A-570-979
Administrative Review
12/1/2013 - 11/30/2014
Public Document
E&C/Office IV: HS, JP, TM

DATE: June 13, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Final Results of the 2013-2014 Antidumping Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, From the People's Republic of China

---

SUMMARY

On December 28, 2015, the Department of Commerce (the "Department") published its *Preliminary Results* in the 2013-2014 administrative review of the antidumping duty order on crystalline silicon photovoltaic cells, whether or not assembled into modules ("solar cells") from the People's Republic of China ("PRC").[1] The period of review ("POR") is December 1, 2013, through November 30, 2014. This administrative review covers two mandatory respondents, (1) Yingli Energy (China) Company Limited ("Yingli") and (2) Changzhou Trina Solar Energy Co., Ltd. and Trina Solar (Changzhou) Science & Technology Co., Ltd. ("Trina"). Based on our analysis of the comments received, we made certain changes to our margin calculations for Yingli and Trina. The final dumping margins for this review are listed in the "Final Results" section below.

---

[1] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2013-2014*, 80 FR 80746 (December 28, 2015) ("*Preliminary Results*"), and accompanying Preliminary Decision Memorandum ("PDM").

BACKGROUND

On December 28, 2015, the Department published its *Preliminary Results* in this review. On January 27, 2016, SolarWorld Americas Inc. ("Petitioner"), Yingli, and Trina requested a hearing.[2] On February 2, 2016, Petitioner, Yingli, and Trina submitted case briefs. On February 10, 2016, Petitioner, Yingli, and Trina submitted rebuttal briefs. On March 4, 2016, Yingli and Trina withdrew their requests for a hearing.[3] On March 9, 2016, Petitioner withdrew its request for a hearing. [4] Thus, there are no outstanding hearing requests. On January 27, 2016, the Department tolled all administrative deadlines as a result of the government closure due to Snowstorm "Jonas."[5] The tolled deadline for the final results of this review is May 2, 2016. Subsequently, the Department extended the deadline for the final results of this review until June 13, 2016.[6]

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, 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 10,000mm^2 in surface area, that are permanently integrated into a consumer good

[2] *See* the January 27, 2016 letters to the Department from Petitioner, Yingli, and Trina requesting a hearing.
[3] *See* Letters to the Department from Yingli "Withdrawal of Yingli's Hearing Request," and Trina "Withdrawal of Hearing Request," both dated March 4, 2016.
[4] *See* Letter to the Department from Petitioner, "Withdrawal of Request for Hearing," dated March 9, 2016.
[5] *See* Memorandum from Ron Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, to the Record, Re: "Tolling of Administrative Deadlines as a Result of the Government Closure during Snowstorm 'Jonas,'" dated January 27, 2016.
[6] *See* April 26, 2016 and May 26, 2016 memoranda from Jeff Pedersen, Senior International Trade Compliance Analyst, Office IV, Antidumping and Countervailing Duty Operations to Christian Marsh Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations concerning extensions of the deadline for these final results of review.

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.

CHANGES TO RESULTS OF THE DIFFERENTIAL PRICING ANALYSIS

As a result of changes made in the Department's margin calculations for both Trina and Yingli, the results of the differential pricing analysis for each respondent has changed from the *Preliminary Results*.

For Trina, based on the results of the differential pricing analysis, the Department finds that 75.1 percent of the value of U.S. sales pass the Cohen's *d* test,[7] and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for these final results, the Department is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Trina.

For Yingli, based on the results of the differential pricing analysis, the Department finds that 92.8 percent of the value of U.S. sales pass the Cohen's *d* test,[8] and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for these final results, the Department is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Yingli.

[7] *See* the Final Results Analysis Memorandum for Trina dated concurrent with this memorandum.
[8] *See* the Final Results Analysis Memorandum for Yingli dated concurrent with this memorandum.

DISCUSSION OF THE ISSUES

Comment 1: Surrogate Country

Trina

- The Department found both Thailand and Bulgaria to be economically comparable to China and significant producers of comparable merchandise. Selection of the primary surrogate country should be determined by the quality of the data available in the two potential surrogate countries.
- Because Thai data are unreliable for a key input (*i.e.*, nitrogen), the Department should select Bulgaria as the surrogate country.[9]

Yingli

- Based on the criteria set forth by the Department's policy bulletin,[10] the Department should select Bulgaria as the primary surrogate country.
- China is more economically comparable to Bulgaria than it is to Thailand because China's per-capita gross national income ("GNI") is closer to Bulgaria's than Thailand's.[11] Although the Department does not rank potential surrogate countries in its selection process, this fact should inform the Department's analysis.
- Bulgaria, and not Thailand, was a significant producer of merchandise identical or comparable to the subject merchandise during the POR. Bulgaria leads the world in new solar capacity per capita.[12] The record identifies only three Thai producers of solar modules – one of which (Bangkok Solar) produces non-subject solar products.[13]
- Further, exports of solar cells from Thailand during the POR amounted to less than $5 million. Additionally, nothing on the record indicates that Thailand's solar capacity was provided by Thailand's own indigenous industry. Rather, according to the article provided by Petitioner, Chinese, Japanese, and European companies are supplying a large portion of the solar capacity in Thailand.[14]
- The Department can value all of the direct materials and packing materials using values from Bulgaria, but not from Thailand. Although there are no Bulgarian financial statements on the record, Bulgarian import data are available through GTA to value all factors of production, and the Department could identify and utilize publicly available data to value labor and utilities. The Department does not have complete Thai data for valuing the direct materials; indeed, in its preliminary results, the Department used Bulgarian data to value chlorine because the record lacks contemporaneous Thai import data for chlorine. The Department has previously selected Bulgaria as a primary surrogate country in a proceeding with a fact pattern like the one here.[15]

---

[9] *See* Comment 21 for summary of Trina's arguments related to the valuation of the nitrogen input.
[10] *See* Yingli's Case Br. at 9-10 (*citing* Import Administration Policy Bulletin Number 04.1, "Non-Market Economy Surrogate Country Selection Process" (March 1, 2004) ("Policy Bulletin No. 04.1")).
[11] *Id., at* 11 (*citing* Request for Surrogate Country and Surrogate Value Comments and Information" (May 18, 2015))."
[12] *Id., at* 12, dated February 2, 2016 (*citing* Yingli's July 1, 2015, Surrogate Country Comments at Exhibit 3).
[13] *Id., at* 13 (*citing* SolarWorld's July 1, 2015 Surrogate Country Comments at Exhibit 1).
[14] *See* SolarWorld's July 1, 2015 Surrogate Country Comments at Exhibit 3.
[15] Yingli's Case Brief at 15 (*citing Frontseating Service Valves from the People's Republic of China; Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 71385, 71386 (December 2, 2014) ("*Frontseating*

Petitioner

- When choosing a surrogate country among the countries listed on the surrogate country list, being the "closest" to the NME country, in terms of relative GNI, is not a deciding factor in the Department's determination of which country to select.[16] The Department does not to rank-order countries' comparability according to how close their per-capita GNI is to that of the NME country in question, but rather, treats the possible surrogate countries as equally comparable in evaluating their suitability for use as a surrogate country.[17] Because both Bulgaria and Thailand are surrogate countries on the surrogate country list, in economic terms, they are equally comparable to China.
- The Department's selection of Thailand as the primary surrogate country is correct because it is a much more significant producer of both identical and comparable merchandise than Bulgaria.
- Yingli has only pointed to examples of Bulgarian companies selling merchandise identical to subject merchandise and the fact that Bulgarian imports of solar products increased. It has cited no examples of Bulgarian production of merchandise identical to subject merchandise.
- Although Yingli contends that Thailand is not a significant producer of merchandise that is identical or comparable to subject merchandise because its exports of solar cells during the POR were purportedly less than $5 million, it argues that Bulgaria was a significant producer of identical or comparable merchandise based on $6 million of exports of "semiconductor devices, including photovoltaic cells" during the POR. The value of Thailand's exports classified under the same HTS number (8541.40) was 42 times greater than those of Bulgaria.[18]
- The record contains information demonstrating that there are at least four different producers of solar modules (identical merchandise) in Thailand: Bangkok Solar Power Company Ltd. ("Bangkok Solar"), Spot Solar/Solar Power Technology ("Spot Solar"), SolarTron Public Country Limited ("SolarTron"),[19] and Ekarat Engineering Public Company Limited ("Ekarat").[20] Thus, Thailand has more producers of solar modules than does Bulgaria. Further, there are only financial statements from one producer of solar modules on the record, Ekarat Solar of Thailand.
- Yingli placed little information on the record as to whether Bulgaria is a significant producer of merchandise comparable to subject merchandise (*i.e.*, promotional materials from two companies that sell subject merchandise). In contrast, the record contains evidence – financial statements from Hana Microelectronics and KCE Electronics Public Company Limited – demonstrating that Thailand is also a producer of comparable merchandise.

Valves", and accompanying Issues and Decision Memorandum at Comment 1 ("Frontseating Valves IDM").

[16] *See* SolarWorld's Case Brief at 6-7, dated February 2, 2016 (*citing Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2011-2012*, 79 FR 19053 (April 7, 2014) and accompanying Issues and Decision Memorandum at Comment 1).

[17] *Id., at* 7 (*citing Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Final Results of the First Antidumping Duty Administrative Review*, 76 FR 9753 (February 22, 2011) ("*PET Film from the PRC*") and accompanying Issues and Decision Memorandum at Comment 2).

[18] *Id., at* 9 (*citing* Petitioners' July 1, 2015 Surrogate Country Comments at 4 and Exhibit 4).

[19] *Id.* (*citing* Petitioners' July 1, 2015 Surrogate Country Comments at Exhibit 1).

[20] *Id.* (*citing* Petitioners' October 19, 2015 Surrogate Value Submission).

- The administrative record in this review contains full surrogate value information for Thailand. In contrast, respondents have provided information from Bulgaria that is largely incomplete and unhelpful. First, neither mandatory respondent has submitted any financial statements from companies that produce merchandise that is identical or even comparable to subject merchandise in Bulgaria. Further, the surrogate labor data on the record for Bulgaria is nearly 10 years old.[21]
- The Bulgarian surrogate value data are much less specific than the Thai data. For example, Trina uses isopropyl alcohol in producing subject merchandise. However, the Bulgarian customs tariff aggregates propyl alcohol and isopropyl alcohol under European Union ("EU") HTS 2905.1200. By contrast, the Thai HTS contains a category specific to isopropyl alcohol.[22]
- Both respondents routinely suggest using aggregated six-digit tariff headings to obscure the fact that relevant data for the proper input simply do not exist in Bulgarian import statistics. For example, both respondents use phosphorus oxychloride ("POCL") in the doping process for crystalline silicon wafers and cells.[23] Both respondents have suggested that the Department value this input using Bulgarian imports of all chlorides and chloride oxides classifiable under EU HTS subheading 2812.10[24] which includes phosphorus trichloride oxide, phosphorus trichloride, phosphorous pentachloride, other phosphorus chlorides including phosphorus oxychloride (classifiable under EU HTS 2812.10.18), disulphur dichloride, Sulphur dichloride, phosgene, and thionyl dichloride.[25] Respondents have suggested this course of action because there were no imports of phosphorus oxychloride into Bulgaria during the POR as demonstrated by Bulgarian import data identifying the value of goods classifiable under EU HTS 2812.10.18 as zero.[26] By contrast, Thai import statistics report imports of the very product that the respondents used – phosphorus oxychloride – under Thai HTS 2812.10.00201.[27]

Department's Position:

The evidence on the record of this review supports our finding that while both Bulgaria and Thailand, along with other potential surrogate countries, produce comparable or subject merchandise, the surrogate value data from Thailand provides the best available data for valuing respondents' inputs. Thus, we continue to choose Thailand as the primary 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 FOP, 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 FOP, the Department shall utilize, to the extent possible, the prices or costs of FOP in one or more ME countries that are: (1) at a level of

[21] *Id., at* 11 (*citing* Yingli's July 15 Surrogate Value Submission at Exhibit 7).
[22] *Id., at* 12 (*citing* Petitioners' July 15 Surrogate Value Submission at Exhibit 3).
[23] *Id.* (*citing* Trina's September 25, 2015 Surrogate Value Submission at Exhibit 1 and Yingli's September 28, 2015 Surrogate Value Submission at Exhibit 1).
[24] *Id.* (*citing* Trina's September 25, 2015 Surrogate Value Submission at Exhibit 1 and Yingli's September 28, 2015 Surrogate Value Submission at Exhibit 1).
[25] *Id.* (*citing* Yingli's July 15 Surrogate Value Submission at Exhibit 16 (Chapter 28)).
[26] *Id.* (*citing* Petitioner's October 19 Surrogate Value Submission at Exhibits 13 and 14).
[27] *Id*. (*citing* Petitioner's October 19 Surrogate Value Submission at Exhibit 1).

economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.[28] Further, pursuant to 19 CFR 351.408(c)(2), the Department will normally value FOP in a single country based on data availability and quality.[29]

In this review, the Department identified six countries as being at the level of economic development of the PRC for the POR – Romania, Bulgaria, South Africa, Ecuador, Thailand, and Ukraine.[30] In the *Preliminary Results*, the Department found that: (1) all six countries were economically comparable to the PRC; (2) Romania, Bulgaria, South Africa, Thailand, and Ukraine were significant producers of comparable merchandise; and (3) Thailand was the only potential surrogate country for which there were complete, usable data on the record (the record did not include financial statements from Bulgaria), and that the Thai data were of acceptable quality.[31]

Bulgaria and Thailand Are Equally Economically Comparable to the PRC

With regard to economic comparability, Yingli argues that the Department should choose Bulgaria as the surrogate country because its GNI is closer to the GNI of China than Thailand's GNI and thus it is more economically comparable to China than Thailand. However, Yingli's approach is inconsistent with Department practice. As described in the *Surrogate Country Policy Bulletin*,[32] and as we have previously explained, the Department's practice is "not to rank-order countries' comparability according to how close their per-capita GNI is to that of the NME country in question."[33] Rather, the Department "creates a list of possible surrogate countries which are to be treated as equally comparable in evaluating their suitability for use as a surrogate country, consistent with the statute's requirement that the Department use a surrogate country that is at a level of economic development comparable to that of the NME country."[34] Further, the *Surrogate Country Policy Bulletin* explains that the Department's "current practice reflects in large part the fact that the statute does not require the Department to use a surrogate country that is at a level of economic development most comparable to the NME country."[35]

Consistent with our practice, because both Bulgaria and Thailand are two of the six potential surrogate countries identified as being at the level of economic development of the PRC for the POR,[36] the Department considers these countries to be equally comparable in terms of their

[28] *See Surrogate Country Policy Bulletin*.
[29] *Id.*
[30] *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 May 18, 2015 ("Surrogate Country List") at the Attachment.
[31] *See* PDM at 15-17.
[32] *See* Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) ("*Surrogate Country Policy Bulletin*") at "Economic Comparability" and note 5.
[33] *See PET Film from the PRC*, at Comment 2 (*citing Surrogate Country Selection Policy Bulletin*).
[34] *Id.*
[35] *See Surrogate Country Policy Bulletin* at note 5.
[36] *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 May 18, 2015 ("Surrogate Country List") at the Attachment.

suitability for use as a surrogate country. Accordingly, in terms of economic comparability, we find that there is no basis to select Bulgaria instead of Thailand as a surrogate country.

Significant Producers of Identical or Comparable Merchandise

Yingli contends that Bulgaria, not Thailand, was a significant producer of merchandise identical or comparable to the subject merchandise. However, the record does not support Yingli's claim. First, the GTA export data on the record demonstrate that Thailand is a significant producer of merchandise that is comparable to subject merchandise.[37] Second, the record also contains evidence that Thailand is a producer of merchandise that is identical to subject merchandise in that it has at least two producers of solar cells and panels - Spot Solar and Solartron[38] (Yingli alleges that Bangkok Solar sells only solar panels). Regarding the two companies, the evidence demonstrates that they produce merchandise that is identical to subject merchandise. For instance, with regard to Spot Solar, a list of products identified by Spot Solar as "Our products" identifies solar cells as Spot Solar's products.[39] Further, the record contains a photograph of SolarTron's solar cell factory in Thailand.[40]

Although the GTA export data on the record also demonstrates that Bulgaria is a significant producer of merchandise that is comparable to subject merchandise,[41] as Yingli itself acknowledges, Policy Bulletin No. 04.1 notes that the Department has a preference for selecting as a surrogate, countries that produce merchandise that is identical to subject merchandise.[42] While Yingli argues that Bulgaria produced subject merchandise, the evidence provided by Yingli does not demonstrate that Bulgaria is a significant producer of solar cells or panels. Yingli relies upon a solar industry survey detailing Bulgaria's installation of solar panels as evidence that Bulgaria produces solar cells and panels. However, the industry survey mentions nothing concerning domestic production of solar cells and panels.[43] Similarly, the company brochures that Yingli cites as evidence of the existence of Bulgarian producers of merchandise that is identical to subject merchandise only discuss solar module assembly, not solar cell production.[44] Thus, the record does not contain evidence that solar cells are produced in Bulgaria.

Although Yingli has noted that Thailand imports solar cells and panels, and alleges that Thailand exports little merchandise that is identical to subject merchandise, such imports and/or lack of exports do not change the fact that the record demonstrates that Thailand has four producers of solar cells and panels. Meanwhile, as stated above, there is no evidence that Bulgaria produces

[37] *See* Memorandum from Jeff Pedersen to the File, "World Export Data and Certain Customs Classifications of Inputs used in making Crystalline Silicon Photovoltaic Cells, Whether or not Assembled into Modules, 2013-2014," dated December 21, 2015.
[38] *See* Petitioner's Surrogate Country Comments at Exhibit I.
[39] *See* SolarWorld's July 1, 2015 Surrogate Country Comments at Exhibit 1.
[40] *Id.*
[41] *See* Memorandum from Jeff Pedersen to the File, "World Export Data and Certain Customs Classifications of Inputs used in making Crystalline Silicon Photovoltaic Cells, Whether or not Assembled into Modules, 2013-2014," dated December 21, 2015.
[42] *Id.*
[43] *See* Yingli's July 1, 2015, Surrogate Country Comments at Exhibit 3.
[44] *Id., at* Exhibit 2.

solar cells. Thus, on the basis of this record, the existence of Thailand's four producers of solar cells and panels provides evidence of production of both solar cells and solar panels; evidence that is lacking with respect to Bulgaria.

With regard to production information, the record supports a finding that both Thailand and Bulgaria produce subject or at the least comparable merchandise. Production information aside, as we noted in the preliminary results, where there is no production information, the Department has relied upon export data from potential surrogate countries to determine whether a country is a significant producer of identical or comparable merchandise. In the preliminary results, the Department noted that it had obtained solar cells export data from the Global Trade Atlas ("GTA") for Romania, Bulgaria, South Africa, Ecuador, Thailand, and Ukraine.[45] Based on these data, the Department found that record evidence demonstrates that Romania, Bulgaria, South Africa, Thailand, and Ukraine are all significant producers of comparable merchandise.[46] Thus, regardless of whether we consider production or export data, the record supports a finding that both Thailand and Bulgaria are significant producers of comparable merchandise.

Thailand Provides the Best Data on which to Base Surrogate Values

We agree with Petitioner that Thailand provides more complete, reliable surrogate value data than Bulgaria. The record lacks surrogate financial data for Bulgaria while it contains numerous financial statements for producers of merchandise that is comparable and identical to subject merchandise in Thailand.[47] In addition to lacking Bulgarian financial statements, the record also lacks recent Bulgaria surrogate value data for labor and other inputs whereas Thai surrogate value data cover all of the surrogate values that the Department requires with the exception of chlorine, a minor input only consumed by Trina. Specifically, the Thai labor data on this record are contemporaneous with the POR,[48] while the Bulgarian labor data on the record are approximately 10 years old.[49] The Department has stated in its *Surrogate Country Selection Policy Bulletin* its preference for contemporaneous surrogate value data.[50] As for raw material inputs, as noted above, chlorine is the only input for which the record does not include Thai surrogate data. However, chlorine is a minor input, accounting for an insignificant portion of direct material costs in the *Preliminary Results*,[51] and Trina is the only respondent that reports consuming this input in its production of subject merchandise. While Trina has argued that the Thai surrogate data for nitrogen are inaccurate, we disagree with Trina, as explained in Comment 21, and find that the Thai surrogate value for nitrogen is reliable. Meanwhile, as Petitioner noted above, the record lacks Bulgarian import data for phosphorus oxychloride while it contains Thai data for this input.[52] Finally, as Petitioner noted, the Bulgarian import data are less specific than

[45] *See* Memorandum from Jeff Pedersen to the File, "World Export Data and Certain Customs Classifications of Inputs used in making Crystalline Silicon Photovoltaic Cells, Whether or not Assembled into Modules, 2013-2014," dated concurrently with this memorandum.
[46] Only Ecuador had no exports.
[47] *See also* PDM at 17.
[48] *See* Petitioner's July 15, 2015 Surrogate Value Submission at Exhibit 4.
[49] *See* Yingli's July 15 Surrogate Value Submission at Exhibit 7.
[50] *See* the *Surrogate Country Selection Policy Bulletin* stating that when evaluating data availability in conjunction with choosing a surrogate country contemporaneity the Department has a preference for contemporaneous data.
[51] *See* the Trina Preliminary Analysis Memorandum.
[52] Both respondents use POCL. *See* Trina's September 25, 2015 Surrogate Value Submission at Exhibit 1 and

Thai import data with respect to isopropyl alcohol. Trina uses isopropyl alcohol in producing subject merchandise. However, the Bulgarian customs tariff schedule aggregates propyl alcohol and isopropyl alcohol under EU Customs tariff number 2905.1200. By contrast, the Thai customs tariff schedule contains a category specific to isopropyl alcohol.[53]

While Yingli has cited *Frontseating Valves*, where the Department chose Bulgaria as the primary surrogate country despite the record lacking any surrogate financial data from that country, the facts in that case are distinguishable from those here. The Department stated in *Frontseating Valves* that it chose Bulgaria as the surrogate country because "Bulgaria alone among all of the other countries on the Department's surrogate-country list had HTS categories specific to brass bar and rod that did not include profiles. Profiles are at a higher level of manufacturing than brass bar and rod, and therefore, are not comparable to the inputs used to produce the subject merchandise."[54] In contrast to *Frontseating Valves*, here, the record does not contain important surrogate values from Bulgaria that are not on the record for any other potential surrogate country. Therefore, we have continued to use Thailand as the primary surrogate country in the final results of this review.

Comment 2: Conversion of the Market Economy Price for Wafers

Yingli

- Yingli reported that its average market economy purchase price of wafers was measured in U.S. dollars per kilogram.[55] However, in its preliminary margin calculations, the Department applied this market economy price to the input MSWAFER, which was reported in wafers consumed per watt produced, without first converting this price to U.S. dollars per wafer.[56]
- In the final results, the Department should convert this price to U.S. dollars per wafer using the conversion factor provided in Yingli's May 14, 2015, Section D Response at Exhibit XII-2.

Department's Position:

We agree with Yingli that in calculating the company's preliminary dumping margin, we did not convert Yingli's market economy purchase price of wafers from U.S. dollars per kilogram to a U.S. dollar per wafer price before multiplying it by Yingli's consumption of wafers, per watt.[57] We have done so in these final results.

Yingli's September 28,2015 Surrogate Value Submission at Exhibit 1. However, there were no imports of phosphorus oxychloride into Bulgaria during the period of review. *See* Petitioner's October 19 Surrogate Value Submission at Exhibit 13 and Exhibit 14. By contrast, Thai import statistics report imports of the very product that the respondents use – all classifiable under Thai HTS 2812.10.00201.

[53] *See* Petitioners' July 15 Surrogate Value Submission at Exhibit 3.

[54] *See* Frontseating Valves IDM at Comment 1.

[55] *See* Yingli's Case Brief at 30 (*citing* Yingli's July 1, 2015 supplemental questionnaire response at Exhibit D-5).

[56] *See* the December 18, 2015 Yingli Preliminary Analysis Memo at Attachment I.

[57] *Id.*

Comment 3: Valuation of "Unclassified Stores" of Polysilicon

Yingli

- The Department improperly valued Yingli's unclassified stores based on international market prices of polysilicon rather than Thai imports of HTS 2804.61 ("Hydrogen, rare gases and other non-metals; Containing by weight not less than 99.99% of silicon").
- The unclassified stores consumed by Yingli in the production of solar cells do not have the same purity levels as the other polysilicon inputs consumed by Yingli, and therefore the Department erred by assigning the surrogate value for polysilicon to Yingli's consumption of unclassified stores.
- As Yingli's unclassified stores "have a silicon purity level greater than 99.9999 percent but less than the purity level of virgin polysilicon materials,"[58] which can be as high as 99.999999 percent pure silicon.

