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Administrative Review
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MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Senior Director, Office I
Antidumping and Countervailing Duty Operations
Enforcement and Compliance

SUBJECT: Issues and Decision Memorandum for the Final 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

On December 22, 2016, the Department of Commerce (the Department) published its *Preliminary Results* in the 2014-2015 administrative review of the antidumping duty order of crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells) from the People's Republic of China (PRC).¹ The period of review (POR) is December 1, 2014, through November 30, 2015. This administrative review covers two mandatory respondents: (1) Canadian Solar International Limited, which we have treated as a single entity with five affiliated additional companies (collectively, Canadian Solar);² and (2) Trina Solar, consisting of

¹ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2014–2015*, 81 FR 93888 (December 22, 2016) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

² The Department has continued to treat the following six companies as a single entity: 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./CSI Solar Power (China) Inc. (collectively, Canadian Solar). See Memorandum, “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,” dated December 16, 2016.



Changzhou Trina Solar Energy Co., Ltd., and Trina Solar (Changzhou) Science and Technology Co., Ltd., which we have continued to treat as a single entity with four additional affiliated companies (collectively, Trina).³ Based on our analysis of the comments received, we made certain changes to our margin calculations for Canadian Solar, Trina, and the companies granted separate rate status that we did not individually examine. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues for which we received comments:

- Comment 1: Whether the Department Should Apply Partial AFA to Trina’s Unreported Factors of Production for Purchased Solar Cells
- Comment 2: Application of Partial AFA To Value Trina’s Unreported FOPs
- Comment 3: Whether the Department Should Apply Partial AFA to Canadian Solar’s Unreported Factors of Production for Purchased Solar Cells
- Comment 4: Application of Partial AFA To Value Canadian Solar’s Unreported FOPs
- Comment 5: Surrogate Value for Semi-Finished Polysilicon Ingots and Blocks
- Comment 6: Data Source Used to Value Polysilicon and Mono & Multi Crystalline Wafers and Solar Cells
- Comment 7: Surrogate Value for Scrap Cells and Modules
- Comment 8: Surrogate Value for Silicon Scrap Offsets
- Comment 9: Surrogate Value for Recycled Silicon Scrap
- Comment 10: Surrogate Value for Aluminum Frames
- Comment 11: Surrogate Value for Backsheet
- Comment 12: Surrogate Value for Module Glass
- Comment 13: Surrogate Value for Nitrogen
- Comment 14: Surrogate Value for Canadian Solar’s Silver Paste
- Comment 15: Surrogate Value for Quartz Crucibles
- Comment 16: Selection of Financial Statements
- Comment 17: Trina’s Ocean Freight
- Comment 18: Differential Pricing
- Comment 19: Calculation of Warranty Expenses
- Comment 20: Insurance Costs Related to Warranties
- Comment 21: Treatment of Overhead Items
- Comment 22: Debt Restructuring Income
- Comment 23: Exclusion of Import Data with Values but Quantities of Zero
- Comment 24: Clerical Errors
- Comment 25: Separate Rate Status for Shenzhen Glory Industries Co., Ltd.
- Comment 26: Separate Rate Status for Hangzhou Sunny Energy Science & Technology Co., Ltd.
- Comment 27: Separate Rate Status for Ningbo Qixin Solar Electrical Appliance Co., Ltd.
- Comment 28: Toenergy Technology Hangzhou Co., Ltd.’s Liquidation Instructions

³ The Department has continued to treat the following six companies as a single entity: Changzhou Trina Solar Energy Co., Ltd./Trina Solar (Changzhou) Science & 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. (collectively, Trina)

BACKGROUND

On December 22, 2016, the Department published its *Preliminary Results* in the 2014-2015 administrative review of the antidumping duty order of solar cells from the PRC.⁴ Between January 11 and 25, 2017, SolarWorld Americas Inc. (the petitioner), Trina, Canadian Solar, Shenzhen Glory Industries Co., Ltd. (Shenzhen Glory), SolarCity Corporation (SolarCity), Ningbo Qixin Solar Electrical Appliance Co., Ltd. (Ningbo Qixin), Kencove Farm Fence, Inc. (Kencove), Sunpreme Inc. (Sunpreme), Hangzhou Sunny Energy Science & Technology Co., Ltd. (Sunny), and Toenergy Technology Hangzhou Co., Ltd. (Toenergy), submitted case briefs.⁵ On February 3, 2017, the petitioner, Trina, Canadian Solar, and JA Solar Technology Yangzhou Co., Ltd., JingAo Solar Co., Ltd., and Shanghai JA Solar Technology Co., Ltd. (collectively, JA Companies) submitted rebuttal case briefs.⁶ On April 10, 2017, Canadian Solar resubmitted its case brief.⁷

On January 23, 2017, the petitioner, Trina, and Canadian Solar requested a hearing.⁸ On May 15, 2017, the Department held a public hearing limited to issues raised in the case briefs and the rebuttal briefs.⁹

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.

⁴ See *Preliminary Results* and accompanying PDM.

⁵ See Shenzhen Glory's January 11, 2017 Case Brief (Shenzhen Glory's Case Brief); see also SolarCity's January 25, 2017 Case Brief (SolarCity's Case Brief); see also Trina's January 25, 2017 Case Brief (Trina's Case Brief); see also Ningbo Qixin's January 25, 2017 Case Brief (Ningbo Qixin's Case Brief); see also Kencove's January 25, 2017 Case Brief (Kencove's Case Brief); see also Sunpreme's January 25, 2017 Case Brief (Sunpreme's Case Brief); see also Sunny's January 25, 2017 Case Brief (Sunny's Case Brief); see also Toenergy's January 25, 2017 Case Brief (Toenergy's Case Brief); see also Petitioner's January 25, 2017 Case Brief (Petitioner's Case Brief).

⁶ See Trina's February 3, 2017 Rebuttal Case Brief (Trina's Rebuttal Case Brief); see also JA Companies' February 3, 2017 Rebuttal Case Brief (JA Companies' Rebuttal Case Brief) (In their rebuttal brief, the JA Companies concurred with, and submitted, by reference to, the arguments made by Trina on January 25, 2017, and the arguments made by Canadian Solar on January 26, 2017 in their affirmative briefs. In addition, the JA Companies concurred with, and submitted, by reference to, the arguments made by Trina and Canadian Solar in their rebuttal briefs filed on February 3, 2017. Lastly, the JA Companies argued that the Department should adjust the antidumping duty rate assigned to the JA Companies, which are separate rate respondents, in its final results, based on the arguments contained in Trina and Canadian Solar's affirmative and rebuttal briefs.); see also Canadian February 3, 2017 Rebuttal Case Brief (Canadian Solar's Rebuttal Case Brief); see also Petitioner's February 3, 2017 Rebuttal Case Brief (Petitioner's Rebuttal Case Brief).

⁷ See Canadian Solar's April 10, 2017 Resubmission of Case Brief (Canadian Solar's Case Brief). The Department found untimely filed new factual information in Canadian Solar's original January 25, 2016, case brief. See Department Letter re: Untimely Filed Factual Information," dated April 6, 2017; see also Department Letter re: Response to Canadian Solar International Limited's April 10, 2017 Letter, dated April 26, 2017.

⁸ See Petitioner's January 23, 2017 Request for Hearing Letter; see also Trina's January 23, 2017 Request for Hearing Letter; see also Canadian Solar's January 23, 2017 Request for Hearing Letter.

⁹ See Department Letter re: Public Hearing (Revised Time), dated May 11, 2017; see also Submission from Neal R. Gross and Co., Inc., regarding "United States of America; Department of Commerce; Enforcement of Compliance: Public Hearing," filed May 22, 2017.

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

Merchandise under consideration may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, modules, laminates, panels, building-integrated modules, building-integrated panels, or other finished goods kits. Such parts that otherwise meet the definition of merchandise under consideration are included in the scope of this order.

Excluded from the scope of this order are thin film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS). Also excluded from the scope of this order are crystalline silicon photovoltaic cells, not exceeding 10,000mm² 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.

DISCUSSION OF THE ISSUES

Comment 1: Whether the Department Should Apply Partial AFA to Trina’s Unreported Factors of Production for Purchased Solar Cells

Certain of Trina’s unaffiliated suppliers of solar cells failed to report their factors of production (FOP). In the *Preliminary Results*, the Department applied, as partial adverse facts available (AFA), the highest consumption quantity reported for each FOP that Trina used to produce solar cells.

Trina:

- The Department’s decision to apply partial AFA is based on its finding that the quantity of purchased solar cells for which Trina failed to report FOPs is significant. This

decision is arbitrary and inconsistent with how the Department defines significant quantities in other contexts.

- The main holding in *Mueller*¹⁰ instructs the Department to have as its primary objective the calculation of an accurate dumping rate, rather than deterrence. Given the record as a whole, the Department's application of partial AFA to Trina does not promote fairness or accuracy.
- Therefore, rather than applying the highest reported consumption quantity as partial AFA, the Department should use as facts available the information that Trina already provided in place of the missing purchased cell FOP information. At the very least, the Department should select different facts available that promote accuracy and fairness and in a manner contemplated by the Court of Appeals for the Federal Circuit (CAFC) in *Mueller*.
- The Department's determination that Trina was in a position to induce cooperation from its unaffiliated suppliers is not based on substantial evidence. While Trina's letters to its unaffiliated suppliers requesting FOP information referred to long business relationships,¹¹ the record does not show whether Trina, at the time of making these requests to its supplies, was even still purchasing from these unaffiliated companies during the period of review (POR). In such case, Trina would not have had the threat of withdrawing current orders as an inducement.
- Moreover, to the degree the Department believes that "long-term business relationships" alone might be relevant to inducing cooperation, the facts of this case demonstrate mixed results. In some cases, Trina was able to convince the unaffiliated cell supplier to provide FOP information, but in other cases it was not able to do so.

Petitioner:

- Record evidence clearly indicates that Trina had the means to influence and induce cooperation from its suppliers. During the POR, Trina was the largest solar manufacturer in the world.¹²
- Trina points to the fact that only certain cell suppliers provided FOPs to the Department as evidence of its inability to induce cooperation. Yet, the fact that certain Trina suppliers provided data to the Department demonstrates that Trina was in a position to induce cooperation.
- In the second administrative review of this order, the Department addressed the identical issue and made the identical determination regarding Trina's missing FOP data. Trina, Trina's counsel, and Trina's suppliers were all aware of (or should have been aware of) the reporting requirements.¹³

¹⁰ See Trina's Case Brief at 4 (citing *Mueller Comercial De Mexico, S. De R.L. De C.V. v. United States*, 753 F.3d 1227, 1233 (Fed. Cir. 2014) (*Mueller*)).

¹¹ *Id.* at 5 (citing Trina's June 8, 2016, Section A Supplemental Questionnaire Response at Exhibit 11).

¹² See Trina's Rebuttal Case Brief at 5-6 (citing *e.g.*, Trina's April 25, 2016, Section A Questionnaire Response (Trina's Section A Response) at Exhibit A-15).

¹³ *Id.* at 6-7 (citing *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 (June 20, 2016) (*Solar Cells AR2 Final*) and accompanying Issues and Decision Memorandum (IDM) at Comment 19).

- A critical aspect of the Department's determination now and in the second administrative review is the understanding that partial AFA would induce Trina to reconsider its business relationship with the uncooperative suppliers, *i.e.*, to adjust the manner in which Trina did business with its cell suppliers, which may, in turn, induce those suppliers to provide the necessary information to the Department. Apparently, Trina took no such steps.
- At issue then, is not whether Trina had influence - it did - but, rather, its failure to use that influence to induce cooperation and/or adjust its own practices to source solar cells only from those suppliers willing to cooperate in this and other reviews.
- Trina, a mandatory respondent in the prior administrative review, acknowledged that it has a "long-term business relationship" with the five solar cell suppliers that provided the largest number of solar cells during that POR.¹⁴ Were it not for Trina's influence, all of its suppliers could, and likely would, have refused to respond.

Department's Position: We disagree with Trina and have continued to apply partial AFA to Trina's unreported missing FOPs from Trina's unaffiliated solar cell suppliers. Section 776(a) of the Act provides that, subject to section 782(d) of the Act, the Department shall apply "facts otherwise available" if: (1) necessary information is not on the record; or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.¹⁵ Moreover, section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

There is no dispute that Trina's solar cell suppliers are interested parties. Section 771(9)(A) of the Act defines an interested party as, among other things, a foreign manufacturer of subject merchandise. Trina's unaffiliated solar cell suppliers are producers of solar cells, which are subject merchandise. These suppliers would not provide their FOPs and, thus, they withheld requested information. In addition to Trina's requests for FOP information from these suppliers, the Department requested on numerous occasions that Trina request the information from its suppliers. Additionally, the Department issued its antidumping duty questionnaire to Trina's largest six solar cell suppliers,¹⁶ and certain suppliers refused to respond to the questionnaire.

¹⁴ *Id.* at 7 (citing *Solar Cells AR2 Final* and accompanying IDM at Comment 19).

¹⁵ On June 29, 2015, the Trade Preferences Extension Act of 2015 (TPEA) was signed into law. The TPEA made numerous amendments to the AD and CVD law, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act. *See Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments to section 771(7) of the Act, which relate to determinations of material injury by the ITC. *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015). The amendments to section 776 of the Act are applicable to all determinations made on or after August 6, 2015. Therefore, the amendments apply to this administrative review.

¹⁶ *See* the Department's June 10, 2016, questionnaires issued to Trina's largest solar cell suppliers.

Thus, certain suppliers withheld requested information and failed to cooperate by not acting to the best of their ability to comply with a request for information pursuant to sections 776(a)(2)(A) and 776(b) of the Act. In such situations, the statute allows the Department to use AFA in place of the missing information.

Contrary to Trina's claim, the use of partial AFA to value the unreported FOPs from Trina's unaffiliated solar cell suppliers is not arbitrary. The Department's determination to apply partial AFA in this case is consistent with its practice regarding the valuation of unreported FOPs. The Department has previously excused the respondents from reporting FOPs from some of their smallest suppliers in situations where a respondent has a large number of suppliers,¹⁷ and also in situations where the unreported FOP data are of limited quantity.¹⁸ Our determination is consistent with prior determinations. For instance, in *Narrow Woven Ribbons*, the Department applied partial AFA to a respondent because its unaffiliated ribbon suppliers declined to report their costs related to subject merchandise and, thus, failed to cooperate with the Department's requests for information.¹⁹ The Department determined that the application of partial AFA was appropriate in this case because the unaffiliated ribbon suppliers produced ribbons and then sold the ribbons to the mandatory respondent who, after further processing, exported the ribbons to the United States during the POR and, thus, they were interested parties within the meaning of section 771(9)(A) of the Act. Similarly, in *Certain Steel Nails*, the Department applied partial AFA in determining a respondent's dumping margin because its unaffiliated supplier did not provide FOP data. The Department noted that "it is crucial for suppliers of subject merchandise to provide their own FOP data because suppliers actually provide finished merchandise independently subject to the Order, in contrast to tollers who only perform a process at one stage of the production."²⁰

This administrative review is distinguishable from cases in which the Department has excused the respondents from reporting certain FOPs, and distinguishable from the situation of Yingli, a mandatory respondent in the second administrative review of this proceeding. There, the Department did not apply AFA to Yingli's purchased solar cells for which it failed to report

¹⁷ See *Certain Activated Carbon From the People's Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review and Extension of Time Limits for the Final Results*, 74 FR 21317, 21320-21321 (May 7, 2009) (*Activated Carbon AR1*), unchanged in *First Administrative Review of Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 57995 (November 10, 2009) (*Activated Carbon AR1 Final*).

¹⁸ See *Activated Carbon AR1*, 74 FR at 21321, unchanged in *Activated Carbon AR1 Final*. See also *Crystalline Silicon Photovoltaic Cells. Whether or Not Assembled Into Modules. From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2012-2013*, 80 FR 1021 (January 8, 2015) (*Solar Cells AR1 Prelim*) and accompanying PDM at 17, unchanged in *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2012-2013*, 80 FR 40998 (July 14, 2015) (*Solar Cells AR1 Final*).

¹⁹ See *Narrow Woven Ribbons With Woven Selvage From Taiwan; Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 19635 (April 13, 2015) (*Narrow Woven Ribbons*) and accompanying IDM at Comment 7.

²⁰ See *Certain Steel Nails From the People's Republic of China: Final Results and Final Partial Rescission of the Second Antidumping Duty Administrative Review*, 77 FR 12556 (March 1, 2012) (*Certain Steel Nails*) and accompanying IDM at Comment.

FOPs, due to the relatively small quantity of the solar cells in question.²¹ Here, the percentage of solar cells provided by Trina's uncooperative suppliers exceeds 15 percent of all solar cells that Trina used to make solar modules during the POR.²² We do not find this percentage to be relatively small, insignificant, or reasonably characterized as being of limited quantity. While Trina argues that the Department's determination regarding the magnitude of the quantity of solar cells with missing FOPs is arbitrary and inconsistent with how the Department defines significant quantities in other contexts, Trina has not cited any instances where the Department defined "significant" with respect to unreported FOPs in a manner inconsistent with our decision here.

Finally, the Department's application of partial AFA is not inconsistent with *Mueller*.²³ In *Mueller*, the CAFC concluded that the Department may rely on considerations such as inducement of cooperation when an unaffiliated supplier failed to provide its cost of production to prevent the unaffiliated party from otherwise evading an antidumping rate by selling its goods through a participating respondent. The CAFC agreed with the Department that Mueller had an existing relationship with the supplier and, thus, could have "refused to do business" with that company "in the future as a tactic to force" that company to cooperate. The CAFC, thus, held that because Mueller and other exporters could refuse "to export goods produced" by the unaffiliated supplier, such a relationship could "potentially induce" the supplier "to cooperate." The CAFC indicated in *Mueller* that fairness or accuracy, rather than deterrence, is the overriding purpose of the antidumping statute.²⁴ Yet the CAFC recognized that the Department may apply AFA in order to induce cooperation by other interested parties whose information is needed to calculate that respondent's dumping margin, in situations where the respondent has a mechanism to induce the non-cooperating party(ies) to cooperate.²⁵ While Trina argues that it does not have enough leverage to persuade its solar cell suppliers to cooperate with the Department's requests for information, the record evidence supports our finding that Trina could potentially induce compliance on the part of its solar cell suppliers. The Department chose Trina as a mandatory respondent in the investigation of this proceeding, as well as in the previous administrative review and this administrative review, because it was one the largest two exporters of subject merchandise to the United States.²⁶ Further, Trina identified itself as the largest solar manufacturer in the world during the POR.²⁷ Based on Trina's large size and the quantity of solar cells²⁸ that it purchased from suppliers, it is reasonable to conclude that Trina is

²¹ See *Solar Cells AR2 Final* and accompanying IDM at Comment 19.

²² See Trina's Case Brief (public version) at 7 (where it indicated that its unreported solar cells accounted for more than 15 percent of the solar cells it used to produce solar modules during the POR). The exact amount of unreported FOPs, as acknowledged by Trina, is stated in the proprietary version of Trina's Case Brief at 7.

²³ See *Mueller*, 753 F.3d at 1235.

²⁴ *Id.*

²⁵ *Id.*

²⁶ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Affirmative Preliminary Determination of Critical Circumstances*, 77 FR 31309 (May 25, 2012); see also *Solar Cells AR2 Final* and accompanying IDM at Comment 19; see also Memorandum "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 5.

²⁷ See, e.g., Trina's Section A Response at Exhibit A-15.

²⁸ As noted above, Trina indicated in the public version of the case brief that the uncooperative solar cell suppliers

an important customer to its Chinese solar cell suppliers. Given that Trina's business may be important to its solar cell suppliers, the Department believes Trina would be in a position to exercise its leverage over its solar cell suppliers to induce them to cooperate in this review. Trina itself noted that it has a "long-term business relationship" with the solar cell suppliers providing the largest quantity of solar cells during this and the previous POR.²⁹ While Trina notes that the record does not show whether Trina was continuing to purchase cells from its long-term customers, Trina did not cite record information demonstrating that these long-term relationships have ended nor did it claim that such relationships have ended. Based on Trina's acknowledgment of its long-term business relationship with its largest solar cell suppliers, we find that Trina is in a position to exercise its leverage over its solar cell suppliers to induce its suppliers to cooperate. Trina may choose not to do business with such suppliers in the future due to their lack of cooperation and/or select suppliers that are willing to participate in an antidumping proceeding. By applying AFA with respect to the missing data, the Department is relying on the statutory means that it has available to induce the cooperation of these parties so that the Department has the information necessary to calculate accurate dumping margins.

Comment 2: Application of Partial AFA To Value Trina's Unreported FOPs

Trina:

- While the Department should rely on Trina's consumption rates for the missing solar cell FOPs, if it does not do so, and it applies partial AFA, it should select facts available that will promote accuracy and fairness in a manner contemplated by the CAFC in *Mueller*. The Department's selection of AFA in this regard is punitive and disregards fairness and accuracy.
- Specifically, if the Department applies partial AFA, it should apply AFA only to the portion of the total quantity of solar cells for which FOPs were not provided that exceeds 15 percent of the total quantity of solar cells used by Trina to produce solar modules. Substantially all of the cells Trina consumed during the POR were self-produced. In other contexts, the Department's regulations (19 CFR 351.408(c)(1) and 351.208(c)) have defined "substantially all" to be 85 percent.
- If the Department continues to apply AFA, then it must select different facts otherwise available. Rather than selecting the highest consumption rate for each of the inputs to produce solar cells, the Department should take a weighted average of the upper half of the reported consumption amounts for each of Trina's FOPs as the consumption quantity for the corresponding missing FOP.
- As stated in *Mueller*, the Department's determination must demonstrate how the facts chosen promote accuracy and fairness balanced against its policy considerations in promoting cooperation.³⁰ In this case, the Department selected the highest reported consumption rates for solar cell FOPs as partial AFA.
- The Department's determination lacks any reasoning explaining why the facts chosen promote accuracy and fairness. A selection of an amount based on the upper half of the

alone account for over 15 percent of the solar cells Trina required to produce solar modules during the POR.

²⁹ See Trina's June 8, 2016, Section A Supplemental Questionnaire Response at Exhibit 11; see also *Solar Cells AR2 Final* and accompanying IDM at Comment 19.

³⁰ See Trina's Case Brief at 7 (citing *Mueller* at 1235).

reported consumption quantities would be more accurate, while at the same time advancing the Department's policy interest in promoting cooperation from parties.

Petitioner:

- Trina's suggested alternative approaches have no basis in the Department's regulations or past agency practice, and should be rejected.
- In arguing that the Department should limit the AFA portion only to the percentage of Trina's unreported FOPs from cell suppliers which exceed 15 percent, Trina cites 19 CFR 351.408, which governs when the Department should use prices paid in market economy countries to value FOPs, and is irrelevant to how the Department should apply AFA. The Department rejected this identical argument in the second administrative review.³¹
- Trina's alternate suggestion that the Department should apply as AFA a weighted average of the upper half of the reported consumption amounts is also without merit and Trina cites to no precedent that supports such an approach. The Department's decision to value the unreported FOPs using the highest consumption rate of the same inputs used by Trina to produce solar cells is consistent with Department practice,³² and with the Department's application of AFA to address an identical situation in the previous administrative review of this proceeding.³³

Department's Position: We disagree with Trina. Trina argues that the Department's choice of AFA consumption rates lacks any reasoning explaining why the facts chosen promote accuracy and fairness. The Department's choice of facts available with adverse inferences is based on Trina's own consumption rates of the inputs used to produce solar cells, albeit the highest consumption rates reported by Trina. Thus, these consumption rates are representative of actual rates experienced by Trina during the POR.³⁴ Also, we have weight averaged the FOP data that we are using as partial AFA with Trina's actual reported FOP consumption quantities for the solar cells that Trina produced, thereby ensuring that our application of AFA is proportional to the missing information. Moreover, there is no basis for concluding that Trina's proposed AFA consumption rates are any more "accurate" than those selected by the Department, given that the true consumption rates are unknown because Trina's solar cell suppliers did not provide their FOPs. The possibility exists that parties could obtain a more favorable result by not cooperating because the uncooperative supplier's consumption rates could even be higher than Trina's rates. As the Department has noted in the past, adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."³⁵ Rather, the Department has selected facts available in this situation which balance the goals of determining accurate dumping margins with the need to induce cooperation.

³¹ See Petitioner's Rebuttal Case Brief at 17 (citing Trina's Case Brief at 6-7).

³² See Petitioner's Rebuttal Case Brief at 18-19 (citing *Polyethylene Terephthalate Film, Sheet and Strip from the People's Republic of China: Final Results of the 2009-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 77 FR 14493 (March 12, 2012) (*PET Film*) and accompanying IDM at Issue 10; *Malleable Iron Pipe Fittings From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 37051 (June 29, 2006) (*Malleable Pipe*) and accompanying IDM at Comment 14).

³³ See Petitioner's Rebuttal Case Brief at 18 (citing *Solar Cells AR2 Final* and accompanying IDM at Comment 19).

³⁴ The Department only selected among consumption rates for CONNUMs sold in the United States during the POR.

³⁵ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No.103-

The Department's choice of AFA rates is consistent with court decisions that have considered the Department's use of AFA and prior administrative cases. Both the CAFC and the Court of International Trade (CIT) have recognized that the possible use of AFA serves as an incentive for the respondents to participate in administrative reviews,³⁶ and the CAFC has recognized that the purpose of applying AFA, in whole or in part, is to induce cooperation without being punitive.³⁷ In *PET Film and Malleable Pipe* the Department applied, as partial AFA for missing FOPs, the highest consumption rate reported in the respondent's FOP database for the same inputs for which consumption data were missing.³⁸ The Department's decision to replace the unreported FOPs with the highest consumption rate of the same inputs used by Trina to produce solar cells is also consistent with the Department's application of AFA to address the identical situation in the previous administrative review of this proceeding.³⁹ Thus, the Department's approach here is consistent with court decisions and with the Department's practice.

Moreover, there is no basis for concluding the percentage in 19 CFR 351.408(c)(1) is relevant to the Department's determination here with respect to the significance of the percentage of Trina's unreported FOPs. Section 351.408(c)(1) of the Department's regulations governs when the Department uses prices paid in market economy countries to value FOPs.⁴⁰ Section 351.408(c)(1) of the Department's regulations does not address the significance of unreported FOPs for purposes of applying AFA. Only applying AFA to the quantity of cells above 15 percent for which FOPs are unreported would not fully address the non-cooperation. Here, the Department has determined that the degree of missing FOPs is significant and has determined to apply AFA. We see no basis to apply AFA only to a portion, rather than the full magnitude, of the quantity of cells for which FOP information was withheld. Trina's suggested approach would result in the Department applying AFA to only a small portion of the solar cells for which FOPs were not reported and thus may not be likely to induce cooperation.

Likewise, Trina's alternative approach of basing AFA consumption rates on the weighted average of the upper half of the reported consumption amounts for each of Trina's FOPs, limits the deterrence effect on the FOPs used to calculate the dumping margin and thus may not be likely to induce cooperation. Given the possibility that parties could obtain a more favorable result by not cooperating because the uncooperative supplier's consumption rates could even be higher than Trina's rates, it would not be appropriate to use consumption rates as AFA that are less than Trina's highest consumption rates. The Department finds that using Trina's highest

316, Vol. 1, (1994) (SAA) at 870, reprinted in 1994 U.S.C.C.A.N. 4040, 4198-99; accord *Ta Chen Stainless Steel Pipe Inc., v. United States*, 24 C.I.T 841, 849 (CIT 2000).

³⁶ See *PAM, Sip.A. v. United States*, 582 F.3d 1336, 1340 (Fed. Cir. 2009) (the possibility of a high AFA margin creates a powerful incentive to avoid dumping and to cooperate in investigations); see also *F.Lii de Cecco di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1032 (Fed. Cir. 2000) (*F.Lii de Cecco di Filippo Fara S. Martino S.p.A.*) (the purpose of section {776(b)} is to provide the respondents with an incentive to cooperate ...).

³⁷ See *F.Lii de Cecco di Filippo Fara S. Martino S.p.A.*, 216 F.3d at 1027, 1032; see also *Gallant Ocean (Thai.) Co., Ltd. v. United States*, 602 F.3d 1319, 1324 (Fed. Cir. 2010).

³⁸ See *PET Film* and accompanying IDM at Issue 10; see also *Malleable Pipe* and accompanying IDM at Comment 14, (where the Department replaced the respondent's missing water FOP with the highest consumption rate on the record).

³⁹ See *Solar Cells AR2 Final* and accompanying IDM at Comment 19.

⁴⁰ See *Use of Market Economy Input Prices in Nonmarket Economy Proceedings*, 78 FR 46799, 46800 (August 2, 2013).

consumption rates is appropriate because it balances the use of an actual consumption rate experienced by a respondent during the POR with inducement to cooperate.

Based on the foregoing, and contrary to Trina's assertions, the manner in which we have applied partial AFA in this case is consistent with the CAFC's decision in *Mueller*, and with other CAFC decisions as well as Department precedent in similar situations. Additionally, the Department's partial AFA is based on Trina's own data, and consistent with the purpose of applying AFA, because it contains a deterrent to non-cooperation without being punitive.

Comment 3: Whether the Department Should Apply Partial AFA to Canadian Solar's Unreported Factors of Production for Purchased Solar Cells

Certain of Canadian Solar's unaffiliated suppliers of solar cells and solar modules failed to report their factors of production (FOP). To account for the missing information, in the *Preliminary Results*, the Department applied, as partial AFA, the highest consumption quantity reported for each FOP that Canadian Solar used to produce solar cells.

Canadian Solar:

- The Department should not apply partial AFA to Canadian Solar. Canadian Solar is a cooperative party, and the CAFC has ruled that the Department may only apply adverse inferences to a cooperative party to impact non-cooperating party or to prevent evasion of antidumping duties.⁴¹ The application of adverse inferences in calculating Canadian Solar's dumping margin would neither induce cooperation on the part of a non-cooperating suppliers nor prevent evasion of antidumping duties.
- For example, in *Changzhou*, the CAFC determined that the application of adverse inferences was not reasonable, because the record did not support a finding that the cooperating parties could induce the non-cooperating party to provide the information requested, nor did it support a finding that the non-cooperating party was likely to evade duties by selling through cooperating parties.⁴² Similarly, in *Xiping*, the CIT determined that using adverse inferences to determine a cooperating respondent's dumping rate was not reasonable because the use of adverse inferences "had no impact on the parties that had failed to cooperate."⁴³
- The application of AFA only affects Canadian Solar, not the uncooperative suppliers, because there is no evidence that these suppliers export, or have individual dumping margins to evade. On the other hand, applying AFA to Canadian Solar may induce the uncooperative suppliers to conduct business with Chinese producers and exports other than Canadian Solar – precisely contrary to the Department's inducement and evasion policies.
- The Department's reliance on *Mueller* is misplaced because the facts in *Mueller* are different than the facts here. First, in *Mueller*, the non-cooperating party operating in

⁴¹ See Canadian Solar's Brief at 9 (citing *Mueller*, 753 F.3d at 1236).

⁴² *Id.* at 10 (citing *Changzhou Wujin Fine Chem. Factory Co. v. United States*, 701 F.3d 1367, 1378 (Fed. Cir. 2012) (*Changzhou*)).

⁴³ *Id.* at 11 (citing *Xiping Opeck Food Co. v. United States*, 34 F. Supp. 3d 1331, 1349-50 (CIT 2014) (*Xiping*) (citing *Changzhou*, 701 F.3d at 1375-79)).

connection with the cooperating party, was also a mandatory respondent that failed to cooperate, and thus it was assigned an individual dumping rate based on AFA. Consequently, the Department was concerned that the non-cooperating party could avoid its own adverse dumping rate by exporting its merchandise through the cooperating respondent.⁴⁴ Here, Canadian Solar’s unaffiliated uncooperative suppliers are not mandatory respondents and have not been assigned their own dumping margins. Hence, they have no individual rates that they would be attempting to “evade.”

- Additionally, in *Mueller*, the cooperating respondent had an existing long-term relationship with the non-cooperating party. The CAFC found this fact to be an important consideration as to whether a respondent is able to “force the non-cooperating party’s cooperation.”⁴⁵ In the current review, there are no facts whatsoever on the record supporting a finding of an existing, long-term relationship between Canadian Solar and any of its suppliers.
- The Department’s conclusion that Canadian Solar’s size provides it with leverage over its suppliers is also misguided. The solar energy market is robust and dynamic, with many producers and exporters. Moreover, the share of Canadian Solar’s purchases of solar cells relative to the total sales of each of Canadian Solar’s solar cell suppliers is unknown. In addition, Canadian Solar purchases solar cells and modules from a number of suppliers. The diffusion of Canadian Solar’s purchases of solar cells and modules among the various suppliers reduces the likelihood that Canadian Solar represents a substantial proportion of the business of any one of its suppliers.
- As part of its determination as to whether it should apply partial AFA to Canadian Solar, the Department considered the relative size of the missing information – *i.e.*, whether the missing information was “material.” However, there is nothing in the statute, the regulations, or case law that supports the inclusion of this consideration for applying AFA. The Department is directed to consider only whether a respondent failed to cooperate by not acting to the best of its ability.⁴⁶ The Department did not explain how the magnitude of the missing information is related to a respondent’s level of cooperation, nor why it is more permissible to penalize a cooperative respondent if the gap caused by the non-cooperation of unaffiliated entities is large.

