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Administrative Review
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December 16, 2016

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

FROM: Edward Yang *EY*
Senior Director, Office VII
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Preliminary Results of the 2014-2015
Antidumping Duty Administrative Review of Crystalline Silicon
Photovoltaic Cells, Whether or not Assembled into Modules, From
the People's Republic of China

SUMMARY

In response to requests from interested parties, the Department of Commerce ("Department") is conducting an administrative review of the antidumping duty ("AD") order on crystalline silicon photovoltaic cells, whether or not assembled into modules ("solar cells"), from the People's Republic of China ("PRC") covering the period December 1, 2014 through November 30, 2015 (the period of review ("POR")). The administrative review covers 36 exporters of the subject merchandise, including two mandatory respondents, Canadian Solar International Limited, which we have preliminarily treated as a single entity with five affiliated additional companies identified below (collectively "Canadian Solar") and the collapsed entity Trina Solar, consisting of Changzhou Trina Solar Energy Co., Ltd., and Trina Solar (Changzhou) Science and Technology Co., Ltd., which we have preliminarily continued to treat as a single entity with five additional affiliated companies identified below (collectively "Trina").

The Department preliminarily determines that 26 companies, which include the two collapsed mandatory respondents, have established their entitlement to separate rate status and have sold subject merchandise in the United States at prices below normal value ("NV") during the POR. The Department also preliminarily determines that four companies failed to establish their entitlement to separate rates status and six other companies made no shipments of subject merchandise during the POR.



Background

On December 1, 2015, the Department notified interested parties of the opportunity to request an administrative review of orders, findings, or suspended investigations with anniversaries in December 2015, including the AD order on solar cells from the PRC.¹ On December 31, 2015, SolarWorld Americas Inc. (“Petitioner”), as well as various exporters and U.S. importers, requested that the Department conduct an administrative review of certain exporters covering the period December 1, 2014 through November 30, 2015. On February 9, 2016, the Department published a notice initiating an AD administrative review of solar cells from the PRC covering 44 companies/company groupings and the period December 1, 2014 through November 30, 2015.²

In the Initiation Notice, the Department stated that if it limited the number of respondents for individual examination, then it intended to select respondents based on volume data contained in responses to its quantity and value (“Q&V”) questionnaire.³ Further, the Department noted that it intended to limit the number of Q&V questionnaires issued in the review based on U.S. Customs and Border Protection (“CBP”) data for U.S. imports during the POR.⁴ On February 4, 2016, the Department issued a Q&V questionnaire to the eight companies or company groupings with the largest shipments during the POR, by value, according to information gathered from CBP. In February 2016, the Department received Q&V questionnaire responses from these eight companies as well as from tenKsolar (Shanghai) Co., Ltd.⁵ In addition, seven companies or company groupings reported making no shipments during the POR.

Numerous companies submitted separate rate applications and certifications in February and March 2016. In June 2016, the Department issued supplemental questionnaires to a number of companies requesting separate rates status. The Department received responses to its separate rates supplemental questionnaires in July 2016.

On March 28, 2016, the Department selected Canadian Solar and Trina Solar as mandatory respondents.⁶ On March 31, 2016, the Department issued its AD questionnaire and a questionnaire regarding double remedies to Canadian Solar and Trina Solar. These companies submitted responses to the Department’s AD questionnaire, the questionnaire regarding double remedies, and supplemental questionnaires from April 2016 through December 2016. During this time period, Petitioner also submitted comments on these companies’ questionnaire and supplemental questionnaire responses.

¹ See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review, 80 FR 75058 (December 1, 2015) (“Opportunity to Request Administrative Review”).

² See Initiation of Antidumping and Countervailing Duty Administrative Reviews, 81 FR 6832, 6835 (February 9, 2016) (“Initiation Notice”).

³ Id. at 6833.

⁴ Id.

⁵ The Department stated in the Initiation Notice that any party subject to the review could submit a Q&V questionnaire response by the applicable deadline if it desired to be included in the pool of companies from which the Department would select mandatory respondents. Id.

⁶ See memorandum from Jeff Pedersen, Senior International Trade Compliance Analyst, Office IV, AD/CVD Operations, Enforcement and Compliance to Abdelali Elouaradia, Director, Office IV, AD/CVD Operations, Enforcement and Compliance regarding “2014-2015 Antidumping Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Respondent Selection,” dated March 28, 2016 (“Respondent Selection Memorandum”) at 6.

In response to the Department's May 24, 2016 request for comments on surrogate country selection and surrogate values ("SVs"),⁷ Petitioner, Canadian Solar, and Trina Solar submitted comments and/or rebuttal comments on surrogate country selection and SVs from June 2016 through October 2016.

Five companies timely withdrew their requests for an administrative review. Therefore, on July 21, 2016, the Department rescinded the review with respect to these five companies.⁸

On August 2, 2016, and again on November 17, 2016, the Department extended the time limit for completing the preliminary results of this review. The current extended deadline for completing the preliminary results of this review is December 16, 2016.⁹

In response to the Department's September 28, 2016 request for comments for consideration in these preliminary results of review, Petitioner and Trina submitted comments in November 2016.

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

⁷ See Letter from the Department to all interested parties, regarding "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 24, 2016 ("Request for SC and SV Comments").

⁸ See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review, 81 FR 47347 (July 21, 2016) ("Rescission Notice").

⁹ See memorandum from Patrick O'Connor, International Trade Compliance Analyst, Office IV, Antidumping and Countervailing Duty Operations through Abdelali Elouaradia, Director, Office IV, Antidumping and Countervailing Duty Operations, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, regarding "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated August 2, 2016; see also memorandum from Jeff Pedersen, International Trade Compliance Analyst, Office IV, Antidumping and Countervailing Duty Operations through Abdelali Elouaradia, Director, Office IV, Antidumping and Countervailing Duty Operations, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, regarding "2014-2015 Antidumping Duty Administrative Review of Certain 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 November 17, 2016.

goods kits. Such parts that otherwise meet the definition of merchandise under consideration are included in the scope of this order.

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

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

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

Preliminary Determination of No Shipments

Canadian Solar Inc., BYD (Shangluo) Industrial Co., Ltd., Dongguan Sunworth Solar Energy Co., Ltd., Hangzhou Sunny Energy Science and Technology Co., Ltd., Jiangsu High Hope Int'l Group, Wuxi Suntech Power Co., Ltd./Luoyang Suntech Power Co., Ltd. (“Wuxi Suntech”) and Zhongli Talesun Solar Co. Ltd., reported no shipments of subject merchandise to the United States during the POR. To test these claims, the Department reviewed information obtained from a CBP data query and issued a no-shipment inquiry to CBP requesting that it provide any information that contradicted the no-shipment claims of these companies.

On February 18, 2016, Wuxi Suntech filed a no shipments certification in which it reported that it had no exports, sales, or entries during the POR.¹⁰ On November 18, 2016, the Department placed on the record information that identified certain shipments to the United States made by Wuxi Suntech.¹¹ On December 5, 2016 Wuxi Suntech timely commented on this information and provided information to support its claim of no shipments.¹² No other interested party commented on the information.

Although the customs information placed on the record indicates that Wuxi Suntech had shipments of solar panels to the United States during the POR, the information provided by Wuxi Suntech demonstrates that the shipments were replacements for sales occurring prior to this POR pursuant to warranty agreements, and thus, that the shipments had no commercial value. In a

¹⁰ See February 18, 2016 submission by Wuxi Suntech re: “No Shipment Certifications.”

¹¹ See November 18, 2016 memorandum from Jeff Pedersen to All Interested Parties concerning Release of U.S. Customs and Border Protection Information Relating to No Shipment Claims Made in the 2014-2015 Administrative Review of Crystalline Silicon Photovoltaic Cells from the People’s Republic of China.

¹² See Wuxi Suntech’s December 5, 2016 submission.

previous review, the Department considered replacement shipments and determined that it would be inappropriate to include such merchandise in the margin calculations because “doing so would be to calculate a dumping margin for the same sale in two different reviews.”¹³ Further, the Department has previously found that a respondent had no reviewable sales and rescinded a review when a respondent’s only entry during the POR was a sample shipment that had no commercial value.¹⁴ Consistent with these prior decisions, because we have determined that Wuxi Suntech’s only POR shipments were replacement shipments that had no commercial value or otherwise lacked consideration, we preliminarily determine that Wuxi Suntech did not have any reviewable transactions during the POR.

Based on the no shipment certifications of certain companies listed above, our analysis of the results of a CBP data query, and the fact that CBP did not identify any information that contradicted the no-shipment claims, we preliminarily determine that Canadian Solar Inc., BYD (Shangluo) Industrial Co., Ltd., Dongguan Sunworth Solar Energy Co., Ltd., Hangzhou Sunny Energy Science and Technology Co., Ltd., Jiangsu High Hope Int’l Group, Wuxi Suntech, and Zhongli Talesun Solar Co. Ltd. did not have any reviewable transactions during the POR. However, consistent with Departmental practice in non-market economy (“NME”) cases, it is not appropriate to rescind the review with respect to these companies but, rather, it is appropriate to complete the review with respect to these companies and issue instructions to CBP based on the final results of the review.¹⁵

Selection of Respondents

Section 777A(c)(1) of the Tariff Act of 1930, as amended (the “Act”), directs the Department to calculate an individual weighted-average dumping margin for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion to limit its examination to a reasonable number of exporters or producers if it is not practicable to make individual weighted-average dumping margin determinations because of the large number of exporters and producers involved in the review.