Petitioner

- Yingli's proposal is distortive. Yingli wants both the benefit of a high surrogate value for contaminated polysilicon scrap and waste (cuttings from crystals, doped wafers, and edge trimmings), and a low surrogate value for purer reprocessed silicon that is being reintroduced into a polysilicon crystal melt. This proposal makes no sense from a manufacturing perspective, and is also contrary to Department precedent. The Department has found it prima facie "unreasonable" to value a scrap by-product using a surrogate value that is higher than the material input which generates that scrap byproduct.
- As Yingli acknowledges, an unclassified store is still a solar grade polysilicon material with an extremely high level of purity. This polysilicon can be reintroduced into the production process provided that it has been reprocessed in a multi-step process to remove impurities. This cleaned silicon has high value – certainly higher than a basket category of polysilicon classifiable under Thai HTS 2804.61 or 2804.69 ("Hydrogen, rare gases and other non-metals; Containing by weight less than 99.99% of silicon").
- Material that has been recaptured for eventual reprocessing into unclassified stores is highly contaminated. Before reprocessing, the material is useless for inclusion in polysilicon melt, and has a minimal value in comparison to reprocessed unclassified stores. The Department should decline to value contaminated scrap using a surrogate value for virgin polysilicon, while at the same time valuing cleaned and reprocessed polysilicon at a much lower value.
- If the Department should opt to reclassify this input due to the reduced purity level, it would necessarily be required to value all byproduct scrap material credits utilizing a surrogate value other than a value for virgin polysilicon.

Department's Position:

We disagree with Yingli. The term unclassified stores is used by Yingli to describe ingot trimmings and broken wafers generated by Yingli's previous production of polysilicon ingots.[59]

[58] *See* Yingli's Case Brief at 30 (*citing* Yingli's July 22, 2015 supplemental questionnaire response at 17-18).
[59] *See* Yingli's July 22, 2015 supplemental questionnaire response at its response to question 7.

These trimmings and broken wafers are used as a direct input used to make polysilicon ingots.[60] Yingli argues that the Department should value its unclassified stores using HTS 2804.61. This HTS consists of silicon with a purity level as low as 99.99 percent, while the international market prices of solar-grade polysilicon have a purity of at least 99.9999 percent.[61] The Department has repeatedly determined during the proceeding that imports such as those under HTS 2804.61, which consist of imports with a silicon purity level as low as 99.99 percent do not provide an accurate surrogate value for the polysilicon used to produce solar cells.[62] We have consistently stated in the underlying investigation, the previous review, and in the preliminary results of this review, that the silicon purity requirements of solar cell production result in dramatic price differences between the low-grade silicon products imported under HTS 2804.61 and the high-grade solar-grade polysilicon necessary to produce solar cells.[63] Thus, as we did in the previous review, the underlying investigation, and the preliminary results of this review,[64] the Department has relied on international market prices of solar-grade polysilicon to value all polysilicon inputs, including Yingli's unclassified stores.[65]

Yingli raised the same argument in the immediately preceding review. In that review the Department determined that it was more appropriate to value Yingli's unclassified stores using international market prices of solar-grade polysilicon, rather than Thai imports under HTS 2804.61 because at verification Yingli demonstrated that "'unclassified stores' were used to produce silicon ingots … the only direct material input used to make silicon ingots was silicon," and "the only direct material input used to produce solar wafers were the silicon ingots . . . {which} suggest{ed} that the forms of silicon used in production would be of a higher quality than the imports in HTS 2804.61, which covers lower purity silicon."[66]

Similarly, in this review, Yingli itself states that it could not use silicon with a purity of only 99.99 percent to make its unclassified stores. Instead, Yingli has consistently stated in its responses and in its case brief that it "knows that the purity level of unclassified stores must be over 99.9999 percent."[67] This silicon purity level matches that of the solar-grade polysilicon, the international prices of which we used to value Yingli's unclassified stores in the immediately

---

[60] *Id.*
[61] *See* the December 18, 2015 Preliminary Surrogate Value Memorandum at 2-3.
[62] *Id*.
[63] *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 (October 17, 2012) ("*Solar I Investigation*") and accompanying Issues and Decision Memorandum at Comment 24; *Solar I IDM* at Comment 14; PDM at 23-24.
[64] *Id.*
[65] In its preliminary results the Department relied on two sets of international market prices of solar-grade polysilicon. One source was based on GTM Research of the international solar market submitted in Yingli's July 15, 2015 submission at Exhibit 2, and Trina's July 15, 2015 submission at Exhibit B-2. The other was a Bloomberg New Energy Finance report of the international solar market that was submitted by Petitioner in its July 15, 2015 submission at Exhibit 12. *See* the calculation of the surrogate value used to value all polysilicon inputs in the December 18, 2015 Preliminary Surrogate Value memorandum at Exhibit 5.
[66] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments*; 2012-2013, 80 FR 40998 (July 14, 2015) ("*Solar ARI*") and accompanying Issues and Decision Memorandum at Comment 14 ("Solar I IDM").
[67] *See* Yingli's July 22, 2015 supplemental questionnaire response at its response to question 7. *See also* Yingli's October 1, 2015 supplemental questionnaire response at 10.

preceding review. In the investigation of solar cells from the PRC, the U.S. International Trade Commission ("ITC") noted in its description of the production of solar cells that producers begin by inputting polysilicon that has a silicon purity of at least 99.9999 percent.[68] Specifically, the ITC stated that solar-grade polysilicon has a silicon purity level of between 99.9999 and 99.999999 percent.[69] Although Yingli cites the Department's statement in the preliminary results that polysilicon may have a silicon purity level as high as 99.999999 percent, the Department was identifying the upper limit of the purity range of solar-grade polysilicon ("solar grade polysilicon requires purity levels as high as 99.999999%") not a requirement that all solar-grade polysilicon have a silicon purity level of 99.999999 percent.[70] Thus, the international prices which we used to value Yingli's unclassified stores were for polysilicon with a purity level consistent with the silicon purity level of Yingli's unclassified stores.

As stated above, the unclassified stores are a direct input used to make polysilicon ingots.[71] They are made from ingot trimmings and broken wafers generated by Yingli's previous production of polysilicon ingots.[72] Yingli has argued that on one hand the Department should value these ingot trimmings and broken wafers that it processes into unclassified stores (the offsets to its production costs) using the international prices of high grade, solar-grade polysilicon (which the Department has done), while on the other hand Yingli argues that the Department should value these ingot trimmings and broken wafers reintroduced into production (*i.e.*, the unclassified stores) using imports under Thai HTS 2804.61 which include lower grade silicon products. This is illogical. Typically the Department has found that when the price of scrap exceeded the price of the relevant material input, the results were "unreasonable."[73] Here, there is no special situation or data to explain why the Department should use a surrogate value that would result in a higher value for polysilicon scrap than for unclassified stores, the material input, and so we find that Yingli's argument is unpersuasive.

Furthermore, Yingli's argument that the Department should not assign the same surrogate value to unclassified stores that it assigned to virgin polysilicon, which has a greater level of purity, is not supported by record evidence. Specifically, Yingli argues that because its "unclassified stores have a purity level greater than 99.9999 percent but less than the purity level of virgin polysilicon . . . the Department erred by assigning the surrogate value for polysilicon to Yingli's consumption of unclassified stores materials."[74] However, we provided Yingli several opportunities to provide further details concerning its unclassified stores, but it failed to identify the actual silicon purity level other than to state that it was "at least" 99.9999 percent. As discussed above, the international prices which we used to value Yingli's unclassified stores were for polysilicon with a purity level consistent with the silicon purity level of Yingli's

[68] *See* the ITC's final injury determination, *Crystalline Silicon Photovoltaic Cells and Modules from China, Investigation Nos. 701-TA-481 and 731-TA-1190 (Final),* Publication 4360 (November 2012) ("*ITC Solar Cells Final*") at I-16.
[69] *Id.*
[70] *See* the December 18, 2015 Preliminary Surrogate Value Memorandum at 2-3.
[71] *See* Yingli's July 22, 2015 supplemental questionnaire response at its response to question 7.
[72] *Id.*
[73] *See Frontseating Service Valves From the People's Republic of China; 2010-2011 Antidumping Duty Administrative Review; Final Results*, 77 FR 67334 (November 9, 2012) and accompanying Issues and Decision Memorandum at Comment 3.
[74] *See* Yingli's case brief at 3-4.

unclassified stores. Thus, the record demonstrates that the most specific information with which to value *both* of these inputs, which have the high level of purity required to produce solar cells, is the international market prices of solar-grade polysilicon.[75]

Yingli has provided no evidence to show why the Department should value its unclassified stores based on silicon that is only required to have a silicon purity level of 99.99 percent, which, as acknowledged by Yingli itself, is significantly lower than the silicon purity level requirements of silicon used to produce solar cells of 99.9999 percent. Meanwhile, the record contains ample evidence that the international prices of solar-grade polysilicon which the Department used to value all polysilicon inputs is for polysilicon with a purity level consistent with that of Yingli's unclassified stores. Consistent with the Department's decision in the previous review, we have valued Yingli's unclassified stores using international market prices for solar-grade polysilicon.

Comment 4: Valuation of Brokerage and Handling in Doing Business in Thailand

Yingli

- If the Department continues to use *Doing Business in Thailand ("DBIT")* to value brokerage and handling expenses, it must exclude letter of credit expenses, which were included in the overall *DBIT* brokerage and handling expense, since letter of credit expense were not incurred by Yingli in exporting the merchandise under review.
- Brokerage and handling costs in *DBIT* include (i) document preparation, (ii) customs clearance and technical control; and (iii) ports and terminal handling.
- Although the Department declined to make an adjustment for letter of credit expenses in the prior review, the record in this review contains correspondence with the World Bank stating that the cost of obtaining a letter of credit is included in the overall cost of document preparation.[76]
- There is no evidence that Yingli obtained letters of credit in the process of exporting merchandise to the United States, and Yingli has stated repeatedly that it does not obtain letters of credit.

Department's Position:

We agree with Yingli and have, in calculating Yingli's dumping margin for the final results, deducted from the surrogate value for brokerage and handling the included fee for a letter of credit. Yingli placed on the record information from the publisher of *DBIT*, stating that the brokerage and handling expense in that publication includes a $60.00 expense for letters of credit.[77] Yingli stated several times on the record of this review that it does not obtain letters of credit[78] and we can find no record evidence to contradict Yingli's statements.

[75] We further note that there is nothing on the record demonstrating that the silicon purity of Yingli's virgin polysilicon is higher than its unclassified stores.
[76] *See* Yingli's Case brief at 32 (*citing* Yingli's July 29, 2015, Surrogate Values Rebuttal Comments at Exhibit SVR-8).
[77] *See* Yingli's July 29, 2015, Surrogate Values Rebuttal Comments at Exhibit SVR-8
[78] *Id., at* 9. *See also* Yingli's October 26, 2015, Pre-Preliminary Comments at 22.

Also, in calculating Trina's dumping margin for the final results, we deducted the letter of credit cost from the surrogate value for brokerage and handling because we find no evidence that Trina used letters of credit or paid any expenses related to the issuance of letters of credit.[79]

Comment 5: Whether the Department should adjust the brokerage and handling Surrogate Value (SV) used for Trina in the Preliminary Results

Trina

- If the Department continues to use the brokerage and handling SV that it used in the *Preliminary Results*, it should exclude from the SV a portion of the services that Trina did not require or use a domestic broker to provide. The $175 document preparation expense in *DBIT* includes cost for the preparation of five documents: the bill of lading, certificate of origin, commercial invoices, customs export declarations, and terminal handling receipts. The Department should pro-rate the $175 document preparation expense to reflect only the cost ($70) of two of the five documents: the customs export declaration and terminal handling receipts, (*i.e.*, $175 x (2 ÷ 5)).

Petitioner

- DBIT does not state that the five documents are the responsibility of a third-party broker or vendor, or that the five documents are an exhaustive list of documents such third-parties would prepare. The list includes optional documents (*e.g.*, certificates of origin), includes materials that would necessarily be generated by a producer or a seller (*e.g.*, a commercial invoice), and excludes documents that would be included in the standard "documents preparation" fee (*i.e.*, a letter of credit). Thus, the list has no relation to the actual documents that are generated or contemplated in relation to the "documents preparation" fee.

Department's Position:

We disagree with Trina. Trina did not support its proposed adjustments with any record evidence and there is insufficient information to determine whether, or how, to make any such adjustments. Specifically, *DBIT* did not identify the costs related to the bill of lading, certificate of origin, and commercial invoice under the document preparation expense portion of the brokerage and handling expense. As a result, the Department has no means to determine whether specific expenses related to each of these documents was included in the document preparation cost, or, if included, how much of the document preparation cost was related to the bill of lading, certificate of origin, and commercial invoice. This is in contrast to letter of credit expenses, which DBIT does identify.[80] Without information in DBIT about the nature of the document preparation costs, other than letters of credit, Trina's argument rests on speculation.[81]

[79] Trina submitted all documents concerning two U.S. sales that were hundreds of pages in length. *See* Trina's May14, 2016 submission at Exhibits A-12 and A-13. There was no mention of letters of credit.
[80] *See* Comment 4 – Valuation of Brokerage and Handling in Doing Business in Thailand.
[81] The Department came to similar conclusions in *Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China*, 78 FR 35245 (June 12, 2013) and the accompany IDM at Issue 7, and its determination was upheld in *DuPont Teijin Films China Ltd. v. United States*, 7 F. Supp. 3d 1338, 1349-1350 (CIT 2014).

Speculation is not substantial evidence.[82] Thus, the Department finds that there is no basis to adopt Trina's proposed adjustments to the SV for brokerage and handling.

Comment 6: Calculation of Surrogate Labor Value

Yingli

- The Department improperly included overtime pay in the calculation of the labor rate. The Department should remove overtime costs from the numerator of the labor rate calculation because overtime hours associated with overtime pay are not known.
- The Department's calculation of the surrogate value for labor assumes five and a half working days a week[83] regardless of whether overtime pay was included in the surrogate value for labor. Thus, it is implicit in the Department's calculations that five and a half days are the standard number of work days in Thailand without any overtime. By including the additional expense of overtime pay in the numerator of its labor rate calculation, without including the number of overtime hours worked in the denominator of the calculation, the resulting per-hour labor rate calculated by the Department was artificially inflated and incorrect.

Petitioner

- It is the Department's policy and practice to include all components of labor compensation and benefits in the labor rate.[84] The Thai National Statistical Office ("NSO") data separately include various direct wages and intangible benefits, including overtime labor cost. As such, the Department should include overtime costs in the calculation of the overall labor rate for the final results.
- There is no evidence on the record that five and a half working days a week represents the standard number of work days in Thailand, and thus the Department cannot assume that 192 hours are worked in a month before overtime pay commences. The Department should continue to include overtime labor costs in the calculation of its surrogate labor rate.

Department's Position:

Yingli raised a similar argument in the previous review. As we noted in *Solar AR1*,[85] the Department's practice is to include all components of labor, such as benefits, housing, training, bonuses, and gratuities in surrogate labor costs. The Department previously noted that it prefers "earnings" data from the International Labor Organization ("ILO"), when available, rather than wage rate data from the ILO, which excludes overtime, because it more accurately reflects the full remuneration received by workers.[86] The Department also stated in *Antidumping*

[82] *See Lucent Techs., Inc. v. Gateway, Inc.*, 580 F.3d 1301, 1327 (Fed. Cir. 2009).
[83] The Department's calculation of the surrogate value of labor is based on a working week of 5.5 days, 8 hours a week, 4 weeks a month (5.5*8*4=192).
[84] *See* Petitioner's Rebuttal Case Brief at 57-58 (citing to *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092, 36093 (June 21, 2011) ("*Antidumping Methodologies*")).
[85] *See* Solar I IDM at Comment 17.
[86] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor; Request for Comment*, 76 FR 9544, 9545 (February 18, 2011).

Methodologies its preference for data from Chapter 6A of the ILO to value labor because it includes additional costs as compared to Chapter 5B of the ILO.[87] Lastly the Department's labor rates represent "fully-loaded" wages (*i.e.*, inclusive of all bonuses, overtime, *etc.*).[88]

Consistent with the Department's practice and our decision in the previous review,[89] we continue to include overtime compensation in the numerator of the labor rate calculation because we are valuing surrogate labor costs on the basis of *fully loaded* wages, which include overtime. Moreover, consistent with Department practice in our calculation, and as specified in *Antidumping Methodologies*, to convert the surrogate labor costs to an hourly basis, the Department uses a five and a half working days week, rather than a week of five working days, in its determination for the labor surrogate value.[90] Therefore, we do not believe it is unreasonable to include overtime compensation in the numerator of the calculation. Accordingly, for the final results, we have continued to include overtime costs in the calculation of labor.

Comment 7: Surrogate Value for Aluminum Angle Keys

Yingli

- The Department should value aluminum angle keys using HTS 7604.29.10 ("Aluminum bars, rods and profiles; Other; Extruded Bars and Rods"), and not HTS 8302 ("Mountings And Other Hardware For Furniture, Doors, Windows Etc.; Hatracks, Castors Etc.; Door Closures; The Foregoing And Parts Thereof, Of Base Metalx), because Yingli's angle keys are made of extruded bars.
- Yingli submitted documents that demonstrate that its aluminum angle keys are made of extruded aluminum bars and are not significantly processed after extrusion.[91]
- The Department incorrectly valued Yingli's aluminum angle keys under HTS 8302.49.99 (mountings, fittings and similar articles, and parts thereof, nesoi, of base metal, other) in *Solar AR1*. In reaching its decision, the Department cited a U.S. Customs and Border Protection ("CBP") ruling that classified aluminum corner keys under HTS 8302.41.60. However, this CBP ruling related to a different product than Yingli's aluminum angle keys. As explained in the CBP ruling, CBP determined that the aluminum corner keys under examination in the ruling should be classified under HTS 8302.41.60, which includes "Iron or steel, aluminum or zinc mountings, fittings & similar articles, nesoi, suitable for buildings, & base metal pts thereof," only because "the corner key is suitable for buildings." Yingli's aluminum angle keys, however, are not suitable for buildings, but, rather, are used to fasten and bind aluminum frames together in solar panels.

[87] *Id.*
[88] *See Drawn Stainless Steel Sinks From the People's Republic of China: Investigation, Final Determination*, 78 FR 13019 (February 26, 2013), and accompanying Issues and Decision Memorandum at Comment 3; *Solar Cells Investigation* at Comment 5.
[89] *See* Solar I IDM at Comment 17.
[90] *See Antidumping Methodologies.*
[91] *See* Yingli's July 22, 2015 Supplemental Questionnaire Response at 25 and Exhibit SA2-29.

Petitioner

- The record demonstrates that Yingli's aluminum angle keys have been substantially processed into finished fabricated aluminum parts and are no longer simple aluminum extrusions.[92]
- CBP issued two rulings that aluminum corner keys should be classified under HTS 8302.[93] While Yingli has attempted to differentiate its aluminum corner keys from those covered by the CBP rulings because the aluminum corner keys in the CBP rulings were used in doors and windows in buildings, rather than in solar panels, the fact remains that the aluminum corner keys covered by the rulings and Yingli's aluminum keys are machined goods that have a specific form, feel, and use. While HTS subheading 8302.41 may cover aluminum comer keys used in items that are related to buildings, HTS subheading 8302.49 covers aluminum comer keys used in items that are related to goods other than buildings and this HTS number should be used to value Yingli's aluminum angle keys.

Department's Position:

Consistent with the preliminary results of this review, as well as with *Solar AR1,* we valued Yingli's aluminum angle keys using Thai HTS 8302.49.99 for these final results because we find this surrogate source to be more specific to Yingli's input than the other potential surrogates on the record. Based on Yingli's own description, aluminum angle keys are not simply extruded aluminum bars and rods, but are extruded aluminum bars and rods that have been worked into angle keys.[94] While Yingli's suggested HTS category, 7604.29.10, includes aluminum bars, rods, and profiles, and products that "have been subsequently worked after production" the HTS description for HTS 7604 notes "provided that they have not thereby assumed the character of articles or products of other headings."[95] Thus, we examined whether Yingli's aluminum angle keys have a character similar to the articles or products of other headings.

HTS 8302 is described as: Mountings And Other Hardware For Furniture, Doors, Windows Etc.; Hatracks, Castors Etc.; Door Closures; The Foregoing And Parts Thereof, Of Base Metal. In *Solar AR1* we noted that Petitioner placed on the record a CBP ruling that classifies aluminum angle keys used in windows under HTS category 8302.41 (mountings, fittings and similar articles nesoi (except hinges and castors), and parts thereof, suitable for buildings, of base metal). We have placed this same CBP ruling on the record of this review.[96] Petitioner placed an additional CBP ruling on the record of this review that classifies aluminum angle keys used in doors under HTSUS category 8302.41.6045 (base metal mountings, fittings and similar articles…other mountings, fittings and similar articles, and parts thereof, suitable for buildings, other, of iron or steel, of aluminum or of zinc, suitable for interior and exterior doors (except

[92] *See* Yingli's July 22, 2015 Supplemental Questionnaire Response at Exhibit SA2-29.
[93] *See* Petitioner's July 29, 2015 SV Submission at Exhibit 1 (N125355 and N123295).
[94] *See* Yingli's July 22, 2015 Supplemental Questionnaire Response at 24 and Exhibit SA2-29.
[95] *See* Solar I IDM at Comment 35 (*citing Jiangsu Jiasheng Photovoltaic Technology Co., Ltd. v. United States*, 28 F. Supp. 3d 1317, 1337 (CIT 2014) ("*Jiangsu*") and the December 18, 2015 memorandum from Jeff Pedersen to the file entitled "Export Data and Customs Rulings and Related Documents" at Attachment III (containing excerpts from the United States Harmonized Tariff Schedule).
[96] *See* the December 18, 2015 memorandum from Jeff Pedersen to the file entitled "Export Data and Customs Rulings and Related Documents" at Attachment II ("CBP Ruling N125355").

garage, overhead or sliding doors), other).[97] These CBP rulings cover aluminum window and door angle keys that are produced with the same physical characteristics as Yingli's aluminum angle keys, *i.e.*, made of aluminum and consisting of angled joints.[98] Further, we note that aluminum window and door angle keys have the same function as Yingli's aluminum angle keys, *i.e.*, to connect and join the ends of frames. Yingli described, and provided pictures of, its aluminum angle keys that support its statements that its aluminum angle keys consist of aluminum, are cornered, and are used to fit together solar module frames.[99] Thus, the CBP rulings on window and door angle keys considered items almost identical in composition and function as Yingli's aluminum angle keys.

Further, the fact that one of the above-mentioned rulings distinguish hinges from mountings and fittings, and both of these rulings specify that HTS 8302.41 would only consist of mountings, fittings, and similar items, indicates that HTS 8302.41 contains items similar to angle keys. CBP Ruling N123295 rejected a proposed classification of the aluminum angle keys at issue in that ruling under HTS 8302.10, which consists of metal hinges, noting that the aluminum angle keys were not hinges and so classified the aluminum angle keys under HTS 8302.41 because this category consists of "base mountings, fittings, and similar articles . . . of aluminum." CBP Ruling N125355 similarly notes that the correct classification of the aluminum angle keys at issue in that ruling is HTS 8302.41, which consists of "base mountings, fittings, and similar articles . . . of aluminum."

While we have classified Yingli's aluminum angle keys under HTS 8302.49, rather than HTS 8302.41, because they are used in solar panels rather than in doors or windows, the reasoning cited in the CBP rulings to classify the aluminum angle keys considered in those ruling under HTS 8302.41 supports classifying Yingli's aluminum angle keys under HTS 8302.49. In classifying the aluminum angle keys under the broad category HTS 8302, the two CBP rulings cited above noted that the aluminum angle keys consist of aluminum and are fittings. Further, HTS subheadings 8302.41 and 8302.49 consist only of mountings, fittings and similar articles. The difference between HTS 8302.41 and HTS 8302.49 is that HTS 8302.41 contains mountings and fittings used in buildings and 8302.49 contains fittings and mountings not used in buildings or furniture (and thus applies to fittings used to connect solar panel frames). Thus, just as HTS 8302.41 is narrowly focused on aluminum fittings and mountings and excludes items such as hinges, HTS 8302.49 is narrowly focused on items similar to Yingli's aluminum angle keys and excludes items such as hinges.

The Department is not bound by CBP rulings for U.S. imports when selecting surrogate values from surrogate countries pursuant to section 773(c)(4) of the Act. Yet, we find CBP Rulings N123295 and N125355 probative for determining the appropriate HTS with which to value Yingli's aluminum angle keys because the rulings cover products with functions and materials that overall are highly similar to those of Yingli's aluminum angle keys, the HTS category specified by the rulings includes items similar to Yingli's aluminum keys, and the description of HTS 8302 – Base metal mountings, fittings and similar articles – appears more specific to Yingli's aluminum keys than the description of HTS 7604, the HTS category that Yingli

[97] *See* Petitioner's July 29 SV Submission at Exhibit 1 ("CBP Ruling N123295").
[98] *See* CBP Ruling CBP Rulings N125355 and N123295.
[99] *See* Yingli's July 22, 2015 Supplemental Questionnaire Response at 24 and Exhibit SA2-29.

advocates using – Aluminum bars, rods and profiles. Further, explicitly excluded from HTS 7604 are articles included elsewhere. The mountings, fittings and similar articles described for HTS 8302 appear to include angle keys which fit and join two pieces of aluminum frames; thus such keys would not be included under HTS 7604. Thus, we have determined that the CBP rulings cited above support our finding that HTS 8302.49 is more specific to Yingli's aluminum angle keys than other potential surrogates on the record. Therefore, for the final results, we have continued to value Yingli's aluminum angle keys using Thai imports under HTS 8302.49.99 because we find this surrogate to be the best available information on the record for valuing Yingli's aluminum angle keys.