Petitioner:

- Canadian Solar’s argument and its understanding of the relevant precedent is incorrect. Canadian Solar incorrectly contends that the Department may only apply adverse inferences to a cooperative respondent affected by an uncooperative interested party where the respondent has the ability to induce cooperation from the interested party, the AFA affects the non-cooperating interested party, and the use of AFA prevents duty evasion.
- However, in confirming the reasonableness of *Mueller* in *Xiping*, the CAFC stated “that under certain circumstances, Commerce may apply adverse inferences in such a way that they extend to instances when doing so has ‘collateral effects’ on a cooperating

⁴⁴ *Id.* at 12 (citing *Mueller*, 753 F.3d at 1236).

⁴⁵ *Id.* at 13 (citing *Mueller*, 753 F.3d at 1235).

⁴⁶ *Id.* at 13 (citing section 776(b) of the Act).

respondent.”⁴⁷ The CAFC explained that “if a cooperating party was in a position to induce a non-cooperating party to supply needed information and failed to do so, AFA could be used to determine the cooperating party’s rate.”⁴⁸

- The facts of this case support the application of partial AFA in accordance with *Mueller*. Record evidence indicates that Canadian Solar had the means to influence and induce cooperation from its suppliers. During the POR, Canadian Solar was one of the largest exporters of solar modules to the United States,⁴⁹ and it purchased a substantial quantity of solar cells for use in those solar modules. Moreover, the existence of accounts in Canadian Solar’s accounting system and its corporate divisions dedicated to the purchase of solar cells, demonstrate the existence of long-term relationships between Canadian Solar and its solar cell suppliers.⁵⁰ The fact that certain Canadian Solar suppliers provided FOP data to the Department demonstrates that Canadian Solar was in a position to induce cooperation.
- Canadian Solar interprets *Xiping*, *Chanqzhou*, and *Mueller* as the courts holding that a non-cooperating party engaging in transactions with a cooperating respondent will only be affected by AFA applied to the cooperating respondent, or be able to evade antidumping duties, when the non-cooperating party is also either a mandatory respondent or has a separate rate. This interpretation is in error.
- While it is true that the respondents’ non-cooperating suppliers are not mandatory respondents in this review and do not have individual rates, they are nevertheless interested parties that produce subject merchandise. As interested parties in this proceeding and foreign producers of subject merchandise that effectively export to the United States *via* Canadian Solar, the non-cooperating suppliers are directly affected by the Department’s AFA determination. There is no record evidence to suggest that Chinese solar cell suppliers readily shift from one exporter to another with no consequences as Canadian Solar suggests.
- Hence, the Department’s application of AFA directly affects Canadian Solar’s non-cooperating suppliers and, therefore, the potential for duty evasion clearly exists. As such, the Department appropriately interpreted and applied *Mueller* to the facts of this case.
- Given that the instant AFA issue was in the prior administrative review, Canadian Solar and its suppliers have long been aware of the importance that the Department places on reporting solar cell FOPs. In fact, Canadian Solar stated that “it understands the requirement to provide all FOPs for all solar cell and solar module suppliers and all tollers.”⁵¹
- While the statute may not explicitly require consideration of the amount or size of missing data, consideration of this factor is implicit in, and very important to, the

⁴⁷ See *Xiping*, 34 F. Supp. 3d 1331, 1348.

⁴⁸ *Id.* at 1348.

⁴⁹ See Memorandum, “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Unreported Factors of Production,” dated December 16, 2016 (Canadian Solar Unreported FOPs Memorandum) at 6.

⁵⁰ This argument cannot be fully summarized due to proprietary concerns. See Canadian Solar’s Case Brief at 8 for a more complete discussion of this argument.

⁵¹ See Canadian Solar’s September 2, 2017 Supplemental Questionnaire Response (Canadian Solar’s September 2, 2017 SQR) at 1-2.

Department's AFA analysis and practice. This is particularly evident in the Department's determinations regarding missing FOP data. As detailed in the second administrative review of this proceeding, the Department's practice is to evaluate thoroughly the affect that the missing FOP data have on a respondent's dumping margin calculations on a case-by case basis.⁵²

- Here, the Department thoroughly evaluated the effect of the missing FOP data, and determined that partial AFA was warranted. If there were no such consideration of the amount or the effect of missing information, AFA would have no meaning and the purpose and intent of the statute would be voided. Indeed, absent consideration of the amount or effect of missing information, the Department could apply AFA in situations where only a very small/immaterial amount of data was missing, and, at the other extreme, could decide not to apply AFA even if the respondents failed to provide any data.

Department's Position: We disagree with Canadian Solar. As previously noted, section 776(a) of the Act provides that the Department shall apply "facts otherwise available" if an interested party or any other person withholds information that has been requested. Additionally, section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

There is no dispute that Canadian Solar's suppliers are interested parties. Section 771(9)(A) of the Act defines an interested party as, among other things, a foreign manufacturer of subject merchandise. Canadian Solar's uncooperative suppliers manufactured solar cells and modules which are subject merchandise. Additionally, there is no dispute that these suppliers would not provide their FOPs. Canadian Solar reported that it repeatedly requested FOP information from its unaffiliated solar cell and solar module suppliers and that it could not obtain FOP information from certain suppliers.⁵³ The Department subsequently issued its antidumping questionnaire to Canadian Solar's largest (by supplied quantity) five unaffiliated suppliers of solar cells and largest five unaffiliated suppliers of solar modules.⁵⁴ Most of these suppliers refused to provide FOPs.⁵⁵ Thus, these suppliers withheld requested information and failed to cooperate by not acting to the best of their ability to comply with a request for information pursuant to sections

⁵² *Id.* at Comment 19. (The Department's determination to apply partial AFA in this case is consistent with our practice regarding the valuation of unreported FOPs. The Department has previously excused the respondents from reporting FOPs from some of their smallest suppliers in situations where a respondent has a large number of suppliers and also in situations where the unreported FOP data are of limited quantity. This case is distinguishable from situations where the Department has excused the respondents from reporting FOPs, and distinguishable from the situation of Yingli in this administrative review, because the percentage of solar cell inputs provided by Trina's unaffiliated solar cell suppliers is significant and cannot reasonably be characterized as being of limited quantity.).

⁵³ See Canadian Solar's June 8, 2016 Section A Supplemental Questionnaire Response at Exhibits SA-14, SA-15 and SA-16; see also Canadian Solar's July 8, 2016 Section D Supplemental Questionnaire Response at Exhibit SD-13; see also Canadian Solar's July 21, 2016 Supplemental Questionnaire Response at Exhibit SD2-1; see also Canadian Solar's September 2, 2016 Supplemental Questionnaire Response at Revised Exhibit SD2-1.

⁵⁴ See letters care of Canadian Solar to five unaffiliated cell suppliers, dated June 5, 2016 and letters care of Canadian Solar to five unaffiliated module suppliers, dated August 9, 2016.

⁵⁵ The total number of suppliers of solar cells and solar modules to Canadian Solar providing and not providing FOPs is proprietary information and is identified in the Canadian Solar Unreported FOPs Memorandum at 5.

776(a)(2)(A) and 776(b) of the Act. In such situations, the statute allows the Department to use AFA in place of the missing information. However, Canadian Solar claims that unlike certain of its suppliers, it cooperated in this review and thus application of AFA is not appropriate. The CAFC addressed just such a situation in *Mueller*.

As Canadian Solar itself notes, in *Mueller*, the CAFC recognized that the Department may apply AFA in order to induce cooperation by interested parties whose information is needed to calculate a respondent's dumping margin in situations where the respondent has a mechanism to induce the non-cooperating party to cooperate.⁵⁶ Specifically, the CAFC noted that *Mueller* had an existing relationship with the supplier and thus could have "refused to do business" with that company "in the future as a tactic to force" that company to cooperate.⁵⁷ While Canadian Solar claims that, unlike *Mueller*, there is no evidence that it has long-term relationships with its suppliers (and thus ability to induce cooperation), the existence of supplier-specific accounts in the accounting system and corporate divisions within Canadian Solar dedicated to the purchase of solar cells demonstrate the existence of long-term relationships between Canadian Solar and its solar cell suppliers.⁵⁸ As in *Mueller*, Canadian Solar could have refused to do business with its uncooperative suppliers "in the future as a tactic to force" cooperation.

Canadian Solar downplays its ability to induce cooperation from its suppliers, noting that there is no information as to what share of the uncooperative suppliers' business it represents and concluding that the large number of solar producers and Canadian Solar's use of multiple suppliers makes it less likely it represents a substantial portion of its suppliers' business. While there is no information on the record regarding Canadian Solar's share of its uncooperative suppliers' business, we cannot conclude, based on the lack of such information, that Canadian Solar's refusal to do business with its uncooperative suppliers would not serve as a mechanism to induce cooperation, as the CAFC found in *Mueller*. According to information on the record, Canadian Solar is a significant producer in the solar market with significant sales in 2014.⁵⁹ The Department chose Canadian Solar as a mandatory respondent in this review because it was one of the largest two exporters of subject merchandise to the United States during this POR.⁶⁰ Moreover, even with its enormous size, Canadian Solar continues to grow rapidly.⁶¹ Furthermore, Canadian Solar purchased a substantial quantity of solar cells and solar modules from its suppliers.⁶² We believe this combination of industry position, rapid growth, significant purchases of solar cells and modules, and the potential of losing such a significant solar module producer as a customer, indicate that, as in *Mueller*, Canadian Solar is in a position to exercise leverage to induce cooperation from its uncooperative solar cell and solar module suppliers.

⁵⁶ See *Mueller*, 753 F.3d at 1233, 1235.

⁵⁷ *Id.*, at 1235.

⁵⁸ See Canadian Solar's September 2, 2016 Supplemental Questionnaire Response at 1-2.

⁵⁹ See Canadian Solar's April 28, 2016 Section A Questionnaire Response (Canadian Solar's Section A Response) at Exhibit A-30; see also Trina's Section A Response at Exhibit A-15 (Trina Solar's 2014 audited financial statements states that Trina Solar became the largest solar module producer in the world in 2014).

⁶⁰ See Respondent Selection Memorandum at 5.

⁶¹ See Canadian Solar's Section A Response at Exhibit A-30 which identifies total revenues nearly doubling in 2014.

⁶² See Canadian Solar Unreported FOPs Memorandum at 6; see also Canadian Solar's September 29, 2016 Supplemental Questionnaire Response (Canadian Solar's September 29, 2016 SQR) at Exhibits SD3-1 and SD3-2.

Moreover, we disagree with Canadian Solar's claim that the application of AFA would not affect the uncooperative suppliers or that *Mueller* is not applicable here because the uncooperative suppliers have no individual dumping rates to evade by shipping through a cooperative supplier, unlike the situation in *Mueller*. Canadian Solar's dumping margin in this review will be assessed on merchandise which includes the uncooperative suppliers' solar cells and modules. Thus, these suppliers' merchandise is directly affected by the Department's AFA determination. Moreover, there is no record evidence to suggest that these suppliers could readily shift from one exporter to another with no consequences as Canadian Solar suggests. Additionally, the possibility exists that parties could obtain a more favorable result by not cooperating because the uncooperative supplier's consumption rates could even be higher than Canadian Solar's rates. Thus, the uncooperative suppliers could avoid the appropriate dumping margins that should apply to the merchandise they produced by failing to cooperate, similar to the concern in *Mueller*.

Canadian Solar asserts that the Department incorrectly applied AFA, in part, because it based its decision to resort to adverse inferences on the extent of the missing information. However, as noted above, and in keeping with section 776(b) of the Act, the Department applied adverse inferences in selecting from among the facts available because the suppliers in question failed to cooperate by not acting to the best of their abilities to comply with a request for information. By applying partial AFA, the Department is relying upon the statutory means at its disposal to induce the cooperation of the uncooperative suppliers.

Moreover, the instant situation is distinguishable from situations where the Department has excused the respondents from reporting FOPs, and distinguishable from the situation of a mandatory respondent – Yingli - in the second administrative review of this proceeding where the Department did not apply AFA to Yingli's unreported FOPs of purchased solar cells because Yingli cooperated with the Department and the Department did not find it necessary to request the missing FOP data from the unaffiliated suppliers because the unreported information was for a relatively small portion of production.⁶³ Here, the percentage of solar cells and solar modules provided by Canadian Solar's uncooperative suppliers is not relatively small or insignificant.⁶⁴ Therefore the Department requested missing FOP data from the largest unaffiliated uncooperative suppliers. However, most of these suppliers refused to provide FOPs.

Our determination is consistent with prior determinations. For instance, in *Narrow Woven Ribbons*, the Department applied partial AFA to a respondent because its unaffiliated ribbon suppliers declined to report their costs related to subject merchandise and thus failed to cooperate with the Department's requests for information.⁶⁵ The Department determined that the application of partial AFA was appropriate in this case because the unaffiliated ribbon suppliers produced ribbons and then sold the ribbons to the mandatory respondent who, after further processing, exported the ribbons to the United States during the POR and thus they were interested parties within the meaning of section 771(9)(A) of the Act. Similarly, in *Certain Steel Nails*, the Department applied partial AFA in determining a respondent's dumping margin because its unaffiliated supplier did not provide FOP data. The Department noted that "it is

⁶³ See *Solar Cells AR2 Final* and accompanying IDM at Comment 19.

⁶⁴ See Canadian Solar's September 29, 2016 SQR at Exhibits SD3-1 and SD3-2.

⁶⁵ See *Narrow Woven Ribbons* and accompanying IDM at Comment 7.

crucial for suppliers of subject merchandise to provide their own FOP data because suppliers actually provide finished merchandise independently subject to the Order....”⁶⁶

As we explained above and in the *Preliminary Results*, Canadian Solar’s unaffiliated solar cell and module suppliers are interested parties within the meaning of section 771(9)(A) of the Act because they are subject merchandise producers which failed to cooperate by not providing their FOP data requested by the Department. Thus, consistent with section 776(b) of the Act, which states that the Department may apply AFA when an interested party has failed to cooperate by not acting to the best of its ability in responding to the Department’s requests for information, we find the use of partial AFA to be appropriate.⁶⁷ Accordingly, we continue to find, pursuant to section 776(b) of the Act, that the application of partial AFA is warranted, and have continued to value the unreported solar cell and solar module FOPs using Canadian Solar’s highest consumption rates for FOPs for solar cells and modules sold in the United States.

Comment 4: Application of Partial AFA To Value Canadian Solar’s Unreported FOPs

Canadian Solar:

- If the Department continues to apply partial AFA to Canadian Solar, it should correct three errors in the application of AFA in the *Preliminary Results*.
- First, the Department applied partial AFA with respect to the missing solar cell FOPs twice. This occurred because after applying partial AFA to the percentage of solar cells for which Canadian Solar was unable to obtain FOPs, the Department then applied partial AFA to the percentage of solar panels for which Canadian Solar was unable to obtain FOPs. This second application of AFA was based on both the percentage of solar cells and solar modules for which Canadian Solar was unable to obtain FOPs from its suppliers. Using both of these percentages added together resulted in a disproportionate application of adverse inferences to solar cell FOPs. The sum of these percentages accounts for both the missing solar cell FOPs and the missing module FOPs. But this has the effect of double counting a portion of the missing module FOPs, because they have already been accounted for in the Department’s assignment of the highest consumption rates to the missing solar cell FOPs.
- Second, in applying its AFA methodology, the Department not only used Canadian Solar’s highest consumption rates for each FOP that it used in producing solar cells and solar modules as the AFA consumption rates for the missing solar cells and solar module FOPs, but also incorrectly assigned certain FOPs to certain solar cells and solar modules that Canadian Solar did not use to produce those solar cells and modules. Specifically, the Department assigned the highest consumption rate for certain FOPs that are only used to produce monocrystalline cells and modules to multicrystalline cells and modules and assigned the highest consumption rate for certain FOPs that are only used to produce multicrystalline cells and modules to monocrystalline cells and modules.
- Third, the database to which the Department applied its partial AFA methodology, reported FOP consumption amounts during the POR for 100 percent of the cells, whether Canadian Solar produced or purchased them, which includes FOP consumption rates for cells obtained from those entities that did not provide FOP data. Thus, the Department

⁶⁶ See *Certain Steel Nails* and accompanying IDM at Comment 13.

⁶⁷ *Id.* at 9.

double counted these FOP consumption rates when it additionally applied adverse inferences. To correct for this error, the Department should apply adverse inferences to the percentage of the total database which accounts for the cells obtained from Canadian Solar's cell suppliers who did not provide data.

Department's Position: Canadian Solar's first alleged error is that by applying partial AFA to solar cells and to solar modules separately, the Department double counted the unreported module FOPs. We did not. In calculating the normal value of each CONNUM, we calculated the following three amounts separately: (1) the normal value of solar modules for which Canadian Solar reported all FOPs; (2) the normal value of solar modules for which Canadian Solar failed to report the FOPs for the solar cells used in the modules;⁶⁸ and (3) the normal value of solar modules for which Canadian Solar did not report any FOPs.⁶⁹ We then weight averaged the three calculated amounts by multiplying the three resulting normal values by the percent each group represented of total solar modules produced or purchased by Canadian Solar during the POR and then summed them to derive the total normal value. The three ratios equal one hundred percent.⁷⁰ Thus, the Department did not apply partial AFA twice with respect to solar cells.

With regard to Canadian Solar's second alleged error, we agree that the Department should apply AFA to multicrystalline and monocrystalline products separately. In the *Preliminary Results*, the Department determined the AFA consumption rates for the missing FOPs using the highest consumption of each input reported by Canadian Solar for any CONNUM. However, Canadian Solar produced both multicrystalline and monocrystalline solar cells and modules and used different types of inputs in making each type of product. Therefore, the Department's AFA methodology not only assigned the highest consumption rates, as AFA, to the missing FOPs but resulted in including FOPs for certain inputs that were not used to produce those products. Thus, for the final results, the Department has based the AFA consumption rates for solar modules made using multicrystalline solar cells on the highest FOP consumption rates of any solar module made by Canadian Solar using multicrystalline solar cells and has based the AFA consumption rates for solar modules made using monocrystalline solar cells on the highest FOP consumption rates of any solar module made by Canadian Solar using monocrystalline solar cells.

We disagree with Canadian Solar's third alleged error that we double counted the consumption of solar cells because the database to which the Department applied its partial AFA methodology already included the consumption rates of certain finished solar cells that Canadian Solar added as a proxy for the missing FOP consumption rates. This error with respect to a proxy specifically

⁶⁸ We calculated normal value using the reported FOPs for module assembly and applied AFA with respect to all inputs used to produce solar cells (using the highest FOPs reported by Canadian Solar for its own solar cell production).

⁶⁹ We calculated normal value by applying AFA with respect to all FOPs (using the highest FOPs reported by Canadian Solar).

⁷⁰ See Memorandum, "Antidumping Duty Administrative Review of Certain Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Preliminary Analysis Memorandum for 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./CSI Solar Power (China) Inc.," dated December 16, 2016 (Canadian Solar's Prelim Analysis Memorandum) at Attachment I.

involved the Department supposedly including in its calculation of normal value both the consumption of finished solar cells as well as the consumption of the inputs necessary to produce solar cells. While Canadian Solar did report in its database the consumption of finished solar cells, the Department did not include this field in its calculation of Canadian Solar's normal value. Rather, the Department based its calculation of the normal value of solar cells for which Canadian Solar reported no FOPs on the highest FOPs Canadian Solar reported consuming in producing solar cell. Thus, the Department's calculation was based on a complete build-up of each input consumed in cell production reported by Canadian Solar, rather than on the consumption of completed solar cells included in the database.⁷¹

In addressing Canadian Solar's alleged errors, the Department determined that it calculated the percentage of solar cells for which FOPs were not reported by the quantity of solar cells used in the production of solar modules rather than the quantity of solar cells in all solar modules, both those that were produced and those that were purchased.⁷² For these final results, we corrected this error by basing the ratio on the total quantity of solar cells in solar modules Canadian Solar either produced or purchased.

Comment 5: Surrogate Value for Semi-Finished Polysilicon Ingots and Blocks

Petitioner:

- Polysilicon ingots and blocks are fully manufactured and processed goods that are produced from polysilicon rocks and numerous other material inputs, using labor and electricity, in a multi-step production process.⁷³ It is incorrect and distortive to value such a fully processed intermediate product using the pricing of one of the inputs (polysilicon) used to produce that product.
- To estimate the surrogate value (SV) for these inputs, the Department should begin with the SV for polysilicon and add to that the values for all intermediate items and steps that are required to produce one unit of silicon ingot or silicon block.⁷⁴ Trina's section D questionnaire response provides all of the data necessary to apply this methodology.
- In its margin calculations, in addition to summing the material input values specific to the ingot and block stages of production, the Department can calculate the value for the brick by adding the additional inputs to the value of the ingot, and can also account for the labor and electricity specific to the ingot and block production stages by multiplying the

⁷¹ The Department noted to Canadian Solar that it had reported solar cell consumption in its FOP database and requested that it report the FOPs consumed in the production of Chinese solar cells based on its own production experience. See the Department's October 20, 2016 questionnaire issued to Canadian Solar. Canadian Solar complied with the Department's request. See Canadian Solar's October 28, 2016 Sixth Section D Supplemental Questionnaire Response at 3, 4, and Revised Exhibit D-1. The Department's calculation of Canadian Solar's preliminary margin is in the Canadian Solar's Prelim Analysis Memo at Attachment I. The buildup of normal value demonstrates that Canadian Solar's consumption of solar cells were not included in this buildup.

⁷² See Canadian Solar's September 29, 2016 SQR at Exhibits SD3-1 and SD3-2 for the numerators and denominators of these ratios and the application of these ratios in Canadian Solar's Prelim Analysis Memorandum at Attachment I.

⁷³ See Petitioner's Case Brief at 31.

⁷⁴ *Id.*

percentage of labor and electricity allocated to the ingot and block stages of production by the overall value for electricity and labor.⁷⁵

Trina:

- Consistent with its findings in the investigation, the first administrative review, and the second administrative review in this proceeding, the Department found the GTM Research (“GTM”) and Bloomberg New Energy Finance (“BNEF”) data to be the best available information with which to value polysilicon ingots and blocks.⁷⁶
- The petitioner complains that the polysilicon block or ingot is further processed from the polysilicon rock and that the former should cost more than the later.
- The petitioner suggests that the Department could estimate the SV for these inputs by summing all of the cost items reported in the polysilicon processing stages and silicon ingot production stages, but provided the Department with no authority or precedent for adopting such an approach.⁷⁷
- In this case, a constructed build-up of costs for silicon blocks or ingots is unnecessary and the Department rejected this approach in the previous administrative review because of insufficient evidence suggesting that the processing and additional inputs used at the ingot and block production stages add significant value beyond the cost of the polysilicon.⁷⁸
- The SV that the Department used in the *Preliminary Results* represents the best available information and the Department should continue to rely on this value in the final results.

Department’s Position: Consistent with our determination in *Solar Cells AR1 Final*⁷⁹ and *Solar Cells AR2 Final*,⁸⁰ we disagree with the petitioner and have determined that the best available information on the record with which to value polysilicon ingots and blocks is the international price of solar-grade polysilicon. No party submitted a SV for ingots or blocks. Because semi-finished polysilicon ingots and blocks comprise primarily polysilicon, the world-market price for polysilicon represents the best SV on the record with which to value the respondents’ polysilicon ingots and blocks. Although the petitioner contends that using the world-market price for polysilicon to value polysilicon ingots and blocks misses certain processing costs, most of the processing done to produce ingots and blocks from virgin polysilicon (*e.g.*, melting the polysilicon and casting the ingots, cutting the ingots into blocks) is largely performed by relatively expensive machinery.⁸¹ Thus, most of the costs of this production are already captured by manufacturing overhead. We do not believe there is sufficient evidence to demonstrate that the processing and additional inputs used at the ingot, and block production stages adds significant value beyond the original cost of the polysilicon.

⁷⁵ *Id.* at 33.

⁷⁶ See Trina’s Rebuttal Case Brief at 18 (citing *Preliminary Results* and accompanying PDM at 23-24).

⁷⁷ *Id.* (citing Petitioner’s Case Brief at 31-33).

⁷⁸ *Id.* (citing *Solar Cells AR2 Final* and accompanying IDM at Comment 13).

⁷⁹ See *Solar Cells AR1 Final* and accompanying IDM at Comment 34.

⁸⁰ See *Solar Cells AR2 Final* and accompanying IDM at Comment 13.

⁸¹ See Trina’s May 25, 2016 Section D Questionnaire Response at Exhibits D-3 and D-4.

Further, the petitioner argues that we should add the cost of the processing necessary to convert the polysilicon into ingots and blocks to value the purchased ingots and blocks. While this is the approach we used to value Trina's manufactured ingots, we do not find a basis for valuing purchased ingots and blocks similarly. The Department's normal practice is to value purchased inputs using a SV for a product that is identical or similar to the input being valued rather than constructing a SV based on SVs for the purchased input's components.⁸² While there have been exceptions to this practice where the Department determined that the available SVs were so unsuitable that the situation required using a build-up methodology to value the input, we do not find that to be the case here. As noted above, semi-finished polysilicon ingots and blocks comprise primarily polysilicon. We have an acceptable price for polysilicon on the record. We do not consider the polysilicon price inapplicable when polysilicon, in an ingot or block form, is the input we seek to value. Although other processes are employed to ultimately produce the ingot or block, as explained above, most of the processing is performed by relatively expensive machinery and therefore, most of the costs of this production are already captured by manufacturing overhead. Therefore, we have continued to value Trina's and Canadian Solar's polysilicon ingots and blocks using the world-market price for polysilicon.

Comment 6: Data Source Used to Value Polysilicon and Mono & Multi Crystalline Wafers and Solar Cells

Petitioner:

- The Department should use world market (international) prices as tracked by BNEF to value polysilicon and polysilicon wafers.
- The data from BNEF are preferable to the data from GTM for valuing polysilicon because the data from BNEF explicitly exclude pricing from Chinese sources whereas the data from GTM do not.⁸³
- Moreover, the Department should use BNEF data because the data provide separate breakouts for mono- and multi-crystalline wafers as well as for mono- and multi-crystalline solar cells, and reports them on a basis that excludes distortive Chinese sourced pricing.⁸⁴

Trina:

- In the Preliminary Results, the Department valued Trina's polysilicon and wafer inputs using world-market prices from BNEF and from GTM Research.⁸⁵

⁸² See *Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China*, 68 FR 47538 (August 11, 2003) and accompanying Issues and Decision Memorandum at Comment 1 (“{i}n accordance with our practice, we have continued to value acetic acid itself using a surrogate value, rather than valuing the individual components of this factor, for purposes of the final determination.”). See also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Ball Bearings and Parts Thereof From the People's Republic of China*, 68 FR 10685 (March 6, 2003) and accompanying Issues and Decision Memorandum at Comment 6 (“... we agree with petitioner and Torrington that in a NME proceeding it is the Department's normal practice to value the purchased components and not the input factors used to produce them if the firm is not integrated”).

⁸³ See Petitioner's Case Brief at 30 (citing *Solar Cells AR2 Final* and accompanying IDM at Comment 16).

⁸⁴ *Id.* (citing Petitioner's Original SV Submission at Exhibit 4).

⁸⁵ See Trina's Rebuttal Case Brief at 16 (citing Memorandum, “Crystalline Silicon Photovoltaic Cells, Whether or

- As a general principle, more data points provide broader, more accurate data.⁸⁶ Reliance on only the BNEF data would diminish the breadth and reliability of the polysilicon SVs.
- The petitioner's concerns regarding the GTM data are unfounded as the GTM data include both a "Global Blended" polysilicon price and a "China Domestic" polysilicon price. The record contains no indication that the GTM "Global Blended" price includes Chinese prices.⁸⁷ Even if it did, such inclusion would serve only to increase the average Global Blended price reported since every China Domestic spot price for polysilicon is higher than the Global Blended spot for the same day.
- The petitioner requests that the Department use the BNEF data to value mono- and multi-crystalline solar cells separately. However, Trina did not report any consumption of solar cells, only the inputs to produce cells.⁸⁸

Canadian Solar:

- The Department should reject the petitioner's argument to value these inputs using only the data from BNEF.⁸⁹
- The Department has already considered the very same issue in the most recent review in this proceeding, in which it elected to value polysilicon inputs using average world-market prices from both BNEF and GTM Research.⁹⁰
- The Department should either continue to value Canadian Solar's polysilicon inputs using an average of the world-market prices derived from both BNEF and GTM, or value Canadian Solar's polysilicon inputs using only data from GTM, which represents the widest range of data available from a single source.⁹¹
- In the investigation and the first and second administrative reviews of this proceeding, the Department relied on world-market prices from more than one source to value polysilicon, and specifically rejected a respondent's argument to use only a single source to calculate the SV because the record lacked any information demonstrating that the particular source was more significant in terms of the amount of sales represented than the other source of world market prices on the record.⁹² The Department instead "considered the widest range of data available and weighted all data points equally because . . . this is the most appropriate methodology for calculating the SV for polysilicon."⁹³

Not Assembled Into Modules, from the People's Republic of China: Factor Valuation Memorandum," dated December 16, 2016 (Prelim SV Memo) at 2).

⁸⁶ See Trina's Rebuttal Case Brief at 17 (citing e.g., *Steel Concrete Reinforcing Bar From the Republic of Turkey: Final Affirmative Countervailing Duty Determination Final Affirmative Critical Circumstances Determination*, 79 FR 54963 (September 15, 2014) (*Concrete Bar from Turkey*)).

⁸⁷ *Id.*

⁸⁸ *Id.* at 18.

⁸⁹ See Canadian Solar's Rebuttal Case Brief at 22.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.* at 23 (citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China, Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part*, 77 FR 63791 (October 17, 2012) (*Solar Cells Investigation Final*) and accompanying IDM at Comment 24).

⁹³ *Id.*

- In the first and second administrative reviews of this proceeding, the Department derived SVs for polysilicon inputs by averaging world-market prices derived from both BNEF and GTM, rejecting the petitioner’s argument that the GTM data should be disregarded because it included prices from Chinese sources.⁹⁴
- If the Department determines that only one source should be used to value polysilicon inputs, it should rely solely on GTM data as the data from BNEF does not offer prices that are truly representative of the world market. The BNEF data have been selectively scrubbed, without explanation, to exclude prices from Chinese sources but not prices from other countries considered by the Department to be non-market economies.⁹⁵

Department’s Position: For these final results, we have used both BNEF and GTM data to value polysilicon and have used BNEF data to value mono- and multi-crystalline wafers. We did not require either source to value finished solar cells because solar cells are subject merchandise and, thus, we valued them using the Department’s FOP methodology (*i.e.*, we valued the inputs used to produce solar cells, not the finished solar cells). We relied solely upon the BNEF data to value wafers because, as explained below, these data are more specific to the wafers used by Canadian Solar and Trina than are the GTM data.

The BNEF data “represent world market pricing that is *exclusive* of pricing obtained from sources within China.”⁹⁶ The GTM data include a “Global Blended” price, which features prices representative of the world market, and a separate “China Domestic” price.⁹⁷ In utilizing the GTM data, we relied on the Global Blended price.⁹⁸ Thus, both of the international prices that we used in the *Preliminary Results* to value polysilicon are distinct from the GTM China domestic price that is clearly identified as a PRC domestic price. There are no further details regarding the Global Blended GTM data. Thus, to the extent possible, we have attempted to not use China domestic prices.

The petitioner advocates using BNEF data rather than GTM data to value mono- and multi-crystalline wafers, and mono- and multi-crystalline photovoltaic cells because the data provide separate mono- and multi-crystalline prices and thus are more specific to each type of input. However, the record shows that both data sources provide mono- and multi-crystalline wafer prices but the BNEF data include per-unit prices for a specific size of mono- and multi-crystalline wafers. Further, as noted above, we did not need to value finished solar cells in our calculation of NV because solar cells are subject merchandise and, therefore, we valued mono- and multi-crystalline solar cells using the Department’s FOP methodology. Thus, the petitioner’s comment regarding the use of BNEF data for the valuation of mono- and multi-crystalline photovoltaic cells is not relevant. Nevertheless, as noted, the BNEF data, as opposed to the GTM data, specify the size of the mono- and multi-crystalline wafers. Given this additional specificity regarding wafers, we used only BNEF data to separately value the mono-

⁹⁴ *Id.* at 22 (citing *Solar Cells AR1 Final* and accompanying IDM at Comments 27 and 34; *Solar Cells AR2 Final* and accompanying IDM at Comment 16).

⁹⁵ *Id.* at 23-24.

⁹⁶ See Petitioner’s Case Brief at 30 (citing *Solar Cells AR2 Final* and accompanying IDM at Comment 16).

⁹⁷ See Trina’s July 18, 2016 SV Comments at Exhibit C-1, PV Pulse Report, Table 2A.

⁹⁸ See Prelim SV Memo.

and multi-crystalline wafers of both mandatory respondents in the *Preliminary Results* and have continued to do so in these final results.⁹⁹ However, consistent with the Department’s valuation in the previous review of this proceeding where it relied on GTM data as well as BNEF data in valuing polysilicon consumption,¹⁰⁰ we continue to value the consumption of polysilicon by averaging the world-market prices from both BNEF and GTM data.