In its Respondent Selection Memorandum, the Department determined, pursuant to section 777A(c)(2) of the Act, that given the large number of producers or exporters for which a review was initiated and the Department’s current resource constraints, it would not be practicable to individually examine all known exporters/producers.¹⁶ Therefore, in accordance with section 777A(c)(2)(B) of the Act, the Department selected for individual examination the two exporters accounting for the largest volume of subject merchandise exported from the PRC during the POR, Canadian Solar and Trina Solar.¹⁷

¹³ See Certain Polyester Staple Fiber From the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review; 2013-2014, 80 FR 43392, 43393 (July 22, 2015), and accompanying Preliminary Decision Memo at 4, unchanged in Certain Polyester Staple Fiber From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2013-2014, 81 FR 4613, 4614 (January 27, 2015).

¹⁴ See Chlorinated Isocyanurates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 76 FR 70957 (November 16, 2011) and accompanying Issues and December Memorandum at Comment 8.

¹⁵ See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties, 76 FR 65694 (October 24, 2011).

¹⁶ See Respondent Selection Memorandum at 3-4.

¹⁷ Id.

Single Entity Treatment

To the extent that the Department's practice does not conflict with section 773(c) of the Act, the Department has, in prior cases, treated certain NME exporters and/or producers as a single entity if the facts of the case supported such treatment.¹⁸ Pursuant to 19 CFR 351.401(f)(1), the Department will treat producers as a single entity, or "collapse" them, where: (1) those producers are affiliated; (2) the producers have production facilities for producing similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities; and (3) there is a significant potential for manipulation of price or production.¹⁹ In determining whether a significant potential for manipulation exists, 19 CFR 351.401(f)(2) indicates that the Department may consider various factors, including: (1) the level of common ownership; (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (3) whether the operations of the affiliated firms are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.²⁰

Section 771(33)(F) of the Act identifies persons that shall be considered "affiliated" or "affiliated persons," as two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.²¹ Section 771(33) of the Act further states that a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

The Department has preliminarily determined that the following companies are under common control and, therefore, are affiliated, in accordance with section 771(33)(F) of the Act: Canadian Solar International Limited, Canadian Solar Manufacturing (Changshu), Inc., Canadian Solar Manufacturing (Luoyang), Inc., CSI Cells Co., Ltd., CSI-GCL Solar Manufacturing (YanCheng) Co., Ltd., and CSI Solar Power (China) Inc. We have also preliminarily determined that these companies should be treated as a single entity for AD purposes pursuant to 19 CFR 351.401(f). These affiliated companies operate production facilities that produce similar or identical products that would not require substantial retooling of their facilities in order to restructure manufacturing priorities.²² Also, there is a significant potential for the manipulation of price or production among these companies as evidenced by the level of common ownership, the degree

¹⁸ See Certain Steel Nails From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances and Postponement of Final Determination, 73 FR 3928, 3932 (January 23, 2008), unchanged in Certain Steel Nails From the People's Republic of China: Amended Preliminary Determination of Sales at Less Than Fair Value, 73 FR 7254 (February 7, 2008) and Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 33977 (June 16, 2008).

¹⁹ See, e.g., Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review, 63 FR 12764, 12774-12775 (March 16, 1998).

²⁰ See also, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From Taiwan, 62 FR 51427, 51436 (October 1, 1997).

²¹ See section 771(33)(F) of the Act.

²² See 19 CFR 351.401(f)(1). See also the December 16, 2016 memorandum from Jeff Pedersen, International Trade Analyst, AD/CVD Operations Office IV to Abdelali Elouaradia, Director, AD/CVD Operations Office IV regarding "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Affiliation and Single Entity Memorandum for Canadian Solar International Limited ("Canadian Solar Single Entity Memorandum") at 6-7.

of management overlap, and the intertwined nature of the operations of these companies.²³ Thus we have preliminarily treated these companies as a single entity.²⁴

In the 2013-2014 AD administrative review of solar cells from the PRC, the Department found that Trina Solar (i.e., 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. were affiliated pursuant to 771(33)(F) of the Act, and should be treated as a single entity for AD purposes, pursuant to 19 CFR 351.401(f)(1)-(2).²⁵ Information provided by Trina confirms that none of the facts that we relied on to support our prior determination to treat these parties as a single entity have changed during this review period.²⁶ Because there is no evidence on the record that contradicts our prior collapsing determination, or the evidence on this record, we have preliminarily continued to find Trina Solar, 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. as a single entity in this administrative review. Specifically, we preliminarily continue to find that 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. were under the common control of Trina Solar Limited, a publicly-traded parent company, during the POR and, thus, these companies are affiliated within the meaning of sections 771(33)(F) of the Act.²⁷ Additionally, we preliminarily continue to find that treatment of Trina Solar, 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. as a single entity (“Trina”), pursuant to 19 CFR 351.401(f)(1)-(2), is appropriate because the companies’ production facilities would not require substantial retooling in order to restructure manufacturing priorities, and there is a significant potential for the manipulation of price or production. We based our preliminary determination that there is a significant potential for the manipulation of price or production on the level of common ownership, the substantial overlap in management and directors, and the intertwined production activities of these companies.²⁸

DISCUSSION OF THE METHODOLOGY

Non-Market Economy Country

²³ See 19 CFR 351.401(f)(2). See also Canadian Solar Single Entity Memorandum at 7-8.

²⁴ Id.

²⁵ 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; 2013-2014, 81 FR 39905, 39905 & n.3 (June 20, 2016); see also Letter from the Department, “Section A Supplemental Questionnaire in the Antidumping Duty Review of Crystalline Silicon Photovoltaic Cells from the People’s Republic of China,” dated May 18, 2016, at Attachment I (containing the memorandum regarding “Affiliation and Single Entity Status of 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) (“AR2 Trina Collapsing Memo”).

²⁶ See Trina’s April 25, 2016 Section A Response at A-10–A-13 and X-9–X-11; Trina’s June 8, 2016 Supplemental Section A Response at 2-4; see also AR2 Trina Collapsing Memo.

²⁷ Id.

²⁸ Id.

The Department considers the PRC to be a NME country.²⁹ In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Therefore, the Department will continue to treat the PRC as an NME country for purposes of these preliminary results of review. The Department calculated NV using a factors of production (“FOP”) methodology in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rates

In all proceedings involving NME countries, the Department maintains a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single weighted-average dumping margin.³⁰ In the Initiation Notice, the Department notified parties of the application process by which exporters or exporter/producers may obtain separate rate status in NME proceedings.³¹ It is the Department’s policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (de jure) and in fact (de facto), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in Sparklers,³² as amplified by Silicon Carbide.³³ However, if the Department determines that a company is wholly foreign-owned or located in a market economy (“ME”) country, then analysis of the de jure and de facto criteria are not necessary to determine whether the company is independent from government control and eligible for a separate rate.³⁴

The Department continues to evaluate its practice with regard to the separate rates analysis in light of the diamond sawblades from the PRC AD proceeding, and the Department’s determinations therein.³⁵ In particular, in litigation involving the diamond sawblades

²⁹ See Hardwood and Decorative Plywood From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 58273 (September 23, 2013) and the accompanying Issues and Decision Memorandum at the Background section.

³⁰ See Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 55039, 55040 (September 24, 2008); Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People’s Republic of China, 71 FR 53079, 53082 (September 8, 2006); Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People’s Republic of China, 71 FR 29303, 29307 (May 22, 2006).

³¹ See Initiation Notice, 81 FR at 6834.

³² See Final Determination of Sales at Less Than Fair Value: Sparklers From the People’s Republic of China, 56 FR 20588 (May 6, 1991) (“Sparklers”).

³³ See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People’s Republic of China, 59 FR 22585 (May 2, 1994) (“Silicon Carbide”).

³⁴ See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles From the People’s Republic of China, 72 FR 52355, 52356 (September 13, 2007).

³⁵ See Final Results of Redetermination Pursuant to Remand Order for Diamond Sawblades and Parts Thereof from the People’s Republic of China (May 6, 2013) in Advanced Technology & Materials Co., Ltd., et al. v. United States, 885 F. Supp. 2d 1343 (CIT 2012), affirmed in Advanced Technology & Materials Co., Ltd., et al. v. United States, 938 F. Supp. 2d 1342 (CIT 2013). This remand redetermination is on the Enforcement and Compliance website at <http://enforcement.trade.gov/remands/12-147.pdf>. See also Diamond Sawblades and Parts Thereof from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review: 2011-2012, 78 FR 77098 (December 20, 2013) and accompanying Preliminary Decision Memorandum at 7, unchanged in Diamond Sawblades, 79 FR 35723 (June 24, 2014) and accompanying Issues and Decision Memorandum at Comment 1.

proceeding, the U.S. Court of International Trade found the Department's existing separate rates analysis deficient in the circumstances of that case, in which a government-controlled entity had significant ownership in the respondent exporter.³⁶ Based on this, we have concluded that where a government entity holds a majority ownership share, either directly or indirectly, in the respondent exporter, the majority ownership holding in and of itself means that the government exercises or has the potential to exercise control over the company's operations generally, which may include control over, for example, the selection of management, a key factor in determining whether a company has sufficient independence in its export activities to merit a separate rate. Consistent with normal business practices, we would expect any majority shareholder, including a government, to have the ability to control, and an interest in controlling, the operations of the company, including the selection of management and the profitability of the company. Accordingly, we have considered the level of government ownership in our separate rates analysis where necessary.