Comment 8: Surrogate Value for Aluminum Frames

Petitioner

- The Department incorrectly used HTS 7604.29.90001, which covers "aluminum alloy bars, rods and profiles, other, other than hollow profiles, other {implying aluminum alloy}, other profiles" to value Yingli's aluminum frames.
- The Department followed its decision from the original investigation, but the factual record in this review is materially different and clearly demonstrates that the aluminum frames used by Trina and Yingli are fabricated aluminum goods that have been produced to a point that they are no longer a simple aluminum extrusion.
- Aluminum frames that are designed for a specific purpose which have been fabricated for that specific use are not classified under HTS 7604, but elsewhere due to the fact that the product has lost its character as a simple extrusion.
- Wuxi Suntech, a mandatory respondent both in *Solar AR1* and the underlying investigation, requested a binding tariff classification from CBP for aluminum frames that its U.S. subsidiary Suntech Arizona imported to produce solar modules. CBP ruled that Wuxi Suntech's aluminum frames should be categorized under HTS 7616.[100]
- CBP also confirmed that solar frames from China and Malaysia are not simple extrusions but are instead finished goods (often sold in sets) that have assumed the identity of a product far more advanced than an aluminum extrusion.[101] The results of these rulings contrast with CBP rulings concerning aluminum profiles and extrusions that were not further processed, which were classified under HTS categories 7604 and 7608.[102] Thus, it is clear that while unprocessed aluminum tubes and profiles are classified under HTS categories 7604 and 7608, further processed aluminum profiles are classified under HTS 7616 or other categories containing finished articles.
- This conclusion is confirmed by the explanatory notes to Chapter 76 of the HTS stating that this category consists of aluminum extrusions and profiles (which are defined as products of a uniform cross-section along their whole length) that "have not... assumed the character of articles or products of other headings." [103]
- Yingli's aluminum solar frames have been further manufactured and processed into a good that has assumed the character of a product of a different heading than HTS 7604.

[100] *See* Petitioner's case brief at 7 (*citing* Petitioner's July 29, 2015 submission at Exhibit 1 (CBP Ruling N139353)).
[101] *Id., at* 7 (*citing* Petitioner's July 29, 2015 submission at Exhibit 1 (CBP Ruling N238208)).
[102] *Id., at* 6 (*citing* Petitioner's July 29, 2015 submission at Exhibit 1 (CBP Rulings N080920, NY R01215, and NY I82931)).
[103] *Id., at* 7 (*citing* Petitioner's July 29, 2015 submission at Exhibit 2).

Yingli provided detailed engineering drawings demonstrating that its aluminum profiles underwent extensive additional processing.[104]

- Based upon guidance from CBP in its two tariff classification rulings, numerous Chinese companies importing aluminum frames into the United States for use in solar modules are utilizing HTS 7616 to classify their imports.[105]
- The Department should value aluminum frames using Thai imports under HTS 7616.99.9909 (articles of aluminum, nesoi), which covers fabricated aluminum goods, like finished aluminum solar frames. If CBP believed that fabricated aluminum frames are simple extrusions, CBP would have classified them as products under heading 7604. Given that CBP recognized these items were further manufactured and possessed significant value added qualities and that no other HTS heading is appropriate for these frames, heading 7616 is the proper HTS category for the frames.
- The Department should not be concerned about the inclusion of dissimilar products under HTS 7616.99.9909 as expressed in previous segments of this proceeding, because nails, tacks, staples, screws, bolts, nuts, screw hooks, rivets, cotters, cotter-pins, staples, hooks, ferrules, cloth, grill, netting, bobbins, reels, and the like are not classified under HTS 7616.99.9909, but rather classified elsewhere in heading 7616.
- The Department should not hesitate to make an adjustment to its prior decisions regarding the valuation of aluminum frames, particularly as the evidence in this review is much clearer than the evidence the Department had at its disposal in prior segments of this proceeding. The record of this review demonstrates beyond any doubt that respondents' aluminum frames are highly processed, finished aluminum products, and that the use of HTS 7604.29.90001 as a surrogate results in a significant undervaluation of this important input for subject merchandise.

Yingli

- The Department should reject the Petitioner's argument to value aluminum frames using HTS 7616.99.9909.[106] This HTS is an "other" category that includes a broad range of products and is not the best information available for valuing aluminum frames. The Department should continue to use HTS 7604.29.90001 to value aluminum frames.
- Documentation shows that Yingli's aluminum frames have closed ends extruded from a single piece of anodized aluminum, allowing for a double-walled frame. They have a defined cross-sectional profile, formed pursuant to specifications set by the company for strength, ductility, angle, bending angle, plane clearance, twist angle, and allowable variation, among other requirements.[107] Yingli's aluminum frames are the same as those it used in *Solar AR1* and in the investigation in this proceeding as well as those used by other Chinese producers, including Trina. Thus, aluminum frames are properly classified in HTS category 7604.29, as the Department found in the final results of the first administrative review, following its on-site verification of Yingli's facilities.[108]

---

[104] *Id., at* 4 (*citing* Yingli's July 1, 2015 supplemental questionnaire response at Exhibit SD1-3); *see also* Yingli's June 10, 2015 supplemental questionnaire response at Exhibit C-7, and Yingli's June 30, 2015 supplemental questionnaire response at Exhibit SC2-4.
[105] *See* Petitioner's September 10, 2015 submission at Exhibit 1 and 2.
[106] *See* Yingli Rebuttal Brief at 7-11.
[107] *See* Yingli's August 31, 2015 supplemental questionnaire response at 2.
[108] *See* Solar I IDM at Comment 36.

- The aluminum profiles purchased to construct the aluminum frames are not hollow, and the aluminum frames are nearly identical to the type of profile that the Department has identified as not being hollow.[109] Accordingly, Yingli's aluminum frames are properly classified under HTS 7604.29 (other than hollow profiles), as the Department found in the final results of *Solar AR1,* following its on-site verification of Yingli's facilities.[110]
- Petitioner has cited no evidence on the record contradicting Yingli's description of its aluminum frames or the Department's previous surrogate value selection. This record contains the same information pertaining to aluminum frames as the record in *Solar AR1*, including the same product specifications, a PRC Customs Import Declaration form indicating that aluminum frames were imported under HTS 7604.29, and a copy of a page of China's tariff schedule, which indicates that HTS 7604.29 pertains to "aluminum bars, rods and profiles; other."[111]
- Petitioner argues for aluminum frames to be valued under HTS 7616.99 based on CBP rulings, but this argument was rejected by the Department in the underlying investigation and in *Solar AR1*. In the investigation, the Department found HTS 7604 to be the best available information to value respondents' aluminum frames because alloyed aluminum profiles are identified under HTS 7604, while HTS 7616.99 is an "other" category that includes products dissimilar to aluminum frames.[112] The Department selected HTS 7604 because it covers products similar to the aluminum frames at issue. This decision was sustained by the CIT.[113] The Department again reached the same decision to value aluminum frames used in solar modules with HTS 7604.29 in the *Solar Products Investigation*.[114]
- Petitioner cites a CBP ruling which classified aluminum frames imported by Suntech Arizona under HTS 7616.99. However, the Department is not bound by CBP rulings for U.S imports when selecting import values from surrogate countries, but is expected to use the best available information to value the inputs.[115] The CIT concurred that the Department was not required to follow CBP rulings in every case, including *Solar Cells*.[116]
- Petitioner argues that the Department should not be concerned about Thai HTS 7616.99.9909 covering dissimilar products. However HTS 7616.99.9909 is still an "other" category that contains many diverse products.
- Petitioner argues, based on a number of CBP rulings, that the processing of Yingli's aluminum frames beyond extrusion somehow makes them finished articles or fabricated aluminum goods ineligible for classification under HTS 7604. However, in the investigation the Department explained that the petitioner's assertion that the respondents' aluminum frames are finished articles was not relevant to the Department's

[109] *See* Yingli's September 17, 2015 supplemental questionnaire response at 17-18.
[110] *See* Solar I IDM at Comment 36.
[111] *See* Yingli's August 31, 2015 supplemental questionnaire response at Exhibit SD2-1.
[112] *See* Yingli's rebuttal brief at 8 (citing *Solar I Investigation*, and accompanying Issues and Decision Memorandum at Comment 16).
[113] *Id.* (*citing Jiangsu* at 1338).
[114] *See Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 76970 (December 23, 2014) ("*Solar Products Investigation*"), and accompanying Issues and Decision Memorandum ("Solar Products IDM") at Comment 9.
[115] *See* Yingli's rebuttal brief at 7 (citing Solar I Investigation IDM) at Comment 16; Solar I IDM at Comment 36).
[116] *Id.* (*citing Jiangsu*, 28 F. Supp. 3d at 1336).

choice of a surrogate value.[117] The CIT sustained the Department's reasoning in this regard stating that "{t}he fact that HTS 7604 has been applied in the past to unfinished articles does not support the conclusion that Thai HTS 7604 covers solely unfinished merchandise that is different in nature and value from the aluminum frames at issue."[118]

Trina

- Petitioner's argument regarding the valuation of aluminum frames is not new and has been rejected previously by the Department three times. In addition, the Department's initial determination rejecting Petitioner's argument in the underlying investigation has been sustained by the CIT. The Department's most recent determination summarizes the Department's position with respect to Petitioner's argument. In *Solar AR1* the Department explained that HTS 7604.29.90001 constitutes the best available information for valuing aluminum frames and rejected Petitioner's arguments as it had in the *Solar Cells Investigation* and the *Solar Products Investigation*.[119] Since those decisions, nothing has changed that would warrant a different determination in this segment of the proceeding. The aluminum frames used by Trina are still non-hollow, aluminum profiles.[120]
- The information concerning the import of aluminum frames into the United States from CBP and other sources that Petitioner placed on the record to purportedly demonstrate that HTS 7616 is the more appropriate classification for the aluminum frames is flawed because there is nothing on the record to indicate that the information was comprehensive in nature or that it was not selectively chosen to support Petitioner's position. Also, information concerning the classifications of aluminum frames under HTS 7616 was not necessarily available to the preparers of the report; it would appear that the preparers of the report guessed which HTS number the merchandise would be classified under.
- A comparison of the import prices contained in Petitioner's import data[121] with the Thai import price of HTS 7616.99.9909[122] also demonstrates that applying a surrogate value based on imports under HTS 7616.99.9909 would be inaccurate.

Department's Position:

We agree with Yingli and Trina that HTS 7604.29.90001 continues to constitute the best available information to value their aluminum frames. Both mandatory respondents describe the input in question as non-hollow, aluminum profiles.[123] In the underlying investigation, the Department concluded that HTS 7604 constitutes the best available information to value the respondents' aluminum frames because alloyed aluminum profiles are identified under HTS 7604, while HTS 7616.99 is an "other" category that includes products dissimilar to aluminum

[117] *Id., at* 9 (*citing* Solar Cells Investigation IDM at Comment 16).
[118] *Id.* (*citing Jiangsu*, 28 F. Supp. 3d at 1337).
[119] *See* Trina rebuttal brief at 10-11 (*citing* Solar I IDM at Comment 36, Solar Cells Investigation IDM at Comment 16, and Solar Products Investigation IDM at Comment 9).
[120] *Id., at* 11 (*citing* Trina's June 30, 2015 Supplemental Questionnaire Response at Exhibit SC2-4).
[121] *See* Petitioner's September 10, 2015 submission at Exhibit 2.
[122] *See* Petitioner's July 16, 2015 submission at Exhibit 1.
[123] *See* Yingli's August 31, 2015 supplemental questionnaire response at 2, September 17, 2015 supplemental questionnaire response at 17-18, and Trina's June 30, 2015 Supplemental Questionnaire Response at Exhibit SC2-4.

frames.[124] This decision was sustained by the CIT.[125] The Department again reached the same decision to value aluminum frames under HTS 7604.29 in the *Solar Products Investigation*[126] and in *Solar AR1* of this proceeding.[127] Petitioner now claims that the facts relied upon by the Department to value aluminum frames with HTS 7604 no longer supports the decision. We disagree. Petitioner cites no new material fact or relevant argument that was not already considered in the previous decisions regarding the surrogate value for aluminum frames in both the *Solar Cells Investigation* and the *Solar Products Investigation*. Just as in those cases, the input in question is described by Yingli and Trina as non-hollow, aluminum profiles.[128] No party has challenged this description and the Department has found nothing on the record to contradict Yingli and Trina's descriptions. Further, the product coverage of HTS 7604.29 (*i.e.*, aluminum alloy bars, rods and profiles, other, other than hollow profiles) is unchanged and continues to pertain to non-hollow aluminum profiles such as those consumed by Yingli and Trina in this review period, just as we found it pertained to the aluminum frames consumed by Yingli and Trina in previous segments in this proceeding and in the *Solar Products Investigation.*

Petitioner cites to diagrams that purportedly prove that Yingli and Trina's aluminum profiles have been processed to such a degree that they are no longer classifiable under HTS 7604.[129] Petitioner points to explanatory notes to Chapter 76 of the HTS stating that this category consists of aluminum profiles that "have not... assumed the character of articles or products of other headings."[130] Petitioner thus concludes that the aluminum profiles used in solar modules are processed to such an extent that they can no longer be classified under HTS 7604, and thus they must be classified under HTS 7616. The Department has already considered the amount of finishing that aluminum profiles undergo to become aluminum frames in selecting an appropriate surrogate value for aluminum frames in its previous determinations. In the *Solar Cells Investigation* and *Solar AR1* of this proceeding, we stated:

> Petitioner's assertion that respondents' aluminum frames are finished articles is not relevant to our decision. While CBP rulings on the record supporting the use of HTS 7604 concern unfinished aluminum articles, this does not necessarily mean that HTS 7604 would only contain unfinished aluminum profiles. While other HTS categories identify whether they contain finished or unfinished items, HTS 7604 does not specify whether it contains finished or unfinished aluminum profiles.[131]

[124] *See Solar Cells Investigation* IDM at Comment 16.
[125] *See Jiangsu*, 28 F. Supp. 3d at 1336-37.
[126] *See Solar Products* IDM at Comment 9.
[127] *See* Solar I IDM at Comment 36.
[128] *See* Yingli's August 31, 2015 supplemental questionnaire response at 2, September 17, 2015 supplemental questionnaire response at 17-18, and Trina's June 30, 2015 Supplemental Questionnaire Response at Exhibit SC2-4.
[129] See Yingli's July 1, 2015 Supplemental Questionnaire Response at Exhibit SDl-3 and Trina's June 30, 2015 Supplemental Questionnaire Response at Exhibit SC2-4.
[130] *See World Customs Organization Explanatory Notes,* Vol. 3, Chapter 76 (2013) at XV-76-1, attached to Petitioner's November 10, 2014 submission at Exhibit 4.
[131] *See Solar Cells Investigation* IDM at Comment 16 and the Solar I IDM at Comment 36. The Department reached the identical conclusion in the *Solar Products Investigation* IDM at Comment 9.

Further, we noted in the *Solar Products Investigation* that the "ITC definition of aluminum profiles cited by Petitioner indicates that profiles may be cast, sintered, and worked after production."[132] Also, in sustaining the Department's determination with respect to aluminum frames, the CIT stated that "HTS 7604 includes aluminum bars, rods, and profiles, and products that have been *subsequently worked after production* . . . provided that they have not thereby assumed the character of articles or products of other headings" (emphasis added).[133] As an initial matter, no other heading that would contain the aluminum frames in question is on the record of this review. Additionally, we previously addressed the argument that because the aluminum frames contain corners, they should not be valued using HTS 7604, which applies to profiles with a uniform cross section.[134] We stated in response to this argument that while certain aluminum frames purchased by respondents contain corners, we do not believe that this would necessarily change their classification as aluminum profiles. We noted that the ITC definition of aluminum profiles cited by Petitioner indicates that profiles may be cast, sintered, and worked after production.[135] Thus, the Department and the CIT have previously considered the fact that aluminum profiles used as aluminum frames have undergone further processing. As noted above, the Department has made determinations in two segments of this proceeding and in another proceeding that HTS 7604 is the best available information with which to value the frames made of aluminum profiles and used to assemble solar modules, and although one of those decisions was challenged in *Jiangsu*, the determination was sustained by the CIT. The facts here are not materially different from those in the *Solar Cells Investigation* and *Solar Products Investigation*, or in *Solar AR1* of this proceeding and we have reached the same conclusion here as we reached in those investigations and the review.

Just as it did in the *Solar Cells Investigation* and *Solar Products Investigation* and in *Solar AR1*, Petitioner submitted CBP rulings to support its position that the aluminum frames here should not be classified under HTS 7604. Petitioner has also provided information demonstrating that importers are entering aluminum frames consistent with these rulings. However, as stated in our position to the issue involving aluminum angle keys, the Department is not bound by CBP rulings for U.S. imports when selecting import values from surrogate countries, but instead must select the best available information on the record. Although one of the CBP rulings cited by Petitioner states that Wuxi Suntech's frames should be classified under HTS 7616.99 (articles of aluminum, nesoi), this HTS number is for an "other" category, which would only contain articles of aluminum not already identified elsewhere in the HTS. As stated above, alloyed aluminum profiles are identified under HTS 7604. Furthermore, HTS 7616 covers a number of inputs, which are dissimilar to the aluminum frames used by Yingli and Trina. Additionally, there was no explanation in the CBP ruling on Wuxi Suntech's frames as to why the frames should be classified under HTS 7616.99. Without such an explanation, we are not able to weigh the ruling against record evidence supporting the Department's use of an HTS number different from the one identified in the ruling. In *Solar AR1* Petitioner cited a CBP ruling finding that aluminum frame sets should be classified under HTS 8541.90 "Diodes, Transistors, photovoltaic cells whether or not assembled in modules or made up into panels."[136] Petitioner also submitted this

[132] *See* Solar Products IDM at Comment 9.
[133] *See Jiangsu*, 28 F. Supp. 3d at 1337.
[134] *See* Solar Products IDM at Comment 9.
[135] *Id., at* Comment 9.
[136] *See* Solar ARI IDM at Comment 36.

CBP ruling in this administrative review (but did not argue that the Department should follow this CBP ruling when valuing aluminum frames). We believe the fact that these two CBP rulings identify different chapters of the HTS for aluminum frames, without providing much explanation as to why each HTS category was selected, undermines Petitioner's reliance on one of the rulings to support its suggested HTS category for valuing aluminum frames.

Petitioner's arguments partially rest on conclusions it reaches concerning HTS explanatory notes that aluminum profiles are only considered as such if "they have not... assumed the character of articles or products of other headings."[137] As noted above, the record does not contain information for any other heading that includes the aluminum frames used by Trina and Yingli. Petitioner argues that HTS 7604 only covers unfinished aluminum profiles and assumes that finished aluminum profiles do not fit in any other HTS category; thus HTS 7616, which covers aluminum articles not elsewhere specified or indicated, must be the catch-all category that includes the processed aluminum profiles at issue. We disagree with Petitioner's interpretation. As we stated in both the *Solar Cells Investigation* and the *Solar Products Investigation*, while "other HTS categories identify whether they contain finished or unfinished items, HTS 7604 does not specify whether it contains finished or unfinished aluminum profiles."[138] Thus, we disagree with Petitioner's conclusion that aluminum profiles that were further processed would not typically be classified in HTS 7604 and we disagree that such profiles would necessarily be classified in HTS 7616. Rather, we find that the products covered by HTS 7616 are different from the aluminum frames at issue in this case because this HTS "includes *in particular* . . . nails, tacks, staples, screws, bolts, nuts, screw hooks, rivets, cotters, cotter pins, washers, knitting needles, bodkins, crochet hooks, embroidery stilettos, safety pins, other pins and chains, and cloth, grill and netting of aluminum wire." This HTS description does not refer to anything similar to aluminum profiles that were further processed into frames. Petitioner's argument that HTS 7616.99.9909 does not include the many dissimilar items listed above[139] ignores the fact that none of the items that are listed under HTS 7616 are similar to aluminum frames.

As it has done in the past, in nearly all of its arguments, Petitioner attempts to demonstrate that aluminum frames used in solar panels would be classified under HTS 7616 rather than HTS 7604. Such arguments fail to squarely address the Department's concern, which is to identify the best available information to serve as a surrogate value with which to value Yingli and Trina's aluminum frames. We continue to find that HTS 7604 consists of items far more similar to Yingli and Trina's aluminum frames than the items imported under HTS 7616 and thus imports under HTS 7604 constitute the best available information with which to value Yingli and Trina's aluminum frames, consistent with section 773(c)(1) of the Act. In identifying such information, the Department weighs available information on the record and makes a product-specific and case-specific decision as to what constitutes the "best available information" for a surrogate

[137] *See World Customs Organization Explanatory Notes*, Vol. 3, Chapter 76 (2013) at XV-76-1, attached to Petitioner's November 10 SV Submission at Exhibit 4.
[138] *See* Solar Cells Investigation IDM at Comment 16 and Solar Products IDM at Comment 9.
[139] Petitioner notes that there are separate Thai HTS categories for nails, tacks, staples, screws, bolts, nuts, screw hooks, rivets, cotters, cotter-pins, staples, hooks, ferrules, cloth, grill, netting, bobbins, and reels under HTS 7616 and thus that HTS 7616.99.9909 does not include these items dissimilar to aluminum frames.

value for each input.[140] HTS 7616 covers items that are dissimilar to the non-hollow, aluminum profiles at issue while HTS 7604.29 expressly covers non-hollow aluminum profiles used by Yingli and Trina for their aluminum frames. Furthermore, record information does not indicate that aluminum profiles that have been finished or further processed are excluded from this category. Because the definition of HTS 7604 is more specific to the input at issue than the definition of HTS 7616, the Department continues to find that HTS 7604.29.90001 constitutes the best available information with which to value Yingli's and Trina's aluminum frames.[141]

Comment 9: Differential Pricing

Yingli

- The Department should not apply a "differential pricing" analysis to determine which comparison method to use to calculate Yingli's weighted-average dumping margin, because that analysis is not in accordance with U.S. law.
- First, the Department's "differential pricing" analysis fails to identify a pattern of export prices that differ significantly among purchasers, regions or time periods (*i.e.*, it fails to identify "targeted dumping"), as required by section 777A(d)(1)(B)(i) of the Act and the Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act because: (i) the Cohen's *d* test does not evaluate whether "targeted dumping" exists, but rather measures only the extent of the difference between the mean of a test group and the mean of a comparison group; (ii) the Cohen's *d* test cannot differentiate between "targeted dumping" and the myriad of other potential causes of variations in price; (iii) the Cohen's *d* test identifies all instances in which prices of the test group deviate from prices of the comparison group regardless of whether the deviation is positive or negative, while "targeted dumping" could exist only if test group sales were priced significantly below comparison group sales; (iv) the Cohen's *d* test excludes test group sales from the comparison group, and therefore fails to compare pricing of sales in the test group with the normal pattern of pricing for all sales; and (v) the ratio test aggregates the results of the Cohen's *d* test to purchasers, regions, and time periods, and therefore masks the fact that sales may not in fact be differentially priced by any of these individual bases identified in the statute.
- Second, the Department fails to explain why any "targeted dumping" identified cannot be taken into account by a standard average-to-average ("A-A") or transaction-to-transaction ("T-T") comparison methodology, as required by section 777A(d)(l)(B)(ii) of the Act.
- Third, the Department's use of several unjustified numerical thresholds in its "differential pricing" analysis leads to arbitrary and unreasonable results, and renders the Department's entire analytical framework unlawful. For example: (i) the Cohen's *d* test leads to meaningless conclusions because it applies whenever at least two observations exist in the test and comparison groups; and (ii) the 0.8 cutoff for the Cohen's *d* test means that prices may be considered to be "targeted" almost half the time.

[140] *See Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 41808 (July 19, 2010) and accompanying Issues and Decision Memorandum at Comment 2; *Certain New Pneumatic Off-the-Road Tires from China*, 78 FR 22513 (April 16, 2013), and accompanying Issues and Decision Memorandum at Comment 5.A.

[141] *See* Yingli's October 1, 2015 submission at D-18; Yingli's June 24, 2014 submission at Exhibit 1; Yingli's August 24, 2014 submission at Exhibit 1.

- Fourth, the Department has no basis in law for applying the average-to-transaction ("A-T") method to sales that it does not find to be "targeted." Rather, section 777A(d)(l)(B) of the Act permits the Department to apply the A-T method only to sales that it finds to be "targeted." Moreover, the Department has never explained why applying the A-T method to all sales when the ratio test yields a result of 66 percent or greater is a reasonable approach in an administrative review.

