PT Len's financial statements.

Adjustment Under Section 777A(f) of the Act

In applying section 777A(f) of the Act in this review, the Department examined: (1) whether a countervailable subsidy (other than an export subsidy) has been provided with respect to a class or kind of merchandise, (2) whether such countervailable subsidy has been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period, and (3) whether the Department can reasonably estimate the extent to which that countervailable subsidy, in combination with the use of NV determined pursuant to section 773(c) of the Act, has increased the weighted average dumping margin for the class or kind of merchandise.¹²⁷ For a subsidy meeting these criteria, the statute requires the Department to reduce the AD duty by the estimated amount of the increase in the weighted average dumping margin subject to a specified cap.¹²⁸

Since the Department has relatively recently started conducting an analysis under section 777A(f) of the Act, the Department is continuing to refine its practice in applying this section of the law. The Department examined whether Yingli demonstrated: (1) a subsidies-to-cost link, e.g., subsidy impact on cost of manufacture ("COM"); and (2) a cost-to-price link, e.g., respondent's prices changed as a result of changes in the COM.

As a result of our analysis, the Department is preliminarily making adjustments to the dumping margin calculated for Yingli. Additionally, the Department is preliminarily making adjustments to the assessment rates and cash deposit rates for antidumping duties for companies that are not being individually examined but preliminarily are being granted separate-rate status in this review, and the PRC-wide entity pursuant to section 777A(f) of the Act, in the manner described below. In making these adjustments, the Department has not concluded that concurrent application of NME ADs and countervailing duties ("CVDs") necessarily and automatically results in overlapping remedies. Rather, a finding that there is an overlap in remedies, and any resulting adjustment, is based on a case-by-case analysis of the totality of facts on the administrative record for that segment of the proceeding as required by the statute.

With respect to whether a countervailable subsidy, other than an export subsidy, has been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period, the Department examined the final determination issued by the U.S.

¹²⁶ See Solar Cells Investigation, 77 FR at 63791 and accompanying Issues and Decision Memorandum at Comment 2.

¹²⁷ See Sections 777A(f)(1)(A)-(C) of the Act.

¹²⁸ See Sections 777A(f)(1)-(2) of the Act.

International Trade Commission (“ITC”) in this proceeding, which indicates that prices steadily decreased during January 2009 to June 2012, and that price decreases occurred in all of the examined product categories.¹²⁹ Based on this information, the Department preliminarily finds that prices of imports of the class or kind of merchandise during the relevant period decreased.

Yingli provided information that the Provision of Electricity for LTAR, the Provision of Polysilicon for LTAR, and the Provision of Land for LTAR subsidies impacted its COM, and that the other subsidy programs under investigation (e.g., grant programs, tax programs, export credit subsidies, etc.) did not.¹³⁰ We preliminarily determine that Yingli’s questionnaire responses indicate a subsidies-to-cost linkage for the LTAR subsidy programs identified above. Yingli provided information indicating certain costs impact the price at which it sells subject merchandise to its affiliates and customers.¹³¹ Thus, Yingli’s questionnaire responses indicate a cost-to-price linkage for the electricity, polysilicon, and land subsidy programs that impact COM.

In the final determination of the companion CVD investigation, the Department did not determine program-specific rates for Yingli, and thus the CVD all others rate, which is a weighted average of the CVD rates found for the mandatory respondents, applied to Yingli. Accordingly, for purposes of section 777A(f) in this review, the Department is basing the adjustment to account for domestic subsidies on a weighted average of the program-specific CVD rates found in the companion CVD investigation for the mandatory respondents for the Provision of Electricity for LTAR, the Provision of Polysilicon for LTAR, and the Provision of Land for LTAR.¹³²

Because the record indicates that factors other than the cost of electricity, polysilicon, and land impact Yingli’s prices to customers,¹³³ the Department is applying a documented ratio of cost-price changes for the Chinese manufacturing sector as a whole, which is based on data provided by Bloomberg, as the estimate of the extent of subsidy pass-through.¹³⁴

Separate Rate Companies

For the non-individually examined companies, which are eligible for a separate rate, their weighted-average dumping margin is based on the weighted-average dumping margin of the mandatory respondent for which we calculated a weighted-average dumping margin in this

¹²⁹ See Crystalline Silicon Photovoltaic Cells and Modules from China, Investigation Nos. 701-TA-481 and 731-TA-1190 (Final), Publication 4360 (November 2012).

¹³⁰ See Submission from Yingli, “Yingli’s Response to the Department’s Double Remedies Questionnaire,” dated August 4, 2014 (“Yingli Double Remedies Response”).

¹³¹ Id. Yingli designated the specific types of costs as business proprietary information.

¹³² See Yingli’s Analysis Memorandum. The weighted average was calculated using the publicly reported values of the U.S. exports of subject merchandise of the two mandatory respondents, Trina Solar and Wuxi Suntech, in the companion CVD investigation. Based on these publicly reported export sales in the CVD investigation, for purposes of this administrative review we weighted Trina Solar’s rates as 38.8 percent and Wuxi Suntech’s rates as 61.2 percent.

¹³³ See Yingli Double Remedies Response.

¹³⁴ See Yingli’s Analysis Memorandum.

review. In the companion CVD investigation, the Department did not individually examine these non-mandatory respondents that are preliminarily eligible for separate rates in this review, except Trina Solar, and, therefore the all-other CVD rate as determined in the CVD investigation applied to these companies, except to Trina Solar. Trina Solar was individually examined in the CVD investigation and received its own calculated CVD rate.

Accordingly, in this review, as we are applying the weighted-average dumping margin calculated for Yingli to these exporters, including Trina Solar, the adjustment to account for domestic subsidies is based on the domestic subsidy pass-through amount determined for Yingli, which, as described above, is based on an average of the program-specific countervailing duty rates found for the mandatory respondents for the Provision of Electricity for LTAR, the Provision of Polysilicon for LTAR, and the Provision of Land for LTAR in the CVD investigation. This adjustment is not more than the countervailing duty attributable to these countervailable subsidies for any of these exporters.

Finally, in making these adjustments for the separate rate companies, the Department preliminarily determines that the percentage of the CVDs determined to have passed through to U.S. prices is the documented ratio of cost-price changes for the Chinese manufacturing sector as a whole, which is based on data provided by Bloomberg.¹³⁵

PRC-Wide Entity

For the PRC-wide entity, we have assigned, as AFA, a dumping margin from the petition. Further, as AFA, we have adjusted this margin for the lowest domestic subsidy pass-through amount determined for any company. This adjustment is based on the smallest countervailable subsidy amount found in the CVD investigation for any company for the Provision of Electricity for LTAR, the Provision of Polysilicon for LTAR and the Provision of Land for LTAR. This adjustment is not more than the countervailing duty attributable to these countervailable subsidies for the PRC-wide entity.

In making this adjustment, the Department preliminarily determines, based on the facts available, that the percentage of the CVDs determined to have passed through to U.S. prices is the documented ratio of cost-price changes for the Chinese manufacturing sector as a whole, which is based on data provided by Bloomberg.

Currency Conversion

Where appropriate, the Department made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

¹³⁵ See Yingli's Analysis Memorandum.

CONCLUSION

We recommend applying the above methodology for these preliminary results of review.

✓
Agree

Disagree

Paul Piquado
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

31 DECEMBER 2014
Date