Separate Rate Applicants

As noted above, the Department initiated this review with respect to 44 companies. Interested parties timely withdrew all of their requests for a review of five companies, or groups of companies, and the Department rescinded this review with respect to these five companies or groups of companies.³⁷ Of the remaining 39 companies/company groupings, as noted above, the Department preliminarily determined that seven of the companies did not have any reviewable transactions during the POR and it preliminarily determined that three of the Canadian Solar companies for which the Department initiated this review should be treated as a single entity. The separate rates status of the remaining 29 companies is discussed below:

Mandatory Respondents

1. Canadian Solar International Limited, Canadian Solar Manufacturing (Changshu) Inc., Canadian Solar Manufacturing (Luoyang) Inc., CSI Cells Co., Ltd., CSI-GCL Solar Manufacturing (YanCheng) Co., Ltd., and CSI Solar Power (China) Inc.
2. 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./Hubei Trina Solar Energy Co., Ltd.

Separate Rate Respondents

³⁶ See, e.g., *Advanced Technology & Materials Co., Ltd. v. United States*, 885 F. Supp. 2d 1343, 1349 (CIT 2012) ("The court remains concerned that Commerce has failed to consider important aspects of the problem and offered explanations that run counter to the evidence before it."); *id.* at 1351 ("Further substantial evidence of record does not support the inference that SASAC's {state-owned assets supervision and administration commission} 'management' of its 'state-owned assets' is restricted to the kind of passive-investor *de jure* 'separation' that Commerce concludes.") (footnotes omitted); *id.* at 1355 ("The point here is that 'governmental control' in the context of the separate rate test appears to be a fuzzy concept, at least to this court, since a 'degree' of it can obviously be traced from the controlling shareholder, to the board, to the general manager, and so on along the chain to 'day-to-day decisions of export operations,' including terms, financing, and inputs into finished product for export."); *id.* at 1357 ("AT&M itself identifies its 'controlling shareholder' as CISRI {owned by SASAC} in its financial statements and the power to veto nomination does not equilibrate the power of control over nomination.") (footnotes omitted).

³⁷ See Respondent Selection Memorandum; see also *Rescission Notice*.

3. Chint Solar (Zhejiang) Co., Ltd.
4. ERA Solar Co., Ltd.
5. ET Solar Energy Limited
6. Hengdian Group DMEGC Magnetics Co., Ltd.
7. JA Solar Technology Yangzhou Co., Ltd.
8. Jiawei Solarchina (Shenzhen) Co., Ltd.
9. Jiawei Solarchina Co., Ltd.
10. JingAo Solar Co., Ltd.
11. Lightway Green New Energy Co., Ltd.
12. Ningbo ETDZ Holdings, Ltd.
13. Risen Energy Co., Ltd.
14. Shanghai BYD Co., Ltd.
15. Shanghai JA Solar Technology Co., Ltd.
16. Shenzhen Sungold Solar Co., Ltd.
17. Shenzhen Topray Solar Co., Ltd.
18. Star Power International Limited
19. Systemes Versilis, Inc.
20. Taizhou BD Trade Co., Ltd.
21. tenKsolar (Shanghai) Co., Ltd.
22. Toenergy Technology Hangzhou Co., Ltd.
23. Wuxi Tianran Photovoltaic Co., Ltd.
24. Yingli Energy (China) Company Limited/Baoding Tianwei Yingli New Energy Resources Co., Ltd./Tianjin Yingli New Energy Resources Co., Ltd./Hengshui Yingli New Energy Resources Co., Ltd./Lixian Yingli New Energy Resources Co., Ltd./Baoding Jiasheng Photovoltaic Technology Co., Ltd./Beijing Tianneng Yingli New Energy Resources Co., Ltd./Hainan Yingli New Energy Resources Co., Ltd./ Shenzhen Yingli New Energy Resources Co., Ltd.
25. Zhejiang Era Solar Technology Co., Ltd.
26. Zhejiang Sunflower Light Energy Science & Technology Limited Liability Company

1. Joint Ventures between Chinese and Foreign Companies or Wholly Chinese-Owned Companies

For the aforementioned companies that are either Chinese and foreign joint ventures or wholly Chinese-owned companies, the Department analyzed whether these companies have demonstrated an absence of de jure and de facto government control over their respective export activities.

a. Absence of De Jure Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) legislative enactments decentralizing control over export activities of the companies; and (3) other formal measures by the government decentralizing control over export activities of companies.³⁸

³⁸ See Sparklers, 56 FR at 20589.

The evidence provided by the joint ventures between Chinese and foreign companies or wholly Chinese-owned companies in the above list supports a preliminary finding of an absence of de jure government control for each of these companies based on the following: (1) an absence of restrictive stipulations associated with the individual exporters' business and export licenses; (2) the existence of applicable legislative enactments decentralizing control of the companies; and (3) the implementation of formal measures by the government decentralizing control of Chinese companies.

b. Absence of De Facto Control

Typically, the Department considers four factors in evaluating whether a respondent is subject to de facto government control of its export functions: (1) whether the export sales prices are set by, or are subject to the approval of, a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.³⁹ The Department has determined that an analysis of de facto control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning them separate rates.

The evidence provided by the joint ventures between Chinese and foreign companies or wholly Chinese-owned companies in the above list supports a preliminary finding of an absence of de facto government control based on record statements and supporting documentation showing that the companies: (1) set their own export sales prices independent of the government and without the approval of a government authority; (2) have the authority to negotiate and sign contracts and other agreements; (3) maintain autonomy from the government in making decisions regarding the selection of management; and (4) retain the proceeds of their respective export sales and make independent decisions regarding the disposition of profits or financing of losses.

Therefore, the evidence placed on the record of this administrative review by the joint ventures between Chinese and foreign companies or wholly Chinese-owned companies in the above list demonstrates an absence of de jure and de facto government control under the criteria identified in Sparklers and Silicon Carbide. Accordingly, the Department preliminarily grants separate rate status to these companies.

2. Wholly Foreign-Owned

For the companies in the above list that provided evidence that they are wholly owned by a company located in a ME country, the Department has no record evidence indicating that these companies are under the control of the Government of China ("GOC"). Thus, it is not necessary for the Department to conduct a separate rate analysis to determine whether these companies are

³⁹ See Silicon Carbide, 59 FR at 22586-87; Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China, 60 FR 22544, 22545 (May 8, 1995).

independent from government control.⁴⁰ Therefore, the Department has preliminarily granted separate rate status to these companies.

3. Companies Not Receiving a Separate Rate

The Department has not granted the following seven companies a separate rate because either they did not file a separate rate application, which, as stated in the Initiation Notice,⁴¹ they were required to do in order to be considered for separate-rate status. Because the Department preliminarily determines that the companies listed above are not eligible for separate rate status, we are treating them as part of the PRC-wide entity. Because no party requested a review of the PRC-wide entity, the entity is not under review and the entity's rate (i.e., 238.95 percent) is not subject to change.⁴²

- 27. Jiangsu Sunlink PV Technology Co., Ltd.
- 28. Ningbo Hisheen Electrical Co., Ltd.
- 29. Shenzhen Glory Industries Co., Ltd.

4. Separate Rate for Companies Not Individually Examined

The statute and the Department's regulations do not address the establishment of a dumping margin for respondents not selected for individual examination when the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, the Department looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when determining the dumping margin for respondents which the Department did not examine individually in an administrative review.⁴³ Section 735(c)(5)(A) of the Act articulates a preference not to calculate an all-others rate using dumping margins which are zero, de minimis or based entirely on facts available ("FA"). Accordingly, the Department's usual practice in determining the dumping margin for separate-rate respondents not selected for individual examination has been to average the weighted-average dumping margins for the individually examined respondents, excluding dumping margins that are zero, de minimis, or based entirely on FA.⁴⁴ Consistent with this practice, the Department has assigned to the companies that have not been individually examined, but which

⁴⁰ See, e.g., Seamless Refined Copper Pipe and Tube from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 75 FR 26716, 26720 (May 12, 2010), unchanged in Seamless Refined Copper Pipe and Tube From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 60725 (October 1, 2010).

⁴¹ See Initiation Notice, 81 FR at 6834.

⁴² 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; 2013– 2014, 81 FR 39905, 39908 (June 20, 2016) ("AR2 Final").

⁴³ See, e.g., 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, 63794 (October 17, 2012).

⁴⁴ See Longkou Haimeng Mach. Co. v. United States, 581 F. Supp. 2d 1344, 1357-60 (Ct. Int'l Trade 2008) (affirming the Department's determination to assign a 4.22 percent dumping margin to the separate rate respondents in a segment where the three mandatory respondents received dumping margins of 4.22 percent, 0.03 percent, and zero percent, respectively); see also Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 36656, 36660 (July 24, 2009).

have demonstrated their eligibility for a separate rate, a dumping margin based on the dumping margins calculated for Canadian Solar and Trina.⁴⁵

In these preliminary results, the Department has calculated rates for the two mandatory respondents (i.e., Canadian Solar and Trina) that are not zero, de minimis, or based entirely on facts available. Normally, the Department's practice is to assign to separate rate entities that were not individually examined a rate equal to the weighted average of the rates calculated for the individually examined respondents, excluding any rates that are zero, de minimis, or based entirely on adverse facts available ("AFA").⁴⁶ Consistent with this practice, the Department has assigned to the companies that have not been individually examined but have demonstrated their eligibility for a separate rate a margin equal to the weighted-average margin using the ranged sales values which Canadian Solar and Trina reported in the public versions of their questionnaire responses.⁴⁷

Application of Partial FA and Adverse Facts Available ("AFA")

Section 776(a)(1) and (2) of the Act provides that, if necessary information is missing from the record, or if an interested party: (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the AD statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

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

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, the Department is not required to

⁴⁵ See the memorandum from Jeff Pedersen International Trade Analyst, AD/CVD Operations Office IV to Howard Smith, Program Manager, AD/CVD Operations Office IV "2014-2015 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: Calculation of the Dumping Margin for Respondents Not Selected for Individual Examination," dated concurrently with this notice.