Trina

- The Department should either eliminate or change its differential pricing analysis in the final results.
- Firstly, the numerical thresholds used by the Department in its differential pricing analysis are arbitrary, and therefore, they should only be used when there is an explanation or evidence: (i) legally, the Department is not allowed to impose arbitrary "bright-line" thresholds through its decisions in individual cases, but rather, such thresholds must be promulgated as regulations in accordance with the procedural requirements of the Administrative Procedures Act; (ii) the Department has repeatedly stated that its analysis of "targeted dumping" has to proceed on a case-by-case basis, and therefore, the Department may not base its findings on the mathematical calculations and numerical thresholds used in the "differential pricing" analysis without evidence on the record to support such analysis; and (iii) the mere existence of different results is not sufficient to satisfy the statutory requirement to explain why the A-A method cannot account for "such differences." The Department should demonstrate why those patterns cannot be addressed using the normal comparison methodologies or why the differences in the weighted-average dumping margins between the A-A method and the A-T method were attributable to "differential pricing."
- Secondly, the Department must eliminate statistically insignificant and unreliable results by increasing the minimum number of observations in its analysis to 10, because: (i) a minimum of two observations in either the test group or the base group yields results for individual comparisons that have relatively little meaning and which distort the overall results of the Cohen's *d* test; (ii) the greater the number of data points, the more useful the standard deviation is as a tool to measure variability, which is the basis of the Cohen's d test; (iii) in Trina's case, of the standard deviations the Department calculated of the base group and test group, nearly half rely on between 2 and 10 data points, illustrating that the Department has included many standard deviations in its analysis that are unreliable and that dilute any valuable comparisons between test and comparison groups; and, (iv) as Trina reported significantly more than a thousand U.S. sales during the POR, it is neither reasonable nor accurate for the Department to rely on relatively few numbers of sales of the same CONNUM to determine whether there is an accurate and measurable difference between the mean of a test group and the mean of a comparison group.

Petitioner

- Yingli and Trina's arguments have all been previously rejected by the Department.
- The Department's differential pricing analysis appropriately identifies a pattern of export prices that differ significantly among purchasers, regions, or time periods.
    - The Cohen's *d* test is an appropriate measure of prices that differ "significantly."

    - The Department is not required to consider other potential cause of variations in prices. Two recent decisions from the Federal Circuit, *JBF RAK LLC v. United States* and *Borusan Mannesmann Boru Sanayi v. Ticaret A.S. v. United States*, have held that the Department does not need to consider potential reasons for variations in price.[142]
    - The Department's consideration of both above- and below-average sales its analysis is reasonable and in accordance with law.
    - The Department's comparison groups are appropriate
    - The Department's aggregation of the results of the Cohen's *d* test is reasonable.
- The Department should reject Yingli's claims that it failed to explain why "targeted dumping" cannot be accounted for by the average-to-average methodology or the transaction-to-transaction methodology.
- The Department should reject both Yingli and Trina's claim regarding the reasonableness of the Department's thresholds. The Department's thresholds are reasonable and in accordance with law. Further, the Department appropriately explained its differential pricing analysis.
- The Department reasonably applies the alternative methodology to all sales when the 66 percent threshold under the ratio test is met.

Department's Position:

As discussed above, for these final results, the Department has applied the average-to-average method to calculate the weighted-average dumping margin for both Trina and Yingli. Accordingly, Trina's and Yingli's comments from their case briefs regarding the Department's application of a differential pricing analysis and the alternative average-to-transaction method from the *Preliminary Results* are moot.

Comment 10: Valuing Tempered Glass

Yingli

- If the Department continues to select Thailand as the surrogate country in the final results, it must modify the valuation of Yingli's tempered glass input.
- Due to a massive oversupply of tempered glass during the five years preceding the POR, the global average selling price of tempered glass fell consistently during this period, from $1.16 per kg in 2009 to $0.51 per kg in 2014, and is expected to remain at approximately $0.66 per kg through 2018.[143] The Department's surrogate values applied to tempered glass in the investigation and first review of less than $1.00 per kg reflected this trend.[144] However, in this review, the Department ignored the conditions in the international tempered glass market and improperly valued Yingli's tempered glass input. The value used by the Department in the preliminary results of $4.14 per kg is

[142] Petitioner's rebuttal brief at 61 (*citing JBF RAK LLC v. United States*, 790 F.3d 1358, 1368 (Fed. Cir. 2015); *Borusan Mannesmann Boru Sanayi v. Ticaret A.S. v. United States*, 608 F. App'x 948,949 (Fed. Cir. 2015)).
[143] *See* Yingli's case brief at 16 (*citing* Yingli's July 15, 2015, Surrogate Values Submission at Exhibit 4).
[144] *Id.*; *see also* Yingli's July 29, 2015, Surrogate Values Rebuttal Comments at SVR-3 (providing the values selected by the Department in the investigation ($0.86 per kg) and first administrative review of this proceeding ($0.98 per kg)).

aberrational because it is between 391 percent and 812 percent of credible benchmark prices on the record.[145]

- The Department's practice is to compare potential surrogate values to credible benchmark prices in determining whether a potential surrogate value is aberrational and the CIT has affirmed this practice.[146] There are numerous cases where the Department and the CIT found prices that are even 60 percent greater than benchmark prices to be aberrational.[147]
- The unreliability of the Thai surrogate value used in the preliminary results is further confirmed by the extent to which it is distorted by aberrantly-priced imports from Hong Kong during the POR. Specifically, the average value of Thai imports from Hong Kong during the POR was $191.47 per kg, but the average value was only $1.00 per kg for imports from all other countries.
- The Department should not consider the prices from the potential surrogate countries Ecuador and Ukraine in its benchmark analysis.[148] The tempered glass average unit value ("AUV") for imports into Ecuador of $2.75 per kg and the AUV of imports into Ukraine of $5.89 per kilogram are based on much smaller quantities of imports than the quantities of imports of other AUVs on the record and thus are not credible comparisons for use as benchmarks. Further, the Department has noted that Ecuador had no exports of subject merchandise during the POR.[149]
- Yingli's dumping margin, all other things being equal, would have been significantly negative if the Department had valued tempered glass with the world market price of $0.51 per kg.[150] The gigantic swing in dumping margins caused by the valuation of this one factor of production in itself demonstrates the aberrational nature of the surrogate value selected by the Department in the preliminary results.
- In the event that the Department again selects Thailand as the surrogate country in the final results, it should not use the Thai surrogate of US $4.14 per kg to value tempered glass, but should use the $0.51 per kg world market price on the record as the best information to value tempered glass. However, all prices cited by Yingli as benchmarks would be preferable to the surrogate value used in the preliminary results.

[145] *See* Yingli's case brief at 19 (arguing that the credible benchmark prices include (i) the values selected by the Department in the investigation ($0.86 per kg) and first administrative review of this proceeding ($0.98 per kg) (*see* Yingli's July 29, 2015, Surrogate Values Rebuttal Comments at SVR-3); (ii) the 2014 world market price ($0.51 per kg) (see Yingli's July 15, 2015, Surrogate Values Submission at Exhibit 4); (iii) the price of tempered glass in Bulgaria during the POR ($0.77 per kg) (*see* Yingli's July 29, 2015, Surrogate Values Rebuttal Comments at SVR-3); and, (iv) price quotes from a tempered glass producer in Germany (averaging $1.00 per kg) (*see* Trina's October 19, 2015 Surrogate Values Submission at Exhibit 4); *Id., at* 23.

[146] *See* Yingli's case brief at 17-18 (*citing, e.g., Certain Activated Carbon From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 61172 (October 9, 2015) ("*Activated Carbon 2014*"), and accompanying Issues and Decision Memorandum at Comment 6; *Blue Field (Sichuan) Food Indus. Co. v. United States*, 949 F. Supp. 2d 1311, 1317 (CIT 2013)).

[147] *See* Yingli's Case Brief at 23-25.

[148] *Id., at* 19-22.

[149] *Id., at* 22 (*citing* Preliminary Issues and Decision Memorandum at 16).

[150] *Id., at* 16-17 (*citing* Yingli's July 15, 2015, Surrogate Values Submission at Exhibit 4 for the source of the $0.51 per kg world market price of tempered glass).

Petitioner

- The Department's selected surrogate value for tempered glass is reasonable. Solar glass is a long-lasting and significant material input used to make solar panels, and it is thus no surprise that solar glass is properly valued at the high end of any of a valuation of tempered glass.
- Pricing from Ecuador and Ukraine confirm the appropriateness of the Department's use of Thai pricing. The Department has previously found that both these countries are producers of identical or comparable merchandise, and imports of tempered glass into both countries are "commercially significant." The average Ecuadoran and Ukrainian price falls within the range of pricing data for Bulgaria, which Yingli argues is a valid benchmark country. The Thai AUV for tempered glass is the second highest AUV for tempered glass of the four countries under consideration (Ukraine being the highest), and the import quantity is commercially significant when compared to imports of Bulgaria, Ecuador and Ukraine.
- Moreover, even if one were to omit Ecuadorian and Ukrainian pricing, the quantity and value of Thai imports of tempered glass do not meet the Department's standard of "aberrational" as articulated in *Diamond Sawblades* where the Department stated that only a surrogate value that is both aberrantly high and based on a commercially insignificant quantity can be considered aberrational.[151]
- Contrary to Yingli's claims, the data from Hong Kong reflects variations in pricing that existed in the investigation and the first administrative review of this proceeding. The quantity of tempered glass imported into Thailand from Hong Kong represents a commercial quantity, and the prices of Hong Kong imports of tempered glass are not the highest prices, as imports from other countries had higher prices.

Department's Position:

We disagree with Yingli's arguments that POR Thai imports of tempered glass under HTS 7007.19.90000 with an AUV of $4.14 per kg are aberrational. Thus, we have continued to value tempered glass using Thai imports of HTS 7007.19.90000.

When determining whether prices are aberrational, the Department has found that the existence of higher prices alone does not necessarily indicate that the prices are distorted or misrepresentative, and thus it is not a sufficient basis upon which to exclude a particular surrogate value.[152] Rather, interested parties must provide specific evidence showing whether the value is aberrational. In testing the reliability of surrogate values alleged to be aberrational, the Department's current practice is to examine GTA import data for potential surrogate

[151] *Id., at* 45 (*citing 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 (May 22, 2006) ("*Diamond Sawblades*") and accompanying Issues and Decision Memorandum at Comment 11.D).

[152] *See Steel Wire Garment Hangers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2012-2013*, 80 FR 13332 (March 13, 2015) and accompanying Issues and Decision Memorandum ("*Hangers from the PRC IDM*") at Comment 5 (*citing Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 56158 (September 12, 2011) and accompanying Issues and Decision Memorandum at Comment 12).

countries for a given case, to the extent such import data are available.[153] The Department has also examined data from the same HTS number for the surrogate country whose data are allegedly aberrational over multiple years to determine if the current data appear aberrational compared to historical values.[154]

In applying the first comparison methodology described above to this record with regard to tempered glass, we note that the Thai AUV of tempered glass of $4.14 per kg is not the highest AUV among the AUVs from other potential surrogate countries. The highest AUV for tempered glass, $5.89 per kg, is for imports into Ukraine. Further, the AUV for tempered glass imports into Ecuador is $2.75 per kg. Thus, Thailand's AUV falls within the range of AUVs of GTA import data for countries comparable to the PRC in terms of economic development, indicating that it is not aberrational.

Yingli argues that the volume of imports of tempered glass into Ukraine ($1,200,000 and 205,353 kg) and Ecuador ($75,000 and 30,000 kg) are too small to represent reliable benchmarks. However, the volume of imports into Ukraine is within the range of import volumes for this input for the other potential surrogate countries. Moreover, while the volume of imports into Ecuador is the smallest volume of imports for this input for any of the other countries determined to be at a comparable level of economic development as the PRC for which there are data on the record, a lower import quantity does not, in and of itself, demonstrate that the AUV is distorted. The Department has consistently found small quantities alone are not inherently distortive.[155] Even if the Ecuador import volumes are considered small, where the quantity is small, but there is no indication that the value is aberrational, the Department will continue to rely on that statistic for use as a surrogate value.[156] If we compare the AUV for

[153] *See Hangers from the PRC* IDM at Comment 5 (*citing Certain Oil Country Tubular Goods From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 77 FR 74644 (December 17, 2012) and Issues and Decision Memorandum at Comment 1).

[154] *Id.* (*citing Carbazole Violet Pigment 23 from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 36630 (June 28, 2010) and accompanying Issues and Decision Memorandum at Comment 6).

[155] *See, e.g.*, *Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Results of Administrative Review*; 2011-2012, 78 FR 15696 (March 12, 2013) unchanged in C*ertain Frozen Warmwater Shrimp From the People's Republic of China: Final Results of Administrative Review*; 2011-2012, 78 FR 56209 (September 12, 2013) and accompanying Issues and Decision Memorandum at Comment 4, where the Department found four metric tons distortive. *See also Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping New Shipper Reviews, 2011-2012*, 78 FR 39708 (July 2, 2013), and accompanying Issues and Decision Memorandum at Comment 4.

[156] S*ee Shakeproof Assembly Components Div. of Ill. Tool Works, Inc. v. United States*, 59 F. Supp. 2d 1354, 1360 (CIT 1999) (explaining that Department's practice is to exclude "small-quantity data when the per-unit value is substantially different from the per-unit values of the larger quantity imports of that product from other countries") (quoting *Heavy Forged Hand Tools, Finished or Unfinished With or Without Handles, from the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews*, 63 FR 16758, 16761 (April 6, 1998)); *see also Lightweight Thermal Paper From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 57329 (October 2, 2008) ("*Lightweight Thermal Paper from the PRC*"), and accompanying Issues and Decision Memorandum at Comment 10; *see also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: China: Final Results of Antidumping Duty Administrative Review*, 74 FR 3987 (January 22, 2009), and accompanying Issues and Decision Memorandum at Comment 6.

Ecuador's imports of tempered glass to the AUVs of other potential surrogate countries, it does not clearly demonstrate that the Ecuador AUV is aberrational. Further, while there is no evidence that Ecuador is a significant producer of identical or comparable merchandise, it is on the list of economically comparable countries as is Thailand. For these reasons, we believe it is appropriate to use Ecuador's tempered glass AUV as a benchmark.

We also disagree that the Thai import data are aberrational due to relatively high-priced imports from Hong Kong. The import data do not demonstrate that the quantity of Thai imports of tempered glass from Hong Kong (38,000 kg) is small (out of the 28 countries exporting tempered glass to Thailand, Hong Kong has the fourth largest quantity) nor do they demonstrate that the per-unit value is substantially different from the per-unit values of the Netherlands ($210 per kg) and the United States ($300 per kg).

Further, all of the data pointed to by Yingli does not appear to demonstrate the POR Thai import data to be aberrational by the standards typically relied on by the Department. Here, the Thai value is not even the highest value among the data on the record and is approximately four times as high as the data Yingli commonly cites in its arguments, which ignores the Ecuadoran and Ukrainian purchases. In *Pencils from the PRC*, the Department did not exclude certain surrogate values which were over four times the overall average surrogate value for a particular input.[157] In *Steel Wire Rope*, the Department stated that it would determine whether unit values are aberrational if they are many times higher than the import values from other countries.[158] Similarly, in *Fish from Vietnam*, the Department found the SVs for labels to be aberrational where the AUVs varied between 30 and 79 times greater than the average of the rest of the import data.[159] Here, the Thai POR import data is between two and four times greater than the simple average of all of the other tempered glass values on the record depending on whether you include or exclude the Ecuadoran and Ukrainian tempered glass imports. Based on this analysis, we find that it is not evident that the Thai POR import data is so much higher than the alternative values on the record such that the Thai POR import data would be considered aberrationally high.

With regard to the historical Thai import prices placed on the record by Yingli, the Department has examined historical import data for the potential surrogate countries for a given case, to the extent such import data is available.[160] Yingli only placed on the record Thai import prices from AR1 and the investigation. These data do not, on their own, demonstrate that the Thai AUV for

---

[157] *See Certain Cased Pencils from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 33,406 (July 13, 2009) ("*Pencils from the PRC*") and accompanying Issues and Decision Memorandum at Comment 6.

[158] See *Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rope From India and the People's Republic of China; Notice of Final Determinations of Sales at Not Less Than Fair Value: Steel Wire Rope from Malaysia*, 66 FR 12759 (February 28, 2001), and accompanying Issues and Decision Memorandum at Comments 1 and 6 (*Steel Wire Rope*).

[159] *See Final Results of Redetermination Pursuant to Catfish Farmers of America v. United States, Consol. Court No. 08-00111, Slip Op. 09-96*, (September 14, 2009), dated December 10, 2009, at 4-7.

[160] *See Carbazole Violet Pigment 23 from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 36630 (June 28, 2010) ("Carbazole") and accompanying Issues and Decision Memorandum at Comment 6.

tempered glass for the POR is aberrational, particularly when viewed in light of the other information on the record which demonstrates that the Thai AUV for tempered glass for the POR is not aberrational.

In summary, the Thai AUV for tempered glass is reasonable because, based on a comparison methodology consistent with the Department's practice, it is within the range of AUVs of other economically comparable surrogate countries. The AUV of tempered glass imports into Ukraine is higher than the Thai AUV while the AUV of imports into Ecuador is lower. While some of the "benchmark" prices for tempered glass cited by Yingli are less than the Thai AUV for tempered glass, the CIT has stated that the existence of values that are higher or lower than other data on the record does not, by itself, demonstrate the value to be aberrational. Just because there are differences between proposed values from different countries does not necessarily mean that one of those values is aberrational.[161] Also, as noted above, the Thai imports are not aberrantly small in terms of value ($10,000,000) or quantity (2,000,000 kg). Thus, there is no reason to choose an alternate surrogate value to Thai imports of HTS 7007.19.90000 when valuing tempered glass. Further, Thai HTS 7007.19.90000 specifically consists of tempered glass and thus represents the best available information for valuing Yingli's tempered glass.

We also note that the Department has a preference to use SV data from a single surrogate country.[162] The POR imports of Thai HTS 7007.19.90000 is the only SV on this record that comes from our single surrogate country Thailand. Thus, because for the reasons stated above, we find the Thai POR import data to be a reliable surrogate value, there is no reason to consider the values argued for by Yingli from other countries. Furthermore, the Department prefers to use published prices that are widely available, rather than prices and price quotes from a limited number of suppliers that can only be obtained through direct inquiry.[163] Publicly available, published prices generally do not suffer from potential biases compared to the five German price quotes submitted by Yingli, that can be obtained through research by private firms.

Comment 11: Surrogate Value for Junction Boxes

Petitioner

- As it did in the first administrative review of this order, the Department should value Yingli's junction boxes using Thai HTS 8544.42.99000 (Other Electric Conductors, for a Voltage not Exceeding l,000V, Fitted with Connectors, Other).[164]
- Thai HTS 8544.42.9100 (Other electric conductors, for a voltage not exceeding 1,000 V: Fitted with connectors: Electric Cables Insulated With Plastics Having A Core Diameter

[161] *See Camau Frozen Seafood Processing Import Export Corporation v. United States*, 929 F. Supp. 2d 1352, 1356 n.9 (CIT 2013) ("*Camau II*"); *see also Trust Chem Co. Ltd. v. United States*, 791 F. Supp. 2d 1257 (CIT 2011) (affirming the Department's determination that "higher prices alone do not necessarily indicate that the price data are distorted or misrepresentative, and thus are not sufficient to exclude a particular surrogate value").
[162] *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 3987 (January 22, 2009) and IDM at Comment 6. *See also* Policy Bulletin 04.1.
[163] The domestic Thai prices and the Linde Thailand price quote to Trina summarized in Enclosure 1 of Trina's case brief were obtained through direct inquiry by Trina.
[164] *See* Petitioner Case Brief at 16-18.

Not Exceeding 19.5mm), which was used to value this input in the *Preliminary Results*, is limited only to electric cables and does not include the junction box or other components incorporated into the box.

Yingli

- The Department should continue to value Yingli's junction boxes using Thai HTS 8544.42.9100 because it is more specific to Yingli's junction boxes (based on certain proprietary information).[165]

Trina

- The Department should not value junction boxes with the surrogate value suggested by Petitioner as Petitioner did not provide evidence to support its claim that junction boxes possess numerous other components in addition to the electric cable (Petitioner argues that the HTS number used in the *Preliminary Results* is limited only to electric cables) or whether those components are relatively more significant than the cable.
- Thus, the Department should continue to value Yingli's junction boxes using Thai HTS 8544.42.9100.

Department's Position:

The Department agrees with Petitioner and has valued the respondents' junction boxes using Thai HTS 8544.42.99000 (Other Electric Conductors, for a Voltage not Exceeding l,000V, Fitted with Connectors, Other) for these final results of review. As Petitioner states, Thai HTS 8544.42.9100 appears to be limited to electrical cables. Both Yingli's and Trina's marketing materials contain diagrams of its solar panels, which depict the junction box contained in the solar panel as a rectangular device with two attached wires.[166] This fact precludes Yingli's and Trina's junction boxes from being classified under HTS 8544.42.9100 and thus obviates the need to rely on the proprietary information cited by Yingli that purports to show its junction box meeting certain characteristics of Thai HTS 8544.42.9100. Because both Trina and Yingli describe their junction boxes as consisting of electric conductors, for a voltage not exceeding l,000V, and fitted with connectors,[167] we find that Thai HTS 8544.42.99000 is more specific to the input at issue and have used this HTS category to value Yingli's and Trina's junction boxes for these final results of review.

Comment 12: Financial Statements

Petitioner

- For the final results, the Department should calculate respondents' overhead, selling, general and administrative ("SG&A") expenses and profit using the financial statements of Ekarat Engineering Public Company Limited ("Ekarat") because there is record evidence that Styromatic (Thailand) Co., Ltd. ("Styromatic"), which does not produce

[165] *See* Yingli Rebuttal Brief at 16-17.
[166] *See* Yingli's April 16, 2015 Section A Response at Exhibit A-49 and Trina's April 17 Section A Response at Exhibit 20.
[167] *See* Yingli's July 22, 2015 Response at its response to question 21 and Trina's April 17 Section A Response at Exhibit 20.

solar cells and modules and was the Department's choice in the *Preliminary Results*, received countervailable subsidies during the POR.[168] The record contains information that is similar to the information that led the Department to conclude in the investigation that Styromatic was a recipient of countervailable subsidies.

- As the Department recognized in the *Preliminary Results*, Ekarat is the only manufacturer of subject merchandise for which financial statements are on the record.[169] Ekarat's financial statements are therefore the best available information to use in calculating surrogate financial ratios.

Trina

- The Department should not calculate surrogate financial ratios using Ekarat's financial statements because its financial statements lack information needed to calculate surrogate financial ratios, including a complete and correct itemization of all elements of costs, and they combine certain elements of costs that the Department normally segregates.[170]
- Petitioner has cited sales by Ekarat of transformer production, transformer maintenance services, and electricity as evidence that Ekarat produces subject merchandise. However, there is nothing to equate such products with solar cells or solar panels. Further, while Ekarat's income statement identifies sales to Ekarat Solar Co. Ltd., there is no evidence that these sales relate to solar cells or solar panels.[171]
- Ekarat's financial statements are distorted by countervailable subsidies.[172] However, there is no evidence that Styromatic's financial statements are tainted by countervailable subsidies.
- If the Department determines that all available Thai financial statements contain evidence of countervailable subsidies, then the Department should calculate surrogate financial ratios using the financial data of South African producer, Mustek Limited, which were used in the investigation of *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China* to calculate surrogate financial ratios.[173]

Yingli

- None of Petitioner's evidence that Styromatic benefited from countervailable subsidies relates to the POR.
- Petitioner has provided no evidence that any assistance provided by the Thailand Board of Investment ("BOI") before, or after, the POR corresponds to a subsidy program that the Department has previously found to be countervailable.
- If the Department determines that all available Thai financial statements contain evidence of countervailable subsidies, then it should calculate surrogate financial ratios using the financial data of South African producer, Mustek Limited, which were used in the investigation of *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China* to calculate surrogate financial ratios.

[168] *See* Petitioner's case brief at 23 (*citing* Petitioner's October 29, 2015 submission at Exhibit 2).
[169] *Id., at* 27 (citing PDM at 27).
[170] *See* Trina's rebuttal brief at 2 (*citing* Petitioner's October 19, 2015 submission at Exhibit 5).
[171] *Id., at* 4-5 (*citing* Petitioner's October 19, 2015 submission, Exhibit 5 at 61).
[172] *Id., at* 7 (*citing* Petitioner's October 19, 2015 submission, Exhibit 5 at 113-114, note 37).
[173] *Id., at* 8-9 (*citing Solar Products Investigation,* and accompanying IDM at Comment 2).