Comment 7: Surrogate Value for Scrap Cells and Modules

Petitioner:

- Thai HTS subheading 2804.69 (containing by weight less than 99.99 percent of silicon) is appropriate for valuing Trina and Canadian Solar’s scrap solar cells (fields “CELL_SCRAP W” and “BP CELL_Poly_kg”, respectively) that were sold for their silicon content¹⁰¹ because the cracked waste photovoltaic cell material contains substantial contaminants - including but not limited to dopants, silver pastes, aluminum-silver pastes, boron, and phosphorus oxychloride – that render the material anything but 99.99 percent pure.¹⁰²
- As an initial matter, it is unclear why the Department used HTS subheading 2804.61 for Canadian Solar’s cell scrap, when Canadian Solar itself initially identified HTS subheading 2804.69 as the most appropriate classification.¹⁰³
- HTS subheading 2804.69 is particularly appropriate here as the cracked photovoltaic cell material contains substantial contaminants — including but not limited to dopants, silver pastes, aluminum-silver pastes, boron, and phosphorus oxychloride — that render the material anything but 99.99 percent pure.¹⁰⁴
- Significant reprocessing is required to remove these contaminants and obtain usable silicon from cell and module scrap. The Department, therefore, should use HTS subheading 2804.69 to value Canadian Solar and Trina’s scrap cells that were sold for their silicon content as scrap for use in wafer production.¹⁰⁵
- Likewise, scrap modules contain polysilicon that is heavily contaminated with non-polysilicon additives and materials. As Trina notes in its Section D questionnaire response, it does not reintroduce these materials into the production process, and instead sells them for scrap.¹⁰⁶ All scrapped solar modules sold by Trina are broken modules with broken glass. Trina indicates that the buyers of the scrapped solar modules disassemble the broken modules and attempt to collect useful material such as broken cells, aluminum, broken glass, and junction boxes.¹⁰⁷

⁹⁹ Although the petitioner also claimed that BNEF data should be used because the data provide separate breakouts for mono- and multi-crystalline solar cells, we did not need to value solar cells for either respondent, we only needed to value the inputs used to produce solar cells.

¹⁰⁰ See *Solar Cells Investigation Final* and accompanying IDM at Comment 24; see also *Solar Cells AR1 Final* and accompanying IDM at Comments 27 and 34.

¹⁰¹ The silicon could be used to manufacture polysilicon for use in wafer production.

¹⁰² See Petitioner’s Case Brief at 35-36.

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 36.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* (citing Trina’s May 25, 2016 Section D Questionnaire Response at D-24).

¹⁰⁷ *Id.* (citing Trina’s July 8, 2016 Section D Supplemental Questionnaire Response at 9).

- Trina is the only respondent that reported scrap modules, and the Department inappropriately valued all module scrap under Thai HTS subheading 8548.90.90, which covers “Electrical Parts Of Machinery Or Apparatus Nesoi,” including materials wholly unrelated to photovoltaic modules including scrapped electrolytic capacitors and power supply components.¹⁰⁸ In Chapter 85, subheading 8548.90.90 is an “other” sub-classification under 8548.90 that would include scrapped electrolytic capacitors, power supply components, and other materials that are wholly unrelated to a photovoltaic cell or module. It is the Department’s practice to not value a scrap offset for a material with a higher average unit value than the primary input that was used to generate that scrap, because doing so “will produce an unreasonable result.”¹⁰⁹ The use of Thai HTS subheading 8548.90.90 to value module scrap results in a SV nearly seven times the SV the Department used for the primary material input, *i.e.*, virgin polysilicon.¹¹⁰ In this circumstance, the AUV of the scrap being generated is 200 percent higher than the value of the material input used to produce the good, and using this AUV would result in a net negative value for the consumed polysilicon.¹¹¹
- Because Trina does not know specifically how or to what extent the scrap materials are used by the buyer, it is reasonable to assume, as facts available, that the primary reason the buyer purchases the broken module scrap is for the polysilicon content. Accordingly, Thai HTS subheading 2804.69 is particularly appropriate here as the cracked photovoltaic cell material contains substantial contaminants rendering it less than 99.99 percent pure.¹¹²

Trina:

- The petitioner contends that Trina’s sales of scrap modules should be valued using HTS subheading 2804.69 which is the same SV that is applied to silicon scrap.¹¹³ The petitioner’s assertion that the SV that the Department has applied to scrap, HTS subheading 8548.90.90, is overly inclusive because it includes scrapped electrolytic capacitors, power supply components, and other materials is purely speculative because the record lacks any information regarding the actual items imported into Thailand during the POR under this tariff classification. Moreover, the petitioner fails to explain how or why the inclusion of other items in this classification would be distortive or inaccurate.¹¹⁴
- The petitioner’s concern that the SV for module scrap is higher than the average unit value of the primary unit used to generate the scrap (*i.e.*, virgin polysilicon) does not support a conclusion that the module scrap values are unreasonably high. It is quite likely that a finished solar module, even one that is sold as scrap, would be significantly more valuable than the single input of polysilicon.¹¹⁵

¹⁰⁸ *Id.* (citing Prelim SV Memo at Attachment II).

¹⁰⁹ *Id.* at 37 (*Steel Wire Garment Hangers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 47587 (August 14, 2008) (*Wire Hangers from China*) and accompanying IDM at 19).

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ See Trina’s Rebuttal Case Brief at 20 (citing Petitioner’s Case Brief at 35).

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 21.

Department's Position: We agree with the petitioner, in part. The value of scrap solar cells sold for use in manufacturing polysilicon lies in their silicon content. Therefore, consistent with *Solar Cells AR1 Final*¹¹⁶ and *Solar Cells AR2 Final*,¹¹⁷ we valued Canadian Solar and Trina's scrap cells sold for polysilicon based on HTS 2804.69, which is the HTS category applicable to silicon. Record evidence suggests that the nature of the process, and the additional chemicals and additives used during cell production, introduce impurities which may lower purity levels of the polysilicon obtained by re-melting the solar cells and using the re-melted solar cells with other feedstock polysilicon for ingot production.¹¹⁸ Solar cells primarily consist of polysilicon, and Canadian Solar and Trina's recycled polysilicon from solar cells requires cleaning to remove contaminants. This suggests that the recycled polysilicon is not at the purity level required for solar grade polysilicon (99.9999 percent silicon). Additionally, we believe the multiple additives used in manufacturing solar cells, such as dopants, silver pastes, aluminum-silver pastes, boron, and phosphorus oxychloride, suggest that the silicon in scrap solar cells may not be at the purity level of Thai HTS category 2804.61 (silicon of a purity not less than 99.99 percent). Thus, we continue to use Thai imports for HTS 2804.69, which is for inputs of silicon containing less than 99.99 percent purity, to value Canadian Solar and Trina's cell scrap sold for polysilicon.

Concerning Trina's module scrap, in *Solar Cells AR2 Final*, Trina reported that "(u)nqualified modules are completely broken modules that were sold or discarded. The scrap of certain aluminum frames was also recovered and sold during the POR."¹¹⁹ Trina further reported in the instant review that "{a}ll the scrapped solar modules sold by Trina are broken modules with broken glass. The buyer of the scrapped solar modules would disassemble the broken modules and try to collect something useful such as broken cells, aluminum, broken glass and junction boxes."¹²⁰ As the petitioner noted, the Thai HTS subheading (8548.90.90.124) that we used to value module scrap in the *Preliminary Results* covers "Electrical Parts Of Machinery Or Apparatus Nesoi," which may include materials, such as electrolytic capacitors and power supply components, that Trina did not identify as items its purchasers of scrap modules salvage from those modules. Therefore, we have reconsidered the scrap module SV that we used in the *Preliminary Results* in order to value the scrap modules using the best available information regarding the value in keeping with section 773(c)(1)(B) of the Act.

Trina's scrap modules comprise a disparate group of materials, each of which may have very different scrap values. Thus, the challenge is to determine which of these scrap values is the best available information for valuing the scrap modules as a whole. While the petitioner claims that it is reasonable to assume that the primary reason the buyers purchase module scrap is for the polysilicon content, this is not evident from the record. Trina reported that purchasers of scrap modules try to salvage anything useful from the modules including broken cells, aluminum, broken glass and junction boxes. Given the lack of evidence as to which scrap material is the primary scrap material purchasers seek from scrap modules, and the fact that the scrap module offset is based on weight, we find it reasonable to take into consideration which of the parts of

¹¹⁶ See *Solar Cells AR1 Final* and accompanying IDM at Comment 33.

¹¹⁷ See *Solar Cells AR2 Final* and accompanying IDM at Comment 17.

¹¹⁸ See Petitioner's Case Brief, at 36.

¹¹⁹ See *Solar Cells AR2 Final* and accompanying IDM at Comment 17.

¹²⁰ See Trina's July 8, 2016 Section D Supplemental Questionnaire Response at 9.

scrap modules predominate by weight. Two elements of scrap modules predominate by weight, glass and aluminum frames.¹²¹ Although the glass in a module may weigh more than aluminum frames, in this case an aluminum scrap value could serve to not only value the scrap aluminum frames but also serve as a surrogate to value the metal junction boxes given that we do not have information regarding the type of metal used in those boxes. Moreover, while scrap aluminum has value, we believe broken glass has limited value and alone does not reflect the value of the scrap module. Based on this line of reasoning, we believe the Thai imports of aluminum scrap, Thai HTS 7602.00, represent the best available information for valuing scrap modules.

Concerning the petitioner's comment with respect to the Department's use of Thai HTS 8548.90.90, we agree that the Department has a long-standing practice of rejecting or capping SVs for offsets, such as by-products, in instances where the by-product SV exceeds the SV of the input from which it was derived. Recent case precedent supports the practice of rejecting and/or capping a scrap SV when it is higher than the SV for the input which generated the scrap by-product in question.¹²² The petitioner asserts that Thai HTS 8548.90.90, used to value Trina's module scrap in the Preliminary Results of this review, has a higher AUV than that of polysilicon, however we are not valuing Trina's solar module scrap using Thai HTS 8548.90.90 in these final results of review. Secondly, as stated above, Trina's scrap modules are not scrap polysilicon. Hence, the petitioner's comparison, which focuses on polysilicon, is misguided in that it assumes that the only value in scrap modules is provided by the polysilicon. The petitioner relies on *Wire Hangers from China*, where the Department decided not to value certain steel wire rod scrap using an AUV that was over 40 percent greater than the calculated SV for new wire rod.¹²³ Here, however, as noted, we are not attempting to value only the scrap of one major input used to produce the subject merchandise; rather we are attempting to value scrap modules themselves, which are comprised of multiple inputs. Thus, we do not find *Wire Hangers from China* on point. Even if the petitioner's reliance on *Wire Hangers from China* were appropriate, the aluminum scrap value is less than the SV of aluminum frames used in the production of solar modules.¹²⁴ For the reasons explained above, we have valued Trina's scrap modules using Thai HTS 7602.00 for these final results of review.

Comment 8: Surrogate Value for Silicon Scrap Offsets

Petitioner:

- Trina sells recovered silicon that is of poor quality and that cannot be re-introduced into production as scrap. In the *Preliminary Results*, the Department valued Trina's silicon scrap using Thai imports under HTS number 2804.61, which refers to imports "Containing By Weight Not Less Than 99.99 percent Of Silicon."¹²⁵
- To determine the by-product value of recycled silicon, the Department should assign to the by-product offset (either that which is sold or counted as by-product but will be reintroduced) a SV that is commensurate with the fact that the input is, in its current state,

¹²¹ See Trina's July 8, 2016 Section D Supplemental Questionnaire Response at Exhibit 1 (FOP Database).

¹²² See, e.g., *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2013-2014*, 80 FR 55328 (September 15, 2015) and accompanying IDM at Comment 7.

¹²³ See *Wire Hangers from China* at Comment 7.

¹²⁴ See Prelim SV Memo at Attachment I.

¹²⁵ *Id.* at Attachment II.

quite impure and unable (without significant working and processing) to be brought up to a level at which it can be introduced into a silicon melt. Indeed, as Trina confirmed, if the recovered silicon scrap is of poor quality and cannot be reintroduced into production, it is sold.

- Consistent with its findings in the final results of the second administrative review, the Department should use Thai imports of silicon with a purity content less than 99.99 percent to value by-product offsets. These products are classified under Thai HTS number 2804.69.¹²⁶

No other parties commented on this issue.

Department's Position: We agree with the petitioner. Trina stated on the record that:

{s}ilicon scraps include silicon scraps generated from various production stages, such as {the} silicon ingot, silicon brick, and wafer production stage{s}. All recovered silicon scraps with feasible silicon purity will be re-introduced into the production of silicon ingots during the POR. If the recovered silicon scrap is poor of quality {sic} and can't be re-introduced into the production, then such silicon scraps were sold.¹²⁷

The scrap in question here is the silicon generated from the wafer production that could not be reintroduced into production and thus was sold rather than the scrap generated from the wafer production that is reintroduced into production (which we valued using world market prices for solar-grade polysilicon). Trina's own characterization of the silicon scrap in question indicates that it is of a less than "feasible silicon purity" that would be required for reintroduction into production. Trina furthermore indicates that the silicon scrap in question is of a poor quality which leads us to believe its level of purity is more akin to the quality of silicon salvaged from scrap solar cells, which contain contaminants. As a result, we have determined that the silicon scrap in question is most accurately classified using the Thai HTS category that consists of silicon of a purity less than 99.99 percent, *i.e.*, HTS 2804.69.

Comment 9: Surrogate Value for Recycled Silicon Scrap

Petitioner:

- The Department should not value recycled polysilicon by-products as virgin polysilicon.
- In the *Preliminary Results*, the Department valued the offset to Canadian Solar and Trina's costs for the silicon by-product that is reintroduced into solar wafer production based on international prices of solar-grade polysilicon. However, the by-product, when generated, is impure and unable, without processing, to be brought up to a level at which it can be reintroduced into a silicon melt.¹²⁸ Thus, before reintroducing silicon into production, the silicon undergoes processing purification and other steps rendering it of

¹²⁶ See Petitioner's Case Brief at 35.

¹²⁷ See Trina's May 25, 2016 Section D Questionnaire Response at D-23.

¹²⁸ See Petitioner's Case Brief at 34 (citing Trina's May 25, 2016 Section D Questionnaire Response at D-16 and D-23).

suitable quality for reintroduction into solar wafer production. The Department should assign to the by-product offset a SV that is commensurate with the fact that the input is impure.¹²⁹

- Consistent with its findings in the final results of the second administrative review in this proceeding, the Department should utilize Thai imports of polysilicon with a purity content less than 99.99 percent, Thai HTS number 2804.69, to value by-product offsets.¹³⁰

SolarCity:

- The Department correctly valued the recycled polysilicon used in production using Thai HTS number 2804.69.¹³¹
- Trina itself admits that before polysilicon is recycled it must undergo substantial processing purification and other steps to render it suitable for reintroduction into a silicon melt.¹³² As the Department has previously noted, solar grade polysilicon requires a purity level of 99.9999 percent.¹³³ Thus, the Department appropriately treated polysilicon that was going to be recycled as insufficiently pure to be reintroduced into silicon melt without substantial process,¹³⁴ valuing the polysilicon using Thai HTS number 2804.69.

Canadian Solar:

- Contrary to the petitioner's incorrect assertions, the Department used the international prices of solar-grade polysilicon to value recycled polysilicon by-product offsets in the second administrative review in this proceeding.¹³⁵
- The Department should continue to value Canadian Solar's by-product offsets for polysilicon that can be reintroduced into production using international prices of solar-grade polysilicon because record evidence demonstrates that Canadian Solar's recycled polysilicon by-product is at a purity level similar to that of virgin polysilicon.¹³⁶

Trina:

- The petitioner's claim that recycled polysilicon needs significant or special processing to be reintroduced into production, and thus it must be valued as silicon with a purity level less than 99.99 percent, is contradicted by the facts on the record. In the first stage of ingot production, both purchased polysilicon and recycled polysilicon are sent through the same purification process to remove any impurities.¹³⁷

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ See SolarCity's Case Brief at 5.

¹³² *Id.*

¹³³ *Id.* (citing *Solar Cells AR2 Final* and accompanying IDM at Comment 17).

¹³⁴ *Id.* at 6 (citing Prelim SV Memo at Attachment II).

¹³⁵ See Canadian Solar's Rebuttal Case Brief at 24 (citing Canadian Solar's July 25, 2016 Rebuttal SV Comments at Exhibit SVR-3).

¹³⁶ *Id.* at 24-25 (citing Canadian Solar's September 29, 2016 SQR at 7).

¹³⁷ See Trina's Rebuttal Case Brief at 19-20 (citing Trina's May 25, 2016 Section D Questionnaire Response at D-16).

- The petitioner confuses the issue by claiming that if Trina’s recovered silicon scrap is of poor quality it cannot be reintroduced into production and is sold.¹³⁸ However, Trina reported poor quality recovered polysilicon in the filed “SILICON_SCRAP” while the petitioner’s comments relate to Trina’s recycled polysilicon reused in production that was reported in the fields “RECYCLED_SILICON_C” and “RECYCLED_SILICON_B.”
- The Department appropriately and consistent with its decision in the previous review, valued Trina’s polysilicon by-products.¹³⁹

Department’s Position: We disagree with the petitioner and SolarCity and have continued to value the offset for polysilicon by-products that are reintroduced into solar wafer production based on international prices of solar-grade polysilicon. Under consideration here is the polysilicon by-product that is generated when raw polysilicon that has been melted into block or cylinder form is cut to a size that can then be sliced into silicon wafers. Only the portions of the blocks, cylinders, or wafers that are cut off and broken during the slicing phase of production, and that are of a quality sufficient to be reintroduced into production, are under consideration here.¹⁴⁰ As an initial matter, the petitioner is incorrect that the Department valued the offset for polysilicon by-products that were reintroduced into production in the previous administrative review using Thai imports of HTS 2804.69 (purity content less than 99.99 percent). The Department valued the offset for polysilicon by-products with a silicon purity level of 99.9999 percent or above – also known as solar-grade polysilicon – using the world market prices for solar-grade polysilicon in the prior two administrative reviews of this proceeding.¹⁴¹ Similarly, SolarCity is incorrect that in the *Preliminary Results* of this review the Department valued polysilicon reintroduced into production using HTS 2804.69. Consistent with the previous two administrative reviews, we valued such polysilicon using international market prices of solar-grade polysilicon.¹⁴²

For both Canadian Solar and Trina, not all by-products containing silicon are reintroduced into production. Only the polysilicon that can be returned to a purity level consistent with that of solar-grade polysilicon is reintroduced into production.¹⁴³ The Department has consistently noted in the investigation and the subsequent three administrative reviews in this proceeding that the silicon used as the input in solar production must be solar-grade polysilicon.¹⁴⁴ Neither the petitioner nor SolarCity have disputed this fact. Indeed, both have argued that the silicon introduced into solar wafer production by both respondents should be valued using prices for solar-grade polysilicon.¹⁴⁵ Neither the petitioner nor SolarCity have disputed the respondents’

¹³⁸ *Id.* (citing Petitioner’s Case Brief at 19).

¹³⁹ *Id.* at 19-20.

¹⁴⁰ See Canadian Solar’s May 25, 2016 Section D Questionnaire Response at 8, Canadian Solar’s September 29, 2016 SQR at 7, and Trina’s July 8, 2016 Section D Supplemental Questionnaire Response at D-23 and Exhibit D-13.

¹⁴¹ See *Solar Cells AR1 Final* and accompanying IDM at Comment 33; see also *Solar Cells AR2 Final* and accompanying IDM at Comment 3.

¹⁴² See Prelim SV Memo at Attachment II.

¹⁴³ See Canadian Solar’s September 29, 2016 SQR at 7 and Trina’s July 8, 2016 Section D Supplemental Questionnaire Response at D-23 and Exhibit D-13.

¹⁴⁴ See Prelim SV Memo. See also Solar Investigation IDM at Comment 9. See also *Solar Cells AR1 Prelim* and accompanying PDM at 30.

¹⁴⁵ See Petitioner’s July 18, 2016 SV Comments at 4 and Solar City’s Case Brief at 5.

statements that the polysilicon by-product under question here is polysilicon that has been reintroduced into the production of solar wafers. Additionally, neither party has challenged Canadian Solar or Trina's statements on the record that they have reported all FOPs necessary to reintroduce the polysilicon by-product into production.¹⁴⁶

Both the petitioner and Solar City posit that the difference between the polysilicon by-product and the raw solar-grade polysilicon used to produce solar wafers is supposed differences in processing or cleaning of the polysilicon by-product: however as noted by Trina, the process for incorporating recycled polysilicon and raw solar-grade polysilicon into production is the same.¹⁴⁷ Further, as noted above, the respondents reported the processing FOPs used to reintroduce the silicon scrap in question. The Department subsequently reduced their offset by these reported amounts in its dumping margin calculations. Consequently, we have determined to continue to value the offset for polysilicon by-products that are reintroduced into solar wafer production based on international prices of solar-grade polysilicon.

Comment 10: Surrogate Value for Aluminum Frames

Petitioner:

- The Department should value Trina's aluminum frames based on Thai HTS Number 7616.99. The Department incorrectly used Thai HTS 7604.29.90001, which covers "aluminum alloy bars, rods and profiles, other, other than hollow profiles, other, other profiles" to value Trina's aluminum frames.
- Solar frames used in the production of subject merchandise are fabricated aluminum products that have been further manufactured into a finished and final form and are no longer simple aluminum extrusions, covered by HTS 7604.29.90001.¹⁴⁸ The goods require no further processing or further manufacturing, and are ready for immediate incorporation into a solar module.
- Under the statutory definition in the notes to Chapter 76 of the HTS, such goods are not considered aluminum "profiles" and thus are not properly classified under HTS number 7604.
- U.S. Customs and Border Protection (CBP) rulings concerning imports of solar frames confirm that such imports are not simple extrusions but are instead finished aluminum goods.¹⁴⁹ A hollow aluminum tube and profile that is to be imported into and subsequently fabricated and converted in the United States is classifiable under headings 7604 or 7608.¹⁵⁰ Similarly extruded aluminum profiles that have a uniform cross section along their entire length that will be converted into window {sic} and doors in the United States are classifiable, before importation, under HTS 7604.29.1000. Unfinished and uncoated profiles that have no finished cuts, holes, bends or other fabricating that will be

¹⁴⁶ See Canadian Solar's September 29, 2016 SQR at 7; see also Trina's July 8, 2016 Section D Supplemental Questionnaire Response at 10; see also Trina's May 25, 2016 Section D Questionnaire Response at D-23.

¹⁴⁷ See Trina's May 25, 2016 Section D Questionnaire Response at D-16.

¹⁴⁸ See Petitioner's Case Brief at 22.

¹⁴⁹ See Petitioner's Rebuttal Case Brief at 23 (citing Petitioner's July 25, 2016 Rebuttal SV Comments at Exhibit 1, CBP Ruling N238208).

¹⁵⁰ See Petitioner's Case Brief at 24 (citing CBP Ruling NY R01215 (January 5, 2005)).

subsequently converted into storm doors are similarly classifiable under HTS number 7604.29.1000.¹⁵¹

- The results of these CBP rulings contrast with CBP rulings concerning aluminum profiles and extrusions that were not further processed, which were classified under HTS categories 7604 and 7608.¹⁵² Thus, it is clear that while unprocessed aluminum tubes and profiles are classified under HTS categories 7604 and 7608, further processed aluminum profiles are classified under HTS 7616 or other categories containing finished articles. CBP has classified imports of aluminum frames by Wuxi Suntech, a sales affiliate of a mandatory respondent in the underlying investigation of this proceeding, under HTS 7616.99.¹⁵³
- Record evidence demonstrates that Trina's solar frames have in fact undergone several processes to complete them for final use such as drilling, cutting, punching, bending, coating and stamping before assembly with solar cells and backing materials.¹⁵⁴ This is further demonstrated by Canadian Solar, which, in contrast to Trina, purchases aluminum extrusions and then has tollers perform the various fabrication processes necessary to produce the "final frame."¹⁵⁵ The degree to which Trina's aluminum frames have been processed ensures they have lost their character as simple aluminum extrusions and have instead taken the form of a fabricated aluminum good classifiable under HTS 7616.99.¹⁵⁶
- Further demonstrating that Trina's solar frames cannot be classified under HTS 7604 is the fact that HTS 7604 accounts for aluminum bars, rods or profiles with "a uniform cross section along their whole length..., provided that they have not thereby assumed the character of articles or products of other headings." The aluminum solar frames in question are not uniform in cross section along their entire length, and thus cannot fit the definition of HTS 7604.¹⁵⁷
- These classifications described above are statutory laws to which the Department must abide.¹⁵⁸
- SolarCity's argument for using HTS 8541.90 was based on CBP's ruling that the petitioner placed on the record regarding solar frame sets from China and Malaysia.¹⁵⁹ The description of the product under consideration in that ruling refers specifically to frame "sets." It is not clear if Trina's input is a frame "set." For this reason, the record evidence indicates Trina's input remains best classified under HTS 7616.99. Nevertheless, this CBP ruling further demonstrates the nature of aluminum frames as a

¹⁵¹ *Id.* at 25 (citing CBP Ruling NY 182931 (June 25, 2002))

¹⁵² See Petitioner's Case Brief at 24 (citing Petitioner's July 25, 2016 Rebuttal SV Comments at Exhibit 1, CBP Ruling N080920).

¹⁵³ See Petitioner's Rebuttal Case Brief at 22-23 (citing Petitioner's July 25, 2016 Rebuttal SV Comments at Exhibit 1, CBP Ruling N139353).

¹⁵⁴ See Petitioner's Case Brief at 23 (citing Trina's May 25, 2016 Section D Questionnaire Response at Exhibit 14).

¹⁵⁵ *Id.* (citing Canadian Solar's May 25, 2016 Section D Questionnaire Response at D-23 and D-24).

¹⁵⁶ *Id.* at 23.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at 24.

¹⁵⁹ See Petitioner's Rebuttal Case Brief at 23 (citing Petitioner's July 25, 2016 Rebuttal SV Comments at Exhibit 1 (CBP Ruling N238208 (February 15, 2013))).

further-processed, further-worked good with a particularized identity as a solar module frame, and not a mere extrusion.¹⁶⁰

SolarCity:

- The Department properly valued the aluminum frames under Thai HTS heading 7604.29.90001. However, extruded aluminum frame sets used in framing an assembly of solar cells are classified as parts under the solar panel tariff provision, HTS 8541.90.0000.¹⁶¹ Thus, to the extent the petitioner is correct that the frames are further processed, the petitioner has selected the wrong tariff provision.¹⁶²

Trina:

- The Department should reject the petitioner's argument that Trina's aluminum frames should be valued using Thai HTS 7616.99.99090 because it is an "other" HTS category that covers a broad range of products and is not the best information for valuing aluminum frames.¹⁶³
- The petitioner's argument regarding the valuation of aluminum frames has been rejected by the Department in four segments across two different proceedings. In *Solar Cells AR2 Final*, the Department explained that HTS 7604.29.90001 constitutes the best available information for valuing aluminum frames and rejected the petitioner's arguments as it had in the *Solar Cells Investigation Final*, *Solar Products Investigation Final*, and *Solar Cells AR1 Final*.¹⁶⁴ In addition, the Department's initial determination rejecting the petitioner's argument in the underlying investigation in the instant proceeding has been sustained by the CIT.¹⁶⁵ Since those decisions, nothing has changed that would warrant a different determination in this segment of the proceeding. The aluminum frames used by Trina are still non-hollow, aluminum profiles.¹⁶⁶
- The petitioner's arguments are based on omissions and mischaracterizations of the record. The petitioner claims without any evidence on the record that Trina's aluminum frames are not uniform in cross section along their entire length and thus cannot be classified under heading 7604.¹⁶⁷ Exhibit SC-17 of Trina's June 21, 2016, section C supplemental response includes a drawing of the frame showing a single, uniform cross section for the extruded aluminum frame, thereby countering the petitioner's claim.
- In its explanation of what the petitioner believes is covered by heading 7604, the petitioner omitted language from its quotation indicating that goods further processed

¹⁶⁰ *Id.* at 23-24.

¹⁶¹ See SolarCity Case Brief at 3-4 (citing CBP Ruling N238208 (February 15, 2013) at 1).

¹⁶² *Id.* at 4.

¹⁶³ See Trina's Rebuttal Case Brief at 13.

¹⁶⁴ *Id.* (citing *Solar Cells AR1 Final* and accompanying IDM at Comment 36; *Solar Cells AR2 Final* and accompanying IDM at Comment 8; *Solar Cells Investigation Final* and accompanying IDM at Comment 16; *Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 76970 (December 23, 2014) (*Solar Products Investigation Final*) and accompanying IDM at Comment 9).

¹⁶⁵ *Id.* (citing *Jiangsu Jiasheng Photovoltaic Technology Co., Ltd. v. United States*, 28 F. Supp. 3d 1317, 1335-1338 (CIT 2014) (*Jiangsu*)).

¹⁶⁶ *Id.* at 14 (citing Trina's June 21, 2016 Section C Supplemental Questionnaire Response at 24 and Exhibit SC-17 (containing diagrams showing the frames to be non-hollow profiles)).

¹⁶⁷ *Id.* (citing Petitioner's Case Brief at 23).

after extrusion may also be considered “profiles” because it undermined their desired interpretation.¹⁶⁸

Department’s Position: We agree with Trina that HTS 7604.29.90001, which covers non-hollow aluminum profiles, is the best available information with which to value Trina’s aluminum frames. Trina has demonstrated that the inputs in question are non-hollow, aluminum profiles.¹⁶⁹ In the underlying investigation, the Department concluded that HTS 7604 constitutes the best available information to value the respondents’ aluminum solar frames because alloyed aluminum profiles are identified under HTS 7604, while the petitioner’s suggested HTS 7616.99 is an “other” category that includes products dissimilar to aluminum frames.¹⁷⁰ The decision was sustained by the CIT.¹⁷¹ The Department reached the same decision to value aluminum frames under HTS 7604.29 in the *Solar Products Investigation*,¹⁷² *Solar Cells AR1 Final*,¹⁷³ and *Solar Cells AR2 Final*.¹⁷⁴

The petitioner claims that the facts relied upon by the Department to value aluminum frames with HTS 7604 do not support the decision. We disagree. Just as in the segments of the proceedings noted above, the input in question is described by Trina as non-hollow, aluminum profiles.¹⁷⁵ No party has provided evidence challenging this description and the Department has found nothing on the record to contradict Trina’s description. While the petitioner has claimed the products in question cannot be defined as “aluminum profiles” based on the degree to which the product is further processed, Trina correctly points out that the U.S. International Trade Commission (ITC), in its application of HTS nomenclature, states that “profile” can be applied to goods “which have been subsequently worked after production.”¹⁷⁶ Further, the product coverage of HTS 7604.29 (i.e., aluminum alloy bars, rods and profiles, other, other than hollow profiles) is unchanged and continues to pertain to non-hollow aluminum profiles such as those consumed by Trina in this review period, just as we found it pertained to the aluminum frames consumed by Trina in previous segments in this proceeding and in *Solar Products Investigation Final*.

The Department has already considered the amount of finishing that aluminum profiles undergo to become aluminum frames in selecting an appropriate SV for aluminum frames in its previous determinations. In the *Solar Cells Investigation Final*, *Solar Cells AR1 Final*, and *Solar Cells AR2 Final*, the Department stated:

¹⁶⁸ *Id.* (citing Petitioner’s Case Brief at 23).

¹⁶⁹ See Trina’s June 21, 2016 Section C Supplemental Questionnaire Response at C-24 and Exhibit SC-17 (containing diagrams showing the frames to be non-hollow profiles).

¹⁷⁰ See *Solar Cells Investigation Final* and accompanying IDM at Comment 16.

¹⁷¹ See Trina Rebuttal Brief at 13 (citing *Jiangsu*, 28 F. Supp. 3d at 1317, 1337).

¹⁷² See *Solar Products Investigation Final* and accompanying IDM at Comment 9.

¹⁷³ See *Solar Cells AR1 Final* and accompanying IDM at Comment 36.

¹⁷⁴ See *Solar Cells AR2 Final* and accompanying IDM at Comment 8.

¹⁷⁵ See Trina’s June 21, 2016 Section C Supplemental Questionnaire Response at 24 and Exhibit SC-17 (containing diagrams showing the frames to be non-hollow profiles).

¹⁷⁶ See Petitioner’s July 25, 2016 Rebuttal SV Comments at Exhibit 2, Chapter 76 Note 1(b), profiles “also covers cast or sintered products, of the same forms, which have been subsequently worked after production.”

Petitioner's assertion that respondents' aluminum frames are finished articles is not relevant to our decision. While CBP rulings on the record supporting the use of HTS 7604 concern unfinished aluminum articles, this does not necessarily mean that HTS 7604 would only contain unfinished aluminum profiles. While other HTS categories identify whether they contain finished or unfinished items, HTS 7604 does not specify whether it contains finished or unfinished aluminum profiles.¹⁷⁷

Further, we noted in *Solar Products Investigation Final* that the "ITC definition of aluminum profiles cited by the petitioner {in the *Solar Products Investigation*} indicates that profiles may be cast, sintered, and worked after production."¹⁷⁸ In sustaining the Department's determination with respect to aluminum frames, the CIT stated that "HTS 7604 includes aluminum bars, rods, and profiles, and products that have been *subsequently worked after production* . . . provided that they have not thereby assumed the character of articles or products of other headings" (emphasis added).¹⁷⁹ Thus, the Department and the CIT have previously considered the fact that aluminum profiles used as aluminum frames have undergone further processing.

The petitioner further argues that the aluminum profiles should not be valued using HTS 7604 because they are not uniform in cross section along their entire length. The Department believes that while certain aluminum frames purchased by the respondents contain corners, we believe they are nevertheless uniform in cross section, and that the existence of corners does not change their classification as aluminum profiles.¹⁸⁰ Trina's cite to Exhibit SC-17 of its June 21, 2016 section C supplemental response includes a drawing of the frame showing a single, uniform cross section for the extruded aluminum frame, thereby countering the petitioner's claim. Finally, as mentioned above, we note that the ITC's definition of aluminum profiles cited by the petitioner indicates that profiles may be cast, sintered, and worked after production.¹⁸¹ Nothing on the record indicates that the work done to aluminum profiles after production may not result in the product possessing corners.