⁴⁶ See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China, 71 FR 77373, 77377 (December 26, 2006), unchanged in Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China, 72 FR 19690 (April 19, 2007).

⁴⁷ See the memorandum from Jeff Pedersen to Howard Smith, "2014-2015 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: Calculation of the Margin for Respondents Not Selected for Individual Examination," dated concurrently with this notice.

determine, or make any adjustments to, a weighted average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information. Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or other information placed on the record.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.⁴⁸ When selecting an AFA margin, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.

Certain unaffiliated tollers of inputs used by Canadian Solar and Trina to produce subject merchandise and unaffiliated suppliers of solar cells and/or solar modules to both respondents failed to provide FOP data. The Department preliminarily determines that it is appropriate to apply AFA, pursuant to section 776(b) of the Act, with respect to the unreported FOPs for purchased solar cells and solar modules. These unreported FOPs for solar cells and solar modules represent a material amount of necessary FOP information. However, in accordance with section 776(a)(1) of the Act, the Department is applying FA with respect to the unreported FOPs from the unaffiliated tollers. The record indicates that the tolled portions either represent relatively small percentages of the inputs consumed or the tollers only performed a relatively small portion of the total processing involved in producing the input. For details regarding these determinations, see the memoranda regarding unreported FOPs.⁴⁹

Surrogate Country Selection

Legal and Regulatory Framework

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 economic development comparable to that of the NME country; and (2) significant producers of

⁴⁸ Statement of Administrative Action Accompanying the Uruguay Round Agreements Act (“SAA”), H.R.Rep. No. 103-316, at 870 (1994), as reprinted in 1994 U.S.C.C.A.N. 4040, 4199.

⁴⁹ See the memoranda from Jeff Pedersen International Trade Analyst, AD/CVD Operations, Office IV to Abdelali Elouaradia Director, AD/CVD Operations, Office IV entitled: “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Unreported Factors of Production” dated concurrently with this notice.

comparable merchandise.⁵⁰ Further, pursuant to 19 CFR 351.408(c)(2), the Department will normally value FOP in a single country.

Where the Department determines that there is more than one country at a level of economic development comparable to that of the NME country and a significant producer of comparable merchandise, it then examines the availability and quality of the SV data on the record from each potential surrogate country in order to select a single primary surrogate country.

Interested Parties' Comments

Petitioner contends that the Department should select Thailand as the primary surrogate country, consistent with the surrogate country selected in the first and second administrative reviews of this order.⁵¹ Canadian Solar argues that the Department should select Bulgaria, Romania, or Thailand as the primary surrogate country because all three countries are economically comparable to the PRC, are significant producers of merchandise that is identical or comparable to subject merchandise, and have robust surrogate data sources.⁵² Trina maintains that each of the countries identified by the Department as being at the level of economic development of the PRC is potentially a significant producer of merchandise that is identical or comparable to subject merchandise.⁵³ Our surrogate country analysis is below.

Economic Comparability

On May 24, 2016, the Department issued a memorandum identifying six countries as being at the level of economic development of the PRC for the POR. The countries identified in that memorandum are Bulgaria, Ecuador, Mexico, Romania, South Africa and Thailand.⁵⁴

The Department determined economic comparability based on per capita gross national income, as reported in the most current annual issue of the World Development Report (The World Bank).⁵⁵ The countries identified above are not ranked and are considered equivalent in terms of economic comparability to the PRC.

⁵⁰ See Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) ("Policy Bulletin").

⁵¹ See Letter from Petitioner to the Department, regarding "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Comments on Surrogate Country Selection," dated June 27, 2016 ("Petitioner's June 27, 2016 Submission") at 5.

⁵² See Letter from Canadian Solar to the Department, regarding "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Canadian Solar's Comments on Surrogate Country Selection," dated June 27, 2016 at 4.

⁵³ See Letter from Trina to the Department, regarding "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Comment on Countries with Significant Production of Identical and Comparable Merchandise," dated June 27, 2016 at 2.

⁵⁴ See Request for SC and SV Comments.

⁵⁵ See Policy Bulletin at 2 (endnotes omitted); see e.g., Utility Scale Wind Towers From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 77 FR 75992 (December 26, 2012) and the accompanying Issues and Decision Memorandum at Comment 1. Although 19 CFR 351.408(b) instructs the Department to rely on gross domestic product ("GDP") data in such comparisons, it is Departmental practice to use "per capita GNI, rather than per capita GDP, because while the two measures are very similar, per capita GNI is reported across almost all countries by an authoritative source (the World Bank), and because the Department finds that the per capita GNI represents the single best measure of a country's level of total income and thus level of economic development." See Antidumping Methodologies in Proceedings Involving Non-Market Economy Countries: Surrogate Country Selection and Separate Rates, 72 FR 13246, 13246 n.2 (March 21, 2007).

Significant Producers of Identical or Comparable Merchandise

While the statute does not define “significant” or “comparable” the Department’s practice is to evaluate whether production is significant based on characteristics of world production of, and trade in, comparable merchandise (subject to the availability of data on these characteristics) and to determine whether merchandise is comparable on a case-by-case basis.⁵⁶ Where there is no production information, the Department has relied upon export data from potential surrogate countries. With respect to comparability of merchandise, in all cases, if identical merchandise is produced in a country, the country qualifies as a producer of comparable merchandise. Where there is no evidence of production of identical merchandise in a potential surrogate country, the Department has determined whether merchandise is comparable to the subject merchandise on the basis of similarities in physical form and the extent of processing or on the basis of production factors (physical and non-physical) and factor intensities. Since these characteristics are specific to the merchandise in question, the standard for ‘significant producer’ will vary from case to case.⁵⁷

There are no country-wide statistics regarding the production of merchandise that is identical or comparable to subject merchandise on the record of this review for any of the economically comparable countries identified above. However, the record does contain information indicating that manufacturers of merchandise identical to subject merchandise are located in certain potential surrogate countries. Specifically, the record shows that Thailand has several manufacturers that not only assemble solar cells into solar panels, but also produce solar cells.⁵⁸ While the record shows that Bulgaria had an assembler of solar panels, there is no evidence that Bulgaria had any producer of solar cells.

Moreover, the record also contains evidence of production of comparable merchandise in the form of export data, which is one of the factors we consider in determining whether a country is a significant producer of comparable merchandise. Export data from UN Comtrade demonstrates that Bulgaria, Ecuador, Mexico, Romania, South Africa, and Thailand exported merchandise during the POR that is identical or comparable to subject merchandise.⁵⁹

Based on the foregoing, the Department has determined that Bulgaria, Ecuador, Mexico, Romania, South Africa, and Thailand are all significant producers of comparable merchandise. Because there is more than one country at a level of economic development comparable to that of the PRC and a significant producer of comparable merchandise, we examined the availability and quality of the SV data on the record from each potential surrogate country in order to select a single primary surrogate country.

Data Availability and Quality

⁵⁶ See Xanthan Gum from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 78 FR 2252 (January 10, 2013) and accompanying Preliminary Decision Memorandum at 4-7, unchanged in Xanthan Gum from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 33350 (June 4, 2013).

⁵⁷ See Policy Bulletin 04.1. See e.g., Hardwood and Decorative Plywood From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 58273 (September 23, 2013) and the accompanying Issues and Decision Memorandum at Comment 7.

⁵⁸ See Petitioner’s June 27, 2016 Submission at Exhibit 1.

⁵⁹ See Petitioner’s June 27, 2016 Submission at Exhibit 1.

When evaluating SV data, the Department considers several factors including whether the SVs are publicly available, contemporaneous with the period under consideration, a broad-market average, from an appropriate surrogate country, tax and duty-exclusive, and specific to the input being valued.⁶⁰ The Department's preference is to satisfy the breadth of these aforementioned selection factors.⁶¹

Parties have placed on the record import data from Bulgaria and Thailand, which provide prices with which to value nearly all of the inputs used by both mandatory respondents in producing subject merchandise.⁶² An examination of the import data submitted by parties indicates that the data are equal in terms of being publicly available, contemporaneous with the period under consideration, broad-market averages, from an appropriate surrogate country, and tax and duty-exclusive. However, we have determined that the Thai data provide greater specificity for many inputs when compared with the Bulgarian data. Specifically, much of the Bulgarian import data are itemized only to the sixth digit of the Bulgarian Harmonized Tariff Schedule ("HTS"), while the Thai import data are itemized to the eleventh digit.⁶³ Consequently, the Thai import data allow for greater specificity in selecting SVs for inputs. Additionally, as noted above, there is record evidence that not only solar module assemblers, but solar cell manufacturers are located in Thailand. This also supports the conclusion that Thai import data are specific to the inputs that we are valuing given that these manufacturers could be importing inputs actually used in the production of solar cells.⁶⁴

Given the above, the Department has selected Thailand as the primary surrogate country for this review. A detailed description of the Thai SVs selected by the Department is provided below in the "Normal Value" section of this memorandum.

Date of Sale

The Department will normally, in accordance with 19 CFR 351.401(i), "use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business" as the date of sale unless the evidence indicates that there is another date which better reflects the date on which the material terms of sales are established. Canadian Solar and Trina both reported the sales invoice date as the date of sale.⁶⁵ Because there is no other information on the record

⁶⁰ See, e.g., Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2010-2011, 78 FR 17350 (March 21, 2013), and accompanying Issues and Decision Memorandum at Comment I(C).

⁶¹ Id.

⁶² See generally Petitioner's, Trina's, and Canadian Solar's SV Submissions.