Department's Position:

We disagree with Petitioner's assertion that Styromatic received countervailable subsidies during the POR. Petitioner has not cited any evidence in Styromatic's financial statements of countervailable subsidies and we can find no evidence in its financial statements of countervailable subsidies.[174] Instead, Petitioner cites various sources citing assistance provided Styromatic by the BOI.[175] However, as Yingli correctly points out, none of the evidence submitted by Petitioner to support its claim that Styromatic received countervailable subsidies pertains to the receipt of benefits during the POR. Furthermore, Petitioner has provided no evidence that any assistance provided to Styromatic by BOI before or after the POR corresponds to a subsidy program that the Department has previously found to be countervailable.

While Petitioner claims that Ekarat produced subject merchandise, and notes that the Department stated as much in the *Preliminary Results*,[176] after further examination we have determined that there is no evidence on the record to support such a finding. As noted by Trina, Ekarat's financial statements identify sales of transformer production, transformer maintenance services, and electricity. Petitioner has apparently relied on this as evidence that Ekarat produces subject merchandise. However, there is nothing in the financial statements themselves that equates such products with solar cells or solar panels.[177] Additionally, Petitioner has not challenged the Department's finding in the *Preliminary Results* that Ekarat benefitted from countervailable subsidies.[178]

The Department generally values overhead, SG&A, and profit using financial statements of producers of merchandise in the surrogate country that is identical or comparable to the subject merchandise, that cover a period that is contemporaneous with the POR, that are subsidy-free, and that are publicly available.[179] In the instant case, of the six Thai financial statements on the record, only Styromatic's financial statements contain no evidence of countervailable subsidies during the POR, while there is clear evidence that the other financial statements are for companies that received countervailable subsidies.[180] Thus, Styromatic's financial statements represent the only contemporaneous, audited, subsidy-free, financial statements on the record of this proceeding for a producer of merchandise comparable to the subject merchandise in the primary surrogate country. Therefore, for the final results of this administrative review, we are continuing to rely solely on the Styromatic's financial statements, as we determine that they

[174] *See* Yingli's October 19, 2015 submission at Exhibit 2.
[175] *See* Petitioner's case brief at 24 (citing to its October 29, 2015 submission at Exhibits 2A – 2D).
[176] *See* PDM at 27.
[177] *See* Petitioner's October 19, 2015 submission at Exhibit 5.
[178] *See* PDM at 27-28.
[179] *See 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), and accompanying IDM at Comment 2.
[180] *See* the Team Precision Public Co. Ltd. financial statements at note 18, in Yingli's July 29, 2015 submission at Exhibit 1; *see also* the Hana Microelectrics Public Co., Ltd. financial statements at note 26, in Petitioner's July 15, 2015 submission at Exhibits 13 and 14; *see also* the Hitachi Tochigi Electronics (Thailand) Co., Ltd. financial statements at note 12, in Yingli's October 19, 2015 submission at Exhibit 1; *see also* the KCE Electronics Public Company Limited Financial Statements at note 31, in Petitioners' October 19, 2015 submission at Exhibits 3 and 4; and *see also* the Ekarat Engineering Public Company Limited financial statements at note 37, in Petitioner's October 19, 2015 submission at Exhibits 5 and 6.

constitute the best available information on the record for the purposes of calculating the surrogate financial ratios.

Comment 13: Surrogate Value for Semi-finished Polysilicon Ingots and Blocks

Petitioner

- In the *Preliminary Results* of this review, the Department based the surrogate value for semi-finished polysilicon ingots and blocks on international prices of polysilicon. This surrogate value is substantially understated because polysilicon ingots and blocks cost more than virgin polysilicon because of the value added processes necessary to convert the polysilicon into ingots and blocks.
- The Department should base the surrogate value for these inputs on the market economy purchase prices paid for these specific inputs by respondents. These prices demonstrate that the surrogate value used in the *Preliminary Results* substantially undervalued polysilicon ingots and blocks.
- If the Department does not base the surrogate value on market purchases, it should value these inputs by adding to the international prices for polysilicon the value of the intermediate inputs that are required to produce silicon ingots and silicon blocks.

Trina and Yingli

- Polysilicon ingots and blocks are comprised primarily of polysilicon. The Department should therefore continue to value these items as polysilicon for the purposes of its final results by utilizing the world-market prices for polysilicon, or alternatively, by applying a surrogate value based on imports of HTS 2804.61 (silicon, containing by weight less than 99.99 percent of silicon).
- The Department has previously rejected the use of proprietary market economy purchase prices in determining whether surrogate values are aberrational. In *Solar Cells AR1*, the Department stated that in instances where less than 85 percent of the total volume of a factor is purchased from market economy suppliers, those market economy purchases cannot serve as a benchmark for assessing the propriety of surrogate values.[181]
- Petitioner's proposal to value polysilicon ingots and blocks by increasing international prices for polysilicon by the value of intermediate inputs that are required to produce silicon ingots and blocks ignores the fact that the value of those inputs is expressed on a per-watt basis but the Department would need to have this information on a per-kilogram basis. Additionally, there is no precedent for such an approach.

Department's Position:

Consistent with our determination in *Solar Cells AR1*,[182] we disagree with Petitioner and have determined that the best available information on the record to value polysilicon ingots and blocks is the international prices of solar-grade polysilicon. No party submitted a surrogate value for ingots and blocks. Because semi-finished polysilicon ingots and blocks comprise primarily polysilicon, the world-market price for polysilicon represents the best surrogate value

[181] *See Solar Cells AR1* IDM at Comment 35.
[182] *Id., at* Comment 34.

information on the record to value respondents' polysilicon ingots and blocks. Although Petitioner contends that using the world-market price for polysilicon to value polysilicon ingots and blocks misses certain processing costs, most of the processing done to produce ingots and blocks from virgin polysilicon (*e.g.*, melting the polysilicon and casting the ingots, cutting the ingots into blocks) is largely performed by expensive machinery.[183] Thus, most of the costs of this production are already captured by manufacturing overhead. We do not believe there is sufficient evidence to demonstrate that the processing and additional inputs used at the ingot, and block production stages adds significant value beyond the original cost of the polysilicon. Further, although Petitioner argues that we should add the cost of the processing necessary to convert the polysilicon into ingots and blocks, none of the information required to make this adjustment is on the record. Therefore, we have continued to value Yingli's and Trina's polysilicon ingots and blocks using the world-market price for polysilicon.

Petitioner compares market economy purchase price information for ingots and blocks with the surrogate used to value these FOPs to determine whether the Department has selected the appropriate surrogate value. However, it is Department practice not to use a respondent's market economy purchase prices as benchmarks to determine whether an SV is appropriate[184] because a respondent's market economy purchase prices are proprietary information and are not necessarily representative of industry-wide prices available to other producers.[185] Additionally, the Department typically rejects price quotes and prices from single surrogate producers as surrogate values because they do not constitute contemporaneous broad market averages, which the Department prefers for purposes of FOP valuation.[186] For the same reasons, we do not find that market purchases made by one company constitute a broad market average. Rejection of market purchases as a surrogate value based partially on the fact that they did not constitute a broad market average was sustained by the CAFC.[187] Accordingly, the market purchase prices paid by respondents for polysilicon ingots and blocks are neither appropriate benchmarks for SVs nor SVs themselves. Thus, we find that the SV for solar-grade polysilicon provides the best available information for valuing polysilicon ingots and blocks.

---

[183] *See* Trina's May 14, 2016 Section D submission at Exhibits D-3 and D-4 and its factors of production database submitted on November 16, 2015. *See also* Yingli's May 14, 2016 Section D submission at Exhibit D-3 and its factors of production database submitted on October 13, 2015.

[184] *See Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 38366 (July 6, 2006) (*Cased Pencils from the PRC*), and accompanying Issues and Decision Memorandum at Comment 1.

[185] *See Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 26712 (May 9, 2014) (*Multilayered Wood Flooring from the PRC 2011-2012*), and accompanying Issues and Decision Memorandum at Comment 6.

[186] *See, e.g., Certain Steel Threaded Rod from the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review; 2010-2011*, 77 FR 67332 (November 9, 2012), and accompanying Issues and Decision Memorandum at Comment 1. *See also Diamond Sawblades and Parts Thereof From the People's Republic of China; Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 32344 (June 8, 2015) and accompanying Issues and Decision Memorandum at Comment 1 where the Department stated that "we prefer country-wide information such as government import statistics to information from a single source, and we prefer industry-wide values to values of a single producer because industry-wide values better represent prices of all producers in the surrogate country. We also prefer to value factors using prices that are broad market averages because 'a single input price reported by a surrogate producer may be less representative of the cost of that input in the surrogate country.'"

[187] *See Home Meridian Int'l Inc. v. United States*, 772 F.3d 1289 (CAFC 2014).

Comment 14: Surrogate Value for Backsheets

Petitioner

- The Department erred in utilizing Thai HTS 3920.62.00001 (plates, sheets, film, foil and strip of plastics, not self-adhesive, non-cellular, not reinforced etc., of polyethylene terephthalate ("PET") for tape used in the manufacture of telephonic or electric wire) to value Yingli's solar module backsheets and Thai HTS 3920.62.00090 (plates, sheets, film, foil and strip of plastics, not self-adhesive, non-cellular, not reinforced etc., of PET, other) to value Trina's solar module backsheets.
- Thai HTS 3920.62.00001 pertains to plastics used in the manufacture of telephonic or electrical wire, which is a specific use provision that has no bearing on backsheets material used for photovoltaic applications. The Department recognized in the first administrative review in this proceeding that photovoltaic backsheets are neither telephone nor electronic wire.[188]
- The market economy prices that respondents paid for their backsheets are not comparable to the surrogate values that the Department used to value the backsheets.[189] These discrepancies demonstrate that the surrogate values the Department applied in the preliminary results are unrepresentative of Yingli's and Trina's backsheet costs.
- Utilization of Thai HTS 3920.62.00001 to value most backsheets consumed by Trina and Yingli would represent a broad oversimplification of solar-grade backsheets, which are highly technical and particularized goods. Solar-grade backsheets are engineered materials designed for long use, have protective and insulating properties, and contain several different layers of materials, including patented or trademarked materials, which are more expensive than the AUVs the Department assigned to this input.
- The Department should value all backsheets utilizing Thai imports of other plastics in sheet form classified under Thai HTS 3920.99.90090 (plates, sheets, film, foil and strip of plastics, not self-adhesive, non-cellular, not reinforced or laminated etc., nesoi, other). Alternatively, the Department should consider taking a simple average of the Thai HTS numbers corresponding to imports of the various constituent backsheet materials to yield an average price per-kilogram applicable to total backsheet consumption.

Trina

- The appropriate SV for Trina's backsheets that consist primarily of PET is the AUV of Thai HTS 3920.62.00001 not the AUV of Thai HTS 3920.99.90090. On the other hand, the Department correctly valued Trina's backsheets consisting primarily of ethylene-vinyl acetate ("EVA") using Thai HTS 3920.10.00090
- Petitioner's suggestion to value backsheets using an HTS subcategory that covers plastics not elsewhere specified under HTS 3920 is inappropriate because PET film is classified under HTS 3920.62 and EVA is classified under HTS 3920.10 (plates, sheets, film, foil and strip of plastics, not self-adhesive, non-cellular, not reinforced etc., of polymers of ethylene). Thus, HTS 3920.62, which covers PET film, is an appropriate HTS category for valuing Trina's backsheets that consist primarily of PET, while HTS 3920.10, which

[188] *See* Solar Cells AR1 IDM at Comment 24.
[189] *See* Trina's May 14, 2016 Section D Response at Exhibit D-6 and Yingli's May 14, 2016 Section D Response at Exhibit D-6.

covers polymers of ethylene, is specific to Trina's EVA backsheets because EVA consists of polymers of ethylene.
- Market economy purchases paid by the Chinese respondents are not factors the Department normally considers in assessing potential surrogate values.
- The invoice corresponding to the purchase cited by Petitioner in its arguments classifies Trina's imports of backsheets under HTS 3920.62.[190]

Yingli
- The Department should reject Petitioner's arguments because the most significant component of Yingli's backsheets is PET, which corresponds to Thai HTS 3920.62.
- The plastics that constitute the vast majority of Yingli's backsheets cannot be considered "highly engineered plastic" materials as argued by Petitioner.
- If the Department concludes that the Thai HTS number used in the preliminary results to value Yingli's backsheets is incorrect, then it should use Thai HTS 3920.62.00090, which also corresponds to PET, to value Yingli's backsheets. Alternatively, the Department could value Yingli's backsheets using the average of Thai HTS categories corresponding to the primary and secondary materials contained in Yingli's backsheets.
- Under Department practice, Yingli's proprietary market economy purchase prices cannot serve as benchmarks for assessing a selected surrogate value because a respondent's market economy purchases are proprietary information and are not necessarily representative of industry-wide prices available to other producers.[191]

Department's Position:

Yingli reported that PET was the primary input in all of its backsheets,[192] while Trina reported that its backsheets consisted primarily of either PET or EVA.[193] As noted by both respondents, HTS heading 3920 consists of categories specific to PET (HTS 3920.62) and EVA (HTS 3920.10). Therefore, we disagree with Petitioner that HTS 3920.99.90090, which is a category covering plastics not elsewhere specified under HTS heading 3920, is the appropriate HTS category for valuing Yingli and Trina's backsheets, which consist primarily of PET and/or EVA. Furthermore, both Trina and Yingli cited importation documents demonstrating that the backsheets primarily consisting of PET are properly classified under HTS 3920.62.[194] Therefore, we find that HTS 3920.62 and 3920.10 constitute the best available information on the record to value backsheets primarily consisting of PET and EVA, respectively, because each category only covers imports corresponding to the primary type of material used in the respondents' backsheets.

Petitioner argues that the market economy prices that respondents paid for their backsheets are not comparable to the SVs that the Department used to value the backsheets. However, as noted in response to another issued discussed above, it is the Department's practice not to use a

[190] *See* Trina's May 14, 2016 Section D Response at Exhibit D-6.
[191] *See, e.g., Solar Cells AR1* IDM at Comment 35.
[192] Publicly stated in Yingli's July 22, 2015 submission at its response to question 22.
[193] *See* Trina's September 23, 2015 response at 2, publicly summarized in its rebuttal brief at 14-15.
[194] *See* Yingli's May 14, 2015 Section D submission at Exhibit D-6 and Trina's May 14, 2015 Section D submission at Exhibit D-6.

respondent's market economy purchase prices as benchmarks to determine whether a surrogate value is appropriate[195] because a respondent's market economy purchase prices are proprietary information and are not necessarily representative of industry-wide prices available to other producers.[196] For this reason, we find the Petitioner's argument unpersuasive.

Petitioner and Yingli alternatively suggested valuing backsheets using a simple average of the AUVs of HTS categories covering imports of the various constituent backsheet materials. However, Trina and Yingli purchased backsheets for use in solar panels, not the separate types of plastic used to make the backsheets.[197] Because record evidence shows that Yingli and Trina bought whole backsheets, as opposed to assembling the various components themselves, we selected the best available information on the record for valuing backsheets, not for valuing the components of backsheets. However, there are no SVs on the record specifically for backsheets. Backsheets are multilayered plastic sheets. Thus, we determined that the best available information on the record for valuing backsheets is the import value for the type of plastic sheet which most closely corresponds to type of backsheets used by the respondents. Furthermore, both Trina and Yingli cited customs documents demonstrating that the backsheets primarily consisting of PET are properly classified under HTS 3920.62.[198]

While Petitioner argues that using Thai HTS numbers for various types of plastic sheets (*i.e.*, Thai HTS 3920.62 and 3920.10) to value backsheets is inappropriate because it reflects a broad oversimplified view of backsheets which does not account for other aspects of the product (*e.g.*, the specifically engineered design and other technical aspects of the product), the potential import values suggested as SVs by all of the interested parties, including Petitioner, namely Thai HTS numbers 3920.10, 3920.62, and HTS 3920.99, all cover plates, sheets, film, foil and strip of plastics. Hence, Thai HTS 3920.99, which Petitioner advocates using to value backsheets, is no more specific to respondents' backsheets with regards to the technical aspects of the backsheets, than the other potential import values on the record and, in fact, it is less specific to the backsheets because it does not cover EVA or PET. Thus, we disagree with Petitioner that Thai HTS 3920.99.90090, which is a category consisting of plastics not elsewhere specified under HTS heading 3920, is the best available information with which to value Yingli and Trina's backsheets, which consist primarily of PET and EVA, both of which are specified under HTS heading 3920. Specifically, Thai HTS 3920.62 covers PET, and Thai HTS 3920.10 covers polymers of ethylene, which would include EVA.

However, we agree with Petitioner that it is not appropriate to value backsheets using the subheadings within Thai HTS categories 3920.62 and 3920.10 covering, respectively, PET and EVA tape used exclusively in the manufacture of telephonic or electric wire (*i.e.*, Thai HTS 3920.62.00001 and 3920.10.00001) because these subheadings are not specific to Yingli and Trina's backsheets. For the final results, we are valuing Yingli and Trina's backsheets consisting primarily of PET using Thai HTS 3920.62.00090, which covers PET imports not included under

[195] *See Cased Pencils from the PRC*, and accompanying Issues and Decision Memorandum at Comment 1.
[196] *See Multilayered Wood Flooring from the PRC 2011-2012*, and accompanying Issues and Decision Memorandum at Comment 6.
[197] *See* Yingli's July 22, 2015 submission at its response to question 23 and Trina's May 14, 2015 Section D submission at D-6.
[198] *See* Yingli's May 14, 2015 Section D submission at Exhibit D-6 and Trina's May 14, 2015 Section D submission at Exhibit D-6.

Thai 3920.62.00001, and thus would cover backsheets while excluding tape used exclusively in the manufacture of telephone or electric wire. For the same reasons, we have valued Trina's backsheets consisting primarily of EVA using Thai HTS 3920.10.00090 which covers polymers of ethylene imports not included under Thai HTS 3920.62.00001.

Comment 15: World Cup Sponsorship

Yingli

- The Department should not adjust Yingli's indirect selling expenses by the expenses incurred by its parent company, Yingli Green Energy Holding Company Limited, for advertising during the World Cup. Each affiliate within the Yingli Group paid for its own advertising and marketing expenses in its own market if it benefited from those activities. For instance, Yingli's U.S. affiliate, Yingli Green Energy Americas, Inc., paid certain marketing expenses in the United States, including those expenses related to its sponsorship of the U.S. soccer team.
- However, if the entire Yingli Group benefitted from advertising or marketing activities, the parent company, Yingli Green Energy Holding Company Limited, assumed the entirety of those expenses, which is the case for the expenses incurred for the World Cup advertising. By adjusting Yingli's indirect selling expenses for the World Cup advertising expenses, the Department has included indirect selling expenses that were ultimately not incurred by Yingli Green Energy Americas, Inc. in its margin calculations.
- Surrogate SG&A expenses already include advertising expenses. In order to avoid double-counting Yingli's advertising expenses, the Department should not increase Yingli's indirect selling expenses to account for World Cup advertising expenses.

Petitioner

- Despite Yingli's claim that its affiliates incur advertising expenses solely in relation to their respective markets, Yingli did not provide information about the advertising expenses incurred by any other affiliate. The costs associated with a World Cup sponsorship are very large, and it appears that Yingli has shifted these costs away from its U.S. market.
- The Department should attribute a greater amount of advertising and marketing expenses to Yingli's U.S. sales than those expenses reported by the U.S. affiliate, Yingli Green Energy Americas, Inc., and continue to adjust the price of Yingli's U.S. sales for World Cup advertising and marketing expenses incurred by the parent company, Yingli Green Energy Holding Company Limited, because these expenses benefitted Yingli's sales in the U.S. market.
- Although Yingli claims that the marketing expenses are already captured in the financial ratio for SG&A, the surrogate SG&A expenses do not reflect advertising costs of the magnitude associated with the World Cup sponsorship. The Department's determination to adjust these advertising and marketing expenses is reasonable, and the Department should continue to adjust for these amounts in the final results.

Department's Position:

We have continued to adjust Yingli's U.S. indirect selling expenses by expenses related to World Cup advertising. Section 772(d)(1) of the Act directs the Department to deduct from the U.S. price, direct and indirect selling expenses, which relate to commercial activity in the United States. Furthermore, 19 CFR 351.402(b) states that the Department will adjust the price of U.S. sales by ".. .expenses associated with commercial activities in the United States that relate to the sale to an unaffiliated purchaser, no matter where or when paid." Yingli has not demonstrated that none of the World Cup sponsorship expenses relate to U.S. economic activities. Rather, this type of sponsorship benefitted the Yingli Group as a whole, including the U.S. sales affiliate, Yingli Green Energy Americas, Inc. Given that the advertising expenses related to the World Cup are not included in the financial statements of Yingli Green Energy Americas, Inc.,[199] included in the reported indirect selling expenses, or reported anywhere else in the U.S. sales expenses,[200] it is appropriate to allocate some of the World Cup sponsorship expenses to U.S. sales and deduct these expenses from the gross unit sales price when calculating the CEP for those sales.[201]

Although Yingli argues that including World Cup advertising expenses in U.S. indirect selling expenses double counts advertising expenses because such expenses are captured in the surrogate SG&A expenses, surrogate SG&A expenses are intended to value expenses incurred within the non-market economy, in this case China.[202] However, the World Cup advertising expenses were not reported in the financial statements of Yingli in China,[203] rather these expenses were reported in the financial statements of the parent company, Yingli Green Energy Holding Company Limited (which is located in the Cayman Islands).[204] Thus, we are not duplicating or otherwise "double-counting" Yingli's advertising expenses incurred in China or, as explained above, incurred by Yingli's U.S. sales affiliate, Yingli Green Energy Americas, Inc.

Comment 16: Data Source to use to Value Polysilicon and Wafers

Petitioner

- The Department should only use Bloomberg New Energy Finance ("BNEF") data to value polysilicon and polysilicon wafers.[205]

[199] *See* Yingli's October 22, 2015 response at 1 and demonstrated by Yingli's June 12, 2015 response at Exhibits SC1-6 and SC1-7.
[200] *See* Yingli's June 12, 2015 response at 13-14 and Exhibit SC1-6.
[201] As detailed in the Yingli Preliminary Results Analysis Memorandum at 4-5, consistent with Yingli's accounting of the expenses in question, we allocated the total World Cup advertising costs over a period of four years, and we then only allocated the portion applicable to the POR to U.S. sales based on U.S. sales by Yingli Green Energy Americas, Inc. as a percentage of the Yingli Group's worldwide sales.
[202] *See Drill Pipe From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances*, 76 FR 1966 (January 11, 2011) and accompanying Issues and Decision Memorandum at Changes From Verification, Comment C.
[203] *See* Yingli's October 22, 2015 response at 1 and demonstrated by Yingli's June 12, 2015 response at Exhibits SC1-6 and SC1-7.
[204] *See* Yingli's April 16, 2015 Section A response at A-3.
[205] *See* Petitioner's Case Brief at 10.

- The data from BNEF is preferable to the data from GTM Research ("GTM") for valuing polysilicon because the data from BNEF explicitly excludes pricing from Chinese sources whereas the data from GTM does not.
- It is the Department's practice to use surrogate data exclusive of prices from non-market economies as evidenced by the fact that it excluded imports from China in its calculation of Thai AUVs in the preliminary results.

Trina

- The Department should continue to rely on both BNEF and GTM as sources for international prices for valuing polysilicon and wafers.
- As a general principle, more data points provide broader, more accurate data.[206] Reliance on only the BNEF data would diminish the breadth and reliability of the polysilicon SVs.
- Petitioner's concerns regarding the GTM data are unfounded as the GTM data include both a "Global Blended" polysilicon price and a "China Domestic" polysilicon price. The record contains no indication that the GTM "Global Blended" price includes Chinese prices.[207]

Yingli

- The Department should reject Petitioner's argument and should either continue to value Yingli's polysilicon inputs using an average of the world-market prices derived from both BNEF and GTM, or value Yingli's polysilicon inputs using only data from GTM.
- In the investigation and first administrative review of this proceeding, the Department relied on world-market prices from more than one source to value polysilicon. The Department chose to value polysilicon inputs in the *Preliminary Results* by averaging the world-market prices derived from BNEF and GTM because this method uses the widest range of data available.[208]
- If the Department determines that only one source should be used to value polysilicon inputs, it should rely solely on GTM data as the data from BNEF does not offer prices that are truly representative of the world market. The BNEF data have been selectively scrubbed, without explanation, to exclude prices from Chinese sources but not prices from other countries considered by the Department to be non-market economies.