As previously mentioned, the Department has made determinations in three segments of this proceeding, and in another proceeding, that HTS 7604 is the best available information with which to value the aluminum frames used to assemble solar modules. Although one of those decisions was challenged in *Jiangsu*, the determination was sustained by the CIT. The facts here are not materially different from those in *Solar Cells Investigation Final*, *Solar Products Investigation Final*, *Solar Cells AR1 Final*, or *Solar Cells AR2 Final* and we have reached the same conclusion here as we reached in those investigations and reviews.

¹⁷⁷ See *Solar Cells Investigation Final* and accompanying IDM at Comment 16, *Solar Cells AR1 Final* and accompanying IDM Comment 36, and *Solar Cells AR2 Final* and accompanying IDM at Comment 8. The Department reached the identical conclusion in *Solar Products Investigation Final* and accompanying IDM at Comment 9.

¹⁷⁸ See *Solar Products Investigation Final* and accompanying IDM at Comment 9.

¹⁷⁹ See *Jiangsu*, 28 F. Supp. 3d at 1337.

¹⁸⁰ See *Solar Products Investigation Final* and accompanying IDM at Comment 9, *Solar Cells Investigation Final* and accompanying IDM at Comment 16, *Solar Cells AR1 Final* and accompanying at Comment 36, and *Solar Cells AR2 Final* and accompanying IDM at Comment 8.

¹⁸¹ *Id.*

Just as it did in the *Solar Cells Investigation Final*, *Solar Products Investigation Final*, *Solar Cells AR1 Final*, and *Solar Cells AR2 Final*, the petitioner cited CBP rulings to support its position that the aluminum frames here should not be classified under HTS 7604. However, the Department is not bound by CBP rulings for U.S. imports when selecting import values from surrogate countries, but instead must select the best available information on the record.¹⁸² One of the CBP rulings cited by the petitioner states that the aluminum frames used to produce solar panels should be classified under HTS 7616.99 (articles of aluminum, not elsewhere specified or indicated);¹⁸³ however, this HTS category is for an “other” category, which would only contain articles of aluminum not already identified elsewhere in the HTS. As stated above, alloyed aluminum profiles are identified under HTS 7604. Furthermore, HTS 7616 covers a number of inputs which are dissimilar to the aluminum frames used by Trina, such as nails, screw, and bolts. Additionally, there was no explanation in the CBP ruling on Wuxi Suntech’s frames as to why the frames should be classified under HTS 7616.99. Absent an explanation, we are unable to weigh the ruling against record evidence supporting the Department’s use of an HTS category different from the one identified in the ruling.

In *Solar Cells AR1 Final* and *Solar Cells AR2 Final*, the petitioner cited a CBP ruling in which CBP classified solar frame sets from China and Malaysia as finished goods under HTS 8541.90.¹⁸⁴ SolarCity suggests the most appropriate classification may be HTS 8541.90—referring to the CBP ruling the petitioner placed on the record of the current administrative review;¹⁸⁵ however, the petitioner maintains that Trina’s input remains best classified under 7616.99 because the description of the product under that ruling refers specifically to frame “sets,” and it remains unclear if Trina’s input is a frame “set.”

The petitioner’s arguments partially rest on conclusions it reaches concerning HTS explanatory notes that aluminum profiles are only considered as such if “they have not... assumed the character of articles or products of other headings.”¹⁸⁶ The petitioner argues that HTS 7604 only covers unfinished aluminum profiles and assumes that finished aluminum profiles do not fit in any other HTS category; thus HTS 7616, which covers aluminum articles not elsewhere specified or indicated, must be the catch-all category that includes the processed aluminum profiles at issue. We disagree with the petitioner’s interpretation. As we stated in both *Solar Cells Investigation Final* and *Solar Products Investigation Final*, while “other HTS categories identify whether they contain finished or unfinished items, HTS 7604 does not specify whether it contains finished or unfinished aluminum profiles.”¹⁸⁷ Thus, we disagree with the petitioner’s conclusion that aluminum profiles that were further processed would not typically be classified in HTS 7604 and we disagree that such profiles would necessarily be classified in HTS 7616. Rather, we find that the products covered by HTS 7616 are different from the aluminum frames

¹⁸² See *Solar Cells AR2 Final* and accompanying IDM at 19.

¹⁸³ See Petitioner’s Rebuttal Case Brief at 23.

¹⁸⁴ See *Solar Cells ARI Final* and accompanying IDM at Comment 36; see also *Solar Cells AR2 Final* and accompanying IDM at Comment 8.

¹⁸⁵ See SolarCity’s Case Brief at 3-4 (citing CBP Ruling N238208).

¹⁸⁶ See Petitioner’s Rebuttal Case Brief at 23.

¹⁸⁷ See *Solar Cells Investigation Final* and accompanying IDM at Comment 16; see also *Solar Products IDM* at Comment 9.

at issue in this case because this HTS “includes in particular... nails, tacks, staples, screws, bolts, nuts, screw hooks, rivets, cotters, cotter pins, washers, knitting needles, bodkins, crochet hooks, embroidery stilettos, safety pins, other pins and chains, and cloth, grill and netting of aluminum wire.” This HTS description does not refer to items similar to aluminum profiles that were further processed into frames. The petitioner’s argument that HTS 7616.99.9909 does not include the many dissimilar items listed above¹⁸⁸ ignores the fact that none of the items that are listed under HTS 7616 are similar to aluminum frames.

The petitioner attempts to demonstrate that aluminum frames used in solar panels would be classified under HTS 7616 rather than HTS 7604. Such arguments fail to address squarely the Department’s concern here, which is to identify the best available information with which to value Trina’s aluminum frames. We continue to find that HTS 7604 consists of items far more similar to Trina’s aluminum frames than the items imported under HTS 7616 and/or HTS 8541.90 and thus imports under HTS 7604 constitute the best available information with which to value Trina’s aluminum frames, consistent with section 773(c)(1) of the Act. In identifying such information, the Department weighs available information on the record and makes a product-specific and case-specific decision as to what constitutes the “best available information” for a SV for each input.¹⁸⁹ HTS 7616 and HTS 8541.90 cover items that are dissimilar to the non-hollow, aluminum profiles at issue while HTS 7604.29 expressly covers non-hollow aluminum profiles, which is the product used by Trina for their aluminum frames. Furthermore, record information does not indicate that aluminum profiles that have been finished or further processed are excluded from this category. Because the definition of HTS 7604 is more specific to the input at issue than the definition of HTS 7616 or HTS 8541.90, the Department continues to find that HTS 7604.29.90001 constitutes the best available information with which to value Trina’s aluminum frames.

Comment 11: Surrogate Value for Backsheet

Petitioner:

- Canadian Solar stated that it purchased different types of backsheets, all of which consist of five layers of materials.¹⁹⁰ While the core layer of the backsheets is polyethylene terephthalate (PET) film, that layer is coated with an adhesive layer on each side. The composition of the two outer layers, in turn, may vary by supplier. According to Canadian Solar, “some are of polyvinyl fluoride film and polyolefin film, some are PVDF and ME film, some are PVDF and fluorine film, and some are modified

¹⁸⁸ The petitioner notes that there are separate Thai HTS categories for nails, tacks, staples, screws, bolts, nuts, screw hooks, rivets, cotters, cotter-pins, staples, hooks, ferrules, cloth, grill, netting, bobbins, and reels under HTS 7616 and thus that HTS 7616.99.9909 does not include these items dissimilar to aluminum frames.

¹⁸⁹ See *Narrow Woven Ribbons With Woven Selvage From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 41808 (July 19, 2010) and accompanying IDM at Comment 2; see also *Certain New Pneumatic Off-the-Road Tires From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part; 2010-2011*, 78 FR 22513 (April 16, 2013) (*OTR Tires 2010-2011*) and accompanying IDM at Comment 5.A.

¹⁹⁰ See Petitioner’s Case Brief at 28-29 (citing Canadian Solar’s June 17, 2016, Section C Supplemental Questionnaire Response at 43).

polytetrafluoroethylene (FFC).”¹⁹¹ Canadian Solar also stated that it does not know each film’s respective percentage, by weight, of the backsheet.

- In the *Preliminary Results*, the Department relied on Thai HTS category 3920.62.00.090, which is specific to PET film, to value Canadian Solar’s backsheets. Given the complex and varied nature of Canadian Solar’s backsheet materials, the Department should value Canadian Solar’s backsheets using Thai HTS category 3920.99.90090, which is based on imports of other plastics in sheet form.

SolarCity:

- The Department properly valued backsheets under Thai HTS heading 3920 according to the type of material used. The petitioner incorrectly argues that the Department should classify backsheet inputs under Thai HTS category 3920.99.90090; however, this is not the most specific tariff provision for the merchandise being valued.
- The Department should not deviate from its past practice; and, where the makeup of the backsheet is ascertainable, the backsheet should be valued according to its material composition. The Department correctly valued Trina’s backsheet, comprising primarily polyethylene terephthalate, using HTS category 3920.62.00090, which is specific to “plates, sheets, film foil and strip,” made of PET.

Canadian Solar:

- The Department should continue to value Canadian Solar’s backsheets using Thai HTS category 3920.62.00090 because the different types of backsheets used by Canadian Solar during the POR all contain a core layer of PET.¹⁹²
- A material safety data sheet (MSDS) for backsheet from one supplier indicates that the core layer of PET accounts for 87% of the total weight of the backsheets, which is a significant portion.¹⁹³
- The Department explained in the prior segment of the instant proceeding that Thai HTS category 3920.99.90090, which covers plastics not elsewhere specified under HTS heading 3920, was an inappropriate HTS category to use to value backsheets that consist primarily of PET because HTS heading 3920 contains an HTS subcategory that is specific to PET (*i.e.*, 3920.62.00090).¹⁹⁴
- The petitioner offers no reasons why the Department should reconsider that correct analysis and arrive at a different conclusion in the present review.

Department’s Position: In the *Preliminary Results*, we valued Canadian Solar’s backsheets using HTS category 3920.62.00090 (*i.e.*, Other plates, sheets, film, foil and strip, of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other; Of poly(ethylene terephthalate); Other).¹⁹⁵ For the final results, we have continued to value the respondents’ backsheets using the HTS category for the type of plastic sheet which most closely

¹⁹¹ *Id.*

¹⁹² See Canadian Solar’s June 17, 2016, Section C Supplemental Questionnaire Response at 43.

¹⁹³ See Canadian Solar’s June 17, 2016, Section C Supplemental Questionnaire Response at 43 and Exhibit SC-25.

¹⁹⁴ See Canadian Solar’s Rebuttal Case Brief at 21 (citing *Solar Cells AR2 Final* and accompanying IDM at Comment 14).

¹⁹⁵ See Petitioner’s June 18, 2016 SV Comments at Exhibit 3.

corresponds to the composition of the backsheets used by the respondents. Accordingly, we have continued to value Canadian Solar's backsheets using HTS category 3920.62.00090.

Canadian Solar explained that its backsheets are purchased in finished condition and consist

...of five layers of materials. The core layer is PET film (*i.e.*, polyethylene terephthalate film) that is coated with an adhesive layer at each side. The two outer layers may vary by supplier; some are of polyvinyl fluoride film and polyolefin film, some are PVDF and ME film, some are PVDF and fluorine film, and some are modified polytetrafluoroethylene ("FFC").¹⁹⁶

Canadian Solar also provided a MSDS from a supplier, which indicates that the core PET in the backsheets purchased from that supplier account for 87%, by weight.¹⁹⁷ The Department confirmed these percentages after a review of the supplier's MSDS. Furthermore, Canadian Solar classified its backsheet under HTS category 3920.6200.09 when reporting its market economy purchases.¹⁹⁸ Thus, record evidence does not indicate that a material other than PET is the predominant material in Canadian Solar's backsheets.

Because record evidence shows that Canadian Solar bought backsheets in a finished condition,¹⁹⁹ as opposed to assembling various components into backsheets, we sought the best available information on the record for valuing backsheets, not for valuing the components of backsheets. However, there are no SVs on the record specifically for backsheets. Backsheets are multilayered plastic sheets. Thus, we determined that the best available information on the record for valuing Canadian Solar's backsheets is the import value for the type of plastic sheet which most closely corresponds to the predominant material in Canadian Solar's backsheets. Valuing the respondents' backsheets based on the predominant material in the backsheet is also consistent with CBP ruling N233581, where CBP found that the applicable subheading for certain flexible non-cellular transparent plastic sheeting, where PET predominates by weight, is HTS category 3920.62.0000. Therefore, we disagree with the petitioner that HTS 39209990090 (*i.e.*, Other plates, sheets, film, foil and strip, of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other; Of other plastics: Other; Other),²⁰⁰ which is a category covering plastics not elsewhere specified under HTS heading 3920, is the appropriate HTS category for valuing Canadian Solar's backsheets when HTS category 3920 contains a subcategory that is specific to PET (*i.e.*, 3920.62.00090) and Canadian Solar's backsheets consist primarily of PET.

Trina stated that its backsheets are delivered by suppliers in a finished condition.²⁰¹ Trina also provided a listing of its backsheets which indicates the predominant material in the backsheets.²⁰² Trina reported that its backsheets are primarily comprised of either PET, EVA, or

¹⁹⁶ See Canadian Solar's June 17, 2016, Section C Supplemental Questionnaire Response at 43.

¹⁹⁷ *Id.* at 43 and Exhibit SC-25.

¹⁹⁸ See Canadian Solar's May 25, 2016 Section D Questionnaire Response at 18 and Exhibit D-8.

¹⁹⁹ See Canadian Solar's June 17, 2016, Section C Supplemental Questionnaire Response at 43.

²⁰⁰ See Petitioner's July 18, 2016 SV Comments at Exhibit 3

²⁰¹ See Trina's June 21, 2016 Section C Supplemental Questionnaire Response at 26.

²⁰² *Id.* at Exhibit SC-18.

propylene (“PP”).²⁰³ For the reasons explained above, we have continued to value Trina’s backsheets based on the predominant material in the backsheets. Specifically, we have valued Trina’s backsheets primarily comprising PET using HTS category 39206200090, backsheets primarily comprising EVA using HTS category 39201000090 (*i.e.*, Other plates, sheets, film, foil and strip, of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other; Of polymers of ethylene; Other), and backsheets primarily comprising PP using HTS category 39202090090 (*i.e.*, Other plates, sheets, film, foil and strip, of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other; Of polymers of propylene: Other; Other).²⁰⁴

Comment 12: Surrogate Value for Module Glass

Trina:

- The HTS category used in the *Preliminary Results* (*i.e.*, 7007.19.90000), which covers safety glass consisting of toughened (tempered) glass, is not the best available information to value Trina’s tempered glass and coated glass.
- The Department should value Trina’s coated glass with HTS category 7005.29.90001 because this category covers float glass of a thickness not exceeding 5 mm, and thus is specific to the thickness of glass used by Trina.
- Trina described its glass factors as being of float glass that were tempered and provided detailed specifications regarding the glass thickness. As indicated in Trina’s response, all of Trina’s glass was less than 5 mm in thickness.²⁰⁵ While the coated glass consumed by Trina was tempered, HTS category 7005.29.90001 is appropriate because it is more closely aligned with the thickness of Trina’s coated glass.
- If the Department finds that HTS category 7005.29.90001 is not the best available information to value Trina’s coated glass, then the Department should value Trina’s coated glass with the information proposed in Canadian Solar’s case brief.
- The petitioner’s claim that Trina did not provide detailed information regarding the nature of its input is incorrect. Trina provided specification sheets for its coated glass, and an additional specification sheet for its solar glass detailing the standards and testing methods for 23 different characteristics of the coated glass.²⁰⁶
- The HTS categories for laminated glass (*i.e.*, 7007.21 or 7007.29) are inappropriate to value Trina’s tempered glass or coated glass. An explanatory note from the World Customs Organization explains that laminated glass is “made in sandwich form, with one or more interlayers of plastics between two or more sheets of glass.”²⁰⁷ The specification sheets provided by Trina demonstrate that neither its tempered glass nor its coated glass are “sandwich glass” (*i.e.*, laminated glass).

²⁰³ See Trina’s November 9, 2016 Pre-Preliminary Comments at 13-14.

²⁰⁴ See Petitioner’s July 18, 2016 SV Comments at Exhibit 3.

²⁰⁵ See Trina’s Case Brief at 14 (citing Trina’s July 8, 2016 Section D Supplemental Questionnaire Response at 4 and Exhibit 8).

²⁰⁶ See Trina’s Rebuttal Case Brief at 15 (citing Trina’s May 25, 2016 Section D Questionnaire Response at Exhibit 14; Trina’s June 21, 2016 Section C Supplemental Questionnaire Response at Exhibit SC-20).

²⁰⁷ *Id.*

Canadian Solar:

- The Thai SV used to value Canadian Solar’s module glass in the *Preliminary Results* is so aberrationally high that it accounts for 13 to 19 percent of Canadian Solar’s total cost of manufacturing (depending on the CONNUM), similar to total costs attributable to polysilicon and wafers *combined* – the two most predominant material inputs used to manufacture subject merchandise.
- The Thai SV “diverges violently” from credible benchmarks on the record,²⁰⁸ such as 1) the safety glass price during the POR from Bulgaria submitted by the petitioner, and 2) the price of Canadian Solar’s market economy purchases of module glass.
- When a party claims that a particular SV is aberrational, the Department’s normal practice is to examine relevant price information on the record, including any appropriate benchmark data, in order to accurately value the input in question.²⁰⁹ During this examination, the Department generally compares the value from the primary surrogate country with the values under the same HTS categories from other countries that are considered by the Department to be at a level of economic development comparable to the non-market economy (NME) country at issue.²¹⁰ The CIT has explained that the Department must compare credible benchmarks with the surrogate prices in question and “{i}f the agency’s surrogate prices diverge violently from credible benchmark prices, Commerce must explain why it chose to reject {a respondent’s} data while crediting its own.”²¹¹
- In *Chlorinated Isocyanurates*, *Citric Acid AR1 Final*, and *Frozen Warmwater Shrimp*, the Department rejected aberrational SVs.²¹² In *Xinjiamei Furniture* and *Peer Bearing*, the CIT has considered differences smaller than or equal to those between the Thai SV and the credible benchmark data in the current case to be significant.²¹³
- The unreliability of the Thai SV used in the *Preliminary Results* is further confirmed by the degree to which it is distorted by aberrant imports from Hong Kong. Specifically, safety glass imports from Hong Kong to Thailand during the POR increased the average

²⁰⁸ See Canadian Solar’s Case Brief at 30 (citing *Blue Field (Sichuan) Food Indus. Co. v. United States*, 949 F. Supp. 2d 1311, 1326 (CIT 2013) (*Blue Field*)).

²⁰⁹ See Canadian Solar’s Case Brief at 29 (citing, e.g., *Certain Activated Carbon From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 61172 (October 9, 2015) (*Activated Carbon 2013-2014*) and accompanying IDM at Comment 6).

²¹⁰ See Canadian Solar’s Case Brief at 30 (citing *Final Results of Redetermination Pursuant to Court Remand; Certain Preserved Mushrooms from the People’s Republic of China*, Court No. 12-00320, Slip Op. 13-142 (November 14, 2013) dated March 18, 2014, at 8).

²¹¹ See Canadian Solar’s Case Brief at 30 (citing *Blue Field*, 949 F. Supp. 2d at 1311, 1326 (citing *Peer Bearing Co. – Changshan v. United States*, 804 F. Supp. 2d 1337, 1371 (CIT 2011)) (emphasis added)).

²¹² See Canadian Solar’s Case Brief at 31-31 (citing *Chlorinated Isocyanurates From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 4539 (January 28, 2015) (*Chlorinated Isocyanurates*) and accompanying IDM at Comment 2; *Citric Acid and Certain Citrate Salts from the People’s Republic of China: Final Results of the First Administrative Review of the Antidumping Duty Order*, 76 FR 77772 (December 14, 2011) (*Citric Acid AR1 Final*) and accompanying IDM at Comment 12; *Administrative Review of Certain Frozen Warmwater Shrimp From the People’s Republic of China: Final Results, Partial Rescission of Sixth Antidumping Duty Administrative Review and Determination Not to Revoke in Part*, 77 FR 53856 (September 4, 2012) (*Frozen Warmwater Shrimp*) and accompanying IDM at Comment 10).

²¹³ See Canadian Solar’s Case Brief at 32 (citing *Xinjiamei Furniture (Zhangzhou) Co. v. United States*, 2013 Ct. Intl. Trade LEXIS 34, 35 Int’l Trade Rep. (BNA) 1136, SLIP OP. 2013-30, 2013 WL 920276 (CIT 2013) (*Xinjiamei Furniture*); *Peer Bearing Company-Changshan v. United States*, 752 F. Supp. 2d 1353, (CIT 2011)).

unit price of all imports into Thailand by over 250%, whereas they represented a mere 0.4% of the total volume of imports. When the imports from Hong Kong are excluded from the SV calculation, the Thai SV plummets from US\$ 2.79 to US\$ 1.11, and declines to a level similar to the Bulgarian and market economy purchase benchmarks.

- In *Catfish Farmers Remand Redetermination* and *Steel Wire Rope*, the Department found data points contained in import statistics to be aberrational and excluded such data from the SV calculation.²¹⁴
- The Department should value module glass using a non-aberrational alternative. First, the Department should select the Thai HTS category for float glass (*i.e.*, 7005.2990.0010) as the best alternative SV. Record evidence demonstrates that Canadian Solar uses float glass to produce modules. Although the record demonstrates that Canadian Solar also uses tempered glass, the record does not support a finding that tempered glass is exclusively “safety glass” of the sort included in the Thai HTS category for that product. Second, alternatively, the Department should value module glass using the Thai value for safety/tempered glass calculated after excluding the aberrational Hong Kong import data. Finally, if the Department uses the Thai value for safety glass, calculated with or without the aberrant Hong Kong import data, the Department should then calculate a weighted-average SV to value Canadian Solar’s module glass based on Canadian Solar’s reported consumption by glass type (*i.e.*, float glass and tempered glass). Specifically, to calculate Canadian Solar’s module glass SV, the Department should multiply the Thai safety glass value by tempered glass consumption and the Thai float glass value by the remaining glass consumption, and sum the two resulting values together.
- The petitioner’s suggestion that the Department value Canadian Solar’s module glass using Thai HTS 7007.29.90 is inappropriate. Thai HTS 7007.29.90 covers laminated glass, which is “made in sandwich form, with one or more interlayers of plastics between two or more sheets of glass.”²¹⁵ The petitioner fails to demonstrate why multi-layered glass, sandwiching interlayers of plastic, is remotely reflective of the type of glass used by Canadian Solar.
- The petitioner’s description of Canadian Solar’s module glass, and its alleged confusion as the type of glass used by Canadian Solar, is disingenuous. For example, the petitioner claims that Canadian Solar did not use float glass in its solar modules. This is incorrect, as demonstrated by the very evidence to which the petitioner cites (*i.e.*, Canadian Solar’s Exhibit SC2-1).

Petitioner:

- Solar modules are highly engineered goods that must possess certain features including durability, product longevity, and safety. These factors are also required of the glass used on the front of the solar module. The Thai HTS category 7007.19.90.000 used in the

²¹⁴ See Canadian Solar’s Case Brief at 33-34 (citing *Final Results of Redetermination Pursuant to Catfish Farmers of America v. United States*, Consol. Court No. 08-00111, Slip Op. 09-96 (September 14, 2009) dated December 10, 2009 at 5-7 (*Catfish Farmers Remand Redetermination*); *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People’s Republic of China*, 70 FR 24502 (May 10, 2005), and accompanying IDM at Comment 16; *Notice of Final Determinations of Sales at Less Than Fair Value: Steel Wire Rope From India and the People’s Republic of China*; *Notice of Final Determination of Sales at Not Less Than Fair Value: Steel Wire Rope From Malaysia*, 66 FR 12759 (February 28, 2001) (*Steel Wire Rope*) and accompanying IDM at Comment 1).

²¹⁵ See Canadian Solar’s Rebuttal Case Brief at 19.

Preliminary Results, while not aberrational, does not capture glass with the extreme durability required for module glass. To best capture the nature of the surface treatments necessary to ensure the “extreme durability” of this glass, the Department should value Trina’s and Canadian Solar’s glass inputs using HTS category 7007.29.90, which reflects strengthened, laminated glass, other than for use in vehicles, aircraft or spacecraft.

- Due to Trina’s failure to respond to the Department’s supplemental instruction, the specific nature of Trina’s glass inputs, other than the dimensions, is not clear.
- Trina indicates that there are no significant differences between its glass and the glass found on specification sheets from other solar producers’ websites. The glass from other solar producers is not only tempered but has glazing and antireflective surface treatments that impart extreme durability to the glass. Given the nature of this glass, it is unlikely that Trina’s glass inputs would be simple float glass.
- The record indicates that Canadian Solar did not use simple float glass, but rather glass that had additional processing to ensure the strength required for use in a solar module.
- Canadian Solar reported different types of glass under a single FOP. Canadian Solar provided the percentages of each type of glass used, however it is unclear how these percentages tie to the reported FOPs, and which of Canadian Solar’s glass descriptions apply to which glass inputs.
- Canadian Solar asserts the Department should rely on incomplete and ill-defined information to assume that a certain percent of the glass it used in module production was float glass, and the remaining percentage used was safety glass, in order to calculate a weighted-average SV using HTS categories 7007.19.90.000 and 7005.29.90.001. Canadian Solar’s limited, overlapping descriptions prevent a more accurate breakdown and understanding of the specific types of glass used in the module production stage. Nevertheless, it is reasonable to assume that Canadian Solar consumed the same general type of glass as Trina.
- Canadian Solar’s argument relies on the comparison of the Department’s SV to only two other data points on the record - the AUV for Bulgarian imports under HTS 7007.19.80 and its own reported MEP prices for glass. It is the Department’s established practice to compare the SV alleged to be aberrational to GTA import data for all of the potential surrogate countries - not only a single country. Furthermore, the Department’s practice, as upheld by the CAFC, is to not rely on MEP pricing as a benchmark when evaluating whether a SV is aberrational.²¹⁶
- In the *Solar Cells AR2 Final*, the Department rejected similar glass pricing comparisons put forth by the respondent Yingli and determined the SV for tempered glass under Thai HTS number 7007.19.90.000 of US\$ 4.14/kg was non-aberrational. The AR2 SV is 48.4 percent higher than the SV used by the Department (2.79 USD/kg - i.e., 93.59 Baht/kg) in the *Preliminary Results*. If the Department found no basis to determine the AR2 SV under 7007.19.90.000 was aberrational, there is clearly no basis to determine the current, 48 percent lower SV to be aberrational for this POR.
- There is also no evidence that the Thai SV based on HTS 7007.19.90.000 is distorted by aberrant import data from Hong Kong. The Department’s longstanding position that high prices alone do not necessarily indicate the prices to be distortive equally applies to the

²¹⁶ See Petitioner’s Rebuttal Case Brief at 30 (citing *Solar Cells AR2 Final* and accompanying IDM at Comment 13; *Home Meridian Int’l, Inc. v. United States*, 772 F.3d 1289 (Fed. Cir. 2014) (*Home Meridian*)).

final AUV as well as the data used to derive that SV. The Department has likewise consistently found small quantities alone are not inherently distortive. A review of the import data shows that Hong Kong had neither the lowest quantity nor the highest AUV.

SolarCity:

- Tempered glass used in the production of panels is not laminated safety glass reflected under Thai HTS category 7007.29. An explanatory note from the World Customs Organization explains that laminated glass is “made in sandwich form, with one or more interlayers of plastics between two or more sheets of glass.”²¹⁷ The record does not indicate that the tempered glass input is “sandwich glass”.

Sunpreme:

- The Department valued Canadian Solar’s module glass with a Thai SV that is aberrational and does not represent the best available information on the record. The Department should instead use the Thai value for float glass which is reasonable and represents best available information.
- The Thai SV selected by the Department is unreliable because it is distorted by high-price, low-volume imports from Hong Kong. The Department has previously found data contained in import statistics to be aberrational and excluded such data from the SV calculation.

Department’s Position: In the *Preliminary Results*, we valued Canadian Solar’s solar module glass,²¹⁸ and Trina’s coated glass and tempered glass, using HTS category 7007.19.90000 (*i.e.*, Toughened (Tempered) Safety Glass, Not Suitable For Incorporation In Vehicles, Aircraft, Spacecraft Or Vessels; Other).²¹⁹ We disagree with the respondents’ and the petitioner’s arguments that HTS category 7007.19.90000 is inappropriate for valuing Trina and Canadian Solar’s solar module glass, or that the AUV for Thai imports under this HTS category during the POR is aberrational. Thus, we have continued to value Trina and Canadian Solar’s module glass using Thai imports of tempered glass classified under HTS category 7007.19.90000 for the final results.

The record contains Thai import data for tempered/safety glass (*i.e.*, HTS category 7007.19.90000),²²⁰ float glass (*i.e.*, HTS category 7005.29.90001),²²¹ and laminated safety glass (*i.e.*, HTS category 7007.29.90).²²² Thus, these are the three options available for selecting a SV for module glass. Both Canadian Solar and Trina have submitted descriptions of their module glass on the record. In its June 17, 2016, supplemental questionnaire response, Canadian Solar stated that the types of glass used on the front of its solar panel “...include embossed, polished, un-tempered or half-tempered or tempered, coated, or drilled, and pre-cut according to the size of

²¹⁷ See SolarCity’s Case Brief at 5 (citing 2016 Harmonized Tariff Schedule, Title 70.07, World Customs Explanatory Note (B)).

²¹⁸ We note that Canadian Solar reported different types of glass inputs under a single glass FOP.

²¹⁹ See Petitioner’s July 18, 2016 SV Comments at Exhibit 3.

²²⁰ See Petitioner’s July 18, 2016 SV Comments at Exhibits 1 and 2.

²²¹ See Trina’s July 18, 2016 SV Comments at Exhibits B-1 and B-3.

²²² See Petitioner’s July 18, 2016 SV Comments at Exhibits 1 and 2.

solar panels.”²²³ In its July 8, 2016, supplemental questionnaire response, Canadian Solar stated that its “glass is either tempered or half-tempered.”²²⁴ In its June 21, 2016, supplemental questionnaire response, Trina stated that it uses “low iron coated tempered glass” on the front of the solar panel.²²⁵ In its July 8, 2016, supplemental questionnaire response, Trina responded that it uses float glass when asked by the Department to describe its tempered glass.²²⁶ In its December 12, 2016, questionnaire response, Trina confirmed that its coated glass is tempered. Additionally, Trina provided specification sheets for its coated glass which refer to the glass as “Anti-Reflection Coated Glass.”²²⁷ Trina also provided data sheets for its solar modules which describe the front glass as “3.2 mm (0.13 inches), High Transmission, AR Coated Tempered Glass” and “High Transmission, Low Iron, Heat Strengthened Glass, 2.5 mm,” for example.²²⁸ Thus, an examination of record information and the respondents’ own descriptions indicate that the respondents’ module glass is frequently described as tempered. Moreover, we note that in their case briefs, both Canadian Solar and Trina confirmed that they use module glass that is tempered. Thus, we find that based on HTS descriptions, their module glass is appropriately valued using Thai HTS category 7007.19.90000.

Trina argues that HTS category 7005.29.90001 (*i.e.*, Float glass and surface ground or polished glass, in sheets, whether or not having an absorbent, reflecting or non-reflecting layer, but not otherwise worked; Other; For glass of a thickness not exceeding 5 mm) is more appropriate to value Trina’s coated glass because this HTS category is better aligned with the thickness of Trina’s glass modules. While the description for HTS category 7007.19.90000 does not specify thickness, unlike HTS category 7005.29.90001, this fact does not suggest that HTS category 7007.19.90000 does not cover the glass thickness used by Trina. Rather, the lack of specificity regarding thickness in HTS category 7007.19.90000 indicates that this HTS category covers all thickness levels including the thickness of Trina’s module glass. Furthermore, while Canadian Solar admits that it consumes tempered glass in the production of subject merchandise, it argues its tempered glass is not the safety glass that is classified under HTS category 7007.19.90000. However, Canadian Solar has not demonstrated how its tempered glass is different from the glass classified under HTS category 7007.19.90000. Without such information, the Department is unable to conclude that Canadian Solar’s tempered glass is not classified under HTS category 7007.19.90000, in light of the fact that the description for HTS category 7007.19.90000 includes the word “tempered” whereas the description for HTS category 7005.29.90001 does not.

We disagree with the petitioner’s suggestion that Canadian Solar’s and Trina’s module glass should be valued using HTS category 7007.29.90 (*i.e.*, Laminated safety glass: Other; Other). An explanatory note from the World Customs Organization explains that laminated glass is “made in sandwich form, with one or more interlayers of plastics between two or more sheets of glass.”²²⁹ Record evidence does not indicate that respondents’ module glass is laminated glass that is composed of multiple layers of plastic and glass. The petitioner argues that HTS category

²²³ See Canadian Solar’s June 17, 2016, Section C Supplemental Questionnaire Response at 45.

²²⁴ See BPI Note 1; *see also* Canadian Solar’s July 8, 2016 Section D Supplemental Questionnaire Response at 14.

²²⁵ See Trina’s June 21, 2016 Section C Supplemental Questionnaire Response at 28.

²²⁶ See Trina’s July 8, 2016 Section D Supplemental Questionnaire Response at 3-4.

²²⁷ See Trina’s Section D response at Exhibit 14; *see also* Trina’s June 21, 2016 Section C Supplemental Questionnaire Response at Exhibit SC-20.