⁶³ See generally the Thai and Bulgarian import data, and specifically Petitioner's October 18, 2016 submission at Exhibit 1, Trina's July 18, 2016 submission at Exhibits A-1 and B-1, and Canadian Solar's July 18, 2016 submission at Exhibit SV-1. For example, Bulgarian HTS 854442, which is relevant for valuing junction boxes, has two subcategories while Thai HTS 854442 has over 10 subcategories; Bulgarian HTS 282890, sodium hypochlorite, has no subcategories while Thai HTS 282890 has three subcategories; Bulgarian HTS 283410, sodium nitrate, has no subcategories while Thai HTS 283410 has two subcategories.

⁶⁴ See Canadian Solar and Trina's May 25, 2016 section D responses in which they detail each stage of solar cell production and subsequent assembly of the solar cells into solar modules.

⁶⁵ See Letter from Canadian Solar to the Department, regarding "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China: Canadian Solar's Response to the Department's Section C and Appendices V and XI Questionnaire," dated May 12, 2016 ("Canadian Solar Section C Response") at C-16; see also Letter from Trina to the Department, regarding "Crystalline Silicon Photovoltaic Cells, Whether or

indicating that a different date better reflects the date on which the material terms of sales are established, the Department has preliminarily determined to use the sales invoice date as the date of sale.

Fair Value Comparisons

To determine whether Canadian Solar and Trina's U.S. sales of subject merchandise were made at less than NV, we compared net U.S. sales prices to NV, as described in the "U.S. Price" and "Normal Value" sections below.

Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates dumping margins by comparing weighted-average NVs to weighted-average export prices ("EPs") or constructed export prices ("CEPs") (the average-to-average comparison method) unless the Department determines that another method is appropriate in a particular situation. In AD investigations, the Department examines whether to compare weighted-average NVs to the prices of individual export transactions (the average-to-transaction comparison method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of administrative reviews, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in AD investigations.⁶⁶ In recent investigations and reviews, the Department applied a "differential pricing" analysis to determine whether the application of average-to-transaction comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.⁶⁷ The Department finds the differential pricing analysis used in those recent investigations and reviews may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review.⁶⁸ The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping

Not Assembled Into Modules from the People's Republic of China: Section C Questionnaire Response," dated May 12, 2016 ("Trina Section C Response") at C-14.

⁶⁶ See Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011, 77 FR 73415 (December 10, 2012), and accompanying Issues and Decision Memorandum at Comment 1.

⁶⁷ See Hardwood and Decorative Plywood From the People's Republic of China: Antidumping Duty Investigation, 78 FR 25946 (May 3, 2013), unchanged in Hardwood and Decorative Plywood From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 58273 (September 23, 2013); see also Certain Steel Threaded Rod From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011–2012, 78 FR 21101 (April 9, 2013), unchanged in Certain Steel Threaded Rod From the People's Republic of China: Final Results of Third Antidumping Duty Administrative Review; 2011–2012, 78 FR 66330 (November 5, 2013); see also Certain Lined Paper Products From the People's Republic of China: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review; 2011–2012, 78 FR 34640 (June 10, 2013) unchanged in Certain Lined Paper Products From the People's Republic of China: Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review; 2011–2012, 78 FR 65274 (October 31, 2013).

⁶⁸ See, e.g., Activated Carbon From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011–2012, 78 FR 26748 (May 8, 2013), unchanged in Certain Activated Carbon From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011–2012, 78 FR 70533 (Nov. 26, 2013), and accompanying Issues & Decision Memorandum at Comment 4.

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

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

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

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

value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average comparison method.

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

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

Results of the Differential Pricing Analysis

The results of the differential pricing analysis for both mandatory respondents demonstrate that more than 66 percent of each company's U.S. sales pass the Cohen's *d* test. However, for both mandatory respondents, the Department finds that there is not a meaningful difference in the weighted-average dumping margins calculated using the average-to-average comparison method and the average-to-transaction comparison method when both methods are applied to all sales. Accordingly, the Department has preliminarily determined to use the average-to-average comparison method in making comparisons of CEPs to NVs for Canadian Solar and Trina.

U.S. Price

Constructed Export Price

In accordance with section 772(b) of the Act, CEP is "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d)." Canadian Solar and Trina reported that during the POR, they made sales through their respective U.S. affiliates. Neither company reported making EP sales. Because the mandatory respondents reported that their U.S. affiliates made the U.S. sales and there is no indication that the sales are EP sales, we treated all sales as CEP sales.

In accordance with section 772(b) of the Act, we calculated CEPs for Canadian Solar and Trina by deducting from the reported gross unit sales prices discounts and rebates, movement

expenses, where applicable, in accordance with section 772(c)(2)(A) of the Act, direct and indirect selling expenses, credit, expenses, and inventory carrying costs, all of which relate to commercial activity in the United States, in accordance with section 772(d)(1) of the Act, and CEP profit, in accordance with sections 772(d)(3) and 772(f) of the Act. Where applicable, we reduced movement expenses by freight revenue.

Value Added Tax (“VAT”)

The Department’s recent practice, in NME cases, is to subtract from CEP or EP the amount of any un-refunded (irrecoverable) VAT in accordance with section 772(c)(2)(B) of the Act.⁶⁹ Where the irrecoverable VAT is a fixed percentage of the U.S. price, the Department makes a tax-neutral dumping comparison by reducing the U.S. price by this percentage.⁷⁰ Thus, the Department’s methodology essentially amounts to performing two basic steps: (1) determining the amount (or rate) of the irrecoverable VAT tax on subject merchandise, and (2) reducing U.S. price by the amount (or rate) determined in step one.

The Chinese VAT schedule placed on the record of this review demonstrates that the VAT rate is 17 percent and the rate for rebating VAT on subject merchandise upon exportation is 17 percent.⁷¹ Thus, the record indicates that there is no irrecoverable VAT associated with the exportation of subject merchandise. For the purposes of these preliminary results of review, therefore, we have not reduced U.S. prices for VAT.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME country and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV in an NME case on FOPs because the presence of government controls on various aspects of NME countries renders price comparisons and the calculation of production costs invalid under the Department’s normal methodologies.⁷² Under section 773(c)(3) of the Act, FOPs include, but are not limited to: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. In accordance with section 773(c) of the Act and 19 CFR 351.408(c)(1), we calculated NV by multiplying the reported per-unit FOPs consumption rates by publicly available SVs.⁷³

⁶⁹ See Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings, 77 FR 36481, 36483-84 (June 19, 2012).

⁷⁰ Id.

⁷¹ See Trina Section C Response at C-38 and Exhibits C-12, C-13, and C-14; see also Canadian Solar Section C Response at C-43 and Exhibits C-9 and C-10.

⁷² See, e.g., Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products From the People’s Republic of China, 71 FR 19695, 19703 (April 17, 2006), unchanged in Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People’s Republic of China, 71 FR 53079 (September 8, 2006).

⁷³ See Preliminary Surrogate Value Memorandum.

Factor Valuation Methodology

In accordance with section 773(c) of the Act, the Department calculated NV based on FOP data reported by the individually examined respondents. To calculate NV, the Department multiplied the reported per-unit FOP consumption rates by publicly available SVs. When selecting SVs, the Department considered, among other factors, whether the SV data on the record were publicly available, broad market averages, contemporaneous with the period under consideration or closest in time to the period, product-specific, and tax-exclusive.⁷⁴ As appropriate, the Department adjusted FOP costs by including freight costs to make them delivered values. Specifically, the Department added a surrogate freight cost, where appropriate, to surrogate input values using the shorter of the reported distance from the domestic supplier to the respondent's factory or the distance from the nearest seaport to the respondent's factory.⁷⁵ In those instances where we could not value FOPs using SVs that are contemporaneous with the POR, we adjusted the SVs using inflation indices. An overview of the SVs used to calculate weighted-average dumping margins for Canadian Solar and Trina is below. A detailed description of all SVs used to calculate the weighted-average dumping margins for Canadian Solar and Trina can be found in the Preliminary Surrogate Value Memorandum.⁷⁶

Direct and Packing Materials

The record shows that Global Trade Atlas ("GTA") import statistics from the primary surrogate country, Thailand, are generally contemporaneous with the POR, publicly available, product-specific, tax-exclusive, and represent a broad market average.⁷⁷ Thus, except as noted below, we based SVs for Canadian Solar and Trina's direct materials and packing materials on these import values and, where appropriate, valued other items, such as certain movement expenses, using other publicly available Thai data on the record.⁷⁸

We disregarded certain import values when calculating SVs. We have continued to apply the Department's long-standing practice of disregarding import prices that we have reason to believe or suspect are subsidized or dumped.⁷⁹ In this regard, the Department previously found that it is appropriate to disregard prices of imports from India, Indonesia, South Korea, and Thailand because it determined that these countries maintain broadly available, non-industry specific

⁷⁴ See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam, 69 FR 42672, 42682 (July 16, 2004), unchanged in Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam, 69 FR 71005 (December 8, 2004).

⁷⁵ See Sigma Corp. v. United States, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997).

⁷⁶ See memorandum from Jeff Pedersen, Senior International Trade Compliance Analyst, Office IV, AD/CVD Operations, Enforcement and Compliance to the file regarding "2014-2015 Antidumping Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Factor Valuation Memorandum," dated concurrently with this memorandum ("Preliminary Surrogate Value Memorandum").

⁷⁷ See Preliminary Surrogate Value Memorandum at Attachment I.

⁷⁸ See Preliminary Surrogate Value Memorandum.