Department's Position:

We disagree with Petitioner and have continued to use both BNEF and GTM data to value polysilicon and polysilicon wafers. The BNEF data reflect "the average price of all companies who are either manufacturing or procuring this product outside of the China mainland."[209] The GTM data include both a "Global Blended" polysilicon price and a "China Domestic" polysilicon price.[210] In utilizing the GTM data we relied on the Global Blended polysilicon

[206] *See, e.g.*, *Steel Concrete Reinforcing Bar From the Republic of Turkey: Final Affirmative Countervailing Duty Determination Final Affirmative Critical Circumstances Determination*, 79 FR 54963 (September 15, 2014), ("*Concrete Bar from Turkey*") Issues and Decision Memorandum, at Comment 1.
[207] *See* Trina's Surrogate Value Submission, July 15, 2015, at Exhibit B-1, PV Pulse Report, Table 2A.
[208] *See Solar Cells Investigation* IDM at Comment 24 and *Solar Cells AR1* IDM at Comments 27 and 34.
[209] *See* Petitioner's July 15, 2015 submission at Exhibit 12.
[210] *See* Trina's Surrogate Value Submission, July 15, 2015, at Exhibit B-1, PV Pulse Report, Table 2A.

price.[211] Thus, both of the international prices that we used to value polysilicon and polysilicon wafers in the *Preliminary Results* are distinct from the GTM China domestic price that is clearly identified as PRC domestic prices. There are no further details regarding the Global Blended data. Thus, to the extent possible, we have attempted to not use PRC domestic prices to value polysilicon and polysilicon wafers. Although Petitioner advocates using BNEF data rather than GTM data to value these inputs because of the lack of specific information regarding what prices are included in the GTM data, as a general principle, the Department seeks to use a broad range of prices to determine board market-average SVs.[212] Given this goal, the available information regarding the two surrogate sources, and consistent with the Department's valuation of polysilicon in the previous review of this proceeding where we relied on GTM data as well as BNEF data in valuing polysilicon inputs,[213] we continue to value polysilicon inputs by averaging the world-market prices from both BNEF and GTM.

Comment 17: Calculation of Scrap for Waste Cells and Modules

Petitioner

- The Department erred when it valued broken and scrapped polysilicon cells and waste modules based on Thai imports of HTS 8548.90 ("Waste and scrap of primary cells, primary batteries and electric accumulators; spent primary cells, spent primary batteries and spent electric accumulators; electrical parts of machinery or apparatus, not specified or included elsewhere in this Chapter: Other"), which includes items wholly unrelated to solar cells. HTS 2804.69 ("Hydrogen, rare gases and other nonmetals: Silicon: Other") is more appropriate to value broken and scrapped polysilicon cells and waste modules as cracked photovoltaic cell material contains substantial numbers of contaminants that render the material anything but 99.99 percent pure. Significant reprocessing is required to remove these contaminants and allow the cell and module scrap to be reintroduced into production.
- The AUV of Thai imports of HTS 8548.90 is US$136.00 per kg, which is nearly seven times the SV for the primary material input, virgin polysilicon, used to produce photovoltaic cells and nearly 15 times higher than the price of finished modules sold by Trina and Yingli.[214] As the Department noted in *Wire Hangers from China*,[215] reliance upon a scrap value that is higher than the value of the primary input from which the scrap was generated is unreasonable.

Trina

- The Department should reject Petitioner's argument and continue to use HTS 8548.90 to value Trina's waste from cells and modules.[216]

---

[211] *See* Preliminary Results Surrogate Value Memorandum.
[212] *See Concrete Bar from Turkey*, and the accompanying Issues and Decision Memorandum at Comment 1.
[213] *See Solar Cells Investigation* IDM at Comment 24 and *Solar Cells AR1* IDM at Comments 27 and 34.
[214] *Id., at* 3 and Attachment II (Trina).
[215] *See Steel Wire Garment Hangers from the People's Republic of China*, 73 FR 47587 (August 14, 2008) and the accompanying IDM at Comment 7 (*Wire Hangers from China*) (citing *Final Determination Pursuant to The Remand Order From the U.S. Court Of International Trade In Paslode Division of Illinois Tool Works, Inc. v. United States*, Ct. No. 97-12-02161 (January 15, 1999)).
[216] *See* Trina Rebuttal Brief at 20.

- Finished solar cells, even when sold as scrap, could be more valuable than their main input.
- Petitioner's argument that Thai HTS 8548.90 includes items wholly unrelated to solar cells and thus is over-inclusive as a surrogate for waste from cells and modules is purely speculative because the record lacks any information regarding the actual items imported into Thailand during the POR under this tariff classification.

Department's Position:

We agree with Petitioner, in part. Yingli reported that it removes the polysilicon from its scrap solar cells and reintroduces it into production.[217] Thus, the value of these scrap solar cells is in the silicon content. Hence, consistent with *Solar ARI*,[218] we valued Yingli's scrap cells based on HTS 2804.69, which is the HTS category applicable to silicon.[219] Record evidence suggests that the nature of the process, and the additional chemicals and additives used during cell production, introduce impurities which may lower purity levels of the polysilicon obtained by re-melting the solar cells and using the re-melted solar cells with other feedstock polysilicon for ingot production.[220] Because solar cells primarily consist of polysilicon and Yingli's recycled polysilicon from solar cells requires cleaning to remove contaminants, it suggests that the recycled polysilicon is not at the purity level required for solar grade polysilicon (99.9999 percent silicon). Thus, we continue to use Thai imports for HTS 2804.69, which is for inputs of silicon containing less than 99.99 percent purity, to value Yingli's recycled cell by-product.

In contrast, Trina reported that "(c)ell scrap is broken cells generated in {the} cell production stage and, to a far lesser extent, in the module production stage. All cell scrap is sold since it could not be re-introduced into production."[221] Also, Trina reported that "(u)nqualified modules are completely broken modules that were sold or discarded. The scrap of certain aluminum frames was also recovered and sold during the POR."[222] Based upon these descriptions, in the *Preliminary Results*, the Department determined that Trina's cell scrap consisted of every component of the cell, not simply polysilicon, and its modules scrap consisted of every component of the module. Petitioner's suggested Thai HTS number, 2804.69, for valuing solar cell and module waste pertains specifically to silicon, which is only one component of solar cells and modules waste. We believe that the description of Thai HTS 8548 is more consistent with waste and scrap from solar cells and modules which are apparatus used to generate electricity, like a battery, than Thai HTS number, 2804.69 which simply covers silicon/polysilicon.

Thai HTS 8548 covers "Waste and scrap of primary cells, primary batteries and electric accumulators; spent primary cells, spent primary batteries and spent electric accumulators; electrical parts of machinery or apparatus, not specified or included elsewhere in this Chapter,"

[217] *See* Yingli's July 2, 2015 Response at 17-21 and Exhibit SDl-9.
[218] *See* Solar ARI IDM at Comment 33.
[219] *See* the Yingli Preliminary Analysis Memorandum.
[220] *See* Yingli's July 2, 2015 Response at 17-21 and Solar ARI IDM at Comment 33. Recycled polysilicon from solar cells scrap is combined with other recycled polysilicon and virgin silicon which then goes through a cleaning cycle using sand blasting and an alkali washing machine before used for ingot production
[221] *See* Trina's May 14, 2015 Section D response at D-22.
[222] *Id., at* D-23.

(*i.e.*, in HTS chapter 85).[223] Specifically, we believe that the best available information to value Trina's solar cells and modules scrap is Thai HTS 8548.10, "Waste and scrap of primary cells, primary batteries and electric accumulators; spent primary cells, spent primary batteries and spent electric accumulators," because the description of the HTS number is more similar to the characteristics of Trina's scrapped and broken solar cells and modules than the description of the alternative SVs on the record. Thai HTS 8548.10 is also a better surrogate than Thai HTS 8548.90.90000 ("electrical parts of machinery or apparatus, not specified or included elsewhere, Other" in HTS chapter 85) which the Department used to value Trina's solar cells and modules scrap in the *Preliminary Results*. Photovoltaic cells are more similar in function to electric storage batteries than "electrical parts of machinery or apparatus." Thus, given the SV options on the record, we believe that scrapped cell parts would be more similar to scrap from primary cells, batteries, and electric accumulators, than scrap from electrical parts of machinery or apparatus. We also note that this HTS 8548.10 was identified by Trina in comments submitted prior to the preliminary results as the best information from Thailand with which to value these by-products.[224]

We agree with Petitioner that the Department has a long-standing practice of rejecting or capping byproduct surrogate values in instances where the byproduct surrogate value exceeds the surrogate value of the input from which it was derived. Indeed, recent case precedent supports the practice of rejecting and/or capping a scrap surrogate value when it is higher than the surrogate value for the input which generated the scrap byproduct in question.[225] However, Petitioner made this comment with respect to Thai HTS 8548.90.90000 which has a higher AUV than that of virgin polysilicon, but we are no longer valuing solar cells and solar modules scrap using Thai HTS 8548.90.90000.[226] Secondly, as stated above, Trina's scrap cells and modules are not scrap polysilicon, but rather the scrap of all cell and module components. Thus, Petitioner's comparison, which focuses on only one input – polysilicon – is misguided in that it assumes that the only value in scrap cell and modules is provided by the polysilicon. Petitioner's comparison is like the comparison made in *Wire Hangers from China*, which was cited by Petitioner, where the Department refused to value certain steel wire rod scrap using an AUV that was over 40 percent greater than the calculated surrogate value for new wire rod.[227] However, here, as noted above, scrapped broken solar cells and modules are scrap not of one input used to manufacture the subject merchandise but instead scrap of the variety of inputs that compromise the subject merchandise itself. Hence, we do not find it appropriate to compare the scrap surrogate value selected by the Department to the AUV of polysilicon. Nor do we find it appropriate to compare the scrap surrogate value to the NV, the very item the Department is determining using its FOP methodology. Therefore, we do not believe that this argument is a basis for not valuing Trina's solar cells and modules scrap using Thai HTS 8548.10.

---

[223] *See* Letter from Yingli to The Honorable Penny Pritzker, "Re: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China: Yingli's Rebuttal Comments on Surrogate Values," dated July 29, 2015, at Exhibit SVR-11.
[224] *See* Trina's September 25, 2015 Pre-Preliminary Comments at Exhibit 3A.
[225] *See, e.g., Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2013-2014*, 80 FR 55328 (September 15, 2015) and the accompanying IDM at Comment 7.
[226] *See* Trina's September 25, 2015 Pre-Preliminary Comments at Exhibit 3A.
[227] *See Wire Hangers from China* at Comment 7.

Comment 18: Whether the Department applied the correct surrogate value to Trina's silver paste

Petitioner

- The Department's preliminary selection of Thai HTS 3824.90.99090 ("Prepared binders for foundry moulds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included, Other") to value Trina's silver paste is not appropriate because Trina's silver paste is 90 percent silver. CBP, in Ruling N026989, classified screen printing silver paste as HTSUS 7115.90.4000, which corresponds closely with the Thai HTS subheading that the Department used to value of Yingli's silver paste (HTS 7115.90.10000 ("Other articles of precious metal or of metal clad with precious metal, Other, Other."). The Department should value silver paste for both respondents using Thai HTS subheading 7115.90.10000.

Trina

- It is true that Yingli's silver paste is like that used by Trina. Yingli submitted supporting documentation establishing that the silver paste should be classified under HTS subheading 3824.90. There are no other supporting documents on the record regarding the correct HTS classification of silver paste, for the Department to rely upon to value Trina's silver paste.

Department's Position:

We agree with Petitioner and have, for these final results, valued Trina's silver paste using the AUV of Thai imports under HTS category 7115.90.10000. Trina reported that its silver paste was classifiable under Thai HTS category 3824.90.99090,[228] and as a result, in the preliminary results, the Department valued Trina's silver paste with the AUV corresponding to this HTS category. However, we have reexamined the record and note that Trina also reported that its silver paste is 90 percent silver.[229] Based on Trina's description of the input's physical characteristics, we find that HTS category 7115.90.10000 is the more appropriate category to value Trina's silver paste. Selecting HTS category 7115.90.10000 is also consistent with the Department's valuation of silver paste in the previous administrative review in this proceeding.[230] The explanatory notes of Chapter 71 of the HTSUS, which covers, among other things, precious metals, state that except where the context otherwise requires, reference in the tariff schedule to precious metals or to any particular precious metal includes a reference to alloys treated as alloys of precious metal.[231] The notes also state that a good will be classified as

[228] *See* Letter from Trina to The Honorable Penny Pritzker, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the PRC: Response to Request for Surrogate Values Information," dated September 25, 2015, at Exhibit 3A.
[229] *See* Letter from Trina to The Honorable Penny Pritzker, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the PRC: Section A, C, & D 2nd Supplemental Questionnaire Response," at 4.
[230] *See Solar ARI*, and the accompanying IDM at Comment 13.
[231] *See* Memorandum from Jeff Pedersen to the File, "2013-2014 Administrative Review of the Antidumping Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or not Assembled into Modules, from the People's Republic of China: Export Data and Customs Rulings and Related Documents," dated December 18, 2015, at Attachment III.

an alloy of a precious metal if any one precious metal constitutes as much as 2 percent, by weight, of the alloy.[232] Thus, the description of HTS category 7115.90.10000 more closely reflects Trina's silver paste, an item that is predominantly silver.

Comment 19: Whether the Department should apply partial AFA to Trina's unreported factors of production for purchased solar cells[233]

Trina

- Although both Trina and Yingli were unable to report FOPs for unaffiliated tolling processors and suppliers of solar cells, the Department applied AFA to Trina's unaffiliated suppliers of solar cells and facts available to Yingli. The only difference between Tina and Yingli is the quantity of cells that were purchased for which they were unable to provide FOP information. The Department's determination that the quantity of solar cells purchased by Trina was significant, and warranted partial AFA, is arbitrary and not supported by evidence, as similar facts exist for the other mandatory respondent. While Trina recognizes that the relative percentages of purchased cells differ between Trina and Yingli, the fact that they were treated differently warrants more than an arbitrary determination that one figure is significant and another is not.
- The Department could have requested information to determine what constitutes a significant amount, but it did not.
- The evaluation of any non-cooperation from the cell producers to which the Department issued the section D questionnaire through Trina, must take into account the timing of the Department's requests in this review. Over the period of April 3, 2015, to November 2, 2015, Trina provided the Department with information about its repeated efforts to obtain information from unaffiliated cell suppliers, the quantity of FOP information at issue, and the information that it used to replace purchased cell FOP information. The information that Trina used as the facts otherwise available covers the same materials and the exact same CONNUMs of cells that were purchased. Despite this, the Department issued Section D questionnaires to five of Trina's cell suppliers with a ten-day deadline, eleven days before the scheduled deadline for the *Preliminary Results*. The Department normally affords parties thirty-five days to respond to section D of the questionnaire. The Department had no intention of relying on any responses from Trina's cell suppliers since they would have been submitted the day before the *Preliminary Results* were to be signed.
- In the final results, the Department should use Trina's FOP data as submitted, an approach that also would be consistent with its prior determinations in this proceeding.
- The Department's determination that Trina was in a position to induce cooperation of its suppliers was not based on substantial evidence. While Trina's letters to its suppliers referred to long business relationships, there is no information on the record to support

[232] *Id.*

[233] Petitioner added in its rebuttal brief a comment that the Department should also apply partial AFA to Yingli's unreported FOPs, but at the same time Petitioner contrasted Yingli's small amount of unreported FOPs relative to Trina's. Petitioner provided no explanation why the Department should apply AFA to Yingli's unreported FOPs, and consistent with the Department's finding in the preliminary results, the Department will use facts available in valuing the missing FOP data because Yingli documented its attempts to obtain the FOP information, there is usable information on the record to value the missing

that Trina had current orders with any of the companies, or that Trina is larger and more influential than its suppliers. The influence and industry stature of the solar cell suppliers could be equal to or greater than that of Trina.

- The holding in *Mueller*[234] permits the Department to apply AFA to a respondent where a non-cooperating party's actions have collateral consequences for the cooperating respondent. However, the Department must use facts available that promote fairness and accuracy.
- If the Department applies partial AFA, the Department should apply one of three alternative approaches that are more reasonable than that used in the preliminary results. The Department could (1) apply AFA only to the portion of Trina's missing solar cell inputs above 15 percent, as the Department's regulations have defined "substantially all" to be 85 percent in other contexts;[235] (2) determine that the amount near the midpoint of the two respondents' unreported purchased cell percentages is "significant" and limit application of AFA to the portion of Trina's missing solar cell inputs above that amount; or (3) apply AFA to the portion of Trina's missing solar cell inputs above Yingli's unreported purchased cell percentage. Further, rather than applying the highest consumption rates among CONNUMs sold in the U.S. market, the Department should apply the weighted average consumption rates of the half of these CONNUMS with the highest consumption rates.

Petitioner

- Yingli's percentage of purchased cells was a relatively small share supplied by many unaffiliated suppliers, and thus the unreported production is less significant.
- The Department requested information from Trina regarding its cell suppliers at the beginning of the review, and put Trina on notice that it might need to provide FOP information for its suppliers, yet the record lacks necessary FOP information from the suppliers at issue. Unlike the situation with Yingli's suppliers, the Department issued questionnaires to five of Trina's suppliers directly, and they refused to cooperate. Trina indicated that it was aware of the importance of the information and the consequences of refusal to provide the information in its responses. The suppliers should also have been aware of this. Any suggestion that the suppliers had insufficient time is untrue, because none requested additional time to respond.
- Based on the percentage of cells supplied to Trina, one of the two largest sellers of subject merchandise, Trina could have induced cooperation from its cell suppliers, but did not. Further, record information does not support Trina's claim regarding whether Trina was still purchasing solar cells from the suppliers at issue.[236]
- The Department's decision to value the unreported FOPs by using the highest consumption rate of the same inputs used by Trina to produce solar cells is consistent with Department practice.[237]

---

[234] *See Mueller Comercial De Mexico, S. De R.L. De C.V. v. United States*, 753 F.3d 1227, 1233 (Fed. Cir. 2014) ("*Mueller*").
[235] *See* Trina case brief at 10 (citing 19 CFR 351.408(c)(1) and 351.208(c)).
[236] *See* SolarWorld rebuttal brief at 21-22.
[237] *Id., at* 22 (*citing Polyethylene Terephthalate Film, Sheet and Strip from the People's Republic of China: Final Results of the 2009–2010 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 77 FR 14493 (March 12, 2012) ("*PET Film*") and accompanying IDM at Issue 10; *Certain Malleable Iron Pipe Fittings from the*

- Trina's suggested alternative approaches have no basis in the Department's regulations or past practice.
    - Trina's first suggestion (using the 85 percent /15 percent test) relies on 19 CFR 351.408, which governs when the Department should use prices paid in market economy countries to value FOPs, and is therefore wholly irrelevant to the question before the Department. Respondents are also required to provide FOPs for all subject-merchandise-related consumption during the POR so there is no basis to use an 85 percent threshold.
    - Regarding Trina's second and third suggestions, determining the "significant" amount with respect to one respondent based, even in part, on the conduct of another mandatory respondent is unreasonable and without precedent.

Department's Position:

We disagree with Trina's claim that the use of partial AFA to value the unreported FOPs from Trina's unaffiliated solar cell suppliers is arbitrary. The Department's determination to apply partial AFA in this case is consistent with our practice regarding the valuation of unreported FOPs. The Department has previously excused respondents from reporting FOPs from some of their smallest suppliers in situations where a respondent has a large number of suppliers,[238] and also in situations where the unreported FOP data are of limited quantity.[239] This case is distinguishable from situations where the Department has excused respondents from reporting FOPs, and distinguishable from the situation of Yingli in this administrative review, because the percentage of solar cell inputs provided by Trina's unaffiliated solar cell suppliers is significant and cannot reasonably be characterized as being of limited quantity. Moreover, the Department issued the antidumping duty questionnaire to Trina's largest solar cell suppliers, and these suppliers refused to respond to the questionnaire.[240] Our determination here is consistent with prior determinations. For instance, in *Narrow Woven Ribbons*, the Department applied partial AFA because unaffiliated ribbon suppliers declined to report their costs related to subject merchandise and thus failed to cooperate with the Department's requests for information.[241] The Department determined that the application of partial AFA was appropriate because the unaffiliated ribbon suppliers were interested parties within the meaning of section 771(9)(A) of

---

People's Republic of China, 71 FR 37051 (June 29, 2006) and accompanying IDM at Comment 14).

[238] *See Certain Activated Carbon From the People's Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review and Extension of Time Limits for the Final Results*, 74 FR 21317, 21320-21321 (May 7, 2009) ("Activated Carbon AR1"), unchanged in *First Administrative Review of Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 57995 (November 10, 2009) ("Activated Carbon AR1 Final").

[239] *See Activated Carbon AR1*, 74 FR at 21321, unchanged in *Activated Carbon AR1 Final*. *See also Crystalline Silicon Photovoltaic Cells. Whether or Not Assembled Into Modules. From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2012-2013*, 80 FR I 021 (January 8, 2015) and accompanying Preliminary Decision Memorandum at 17, unchanged in *Solar ARI*.

[240] *See* Memorandum from Thomas Martin to Abdelali Elouaradia, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Unreported Factors of Production," ("Trina Unreported FOPs Memorandum") dated December 18, 2015, at 9-10.

[241] *See Narrow Woven Ribbons With Woven Selvedge From Taiwan; Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 19635 (April 13, 2015) and the accompanying and accompanying Issues and Decision Memorandum at Comment 7.

the Act in that the suppliers produced ribbons and then sold the ribbons to the mandatory respondent who, after further processing, exported the ribbons to the United States during the POR. Similarly, in *Certain Steel Nails,* the Department applied partial AFA in determining the respondent's dumping margin because an interested party (its unaffiliated supplier) did not provide FOP data and noted that "it is crucial for suppliers of subject merchandise to provide their own FOP data because suppliers actually provide finished merchandise independently subject to the Order, in contrast to tollers who only perform a process at one stage of the production."[242] Here, as we explained in our preliminary results, Trina's unaffiliated solar cell suppliers are interested parties within the meaning of section 771(9)(A) of the Act because they are subject merchandise producers (solar cells are subject merchandise) and they failed to cooperate by not providing their FOP data.[243] Thus, consistent with section 776(b) of the Act, which states that the Department may apply AFA when an interested party has failed to cooperate by not acting to the best of its ability in responding to the Department's requests for information, we find the use of partial AFA to be appropriate.[244] Accordingly, we continue to find, pursuant to section 776(b) of the Act, that the application of partial AFA is warranted, and have continued to value the unreported solar cell FOPs using Trina's highest consumption rates for FOPs for solar cells sold in the United States.[245]

Regarding Trina's argument that the Department's application of partial AFA is inconsistent with *Mueller*, the Department disagrees.[246] The Court indicated in *Mueller* that fairness or accuracy, rather than deterrence, is the overriding purpose of the antidumping statute,[247] yet it recognized that the Department may apply AFA in determining a respondent's dumping margin in order to induce cooperation by other interested parties whose information is needed to calculate that respondent's dumping margin, in situations where the respondent has a mechanism to induce the non-cooperating party to cooperate.[248] The Court has also recognized that the purpose of applying AFA, in whole or in part, is to induce cooperation without being punitive.[249] In *PET Film* and *Malleable Pipe* the Department applied, as partial AFA for missing

---

[242] *See Certain Steel Nails From the People's Republic of China: Final Results and Final Partial Rescission of the Second Antidumping Duty Administrative Review*, 77 FR 12556 (March 1, 2012) and accompanying Issues and Decision Memorandum at Comment.
[243] *See* Trina Unreported FOPs Memorandum at 8.
[244] *Id., at* 9.
[245] *See* Memorandum from Thomas Martin to the File, "Antidumping Duty Administrative Review of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Preliminary Analysis Memorandum for Changzhou Trina Solar Energy Co., Ltd., Trina Solar (Changzhou) Science and Technology Co., Ltd., Yancheng Trina Solar Energy Technology Co., Ltd., Changzhou Trina Solar Yabang Energy Co., Ltd., Turpan Trina Solar Energy Co., Ltd., and Hubei Trina Solar Energy Co., Ltd.," dated December 18, 2015, at 8-15.
[246] In *Mueller*, the Court of Appeal for the Federal Circuit ("CAFC") concluded that the Department may rely on considerations such as inducement of cooperation when an unaffiliated supplier failed to provide its cost of production to prevent the unaffiliated party from otherwise evading an antidumping rate by selling its goods through a participating respondent. In *Mueller* the CAFC agreed with the Department that Mueller had an existing relationship with the supplier and thus could have "refused to do business" with that company "in the future as a tactic to force" that company to cooperate. *See Mueller*, 753 F.3d at 1235. The CAFC thus held that because Mueller and other exporters could refuse "to export goods produced" by the unaffiliated supplier, such a relationship could "potentially induce" the supplier "to cooperate."
[247] *See Mueller*, 753 F.3d at 1235.
[248] *Id., at* 1233, 1235.
[249] *See F.Lii De Cecco Di Filipo Fara S. Martino S.pA. v. United States*, 216 F.3d 1027, 1032 (CAFC 2000); *Gallant Ocean (Thai.) Co., Ltd. v. United States*, 602 F.3d 1319, 1324 (CAFC 2010).

FOPs, the highest consumption rate reported in the respondent's FOP data set for the same inputs for which consumption data were missing.[250] Here, the missing data are the inputs used to produce solar cells. Accordingly, as AFA, the Department applied to the inputs not reported by the uncooperative suppliers the highest consumption rate of the same inputs used by Trina in producing solar cells,[251] weighted by the percentage of solar cells provided by the uncooperative suppliers. We emphasize that the Department's methodology uses Trina's FOP data just as reported in its submitted database, in determining the great majority of the normal value of each CONNUM of the solar cells used in its POR production. Indeed, the FOP data we are using as partial AFA is weight-averaged with Trina's actual reported FOP consumption for the solar cells that Trina itself produces. Thus, the manner in which we have applied partial AFA in this case is consistent with the Court's decision in *Mueller i.e.*, consistent with the overriding purpose of the antidumping statute (fairness or accuracy), and consistent with the purpose of applying AFA, *i.e.*, deterring non-cooperation without being punitive.