²²⁸ See Trina’s Section A Response at Exhibit A-20.

²²⁹ See Trina’s October 31, 2016 Rebuttal SV Comments at Exhibit C-2.

7007.29.90 is appropriate because the respondents' module glass likely has undergone additional working such as surface treatments and glazing to ensure extreme strength and durability. However, there is no record evidence of additional working that would result in glass comparable to laminated glass, which is made of multiple layers of plastic and glass.

Canadian Solar and Sunprime argue that Department's reliance on Thai HTS category 7007.19.90000 is inappropriate because it results in a highly aberrational SV. When determining whether prices are aberrational, the Department has found that the existence of higher prices alone does not necessarily indicate that the prices are distorted or misrepresentative, and thus it is not a sufficient basis upon which to exclude a particular SV.²³⁰ Rather, interested parties must provide specific evidence showing the value is aberrational. In testing the reliability of SVs alleged to be aberrational, the Department's practice is to examine GTA import data for potential surrogate countries for a given case, to the extent such import data are available.²³¹ The Department has also examined data from the same HTS category for the surrogate country whose data are allegedly aberrational over multiple years to determine if the current data appear aberrational compared to historical values.²³² Further, we note that the relevant test is to determine whether the AUV in the aggregate is aberrational.²³³ Otherwise, parties would advocate the manipulation of data by removing one or more line items they find objectionable, with the result that we would not be using the average prices for that category, but some subset thereof. Where a party is able to demonstrate that the AUV for an entire category is aberrational or otherwise unreliable, the Department may reject that particular category and use another SV.²³⁴

In addition to the Thai AUV for tempered glass (i.e., 93.59 Baht/kg or \$2.79/kg), the record also contains the Bulgarian AUV for imports of tempered glass,²³⁵ and the price of Canadian Solar's market economy purchases of module glass.²³⁶ Furthermore, the Thai AUV for HTS category 7007.19.90000 from the prior review is \$4.14/kg.²³⁷ However, it is the Department's practice

²³⁰ See *Steel Wire Garment Hangers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 2012-2013, 80 FR 13332 (March 13, 2015) (*Hangers from the PRC*) and accompanying IDM at Comment 5 (citing *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 56158 (September 12, 2011) and accompanying IDM at Comment 12).

²³¹ See *Hangers from the PRC* and accompanying IDM at Comment 5 (citing *Certain Oil Country Tubular Goods From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 77 FR 74644 (December 17, 2012) and IDM at Comment 1).

²³² *Id.* (citing *Carbazole Violet Pigment 23 from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 36630 (June 28, 2010) (*CVP 23 from the PRC*) and accompanying IDM at Comment 6).

²³³ See, e.g., *Certain Hot-Rolled Carbon Steel Flat Products from Romania: Final Results of Antidumping Duty Administrative Review*, 70 FR 34448 (June 14, 2005) and accompanying IDM at Comment 2, where the Department explained that to test the reliability of SVs alleged to be aberrational, it is appropriate to compare the selected SV to the AUVs calculated for the same period using data from the other designated surrogate countries.

²³⁴ See *Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 12651 (March 15, 2005) and accompanying IDM at Comment 11.

²³⁵ See Trina's July 18, 2016 SV Comments at Exhibits A-1 and A-3; see also Canadian Solar's Case Brief at 31.

²³⁶ See Canadian Solar's October 26, 2016 Section D Supplemental Questionnaire Response at Revised Exhibit D-8.

²³⁷ See *Solar Cells AR2 Final* and accompanying IDM at Comment 10.

not to use a respondent's market economy purchase prices as benchmarks to determine whether an SV is appropriate²³⁸ because a respondent's market economy purchase prices are proprietary information and are not necessarily representative of industry-wide prices available to other producers.²³⁹ Additionally, the Department typically rejects price quotes and prices from single surrogate producers as SVs because they do not constitute contemporaneous broad market averages, which the Department prefers for purposes of FOP valuation.²⁴⁰ Moreover, the Department also has a preference to rely on import data for surrogate valuation purposes and as benchmark data. Rejection of market purchases as a SV based partially on the fact that they did not constitute a broad market average was sustained by the CAFC.²⁴¹ Accordingly, the market purchase price paid by Canadian Solar for module glass is neither an appropriate benchmark for SVs nor an appropriate SV, and we have disregarded this market purchase price as a potential benchmark. The Department has previously indicated that to discern whether a particular value is aberrational, it typically compares the prices for an input from all countries found to be at the same level of economic development as the NME whose products are under review. In the instant case, we only have data from Bulgaria, in addition to Thailand, and not data from other countries on the surrogate country list. Without data from other potential surrogate countries, we are unable to compare the Thai data with data from all the other countries on the surrogate country list. However, we note that Thai AUV is within the range of the Bulgarian AUV and the Thai AUV from the prior review.

Canadian Solar referenced several cases in arguing that the Thai AUV in the instant case diverges violently from credible benchmark prices. However, the fact patterns in those cases are different from the instant case. In *Frozen Warmwater Shrimp*, the Department valued shrimp feed using Indonesian import data instead of import data from Thailand (*i.e.*, the primary surrogate country) because the Thai import data demonstrated considerable price volatility based on historical data and compared with imports during the POR into economically comparable countries. In the instant review, however, a comparison of the AUVs in the prior and current reviews does not demonstrate considerable price volatility (*i.e.*, \$4.14/kg. in the prior review, \$2.79/kg. in this review). In *Citric Acid*, the Department inflated the POI Indonesian SV for sulfuric acid, instead of relying on the POR Indonesian SV, because the AUV of the POR-specific GTA Indonesian import data was unusually high when compared with the historical data on the record and data recorded for recent periods. The Indonesian AUV for the current POR in

²³⁸ See *Certain Cased Pencils from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 38366 (July 6, 2006) (*Cased Pencils from the PRC*), and accompanying IDM at Comment 1.

²³⁹ See *Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 26712 (May 9, 2014) (*Multilayered Wood Flooring from the PRC 2011-2012*), and accompanying IDM at Comment 6.

²⁴⁰ See, *e.g.*, *Certain Steel Threaded Rod from the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review; 2010-2011*, 77 FR 67332 (November 9, 2012), and accompanying IDM at Comment 1. See also *Diamond Sawblades and Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 32344 (June 8, 2015) and accompanying IDM at Comment 1 where the Department stated that "we prefer country-wide information such as government import statistics to information from a single source, and we prefer industry-wide values to values of a single producer because industry-wide values better represent prices of all producers in the surrogate country. We also prefer to value factors using prices that are broad market averages because 'a single input price reported by a surrogate producer may be less representative of the cost of that input in the surrogate country.'"

²⁴¹ See *Home Meridian*, 772 F.3d at 1289.

Citric Acid was also the highest value when compared with other benchmarks on the record. In the instant proceeding, however, the Thai AUV is within the range of the Bulgarian AUV and the Thai AUV from the prior review. In *Xinjamei Furniture* and *Peer Bearing*, the CIT remanded the Department's selection of certain SVs due to significant price differences of the SVs when compared with benchmark data. In *Chlorinated Isocyanurates*, the record contained import data for chlorine from all potential surrogate countries and the Department found imports into South Africa and Thailand to be aberrational based on extreme quantities and AUVs. In the instant case, the record only contains the Bulgarian AUV from another potential surrogate countries. As noted above, the Department has found that the existence of higher prices alone does not necessarily indicate that the prices are distorted or misrepresentative. Thus, it is inappropriate to determine that the Thai AUV is aberrational in the instant proceeding based on data from other potential surrogate countries when the record contains one other data point from such countries (*i.e.*, the Bulgarian AUV). However, if we compare the Thai AUV with both the Bulgarian AUV and the Thai AUV from the prior review, the Thai AUV is in the range of those values and hence does not stand out as aberrational. Thus, the data pointed to by the respondents does not demonstrate that the POR Thai AUV used by the Department to value glass is aberrational by the standards typically relied on by the Department.

Canadian Solar and Sunpreme argue that the Thai AUV is aberrational due to relatively low quantity high-priced imports from Hong Kong. An examination of the underlying import statistics used in the calculation of the Thai AUV indicate that the quantity of Thai imports of tempered glass from Hong Kong is 9,185 kg, and out of 22 countries exporting tempered glass to Thailand, Hong Kong has the fourth largest quantity. Therefore, we do not believe the import quantity could be considered low. The per-unit values from the exporting countries range from 26.73 Baht/kg to nearly 20,000 Baht/kg.²⁴² The per-unit value of imports from Hong Kong (*i.e.*, 13,882.08 Baht/kg) is not substantially different from the per-unit values of imports from Denmark (*i.e.*, 13,383 Baht/kg), France (*i.e.*, 18,120.33 Baht/kg), Switzerland (*i.e.*, 19,520.50 Baht/kg), or Mexico (*i.e.*, 19,901 Baht/kg).²⁴³ While the total quantities of imports from Denmark, France, Switzerland, and Mexico for the POR are 12 kilograms or less and the per-unit value of the imports from Hong Kong is comparable to the per-unit value of the low volume imports from Denmark, France, Switzerland, and Mexico, as noted above, the evidence does not support a finding that the overall AUV of this HTS category is aberrational.

Canadian Solar argues that if the Departments continues to value its module glass using HTS category 7007.19.90000, the Department should then calculate a weighted-average SV to value Canadian Solar's module glass based on its reported consumption by glass type (*i.e.*, float glass and tempered glass). As noted above, Canadian Solar explained that it uses tempered and half-tempered.²⁴⁴ The Department finds, based on the term "half-tempered" that half-tempered glass likely has undergone additional workings, such as tempering, albeit possibly not to the extent of fully tempered glass. Thus, it would be inappropriate to value the half-tempered glass as float

²⁴² The import statistics from Mexico, New Zealand, and Switzerland indicate positive values but a total quantity of zero for the POR. For these countries, the Department applied a quantity of 1 for each month where the value is positive but the quantity is zero, in order to calculate approximate per-unit values.

²⁴³ *Id.*

²⁴⁴ See BPI Note 1.

glass (*i.e.*, under HTS category 7005.29.90001) which has not undergone any tempering. Therefore, we have continued to value all of Canadian Solar's module glass as tempered glass.

For the reasons stated above, we have continued to value Trina and Canadian Solar's module glass using Thai HTS category 7007.19.90000.

Comment 13: Surrogate Value for Nitrogen

Trina:

- In the preliminary results, the Department valued nitrogen using an unreliable SV based on Thai import data.
- The Thai import data reflect an AUV of \$9.36/kg. for nitrogen, which is 4,907% higher than the overall weighted-average price derived from the following sources on the record: 1) nitrogen prices from invoices to three different Thai companies (the weighted-average invoice price is \$0.12/kg.); 2) a price quote for nitrogen in Thailand (\$0.07/kg.) and 3) import data for the five countries, other than Thailand, identified as economically comparable to the PRC (Bulgaria, Ecuador Mexico, Romania, and South Africa, reflecting a weighted-average price of \$0.19/kg.).
- While the petitioner will claim that the Department should use the Thai AUV to value nitrogen because the South African and Ecuadorian AUVs are higher than the Thai AUV, this assertion ignores the fact that South Africa, Ecuador, and Thailand account for only 0.33 percent of all imports during the POR from the six potential surrogate countries.
- The quantity and value of nitrogen that was exported from the United States and imported into Thailand listed in the Thai import data significantly differ from the quantity and value of such exports reflected in the U.S. ITC Dataweb. The Thai import data yield an AUV of \$163.46/kg. for U.S. nitrogen imported into Thailand while the U.S. ITC Dataweb yields an AUV of \$0.15/kg. It is reasonable to conclude that the U.S. ITC Dataweb information is correct, because it is within the range of the other prices of nitrogen on the record ranging from \$0.07 to \$0.19 per kilogram.
- The Department could value nitrogen using the weighted average of the domestic Thai prices (*i.e.*, the three invoice prices and the price quote) resulting in an average price of \$0.07/kg. Alternatively, the Department could value nitrogen relying only on the three domestic invoice prices that yield an average price of \$0.12/kg. Finally, the Department could value nitrogen relying on import data from Mexico, Bulgaria, and Romania reflecting an average price of \$0.1829/kg.

Canadian Solar:

- The Thai AUV used to value nitrogen in the preliminary results is aberrationally high.
- Using this AUV to value nitrogen results in nitrogen accounting for 13 to 19 percent of Canadian Solar's total cost of manufacturing (depending on the CONNUM). This is similar to the total costs attributable to polysilicon and wafers *combined* – the two most predominant material inputs used to manufacture subject merchandise. Yet, Canadian

Solar's nitrogen input is so immaterial that it is categorized as overhead in the normal course of business.²⁴⁵

- The Thai AUV “diverges violently” from credible benchmarks on the record,²⁴⁶ such as: 1) POR import values for nitrogen from Mexico, Bulgaria, and Romania; 2) the average transaction price for three Thai domestic purchases of nitrogen; and 3) a price quote for nitrogen in Thailand. The extremely low volume of Thai imports, combined with the astronomically high Thai AUV clearly demonstrate that the Thai AUV is aberrational.
- The Thai AUV is between 3,808 percent and 15,867 percent greater than the credible benchmark prices from the other surrogate countries. This divergence is exponentially greater than the divergence at issue in *Frozen Warmwater Shrimp*, where the Department determined that the POR value for Thai shrimp feed of US\$ 14.54/kg was aberrational when compared to the Thai values for periods corresponding to the fourth administrative review (US\$ 2.60/kg) and fifth administrative review (US\$ 25.49/kg) in the proceeding.²⁴⁷
- The Department should select either the Bulgarian, Romanian, or Mexican AUVs for nitrogen, or use an average of these three AUVs, as the best SV for nitrogen. If the Department declines to value nitrogen by using data from Bulgaria, Romania, and/or Mexico, and it continues to use the Thai data, it should remove the distorted Thai import data for imports from the United States and Switzerland.

Petitioner:

- The Department should continue to value nitrogen based on the Thai AUV of 9.36 USD/kg. (*i.e.*, 321.35 Baht/kg).
- The Department has found that the existence of higher or lower prices on the record does not necessarily indicate that a potential SV is distortive or misrepresentative, and thus is not a sufficient basis upon which to exclude a particular SV. Parties must instead provide specific evidence showing the value to be aberrational.
- In testing the reliability of SVs alleged to be aberrational, the Department's practice is to evaluate - where such data are available: 1) the AUV for the input from the surrogate country at issue, as compared to the AUVs for that input during the POR from all countries found to be at a level of economic development comparable to the non-market economy country, and 2) data from the same HTS number for the surrogate country over multiple years. Moreover, the Department's longstanding practice is to use SV data from the selected surrogate country unless the SV data are unavailable or unreliable.
- The AUVs from other countries on the Department's list of potential surrogate countries do not demonstrate that the Thai AUV is aberrational. The AUVs range from \$0.07 /kg (for Bulgaria) to \$26.27 /kg (for South Africa).²⁴⁸ Thailand's AUV of \$9.36 /kg (321.352 baht/kg) falls within the middle of this range. Furthermore, in the prior segment of this proceeding, the Thai AUV used to value nitrogen was \$11.68 /kg (379.14 baht/kg)²⁴⁹ -

²⁴⁵ See Canadian Solar's Case Brief at 37 (citing Canadian Solar's Section D Response at Exhibit D-6).

²⁴⁶ See Canadian Solar's Case Brief at 38 (citing *Blue Field*, 949 F. Supp. 2d at 1311, 1326).

²⁴⁷ See Canadian Solar's Case Brief at 39 (citing *Frozen Warmwater Shrimp* and accompanying IDM at Comment 10).

²⁴⁸ See Petitioner's Rebuttal Case Brief at 26 (citing Petitioner's July 25, 2016 Rebuttal SV Comments at Exhibit 3).

²⁴⁹ See Petitioner's Rebuttal Case Brief at 26 (citing *Solar Cells AR2 Final* and accompanying IDM at Comment 21).

higher than the \$9.36 /kg value on the record for this POR. Thus, the Department has found that an even higher nitrogen AUV was not aberrational.

- With regard to Canadian Solar's argument that certain aberrant Thai import data should be eliminated from the nitrogen SV calculation, the Department has consistently found that import data for small quantities are not inherently distortive.²⁵⁰ In *Small Diameter Graphite Electrodes from the PRC*, the Department stated that the respondent "presented no evidence that supports its claim that the information corresponding to imports from countries with reported low volumes of steel strip constitute aberrational or unrepresentative data, or somehow distort the overall calculated AUV of imports into {the surrogate country} of steel strip."²⁵¹

Department's Position: In the *Preliminary Results*, we valued Trina's and Canadian Solar's nitrogen input using Thai import data for HTS category 28043000000 (*i.e.*, Hydrogen, rare gases and other non-metals; Nitrogen).²⁵² For the reasons explained below, we have continued to use Thai import data under HTS category 28043000000 to value nitrogen. We note that, irrespective of country, both the respondents and the petitioner agree that HTS category 28043000000 is the appropriate HTS category to use to value nitrogen.

The Department evaluates SV information on a case-by-case basis, and in accordance with section 773(c)(1) of the Act, selects the best available information from an appropriate surrogate country to value FOPs.²⁵³ When selecting SVs for use in an NME proceeding, the Department's preference is to use, where possible, a range of publicly available, non-export, tax exclusive, prices representative of a broad market average and input-specific in effect during the POR, with each of these factors applied non-hierarchically to the case-specific facts. Additionally, the Department's preference is to use SV data from a single surrogate country.²⁵⁴ Furthermore, the Department's preference is to use published prices that are widely available, rather than prices or price quotes from a limited number of suppliers that can only be obtained through direct inquiry. Publicly available, published prices generally do not suffer from potential biases compared to: (1) price quotes, such as the Thai price quote submitted by Trina; or (2) individual prices, such as the three invoice prices submitted by Trina.²⁵⁵ Generally, the Department does not use price quotes if other suitable publicly available data is on the record because: (1) price quotes do not

²⁵⁰ See Petitioner's Rebuttal Case Brief at 27 (citing, *e.g.*, *Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results of Administrative Review*; 2011-2012, 78 FR 56209 (September 12, 2013) and accompanying IDM at Comment 4; *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty New Shipper Reviews*; 2011-2012, 78 FR 39708 (July 2, 2013) and accompanying IDM at Comment 4).

²⁵¹ See Petitioner's Rebuttal Case Brief at 27 (citing *Small Diameter Graphite Electrodes From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review*, 77 FR 40854 (July 11, 2012) and accompanying IDM at Comment 5.

²⁵² See Petitioner's July 18, 2016 SV Comments at Exhibit 3.

²⁵³ See *Lightweight Thermal Paper From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 57329 (October 2, 2008) (*Thermal Paper/PRC (2008)*) and accompanying IDM at Comment 9.

²⁵⁴ See, *e.g.*, *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 3987 (January 22, 2009) (*TRBs/PRC (January 2009)*) and IDM at Comment 6. See also Policy Bulletin 04.1.

²⁵⁵ See *Chlorinated Isocyanurates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*; 2013-2014, 81 FR 1167 (January 11, 2016) and accompanying IDM at Comments 1 and 2.

represent actual prices or broad ranges of data and (2) we do not know the conditions under which they are solicited and whether or not they are self-selected from a broader range of quotes.²⁵⁶ Furthermore, individual prices are not representative of a broad market average. Therefore, based on the information on the record of this segment of the proceeding, the Department does not find the Thai price quote or the invoices from Thai companies to be the best available information. Nor does the Department find these to be appropriate benchmarks, based on the same reasoning described above. Accordingly, although Trina and Canadian Solar contend that the Thai SV used in the *Preliminary Results* is many times higher than these data points, the Department does not find them to be appropriate benchmarks and, therefore, is not persuaded by Trina's and Canadian Solar's arguments that rely on them.

In analyzing whether an AUV is aberrational or distortive, the Department typically compares the AUV for the input during the POR in the country at issue to either: 1) AUVs for that input during the POR from all countries found to be at a level of economic development comparable to the NME or 2) AUVs for that input in the country at issue in prior years.²⁵⁷ The AUVs from other potential surrogate countries in this review do not demonstrate that the Thai AUV is aberrational. The Thai AUV for nitrogen is \$9.36 /kg, while the import values for the other potential surrogate countries range from \$0.08/kg (for Bulgaria) to \$26.27 /kg (for South Africa), and include \$0.08 /kg (for Romania), \$0.25 /kg (for Mexico), and \$17.16 /kg (for Ecuador).²⁵⁸ The Thai AUV is within the range of these AUVs as the Bulgarian, Romanian, and Mexican values are below the Thai AUV while the Ecuadorian and South African values are above it, supporting the suitability of the Thailand AUV for use in valuing nitrogen. While the respondents argue that the Department should value nitrogen using the Mexican, Bulgarian, or Romanian AUVs, the Department resorts to a secondary surrogate country among countries found to be at a level of economic development comparable to the NME, if data from the primary surrogate country are unavailable or unreliable.²⁵⁹ Thus, the Department values inputs using a secondary surrogate country only in the absence of usable data from the primary surrogate country.²⁶⁰ In this instance, we have useable data from our primary surrogate country and need not rely on data from other countries.

Canadian Solar references *Frozen Warmwater Shrimp* in which it claims the Department determined an AUV to be aberrational even though it differed from other values on the record by less than the differences observed in the instant case with respect to the Thai AUV. However, the fact pattern in that case is different from the instant case. Specifically, in *Frozen Warmwater*

²⁵⁶ See *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Sixth Antidumping Duty Administrative Review and Sixth New Shipper Review*, 76 FR 15941 (March 22, 2011) and the accompanying IDM at 9.

²⁵⁷ See *Certain Steel Threaded Rod from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 71743 (December 3, 2014) and accompanying IDM at Comment 2.

²⁵⁸ See Petitioner's July 25, 2016 Rebuttal SV Comments at Exhibit 3.

²⁵⁹ See, e.g., *Certain Steel Threaded Rod from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 69938 (November 12, 2015) and IDM at Comment 9A citing *Jiaxing Brother Fastener Co. v. United States*, 11 F. Supp. 3d 1326, 1332-33 (CIT 2014) (*Jiaxing Brother*).

²⁶⁰ See, e.g., *Activated Carbon 2013-2014* and IDM at Comment 2, citing *Jiaxing Brother* (quoting *Sodium Hexametaphosphate from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 59375 (September 27, 2012) (*Sodium Hex*) and accompanying IDM at Comment I; see also *Sodium Hex* at Comments III and IV.C.

Shrimp, the Department found that the AUVs of shrimp feed imported into Thailand (*i.e.*, the primary surrogate country) during the POR (*i.e.*, the sixth administrative review) and the prior two segments of the proceeding (*i.e.*, the fourth and fifth administrative reviews) demonstrated considerably more price volatility than in other countries that are economically comparable to the PRC (Thai AUVs for shrimp feed of \$2.60/kg, \$25.49/kg, and \$14.54/kg for the fourth, fifth, and sixth administrative reviews).²⁶¹ Additionally, in *Frozen Warmwater Shrimp*, the Department found the Thai AUV unreliable when compared to imports made during the POR by economically comparable countries. Thus, in that case, the Department valued shrimp feed using Indonesian import data instead of Thai import data due to the price volatility of the Thai import data. However, in the instant case, the record does not contain evidence of such price volatility in the Thai import data for nitrogen. The Thai AUV for nitrogen in the prior segment of this proceeding was \$11.68 /kg, which when compared to the POR AUV of \$9.36 /kg, is approximately a 19 percent price decline. We do not believe this comparison demonstrates considerable price volatility. Moreover, the Thai import data are less volatile than the South African (\$26.27 /kg vs. \$5.46 /kg), Romanian, (\$0.08 /kg vs. \$0.13 /kg) and Ecuadorian (\$17.16 /kg vs. \$4.84 /kg) import data based on a comparison of their AUVs from the current and prior reviews. Finally, as noted above, the Thai AUV falls within the range of the other AUVs from economically comparable countries for this POR, thus the Thai AUV is not volatile or unreliable when compared with AUVs from economically comparable countries for this POR.

Furthermore, Canadian Solar argues that the Department did not consider relative import volumes in its analysis when determining to use the Thai AUV to value nitrogen. While the volumes of imports into Thailand, South Africa, and Ecuador, for this input are smaller than the volume of imports for Bulgaria, Mexico, and Romania (*i.e.*, other countries determined to be at a level of economic development comparable with the PRC) a lower import quantity does not, in and of itself, demonstrate that the AUV is distorted. The Department has consistently found small quantities alone are not inherently distortive.²⁶² Even if Thai import volumes are considered small, where the quantity is small, but there is no indication that the value is aberrational, the Department will continue to rely on that statistic for use as a SV. If we compare the AUV for Thailand's imports of nitrogen to the AUVs of other potential surrogate countries, it does not clearly demonstrate that the Thai AUV is aberrational. Thus, we do not find that the smaller Thai import volume indicates that the Thai AUV is necessarily distortive.

Finally, Canadian Solar argues that if the Department continues to use Thai data, the Department should remove the distorted Thai data for imports from the United States and Switzerland. However, excluding certain imports from our valuation of nitrogen would contradict the Department's clear and well-established preference of using the full GTA dataset.²⁶³ This practice ensures an accurate SV based on a broad dataset and avoids the problems that would ensue if parties were able to argue for a subset of cherry-picked import data in an SV calculation. The Department has "found WTA import data to represent the best information available for valuation purposes because when taken as a whole -- after excluding non-market, unspecified,

²⁶¹ See *Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Results of Administrative Review; 2011-2012*, 78 FR 15696 (March 12, 2013), and accompanying PDM at 21.

²⁶² See *Solar Cells AR2 Final* and accompanying IDM at Comment 10.

²⁶³ See, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 35245 (June 12, 2013) at Issue 2.

and subsidized data points -- they represent an average of multiple price points within a specific period and are tax-exclusive.”²⁶⁴ As noted above, the Department has determined that record evidence does not clearly demonstrate that the Thai AUV is aberrational.

Furthermore, Trina questions the reliability of the Thai data for imports from the United States because the Thai import data differs from export data obtained from the U.S. ITC Dataweb. The export data obtained from the U.S. ITC Dataweb are inappropriate for benchmarking purposes because the Department finds country-specific export data²⁶⁵ are not suitable benchmarks to test the validity of selected SV data. Given different reporting and inspection requirements and timing considerations, it is unrealistic to expect export statistics to correspond one-for-one with import statistics for any given shipment of merchandise. The Department does not expect one country’s export quantities to be a one-to-one identical match to another country’s import data.²⁶⁶ As such, we find that export data are not reliable for purposes of evaluating the legitimacy of the corresponding import volumes into Thailand.²⁶⁷

For the reasons noted above, we are continuing to value nitrogen using the AUV from Thailand for HTS 2804300000 (Hydrogen, rare gases and other non-metals; Nitrogen).

Comment 14: Surrogate Value for Canadian Solar’s Silver Paste

Canadian Solar:

- In the *Preliminary Results*, the Department incorrectly used Thai HTS 7115.9010 (“Articles {not elsewhere specified} of precious metal or of metal clad with precious metal; Of gold or silver”) to value all four types of silver paste used by Canadian Solar during the POR.²⁶⁸ The Department should value Canadian Solar’s silver pastes using either: (1) import values under Thai HTS 3824.9099.09 (“Prepared binders for foundry moulds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included, Other”), or (2) a weighted average of import values under Thai HTS 3824.9099.09 and Thai HTS 7115.9010 (weighted to reflect the percentage of silver contained in each of Canadian Solar’s four silver paste inputs).²⁶⁹ At a minimum, the Department should value Canadian Solar’s silver paste consumption that was reported in the Silver Paste 1 field with Thai HTS 3824.9099.09.²⁷⁰
- Thai HTS 7115.9010 is for a precious metal, which is not a proper description of Canadian Solar’s silver pastes.²⁷¹

²⁶⁴ See *TRBs/PRC (January 2009)* and accompanying IDM at Comment 7.

²⁶⁵ See *Activated Carbon AR1 Final* and accompanying IDM at Comment 3f (“The Department does not expect one country’s export quantities to be a one to one ratio to another country’s import data.”)

²⁶⁶ *Id.*

²⁶⁷ See *Thermal Paper/PRC (2008)* and accompanying IDM at Comment 9 (“We do not normally consider export statistics from the relevant exporting country reliable for purposes of evaluating the legitimacy of the corresponding import values into the importing country”).

²⁶⁸ See Canadian Solar’s Case Brief at 42 (*citing* Prelim SV Memo at Attachment II).

²⁶⁹ *Id.* at 42.

²⁷⁰ *Id.*

²⁷¹ See Canadian Solar’s Case Brief at 42; *see also* BPI Note 2.

- The Department's selection of HTS 7115.9010 to value Canadian Solar's silver pastes was incorrect because that HTS code is for a precious metal, which is simply not a proper description of Canadian Solar's silver pastes.
- Second, HTS 7115.9010 covers other articles of precious metal or metal clad with precious metal, with the relevant precious metal being gold or silver. Thus, The Thai HTS code selected by the Department is a basket category of goods covering other articles of precious metal or metal clad with precious metal that includes gold and silver, metals that are significantly more expensive than Canadian Solar's silver pastes.²⁷²
- The Department should value Canadian Solar's silver pastes using Thai HTS 3824.9099.09, because this HTS code is consistent, to the eight-digit level, with the HTS code used by Canadian Solar to import its silver paste.²⁷³
- Alternatively, the Department should value Canadian Solar's silver pastes using a weighted average of HTS 7115.9010 and HTS 3824.9099.09. The Department has utilized similar methodologies in previous cases, which have been subsequently affirmed by the CIT. For example, in *Zhejiang I*,²⁷⁴ the CIT affirmed the Department's determination to use an average of two values found to be equally probative for determining the SV for brokerage and handling.
- Alternatively, at a minimum, the Department should value Canadian Solar's FOP reported in the Silver Paste 1 field using Thai HTS 3824.9099.09.²⁷⁵ Such a valuation would be consistent with the HTS code used by Canadian Solar to import Silver Paste 1.²⁷⁶

Sunpreme:

- Based on the record evidence, the Department should value Canadian Solar's silver paste FOPs using Thai HTS 3824.9099.09 rather than Thai HTS 7115.9010.²⁷⁷ Alternatively, the Department should value Canadian Solar's silver pastes using a weighted average of import values under Thai HTS 7115.9010 and Thai HTS 3824.9099.09.²⁷⁸

Petitioner:

- The Department should continue to rely on Thai HTS 7115.90.10000 to value each of Canadian Solar's silver paste inputs.²⁷⁹
- In *Solar Cells AR2 Final*, Trina advanced an argument similar to Canadian Solar's argument but the Department rejected this argument in favor of using Thai HTS 7115.9010 to value Trina's silver paste because it is 90 percent silver (this position is consistent with the Department's valuation of silver paste in the previous administrative review in this proceeding).²⁸⁰ In reaching this decision, the Department noted that the

²⁷² See Canadian Solar's Case Brief at 43.

²⁷³ *Id.* (citing Canadian Solar's July 8, 2016 Section D Supplemental Questionnaire Response at Exhibit SD-15).

²⁷⁴ *Id.* at 44 (citing *Zhejiang Native Produce & Animal By-Products Imp. & Exp. Group Corp. v. United States*, 33 C.I.T. 791 (CIT 2009) (*Zhejiang I*)).

²⁷⁵ *Id.* at 44.

²⁷⁶ *Id.*; see also BPI Note 3.

²⁷⁷ See Sunpreme's Case Brief at 3.

²⁷⁸ *Id.*

²⁷⁹ See Petitioner's Rebuttal Case Brief at 36.

²⁸⁰ *Id.* at 35 (citing *Solar Cells AR2 Final* and accompanying IDM at Comment 18).

explanatory notes of Chapter 71 of the HTSUS indicate that precious metals can include alloys of precious metals which are alloys where any one precious metal constitutes as much as 2 percent, by weight, of the alloy.²⁸¹

- Canadian Solar reported four silver paste inputs, each with a silver percentage that more closely reflects the description of goods covered under HTS category 7115.90.10000.²⁸² Hence, the Department's reliance on Thai HTS category 7115.90.10000 was reasonable and consistent with agency practice in prior administrative reviews of this proceeding.²⁸³ Canadian Solar has provided no basis to deviate from that practice.²⁸⁴

Department's Position: We agree with the petitioner and have, for these final results, valued Canadian Solar's silver pastes using the AUV of Thai imports under HTS category 7115.90.10000. Based on Canadian Solar's description of the physical characteristics of the inputs, we find that HTS category 7115.90.10000 is the best available information with which to value Canadian Solar's silver pastes. Selecting HTS category 7115.90.10000 is also consistent with the Department's valuation of silver paste in the previous administrative review in this proceeding where we considered a similar input and arguments.²⁸⁵

Canadian Solar argues that the Department should value its silver pastes using Thai HTS 3824.9099.09 because its silver pastes are chemical compounds and thus would not be classified under HTS category 7115.90. However, this argument is directly contradicted by the explanatory notes of Chapter 71 of the HTSUS, which covers, among other things, precious metals, stating that except where the context otherwise requires, reference in the tariff schedule to precious metals, or to any particular precious metal, includes a reference to alloys treated as alloys of precious metal.²⁸⁶ The notes also state that a good will be classified as an alloy of a precious metal if any one precious metal constitutes as much as 2 percent, by weight, of the alloy.²⁸⁷ Therefore, we disagree with Canadian Solar's argument that because its silver pastes are chemical compounds, they cannot be classified under HTS category 7115.90. Also, persuasive in selecting HTS category 7115.90.10 to value this input is a CBP ruling that classifies silver paste with a silver content of between 40 and 85 percent under HTS category 7115.90.²⁸⁸ The silver content in Canadian Solar's silver pastes falls within this range.²⁸⁹ Although the Department is not bound by CBP rulings, it can, nevertheless, take CBP rulings into account in its analysis.