⁷⁹ See Section 773(c)(5) of the Act permits the Department to disregard price or cost values without further investigation if it has determined that certain subsidies existed with respect to those values; see also Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015, 80 FR 46793, 46795 (August 6, 2015); Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) at 590.

export subsidies.⁸⁰ Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it is reasonable to infer that all exporters in India, Indonesia, and South Korea may have benefitted from these subsidies. Therefore, we have not used the prices of Thai imports of goods from India, Indonesia, and South Korea in calculating the import-based SVs. Additionally, in selecting import data for SVs, we disregarded prices from NME countries.⁸¹ Finally, we excluded from our calculation of the average import value any imports that were labeled as originating from an “unspecified” country, because we could not be certain that they were not from either an NME country or a country with generally available export subsidies.⁸²

Consistent with the approach taken in the investigation and first and second administrative reviews of this proceeding, and after considering comments from both the mandatory respondents and Petitioner, we valued polysilicon using international prices from Bloomberg New Energy Finance and GTM Research. In the underlying investigation and in the first two administrative reviews of this proceeding, we valued polysilicon using international prices because we found that the import data from the potential surrogate countries were not necessarily specific to the polysilicon used by respondents.⁸³ Polysilicon used to produce solar cells requires

⁸⁰ See, e.g., Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order, 75 FR 13257 (March 19, 2010), and accompanying Issues and Decision Memorandum at 4-5; Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review, 70 FR 45692 (August 8, 2005), and accompanying Issues and Decision Memorandum at 4; Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at 17, 19-20; Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand, 66 FR 50410 (October 3, 2001), and accompanying Issues and Decision Memorandum at 23.

⁸¹ See, e.g., Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 74 FR 9591, 9600 (March 5, 2009), unchanged in Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 36656 (July 24, 2009) and Certain Kitchen Appliance Shelving and Racks from the People’s Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Notice of Antidumping Duty Order, 74 FR 46971 (September 14, 2009).

⁸² Id.

⁸³ See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part, 77 FR 63791, 63795 (October 17, 2012) (“Solar Cells Investigation”) and accompanying Issues and Decision Memorandum at Comment 24 (“As explained in the *Preliminary Determination*, and reiterated in Comment 9 addressing the surrogate value for wafers, there is substantial evidence on the record leading the Department to question whether the import prices are representative of the price of polysilicon. The purity level required for polysilicon used in manufacturing solar cells is very precise. The import data from the potential surrogate countries are from an HTS category that covers silicon products with various levels of purity. Moreover, record evidence indicates that there are dramatic price differences between silicon with different purity levels. Also, there are extreme variations in the AUVs for the applicable HTS category both between and within potential surrogate countries indicating that that imports may at times primarily consist of lower purity silicon, possibly not of a solar grade, or extremely high purity electronics grade polysilicon, neither of which is the input being valued.”); 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 1021 (January 8, 2015) (“AR1 Prelim”) and accompanying Preliminary Decision Memorandum at the section entitled “Direct and Packing Materials,” unchanged in AR1 Final, and accompanying Issues and Decision Memorandum at Comment 14. 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; 2013-2014, 80 FR 80746 (December 28, 2015) (“AR2 Prelim”) and accompanying Preliminary Decision Memorandum at the section entitled “Direct and Packing Materials,” unchanged in AR2 Final.

extremely precise purity levels (e.g., purity levels as high as 99.999999 percent).⁸⁴ We determined in the investigation in this proceeding that the dramatic price differences due to purity levels and the purity range of the HTS category that covers polysilicon indicates that this HTS category could include a substantial number of products that differ significantly from the polysilicon used by the respondents.⁸⁵ Additionally, as noted above, in the first and second administrative reviews of this proceeding, we found, consistent with our determination in the investigation, that it was appropriate to rely on international prices to value polysilicon. We preliminarily continue to find it appropriate, given the factors considered in the investigation, to rely on international prices in this review to value polysilicon. Specifically, the record contains international prices for polysilicon from Bloomberg New Energy Finance and GTM Research. Because there is no indication of any difference in the quality of these data and in order to obtain a broad sample of international prices, we used both sources to value polysilicon. Because these prices are contemporaneous with the POR, we did not inflate or deflate them.⁸⁶

Similarly, we valued wafers using international prices from Bloomberg New Energy Finance and GTM Research. There are a number of factors, which when considered together, weigh in favor of valuing wafers using international prices rather than Thai import values. First, the international prices on the record are specific to the solar-grade wafers used by the respondents in producing subject merchandise than import prices. The Thai HTS covering silicon wafers – HTS 3818 (chemical elements doped for use in electronics, in the form of discs, wafers or similar forms; chemical compounds doped for use in electronics) – is not further itemized and covers a wide range of products that may not specifically reflect the cost of solar-grade wafers.⁸⁷ Second, wafers for solar cells are primarily made of polysilicon. As stated above, in the investigation and first two administrative reviews of this proceeding we found that differences in silicon purity levels can result in significant price differences.⁸⁸ Given the wide range of products covered by the Thai HTS number covering wafers, it is more likely that the Thai imports include products with a silicon purity level that significantly differs from the silicon purity level required for wafers used to manufacture solar cells. By contrast, we believe the international prices are specific to wafers used in solar products because they are from publications that cover the solar industry.

Given this unique combination of facts, our decision to value the primary input used to make wafers (polysilicon) with international prices, and the fact that international prices are more specific to the wafers used in solar cell production than import prices, we preliminarily find, for purposes of this review, and consistent with the prior two reviews of this proceedings, it is appropriate to also value wafers using international prices.

While the record contains international prices for wafers from both *Bloomberg New Energy Finance* and *GTM Research*, the *GTM Research* data do not specify the size of the wafer.⁸⁹ For all of the above reasons, we are preliminarily valuing wafers using equally weighted prices from

⁸⁴ See Preliminary Surrogate Value Memorandum.

⁸⁵ See Solar Cells Investigation, 77 FR at 63795, and accompanying Issues and Decision Memorandum at Comment 24.

⁸⁶ See Preliminary Surrogate Value Memorandum at the section entitled “Polysilicon and Wafers.”

⁸⁷ *Id.*

⁸⁸ See Solar Cells Investigation, 77 FR at 63795, and accompanying Issues and Decision Memorandum at Comment 24.

⁸⁹ See Preliminary Surrogate Value Memorandum at the section entitled “Polysilicon and Wafers.”

Bloomberg New Energy Finance. We did not inflate or deflate the prices because they are contemporaneous with the POR.⁹⁰

Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from a ME supplier in meaningful quantities and pays for the inputs in a ME currency, the Department uses the actual price paid by the respondent to value those inputs, except when prices may have been distorted by findings of dumping and/or subsidization.⁹¹ Where the Department finds ME purchases to be of significant quantities (*i.e.*, 85 percent or more), in accordance with the statement of policy as outlined in Antidumping Methodologies: Market Economy Inputs,⁹² the Department uses the actual purchase prices to value the inputs. Alternatively, when the volume of a NME firm's purchases of an input from ME suppliers during the period is below 85 percent of its total volume of purchases of the input during the period, but where these purchases are otherwise valid and there is no reason to disregard the purchase prices, the Department will typically weight-average the ME purchase prices with an appropriate SV, according to their respective shares of the total volume of purchases.⁹³ When a firm's ME purchases may have been based on dumped or subsidized sales, are not *bona fide*, or are otherwise not acceptable for use in a dumping calculation, the Department will exclude them from its calculation to determine whether there were significant quantities of ME purchases (the 85 percent threshold).⁹⁴

Canadian Solar and Trina provided evidence of ME purchases of inputs during the POR that were paid for in a ME currency. Thus, consistent with 19 CFR 351.408(c)(1), we used Canadian Solar and Trina's reported ME purchase prices in valuing certain FOPs, either in whole or in part, based upon purchase volume.⁹⁵

Utilities

We valued water and electricity using Thai rates from the Board of Investment of Thailand. We did not inflate or deflate the rates because they were in effect during the POR.⁹⁶

Labor

We valued Canadian Solar and Trina's labor based on Thailand's National Statistical Office ("NSO") data for all manufacturing sectors from surveys taken in 2015. Because these rates were in effect during the POR, we did not inflate or deflate them.⁹⁷

Movement Services

We valued inland truck freight expenses using a report from Thailand's Office of Transport and Traffic Policy and Planning entitled "Strategic Development of Transport Infrastructure in

⁹⁰ Id.

⁹¹ See, e.g., Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27366 (May 19, 1997).

⁹² See Use of Market Economy Input Prices in Nonmarket Economy Proceedings, 78 FR 46799 (August 2, 2013) ("Market Economy Inputs").

⁹³ Id.

⁹⁴ Id.

⁹⁵ See Canadian Solar and Trina Analysis Memoranda.

⁹⁶ See Trina, Canadian Solar, and Petitioner's July 18, 2016 submissions at Exhibits B-5, SV-6 and 7, respectively.

⁹⁷ See Trina, Canadian Solar, and Petitioner's July 18, 2016 submissions at Exhibits B-4, SV-4, and 5, respectively.

Thailand Year 2015-2022.” We did not inflate or deflate the truck rate in this report because the report covered a period contemporaneous with the POR.⁹⁸

We valued brokerage and handling expenses using charges for exporting a standardized cargo of goods from Thailand as published in the World Bank’s 2016 Doing Business in Thailand. We did not inflate or deflate the brokerage and handling charge in this publication because the survey used to obtain the charge requested data from a period contemporaneous with the POR.⁹⁹

We valued marine insurance expense using a marine insurance rate offered by PAF Shipping Insurance. PAF Shipping Insurance is a ME provider of marine insurance. The rate is a percentage of the value of the shipment; thus we did not inflate or deflate the rate.¹⁰⁰

We valued ocean freight expenses using rates from the website <https://my.maerskline.com>, which lists international ocean freight rates offered by Maersk Line. These rates are publicly available and cover a wide range of shipping routes which are reported on a daily basis. We did not inflate or deflate the rates because they are contemporaneous with the POR.¹⁰¹

There are no rates for domestic inland insurance on the record. Therefore, as a substitute, we valued domestic inland insurance using the marine insurance rate identified above.