While Trina has devised three other partial AFA methodologies that would all reduce the adverse impact on Trina's dumping margin from that of the methodology used by the Department in the *Preliminary Results*, the possibility of alternative methodologies does not in itself mean the Department's methodology was inappropriate. In addition, we find that Trina's proposed methodologies are not appropriate means to determine whether a respondent has failed to report a significant percentage of its FOPs. Trina's first proposed methodology analogizes to the threshold set forth in 19 CFR 351.408(c)(1), (*i.e.*, the point at which the Department considers that the market economy input purchases represent substantially all of the total purchases of that input by a respondent[252]), which is not relevant here because this matter concerns rates of FOP consumption rather than FOP valuation, and also, the solar cell purchases at issue do not involve market economy input purchases, but rather domestic purchases. Moreover, all three of Trina's proposed methodologies involve limiting the application of AFA to only a portion of Trina's missing solar cell inputs and applying facts available to the remaining missing solar cell inputs. The application of facts available is not appropriate in this situation given that the FOPs are missing for a significant quantity of subject merchandise, *i.e.*, solar cells, and the solar cell suppliers to which the Department issued the antidumping duty questionnaire refused to respond to the questionnaire. Furthermore, Trina's proposed methodologies consider the quantity of solar cells for which FOPs are missing in relation to other metrics (*i.e.*, 15 percent; the quantity of solar cells for which the other selected mandatory respondent could not provide FOPs) but fail to consider whether Trina's percentage of solar cells with missing FOPs is significant. As noted above, in other cases the Department has considered, among other things, whether the missing FOP data are of a limited or significant quantity when deciding whether the application of AFA is warranted.

---

[250] *See PET Film* and accompanying Issues and Decision Memorandum at Issue 10. *See also Malleable Iron Pipe Fittings From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 71 FR 37051* (June 29, 2006) ("*Malleable Pipe*") and accompanying Issues and Decision Memorandum at Comment 14, (where the Department replaced the respondent's missing water FOP with the highest water value on the record).
[251] The Department only selected among consumption rates for CONNUMs sold in the United States during the POR.
[252] *See Use of Market Economy Input Prices in Nonmarket Economy Proceedings*, 78 FR 46799, 46800 (August 2, 2013).

Although Trina argues that the Department should have requested additional information to determine what constitutes a significant amount of missing FOP data, the Department, in fact, made numerous lines of inquiry to determine the significance of the missing FOP data in its supplemental questionnaires. Trina highlights the fact that the Department issued Trina several supplemental questionnaires requesting information regarding, among other things, Trina's purchased cells. In its initial Section D response, Trina had reported the quantity of solar cells purchased from the unaffiliated cell suppliers during the POR.[253] On August 19, 2015, the Department requested information in a chart regarding the names and country of all suppliers of purchased solar cells, and the quantities of these solar cells purchased and consumed, which it received September 2, 2015.[254] The Department also requested information regarding which Trina affiliate received solar cells.[255] On October 14, 2015, the Department again requested information in another chart regarding quantities of solar cells entered into production and consumed during the POR, and the percentage these solar cells represent of the total POR quantity consumed, which it received October 20, 2015.[256] As Trina states, the Department also requested commentary from Trina regarding its knowledge of the unaffiliated cell providers' raw materials and production processes.[257] On October 26, 2015, the Department requested information, which it received November 2, 2015, regarding the solar cell CONNUMs that Trina produced, from which it obtained the data used as a substitute for the unreported FOPs from the unaffiliated cell suppliers.[258] On November 10, 2015, the Department requested information in a chart regarding the specific CONNUMs that were impacted by the missing information, which it received November 16, 2015.[259] Despite the number of supplemental requests for information, Trina suggests that the Department should have solicited other facts and commentary regarding the significance of Trina's purchased cells, that Trina did not otherwise have the opportunity to submit, and that the relative quantity of purchased cells is, by itself, not a sufficient basis for the Department to make a determination. Notably, Trina has not identified what sort of information it could have provided, nor has it explained how such information could have contributed to the Department's analysis. However, through its supplemental questionnaires, the Department solicited information that serves as the basis of its analysis and determined from the information obtained, that the extent of the unreported FOP data was significant. Specifically, the Department based its determination on the percentage of solar cells for which consumption data

[253] *See* Letter from Trina to The Honorable Penny Pritzker, "Re: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China: Section D Questionnaire and Related Appendices Response," dated May 14, 2015, at D-32.
[254] *See* Letter from Trina to The Honorable Penny Pritzker, "Re: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the PRC: Supplemental Questionnaire On Tolling," dated September 2, 2015.
[255] *Id.*
[256] *See* Letter from Trina to The Honorable Penny Pritzker, "Re: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the PRC: Seventh Supplemental Questionnaire Response," dated October 20, 2015.
[257] *Id.*
[258] *See* Letter from Trina to The Honorable Penny Pritzker, "Re: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the PRC: Eighth Supplemental Questionnaire Response," dated November 2, 2015.
[259] *See* Letter from Trina to The Honorable Penny Pritzker, "Re: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the PRC: Ninth Supplemental Questionnaire Response," dated November 16, 2015.

are missing in relation to Trina's overall consumption of solar cells used in the production of subject modules during the POR.[260]

While Trina argues that it does not have enough leverage to persuade its solar cell suppliers to cooperate with the Department's requests for information, the record evidence supports our finding that Trina could potentially induce compliance on the part of its solar cell suppliers. The Department chose Trina as a mandatory respondent in the investigation of this proceeding as well as in this review because it was one of the largest two sellers of subject merchandise to the United States in both of these segments of the proceeding.[261] Based on Trina's large size and the quantity of solar cells that it purchased from suppliers, it is reasonable to conclude that Trina is an important customer to its Chinese solar cell suppliers, which means that Trina is in a position to exercise its leverage over its solar cell suppliers to induce them to cooperate. Moreover, even if Trina did not have current orders of solar cells with the suppliers, Trina itself noted that it has a "long-term business relationship" with the five solar cell providers providing the largest number of solar cells during the POR.[262] Based on Trina's acknowledgment of its long-term business relationship with its largest cell suppliers, we find that it is reasonable to conclude that Trina has some business mechanism to induce its suppliers to cooperate. Trina may choose not to do business with them in the future due to their lack of cooperation and/or select suppliers that are willing to commit to participation in an antidumping proceeding. By applying AFA with respect to the missing data, the Department is relying on the statutory means that it has available to induce the cooperation of these parties so that the Department has the information necessary to calculate dumping margins.

Trina argues, in the alternative, that even if it did have leverage to induce its suppliers to cooperate with the Department's requests for information, the Department did not allow the solar cell suppliers enough time to respond to the Department's requests and that the Department had no intention of relying on any responses from Trina's cell suppliers for purposes of the preliminary results. The Department issued the antidumping questionnaire to Trina's suppliers of solar cells on November 6, 2015, and granted them ten days (until November 16, 2015) to respond to the questionnaire.[263] Although the questionnaire deadline fell one day before the deadline for the preliminary results of this review, this would not have necessarily precluded the Department from granting an extension of time to respond to the questionnaire, had Trina or its solar cell suppliers requested an extension. Indeed, the Department has in similar instances issued questionnaires with deadlines after preliminary results of administrative review, and considered any information submitted in the final results.[264] Thus, Trina or its suppliers could

---

[260] *See* Memorandum from Thomas Martin to Abdelali Elouaradia, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Unreported Factors of Production," dated December 18, 2015, at 9-10.

[261] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Affirmative Preliminary Determination of Critical Circumstances*, 77 FR 31309 (May 25, 2012). *See also* the March 13, 2015 memorandum from Jeff Pedersen, Senior International Trade Compliance Analyst, Office 4, to Abdelali Elouaradia, Director, Office 4 regarding the 2013-2014 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").

[262] *See* Cell Supplier Responses at Exhibit 1.

[263] *See* letters care of Trina to five unaffiliated cell suppliers, dated November 6, 2015, at page E-1.

[264] *See Narrow Woven Ribbons With Woven Selvedge From Taiwan; Preliminary Results of Antidumping Duty*

have requested an extension of time to file their questionnaire responses. Instead, Trina informed the Department that its solar cell suppliers were unable to answer the questionnaire, though for reasons unrelated to the amount of time provided to respond.[265] Similarly, the deadline for the questionnaire responses would not have precluded the Department from considering any information submitted for purposes of the preliminary results because the Department extended the preliminary results deadline twice, once on November 17, 2015 by 24 days,[266] and again on December 10, 2015 by an additional week.[267] Had Trina's suppliers responded by the initial 10-day deadline, the responses would have been received nearly one month before the deadline for the preliminary results.

Thus, consistent with our prior decisions, the Department will continue to apply partial AFA to Trina's missing FOP information. We will continue to use a methodology that is precisely proportional to the missing information, to induce the cooperation of Trina's suppliers in future segments of this proceeding.

Comment 20: Whether the Department erroneously valued certain overhead items as direct materials

Trina

- In a supplemental questionnaire, the Department requested that Trina report all materials and parts as FOPs, regardless of whether Trina treats them as overhead. In Exhibit D-18 of its June 30, 2015 section D supplemental questionnaire response, Trina identified many non-direct materials and parts that should be considered overhead, and would likely result in the double-counting of cost if reported as separate FOPs. The items are included in the bill of materials, and contribute to the production process, but they: (1) are not physically incorporated into the final product; (2) have a lower cost relative to direct materials; and (3) often are machine parts for manufacturing equipment.
- The CIT's decisions in *Fujian Machinery and Equipment I&E Corp. v. United States*, 178 F. Supp. 2d 1305, 1328 (CIT 2001) and *Fuyao Glass Industry Group Co., Ltd. v. United States*, 29 CIT 109, 123-24 (CIT 2005), noted that the Department's practice emphasizes physical incorporation into the finished product in determining whether an item is a direct material or overhead item.

Administrative Review; 2012-2013, 79 FR 60449 (October 7, 2014) ("The Department also directly contacted King Young's unaffiliated greige ribbon suppliers to request the suppliers' greige ribbon costs. The cost information requested directly from the greige suppliers is due . . . subsequent to these preliminary results."); *see also Certain Steel Nails From the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the Antidumping Duty Administrative Review and Preliminary Intent To Rescind New Shipper Review*, 76 FR 56147 (September 12, 2011) ("Hongli eventually was able to obtain the FOPs but because they were submitted to the Department unsolicited and untimely, the Department rejected these FOPs . . . However, after the preliminary results, we intend to issue questionnaires directly to the unaffiliated producers requesting the FOP data.")

[265] *See* Cell Supplier Responses at Exhibit 2.

[266] *See* Memorandum from Jeff Pedersen, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Second Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated November 17, 2015.

[267] *See* Memorandum from Jeff Pedersen, "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," dated December 10, 2015.

- The financial statements of Styromatic (Thailand) Co., Ltd., which the Department used to calculate financial ratios in the preliminary results, segregate direct material costs and consumable costs. As both Trina and Styromatic (Thailand) Co., Ltd. follow their national accounting standards, and there is no reason to expect that those standards differ significantly, the Department should assume that Styromatic (Thailand) Co., Ltd.'s consumables line item includes auxiliary items that Trina regards as overhead.
- The Department should therefore exclude those inputs that Trina accounts for as overhead from the calculation of NV because those overhead items are more appropriately regarded as "consumables" and were included in Styromatic (Thailand) Co., Ltd.'s overhead expenses.

Petitioner

- The Department correctly excluded items that are not regularly used in the production process, and not consumed in the production process, from direct materials. This is consistent with the Department's practice as set forth in *Citric Acid and Certain Citrate Salts from the People's Republic of China*, *Certain Steel Nails from the People's Republic of China*, and the investigation in this proceeding.[268]
- In the investigation, the Department found that only three of the numerous items that Trina asserted to be overhead were not routinely used in production, and therefore warranted treatment as overhead. Nothing has changed since the investigation that would warrant exclusion of these numerous important material inputs from the calculation of NV. Thus, the Department should include all items that Trina considers to be overhead, but that are regularly used in production, in direct materials.
- Styromatic (Thailand) Co., Ltd.'s financial statements do not separate overhead items from other raw materials.
- The fact that physical incorporation was one factor that the Department considered in previous decisions regarding whether an item was a direct material or part of overhead does not indicate that physical incorporation of a major component of production into the finished product is a necessary condition for separate valuation by the Department.

Department's Position:

We disagree with Trina and agree with Petitioner. The Department has, over time, developed a number of factors for assessing whether inputs should be classified as direct materials or overhead. These factors include: 1) whether the input is physically incorporated into the final product; 2) the input's contribution to the production process and finished product; 3) the relative cost of the input; and, 4) the way the cost of the input is typically treated in the industry.[269] The

[268] *See* SolarWorld rebuttal case brief at 26-27 (*citing Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of the First Administrative Review of the Antidumping Duty Order* ("*Citric Acid AR1*"), 76 FR 77772 (December 14, 2011) and accompanying Issues and Decision Memorandum at Comment 12; *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) and the accompanying Issues and Decision Memorandum at Comment 4; *Solar I Investigation* , and accompanying Issues and Decision Memorandum at Comment 7)).

[269] *See Certain Steel Nails From the People's Republic of China; Final Results of Third Antidumping Duty Administrative Review; 2010-2011*, 78 FR 16651 (March 18, 2013) and the accompanying Issues and Decision Memorandum at Comment 4.

Department has also classified inputs as direct materials if they were found to be: 1) consumed continuously with each unit of production; 2) required for a particular segment of the production process; 3) essential for production; 4) not used for incidental purposes; or, 5) otherwise a significant input to the manufacturing process rather than a miscellaneous or occasionally used material.[270] Also of consideration has been whether the input was so regularly replaced as to represent a direct material rather than an overhead item.[271] The Department relies on the totality of the evidence to guide its decision in each case.[272] In other words, no single factor or combination of these factors will necessarily provide a dispositive indication of whether the Department classifies an input as direct materials or overhead

In this instance, the Department requested, in a supplemental questionnaire, that Trina identify the items that it identified as overhead items that are physically incorporated into the final product, consumed in the production process, or regularly used in the production process.[273] In its response, Trina reported that, of the items at issue (identified with variable names with the prefix, "OH_"[274]), with the exception of separation bars and wooden poles, all of the materials were consumed continuously with each unit of production, were required for a particular segment of the production process, were regularly used in the production process, and were not used for incidental purposes.[275] The materials falling into these categories include the machine parts that Trina argues should be considered to be included in overhead. The Department considered that these materials were essential for Trina's production. We did not include separation bars and wooden poles among the FOPs that we valued, and considered them to be overhead.[276] In specific regard to separation bars and wooden poles, *see* additional details in the Trina Final Analysis Memorandum.[277]

[270] *See Solar I Investigation*, and accompanying Issues and Decision Memorandum at Comment 7; *see also Citric Acid AR1* at Comment 18.
[271] *See Wire Hangers from China*, and the accompanying Issues and Decision Memorandum at Comment 9D.
[272] *Id.*
[273] *See* Letter from Trina to the Honorable Penny Pritzker, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the PRC, Section C&D Supplemental Questionnaire Response," dated June 30, 2015 ("Trina's June 30, 2015 Supplemental Response"), at D-19.
[274] These inputs are identified publically by their variable names in Letter from Trina to the Honorable Penny S. Pritzker, "Re: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China: Response to Request for Surrogate Values Information," dated September 25, 2015, at Exhibit 3A.
[275] *See* Trina's June 30, 2015 Supplemental Response at Exhibit D-18.
[276] *See* Memorandum from Thomas Martin to the File, "Antidumping Duty Administrative Review of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Preliminary Analysis Memorandum for Changzhou Trina Solar Energy Co., Ltd., Trina Solar (Changzhou) Science and Technology Co., Ltd., Yancheng Trina Solar Energy Technology Co., Ltd., Changzhou Trina Solar Yabang Energy Co., Ltd., Turpan Trina Solar Energy Co., Ltd., and Hubei Trina Solar Energy Co., Ltd.," dated December 18, 2015, at 10 (noting that we were not including separation bars and wooden poles inputs in the cost of manufacturing).
[277] *See* Memorandum from Thomas Martin to the File, "Analysis for the Final Results of Antidumping Duty Administrative Review of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Changzhou Trina Solar Energy Co., Ltd., Trina Solar (Changzhou) Science and Technology Co., Ltd., Yancheng Trina Solar Energy Technology Co., Ltd., Changzhou Trina Solar Yabang Energy Co., Ltd., Turpan Trina Solar Energy Co., Ltd., and Hubei Trina Solar Energy Co., Ltd.," dated June 13, 2016 at 3.

Styromatic (Thailand) Co., Ltd.'s financial statements have a separate line item for "consumable supplies" expenses, apart from raw materials.[278] However, because these surrogate financial data are from a company that is not a party to the proceeding, the Department cannot go behind these line items to determine whether the "consumable supplies" expense overlaps with the expenses that Trina has identified as overhead expenses.[279] Accordingly, Trina's arguments about possible double counting are speculation. Consequently, the Department finds it is appropriate to account for the items as separate FOPs that, while not physically incorporated into the final product, were consumed continuously with each unit of production, were required for a particular segment of the production process, and were regularly used in the production process and not for incidental purposes. The materials at issue were significant inputs to the manufacturing process, and although Trina may consider them to be overhead items, the Department values them individually as FOPs to ensure that these items have been included in the calculation of the Trina's NV. [280]

Because all of Trina's reported inputs, with the exception of separation bars and wooden poles, are always used in production and regularly replaced, we find that they should not be considered "consumable supplies" that are accounted for in the surrogate overhead expenses; thus we have valued these inputs as FOPs.

Comment 21: Whether the Department applied the correct surrogate value to nitrogen

Trina

- The Department ignored evidence that the Thai import price for nitrogen is unreliable, and inaccurately valued Trina's nitrogen consumption using this import price.
- Trina has submitted to the record: (1) invoices for nitrogen from three different companies in Thailand; (2) another separate Thai price quote; (3) Bulgarian import statistics; (4) U.S. export prices; and (5) the U.S. export price to Thailand which are all much lower than the Thai import price used by the Department. All of these prices are tightly clustered.
- Moreover, the quantity and value of nitrogen imported into Thailand from the U.S. is significantly and inexplicably different from U.S. data for nitrogen exported to Thailand.
- The Bulgarian import price for nitrogen is better corroborated by the pricing information Trina has submitted to the record, which also weighs in favor of relying on Bulgaria as the surrogate country.

[278] *See* Letter from Yingli to the Honorable Penny Pritzker, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China: Yingli's Submission of Additional Surrogate Value Information," dated October 19, 2015, at Exhibit 2, Styromatic (Thailand) Co., Ltd. 2014 financial statement at 9.
[279] *See, e.g.*, *Helical Spring Lock Washers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 13833 (March 17, 2015) and the accompanying IDM at Comment 6 ("In addition, we will treat Siam Anchor's "Security Guard," and "Rental" expenses as overhead expenses because we have no reason to "look behind" Siam Anchor's financial statements."); *Multilayered Wood Flooring From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011) ("There is no record evidence as to what a typical overhead rate should be other than to look to the financial statements that pass the criteria used by the Department in selecting surrogate financial statements. As stated above, because the Department cannot go behind line items in the surrogate financial statements, the Department bases its determinations on the information contained within the financial statements themselves.")
[280] *Id., at* Exhibit D-18.

- The Department should value nitrogen using either: (1) the weight-average domestic Thai prices on the record (if it continues to rely on Thailand as the primary surrogate country); or (2) Bulgarian import data. The Thai AUV is thousands of times higher than the other prices that Trina has submitted to the record, and it is based on a much lower quantity than the quantity of Bulgarian imports.

Petitioner

- Trina ignores other record evidence that demonstrates that the Thai import AUV for nitrogen is fully consistent with the AUV of nitrogen in other countries that the Department has found to be economically comparable to China and Thailand.
- Specifically, Ukrainian import AUVs of nitrogen are nearly seven times higher than the Thai AUV. Import AUVs of nitrogen in Ecuador and South Africa, while lower than Thailand, are at levels of variance that the Department has found to be acceptable.

Department's Position:

The Department evaluates SV information on a case-by-case basis, and in accordance with section 773(c)(1) of the Act, selects the best available information from an appropriate surrogate country to value FOPs.[281] When selecting SVs for use in an NME proceeding, the Department's preference is to use, where possible, a range of publicly available, non-export, tax exclusive, and input-specific prices in effect during the POR, with each of these factors applied non-hierarchically to the case-specific facts. Also, the Department's preference is to use SV data from a single surrogate country.[282] Furthermore, the Department's preference is to use published prices that are widely available, rather than prices and price quotes from a limited number of suppliers that can only be obtained through direct inquiry.[283] Publicly available, published prices generally do not suffer from potential biases compared to: (1) price quotes, such as the Thai price quotes submitted by Trina, that can be obtained through research by private firms; or (2) individual prices, such as the three invoice prices submitted by Trina, which are not representative of a broad market average.[284]

As explained in Comment 1, the Department continues to consider Thailand an appropriate primary surrogate country and, as established in the *Preliminary Results*, the Department continues to find that the Thai import data for nitrogen obtained from Global Trade Atlas ("GTA") are publicly available, broad market averages, not export prices, tax exclusive, and specific to the input in question; thus, satisfying the critical elements of the Department's SV test. While the Thai import data satisfy these critical elements, Trina argues that the data are unreliable. We now turn to that argument.

---

[281] *See Lightweight Thermal Paper from the PRC*, and the accompanying IDM at Comment 9.

[282] *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 3987 (January 22, 2009) and IDM at Comment 6. *See also* Policy Bulletin 04.1.

[283] The domestic Thai prices and the Linde Thailand price quote to Trina summarized in Enclosure 1 of Trina's case brief were obtained through direct inquiry by Trina.

[284] *See Chlorinated Isocyanurates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 1167 (January 11, 2016) and the accompanying IDM at Comments 1 and 2.

Trina noted that the Thai SV from the selected HTS category was much higher than the weighted average export value from the United States to Thailand under the same HTS category; the weighted-average Thai import value for imports from the United States for the same HTS category; a Thai domestic price quote; three invoices for completed purchases of nitrogen in Thailand; and the Bulgarian import AUV for nitrogen. As an initial matter, as stated above, the Department's preference is to use published prices that are widely available, rather than prices and price quotes from a limited number of suppliers that can only be obtained through direct inquiry due to potential biases.[285] Moreover, when determining whether data are aberrational, the Department has found that evidence that an AUV in the country at issue is high compared to another AUV (such as the Bulgarian import AUV here) does not necessarily establish that the GTA data for that country are unreliable, distorted or misrepresentative.[286] Rather, in analyzing whether an AUV is aberrational or distortive, the Department typically compares the AUV for the input during the POR in the country at issue to AUVs for that input during the POR from all countries found to be at a level of economic development comparable to the NME or compares AUVs of the input during the POR in the country at issue to AUVs for that input in the country at issue in prior years.[287]

The AUVs from other potential surrogate countries in this review do not demonstrate that the Thai AUV is aberrational. The Thai AUV is $11.68 USD/Kg, the import values for the other potential surrogate countries range from $0.09 USD/Kg (for Bulgaria) to $78.75 USD/Kg (for Ukraine), and include $0.13 USD/Kg (for Romania), $4.84 USD/Kg (for Ecuador), and $5.46 USD/Kg (for South Africa)).[288] The Thai SV is within the range of these AUVs as the Ecuadoran and South African values are below the Thai SV while the Ukrainian value is above it, supporting the suitability of the Thailand SV for use in valuing nitrogen. No parties submitted AUVs for nitrogen imported into Thailand in prior years. Thus, because Trina provided no information or argument that would justify finding that the Thai values are aberrational, we continue to value nitrogen using the AUV from Thailand for HTS 28043000000, "Nitrogen."

Lastly, while Trina suggests that the Department value nitrogen using the Bulgarian AUV, the Department resorts to a secondary surrogate country among countries found to be at a level of economic development comparable to the NME, if data from the primary surrogate country are unavailable or unreliable.[289] Thus, the Department values inputs using a secondary surrogate

---

[285] *Id*.

[286] *See Multilayered Wood Flooring from the People's Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2012*, 80 FR 41007 (July 14, 2015) and IDM at Comment 7; *see also Hangers from the PRC IDM* at Comment 5; *Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Results of Administrative Review; 2011-2012*, 78 FR 15696 (March 12, 2013), unchanged in *Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results of Administrative Review; 2011-2012*, 78 FR 56209 (September 12, 2013) ("*PRC Shrimp AR7*").

[287] *See Certain Steel Threaded Rod from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 71743 (December 3, 2014) ("*Steel Threaded Rod 2014*") and IDM at Comment 2.