²⁸¹ *Id.*

²⁸² *Id.* at 36 (citing Canadian Solar's July 8, 2016 Section D Supplemental Questionnaire Response at 8-9).

²⁸³ See Petitioner's Rebuttal Case Brief at 36.

²⁸⁴ *Id.*

²⁸⁵ See *Solar Cells AR1 Final* and accompanying IDM at Comment 13; see also *Solar Cells AR2 Final* and accompanying IDM at Comment 18.

²⁸⁶ See Memorandum, "2013-2014 Administrative Review of the Antidumping Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Export Data and Customs Rulings and Related Documents," dated December 18, 2015 (Customs Info Memo) at Attachment III.

²⁸⁷ *Id.*

²⁸⁸ See *Solar PRC AR1 Final* and accompanying IDM at n.216.

²⁸⁹ See BPI Note 4.

Canadian Solar argues that HTS category 7115.90.10 is inappropriate because it includes high-priced precious metals whose value distorts the SV for silver paste. However, the fact that HTS category 7115.90.10 covers articles with silver and HTS category 3824.90 does not appear to cover silver items means that HTS category 7115.90.10 is a more appropriate surrogate source for valuing Canadian Solar's silver pastes. For the foregoing reasons, we also disagree with Canadian Solar's argument that the Department should value Canadian Solar's silver pastes using Thai HTS 3824.9099.09 because it is consistent with the HTS code used by Canadian Solar to import its silver paste.

Alternatively, Canadian Solar argues that the Department should value Canadian Solar's silver pastes using a weighted average of HTS 7115.9010 and HTS 3824.9099.09. The Department has utilized similar methodologies in previous cases.²⁹⁰ However, the Department has done this when the use of such a methodology constituted the best available information. In this case, Canadian Solar has simply not demonstrated that Thai HTS 3824.9099.09 is appropriate to value its silver pastes. Therefore, Canadian Solar's proposal to conduct a weighted average of 7115.9010 and 3824.9099.09 will not result in the best available information.

Comment 15: Surrogate Value for Quartz Crucibles

Petitioner:

- In Ruling N167595, CBP found that a molybdenum crucible used to grow sapphire crystals was properly classified under HTS subheading 8486.90.0000, which pertains to "Machines and apparatus of a kind used solely or principally for the manufacture of semiconductor boules or wafers, semiconductor devices."²⁹¹ Given that this ruling pertains precisely to crucibles that are used to melt materials that are subsequently formed into a crystal, the Department should value quartz crucibles using Thai HTS subheading 8486.90.19.²⁹²

Canadian Solar:

- The Department should reject the petitioner's argument and continue to value quartz crucibles using Thai HTS 6903.90, because this HTS number is more specific than Thai HTS 8486.90.19 to Canadian Solar's quartz crucibles.²⁹³ Thai HTS 6903.90 explicitly covers "refractory ceramic goods" such as "crucibles" that contain little or no alumina, and the explanatory notes to HTS category 6903 state that, in many cases, the refractory products are not permanent fixtures.²⁹⁴ This description is consistent with the information on the record demonstrating that Canadian Solar's quartz crucibles are single-use (*i.e.*, non-permanent) refractory items containing no alumina.²⁹⁵

²⁹⁰ See Canadian Solar's Brief at 44 (citing *Zhejiang I*, 33 C.I.T. 796).

²⁹¹ See Petitioner's Case Brief at 38.

²⁹² *Id.*

²⁹³ See Canadian Solar's Rebuttal Case Brief at 25, 26.

²⁹⁴ *Id.* at 26.

²⁹⁵ *Id.*

- This approach is consistent with the first and second administrative reviews in this proceeding.²⁹⁶ The petitioner has not pointed to any information on the record of this review that suggests that Canadian Solar's quartz crucibles are in any way different from those used by the respondents in those previous reviews.²⁹⁷

Trina:

- The Department already considered the argument made by the petitioner to value the quartz crucible under Thai HTS number 8486.90.19 and has rejected it.²⁹⁸ In *Solar Cells AR1 Final*, the Department continued to value Yingli's crucibles using imports under Thai HTS category 6903.90 because this category is specific to the crucibles used by Yingli, which the company described as a refractory item and HTS category 6903 explicitly covers refractory items and crucibles.²⁹⁹ In this review, Trina specifically described its quartz crucibles as refractory items.
- As the Department did in *Solar Cells AR1 Final*, the Department should reject the petitioner's argument and continue to rely on Thai HTS heading 6903.90.³⁰⁰

Department's Position: We have continued to value Canadian Solar's and Trina's quartz crucibles using imports under Thai HTS category 6903.90, because this category is more specific to the crucibles than Thai HTS category 8486.90.19. Canadian Solar and Trina described the inputs in question as crucibles, and information submitted by both companies indicates that their crucibles are refractory items.³⁰¹ Thai HTS category 6903 explicitly covers refractory items and crucibles that contain little or no alumina, and the explanatory notes to HTS category 6903 state that, in many cases, the refractory items are not permanent fixtures. This description is consistent with the information on the record demonstrating that Canadian Solar and Trina's quartz crucibles are single-use (i.e., non-permanent)³⁰² refractory items containing little to no alumina.³⁰³ Specifically, Canadian Solar's crucibles are refractory items that contain no alumina and Trina's crucibles are refractory items whose percentage alumina content is 0.1 percent.³⁰⁴

The HTS category proposed by the petitioner is not more specific to Canadian Solar and Trina's crucible inputs than Thai HTS category 6903.90. The petitioner argues that a CBP ruling supports the selection of Thai HTS category 8486.90.19 to value Canadian Solar and Trina's crucibles. However, the petitioner's reliance on this CBP ruling is misplaced. CBP ruling N167595 describes the product at issue as a molybdenum crucible.³⁰⁵ There is no evidence that the crucibles referred to in CBP ruling N167595 share the same physical characteristics as the

²⁹⁶ *Id.* at 25 (citing *Solar PRC AR1 Final*, and the accompanying IDM at Comment 30; Canadian Solar's Surrogate Value Rebuttal Comments at Exhibit SVR-3).

²⁹⁷ *Id.* at 25.

²⁹⁸ See Trina's Rebuttal Case Brief at 22.

²⁹⁹ *Id.*

³⁰⁰ *Id.*

³⁰¹ See Canadian Solar's September 29, 2016 SQR at 6; see also Trina's September 22, 2016 Sixth Supplemental Questionnaire Response (Trina September 22, 2016 Sixth SQR) at 9.

³⁰² See *Solar Cells Investigation Final* and accompanying IDM at 42.

³⁰³ See Canadian Solar's September 29, 2016 SQR at 6; see also Trina September 22, 2016 Sixth SQR at 10.

³⁰⁴ See Trina September 22, 2016 Sixth SQR at 10.

³⁰⁵ See Petitioner's Case Brief at 6 (citing Petitioner's July 25, 2016 Rebuttal SV Comments at Exhibit 1).

quartz crucibles used by Canadian Solar and Trina. Additionally, the HTS code proposed, Thai HTS 8486.90.19, pertains to types of “machines and apparatus.” As demonstrated by the technical specifications and pictures on the record, Canadian Solar’s quartz crucibles are neither “machines” nor “apparatus.”³⁰⁶ For the foregoing reasons, we have continued to value Canadian Solar and Trina’s crucibles using imports under HTS category 6903.90 for these final results of review.

Comment 16: Selection of Financial Statements

Trina:

- The Department should base the surrogate financial ratios only on Styromatic (Thailand) Co., Ltd.’s (Styromatic) 2015 financial statements. Styromatic’s 2014 financial statements cover only one month of the POR, whereas Styromatic’s 2015 financial statements cover eleven months of the POR.
- Where the record contains annual reports from the same company for different years, the Department’s judicially recognized practice is to use only the statement that covers most of the POR (the Department calculated financial ratios using Styromatic’s 2014 and 2015 financial statements in the *Preliminary Results*).³⁰⁷
- The Department should reject the petitioner’s arguments to use Ekarat Engineering Public Company Limited’s (Ekarat) 2015 financial statements.³⁰⁸ Ekarat’s financial statements lack the necessary details, such as a complete and correct itemization of all elements of costs, to calculate financial ratios accurately. The Department has a long-standing practice not to use financial statements that lack the requisite detail to calculate financial ratios accurately.
- Ekarat’s financial statements combine certain elements of costs in the income statement (for example, materials and consumables) that the Department normally segregates into

³⁰⁶ See Canadian Solar’s July 25, 2016 Rebuttal SV Comments at 6-7, Exhibit SVR-2; see also Canadian Solar’s September 29, 2016 SQR at Exhibit SD4-6.

³⁰⁷ See Trina’s Case Brief at 13 (citing *Dupont Teijin Films v. United States*, 997 F. Supp. 2d 1338, 1346 (CIT 2014) (*Dupont Teijin Films*) (stating, “when considering multiple financial statements from a single company the Department considers the financial statements overlapping more months of the POR to be more contemporaneous, and thus, preferable” citing, *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 75 FR 47771 (August 9, 2010) (*Warmwater Shrimp from Vietnam*) accompanying IDM at Comment 3-C; see also *Wooden Bedroom Furniture from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review*, 73 FR 49162 (August 20, 2008), and accompanying IDM at Comment 1-C (“Although the Indian financial statements from the 2005 - 2006 period are contemporaneous with three months of the POR, we determined that these Indian companies (i.e., James Andrew Newton, Jodhpur, Highland House, Askriti Furnishers, Jayabharatham, Nizamuddin, Sujako) statements were not suitable for use in deriving the surrogate financial ratios because the 2006 - 2007 financial statements cover nine months of the POR and, as such, are more contemporaneous than the 2005 - 2006 statements.”)).

³⁰⁸ See Trina’s Rebuttal Case Brief at 2 (citing, e.g., *Steel Wire Garment Hangers From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 2010-2011*, 78 FR 28803 (May 16, 2013) and accompanying IDM at Comment I.D (Department declined to use certain financial statements because they “lacked sufficient detail to value the reported energy FOPs and labor...as energy and labor are not specifically broken out in detail to avoid double-counting”); see also *Folding Metal Tables and Chairs From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 77 FR 13539, 13543 (March 7, 2012) (Department declined to use financial statements that did not provide sufficient detail to allocate expenses accurately)).

direct production costs and overhead expenses. The petitioner's attempt to deconstruct the financial statements is unsupported and unreliable. The petitioner cannot cure the deficiencies in financial statements simply by assigning expenses to cost categories of its own choosing. Without a clear understanding of what these unidentified costs are, there is no basis for the petitioner to consider these costs as overhead expenses rather than, for example material costs.

- Because Ekarat's financial statements are unreliable, the petitioner's comments regarding comparability of production and distortion of data due to countervailable subsidies are moot.
- Additionally, the record is unclear whether Ekarat or its subsidiary, Ekarat Solar, is the solar cell or solar module producer. Even if Ekarat is involved in solar cell or solar module production, its financial statements reveal that its sales of transformers and transformer services represent 99 percent of the company's total 2015 revenue. Record evidence does not demonstrate that transformers are comparable to solar products.
- Moreover, Ekarat's financial statements contain evidence of subsidies that the Department previously determined to be disqualifying countervailable subsidies.³⁰⁹ Note 4.1 of the auditor notes to the financial statements discusses a subsidy received related to the purchase price of electricity. Note 22 discusses income tax benefits that the company received because of Thailand Board of Investment's (BOI)-related income that is not taxable. Note 34 explains that the company is granted "certain right{s} and privilege as a promoted industry from the Board of Investment" and enjoys "Exemption of import duty on machinery," "exemption of payment of corporate income tax on net profit from promoted activity," and other tax exemptions. Note 37 indicates that the company received these benefits on "promoted" revenue and costs in both 2014 and 2015.
- On the other hand, Styromatic's 2015 financial statements do not indicate that the company benefited from subsidies that the Department has previously determined to be countervailable. Investment Promotion Act (IPA) benefits are not, in and of themselves, countervailable and the Department examines individual programs under the IPA separately.³¹⁰ Mere eligibility for a benefit is insufficient evidence to conclude that a company benefited from the program during the specified period. Record evidence demonstrates that while Styromatic was eligible to use income tax exemptions under Section 31 of the IPA, the company did not use the exemption in 2015 because it operated at a taxable loss.
- Contrary to the petitioner's assertion, the record lacks any basis for claiming that the "double deductions" referenced in Note 18 of Styromatic's 2015 financial statements relate to an IPA program that the Department has previously determined to be countervailable.

³⁰⁹ See Trina's Rebuttal Case Brief at 6-7 (citing, e.g., *Frozen Warmwater Shrimp From Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013) (*Warmwater Shrimp from Thailand CVD*) and accompany IDM).

³¹⁰ See Trina's Rebuttal Case Brief at 7 (citing *Warmwater Shrimp from Thailand CVD* and accompanying IDM at Comment 1).

- When other sufficient, reliable, and representative financial data are available for calculating surrogate financial ratios, the Department does not resort to potential surrogate producers whose financial data are distorted by subsidization.³¹¹
- The Department should also reject the petitioner's arguments to use SolarPro Holdings AD's (SolarPro) 2015 financial statements. Record evidence indicates that SolarPro is a holding company that currently does not produce solar cells or solar modules. A statement from a market researcher indicates that a subsidiary of SolarPro, SolarPro JSC, once produced solar modules, but halted production in 2012. SolarPro's website describes the company's activities as including the installation and maintenance of photovoltaic power plants and power systems, but not the production of photovoltaic cells or modules.
- SolarPro's 2015 financial statements do not indicate that SolarPro or any of its subsidiaries are manufacturers or producers of goods, let alone merchandise identical to subject merchandise.
- SolarPro's overhead, SG&A, and profit ratios of 67.04 percent, 70.45 percent, and 61.30 percent, respectively, are unreasonable and contradict the Department's previously calculated financial ratios for solar cell and solar module producers.³¹²
- SolarPro's financial statements lack information to form a reliable basis for calculating surrogate ratios for overhead, SG&A, and profit. The Department's practice is not to go behind financial statements and try to engineer adjustments.

Canadian Solar:

- The Department should use only Styromatic's 2015 financial statements to calculate the surrogate financial ratios. Styromatic's 2015 financial statements cover eleven months of the POR, whereas its 2014 financial statements cover only one month of the POR.
- Alternatively, at a minimum, the Department should weight average financial data in Styromatic's 2014 and 2015 financial statements according to the ratio of the number of months in the POR.
- When considering financial statements from a single company, the Department has explicitly stated that it "considers the financial statements overlapping more months of the POR to be more contemporaneous, and thus, preferable."³¹³ The CIT upheld this practice in *Dupont Teijin Films*, in which the Department faced facts almost identical to those before it in the current review.³¹⁴
- The Department's determination in *Mushrooms from the PRC* is also instructive for the current review, where the record contained 2004-2005 and 2005-2006 financial statements for two companies.³¹⁵ In its final results, the Department determined that the

³¹¹ See Trina's Rebuttal Case Brief at 6 (citing, 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 IDM at Comment 14).

³¹² See Trina's Rebuttal Case Brief at 11 (citing Trina's SV Rebuttal, Exhibit B-1, (October 31, 2016)); see also Trina's SV Rebuttal at Exhibit B-2, Surrogate Value Memorandum, Attachment I and V.; see also Trina's SV Rebuttal at Exhibit B-3; see also Trina's SV Rebuttal at Exhibit B-4.

³¹³ See Canadian Solar's Case Brief at 27 (citing *Warmwater Shrimp from Vietnam* and accompanying IDM at 14).

³¹⁴ See Canadian Solar's Case Brief at 27 (citing *Dupont Teijin Films*, 997 F. Supp. 2d at 1338, 1346).

³¹⁵ See Canadian Solar's Case Brief at 27 (citing *Certain Preserved Mushrooms from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 72 FR 44827 (August 9, 2007) (*Mushrooms from the PRC*) and accompanying IDM at 13 and 14).

2005-2006 financial statements covered more of the POR than the 2004-2005 financial statements, and, thus, derived the surrogate financial ratios using only the 2005-2006 financial statements.

- Styromatic’s 2015 financial statements do not demonstrate that the company received subsidies previously determined by the Department to be countervailable. Styromatic was eligible to receive benefits from Section 31 of the IPA; however, record evidence demonstrates that Styromatic did not benefit from Section 31 of the IPA.
- Moreover, while the Department has previously found certain programs under the IPA to be countervailable, contrary to the petitioner’s argument, the Department has not found the entire IPA *per se* countervailable. Rather, as demonstrated in *Warmwater Shrimp from Thailand CVD*, the Department investigates programs under the IPA individually.³¹⁶
- The petitioner’s claim that Styromatic benefited from other IPA programs because there is a reference to certain “double deductions” in Note 18 is speculation. The mere fact that “double deductions” are a possible IPA benefit does not prove that Styromatic’s “double deductions” were related to the IPA.
- If the Department determines that the “double deductions” referenced in Styromatic’s financial statements constitute a subsidy, the Department’s “reason to believe or suspect” standard is not satisfied here, because the Department has not previously found such “double deductions” to be countervailable.
- In *Clearon Corp.*, the CIT explained: “(1) If a financial statement contains a reference to a specific subsidy program found to be countervailable in a formal CVD determination, the Department will exclude that financial statement from consideration. (2) If a financial statement contains only a mere mention that a subsidy was received, and for which there is no additional information as to the specific nature of the subsidy, the Department will not exclude the financial statement from consideration.”³¹⁷
- In *Catfish Farmers*, the CIT affirmed the Department’s finding that the receipt of a subsidy without any further details concerning its specific nature was insufficient evidence to satisfy the “reason to believe or suspect” standard.³¹⁸
- The Department has previously stated that, in determining whether there is a reason to believe or suspect that a company received countervailable subsidies, it “looks to past determinations of countervailable subsidies, rather than analyzing anew the existence of a countervailable subsidy in the context of the antidumping proceeding.”³¹⁹

³¹⁶ See Canadian Solar’s Rebuttal Case Brief at 8 (citing *Warmwater Shrimp from Thailand CVD* and accompanying IDM at Comment 1).

³¹⁷ See Canadian Solar’s Rebuttal Case Brief at 11 (citing *Clearon Corp. v. United States*, 800 F. Supp. 2d 1355, 1359 (CIT 2011) (*Clearon Corp.*); see also *Diamond Sawblades and Parts Thereof From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014) and accompanying IDM at 37 (stating “petitioner’s reference to tax incentives or other such items does not, without more, give rise to a reason to believe or suspect { } financial statements are distorted by countervailable subsidies”).

³¹⁸ See Canadian Solar’s Rebuttal Case Brief at 10 (citing *Catfish Farmers of America v. United States*, 641 F. Supp. 2d 1362, 1379-1380 (CIT 2009) (*Catfish Farmers*)).

³¹⁹ See Canadian Solar’s Rebuttal Case Brief at 11 (citing *Final Results of Redetermination Pursuant to Court Remand; Fresh Garlic from the People’s Republic of China*, Court No. 11-00267, Slip Op. 14-45 (April 16, 2014) dated August 13, 2014 (citing *DuPont Teijin Films et al v. United States*, 896 F. Supp. 2d 1302, 1312-13 (CIT 2013); *Catfish Farmers*, 641 F. Supp. 2d at 1362, 1380)).

- Canadian Solar is primarily involved in the production and sale of subject merchandise, which is different from the commercial experience of Ekarat, whose affiliates are engaged in a broad array of unrelated businesses. Ekarat's solar cell and module business unit was not profitable during the POR and, in fact, it suspended operations in 2015. Moreover, Ekarat benefitted from subsidies found by the Department to be countervailable.
- Turning to SolarPro, this company suspended its solar cells and modules operations a few years prior to the POR, in 2012. SolarPro's commercial experience, which involves construction, operation, and maintenance of electric power stations and other services in the energy sector, is not comparable to that of Canadian Solar. Moreover, SolarPro is not located in the primary surrogate country, Thailand. The Department's preference is to value all factors in a single surrogate country.³²⁰
- Record evidence shows that all other Thai companies whose financial statements are on the record, except for Styromatic, benefitted from subsidies that the Department previously found to be countervailable. The Department's practice is to disregard financial statements from companies it has a reason to believe or suspect may have benefitted from countervailable subsidies, and only use such financial statements if there is no other sufficient, reliable, and representative data on the record.³²¹
- Should the Department find that there is reason to suspect that Styromatic benefitted from subsidies previously determined to be countervailable based on information in its 2015 financial statements, then the Department should use Styromatic's 2014 financial statements, which the Department used in the second administrative review in this proceeding.

Petitioner:

- Styromatic's financial statements are not the best available information for calculating surrogate financial ratios. The Department should instead rely on the financial statements of Ekarat, a Thai producer of identical merchandise, or SolarPro, a Bulgarian producer of identical merchandise, for the final results.
- Styromatic, a producer of electronic components and circuit boards, is not a producer of merchandise identical to subject merchandise. The Department confirmed this in the *Preliminary Results*, as well as in the most recently completed administrative review in this proceeding. The Department stated: "there is no need to consider using a company that makes only comparable merchandise when there are usable financial statements on the record from companies that produce identical merchandise."³²²

³²⁰ See Canadian Solar's Rebuttal Case Brief at 17 (citing *Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 80 FR 51779 (August 26, 2015) and accompanying IDM at 15-16; see also *Solar Cells Investigation Final* and accompanying IDM at 42).

³²¹ See Canadian Solar's Rebuttal Case Brief at 18 (citing *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Results of the First Antidumping Duty Administrative Review*, 76 FR 9753 (February 22, 2011) and accompanying IDM at 4).

³²² See Petitioner's Case Brief at 14 (citing *Certain Steel Nails From the People's Republic of China: Final Results of the Fourth Antidumping Duty Administrative Review*, 79 FR 19316 (April 8, 2014) and accompanying IDM at 9-10; see also *Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 6836 (February 9, 2005) and accompanying IDM at Comment 1 (emphasis added)).

- The Department previously determined that the IPA program is a *per se* countervailable subsidy under sections 771(5A)(A) and (B) of the Act,³²³ and that Styromatic was a recipient of countervailable subsidies.³²⁴ A comparison of Styromatic's 2011, 2014, and 2015 financial statements reveals that all three financial statements make an identical reference to BOI-sponsored/eligible assets in Note 7 of the auditor's notes.³²⁵
- Styromatic is listed as a BOI promoted company on the BOI's website. Information from the Management System Certification Institute (Thailand) shows that the Thai government subsidized Styromatic to enable the company to reach ISO 9001:2008 status. Styromatic was listed as a beneficiary of an investment project that was sponsored by the BOI with additional support from the European Union. The BOI's zone map for the IPA program shows that the Udon Thani province, where Styromatic operates, is located in Investment Promotion Zone 3; Styromatic benefitted from this IPA program. The Bangkok Post also identified Styromatic as a BOI-promoted company. Note 17 in Styromatic's 2015 financial statements confirms that Styromatic received countervailable subsidies in the form of an exemption from income taxes, under the IPA program since 2009.
- While Styromatic apparently did not benefit from the income tax exemption subsidy identified in Note 18 in 2015, the only reason for this was because it received another subsidy. It appears that, in 2014 (encompassing a portion of the POR), Styromatic benefitted from two subsidies, having taken the double deduction subsidy and then, still having taxable income, benefitted again from the income tax exemption.
- Styromatic's 2014 financial statements are incomplete. These statements reference Note "18" on the Statement of Income - in reference to the income tax line item - yet there is no Note 18 appearing in the Thai or English versions of the financial statements Canadian Solar submitted on the record. It is a reasonable assumption that Note 18 in the 2014 statements would have contained evidence of countervailable subsidies, as do notes 17 and 18 in the 2015 financial statements. It is Department practice to exclude incomplete financial statements from consideration in the calculation of financial ratios.³²⁶
- Ekarat is the only Thai manufacturer of solar cells and modules for which financial statements are on the record. This is confirmed by Ekarat's financial statements, its website, and the *National Survey Report of PV Power Applications in Thailand* for 2014. The Department also recognized Ekarat as a manufacturer of solar cells and modules in the *Preliminary Results*.

³²³ See Petitioner's Case Brief at 8 (citing *Warmwater Shrimp from Thailand CVD* and accompanying IDM at Comment 2).

³²⁴ See Petitioner's Case Brief at 8-9 (citing *Solar Cells Investigation Final* and accompanying IDM at Comment 2; see also *Warmwater Shrimp from Thailand CVD* and accompanying IDM at Comment 1).

³²⁵ See Petitioner's Case Brief at 10 (citing Canadian Solar Original SV Submission at Exhibit SV-11; Canadian Solar SV Rebuttal at Exhibit SVR-7; Petitioner's October 19, 2016 Submission at Exhibit 6E).

³²⁶ See Petitioner's Rebuttal Case Brief at 37 (citing, e.g., *Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33350 (June 4, 2013) and accompanying IDM at Comment 2 (the Department's practice has been to exclude incomplete financial statements from consideration in the calculation of the financial ratios); see also *Certain Steel Nails From the Republic of Korea: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 79 FR 78051 (December 29, 2014) and accompanying IDM at XIV.B).

- The production process for subject merchandise is extremely complex, and is reflected in substantially higher production costs.³²⁷ Styromatic’s financial statements cannot be considered “best information available” when information reflecting production of solar cells and modules is available, as it is here, in Ekarat’s financial statements.
- Ekarat’s business structure and profit experience best correlate to the respondents’ structure and financial experience. Like Ekarat, the respondents in this proceeding are not just single, stand-alone manufacturers of solar panels, but are multi-layered corporations with numerous subsidiaries engaged in various related manufacturing activities. Like Ekarat, the respondents’ subsidiaries have significant related-party investments and transactions such that their profit and financial experience is best captured at the overall consolidated level.
- The Department should rely on the 2015 financial statements of SolarPro, a Bulgarian producer of merchandise identical to subject merchandise, if it does not rely on Ekarat’s 2015 financial statements. In *Citric Acid AR5 Final*, the Department selected Thailand as the surrogate country, but instead based financial ratios on the financial statements of an Indonesian producer which contained no evidence of countervailable subsidies.³²⁸
- SolarPro’s 2015 financial statements are contemporaneous with the POR, reliable and contain no evidence that the company received any countervailable subsidies.
- The Department should also be wary of Trina’s attempts to refute SolarPro’s status as a producer of identical merchandise based on a comparison of SolarPro’s ratios to financial ratios that the Department calculated in past reviews, where the Department has relied almost exclusively on the financial statements of producers of comparable merchandise. To better benchmark SolarPro’s ratios, the Department should consider Ekarat’s combined ratios, which exceed 65 percent for 2015.

Sunpreme:

- The Department should utilize only Styromatic’s 2015 financial statements to calculate surrogate financial ratios. The Department’s clear preference is to use the most contemporaneous data on the record. Styromatic’s 2015 financial statements cover almost the entire POR whereas its 2014 financial statements cover only one month of the POR.

Department’s Position: In the *Preliminary Results*, we based the financial ratios on a simple average of the respective ratios calculated from information in Styromatic’s 2014 and 2015 financial statements. For the final results, we find Styromatic’s 2015 financial statements to be the best available information for calculating surrogate financial ratios.

In selecting SVs for FOPs, section 773(c)(1) of the Act instructs the Department to select “the best available information” from the appropriate market economy (ME) country to value FOPs. The Department normally will use publicly available information to value FOPs, pursuant to 19 CFR 351.408(c)(1). In determining the suitability of SVs, we carefully consider the available

³²⁷ See Petitioner’s Case Brief at 15 (citing Petition for the Imposition of Antidumping and Countervailing Duties, *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, From the People's Republic of China*, vol. II (October 19, 2011) at 21-24 (ACCESS No. 3035966)).

³²⁸ See Petitioner’s Case Brief at 19 (citing *Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 77323 (December 14, 2015) (*Citric Acid AR5 Final*) and accompanying IDM at 12).

evidence with respect to the particular facts of each case and evaluate the suitability of each source on a case-by-case basis. Accordingly, when examining the merits of financial statements on the record, we do not have an established hierarchy that automatically gives certain characteristics (*i.e.*, contemporaneity or specificity) more weight than others. Rather, we must weigh available information with respect to each situation and make a product-and case-specific decision as to what constitutes the “best available information.” Furthermore, the Courts have recognized the wide discretion given to the Department in selecting the best SVs on the record.³²⁹

In calculating surrogate financial ratios, it is the Department’s practice, in accordance with 19 CFR 351.408(c)(4), to use nonproprietary information gathered from producers of identical or comparable merchandise in the surrogate country. In doing so, the Department narrows the list of financial statements meeting this criterion by considering the quality and specificity of the statements, as well as whether the statements are contemporaneous with the data used to calculate production factors.³³⁰

When the Department has reason to believe or suspect that a company may have received countervailable subsidies, financial ratios derived from that company’s financial statements may not constitute the best available information with which to calculate surrogate financial ratios.³³¹ Consequently, the Department does not rely on financial statements that contain references to programs previously found to be countervailable by the Department when there are other sufficiently reliable and representative data on the record for purposes of calculating surrogate financial ratios.³³²

The record contains four Thai financial statements for calendar year 2015: (1) Hana Microelectronics Public Co., Ltd. (Hana); (2) KCE Electronics Public Company Limited (KCE); (3) Ekarat, and (4) Styromatic, and one Thai financial statement for calendar year 2014 from Styromatic. The record also contains the 2015 financial statements of SolarPro, a Bulgarian company.³³³ We noted in the *Preliminary Results* that all of the Thai companies manufactured merchandise that the Department considers to be comparable to solar cells, and all of the Thai financial statements, except those of Styromatic, indicate that the companies received subsidies which the Department has determined to be countervailable.³³⁴

³²⁹ The CIT has held that, “when Commerce is faced with the decision to choose between two reasonable alternatives and one alternative is favored over the other in their eyes, then they have the discretion to choose accordingly.” *FMC Corporation v. United States*, 27 CIT 240, 251 (February 11, 2003), *aff’d* *FMC Corp. v. United States*, 87 F. App’x 753 (Fed. Cir. 2004) (citation omitted).

³³⁰ See *Silicon Metal from the People’s Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 75 FR 1592 (January 12, 2010) (Silicon Metal from the PRC), and accompanying IDM at 36; see *Dorbest Ltd. v. United States*; 604 F.3d 1363, 1374 (Fed. Cir. 2010).

³³¹ See *Freshwater Crawfish Tail Meat From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2014-2015*, 82 FR 17634 (April 12, 2017) and accompanying IDM at Comment 1.

³³² *Id.*, at 11.

³³³ See *Preliminary Results* and accompanying PDM at 26.

³³⁴ See Hana’s financial statements at Note 24, and KCE’s financial statements at Note 30 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 SV Comments at Exhibits 5.

Commerce has developed a well-established practice of excluding incomplete financial statements from consideration, whether due to missing information or a lack of full translation.³³⁵ After further examination of record information, we have disregarded Hana's and KCE's financial statements, because these financial statements are incomplete. The record does not contain the original Thai versions of Hana's and KCE's financial statements and the English versions of these financial statements do not include the signed auditor's reports.³³⁶ Without the original Thai versions, it is not possible to compare and determine whether the translated versions are accurate. It is also unclear whether these statements were, in fact, audited. Moreover, both Hana and KCE benefited from countervailable subsidies under the IPA program.³³⁷

Styromatic's 2014 financial statements are also incomplete. The Notes to Styromatic's 2014 financial statements end at Note 17; however, the income statement for these financial statements refers to a "Note 18;" thus, it appears that the Notes to the financial statements are incomplete.³³⁸ Moreover, we agree with the respondents that it is the Department's practice to use one set of financial statements from a company covering a period that overlaps with the most months of the POR when the record contains multiple financial statements from a single company.³³⁹ Styromatic's 2014 financial statements cover only one month of the POR, whereas its 2015 financial statements cover eleven months of the POR. In addition, because the 2015 financial statements cover a larger period of the POR than the 2014 financial statements, they are preferable.

The petitioner asserts that Ekarat is the only Thai manufacturer of identical merchandise for which financial statements are on the record.³⁴⁰ While Ekarat's 2015 consolidated financial statements state that Ekarat is a manufacturer of solar modules, the financial statements also substantiate that Ekarat is primarily a manufacturer and distributor of transformers. Ekarat's financial statements support that more than 99 percent of its revenue came from sales of distribution transformers and services, and the remaining revenue came from sales of electricity.³⁴¹ The record does not contain evidence that distribution transformers are comparable merchandise. Moreover, any production of solar modules by Ekarat appear to be related to its solar farm operations (discussed in greater detail below), from which the remaining one percent of its revenue appears to have been earned.³⁴² Additionally, the record does not contain evidence demonstrating that a company primarily manufacturing transformers and

³³⁵ See e.g., *Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 14499 (March 12, 2012) and accompanying IDM at Comment 2

³³⁶ See Petitioner's October 19, 2016 Submission of New Factual Information at Exhibit 8 for Hana's and KCE's 2015 financial statements.

³³⁷ See Hana's financial statements at Note 24, and KCE's financial statements at Note 30.

³³⁸ See Canadian Solar's July 18, 2016 SV Comments at Exhibit SV-11 for Styromatic's 2014 financial statements.

³³⁹ See *Activated Carbon AR1 Final* and accompanying IDM at Comment 2c; *Citric Acid AR1 Final* and accompanying IDM at Comment 8.

³⁴⁰ See Petitioner's July 18, 2016 SV Comments at Exhibit 11 for Ekarat's 2015 financial statements.