There are no rates for inland water freight services on the record. Therefore, as a substitute, we valued inland water freight expenses using the inland truck freight rate identified above.

We valued air freight expenses using price quotations from United Parcel Service. We did not inflate or deflate the price quotations because they are contemporaneous with the POR.¹⁰²

Overhead and Financial Expenses

Pursuant to 19 CFR 351.408(c)(4), the Department values overhead, selling, general and administrative (“SG&A”) expenses, and profit using publically available information gathered from producers of identical or comparable merchandise in the surrogate country. The record contains financial statements from four Thai companies, (Hana Microelectronics Public Co., Ltd. (“Hana”),¹⁰³ KCE Electronics Public Company Limited (“KCE”),¹⁰⁴ Ekarat Engineering Public Company Limited (“Ekarat”),¹⁰⁵ and Styromatic (Thailand) Co., Ltd., (“Styromatic”),¹⁰⁶ and one Bulgarian company, SolarPro Holdings AD (“SolarPro”).¹⁰⁷ All of these financial statements show a profit and cover a period contemporaneous with the POR. Ekarat is a manufacturer of solar cells and modules, as well as a distributor and servicer of electrical transformers. The other Thai companies are manufacturers and assemblers of electronic components and circuit boards

⁹⁸ See Canadian Solar and Trina’s July 18, 2016 submissions at Exhibits SV-7 and B-8, respectively.

⁹⁹ See Trina, Canadian Solar, and Petitioner’s July 18, 2016 submissions at Exhibits B-6, SV-8, and 8, respectively.

¹⁰⁰ See Trina’s October 21, 2016 submission at Exhibit 4.

¹⁰¹ See Petitioner’s July 18, 2016 submission at Exhibit 10 and Trina’s October 21, 2016 submission at Exhibit 1.

¹⁰² *Id.* at Attachment VIII.

¹⁰³ See Petitioner’s October 21, 2016 submission at Exhibit 8.

¹⁰⁴ *Id.*

¹⁰⁵ See Petitioner’s July 18, 2016 at Exhibits 5.

¹⁰⁶ See Canadian Solar’s July 18, 2016 submission and Canadian Solar’s July 25, 2016 submission at Exhibit SVR-7 where Canadian Solar placed on the record financial statements covering calendar years 2014 and 2015.

¹⁰⁷ *Id.* at Exhibit 3.

which the Department has considered to be comparable merchandise in the investigation in this proceeding.¹⁰⁸ The Bulgarian company assembles solar panels.

The Department has preliminarily selected Thailand as the primary surrogate country in this segment of the proceeding. Although all of the Thai companies manufactured merchandise that the Department considers to be comparable to solar cells, all of the Thai financial statements, except those of Styromatic, indicate that the companies received subsidies which the Department has determined to be countervailable.¹⁰⁹ The Department's practice is not to rely on financial statements where there is evidence that the company received countervailable subsidies when there are other reliable and representative data on the record for purposes of calculating surrogate financial ratios.¹¹⁰ Accordingly, the Department preliminarily finds that Styromatic's financial statements are a better surrogate source for calculating financial ratios than the other three Thai financial statements because there is no evidence that Styromatic received countervailable subsidies. Moreover, Styromatic manufactures electronic circuits,¹¹¹ which the Department has considered to be comparable merchandise in the investigation in this proceeding.¹¹²

Adjustments for Countervailable Subsidies

In applying section 777A(f) of the Act, the Department examines: (1) whether a countervailable subsidy (other than an export subsidy) has been provided with respect to a class or kind of merchandise, (2) whether such countervailable subsidy has been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period, and (3) whether the Department can reasonably estimate the extent to which that countervailable subsidy, in combination with the use of NV determined pursuant to section 773(c) of the Act, has increased the weighted-average dumping margin for the class or kind of merchandise.¹¹³ For a subsidy meeting these criteria, the statute requires the Department to reduce the dumping margin by the estimated amount of the increase in the weighted-average dumping margin due to a countervailable subsidy, subject to a specified cap.¹¹⁴ In conducting this analysis, the Department has not concluded that concurrent application of NME dumping duties and countervailing duties ("CVDs") necessarily and automatically results in overlapping remedies. Rather, a finding that there is an overlap in remedies, and any resulting adjustment, is based on a case-by-case analysis of the totality of facts on the administrative record for that segment of the proceeding as required by the statute.

For purposes of our analysis under sections 777A(f)(1)(A) and (f)(1)(C) of the Act, the

¹⁰⁸ See Solar Cells Investigation and accompanying Issues and Decision Memorandum at Comment 2.

¹⁰⁹ See the respective financial statements for Hana and KCE at note 24 in both contained in Petitioner's October 21, 2016 submission at Exhibit 8. For Ekarat see page 118 of its financial statement contained in Petitioner's July 18, 2016 at Exhibits 5.

¹¹⁰ See, e.g., Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2009-2010, 78 FR 11143 (February 15, 2013) and accompanying Issues and Decision Memorandum at Comment 14.

¹¹¹ See Canadian Solar's July 18, 2016 submission and Canadian Solar's July 25, 2016 submission at Exhibit SVR-7 where Canadian Solar placed on the record financial statements covering calendar years 2014 and 2015

¹¹² 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) and accompanying Issues and Decision Memorandum at Comment 2.

¹¹³ See Section 777A(f)(1)(A)-(C) of the Act.

¹¹⁴ See Section 777A(f)(1)-(2) of the Act.

Department requested firm-specific information from the mandatory respondents, Canadian Solar and Trina.¹¹⁵ The information sought included information regarding whether countervailed subsidies were received during the relevant period, information on costs, and information regarding the respondents' pricing policies and practices. Additionally, the respondents were required to provide documentary support for the information provided. On May 2, 2016, Canadian Solar and Trina submitted responses to the Department's firm-specific double remedies questionnaires.¹¹⁶ On October 13, 2016, Canadian Solar and Trina submitted responses to the Department's supplemental questionnaires regarding double remedies.¹¹⁷ The responses included information concerning countervailable subsidies received during the relevant period, as well as information regarding the respondents' costs and pricing policies and practices.

Analysis

In performing the analysis under section 777A(f)(1)(B) of the Act for this review, the Department examined whether International Trade Commission ("ITC") import data showed a reduction in the price of imports of the class or kind of merchandise during the relevant period. In this case, merchandise covered by the AD order is classified under the following HTSUS subheadings: 8501.31.800 ("Other DC motors; DC generators: Of an output not exceeding 750 W: Motors: Generators"), 8501.61.0000 ("AC generators (alternators): Of an output not exceeding 75 kVA"), 8507.20.80 ("Other lead-acid storage batteries: Other"), 8541.40.6020 ("Solar Cells: Assembled into modules or made up into panels"), and 8541.40.6030 ("Solar Cells: Other").¹¹⁸ While imports of subject merchandise may enter under any of these five HTSUS subheadings, the descriptions of categories 8501.31.800, 8501.61.0000, and 8507.20.80 suggest that imports classified in these categories would be likely to include imports of a significant amount of non-subject merchandise. As a result, import data for these particular HTSUS subheadings may be unreliable for purposes of determining whether a reduction in the price of imports of the class or kind of merchandise under review may have occurred during the relevant period. Conversely, the descriptions of HTSUS subheadings 8541.40.6020 and

¹¹⁵ See Letter to Canadian Solar from Howard Smith, Program Manager, AD/CVD Operations, Office IV, dated March 31, 2016; see also Letter to Trina from Howard Smith, Program Manager, AD/CVD Operations, Office IV, dated March 31, 2016; see also Letter from the Department to Canadian Solar, regarding "Request for Supplementary Information Regarding Double Remedies," dated October 6, 2016; see also Letter from the Department to Trina, regarding "Request for Supplementary Information Regarding Double Remedies," dated October 6, 2016.

¹¹⁶ See Letter from Canadian Solar to the Department, regarding "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China: Canadian Solar's Response to the Department's Double Remedies Questionnaire," dated May 2, 2016 ("Double Remedies Questionnaire Response"); see also Letter from Trina to the Department, regarding "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China: Double Remedy Questionnaire Response," dated May 2, 2016 ("Double Remedies Questionnaire Response").

¹¹⁷ See Letter from Canadian Solar to the Department, regarding "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China: Canadian Solar's Double Remedies Supplemental Questionnaire," dated October 13, 2016; see also Letter from Trina to the Department, regarding "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China – Double Remedy Questionnaire Response," dated October 13, 2016.

¹¹⁸ See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order, 77 FR 73018 (December 7, 2012).

8541.40.6030 closely match the description of subject merchandise which suggests that these subheadings would be likely to cover primarily subject merchandise.

After reviewing the relevant import data for the relevant period, we find that HTSUS subheading 8541.40.6020 (solar panels), shows a general decrease in the average import price¹¹⁹ while HTSUS subheading 8541.40.6030 (solar cells) shows a general decrease in the average import price in the first two-thirds of the POR, but then a sharp increase in the average import price in the last third of the POR. However, the value of solar cell imports into the United States from the PRC during the POR is less than one percent of the value of solar panel imports into the United States from the PRC during the POR and thus we have based our analysis on the price trend shown by U.S. imports of solar panels. Based on this analysis, the Department has preliminarily determined that ITC import data for the subject merchandise shows a general decrease in the U.S. average import price during the relevant period, *i.e.*, the POR.¹²⁰ Thus, the Department preliminarily finds that the requirement under section 777A(f)(1)(B) of the Act has been met.