[288] *See* Letter from Petitioner to The Honorable Penny S. Pritzker, "Re: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China: Submission of Publicly Available Factual Information to Rebut, Clarify or Correct," dated October 29, 2015 at Exhibit 5B.

[289] *See, e.g., Certain Steel Threaded Rod from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 69938 (November 12, 2015) and IDM at Comment 9A citing *Jiaxing Brother Fastener Co. v. United States*, 11 F. Supp. 3d 1326, 1332-33 (CIT 2014) ("*Jiaxing Brother*").

country only in the absence of usable data from the primary surrogate country.[290] As discussed above, the record contains usable data from the primary surrogate country for valuing nitrogen. Additionally, the record demonstrates that, with the exception of the Romanian AUV, the Bulgarian AUV is significantly different from all of the other AUVs on the record from the potential surrogate countries.

Comment 22: Whether the Department should not include import data with zero quantities in the average unit SV calculation

Trina

- In the *Preliminary Results*, the Department's calculations of surrogate values using import values relied on import values with corresponding import quantities of zero.
- In the investigation in this proceeding, a respondent identified this discrepancy and claimed that the inclusion of import values with corresponding import quantities of zero was distortive. The Department declined to disregard such import values in its SV calculations, stating that these instances reflect imports of quantities less than 0.5 units of measure where the quantity had been rounded to zero. The Department also noted that these were instances of relatively low import values that were typically in the range of import values of other imports where the imported quantity was also very small.
- These same facts do not exist in the current review. Specifically, if a quantity between 0.01 and 0.49 kilograms were substituted for the zero quantities reported for the Thai imports at issue, the resulting AUVs for these imports would be higher than the highest AUVs for any month during the POI for imports from any other country under that same HTS number. Additionally, the AUVs calculated using that substitution would be well out of the range of other small quantity entries. Thus, the reported zero quantities cannot be attributed to rounding and the Department should not use import values with corresponding zero quantities in its SV calculations.

Petitioner

- The Department should decline to make Trina's proposed adjustment, as it declined to do in the original investigation (as well as in *Fresh Garlic from PRC 2010-2011*).[291] In the limited circumstances where a zero quantity has been reported for a non-zero import value, the value of the imported goods is extremely small. Moreover, there is a wide variation in the AUVs for shipments with non-zero quantities.
- There is no basis to assume that only shipments of less than 0.49 kilograms were rounded down to zero. It is equally possible that the quantity of imported goods for which the quantity was rounded to zero was 0.99 kilograms.
- Without concrete evidence showing that surrogate values using import values with corresponding import quantities of zero are clearly aberrational, the Department should continue to include them in its import statistics.

[290] *See, e.g.*, *Activated Carbon 2014* and IDM at Comment 2, citing *Jiaxing Brother* quoting *Sodium Hex* Comment I. *See also Sodium Hex* at Comment III and IV.C.

[291] *See Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 36168 (June 17, 2013) and IDM at Comment 8 (*Fresh Garlic from PRC 2010-2011*).

Department's Position:

The Department disagrees with Trina's argument to exclude import data with a value but with zero quantity because the Department does not find these import data to be unreliable. We agree with Trina that, in most instances, the values for zero quantity import data points are not within the range of other lower quantity and value import data points, in the surrogate value database used by the Department in the *Preliminary Results*. Thus, we agree with Trina that the facts in this review regarding the values and AUVs of the imports with zero quantities may be distinguishable from those in the investigation in this proceeding, and those of the *Fresh Garlic from PRC 2010-2011* cited by Petitioner, where there were few imports where the quantity was reported as zero,[292] and the imports where the quantity was low also had low values.[293] However, the Department finds no basis in the record to conclude that these entries are unreliable or incorrect because they list zero for the quantity. Consistent with the reasoning in the investigation,[294] if the reported information (zero quantities) were the result of errors, we would expect less consistency and more randomness with respect to the type of error observed. For example, if the data were merely erroneous, we would expect errors to also occur with respect to the reported *value* in at least some instances; however there are no imports in the data with a zero value. Since there appear to be no such errors with respect to value, we conclude that the reported zero quantities are reliable, attributable to rounding small quantities down to zero.

While Trina contends that including these import data in the SV calculations simply inflates the AUVs for the HTS categories with such imports, where some quantities are rounded to the next lower whole number (*e.g.*, zero) and other quantities are rounded to the next higher whole number, rounding has both upward and downward effects. Regarding Trina's analysis substituting a reported quantity of zero with any number between .01 or .49 for any given HTS category, we find that while Trina cites instances in its case brief, (such as for hydrochloric acid) substituting .49 kilograms for a zero quantity data point that results in the highest AUV for the surrogate value, performing the same test for nitric acid, isopropyl alcohol, silicon glue, and hot melt ink results in an AUV that is within the range of other AUVs making up the surrogate value for this factor (whether .49 or even .99 kilograms is used as the substitute).

As such, the Department has determined not to exclude the zero quantity data from the SV calculation on the basis of increasing accuracy.

---

[292] 614 of 8,179 imports reported in the import data for affected HTS categories used in the instant review to calculate SVs have values with zero quantities. *See* worksheet titled "Calculated_SV_Data" in the surrogate value calculation file disclosed with Memorandum from Thomas Martin to the File, "Antidumping Duty Administrative Review of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Preliminary Analysis Memorandum for Changzhou Trina Solar Energy Co., Ltd., Trina Solar (Changzhou) Science and Technology Co., Ltd., Yancheng Trina Solar Energy Technology Co., Ltd., Changzhou Trina Solar Yabang Energy Co., Ltd., Turpan Trina Solar Energy Co., Ltd., and Hubei Trina Solar Energy Co., Ltd.," dated December 18, 2015.

[293] *See* Trina case brief at 31 (*citing Solar I Investigation*, and the accompanying IDM at Comment 8); *see also* SolarWorld rebuttal brief at 31 (*citing Fresh Garlic from PRC 2010-2011*, and the accompanying IDM at Comment 8).

[294] *See Investigation* at Comment 8 ("If such instances involve aberrational data (*e.g.*, situations caused by data collection or data input errors), they should occur at random.").

Comment 23: Whether the Department should revise the SV for brokerage and handling

Trina

- Brokerage and handling SV data from Maersk are more specific with respect to Trina's ports of lading in the PRC, and U.S. destinations; more specific to the type of merchandise shipped; and more specific to the type of shipping containers that Trina uses than the "Doing Business in Thailand" SV data used by the Department. The "Doing Business in Thailand" SV data used by the Department is based on unspecified origin and destination ports in Thailand; a standard shipment of unspecified goods; and a dry-cargo 20-foot, full container weighing ten metric tons, which Trina does not use. The Maersk brokerage and handling rates cover the same services as those in the "Doing Business in Thailand" report.
- Brokerage and handling SV data from Maersk are contemporaneous, coinciding exactly with the POR. The "Doing Business in Thailand" SV data used by the Department cover only the first half of the POR.
- The "Doing Business in Thailand" SV data used by the Department include document preparation expenses that Trina did not incur and that are included already in the SG&A portion of NV, while there is no evidence that the brokerage and handling SV data from Maersk would do so.
- The Department must consider the Maersk data reliable as the Department already used that source (and the same data) for valuing ocean freight.
- The Maersk data are consistent with the antidumping statute, which requires that the U.S. price be reduced by any included transportation expenses, but does not require such expenses to be based on SVs such as are used in the NV calculation.

Petitioner

- While Maersk is a market economy provider, the brokerage and handling services were provided in China, likely by Chinese-owned subcontractors, and involved Chinese renminbi. Even if the Department were to assume that the total fee remitted by a customer to Maersk was remitted in U.S. Dollars, the services were ultimately paid for in an NME currency and were provided in China by Chinese companies. These distortions (caused by quoting prices for services provided in an NME country) counsel against using the Maersk data. In contrast, the Department has used the "Doing Business in Thailand" data in many proceedings, and it raises none of the same concerns.

Department's Position:

We disagree with Trina and agree with Petitioner. It is the Department's practice to deduct from the starting price (gross unit price) foreign brokerage and handling charges in accordance with section 772(c) of the Act.[295] However, the prices and costs of a brokerage and handling service

[295] *See, e.g., Certain Uncoated Paper From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 80 FR 51768 (August 26, 2015) and the accompanying PDM at the section titled "Export Price," *unchanged in Certain Uncoated Paper From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 81 FR 3112 (January 20, 2016); *Glycine From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Intent To Rescind, in Part; 2013-2014*, 80 FR 18814 (April 8, 2015) and the accompanying PDM at the

provider within the NME country, offering services paid for in an NME currency, even if subsequently purchased downstream from an ME company, are subject to the distortions inherent in an economy not controlled by market forces, in the same way that raw materials purchased within the PRC are subject to such distortions.[296] For this reason, we base those charges on rates from the surrogate country, in a similar calculation to that performed for direct material costs. Although there is no specific evidence in the Maersk ocean freight data regarding the nature of the entities in the PRC that provided brokerage and handling services on behalf of Maersk, because the ports of export in the Maersk ocean freight data are in the PRC, the services at issue were necessarily performed in the PRC. In contrast, Maersk ocean carriage expenses performed by Maersk itself are not performed in the PRC. Because a SV must be a value from a market economy country, we will continue to use the "Doing Business in Thailand" data, which is our primary surrogate country, to value Trina's brokerage and handling expenses.

Comment 24: Whether the Department should revise Trina's credit expenses and inventory carrying costs

Trina

- The Department should revise its calculation of credit expenses and inventory carrying costs.
- Trina US did not have any short-term borrowings during the POR, and thus did not finance any accounts receivable or inventory during the POR.
- A more appropriate measure of any cost to impute to Trina US for extending credit to its customers and for carrying inventory is the additional bank interest income Trina US would have earned had it received immediate payment from customers.

Petitioner

- Where a respondent does not have U.S. dollar short-term loans from which to derive a U.S. dollar interest rate, Policy Bulletin 98.2[297] states that the Department will impute credit expenses and inventory carrying costs using the U.S. interest rate from the Federal Reserve's weighted-average data for commercial and industrial loans maturing between one month and one year from the time the loan is made. Trina provides no basis for the Department to abandon this practice in this case.

---

section titled "Export Price," *unchanged in Glycine From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 62027 (October 15, 2015); *Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 80 FR 17409 (April 1, 2015) and the accompanying PDM at the section titled "Export Price," *unchanged in Boltless Steel Shelving Units Prepackaged for Sale From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 80 FR 51779 (August 26, 2015).

[296] *See, e.g., Hand Trucks and Certain Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 28801 (May 16, 2013) and the accompanying IDM at Comment 1.

[297] *See* the Department's Policy Bulletin – "Import Administration Policy Bulletin 98.2; Imputed Credit Expenses and Interest Rate," http://enforcement.trade.gov/policy/bull98-2.htm (February 23, 1998) ("Policy Bulletin 98.2").

Department's Position:

We agree with Petitioner. Department Policy Bulletin 98.2, which describes our practice, states:

> In cases where a respondent has no short-term borrowings in the currency of the transaction, we will use publicly available information to establish a short-term interest rate applicable to the currency of the transaction. . . . For dollar transactions, we will generally use the average short-term lending rates calculated by the Federal Reserve to impute credit expenses. Specifically, we will use the Federal Reserve's weighted-average data for commercial and industrial loans maturing between one month and one year from the time the loan is made.

The Department requires respondents to calculate credit expenses and inventory carrying cost using the weighted-average interest rate of its short-term borrowings in the currency of the relevant transaction. In the absence of such borrowings, the Department uses one year published rates. For U.S. dollar denominated loans, it typically uses the Federal Reserve's statistical release "E.2 -Survey of Terms of Business Lending" for commercial and industrial loans made by all commercial banks).[298] Specifically, it uses line item "31 to 365 days" in release E.2.[299] In this case, the Department preliminarily used this rate to calculate Inventory Carrying Costs Incurred in the United States ("INVCARU").[300] However, Trina reported credit expenses using the short-term Federal Reserve lending rate during the POR for all minimal risk commercial and industrial loans. Trina reported that its accounts receivables are low risk, as its sales invoices were mostly completely paid within 30 days.[301]

However, the Department is making a change to the interest rate used to calculate Trina's credit expenses for the final results. Although Trina reported that its sales invoices were nearly completely paid within 30 days and thus its accounts receivables are low risk, Trina's U.S. sales database does not support this claim due to the number of sales which are not paid within 30 days.[302] More importantly, the Department has a "consistent, predictable policy establishing a preferred surrogate U.S. dollar interest rate in all cases where respondents have no U.S. dollar short-term loans," as stated in Policy Bulletin 98.2. Pursuant to this practice, we impute credit expenses and inventory carrying cost without regard to a company's actual working capital surplus or deficiency, and due to money being fungible, without ascertaining which rate best

---

[298] *See, e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip From India*, 67 FR 34899 (May 16, 2002), and accompanying Issues and Decision Memorandum at Comment 16 ("we have calculated imputed U.S. credit expense using the prevailing average short-term interest rate, as published by the Federal Reserve, in effect during the POI. *See* Federal Reserve Statistical Release E.2; Survey of Terms of Business Lending, dated May 1-5, 2000, August 7-11, 2000, November 6-10, 2000, and February 5-9, 2001, available at www.federalreserve.gov/releases/E2.").

[299] *See, e.g.*, *Certain Oil Country Tubular Goods From the Republic of the Philippines: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances* ("*OCTG from the Philippines*"), 79 FR 41976 (July 18, 2014) and the accompanying IDM at Comment 3 (supporting the use of this lending rate).

[300] *See* Letter from Trina to the Honorable Penny Pritzker, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the PRC, Section C Supplemental Questionnaire Response," dated June 5, 2015, at C-12

[301] *Id., at* C-9.

[302] *See* Trina's June 5, 2015, data submission, "Sec C - trina_us02.sas7bdat".

measures the imputed opportunity cost of a given operating activity. In other words, in measuring the overall opportunity cost of loss of use of money, the Department treats short-term loans as equally supporting equally the working capital requirements of a company because it is not possible to associate the specific borrowing with each unique opportunity cost. For this reason, we use the same short-term borrowing rate to impute the cost for one activity, financing of accounts receivable, and the cost for another activity, financing of inventory.[303]

Moreover, with respect to Trina's suggestion to use lost bank interest income to impute credit expenses and to calculate inventory carrying costs, while bank loans are a means of financing accounts receivables, bank savings accounts are one of many possible alternatives for the use of money. Given these facts, and the Department's practice, which we discussed above, we find that there is no basis to calculate Trina's credit expenses using the bank interest income that Trina US would have earned had it received immediate payment on its sales. Accordingly, we find that the short-term borrowing rate is the appropriate means of measuring credit expenses and inventory carrying costs. Thus, for the final results, consistent with the Department's practice, the Department will impute credit expenses using an average of the interest rates for medium risk loans of 31-365 days (which Trina reported under an alternative variable field ("ALTCREDITU"), pursuant to the Department's request[304]). As Trina calculated inventory carrying costs in accordance with our practice, we will make no change for the final results for Inventory Carrying Costs Incurred in the United States ("INVCARU").

Comment 25: Whether the Department should revise Trina's warranty expenses when calculating CEP

Trina

- The Department should not deduct warranty expenses when calculating CEPs for its U.S. sales, since Trina US' 2013 and 2014 income statements show that the company incurred no warranty expenses.
- Trina's parent company in the PRC did accrue warranty expenses, but the Department does not deduct these expenses from the gross unit price of CEP sales in NME cases because they are captured in surrogate SG&A expenses.[305]
- It can be reasonably presumed that Styromatic (Thailand) Co., Ltd., whose financial statements were used in calculating surrogate financial ratios in the preliminary results, incurred warranty expenses, but its financial statements do not have enough detail to remove such warranty expenses from SG&A. If the Department deducts warranty expenses in calculating CEP, the Department is double-counting such expenses.

[303] *See OCTG from the Philippines* at Comment 13.
[304] *Id., at* C-10.
[305] *See* Trina case brief at 42 (*citing Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews, Final Partial Rescission of Antidumping Duty Administrative Reviews, and Determination Not To Revoke in Part*, 69 FR 55581 (September 15, 2004) ("*Heavy Forged Hand Tools*"), and accompanying Issues and Decision Memorandum at Comment 15; *Certain Tissue Paper Products from the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review*, 72 FR 58642 (October 16, 2007) ("*Tissue Paper*") and accompanying Issues and Decision Memorandum, at Comment 6, p. 34); and 19 C.F.R. 351.410).

- If the Department continues to deduct warranty expenses in calculating CEP, it should deduct a three-year average of actual warranty expenses, rather than 2014 accrued expenses.

Petitioner

- Warranty expenses, whether actual or accrued, are direct expenses pertaining to Trina's CEP sales that will be incurred in U.S. dollars, and thus should be deducted in the calculation of CEP. The Department followed this practice in its recent investigation of solar products from China and should do so in this review.[306]
- The determinations cited by Trina are not relevant to this case because they involved EP sales.
- There is no evidence that Styromatic (Thailand) Co., Ltd.'s financial statements include warranty costs, and thus no evidence that the Department is double-counting warranty expenses.
- The Department's practice is to use a three-year average of actual warranty expenses only if there is evidence that the expenses from the period under consideration are not representative of a respondent's historical experience. However, Trina makes no claim that POI expenses are not representative of its experience.

Department's Position:

We disagree with Trina, in part. In this case, we find that it is appropriate to deduct Trina's warranty costs in calculating CEP for a number of reasons. Trina reported that it warranties its U.S. products, among other products, for an extended number of years.[307] Section 772(d)(1)(B) of the Act identifies direct warranty expenses as one type of expense incurred in selling subject merchandise. Specifically, the Act directs the Department to deduct from U.S. price "expenses that result from, and *bear a direct relationship to, the sale*, such as credit expenses, guarantees *and warranties* ..." (emphasis added). As we explained in the investigation in this proceeding, "warranty expenses are expenses associated with a commitment to repair or replace a product" and these expenses are not incurred in the absence of a sale of the subject merchandise.[308] Although Trina reported that warranty claims on U.S. sales are submitted to the parent company in the PRC, and thus the expenses are not "incurred in the United States,"[309] the warranties: (1) pertain to subject merchandise sold by the U.S. affiliate, and thus to commercial activities occurring in the United States; and (2) are reported in the consolidated financial statement of

[306] SolarWorld case brief at 39 (*citing Solar Products Investigation*, and accompanying IDM at Comment 13).
[307] *See* Letter from Trina to the Honorable Penny Pritzker, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the PRC, Section C&D Supplemental Questionnaire Response," dated June 30, 2015 (Trina Section C&D SQR), at Exhibit SC2-10.
[308] *See Solar I Investigation*, and the accompanying IDM at Comment 28 (explaining that warranty expenses are direct selling expenses, not general expenses); *see also Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 20197 (April 15, 2015) and accompanying Issues and Decision Memorandum at Comment 21 (noting that margin calculation program was "set up to reduce CEP U.S. prices by reported warranty expenses," in accordance with section 772(d)(1)(B)).
[309] *See* Letter from Trina to the Honorable Penny Pritzker, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the PRC, Section C Questionnaire Response," dated May 4, 2015, at C-34 and Exhibit C-9.

Trina's parent company, which is a Cayman Island company.[310] On this basis, we find that the warranty expenses are expenses incurred in the United States.

Moreover, while Trina contends that the Department does not deduct warranty expenses incurred by the parent company from CEP in NME cases because the expenses are captured in SG&A expenses, Trina's reliance on *Heavy Forged Hand Tools* and *Tissue Paper* to support its contention is misplaced. Both of those determinations involved circumstance-of-sale adjustments in an EP context in NME cases,[311] adjustments which the Department declined to make because off-setting adjustments to NV determined pursuant to section 773(c) of the Act are not normally possible. This is factually distinct from Trina's warranty expenses which pertain to CEP sales, *i.e.*, sales from Trina US to the first unaffiliated U.S. customer.

Additionally, we disagree with Trina that we should not deduct warranty expenses from CEP because Styromatic (Thailand) Co., Ltd. purportedly must incur these expenses and thus purportedly includes them in SG&A. Pursuant to section 772(d) of the Act, the Department will make adjustment for expenses associated with commercial activities in the United States that relate to the sale to an unaffiliated purchaser no matter where or when paid. As stated above, we disagree with Trina's contention that warranty expenses for products sold in the United States are not associated with economic activities in the United States. In any event, warranty expenses are not specifically identifiable in the Styromatic (Thailand) Co., Ltd., financial statement, and the Department's long-standing practice is normally to accept data in the surrogate producer's financial statements *in toto*, rather than performing a line-by-line analysis of the types of expenses included in each expense category in the surrogate financial statements.[312]

We agree with Trina that the Department should calculate CEP using a three-year average of warranty expenses; rather, than warranty expenses accrued during the POR. However, we disagree that the warranty expense that we apply should be actual warranty expenses rather than accrued warranty expenses. Warranties typically extend over a period of time that is longer than the POR, as is the case with Trina, which warranties its products for an extended number of years.[313] The accrued expense represents the expense associated with a commitment to repair or replace each product in the future.[314] Thus, the total amount of warranty expenses that will be incurred, *i.e.*, whether a specific product sold will have to be repaired or replaced, is unknown at the time of the sale. The Department's practice is to rely on a company's POR accrued warranty expenses, unless those expenses are distortive and not representative of a respondent's historical experience, in which case the Department relies on a three-year average of the respondent's

---

[310] *Id.*

[311] *See Heavy Forged Hand Tools*, at Comment 15; *Tissue Paper*, at Comment 6, p. 34.

[312] *See Certain Uncoated Paper From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 81 FR 3112 (January 20, 2016) and accompanying IDM at Comment 1; *Certain Activated Carbon From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 70163 (November 25, 2014) and accompanying IDM at Comment 6; *see also Rhodia, Inc. v. United States*, 240 F. Supp. 2d 1247, 1250-1251 (CIT 2002) (the Department is "neither required to 'duplicate the exact production experience of the Chinese manufacturers,' nor undergo 'an item-by-item analysis in calculating factory overhead.'" (citations omitted)).

[313] *See* Trina Section C&D SQR, at Exhibit SC2-10.

[314] *See, e.g., Solar Products Investigation* and the accompanying IDM at Comment 13 (noting the Trina reported accrued warranty expenses based upon a percentage of the sales price charged by Trina U.S. to its customers). *See* also *Investigation* at Comment 28.

accrued warranty expenses in its calculations in place of the POR accrued warranty expenses, thereby mitigating the impact of warranty claims that may by nature occur at irregular intervals.[315]

We analyzed the variation in the accrued warranty expense ratio during the most recent three-year period, fiscal years 2012, 2013, and 2014.[316] Because: (1) warranty expenses pertaining to sales during one period may be incurred after that period; and (2) the evidence on the record indicating that the warranty expense ratio reported for 2014 (which includes eleven months of the POR) is not in line with the company's historical experience in the two prior years, the Department has determined that Trina's accrued POR warranty expenses are distortive and a three-year average warranty expense would be more representative of Trina's experience than the POR warranty expense that we used in the preliminary results. Therefore, for the final results, the Department has relied on a three-year average of accrued warranty expenses in calculating the net U.S. price for CEP sales. Specifically, we have calculated a ratio of the three-year average warranty expense to the three-year average net sales of Trina Solar Limited.

Comment 26: Whether the Department should revise Trina's insurance expenses

Trina

- Trina had no EP sales during the POR, only CEP sales made by Trina US after importation. Thus, the Department should calculate domestic inland insurance and marine insurance expenses for shipments related to the reported CEP sales by multiplying the insurance rates by entered value, not the gross unit CEP, which is a price charged after the domestic (PRC) inland and ocean transportation occurred.

Petitioner

- The Department's surrogate domestic inland insurance rate was derived on the basis of gross price and should thus be applied on the basis of gross price.

Department's Position:

We agree with Trina. As we stated in the final results of the previous administrative review, the Department finds that entered value better represents the value of the shipment for these purposes, than does the downstream gross unit price because the gross unit price pertains to a valuation subsequent to shipment.[317] Therefore, consistent with prior determinations, for the final results, we have multiplied the domestic inland insurance and marine insurance rates by entered value rather than the gross unit price.

[315] *See Investigation* and the accompanying IDM at Comment 28.
[316] *See* Letter from Trina to the Honorable Penny Pritzker, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the PRC, Section C Supplemental Questionnaire Response," dated June 5, 2015, at Exhibit SC-15.
[317] *See Solar ARI*, and the accompanying IDM at Comment 21; *see also Honey from the People's Republic of China; Notice of Final Results of Antidumping Duty New Shipper Reviews*, 70 FR 9271 (February 25, 2005) ("Honey from the PRC") and accompanying Issues and Decision Memorandum at Comment 4; *Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields from the People's Republic of China*, 67 FR 6482 (February 12, 2002) and accompanying Issues and Decision Memorandum at Comment 13.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish the final results of this administrative review and the final weighted-average dumping margins in the *Federal Register*.

✓
Agree

Disagree

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

17 JUNE 2016
Date