³⁴¹ See Ekarat's 2015 financial statements at 113.

³⁴² See Ekarat's 2015 financial statements at 113.

operating a solar farm is comparable to a manufacturer/seller of solar cells and modules. As a rule, we prefer to select a financial statements from a producer that primarily produced comparable merchandise, instead of a producer that primarily produced non-comparable merchandise.³⁴³ Additionally, Ekarat's consolidated financial statements include the operations of Ekarat Solar Co., Ltd. (Ekarat Solar), a subsidiary of Ekarat, which is described as a "distributor of solar cell" and "the player in Solar Energy Business."³⁴⁴ However, Ekarat's financial statements note that Ekarat Solar had an operating loss in 2015.³⁴⁵ The Department has an established practice of rejecting financial statements of companies that are not profitable.³⁴⁶ Because Ekarat's 2015 consolidated financial statements indicate that the company is primarily a manufacturer and distributor of non-comparable merchandise, and given that Ekarat's subsidiary, Ekarat Solar, was not profitable during the POR, the Department does not find that Ekarat's consolidated financial statements constitute the best available information for calculating surrogate financial ratios. Furthermore, Ekarat's 2015 consolidated financial statements indicate that Ekarat benefited from countervailable subsidies.³⁴⁷

After eliminating Hana and KCE's 2015, and Styromatic's 2014 financial statements as a basis for financial ratios because they are incomplete, and Ekarat's financial statements because Ekarat primarily produced non-comparable merchandise and its subsidiary (the one described as a "distributor of solar cell" and "the player in Solar Energy Business") was not profitable, we are left with Styromatic's 2015 financial statements and the financial statements of SolarPro, a Bulgarian company that describes its main activities as development, engineering, construction, and maintenance of solar electric power stations and installations. Styromatic's 2015 financial statements are complete³⁴⁸ and, in the *Preliminary Results*, we found that Styromatic did not receive countervailable subsidies in 2015. However, we have since reexamined its 2015 financial statements and determined that there is evidence that Styromatic benefited from the IPA program through a corporate income tax exemption. Canadian Solar argues that, while Styromatic was eligible to receive certain benefits under the IPA, Styromatic did not benefit from the IPA program because it operated at a taxable loss in 2015. The Department disagrees. Specifically, we note that the income statement for Styromatic's 2015 financial statements, which provides data for fiscal years 2014 and 2015, reports profits for both years before income tax. The income tax line item in the income statement is blank and refers to Note 17, which states that the company is exempt from income tax due to its investment promotion certificate. In *Warmwater Shrimp from Thailand CVD*,³⁴⁹ the Department determined that benefits provided under the IPA were export contingent under sections 771(5A)(A) and (B) of the Act. Thus, the

³⁴³ See, e.g., *OTR Tires 2010-2011* and accompanying IDM at Comment 6.

³⁴⁴ See Ekarat's 2015 financial statements at 15 and 21.

³⁴⁵ See Canadian Solar's July 25, 2016 Rebuttal SV Comments at Exhibit SVR-1 for Ekarat Solar's 2015 financial statements.

³⁴⁶ See *Certain Steel Threaded Rod From the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 68400 (November 4, 2011) and accompanying IDM at Comment 5.

³⁴⁷ See page 118 (Note 34) of its financial statement contained in Petitioner's July 18, 2016 SV Comments at Exhibits 5.

³⁴⁸ See Canadian Solar's July 25, 2016 Rebuttal SV Comments at Exhibit SVR-7 for Styromatic's 2015 financial statements.

³⁴⁹ See *Warmwater Shrimp from Thailand CVD* and accompanying IDM at Comment 2.

Department has found this program to provide a countervailable subsidy. Nevertheless, as explained below, we continue to believe that Styromatic's 2015 financial statements represent the best available information on the record of this review for calculating surrogate financial ratios

Although the petitioner advocates basing financial ratios on data from the Bulgarian company, SolarPro, it is unclear from the record information whether SolarPro produced merchandise identical or comparable to subject merchandise during the POR. Specifically, SolarPro's 2015 consolidated annual report indicates that SolarPro was involved in the "development, engineering and construction (EPC) of solar electric power stations and installations, project management, as well as management and maintenance of already established solar parks and installations."³⁵⁰ Additionally, the main activity descriptions on the 2015 consolidated annual report for SolarPro's subsidiaries do not indicate that these subsidiaries are producers of identical or comparable merchandise.³⁵¹

Moreover, SolarPro's website does not clearly indicate that SolarPro produces identical or comparable merchandise. SolarPro's website notes, under "Our main business lines...." "Poly/Mono PV Assembly Line - A 50 MW per year capacity installation available to meet strategic long term demand."³⁵² However, when read in the context of broader descriptions of the company's operations on the website, noting production of equipment and parts for the production of solar panels, and development, construction, and maintenance of photovoltaic solar parks, we believe this statement may describe installation/construction of a solar panel assembly line.

Additionally, it is not clear that record information from third parties is necessarily an accurate description of SolarPro's activities during the POR and the record includes contradictory information as to whether SolarPro produced solar panels during the POR. While SolarPro's company profile from the Financial Times website states that SolarPro produces solar panels, the company profile also focuses on certain events that occurred with respect to SolarPro in 2012. Specifically, it states that "{o}n July 9, 2012, the Company sold its whole stake in Solarpro-S OOD. On November 20, 2012, the Company opened its first solar plant in Macedonia."³⁵³ This information makes it uncertain whether SolarPro's business activities described in the Financial Times source is current and representative of the company's business activities during the POR. Given that the profile only describes events that occurred five years ago and noting more recent, this profile may not be up-to-date. The petitioner also provided an EMIS Business Report and a web-page listing solar panel manufacturers in Bulgaria, which identify SolarPro as a solar panel manufacturer.³⁵⁴ However, a news article dated 2012 reported that SolarPro, a solar panel manufacturer in the Balkans, was halting its operations.³⁵⁵ Additionally, SolarPro's 2012 activity report indicates that one of SolarPro's subsidiaries (SolarPro JSC) was partially sold to a foreign investor.³⁵⁶

³⁵⁰ See Petitioner's October 19, 2016 Submission of New Factual Information at Exhibit 9U.

³⁵¹ *Id.* at Exhibit 9O.

³⁵² *Id.* at Exhibit 9A.

³⁵³ *Id.* at Exhibit 9B.

³⁵⁴ *Id.* at Exhibits 9C and 9E.

³⁵⁵ See Trina's October 31, 2016 Rebuttal SV Comments at Exhibit A-1.

³⁵⁶ *Id.* at Exhibit A-2.

Even if SolarPro deals in solar panels (installation in home or solar power stations), it is not clear whether SolarPro produces the panels or purchases the panels from a separate party. Given these concerns, and SolarPro's own description of its main activities, which do not clearly indicate the production of comparable merchandise, we believe the third-party evidence regarding SolarPro's operations does not adequately demonstrate whether or not SolarPro produced solar panels during the POR and we find the evidence provided by the parties to be contradictory. These facts, in light of the absence of any clear statement in SolarPro's financial statements and website that SolarPro produces/sells solar panels or solar cells, leaves the Department to question whether the company is a producer of identical or comparable merchandise. Because we are unable to conclude that SolarPro, or its subsidiaries, were producers of identical or comparable merchandise, and also because SolarPro is located in Bulgaria and, thus, outside of the primary surrogate country, the Department does not find SolarPro's financial statements constitute the best available information for calculating surrogate financial ratios.

When the Department is faced with a choice between two imperfect options, it is within the Department's discretion to determine which choice represents the best available information, so long as the Department provides a reasonable explanation.³⁵⁷ Given the above, we find that Styromatic's 2015 financial statements constitute the best available information on the record for calculating surrogate financial ratios, because these statements are contemporaneous, audited, and reflect a producer of merchandise comparable to the subject merchandise in the primary surrogate country. As noted above, Styromatic's 2015 financial statements indicate that Styromatic benefited from countervailable subsidies. However, the Department has previously relied on financial statements with evidence of countervailable subsidies if these financial statements represented the best available information on the record.³⁵⁸ Thus, for the final results, we have calculated surrogate financial ratios using Styromatic's 2015 financial statements.

Comment 17: Trina's Ocean Freight

Petitioner:

- In calculating Trina's ocean freight expense, the Department calculated a per-container surrogate cost and then divided the per-container cost by the average number of modules Trina shipped in a 40-ft. high cube container.³⁵⁹ However, the number of modules used in the denominator of the calculation does not match the average number of modules reported in Trina's October 19, 2016, surrogate value submission.³⁶⁰ The Department should revise its calculations accordingly.

³⁵⁷ *Dorbest, Ltd. v. United States*, 462 F. Supp. 2d 1262, 1277 (CIT 2006); see also *Clearon Corp. v. United States*, 2013 WL 646390, *7-8 (CIT 2013).

³⁵⁸ See CVP 23 from the PRC and accompanying IDM at Comment 1.

³⁵⁹ See Petitioner's Case Brief at 45 (citing Memorandum, "Antidumping Duty Administrative Review of Certain Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Preliminary Analysis Memorandum for Changzhou Trina Solar Energy Co., Ltd., Trina Solar (Changzhou) Science and Technology Co., Ltd. Yancheng Trina Solar Energy Technology Co., Ltd., Changzhou Trina Solar Yabang Energy Co., Ltd., Turpan Trina Solar Energy Co., Ltd. and Hubei Trina Solar Energy Co., Ltd.," dated December 16, 2016 (Trina Preliminary Results Analysis Memo) at Exhibit 1.

³⁶⁰ See Petitioner's Case Brief at 46 (citing Trina's October 19, 2016 Additional Surrogate Value Information at

No other interested parties commented on this issue.

Department's Position: We agree with the petitioner. In the *Preliminary Results*, the Department made a clerical error and based the number of modules per container on the ranged data in the public version of Trina's additional surrogate value submission.³⁶¹ However, in calculating ocean freight for these final results, the Department has based the average number of modules per container on the number identified in the proprietary version of Trina's additional surrogate value submission.³⁶²

Comment 18: Differential Pricing

Trina:

- The Department should eliminate its differential pricing analysis and continue to apply the average-to-average (A-A) comparison methodology for Trina.³⁶³
- Resorting to an alternate calculation methodology incorporating zeroing would violate U.S. law and WTO decisions invalidating the Department's differential pricing test (see the WTO's Appellate Body Report in *US-Washers (Korea)*).³⁶⁴
- A recent WTO dispute settlement panel confirmed that the Department's differential pricing test violates the United States' obligations under the Antidumping Agreement.³⁶⁵ In *US-Washers (Korea)*, the dispute settlement panel examined the Department's differential pricing test and held that the test was not in accordance with the AD Agreement because it inappropriately identified "patterns" of price differences based on "random and unrelated price variations."³⁶⁶ The panel also found that resorting to zeroing in the context of the differential pricing test and resulting A-T comparison method also violated the AD Agreement because "individual pattern transactions priced above normal value would not be properly taken into account."³⁶⁷

Petitioner:

- WTO Appellate Body reports are not self-executing.³⁶⁸ Congress provided a procedure through which the Department may change a regulation or practice in response to WTO reports.³⁶⁹ With regard to the use of the Department's differential pricing analysis in administrative reviews, the United States has not adopted a change to its established practice in response to the WTO findings upon which Trina relies.³⁷⁰ Accordingly, the

Exhibit 2).

³⁶¹ See Trina's October 19, 2016 Additional Surrogate Value Information (Public Version) at Exhibit 2.

³⁶² See Trina's October 19, 2016 Additional Surrogate Value Information (BPI Version) at Exhibit 2.

³⁶³ See Trina's Case Brief at 12.

³⁶⁴ *Id.* at 12 (citing *United States-Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea*, Appellate Body Report, WT/DS464/AB/R (September 7, 2016) (*US-Washers (Korea)*)).

³⁶⁵ *Id.* at 12.

³⁶⁶ *Id.* at 12 (citing *US-Washers (Korea)* at paragraph 5.43).

³⁶⁷ See Trina's Case Brief at 12.

³⁶⁸ See Petitioner's Rebuttal Case Brief at 47.

³⁶⁹ *Id.*

³⁷⁰ *Id.*

proper methodology to use in this proceeding is the Department's differential pricing analysis.³⁷¹

- The Department normally calculates dumping margins using the A-A method unless the agency determines that another method is appropriate in a particular situation.³⁷² In this review, the Department analyzed whether to use the average-to-transaction (A-T) method as an alternative comparison method using its differential pricing analysis, which is consistent with Section 777A(d) of the Act.³⁷³ Indeed, the statute directs the Department to examine the significance of price differences among purchasers, regions, or time periods.³⁷⁴ The Department's differential pricing analysis is consistent with the statute.³⁷⁵

No other interested parties commented on this issue.

Department's Position: We disagree with Trina regarding the effect that the WTO Appellate Body's findings in *US - Washing Machines (Korea)* has on the Department's methodology utilized in this review. As a general matter, the U.S. Court of Appeals for the Federal Circuit (CAFC) has held that WTO reports are without effect under U.S. law, "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the Uruguay Round Agreements Act (URAA).²⁸ In fact, Congress adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports.²⁹ Indeed, the SAA noted that "WTO dispute settlement panels will have no power to change U.S. law or order such a change. Only Congress and the Administration can decide whether to implement a WTO panel recommendation and, if so, how to implement it."³⁰ As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Department's discretion in applying the statute.³¹ The Department has not revised or changed its use of the differential pricing methodology, nor has the United States adopted changes to its methodology pursuant to the URAA's implementation procedure.

Comment 19: Calculation of Warranty Expenses

Petitioner:

- The Department should recalculate Trina's accrued U.S. warranty expenses. The Department calculated Trina's warranty expense rate based on an incorrect amount of sales revenue. Instead of limiting sales value to the Trina manufacturers selling to the United States, Changzhou Trina Solar Energy Co., Ltd., (TCZ) and Trina Solar

³⁷¹ *Id.*

³⁷² *Id.* at n.167 (citing 19 CFR 351.414(c)(1); *Carbon and Certain Alloy Steel Wire from Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 80638 (November 16, 2016) and accompanying PDM at 7).

³⁷³ See Petitioner's Rebuttal Case Brief at 48 n.168 (stating that Section 777A(d) of the Act sets forth two criteria that must be met before the Department can apply the A-T methodology, *i.e.*, ({1}) "there is a pattern of export prices...for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and ({2}) the administering authority explains why such differences cannot be taken into account" using one of the standard comparison methodologies).

³⁷⁴ See Petitioner's Rebuttal Case Brief at 48 n.169 (citing Section 777A(d) of the Act).

³⁷⁵ *Id.* at n.170 (citing *JBF RAK LLC v. United States*, 790 F.3d 1358, 1364 (Fed. Cir. 2015) (holding that the Department's application of A-T method in an administrative review "properly" filled the gap Congress left in the statute)).

(Changzhou) Science and Technology Co., Ltd. (TST), the Department included the sales of other Trina companies that did not sell to the United States.

- Alternatively, if the Department does not calculate the warranty expense ratio using the most recent sales revenue for TCZ and TST as the denominator, it should calculate the warranty expense using the three-year average accrued warranty expense for Trina, as it did in the prior review.

Trina:

- The numerator of the petitioner's proposed warranty expense ratio is based on the accrued warranty expenses for all companies within the Trina Group, while the denominator consists of the total sales of only TCZ and TST.
- The petitioner has not claimed, or provided any support showing, that Trina's POR accrued warranty expenses are distortive and not representative of its experience. Thus, there is no basis for the Department to deviate from its practice of using the POR warranty expense.

Department's Position: We agree with Trina. The numerator and denominator of the warranty expense ratio used in the *Preliminary Results* are the total warranty expenses and the value of sales by the entire Trina Group, respectively.³⁷⁶ The petitioner's proposed calculation is erroneous for two reasons. First, the Trina Group consists of numerous producers in addition to TCZ and TST that incur warranty expenses.³⁷⁷ Thus, including in the numerator all warranty expenses of the Trina Group but including in the denominator only the value of sales by TCZ and TST, is distortive.³⁷⁸ Second, the petitioner's approach relies on TCZ's and TST's sales to its U.S. sales affiliate.³⁷⁹ However, in this review, the warranty expenses were calculated by multiplying the warranty expense ratio by the value of the U.S. affiliate's sales to its unaffiliated customers.

The Department's practice is to rely on a company's POR warranty expenses. However, if those expenses are distortive and not representative of a respondent's experience, the Department relies on a three-year average of the respondent's warranty expenses.³⁸⁰ In the prior review in this proceeding, the Department relied on a three-year average of accrued warranty expenses in calculating the warranty expense deducted from U.S. price for CEP sales because the Department determined that Trina's accrued POR warranty expenses were distortive.³⁸¹ Here, the petitioner has not claimed that Trina's warranty expenses for the POR are distortive, and there is no evidence on the record to suggest that Trina's POR warranty expenses are

³⁷⁶ See Trina's June 21, 2016 Section C Supplemental Questionnaire Response at C-17.

³⁷⁷ *Id.* at C-18; see also Trina's Section A Response at A-11.

³⁷⁸ The ratio argued for by the petitioner is derived by dividing the total warranty expenses of the Trina Group by the total sales revenue by TCZ and TST to its sales affiliates. See Trina's June 21, 2016 Section C Supplemental Questionnaire Response at C-17 and Exhibit SC-13.

³⁷⁹ The ratio argued for by the petitioner is derived by dividing the total warranty expenses of the Trina Group by the total sales revenue by TCZ and TST to its sales affiliates. See Trina's June 21, 2016 Section C Supplemental Questionnaire Response at C-17 and Exhibit SC-13.

³⁸⁰ See *Solar Cells AR2 Final* and accompanying IDM at Comment 25; see also *Solar Cells Investigation Final* and accompanying IDM at Comment 28.

³⁸¹ See *Solar Cells AR2 Final* and accompanying IDM at Comment 25.

unrepresentative. Therefore, there is no reason to deviate from our practice of relying on the warranty expenses incurred during the POR.

Comment 20: Insurance Costs Related to Warranties

Petitioner:

- In the *Preliminary Results*, the Department failed to account for insurance costs related to warranties for Canadian Solar's U.S. sales.
- Canadian Solar explained that insurance costs related to warranties for U.S. sales are paid by Canadian Solar Inc., not Canadian Solar USA, and, thus, these insurance costs are indirect expenses not incurred in the United States. However, in the final results of the second administrative review, the Department found that, even though warranty claims on U.S. sales are submitted to the parent company, the warranties clearly pertain to subject merchandise sold by the U.S. affiliate and, therefore, to commercial activities in the United States. The same logic applies to these insurance costs related to warranties with respect to Canadian Solar.
- Canadian Solar failed to provide the insurance costs related to warranties as requested by the Department. Section 776(b) of the Act provides that, if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting the facts otherwise available.³⁸² In addition, the SAA states that the Department may use an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."³⁸³
- It is the Department's practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.³⁸⁴
- As partial adverse facts available for the missing warranty related insurance costs, in accordance with sections 776(a) and 776(b) of the Act, the Department should recalculate the U.S. warranty expense by applying the warranty accrual rate to the gross unit price reported by Canadian Solar in its U.S. sales file.

Canadian Solar:

- In the *Preliminary Results*, the Department decided correctly not to adjust Canadian Solar's net U.S. price for insurance costs related to warranties because these costs are an indirect expense incurred outside of the United States. The Department should continue to treat these insurance costs as an indirect selling expense in the final results.

³⁸² See Petitioner's Case Brief at 44 (citing Section 19 CFR 351.308(a); *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).

³⁸³ See Petitioner's Case Brief at 44 (citing SAA at 870; *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

³⁸⁴ See Petitioner's Case Brief at 44-45 (citing *Steel Threaded Rod From Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013) at 4, unchanged in *Steel Threaded Rod From Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).

- Section 351.402(b) of the Department’s regulations states that it “will make adjustments for expenses associated with commercial activities *in the United States* that relate to the sale to an unaffiliated purchaser.”³⁸⁵ Canadian Solar’s insurance costs related to warranties for U.S. sales were paid by Canadian Solar Inc., not Canadian Solar USA, and, therefore, were incurred outside of the United States.
- If the Department incorrectly determines that adjustments should be made for insurance costs related to warranties, it should reject the petitioner’s argument that it apply AFA. The Department may apply inferences adverse to the interests of a respondent when it “finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information.”³⁸⁶
- However, in accordance with section 782(d) of the Act, the Department should first inform the person submitting the response the nature of the deficiency and provide an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of investigations or reviews.
- Canadian Solar responded to the Department’s supplemental question regarding its reported insurance costs related to warranties for U.S. sales. The Department never followed up or informed Canadian Solar that its response was deficient.

Department’s Position: We agree with the petitioner that the Department should account for insurance costs related to warranties for U.S. sales. When asked by the Department whether Canadian Solar had “...reported insurance costs related to warranties for U. S. sales...,” Canadian Solar responded that the insurance costs related to warranties for U.S. sales “...are paid by {Canadian Solar Inc.}, not Canadian Solar USA. These are indirect expenses that are not incurred in the United States. Therefore...these expenses should not be deducted from U.S. price, and therefore they have not been included in the U.S. sales database.”³⁸⁷ Thus, Canadian Solar did not report insurance costs related to warranties for U.S. sales. However, 19 CFR 351.402(b) states that the Department will adjust the price of U.S. sales by “expenses associated with commercial activities in the United States that relate to the sale to an unaffiliated purchaser, no matter where or when paid.” Although record evidence indicates that Canadian Solar Inc. is located in Canada,³⁸⁸ in its case brief, Canadian Solar confirmed that the insurance costs paid by Canadian Solar Inc. were related to warranties covering U.S. sales. Thus, the payment outside of the United States was associated with commercial activities in the United States relating to sales of subject merchandise to unaffiliated purchasers. Therefore, the adjustment to U.S. prices for insurance expenses should not be limited to only those insurance payments made by Canadian Solar USA.³⁸⁹

³⁸⁵ See Canadian Solar’s Rebuttal Case Brief at 27 (citing SAA at 823 (“constructed export price will be calculated by reducing the price of the first sale to an unaffiliated customer in the United States by the amount of the following expenses (and profit) *associated with economic activities occurring in the United States . . .*”) (emphasis added)).

³⁸⁶ See Canadian Solar’s Rebuttal Case Brief at 28 (citing Section 776(b)(1) of the Act; *Zhejiang Dunan Hetain Metal Co. v. United States*, 652 F.3d 1333, 1346 (Fed. Cir. 2011) (citing *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1381 (Fed. Cir. 2003))).

³⁸⁷ See Canadian Solar’s June 17, 2016, Section C Supplemental Questionnaire Response at 32.

³⁸⁸ See Letter from Canadian Solar’s June 8, 2016 Section A Supplemental Questionnaire Response at Exhibit SA-19 for Canadian Solar Inc.’s 2015 audited annual report.

³⁸⁹ See *Stainless Steel Plate in Coils From Belgium; Final Results of Antidumping Duty Administrative*, 67 FR 64352, (October 18, 2002) and accompanying IDM at Comment 3 (In establishing constructed export price under

In *Solar Products Investigation Final*, the Department addressed a similar issue.³⁹⁰ In that case, the respondent paid insurance expenses outside of the United States which covered the U.S. affiliate's sales of solar panels. We determined that because the cost of insurance was associated with commercial activities in the United States, an adjustment to U.S. prices for the insurance expenses was appropriate.³⁹¹

However, we disagree with the petitioner's position that we should adjust U.S. prices for insurance expenses related to warranties based on partial adverse facts available. The Department asked Canadian Solar whether it had "...reported insurance costs related to warranties for U.S. sales ..." and Canadian Solar explained that it was not reporting these costs because they were incurred outside the United States. We did not request further information upon seeing Canadian Solar's explanation and, thus, we are not applying adverse facts available. As facts available, we relied on Canadian Solar Inc.'s 2015 annual report, which contains information on 2014 and 2015 unamortized carrying amounts for insurance premiums related to solar panel warranties, to determine the amount of the premiums for the POR, and made a deduction from U.S. price for the expense.³⁹²

Comment 21: Treatment of Overhead Items

Trina:

- The Department must not double-count production-related materials as both direct materials and overhead. For the final results, the Department should exclude from the NV calculation those inputs that Trina accounts for as overhead because those overhead items are most accurately regarded as "consumables" and were included in the surrogate financial statements' overhead expenses.
- In deciding whether to classify a respondent's overhead items as direct materials or overhead the Department considers: 1) whether the input is physically incorporated into the final product; 2) the input's contribution to the production process and finished product; 3) the relative cost of the input; 4) the way the cost of the input is typically treated in the industry; 5) whether the input: a) is consumed continuously with each unit of production; b) required for a particular segment of the production process; c) essential for production; d) used for incidental or occasional purposes; and 6) whether the surrogate financial statements treats similar materials as material costs or separate line-items.³⁹³

Section 772(d) of the Act, the Secretary will make adjustments for expenses associated with commercial activities in the United States that relate to the sale to an unaffiliated purchaser, no matter where or when paid. ... In addition, the phrase "no matter where or when paid" is intended to indicate that if commercial activities occur in the United States and relate to the sale to an unaffiliated purchaser, expenses associated with those activities will be deducted from CEP even if, for example, the foreign parent of the affiliated U.S. importer pays those expenses).

³⁹⁰ See *Solar Products Investigation Final* and accompanying IDM at Comment 12.

³⁹¹ *Id.*

³⁹² See Canadian Solar Inc.'s 2015 audited annual report at F-24.

³⁹³ See Trina's Case Brief at 9 (citing *Solar Cells Investigation Final* and accompanying IDM at Comment 7).

- None of Trina’s overhead materials are physically incorporated into the finished product.³⁹⁴
- In *Fujian Machinery*, the CIT agreed that “Commerce’s historical practice has been to treat not as factors of production, but rather as factory overhead, those items that are not physically incorporated into the subject merchandise.”³⁹⁵
- In *Brake Rotors from the PRC*, the Department found that “...{six items} are indirect materials and should be treated as part of factory overhead, because the function of these materials is to ‘assist’ in the manufacturing process and do {sic} not enter physically into the composition of the finished product.”³⁹⁶
- In *Fuyao Glass Industry Group*, the CIT found that “{a}fter surveying a number of Commerce’s determinations, the court has discerned several criteria that Commerce uses in determining whether a given material should be included as a part of factory overhead. First, Commerce must consider whether the material is physically incorporated into the final product, since materials that are not physically incorporated into a final product are considered to be “indirect materials” that are valued as part of factory overhead.”³⁹⁷ In the same case, the CIT found that “Commerce’s own determinations, when considered in the aggregate, tend to show that Commerce typically values material inputs as a separate factor of production only when that input is physically incorporated into the finished product.”³⁹⁸
- In this review, the Department should examine whether the items Trina has identified as overhead items are physically incorporated into the finished product in determining whether to treat them as direct materials or overhead items.
- Although all of Trina’s overhead items contribute to production, whether an item contributes to production is not determinative of whether it should be treated as a direct material. Moreover, simply because an item might be essential or used more than occasionally in production, does not mean that it should be regarded as a direct material.
- Lastly, a potential surrogate company would be expected to classify items as Trina has done in its accounting records if it follows an accounting standard comparable to Chinese GAAP.

³⁹⁴ See Trina’s Case Brief at 9 (citing Trina’s July 8, 2016 Section D Supplemental Questionnaire Response at Exhibit 11).

³⁹⁵ See Trina’s Case Brief at 10 (citing *Fujian Mach. & Equip. Imp. & Exp. Corp. v. United States*, 178 F.Supp.2d 1305, 1328 (CIT 2001) (*Fujian Machinery*)).

³⁹⁶ See Trina’s Case Brief at 10 (citing *Notice of Final Determinations of Sales at Less Than Fair Value: Brake Drums and Brake Rotors From the People’s Republic of China*, 62 FR 9160, 9169 (February 28, 1997) (*Brake Rotors from the PRC*) and accompanying IDM at Comment 8).

³⁹⁷ See Trina’s Case Brief at 10 (citing *Fuyao Glass Industry Group Co., Ltd. v. United States*, 29 C.I.T. 109, 123-24 (CIT 2005) (*Fuyao Glass Industry Group*)).

³⁹⁸ *Id.*

Petitioner:

- In *WBF from the PRC*, the Department explained that it has rejected the argument that physical incorporation is the determinative factor when deciding whether to treat an input as a direct material or an overhead expense.³⁹⁹
- Trina's Section D response is clear that Trina's overhead items are not minor inputs.⁴⁰⁰ The Department's well-established practice is to treat only "minor" material inputs as overhead.⁴⁰¹
- In *Citric Acid AR1 Final*, the Department valued certain items as material inputs, even though those materials were not present in the final product.⁴⁰² In *Steel Nails from the PRC*, the Department considered both the drawing powder that is used to facilitate the drawing of wire rod into wire, and the dies themselves, which act to draw wire rod down into a usable diameter in nail making, as direct materials.⁴⁰³ As in *Citric Acid AR1 Final*, neither drawing powder nor dies are present in finished steel nails.
- The Department valued materials deemed by Trina as overhead materials as direct materials in the investigation and the second administrative review of this proceeding. Nothing has changed since the investigation or the second administrative review that would warrant exclusion of these numerous important material inputs from the NV calculation.
- Record evidence does not demonstrate that the inclusion of these items would result in double counting. Styromatic, Ekarat, and SolarPro's financial statements do not separate "overhead" items from other raw materials. Specifically, Ekarat's financial statements do not distinguish between raw materials and consumables. While Styromatic's financial statements contain a separate "consumable" supplies/material line item and SolarPro's financial statements make the distinction between "main production materials" and "other materials," there is no means by which the Department can determine if they overlap with any of Trina's defined "overhead" expenses.

³⁹⁹ See Petitioner's Rebuttal Case Brief at 46 (citing *Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture From the People's Republic of China*, 69 FR 67313 (November 17, 2004) (*WBF from the PRC*) and accompanying IDM at Comment 6).

⁴⁰⁰ See BPI Note 5.

⁴⁰¹ See Petitioner's Rebuttal Case Brief at 42 (citing *Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars From the People's Republic of China*, 66 FR 33522 (June 22, 2001) and accompanying IDM at Comment 5; *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303 (May 22, 2006) and accompanying IDM at Comment 2; *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008) and accompanying IDM at Comment 27; *Seamless Refined Copper Pipe and Tube From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 60725 (October 1, 2010) and accompanying IDM at Comment 15).

⁴⁰² See Petitioner's Rebuttal Case Brief at 42 (citing *Citric Acid AR1 Final* and accompanying IDM at Comment 12).

⁴⁰³ See Petitioner's Rebuttal Case Brief at 43 (citing *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) (*Steel Nails from the PRC*) and accompanying IDM at Comment 17; *Certain Steel Threaded Rod from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 8907 (February 27, 2009) and accompanying IDM at Comment 2).

Department's Position: We disagree with Trina. The Department has, over time, developed several factors for assessing whether inputs should be classified as direct materials or overhead. These factors include: 1) whether the input is physically incorporated into the final product; 2) the input's contribution to the production process and finished product; 3) the relative cost of the input; and, 4) the way the cost of the input is typically treated in the industry.⁴⁰⁴ The Department has also classified inputs as direct materials if they were found to be: 1) consumed continuously with each unit of production; 2) required for a particular segment of the production process; 3) essential for production; 4) not used for incidental purposes; or, 5) otherwise a significant input to the manufacturing process rather than a miscellaneous or occasionally used material.⁴⁰⁵ Also of consideration has been whether the input was so regularly replaced as to represent a direct material rather than an overhead item.⁴⁰⁶ The Department relies on the totality of the evidence to guide its decision in each case.⁴⁰⁷ In other words, no single factor or combination of these factors will necessarily provide a dispositive indication of whether the Department classifies an input as direct materials or overhead.

Trina reported that its overhead materials are not physically integrated into the final products.⁴⁰⁸ However, based on proprietary information which demonstrates that Trina's overhead items were essential for production, we have continued to treat them as direct materials, with the exception of separate bars.⁴⁰⁹ Trina reported that the separate bars were not consumed in production.⁴¹⁰

Trina relies on several cases in arguing that unless a material is physically incorporated into the finished product, the material is classified as an indirect material and treated as part of factory overhead. In *Brake Rotors from the PRC*, the Department classified certain materials as factory overhead because "...the function of these materials is to 'assist' in the manufacturing process..." and the materials "...do not enter physically into the composition of the finished product."⁴¹¹ However, in that case, although the respondent claimed that limestone and firewood should be treated as indirect materials because they are not physically incorporated into the final product, the Department valued limestone as a direct material because it was consumed during the smelting process as flux, and valued firewood as an energy input consumed in production. Thus, we find *Brake Rotors from the PRC* supports the Department's decision to value Trina's claimed overhead inputs as direct materials because these materials were consumed, and not purely used to assist, in the manufacturing process.

In *Fujian Machinery* and *Fuyao Glass Industry Group*, the CIT noted that the Department must consider whether a material is physically incorporated into the final product in determining

⁴⁰⁴ See *Certain Steel Nails From the People's Republic of China: Final Results of Third Antidumping Duty Administrative Review; 2010-2011*, 78 FR 16651 (March 18, 2013) and accompanying IDM at Comment 4.

⁴⁰⁵ See *Solar Cells Investigation Final* and accompanying IDM at Comment 7; see also *Citric Acid AR1 Final* and accompanying IDM at Comment 18.

⁴⁰⁶ See *Certain Steel Nails from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 18816 (April 8, 2015) and accompanying IDM at Comment 16.

⁴⁰⁷ *Id.*

⁴⁰⁸ See Trina's May 25, 2016 Section D Questionnaire Response at 32.

⁴⁰⁹ See BPI Note 5.