Trina and Canadian Solar

In accordance with section 777A(f)(1)(A) of the Act, the Department examined whether a countervailable subsidy (other than an export subsidy) has been provided with respect to a class or kind of merchandise. During the most recently completed companion CVD administrative review, it was determined that JA Solar Technology Yangzhou Co., Ltd. (“JA Yangzhou”) received countervailable subsidies for the provision of polysilicon, solar glass, electricity, and land for less than adequate remuneration (LTAR).¹²¹ Canadian Solar and Trina provided monthly costs associated with their purchases of polysilicon, solar glass, electricity and land.¹²² Because the Department found the provision of polysilicon, solar glass, electricity, and land for LTAR to be countervailable with respect to the class or kind of merchandise under consideration in the companion CVD review, the Department preliminarily finds that the requirement of section 777A(f)(1)(A) of the Act has been met.

Additionally, in accordance with 777A(f)(1)(C) of the Act the Department examined whether the mandatory respondents demonstrated: (1) a subsidies-to-cost link, *i.e.*, a subsidy effect on the cost of manufacturing (COM) the merchandise under consideration; and (2) a cost-to-price link, *i.e.*, respondent’s prices were dependent on changes in the COM. With respect to the subsidies-to-cost link, in the Double Remedies Questionnaire Response, both Canadian Solar and Trina reported that they consumed polysilicon, solar glass, and electricity in the production of subject merchandise and that they received subsidies for these inputs.¹²³ Canadian Solar and Trina also

¹¹⁹ See memorandum from Jeff Pedersen, Senior International Trade Compliance Analyst, Office IV, AD/CVD Operations, Enforcement and Compliance to the file regarding “2014-2015 Antidumping Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Domestic and Export Subsidy Adjustments Analysis Memorandum,” (“Double Remedies Memorandum”) dated concurrently with this memorandum at Attachment III.

¹²⁰ *Id.*

¹²¹ See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2013, 81 FR 46904 (July 19, 2016) (“Solar Cells CVD Final Results 2013”) and accompanying Issues and Decision Memorandum at VIII.

¹²² See Canadian Solar’s May 2, 2016 Double Remedies Questionnaire Response at Exhibits 6, 7, and 8 and Trina’s May 2, 2016 Double Remedies Questionnaire Response at Exhibits DR-2, DR-3, and DR-5.

¹²³ See Canadian Solar’s May 2, 2016 Double Remedies Questionnaire Response at 4 and Trina’s May 2, 2016

reported that they received subsidies based on the amortization of land use rights.¹²⁴ Furthermore, Canadian Solar and Trina demonstrated that changes in the costs of these inputs occurred on a monthly basis.¹²⁵ Each respondent provided information indicating that the subsidy programs affected their COM on a monthly basis. Specifically, they provided per-unit cost reports associated with material purchases, cost analysis tables for purchases of raw materials, and general ledgers.¹²⁶ Thus, the Department preliminarily concludes that Canadian Solar and Trina have established a subsidies-to-cost link because subsidies for the provision of polysilicon, solar glass, land, and electricity for LTAR impact Canadian Solar's and Trina's costs for producing subject merchandise.

For the cost-to-price link, the Department examined whether Trina and Canadian Solar demonstrated that changes in costs affected, or are taken into consideration when setting, prices. Trina reported that it sets prices based on market conditions, freight and insurance expenses, expected price margin, and overall cost of production considerations (including the cost of raw materials).¹²⁷ Furthermore, Trina reported that a change in the costs of inputs affects pricing, in that a cost increase brings pressure to raise prices, while a cost decrease results in the flexibility to lower prices.¹²⁸ Additionally, Trina reported that a change in the costs of raw materials and other inputs (such as polysilicon and solar glass) is one of the primary factors that it considers in its pricing decisions.¹²⁹ Moreover, Trina reported that its sales department uses monthly cost forecasts, together with several other factors, to set sales prices.¹³⁰ Finally, Trina provided an internal "Price Review and Determination Process" instruction form, which stipulates that Trina's finance department shall provide cost forecasts using a formula which is modified according to cost changes."¹³¹ Trina stated that its sales department uses such cost forecasts to set sales prices.¹³²

Canadian Solar reported that makes its U.S. sales through its U.S. affiliate, Canadian Solar USA, and that Canadian Solar USA's prices to its unaffiliated customers are set, and primarily based on, market conditions, internal price guidelines, and transfer prices (which is, in turn, generally based on changes in the cost of production, expenses, and profit margin).¹³³ Canadian Solar reported that it calculates new transfer prices approximately each month. Canadian Solar's cost-to-price link is more fully discussed in the BPI Decision Memorandum accompanying this memorandum.¹³⁴

Based on the above, and the BPI Decision Memorandum accompanying this memorandum, the Department finds that Canadian Solar and Trina provided adequate information to establish a

Double Remedies Questionnaire Response at 4.

¹²⁴ Id.

¹²⁵ See Canadian Solar's May 2, 2016 Double Remedies Questionnaire Response at Exhibits 6, 7, and 8 and Trina's May 2, 2016 Double Remedies Questionnaire Response at Exhibits DR-2, DR-3, and DR-5.

¹²⁶ Id.

¹²⁷ See Trina's May 2, 2016 Double Remedies Questionnaire Response at 2-3 and Exhibit DR-1.

¹²⁸ Id. at 2-3.

¹²⁹ Id.

¹³⁰ Id.

¹³¹ Id. at Exhibit DR-1.

¹³² Id. at 2-3.

¹³³ See Canadian Solar's May 2, 2016 Double Remedies Questionnaire Response at 2-5.

¹³⁴ See the December 16, 2016 memorandum from Jeff Pedersen to the File concerning "Proprietary Information Relating to Issues Involving Canadian Solar International Limited in the December 16, 2016 Preliminary Decision Memorandum."

linkage between subsidies (the provision of polysilicon, solar glass, electricity and land for LTAR), costs, and prices. Therefore, the Department is using a pass-through adjustment in its calculation of the dumping margins for the mandatory respondents.

In Solar Cells CVD Final Results 2013, the Department did not determine program-specific CVD rates for either Canadian Solar or Trina. Instead, the Department assigned the subsidy rate calculated for JA Yangzhou as the all-others rate, the rate which applied to Canadian Solar and Trina.¹³⁵ Accordingly, in this review, we are making a pass-through adjustment based on a weighted average of the program-specific CVD rates found for JA Yangzhou for the provision of polysilicon, solar glass, and electricity and land for LTAR.¹³⁶ Furthermore, because the record indicates that factors other than the cost of polysilicon, solar glass, electricity, and land affect Canadian Solar and Trina's prices to customers,¹³⁷ the Department is using a documented ratio of cost-price changes for the Chinese manufacturing sector as a whole, which is based on data provided by Bloomberg, to estimate the extent of the subsidy pass-through.¹³⁸

We additionally note that JA Yangzhou did not benefit from export subsidies found to be countervailable in the Solar Cells CVD Final Results 2013.¹³⁹ Therefore, we have made no adjustment for countervailable export subsidies in calculating the dumping margins.

Separate Rate Companies

For the non-individually examined companies eligible for a separate rate, their weighted-average dumping margin is based on the weighted-average dumping margin of the mandatory respondents. In Solar CVD Final Results 2013, the Department did not individually examine the non-mandatory respondents that are preliminarily eligible for separate rates in this review, with the exception of JA Yangzhou. JA Yangzhou was individually examined in Solar CVD Final Results 2013 and received its own calculated CVD rate.

Accordingly, in this review, as we are applying the weighted-average dumping margins calculated for Trina and Canadian Solar to the non-individually examined exporters granted separate rates status, the adjustment to account for domestic subsidies for these exporters is based on the domestic subsidy pass-through amount determined for Canadian Solar and Trina. This adjustment is not more than the countervailing duty attributable to these countervailable subsidies for any of these exporters.

Although JA Yangzhou received its own company-specific CVD rate in Solar CVD Final Results 2013, its AD rate, as a separate rate respondent, is based on the experience of Trina and Canadian Solar in these preliminary results. Pursuant to section 777A(f)(2) of the Act, we "cap" any domestic subsidy adjustment, by adjusting only for a pass-through that eliminates any double remedy, but no more. However, in this case, because the weighted-average domestic subsidy (pass-through) adjustment for the mandatory respondents is based on the countervailing duty rate calculated for JA Yangzhou in the CVD review, the domestic subsidy adjustment for JA

¹³⁵ See Solar Cells CVD Final Results 2013.

¹³⁶ See Solar Cells CVD Final Results 2013, and accompanying Issues and Decision Memorandum at VIII.

¹³⁷ See generally, Trina's Double Remedy Questionnaire Response; see also generally, Canadian Solar's Double Remedy Questionnaire Response.

¹³⁸ See Trina Analysis Memorandum; see also Canadian Solar Analysis Memorandum.

¹³⁹ See Solar Cells CVD Final Results 2013.

Yangzhou is not more than the countervailing duty attributable to the countervailable subsidies found for JA Yangzhou.¹⁴⁰

Currency Conversion

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

CONCLUSION

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



Agree



Disagree



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X 

Signed by: CHRISTIAN MARSH

Christian Marsh

Deputy Assistant Secretary

for Antidumping and Countervailing Duty Operations

¹⁴⁰ See Double Remedies Memorandum.