⁴¹⁰ See BPI Note 6; see also Trina's July 8, 2016 Section D Supplemental Questionnaire Response at Exhibit 11.

⁴¹¹ See *Brake Rotors from the PRC* and accompanying IDM at Comment 8.

whether the material is classified as factory overhead or as a direct material. While the Department has taken this factor into consideration here, this factor alone is not determinative.⁴¹² In *WBF from the PRC*, the Department explained: {t}he Department has rejected the argument that incorporation is the determinative factor when deciding whether to treat an input as a direct material or an overhead expense....⁴¹³ As noted above, the Department relies on the totality of the evidence to guide its decision. In the instant review, while the overhead items were not physically incorporated in the final product, they were essential for production.⁴¹⁴

Trina asserts that its overhead items are regarded as “consumables” and included in the surrogate financial statements’ overhead expenses; thus including them in the NV calculation as direct materials would result in double-counting. While Styromatic (Thailand) Co., Ltd.’s 2015 financial statements have a separate line item for “consumable supplies” expenses, apart from raw materials, the Department cannot go behind these line items to determine whether the “consumables” expense overlaps with the expenses that Trina identified as overhead expenses.⁴¹⁵ Moreover, because all of Trina’s reported inputs, with the exception of separate bars, are always used in production and regularly replaced, we do not believe they should be considered “consumable supplies” that are accounted for in the surrogate overhead expenses.

Consequently, the Department finds it is appropriate to account for the items in question as separate FOPs.⁴¹⁶ The materials at issue were significant inputs to the manufacturing process, and, although Trina may consider them to be overhead items, the Department has valued them, with the exception of separate bars, individually as FOPs.

Comment 22: Debt Restructuring Income

Petitioner:

- The Department should disallow the entire amount of the debt restructuring income offset to Trina’s U.S. indirect selling expenses.
- Trina failed to provide a detailed explanation of the circumstances surrounding the debt restructuring. For instance, Trina has failed to provide a copy of the restructuring agreement, which contains critical information such as the terms and maturity of the loans, and the renegotiated interest rate. Moreover, Trina reported as an offset the entire amount of the debt restructuring income as recorded in its 2015 fiscal year income

⁴¹² See *WBF from the PRC* and accompanying IDM at Comments 6 and 47.

⁴¹³ See *WBF from the PRC* and accompanying IDM at Comment 6.

⁴¹⁴ See BPI Note 7.

⁴¹⁵ See, e.g., *Helical Spring Lock Washers From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 13833 (March 17, 2015) and accompanying IDM at Comment 6 (“In addition, we will treat Siam Anchor’s “Security Guard,” and “Rental” expenses as overhead expenses because we have no reason to “look behind” Siam Anchor’s financial statements.”); see also *Multilayered Wood Flooring From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011) and accompanying IDM at Comment 2 (“There is no record evidence as to what a typical overhead rate should be other than to look to the financial statements that pass the criteria used by the Department in selecting surrogate financial statements. As stated above, because the Department cannot go behind line items in the surrogate financial statements, the Department bases its determinations on the information contained within the financial statements themselves.”)

⁴¹⁶ See BPI Note 6.

statement, even though the entire amount of the income may relate to loans outstanding over multiple fiscal years. The Department's practice has been to allow offsets to interest expenses for only the portion of income that pertains to the current POR. In the instant review, Trina has failed to provide the detailed information regarding the debt restructuring that is critical for determining the portion of the debt restructuring income attributable to the current POR.

- Debt restructuring income does not relate to indirect selling expenses, as defined under 19 CFR 351.410 and under sections 772(c), 772(d), and 773(a)(6) of the Act. Thus, debt restructuring income must not be used as an offset to Trina's U.S. indirect selling expenses.⁴¹⁷ Rather, the Department has often treated the income on debt restructuring as an offset to interest expenses used in the calculation of the cost of production and constructed value.⁴¹⁸

Trina:

- The Department should continue to calculate Trina's net U.S. selling prices using only the indirect selling expenses that Trina reported in field INDIRSU. The petitioner's comments and citations with respect to Trina's U.S.'s debt restructuring income are incorrect, misstate Department policy, and must be disregarded.
- In this review, the record establishes that Trina U.S. only sells subject merchandise that it purchases from Trina, and that it is not engaged in any other operations. When considering a U.S. affiliate that is engaged only in selling activities, it is the Department's long-standing practice to treat all of a U.S. affiliate's selling, G&A, and financial expenses and income as related to sales.
- Because the Department includes all G&A expenses, as well as interest income and expenses, of a U.S. sales affiliate in the calculation of U.S. indirect selling expenses, all of Trina U.S.' non-direct selling expenses and non-sales income related to company operations, including interest income and debt restructuring income, are appropriately treated as related to indirect selling expenses.⁴¹⁹

⁴¹⁷ See Petitioner's Case Brief at 40 (citing *Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from Indonesia*, 72 FR 60636 (October 25, 2007) (*CFS Paper from Indonesia*) and accompanying IDM at Comment 1).

⁴¹⁸ See Petitioner's Case Brief at 40 (citing *Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 68 FR 41303 July 11, 2003) (*Mushrooms from India*) and accompanying IDM at Comment 13; see also *Light-Walled Rectangular Pipe and Tube From Mexico: Notice of Final Determination of Sales at Less Than Fair Value*, 69 FR 53677 (September 2, 2004) (*LWRPT from Mexico*) and accompanying IDM at Comment 28; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From South Korea*, 65 FR 41437 (July 5, 2000) (*Steel Beams from South Korea*) and accompanying IDM at Comment 26.

⁴¹⁹ See Trina's Rebuttal Case Brief at 24 (citing *Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Thailand*, 66 FR 49622 (September 28, 2001) (the Department explained that "because this affiliate ... is a selling entity, it is appropriate to include G&A expenses incurred by the entity in the selling expense calculation."); *Notice of Final Determination of Sales at Less Than Fair Value: Melamine Institutional Dinnerware Products From the People's Republic of China*, 62 FR 1708, 1710 (January 13, 1997) and accompanying IDM at Comment 18 (all expenses not treated as direct selling or movement expenses should be included in indirect selling expenses); *Final Determination of Sales at Less Than Fair Value: Sweaters Wholly or in Chief Weight of Man-Made Fiber from the Republic of Korea*, 55 FR 32659 (August 19, 1990)).

- Indirect selling expenses neither result from, nor bear a direct relationship to, a particular sale.⁴²⁰ Because such indirect selling expenses cannot be tied to a particular sale, they are generally allocated to all sales in a particular market. For these reasons, as the petitioner correctly notes, interest expenses incurred by the U.S. affiliate are included in the total pool of U.S. indirect selling expenses under section 772(d)(1)(D) of the Act.”⁴²¹ For these same reasons, the Department must include Trina’s debt restructuring income in the total pool of U.S. indirect selling expenses.
- The entire amount of Trina U.S.’s debt restructuring income should be included in Trina U.S.’ indirect selling expense calculation. In *Glycine from India*, the Department determined that the respondent recognized both debt expenses and debt recovery on its income statement, and thus included both the debt expenses and debt recovery income in the calculation of the rate for indirect selling expenses.⁴²² In this case, like *Glycine from India*, Trina U.S. recorded its financial expenses and its debt restructuring income on its income statement, and there is no basis to deviate from Trina U.S.’ financial accounting system and exclude the debt restructuring income from the calculation of Trina U.S.’ indirect selling expense ratio.
- Furthermore, there is no basis for the Department to determine that the debt restructuring income is an “extraordinary income item” rather than the recovery of debt. That Trina U.S.’ debt restructuring income is large would not render it “extraordinary income” under U.S. GAAP. In addition, if the amount were an expense instead of income, the Department would treat this amount as an expense in the year incurred, not as an extraordinary item to be excluded. Consistency and fairness thus require that the Department treat Trina U.S.’ restructuring of debt in the same manner.
- The petitioner claims that debt restructuring income is not specifically identified as an indirect selling expense under 19 CFR 351.410 (differences in circumstances of sale) or in sections 772(c), 772(d), and 773(a)(6) of the Act, and thus cannot offset Trina U.S.’ indirect selling expenses. However, “indirect selling expense” itself is not mentioned in any of these authorities. More importantly, section 772(d)(1)(D) of the Act specifically directs the Department to reduce CEP by the amount of “any selling expenses not deducted under subparagraph (A), (B), or (C),” and consistent with this section of the Act and as described above, it is the Department’s general practice to include financial expenses and financial income (such as debt restructuring income) in the calculation of indirect selling expenses because these items are not elsewhere in the Department’s calculations.⁴²³
- In *CFS Paper from Indonesia*, the issue was whether the Department should adjust EP sales prices for debt repayment expenses paid to an unaffiliated trading company that

⁴²⁰ See Trina’s Rebuttal Case Brief at 25 (citing Cf. section 772(d)(1)(B) with section 772(d)(1)(D); see also *Torrington v. United States*, 82 F.3d 1039, 1050 (Fed. Cir. 1996); see also *Torrington v. United States*, 68 F.3d 1347, 1353 (Fed. Cir. 1995).

⁴²¹ See Trina’s Rebuttal Case Brief at 25-26 (citing *Notice of Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea*, 66 FR 3540 (January 16, 2001) and accompanying IDM at Comment 1).

⁴²² See Trina’s Rebuttal Case Brief at 26 (citing *Notice of Final Determination of Sales at Less Than Fair Value: Glycine from India*, 73 FR 16640 (March 28, 2008) (*Glycine from India*) and accompanying IDM at Comment 2).

⁴²³ See Trina’s Rebuttal Case Brief at 27 (citing *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review*, 74 FR 40167 (August 11, 2009) and accompanying IDM at Comment 4).

were “not associated with making sales of the subject merchandise.”⁴²⁴ The Department declined to make the adjustment. That is not the case here with respect to Trina U.S.’ debt restructuring income, which necessarily is related to sales of subject merchandise.

Department’s Position: We agree with the petitioner, in part. As discussed below, the Department’s practice is to allow an offset only for the current portion of the debt restructuring gain.⁴²⁵ The regulations state that “any party seeking to report an expense or a price adjustment on an expense or a price adjustment on an allocated basis must demonstrate to the Secretary’s satisfaction that the allocation is calculated on as specific a basis as is feasible, and must explain why the allocation methodology used does not cause inaccuracies or distortions.”⁴²⁶ It is a longstanding Department practice that, when a respondent makes a claim for a favorable adjustment, it must demonstrate that it is entitled to that adjustment.⁴²⁷ The respondents have the burden of providing data, which are within their control, to establish a position that they urge the Department to take; in antidumping proceedings, “respondents have the burden of creating an adequate record to assist Commerce’s determinations.”⁴²⁸ In this case, Trina did not provide sufficient information and the record is unclear regarding its debt restructuring agreement, such as explanations or terms of the agreement, to allow the Department to determine the current portion of the gain, and, thus, we have disallowed the debt restructuring income offset to U.S. indirect selling expenses for these final results of review.

Trina cites to *Glycine from India* in asserting that, in that case, the Department included bad-debt expenses and bad-debt recovery income in the calculation of the rate for indirect selling expenses because the respondent recognized bad-debt recovery on the income statement.⁴²⁹ The Department normally classifies bad-debt expense as indirect selling expenses because those expenses relate to the sales of a company.⁴³⁰ However, although Trina U.S. similarly recognizes its debt restructuring income on its income statement, it is Department practice to only include the current portion of debt restructure as an offset. In *Steel Beams from South Korea*, the respondent benefited from a gain on exemption of debt as a result of debt restructuring covering multiple accounting periods through the maturity of the loans.⁴³¹ The Department found it distortive that the respondent recorded the entire gain in the year of restructure, while

⁴²⁴ See Trina’s Rebuttal Case Brief at 27 (citing *CFS Paper from Indonesia* and accompanying IDM at Comment 1.

⁴²⁵ See *Steel Beams from South Korea* and accompanying IDM at Comment 26; see also *Mushrooms from India* and accompanying IDM at Comment 13; see *LWRPT from Mexico* and accompanying IDM at Comment 28).

⁴²⁶ See 19 CFR 351.401(g)(2); see also *Frontseating Service Valves From the People’s Republic of China: Final Results of the 2008-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 76 FR 70706 (November 15, 2011), and accompanying IDM at Comment 15; see also *Certain New Pneumatic Off-the-Road Tires From the People’s Republic of China: Final Results of Antidumping Duty New Shipper Review*; 2011-2012, 78 FR 33341 (June 4, 2013) and accompanying IDM at Comment 3.

⁴²⁷ See *Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews*, 67 FR 55780 (August 30, 2002) and accompanying IDM at Comment 4A.

⁴²⁸ See *NSK Ltd. v. United States*, 919 F. Supp. 442, 449 (CIT 1996); *Tianjin Machinery Import & Export Corp. v. United States*, 806 F. Supp. 1008, 1015 (CIT 1992).

⁴²⁹ See *Glycine from India* and accompanying IDM at Comment 2.

⁴³⁰ See *Notice of Final Determination of Sales at Less than Fair Value: Coated Free Sheet Paper from the Republic of Korea*, 72 FR 60630 (October 25, 2007) and accompanying IDM at Comment 14.

⁴³¹ See *Steel Beams from South Korea* and accompanying IDM at Comment 26.

capitalizing and amortizing over several years the associated interest expense. Thus, in that case, the Department reversed the full gain and reduced the interest expense for the current portion of the gain on debt restructuring. Similarly, in *Mushrooms from India* and *LWRPT from Mexico*, the Department noted that its practice is to offset financial expenses only with the current portion of a gain on debt restructuring.⁴³²

In the instant review, Trina provided Trina U.S.’ 2015 income statements listing the amount of the debt restructuring income,⁴³³ but did not provide the terms of the debt restructuring agreement, an explanation of the agreement, or the maturity of the related loan(s). While we agree with Trina that debt restructuring income could be considered an offset to indirect selling expenses because Trina U.S. is a sales affiliate (all of its operations relate to selling), it is not possible to determine the current portion of the debt restructuring income covering only the POR. Thus, for the final results, we have disallowed the debt restructuring income offset to Trina U.S.’ indirect selling expenses.

Comment 23: Exclusion of Import Data with Values but Quantities of Zero

Trina:

- In the investigation in the instant proceeding, the Department stated that zero quantity import data reflect imports of less than 0.5 units of measure that were rounded to zero.⁴³⁴ The Department also found, in the investigation, that all of the import values with zero quantities were relatively low import values that were typically in the range of import values from other countries where the imported quantity was also very small. In *Solar Cells AR2 Final*, the Department also concluded that the zero quantity imports were attributable to rounding and “determined not to exclude the zero-quantity data from the SV calculation on the basis of increasing accuracy.”⁴³⁵
- The Department should exclude zero quantity imports when calculating AUVs for surrogate valuation purposes in this review. The record lacks evidence that all zero quantity imports are explained by rounding small quantity imports to zero, or that their inclusion in the calculation improves accuracy.
- The unexplained occurrence of zero quantity imports is pervasive. A review of the “Calculated_SV_Data” worksheet in Trina’s SV file indicates that 7.5 percent of all data points are zero quantity imports. Specifically, there are 18,801 imports in total of which 1,411 imports report zero quantities. The worksheet also indicates that 77 percent of all HTS classifications include zero quantity imports.
- The data show there are a far greater number of imports expressed as zero quantity imports than there are other small quantity imports expressed as a quantity of one unit of measure. Trina’s “Calculated_SV_Data” worksheet indicates that 1,411 imports have zero quantities and 610 imports have a quantity of one. If the 1,411 imports reflect quantities below 0.5 units of measure rounded to zero, it is reasonable to expect that double that quantity (*e.g.*, approximately 2800 observations) would be between 0.5 and

⁴³² See *Mushrooms from India* and accompanying IDM at Comment 13; see also *LWRPT from Mexico* and accompanying IDM at Comment 28.

⁴³³ See Trina’s Section A Response at Exhibit A-18.

⁴³⁴ See Trina’s Case Brief at 21 (citing *Solar Cells Investigation Final* and accompanying IDM at Comment 8).

⁴³⁵ See Trina’s Case Brief at 21 (citing *Solar Cells AR2 Final* and accompanying IDM at Comment 22).

1.49 units of measure rounded to one unit. However, as noted, there are only 610 imports with a quantity of one.

- If the zero quantity imports are attributable to rounding, then the exclusion of the corresponding values will improve accuracy because the quantity has already been excluded by rounding to zero so the value should similarly be excluded. If the zero quantity imports are attributable to another cause, then the inclusion of these imports can only be distortive and diminish accuracy.

Petitioner:

- The Department should not revise the SV data where quantity is not reported.
- The Department declined to exclude zero quantity imports from its SV calculations in the investigation and the *Solar Cells AR2 Final* in this proceeding, as well as in other cases such as *Fresh Garlic from the PRC*, because the Department found that such instances reflect import amounts that had been rounded to zero.⁴³⁶ Based on the same rationale as *Solar Cells AR2 Final*, and without concrete evidence showing the SVs are clearly distortive, the Department should continue to include zero quantity imports for surrogate valuation purposes.
- It is unclear why Trina concluded that the number of import data points rounded to a quantity of one is double the number of data points rounded to a quantity of zero.
- There is no support for the assumption that only imports less than 0.49 kilograms were rounded a quantity of zero. In many instances in trade, where the imported quantity falls below a certain threshold, such as one pound or one kilogram, the default action is to assign the import a quantity of zero. Thus, it is possible that the maximum imported quantity rounded to zero was 0.99 kilograms rather than 0.49 kilograms.

Department's Position: We continue to find no basis to conclude that the zero quantity import data included in our SV calculations are errors or that these zero quantity imports result in unreliable and distortive SVs. As explained in the investigation and the *Solar Cells AR2 Final*⁴³⁷ in this proceeding, if the zero quantities were the result of errors, we would expect such errors to also occur with respect to the reported *value* in at least some instances; however, there are no imports in the data with a zero value. Moreover, if Trina is correct that the zero quantity imports are erroneous data points, which, based on the import data collected for this review, occur 7.5 percent of the time, this suggests substantive error rates in the GTA data, even before considering the error rate for value data. No party has suggested that the GTA data, taken as a whole, are unreliable, and we have no basis for reaching such a conclusion. Therefore, we do not believe the explanation that zero quantity data points are errors is supported by the evidence.

Rather, we find the zero quantity imports attributable to rounding small import quantities to zero.⁴³⁸ As explained in the *Solar Cells AR2 Final*, rounding has both upward and downward

⁴³⁶ See Petitioner's Rebuttal Case Brief at 39 (citing *Solar Cells Investigation Final* and accompanying IDM at Comment 8; *Solar Cells AR2 Final* and accompanying IDM at Comment 22; *Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 36168 (June 10, 2013) (*Fresh Garlic from the PRC*) and accompanying IDM at Comment 8.

⁴³⁷ See *Solar Cells Investigation Final* at Comment 8 ("If such instances involve aberrational data (e.g., situations caused by data collection or data input errors), they should occur at random.").

⁴³⁸ See *Solar Cells AR2 Final* and accompanying IDM at Comment 22.

effects. Some quantities are rounded to the next lower whole number (*e.g.*, zero) and some quantities are rounded to the next higher whole number. This results in an offsetting effect. It is not clear such rounding significantly distorts the data.

Trina questions the conclusion that zero quantity imports result from rounding by claiming that if the 1,411 zero quantity imports in the data reflect imports with quantities below 0.5 units of measure that are rounded to zero, it is reasonable to expect that double that number of imports (*e.g.*, approximately 2,800 imports) would have between 0.5 and 1.49 units of measure and be rounded to a quantity of one. However, Trina notes that there are only 610 imports with a quantity of one. Trina's argument appears to be based on the conclusion that there are 1,411 data points (imports) for every 0.5 interval in unit of measure. However, there is no basis for concluding that every 0.5 interval in unit of measure will have 1,411 imports associated with it. Hence, we do not believe this line of reasoning demonstrates that rounding cannot explain the zero quantity imports. For the above reasons, the Department has determined not to exclude the zero quantity data from the SV calculation on the basis of increasing accuracy.

Comment 24: Clerical Errors

Canadian Solar:

- The Department incorrectly added freight costs to the market economy purchase price of certain inputs with delivered prices, thereby double-counting freight costs, failed to convert the Thai truck freight SV from Thai Baht to U.S. dollars when used in connection with market economy purchases, and incorrectly allocated electricity consumption to module assembly.

Trina:

- The Department incorrectly assigned the highest usage rate to all consumption of recycled silicon rather than applying this rate, as partial AFA, to only the portion of recycled silicon associated with solar cells purchased from unaffiliated suppliers that failed to provide their FOPs.

Petitioner:

- Canadian Solar is correct that the Thai truck freight SV used in connection with market economy purchases should be converted to U.S. dollars. However, this is not the only error involving this SV. The Department also failed to inflate the Thai truck freight SV, which is a 2013 value, to a POR value.

Department's Position: We agree with Canadian Solar that we double-counted freight costs for certain market economy purchases, failed to convert the Thai truck freight SV used in certain calculations to U.S. dollars, and applied the incorrect ratio to allocate electricity expenses to module assembly. We also agree with the petitioner that we should have inflated the Thai truck freight SV. Furthermore, we agree with Trina that we should have applied the AFA rate to only the portion of costs for which Trina failed to report FOPs. We have corrected these errors in these final results.

Also, in the process of considering these clerical error comments, we discovered that, in calculating the total freight costs of market economy purchases for Trina, we incorrectly multiplied the freight cost by the exchange rate of the currency of Trina's market economy purchases. This exchange rate was unrelated to freight costs. We have corrected this error for these final results.

Comment 25: Separate Rate Status for Shenzhen Glory Industries Co., Ltd.

Shenzhen Glory:

- In the *Preliminary Results*, the Department found that three companies, including Shenzhen Glory, were not entitled to a separate rate because they did not submit separate rates applications or certifications.⁴³⁹
- Shenzhen Glory timely filed a no shipments certification on February 24, 2016, within 30 days of the Department's initiation of the review, confirming that it made no exports, sales, or entries of subject merchandise into the United States during the POR.
- Shenzhen Glory filed the certification on the same day with two other exporters—Dongguan Sunworth Solar Energy Co., Ltd. and Jiangsu High Hope Int'l Group, which the Department recognized in the *Preliminary Results* as having no shipments during the POR.
- The Department should find that Shenzhen Glory had no sales during the POR, and therefore rescind the administrative review with respect to Shenzhen Glory.

No other parties commented on this issue.

Department's Position: In the *Preliminary Results*, the Department incorrectly stated that Shenzhen Glory was not eligible for separate rate status.⁴⁴⁰ Shenzhen Glory established its separate rate status in the prior segment of this proceeding.⁴⁴¹ In the instant review, Shenzhen Glory timely submitted a no-shipments certification indicating that it had no sales, shipments, or entries of subject merchandise during the POR.⁴⁴²

Consistent with our practice, the Department requested that CBP conduct a query on potential shipments made by Shenzhen Glory during the POR. In CBP Message 6320304, the Department alerted CBP of Shenzhen Glory's claim of no shipments and requested that CBP officials notify the Department within 10 days should they be in possession of information contrary to this no shipments claim. CBP officials did not contact the Department with contrary information. Based on Shenzhen Glory's timely no-shipment certification and our analysis of the CBP information, we determined that Shenzhen Glory had no shipments during the POR.

⁴³⁹ See Shenzhen Glory's Case Brief at 1-2 (citing *Preliminary Results*).

⁴⁴⁰ See *Preliminary Results* at 81 FR 93888, 93889 and accompanying PDM at 12.

⁴⁴¹ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2013-2014*, 80 FR 80746 (December 28, 2015) and accompanying PDM at 10, unchanged in *Solar Cells AR2 Final*.

⁴⁴² See Letter from Shenzhen Glory's February 24, 2016 Notice of No Sales Letter.

Although Shenzhen Glory requests that the Department rescind its review of the company, the Department is not rescinding its review of Shenzhen Glory. Consistent with a refinement to its assessment practice in NME cases, the Department finds that it is not appropriate to rescind the review with respect to Shenzhen Glory in these circumstances but, rather, to complete the review with respect to Shenzhen Glory and issue appropriate instructions to CBP based on the final results of the review.⁴⁴³

Comment 26: Separate Rate Status for Hangzhou Sunny Energy Science & Technology Co., Ltd.

Hangzhou Sunny and Kencove:

- The record in this review shows that subject merchandise produced and exported by Hangzhou Sunny Energy Science and Technology Co. Ltd. (Sunny) was entered into and sold to the United States during the POR; however, in the *Preliminary Results*, the Department found that Sunny did not have any reviewable transactions during the POR.⁴⁴⁴ Kencove was an importer of subject merchandise exported by Sunny during the POR.
- Based on the record, the Department should grant Sunny a separate rate.
- If the Department continues to find no reviewable transactions, it should issue an amended notice which explains the factual basis for its decision and provide an adequate opportunity for comment.⁴⁴⁵
- The Department should issue liquidation instructions which identify the importer in order to ensure that sales by Sunny to the U.S. buyer/importer are correctly identified by CBP and the Department should identify on the record that it will include the information for the imported by or sold to party.

No other interested parties commented on this issue.

Department's Position: Sunny and Kencove are correct that the shipment information submitted by Sunny does demonstrate that Sunny had a shipment and sale of subject merchandise during the POR.⁴⁴⁶ Specifically, the commercial invoice submitted by Sunny as part of its Separate Rate Application demonstrates that Sunny did have a sale of subject merchandise during the POR. Because Sunny did have a reviewable transaction during the POR and meets the other requirements for separate-rate status, the Department has assigned Sunny a separate rate.

While 19 CFR 351.212(b)(1) provides that “the Secretary normally will calculate an assessment rate for each importer of subject merchandise covered by the review,” the Department does not calculate a margin for separate rate companies. Sunny is a separate rate respondent whose dumping margin is based on the dumping margins calculated for mandatory respondents. Therefore, the Department did not calculate importer/customer-specific dumping rates for Sunny.

⁴⁴³ See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694, 65695 (October 24, 2011).

⁴⁴⁴ See Sunny's Case Brief at 2-3; see also Kencove's Case Brief at 3.

⁴⁴⁵ See Sunny's Case Brief at 7; see also Kencove's Case Brief at 8.

⁴⁴⁶ See Sunny's March 10, 2016 Separate Rate Application at Exhibit 2a.

Hence, there is no basis for issuing importer/customer-specific liquidation instructions for Sunny.

Comment 27: Separate Rate Status for Ningbo Qixin Solar Electrical Appliance Co., Ltd.

Ningbo Qixin:

- In the *Preliminary Results*, the Department makes no mention of Ningbo Qixin. It is not referenced in the *Preliminary Results Federal Register* notice, the PDM or in the Department's draft liquidation instructions.
- For the final results, the Department should grant a separate rate to Ningbo Qixin.⁴⁴⁷
- In its separate rate application, Ningbo Qixin certified that it made a sale of subject merchandise to the United States during the POR and provided supporting documents.⁴⁴⁸ However, in the *Preliminary Results*, the Department failed to make a separate rate determination regarding Ningbo Qixin.⁴⁴⁹
- The failure to include any mention of Ningbo Qixin in the *Preliminary Results* was a clear error.⁴⁵⁰
- If the Department believes there was no error with respect to Ningbo Qixin in the *Preliminary Results*, it must provide a clear statement to that effect and provide Ningbo Qixin an adequate opportunity to comment.⁴⁵¹
- As an alternative, if the Department should determine that it need not review Ningbo Qixin in this POR, for the final results, it should specifically rescind the review as to Ningbo Qixin and issue instructions to CBP to liquidate any entries according to the previously determined rate for it.

No other interested parties commented on this issue.

Department's Position: Ningbo Qixin provided sales documents as part of its Separate Rate Application (SRA), which included a U.S. Customs 7501 Entry Summary. This Entry Summary lists Ningbo Qixin's sale under the case number for a different proceeding than the instant proceeding. Ningbo Qixin claims that this sale was misclassified in the Entry Summary by the importer and has demonstrated that it has taken steps to resolve this matter. However, the fact remains that Ningbo Qixin has yet to provide evidence of a POR entry of subject merchandise suspended under the instant proceeding.

Ningbo Qixin submitted its SRA on March 10, 2016. The Department reviewed the SRA and found some deficiencies. On June 24, 2016, the Department issued a supplemental questionnaire to obtain additional information. In this supplemental questionnaire, the Department informed Ningbo Qixin that the sale it provided as proof of a POR sale did not appear to be a sale of subject merchandise. The Department asked Ningbo Qixin to provide sales documentation demonstrating that this sale was in fact a sale of subject merchandise during the POR. On July 12, 2016, Ningbo Qixin responded to the Department's supplemental questionnaire. In its

⁴⁴⁷ See Ningbo Qixin's Case Brief at 3.

⁴⁴⁸ *Id.* at 4.

⁴⁴⁹ *Id.* at 3.

⁴⁵⁰ *Id.* at 4.

⁴⁵¹ *Id.* at 5.

response, Ningbo Qixin stated that the sale it provided as proof of a POR sale is actually a sale of subject merchandise; however, Ningbo Qixin only learned that the case number in the entry summary is not correct upon receiving the Department's supplemental questionnaire. As an attachment to its response, Ningbo Qixin provided a copy of email correspondence between Ningbo Qixin and its importer, discussing efforts to correct the alleged error.

Not having received a definitive answer to its first supplemental questionnaire, the Department issued a second supplemental questionnaire to Ningbo Qixin on November 10, 2016. In this questionnaire, the Department once again asked Ningbo Qixin to submit sales documentation demonstrating that the sale it provided as proof of a POR sale was in fact a sale of subject merchandise. On November 21, 2016, Ningbo Qixin submitted its response to the second supplemental questionnaire. In this response, Ningbo Qixin re-stated that, while the sale it provided as proof of a POR sale is in fact a sale of subject merchandise, the case number on the entry summary is incorrect because of a mistake by the importer and Ningbo Qixin has asked the U.S. importer to correct the case number. Furthermore, Ningbo Qixin added, the importer has applied to correct the case number with the CBP. In attachment to this response, Ningbo Qixin provided a copy of the U.S. importer's protest filed with CBP.

The Department's SRA contains the following notation: "{f}or reviews, an exporter cannot obtain a separate rate without providing the Department the relevant U.S. Customs 7501 Entry Summary for a suspended entry..."⁴⁵² Additionally, the Department has stated in other cases that "we rely upon CBP data and or CBP entry documentation to determine if the separate rate applicant had suspended entries during the POR."⁴⁵³ It is not enough that Ningbo Qixin has attempted to correct the alleged mistake with CBP. Without conclusive evidence that the entry of Ningbo Qixin's merchandise was, in fact, misclassified and has now been suspended under the case number for the instant proceeding, Ningbo Qixin has not satisfied the requirements for obtaining a separate rate. Therefore, the Department finds that Ningbo Qixin did not have a suspended entry of subject merchandise during the POR.

While the Department inadvertently omitted a discussion of Ningbo Qixin's separate rate status from the *Preliminary Results*, Ningbo Qixin became aware of the issue through the Department's supplemental questionnaires. In addition, the Department did not state in the *Preliminary Results* that Ningbo Qixin was eligible for a separate rate, which served as an indicator that it might not be obtaining a separate rate for the final results. Furthermore, Ningbo Qixin was not deprived of the opportunity to comment on the direction it believed the Department may go and, indeed, availed itself of that opportunity by briefing the issue. Yet, there continues to be nothing on the record that provides evidence of a suspended entry under the case number for the instant proceeding. Therefore, in these final results, the Department has not granted Ningbo Qixin separate-rate status.

With regard to Ningbo Qixin's argument about rescission of the review as it pertains to Ningbo Qixin, the Department has determined not to rescind the review. While Ningbo Qixin did submit

⁴⁵² See Ningbo Qixin's March 10, 2016 Separate Rate Application at 5.

⁴⁵³ See *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 20197 (April 15, 2015) and accompanying IDM at Comment 3.

a SRA, its SRA did not include evidence of a suspended entry of subject merchandise during the POR. The sale included within Ningbo Qixin's SRA was classified under a different case, which means that there were no entries upon which to grant a separate rate. Therefore, in these final results, Ningbo Qixin will be treated as part of the PRC-wide entity.

Comment 28: Toenergy Technology Hangzhou Co., Ltd.'s Liquidation Instructions

Toenergy:

- The Department's draft liquidation instructions state that Toenergy was the exporter and do not include the name of the U.S. buyer/importer.
- For the final results, in order to ensure that sales by Toenergy to the U.S. buyer/importer are correctly identified by CBP, the Department should modify the liquidation instructions sent to CBP to clearly indicate and include the name of the importer to ensure there is no confusion by CBP at the time of liquidation.⁴⁵⁴

Petitioner:

- To the extent the Department accedes to Toenergy's request to indicate and include the name of its importer in the agency's liquidation instructions to CBP, the Department should match importers with their corresponding exporters in liquidation instructions, to ensure the accurate assessment of antidumping duty rates.⁴⁵⁵

Department's Position: While 19 CFR 351.212(b)(1) provides that "the Secretary normally will calculate an assessment rate for each importer of subject merchandise covered by the review," the Department does not calculate a margin for separate rate companies. Toenergy is a separate rate respondent whose dumping margin is based on the dumping margins calculated for mandatory respondents. Therefore, the Department did not calculate importer/customer-specific dumping rates for Toenergy. Hence, there is no basis for issuing importer/customer-specific liquidation instructions for Toenergy.

⁴⁵⁴ See Toenergy's Case Brief at 4.

⁴⁵⁵ See Petitioner's Rebuttal Case Brief at 4.

RECOMMENDATION

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



Agree



Disagree

X 

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance