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July 5, 2017

MEMORANDUM TO: Carole Showers
Executive Director, Office of Policy
performing the duties of
Deputy Assistant Secretary for Enforcement and Compliance

FROM: Edward Yang
Senior Director, Office VII
Antidumping and Countervailing Duty Operations
Enforcement and Compliance

SUBJECT: Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative: Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China; 2014-2016

SUMMARY:

We analyzed the case and rebuttal briefs submitted by interested parties in the antidumping duty administrative review of certain crystalline silicon photovoltaic products (certain solar products) from the People's Republic of China. We recommend that you approve the positions described in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is a complete list of the issues for which we received comments:

Comment 1: Scope of the Order
    A) The Scope of the Order Is Unlawful
    B) The Final Scope Determination Does Not Apply Retroactively
Comment 2: CVD Export Subsidies
Comment 3: Use of Zero Import Quantity
Comment 4: Use of Differential Pricing Analysis
Comment 5: Surrogate Value for Aluminum Frames
Comment 6: Surrogate Value for Scrap Modules
Comment 7: Exclusion of Certain Sales in the Calculation of Dumping Margin
Comment 8: Warranty Expenses
Comment 9: Debt Restructuring Income
Comment 10: Surrogate Value for Module Glass
Comment 11: Selection of Financial Statements
Comment 12: JA Solar Technology Co., Ltd.'s No Shipments Claim

A table of shortened citations is included after the discussion of the issues below.

Background:

On March 7, 2017, the Department of Commerce (the Department) issued its *Preliminary Results*.[1] On April 5, 2017, the Department extended the due dates of case briefs and rebuttal briefs.[2] On April 25, 2017, the Department placed on the record a memorandum regarding Shanghai JA Solar Technology Co., Ltd.'s (JA Solar) no shipment claim and shipment data from U.S. Customs and Border Protection (CBP).[3]

On April 11, 2017, the Department received case briefs from Shanghai BYD Co., Ltd and BYD Industrial Co., Ltd. (collectively BYD); Changzhou Trina Solar Energy Co., Ltd. and its affiliates Tina Solar (Changzhou) Science & Technology Co., Ltd and Trina Solar (US) (collectively Trina); SNJ Enterprises, LLC, Dba Zamp Solar (SNJ); and SolarWorld Americas, Inc. (the petitioner). BYD incorporated and adopted by reference the arguments made by other Chinese respondents participating in this review.

On April 12, 2017, the Department further extended the due date for rebuttal briefs.[4] On April 21, 2017 the Department received rebuttal briefs from Trina and the petitioner. On May 1, 2017, JA Solar timely submitted comments regarding the Department's memorandum on JA Solar's no shipment claim. No parties submitted rebuttal comments regarding JA Solar's no shipment claim.

Scope of the Order:

The merchandise covered by the order is modules, laminates and/or panels consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including building integrated materials. For purposes of this order, subject merchandise includes modules, laminates and/or panels assembled in the PRC consisting of crystalline silicon photovoltaic cells produced in a customs territory other than the PRC.

Subject merchandise includes modules, laminates and/or panels assembled in the PRC consisting of 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

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[1] *See Crystalline Silicon Photovoltaic Products From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2014-2016,* 82 FR 12793 (March 7, 2017) (*Preliminary Results*) and Preliminary Decision Memorandum (PDM).
[2] *See* memorandum to interested parties re: "Certain Crystalline Silicon Products from the People's Republic of China: Extension of Due Dates of Case Briefs," dated April 5, 2017.
[3] *See* memorandum to interested parties re: "Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Shanghai JA Solar Technology Co., Ltd.'s No-shipment Claim and Release of U.S. Customs and Border Protection Information Relating to No Shipment Claims Made in the 2014-2016 Administrative Review of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China," dated April 25. 2017.
[4] *See* memorandum to interested parties re: "Certain Silicon Products from the People's Republic of China: Extension of Due Dates of Rebuttal Briefs," dated April 12, 2017.

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.

Excluded from the scope of the 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 the order are modules, laminates and/or panels assembled in the PRC, consisting of crystalline silicon photovoltaic cells, not exceeding 10,000mm^2 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 cells. Where more than one module, laminate and/or panel is permanently integrated into a consumer good, the surface area for purposes of this exclusion shall be the total combined surface area of all modules, laminates and/or panels that are integrated into the consumer good. Further, also excluded from the scope of the order are any products covered by the existing antidumping and countervailing duty orders on crystalline silicon photovoltaic cells, whether or not assembled into modules, laminates and/or panels, from the PRC.[5] Additionally, excluded from the scope of this order are solar panels that are: (1) less than 300,000 mm^2 in surface area; (2) less than 27.1 watts in power; (3) coated across their entire surface with a polyurethane doming resin; and (4) joined to a battery charging and maintaining unit (which is an acrylonitrile butadiene styrene ("ABS") box that incorporates a light emitting diode ("LED")) by coated wires that include a connector to permit the incorporation of an extension cable. The battery charging and maintaining unit utilizes high-frequency triangular pulse waveforms designed to maintain and extend the life of batteries through the reduction of lead sulfate crystals. The above-described battery charging and maintaining unit is currently available under the registered trademark "SolarPulse."

Merchandise covered by the order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 8501.61.0000, 8507.20.8030, 8507.20.8040, 8507.20.8060, 8507.20.8090, 8541.40.6020, 8541.40.6030 and 8501.31.8000. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of the order is dispositive.

List of Abbreviations and Acronyms

Acronym/Abbreviation	Full Name
the Act	Tariff Act of 1930, as amended (the Act)
AD	Antidumping
CAFC	Court of Appeals for the Federal Circuit
CBP	Customs and Border Protection
CIT	Court of International Trade
CONNUM	Control Number

[5] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order*, 77 FR 73018 (December 7, 2012); *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Countervailing Duty Order*, 77 FR 73017 (December 7, 2012) (*Order*).

Department	Department of Commerce
EP	Export Price
FA	Facts Available
FOP(s)	Factor(s) of production
Global Trade Atlas	GTA
HTS	Harmonized Tariff Schedule
IDM	Issues and Decision Memorandum
LTFV	Less-Than-Fair-Value
ME	Market Economy
MLE	Material, Labor and Energy
NME	Non-market economy
NV	Normal value
POR	Period of Review
PRC	People's Republic of China
SAA	Statement of Administrative Action accompanying the URAA, H.R. Doc. 103-316, Vol. 1 (1994)
SG&A	Selling, general and administrative expenses
SRA	Separate Rate Applicant
SRC	Separate Rate Certificate
SV	Surrogate Value

DISCUSSION OF THE ISSUES

Comment 1: Scope of the Order

A) The Scope of the Order Is Unlawful

BYD

- Throughout the review and in the *Preliminary Results*, the Department identified the merchandise covered by the order as "consisting of crystalline silicon photovoltaic cells produced in a customs territory other than the PRC." This scope language, as determined in the investigation, which is currently under appeal before the U.S. CIT, unlawfully departs from the Department's prior substantial transformation rule for determining country of origin for solar modules (*i.e.*, the country where the solar cell is produced is the country of origin for the solar module).
- It is not possible to reconcile the scope language applied in this administrative review with the judicially-endorsed concepts of country of origin and "substantial transformation" that have been part of the Department's practice for decades.
- The Department offered a variety of justifications for its adoption of inconsistent positions with respect to solar cells and modules between the *Solar Cells*[6] proceeding and this proceeding; however, the CIT rejected them all.

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

- Under established legal principles, any solar modules assembled in China using solar cells produced outside of China do not have a Chinese origin and cannot lawfully be subject to antidumping measures on products from China.
- Thus, the Department should rescind this review and simultaneously terminate the order retrospectively releasing all covered unliquidated entries since July 31, 2014 (publication of the preliminary determination in the underlying investigation).

SNJ

- The Department applied different country of origin rules in *Solar Cells* and in the instant (Solar Products) proceeding. In *Solar Cells*, the Department determined that the country of origin for modules is the country where the solar cell was produced (the most essential production step is solar cell production, rather than panel assembly), while in Solar Products, the Department determined that the country of origin of modules is the country where the module was assembled; in this case that is China.
- The determination in Solar Products was made despite the Department's reasoning in *Solar Cells*; that a product can only have one country of origin for antidumping and countervailing purposes. Furthermore, in *Solar Cells* the Department declined to treat solar cells made outside of China and assembled into panels in China as subject merchandise when it was treating solar cells made in China and assembled into panels outside of China as subject merchandise.
- The CIT remanded issues regarding the scope determination in the final of the underlying investigation to the Department. Although this action remains pending before the CIT, the Department should consider, in this review, the issues being litigated and the legality of continuing to apply its final scope determination from the underlying investigation in the present review without any explanation of why the Department changed its country of origin analysis from *Solar Cells*.

Petitioner

- This administrative review is not the appropriate avenue to challenge the Department's final scope determination from the investigation. Any such challenge should have been made following the Department's final determination in the investigation and issuance of the antidumping duty order.
- The Department's final scope determination from the underlying investigation is currently being litigated before the CIT. Although the CIT remanded certain scope issues to the Department for reconsideration, the Department has issued its remand redetermination in which it maintained the same scope language. Therefore, the final scope remains valid for purposes of the order (and this administrative review).
- Absent a judicially affirmed alteration to the scope, it would be inappropriate and unprecedented for the Department to alter the scope of an order in an administrative review.

Department's Position: We agree with the petitioner and maintain the scope language determined in the *Solar Products Investigation*. Accordingly, we are not rescinding this review and terminating this proceeding. The Department established the scope of the antidumping duty order on certain solar products from the PRC in the underlying investigation. The CAFC has recognized that, "{t}he purpose of the petition is to propose an investigation. A purpose of the investigation is to determine what merchandise should be included in the final order."[7] Accordingly, the most appropriate time to have commented on the scope for a possible order was during the investigation segment of this proceeding, when the scope was being considered and determined, rather than now in the context of this administrative review which follows the Department's final determination concerning scope. Indeed, in the underlying investigation, interested parties did comment on the scope of a possible future order, and the Department considered interested parties' comments at that time and ultimately determined a final scope.[8] Subsequent to the *Solar Products Investigation*, parties filed complaints with the CIT challenging the Department's determination concerning scope.[9] That litigation remains on-going. Nevertheless, for the reasons explained in the *Solar Products Investigation*[10] as supplemented in the final results of remand redetermination in the on-going *Sunpower* litigation,[11] reasons which we incorporate by reference here, we continue to find that the scope of this proceeding is appropriate.[12]

B) The Final Scope Determination Does Not Apply Retroactively

BYD

- If one assumes that it is lawful to rely on the scope discussed above, the scope may only be applied prospectively to U.S. entries made on or after the date of publication of the Department's final determination (December 23, 2014).
- The preliminary scope of the underlying investigation (effective between publication of the preliminary determination (July 31, 2014) and the final determination (December 23, 2014)) covered modules assembled in China from solar cells not made in China, but made using ingots, wafers, or partially completed cells that were made in China (the two out-of-three rule). It was not until the final determination in the underlying investigation that the Department discarded the two-out-of-three rule and expanded the scope to cover modules assembled in China that were made from solar cells produced anywhere in the world, other than China.
- The final determination scope cannot be applied retrospectively to U.S. entries when importers had no choice at the time but to rely upon the Department's preliminary scope determination.
- The Department cannot now penalize importers for importing products during the instant POR that were clearly outside of the scope of the investigation at the time of entry. The suspension of liquidation should not apply to products that were outside of the scope prior to December 23, 2014.

SNJ

- The Department should instruct CBP that only U.S. entries of merchandise covered by both the preliminary and final scope of the underlying investigation, not just the final

[7] *See Duferco Steel, Inc. v. United States*, 296 F.3d 1087, 1096 (CAFC 2002).

[8] *See Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 76970 (December 23, 2014) (*Solar Products Investigation*), and accompanying Issues and Decision Memorandum at Comment 1.

[9] *See Sunpower Corp. v. United States*, 179 F. Supp. 3d 1286, 1288 (CIT 2016) (*Sunpower*).

[10] *See Solar Products Investigation*, and accompanying Issues and Decision Memorandum at Comment 1.

[11] *See* Final Results of Redetermination Pursuant to Court Order in *Sunpower Corp. v. United States* (June 8, 2016), *available at* http://ia.ita.doc.gov/remands/16-56.pdf.

[12] *See id.*

scope, that were made between July 31, 2014 and December 22, 2014 are subject to the instant order.

- It was not until the Department made its final less-that-fair-value determination and issued the order that it expanded the scope to include solar modules assembled in China, from solar cells "produced in a customs territory other that the PRC," meaning solar cells produced anywhere in the world, other than China. The Department issued instructions to CBP to apply the final determination scope only to merchandise entering on or after the publication of the final determination.
- Consistent with the above, in the quantity and value (Q&V) questionnaire issued by the Department in this review, the Department specifically instructed respondents to report only the sales for export during July 31, 2014 to December 22, 2014 that are covered by the preliminary scope, but to not report sales in this period if the merchandise was only covered by the final determination scope.
- However, the Department's draft liquidation instructions for this review do not take into account, or reference, the prior instructions to CBP in order to confirm and clarify that entries of merchandise made between July 31 2014 to December 22, 2014 are subject to dumping duties under the instant order only if the merchandise is covered by both the preliminary and final scope determinations, but are not subject to dumping duties if covered by the final scope determination alone.
- Clarification in CBP instructions for the final results of the instant review is critical for the proper administration of the order. Consistent with the CBP instructions issued for the underlying investigation, the Department should clarify for CBP that shipments of certain crystalline silicon photovoltaic products with solar cells produced anywhere in the world, other than China, exported for entry during the period July 31, 2014 to December 22, 2014, are not subject to dumping duties.

Petitioner

- While the Department properly maintains the ability to modify a scope during a proceeding, and it is not uncommon for the Department to make alterations to a scope during an investigation, this should not limit the Department's ability to assess duties on goods entering between the preliminary and final determinations. This would greatly undermine relief to the domestic industry and its workers, and set a problematic precedent for enforcement.
- The Department specifically put all interested parties on notice, throughout various stages of the proceeding, that it was evaluating the scope, and that it was possible it would change the scope prior to the final determination. It is the final scope, as determined by the Department, which governs future administrative reviews.
- In the Department's Q&V questionnaires, it made clear that the scope of this administrative review covering the entire POR (July 31, 2014 to January 31, 2016) is the scope from the final determination and order issued in this proceeding. During the review, the Department collected information on subject merchandise for the entire POR, and while the Department may collect data in different formats for different time periods, this in no way altered or implied that the scope of this administrative review was anything other than the final scope as determined in the underlying investigation.

Department's Position: The Department has previously determined that, in general, merchandise that has entered the United States prior to the suspension of liquidation resulting from a preliminary determination in an LTFV investigation (and in the absence of an affirmative critical circumstance finding) is not subject merchandise within the meaning of section 771(25) of the Act.[13] By extension, the Department does not consider entries of merchandise covered by the scope in the final determination of the underlying investigation in this proceeding that were not suspended from liquidation under the scope as interpreted by the Department in the preliminary determination of the underlying investigation as subject merchandise for the period between the Department's preliminary and final determinations in the underlying investigation. Furthermore, the petitioner points to no statutory provision that would require the Department, for merchandise entered during the period in which the Department preliminarily did not treat the merchandise at issue to be subject merchandise and therefore did not require suspension from liquidation, to retroactively suspend, or impose duties on, such merchandise. Hence, with respect to the merchandise that is the subject of this Comment, only merchandise entered into the United States on or after July 31, 2014 and through December 22, 2014 that should be suspended from liquidation under the scope as interpreted in the final determination of the underlying investigation *and* suspended from liquidation under the scope as interpreted in the preliminary determination of that investigation are subject to antidumping duties pursuant to the *Order*, including the final duty liability determined in this administrative review. Despite the petitioner's contention, the Department does not find that its decision limits its ability to assess duties on appropriate goods entering between the preliminary and final determinations. For merchandise properly not suspended from liquidation between the preliminary and final determinations, the Department is not going to instruct CBP to retroactively suspend such merchandise and assess duties.

Comment 2: CVD Export Subsidies

Trina

- To comply with the statute, the Department must increase Trina's constructed export prices by 10.54 percent, which is the countervailing duty imposed in the most recently completed segment of the companion CVD proceeding to offset export subsidies. As the Department has noted, the purpose of adding countervailed export subsidies to U.S. prices is to prevent AD duties from constituting a second remedy for export subsidies.
- Where goods are subject to both antidumping and countervailing duties, the statute provides that "the price used to establish export price and constructed export price shall be – (1) increased by… (C) the amount of any countervailing duty imposed on the subject merchandise under part I of this subtitle to offset an export subsidy,…"
- The Department countervailed the China Ex-Im Bank Export Buyer's Credit Program as an export subsidy in the CVD investigation of solar products from China at a rate of 10.54 percent.

Petitioner

- Trina's arguments are without merit and should be rejected. The Ex-Im Buyer's Credit Program export subsidy rate is based on total AFA. Offsetting U.S. prices with this rate would eliminate any adverse inference applied to Trina even though the purpose of AFA

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[13] *See Certain Stainless Steel Wire Rods from France: Final Results of Antidumping Duty Administrative Review*, 61 FR 47874. (September 11, 1996).

is to encourage respondents to participate in AD and CVD investigations and to ensure that uncooperative behavior is not rewarded.

- Interested parties in concurrent AD and CVD proceedings are generally only concerned about their total duty liability. When an export subsidy rate that is based on total AFA is offset against U.S. prices, the net effect on the respondent's total duty liability is neutral (unless the export subsidy rate is greater than the total AD rate). This is not keeping with the purposes of the AFA provision, which is to apply adverse inferences. Thus, the export subsidy offset should not be made.
- Moreover, in the final results of the second administrative review of Solar Cells, the Department determined that the Ex-Im Buyer's Credit program was not used by the mandatory respondent, and accordingly it did not adjust Trina's U.S. price for countervailable export subsidies in the preliminary results of the third administrative review of Solar Cells. Given the similarities between Solar Cells and Solar Products, the Department should not overlook these results and rely on its practice (using a Solar Products CVD determination from more than two years ago) when it is obligated to calculate the most accurate dumping margin possible. The obligation for accuracy must take precedence over a procedural practice, particularly in light of the unique circumstances presented by the Solar Cells and Solar Products proceedings and the consideration of the identical program within these cases.
- If the Department makes the offset, the offset should be 0.58 percent, which was calculated in the preliminary results of the concurrent Solar Products CVD review. Alternatively, the Department should use the rate calculated in the upcoming final results of the concurrent Solar Products CVD, which are currently scheduled for the same day as the final results of the instant AD review (July 5, 2017). To the extent the Department's final results in the CVD review occur prior to or simultaneous with these final AD results, those CVD final results would constitute the most recently completed segment of the companion CVD proceeding, and thus using that rate would be in accordance with the Department's practice.

Department's Position: Pursuant to section 772(c)(1)(C) of the Act, the Department increases the U.S. price by the amount of any countervailing duty imposed to offset an export subsidy. However, the Department did not make a determination in the CVD investigation of certain solar products from the PRC that the Export Buyer's Credits Program was an export subsidy.[14] Rather, the Department's determination to countervail the program was based on facts otherwise available with an adverse inference, as a result of non-cooperation by the Government of China, and the Department did not make a determination that the program in question was contingent on export performance.[15] In other words, the Department did not determine that the subsidies in

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[14] *See Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014) and accompanying Issue and Decision Memorandum at Comment 16; unchanged in *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Antidumping Duty Order; and Amended Final Affirmative Countervailing Duty an Determination and Countervailing Duty Order*, 80 FR 8592 (February 18, 2015).

[15] *Id. See also* section 771(5A)(B) of the Act which defines an export subsidy to be "a subsidy that is, in law or in fact, contingent upon export performance, alone or as 1 of 2 or more conditions."

question were export subsidies, as required for an offset under section 772(c)(1)(C) of the Act.[16] Thus, we disagree with Trina's argument that the Department should make an adjustment pursuant to section 772(c)(1)(C) of the Act for this program. Without a determination in the companion CVD investigation that this program provides a subsidy that is contingent on export performance (*i.e.*, an export subsidy), and consistent with the preliminary results in the instant review and the Department's practice,[17] we find it is not appropriate to increase Trina's U.S. prices pursuant to section 772(c)(1)(C) of the Act.

Comment 3: Use of Zero Import Quantity

Trina

- In the final results, the Department should recalculate the import statistics excluding instances of zero quantity imports.
- In the *Preliminary Results*, the Department's calculations of surrogate values using import values relied on import values with corresponding import quantities of zero.[18]
- In prior cases, parties have identified this discrepancy and claimed that the inclusion of import values with no corresponding import quantities was distortive.[19] The Department declined to make an adjustment in the past, stating that these instances reflect imports of quantities less than 0.5 units of measure that had been rounded to zero.[20]
- The record in this case lacks a basis to conclude that all of the zero quantity entries are explained by rounding or that their inclusion in the calculation improves accuracy. If rounding is the explanation for the zero quantity entries, then it would be reasonable to expect that double the number of entries rounded to zero (entries with quantities less than 0.5 units) would have quantities between 0.5 and 1.49 and be rounded to a quantity of one. However, that is not the case.

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[16] *See* section 772(c)(1)(C) of the Act ("The price used to establish export price or constructed export price shall be increased by the amount of any countervailing duty imposed . . . to offset *an export subsidy*." (emphasis added).

[17] *See Stainless Steel Sheet and Strip from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less than Fair Value and Preliminary Affirmative Determination of Critical Circumstance*, 81 FR 64135 (September 19, 2016) and accompanying Preliminary Decision Memorandum at 13; unchanged in *Antidumping Duty Investigation of Stainless Steel Sheet and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 82 FR 9716 (February 8, 2017); *see also Circular Welded Carbon-Quality Steel Pipe from Pakistan: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination and Extension of Provisional Measures*, 81 FR 368367 (June 8, 2016), and accompanying decision memorandum at 13; unchanged in *Circular Welded Carbon-Quality Steel Pipe from Pakistan: Final Affirmative Determination of Sales at Less Than Fair Value*, 81 FR 75028 (October 28, 2016).

[18] *See* Trina's Case Brief at 17 (citing *Certain Crystalline Photovoltaic Products from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments: 2014-2014*, 82 FR 12793 (March 7, 2017), and accompanying Preliminary Decision Memorandum.

[19] *See* Trina's Case Brief at 17 (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), and accompanying Issues and Decision Memorandum, Comment 8).

[20] *Id*.

- Even if some zero quantity entries are attributable to rounding, excluding the value of those entries from the AUV calculation is not distortive because the impact of excluding zero quantity entries is negligible. Moreover, if the zero quantities are attributable to rounding, then exclusion of each value associated with a zero quantity will improve accuracy since the quantity has already been excluded.
- While Trina raised this issue in the *Solar Cells AR2 Final*, the Department concluded that the zero quantity entries were attributable to rounding and "determined not to exclude the zero quantity data from the SV calculation on the basis of increasing accuracy."[21] Trina disagrees with the conclusion reached in the *Solar Cells AR2 Final* and is challenging that decision.[22] The record lacks a basis to conclude that all of the zero quantity entries are explained by rounding or that their inclusion in the calculation improves accuracy.

Petitioner

- The Department should continue to include the zero-quantity data points in its import data and surrogate value calculations.
- The Department declined to make just such an adjustment in the investigation leading to the Solar Cells AD order and in the final results of the Solar Cells second administrative review, as well as in other cases, such as *Garlic PRC Final*.[23] The Department found that such instances of zero quantity imports reflected import amounts that had been rounded to zero.
- Trina offers no explanation or evidence demonstrating alternative causes of zero quantity imports, nor does it demonstrate or quantify the distortions allegedly caused by the zero-quantity data.
- The record evidence lacks any basis for the assumption that only shipments of less than 0.49 kilograms were rounded to zero. Therefore, Trina's argument that double the number of entries with quantities rounded to zero would be rounded to one is unclear.[24]
- In *Solar Cells*, the Department explained that if the zero quantity entries were erroneous, it would expect errors to also occur with respect to the reported value in at least some instances (*i.e.*, there would be some zero value entries). In the instant review, there are no zero value entries in the Department's surrogate value data.

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[21] *See* Trina's Case Brief at 17 (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*, 80 FR 39905 (June 20, 2016) (*Solar Cells AR2*), and accompanying Issues and Decision Memorandum at Comment 22).
[22] *See* Trina's Case Brief at 18.
[23] *See* Petitioner's Rebuttal Brief at 13 (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 Products Investigation*) and accompanying Issues and Decision Memorandum (IDM) at Comment 8; *see also 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 21, 2016) (*Solar Products AR2 Final*) and accompanying IDM at Comment 22; *see also Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 36168 (June 17, 2013) (*Garlic PRC Final)*
[24] *See* Petitioner's Rebuttal Brief at 12.

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 *Solar Cells Investigation*[25] and in the *Solar Cells AR2*, 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 8.7 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 that the explanation that zero quantity data are errors is supported by the evidence.

Rather, we find the zero quantity imports attributable to rounding small import quantities to zero.[26] As explained in *Solar Cells AR2*, rounding has both upward and downward 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 770 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 1,540 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 348 imports with a quantity of one. Trina's argument appears to be based on the conclusion that there are 770 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 770 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 4: Use of Differential Pricing Analysis

Trina

- The Department should discontinue its "differential pricing" methodology in light of a recently issued World Trade Organization (WTO) Panel Report finding that the Department's practice of "zeroing" negative dumping margins constitutes an "as such" violation of the United States' obligations under the WTO Antidumping Agreement.[27]
- Resorting to an alternate calculation methodology incorporating zeroing would violate U.S. law and WTO decisions invalidating the Department's differential pricing test (*see*

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

[26] *See Solar CellsAR2* and accompanying IDM at Comment 22.

[27] *See* Trina's Case Brief at 7-9 (citing *United States – Anti-dumping and Countervailing Measures on Large Residential Washers from Korea*, Report of the Panel, WT/DS464/R (Mar. 11, 2016) (U.S. Washers)).

the WTO's Appellate Body Report in *United States-Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea (US – Washing Machines (Korea))*).[28]
- If the Department cannot provide an adequate explanation for the various thresholds that it used in its differential pricing analysis – *e.g.*, those related to passing the Cohen's *d* test and the test for "meaningfulness," then it should not conduct a differential pricing analysis in this case.[29]

Petitioner
- The Department should continue to apply its differential pricing analysis in this review.[30] Trina's arguments are without merit and should be disregarded.
- WTO Appellate Body reports are not self-executing.[31] Congress provided a procedure through which the Department may change a regulation or practice in response to WTO reports.[32] 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.[33] Accordingly, the proper methodology to use in this proceeding is the Department's differential pricing analysis.[34]
- Trina questions the numerical thresholds in the Cohen's *d* test and ratio test used by the Department to determine the existence and amount of targeted dumping. However, Trina's arguments have previously been rejected by the Department, and Trina offers no new meaningful support of its claims.[35]

Department's Position: For the final results, the Department applied the A-A method to calculate the weighted-average dumping margin for Trina. Because the Department is using the A-A methodology, arguments concerning the differential pricing analysis are moot. Moreover, with regard to Trina's arguments concerning U.S. obligations under the WTO Agreements and *US – Washing Machines (Korea)*, we note that WTO findings are not self-executing under U.S. law.[36] The 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).[37] The Department has not revised or changed its use of the differential pricing methodology, nor has

[28] *Id*. at 7.
[29] *Id*. at 9.
[30] *See* Petitioner's Rebuttal Brief, "Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Rebuttal Brief of SolarWorld Americas, Inc.," dated April 20, 2017 (Petitioner's Rebuttal Brief) at 14.
[31] *See* Petitioner's Rebuttal Brief at 14.
[32] *Id*. at 15.
[33] *Id*.
[34] *Id*.
[35] *Id*.
[36] *See, e.g.*, SAA at 659 ("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."); *see also Corus Staal BV v. United States*, 395 F.3d 1343, 1349 (Fed. Cir. 2005).
[37] *See Corus Staal BV v. United States,* 502 F.3d 1370 (Fed.Cir. 2007).

the United States adopted changes to its methodology pursuant to the URAA's implementation procedure.

Comment 5: Surrogate Value for Aluminum Frames

Petitioner

- Frames used in the production of subject modules are fabricated aluminum products that have been further manufactured into a finished and final form and are no longer simple aluminum extrusions, covered by Thai HTS 7604.29.90001. The goods are ready for immediate incorporation into a solar module. In contrast to the respondents claim, such goods are not considered aluminum "profiles," and are therefore not properly classified under HTS number 7604.[38]
- Trina's frames, as purchased, have gone through processes such as drilling, cutting, punching, bending, coating and stamping before assembly with solar cells and backing materials, making them ready for assembly as soon as they reach Trina's facilities.[39] The pictures of aluminum frames that Trina placed on the record confirm that the frames are fabricated aluminum products.[40] The degree to which the respondents' 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 number 7616.99.
- The Department incorrectly used Thai HTS 7604.29.90001 to value Trina's frames, which refers to aluminum bars, rods or profiles, which it defines as having "a uniform cross section along their whole length… provided that they have not thereby assumed the character of articles or products of other headings."[41] The aluminum frames in question are not uniform in cross section along their entire length, and thus cannot fit the definition of HTS 7604.
- CBP rulings confirm that module frames from China and Malaysia are not simple extrusions but are instead finished aluminum goods.[42] The results of these rulings contrast with CBP rulings concerning aluminum profiles and extrusions that were not further processed, which were classified under HTS category 7604.[43] Thus, it is clear that while unprocessed aluminum tubes and profiles are classified under HTS category 7604, further processed aluminum profiles are classified under HTS 7616 or other categories containing finished articles.
- A mandatory respondent in a previous review of this proceeding, Suntech, sought a binding tariff classification ruling for its module frames that its U.S. subsidiary, Suntech Arizona, imported to produce solar modules. In response to Suntech's request, CBP

[38] *See* Petitioner's Case Brief at 17 (citing Harmonized Tariff Schedule of the United States (2017) at Chapter 76, Aluminum and Articles Thereof, Notes, 111(b) ("Profiles")).
[39] *Id.* at 18.
[40] *Id.* (citing Letter from Trade Pacific PLLC to Sec'y Commerce re: *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Third Supplemental Questionnaire Response* (Jan. 30,2017) ("Trina's January 4, 2017 Third SQR") at Ex. 6).
[41] *Id.* at 20 (CBP Ruling N080920 (November 6,2009)).
[42] *Id.* (citing CBP Ruling N238208 (February 15,2013)).
[43] *Id.* (citing CBP Ruling N080NO (November 6,2009)).

classified the frames under HTS 7616.99.[44] Indeed, if CBP believed fabricated aluminum frames were simple extrusions, it would have classified them under HTS 7604. Given these facts the Department should utilize Thai imports of aluminum frames classifiable under Thai HTS number 7616.99.99.090 to value aluminum frames for the final results.[45]

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 contains a broad range of products and is not the best information for valuing aluminum frames.[46]
- The petitioner's argument regarding the valuation of aluminum frames has been rejected by the Department four times. In addition, the Department's initial determination rejecting the petitioner's argument in the underlying investigation has been sustained by the CIT.[47] The Department's most recent relevant determination summarizes the Department's position with respect to the petitioner's argument. In *Solar Cells AR2*, the Department explained that Thai 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*, *Solar Products Investigation*, and *Solar Cells AR1*.[48] 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.[49]
- Moreover, the Department has considered – and found unpersuasive – the petitioner's main arguments that aluminum frames are further manufactured from a basic aluminum extrusion and that CBP rulings suggest that a different tariff classification might be appropriate.[50]
- 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 HTS 7604.[51] Exhibit 19 of Trina's August 29, 2016 supplemental questionnaire response includes a drawing of Trina's frames showing a single, uniform cross section for the extruded aluminum frame, thereby countering the petitioner's claim.[52]

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[44] *Id.* (citing CBP Ruling N139353 (Jan. 13,2011)).
[45] *Id.* at 21.
[46] *See* Trina Rebuttal Brief at 14-15 (citing Petitioner's Case Brief at 21).
[47] *Id.* at 15 (citing *Jiangsu Jiasheng Photovoltaic Technology Co., Ltd. v. United States*, 28 F. Supp. 3d 1317, 1335-1338 (CIT 2014)).
[48] *Id.* (citing Trina Rebuttal Brief at 13 (citing Solar I ARI IDM at Comment 36, Solar I ARII IDM at Comment 8, Solar I Investigation IDM at Comment 16, and Solar Products Investigation IDM at Comment 9)).
[49] *Id.* at 16 (citing Trina's June 21, 2016 Supplemental Response, page SuppC-24 and Exhibit SC-17 (containing diagrams showing the frames to be non-hollow profiles)).
[50] *Id.* (citing Petitioner's Case Brief at 22-23, Solar I ARI IDM at Comment 36, and Solar I ARII IDM at Comment 8).
[51] *Id.* (citing Petitioner's Case Brief at 23).
[52] *Id.*

- In its explanation of what the petitioner believes is covered by HTS 7604, the petitioner omitted language from its quotation indicating that goods further processed after extrusion may also be considered "profiles" because it undermined its desired interpretation.[53]
- Absent any new facts, the Department should not change its valuation of aluminum frames.[54]

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.[55] 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.[56] The decision was sustained by the CIT.[57] The Department reached the same decision to value aluminum frames under HTS 7604.29 in the *Solar Products Investigation*,[58] *Solar Cells AR1*[59], and *Solar Cells ARII*.[60]

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.[61] 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 supposedly processed, Trina correctly points out that, according to the HTS nomenclature, the word "profile" can be applied to goods "which have been subsequently worked after production."[62] 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 the solar cells proceeding and in the *Solar Products Investigation*.

The Department has already considered the amount of finishing that aluminum profiles undergo to become aluminum frames in selecting an appropriate surrogate value for aluminum frames in

[53] *Id.* (citing Petitioner's SV Rebuttal, Exhibit 2, (July 26, 2016), Chapter 76 Note 1(b), profiles "also covers cast or sintered products, of the same forms, which have been subsequently worked after production.").
[54] *Id*. at 17.
[55] *See* Trina's August 29, 2016 Supplemental Response, page 37 and Exhibit 19.
[56] *See* Solar Cells Investigation IDM at Comment 16.
[57] *See* Trina Rebuttal Brief at 15 (citing *Jiangsu Jiasheng Photovoltaic Technology Co., Ltd. v. United States*, 28 F. Supp. 3d 1317, 1337 (CIT 2014) (*Jiangsu*)).
[58] *See* Solar Products IDM at Comment 9.
[59] *See* Solar I ARI IDM at Comment 36.
[60] *See* Solar I ARII IDM at Comment 8.
[61] *See* Trina's Rebuttal Brief (citing Trina's August 29, 2016 Supplemental Response, page 37 and Exhibit 19).
[62] *Id.* at 16; HTS Chapter 76 Note 1(b), profiles "also covers cast or sintered products, of the same forms, which have been subsequently worked after production."

its previous determinations. In the *Solar Cells Investigation*, *Solar Cells AR1*, and *Solar Cells ARII*, the Department stated:

> Petitioner's assertion that respondents' aluminum frames are finished articles is not relevant to our decision. While CBP rulings on the record supporting the use of HTS 7604 concern unfinished aluminum articles, this does not necessarily mean that HTS 7604 would only contain unfinished aluminum profiles. While other HTS categories identify whether they contain finished or unfinished items, HTS 7604 does not specify whether it contains finished or unfinished aluminum profiles.[63]

Further, we noted in the *Solar Products Investigation* that the "ITC definition of aluminum profiles cited by the petitioner indicates that profiles may be cast, sintered, and worked after production."[64] 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).[65] 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 previously addressed this argument in the *Solar Products Investigation*, *Solar Cells Investigation*, *Solar Cells AR1*, and *Solar Cells ARII*, noting that while certain aluminum frames purchased by the respondents contain corners, the Department does not believe that this would necessarily change their classification as aluminum profiles.[66] 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. As mentioned above, we further noted that the ITC's definition of aluminum profiles cited by the petitioner indicates that profiles may be cast, sintered, and worked after production.[67] 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 the solar cells proceeding, and in this proceeding, that HTS 7604 is the best available information with which to value the frames made of aluminum profiles and used to assemble solar modules. Although two of those decisions were challenged in *Jiangsu* and *Jinko*, these determinations

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[63] *See* Solar Cells Investigation IDM at Comment 16, Solar I ARI IDM at Comment 36, and Solar I ARII at Comment 8. The Department reached the identical conclusion in the Solar Products Investigation IDM at Comment 9.
[64] *See* Solar Products Investigation IDM at Comment 9.
[65] *See Jiangsu*, 28 F. Supp. 3d at 1337; *see also Jinko Solar Co. v. United States*, Slip Op. 17-62 (CIT May 18, 2017) ("*Jinko*") at *25-34.
[66] *See* Solar Products Investigation IDM at Comment 9, Solar Cells Investigation IDM at Comment 16, Solar I ARI IDM at Comment 36, and Solar I ARII IDM at Comment 8.
[67] *Id.*

were sustained by the CIT.[68] The facts here are not materially different from those in the *Solar Cells Investigation*, the *Solar Products Investigation*, *Solar Cells AR1*, or *Solar Cells ARII*, and we have reached the same conclusion here as we reached in those investigations and reviews.

Just as it did in the *Solar Cells Investigation*, the *Solar Products Investigation*, *Solar Cells AR1*, and *Solar Cells ARII*, 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.[69] Although 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),[70] this HTS is 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. 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.

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."[71] 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 the *Solar Cells Investigation* and the *Solar Products Investigation*, while "other HTS categories identify whether they contain finished or unfinished items, HTS 7604 does not specify whether it contains finished or unfinished aluminum profiles."[72] 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 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 attempts to demonstrate that aluminum frames used in solar panels would be classified under HTS 7616 rather than HTS 7604. Such arguments fail to squarely address the Department's concern here, which is to identify the best available information with which to

[68] *See Jiangsu*, 28 F. Supp. 3d at 1337; Slip Op. 17-62 at *25-34.
[69] *See* Solar Cells ARII IDM at 19.
[70] *See* Petitioner's Rebuttal Brief at 19.
[71] *See* Petitioner's Case Brief at 19.
[72] *See* Solar Cells Investigation IDM at Comment 16 and Solar Products IDM at Comment 9.

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 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 surrogate value for each input.[73] HTS 7616 covers items that are dissimilar to the non-hollow, aluminum profiles at issue while HTS 7604.29 expressly covers non-hollow aluminum profiles used by Trina for its aluminum frames. Furthermore, record information does not indicate that aluminum profiles that have been finished or further processed are excluded from this HTS category. Because the definition of HTS 7604 is more specific to the input at issue than the definition of HTS 7616, the Department continues to find that Thai HTS 7604.29.90001 constitutes the best available information with which to value Trina's aluminum frames.

Comment 6: Surrogate Value for Scrap Modules

Petitioner

- In the *Preliminary Results*, the Department improperly valued Trina's module scrap based on Thai HTS number 8548.10.99.[74] Scrap modules are polysilicon materials that are heavily contaminated with non-polysilicon additives and materials. As Trina noted in its Section D questionnaire response, the company does not reintroduce these materials into its own production process and instead sells them for scrap.[75]
- Trina further indicates that its scrapped solar modules are broken modules sold to buyers who disassemble the module and try to obtain useful materials therefrom.[76] It is reasonable to assume, as facts available, that the primary reason the buyer purchases the broken module scrap pieces is for the polysilicon content. Thai HTS subheading 2804.69 is, therefore, particularly appropriate here as the cracked photovoltaic cell material contains substantial numbers of contaminants that render the material anything but 99.99 percent pure.[77]

Trina

- The petitioner contends that it is reasonable to assume that buyers of Trina's scrap modules main use of the scrap modules is to recover polysilicon content.[78] The record does not support the petitioner's assumptions.[79]

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[73] *See Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 41808 (July 19, 2010) and accompanying Issues and Decision Memorandum at Comment 2; *see also Certain New Pneumatic Off-the-Road Tires from China*, 78 FR 22513 (April 16, 2013), and accompanying Issues and Decision Memorandum at Comment 5.A.
[74] *See* Petitioner's Case Brief at 22 (citing Trina's January 4, 2017 Third SQR at SuppQ3-2).
[75] *Id.* at 22-23 (citing Trina's July 19,2016 C&D QR at p. D-I8).
[76] *Id.* at 23 (citing Trina's August 29, 2016 First SQR).
[77] *Id.*
[78] *See* Trina's Rebuttal Brief at 18 (citing Petitioner's Case Brief at 22-23).
[79] *Id.*

- Trina explained that the buyers of scrap modules likely recover the cells, aluminum, broken glass and junction box.[80] Thus, the HTS classification used by the Department to value module scrap is appropriate because it is far more reasonable to assume that the recovery of the cells – not simply the silicon content – is a primary utility in salvaging the scrapped modules. The Department should, therefore, disregard the petitioner's request to alter the surrogate value for Trina's module scrap and continue to use the value selected in the *Preliminary Results*, to value module scrap.[81]

Department's Position: Trina reported 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."[82] Thai HTS subheading 8548.10.99, that we used to value module scrap in the *Preliminary Results*, covers "waste and scrap of primary cells, primary batteries and electric accumulators; spent primary cells, spent primary batteries and spent electrical accumulators… other."[83] However, Trina did not identify items such as primary batteries and electric accumulators as materials 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 scrap modules predominate by weight. Two elements of scrap modules predominate by weight, glass and aluminum frames.[84] 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 scrap or 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.

Comment 7: Exclusion of Certain Sales in the Calculation of Dumping Margin

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[80] *Id.* (citing Trina's August 29, 2016 Supplemental Response at 42).
[81] *Id.*
[82] *See* Trina's July 8, 2016 Section D Supplemental Questionnaire Response at 9.
[83] *See* Petitioner's August 17, 2016 SV Submission at Exhibit 3.
[84] *See* Trina's FOP database at Exhibit D-9 of its July 19, 2016 submission.

Trina

- The Department should calculate Trina's dumping margin using only sales of merchandise that entered the United States after the suspension of liquidation began.[85] The Department previously determined that POR sales of merchandise linked to entries prior to the suspension of liquidation are not subject merchandise.
- Trina identified, in numerous submissions, the CEP sales during the POR that should be excluded from the dumping margin calculation.[86]

Petitioner

- The Department should not exclude the CEP sales identified by Trina from its calculations. In cases where a respondent makes CEP sales, the Department's practice is to use the date of sale, rather than entry date, to define the universe of sales.[87] The Department's questionnaire instructed Trina to report CEP sales with dates of sale within the POR[88] and Trina confirmed that it reported its sales on this basis.[89]
- Trina did not provide any source documentation to substantiate its claims that certain CEP sales involved subject merchandise that was entered into the United States before the suspension of liquidation. Due to the lack of record evidence supporting Trina's claims, the Department should adhere to its practice for CEP transactions and not exclude the sales at issue from its calculation of the final dumping margin.

Department's Position: We agree with the petitioner. The Department's general practice is to include in its dumping margin calculations all CEP sales made after importation that have a date of sale within the POR.[90] This is evidenced by the Department's questionnaire which instructs respondents to:

> Report each U.S. sale of merchandise entered for consumption during the POR, except: (1) for EP sales, if you do not know the entry dates, report each transaction involving merchandise shipped during the POR; and (2) for CEP sales made after importation, report each transaction that has a date of sale within the POR. If you believe there is a

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[85] *See* Trina's Case Brief at 2 (citing to *Stainless Steel Plate in Coils From Taiwan: Final Rescission of Antidumping Duty Administrative Review*, 66 FR 18610, 18611-18612 (April 10, 2001) (*Steel Plate Taiwan Final*) and accompanying IDM at Comment 1 citing to *Certain Stainless Steel Wire Rods from France*, 61 FR 47874, 47875 (September 11, 1996) (*Wire Rod France Final*)).

[86] *See* Trina's June 24, 2016 Section A Questionnaire Response (Trina June 24, 2016 AQR), Trina's July 19, 2016 Section C Questionnaire Response (Trina July 19, 2016 CQR) at C-1, and Trina's August 29, 2016 Supplemental Questionnaire Response (Trina August 29, 2016 SQR) at 9-10.

[87] *See* the petitioner's Case Brief at 8, citing to *Carbon and Certain Alloy Steel Wire Rod from Mexico: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 28190 (May 14, 2013) (*Wire Rod Mexico Final*) and accompanying IDM at Comment 2 and *Antidumping Duties, Countervailing Duties* 62 FR 27296, 27314 (May 19, 1997) (*Preamble*).

[88] *See* Trina July 19, 2016 CQR at C-1.

[89] *See* Trina August 29, 2016 SQR at SuppQ1-9.

[90] *See e.g., Certain New Pneumatic Off-the-Road Tires from India: Negative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 81 FR 55431 (August 19, 2016) and accompanying Preliminary Decision Memorandum, at 11-12, unchanged in the final determination.

> reason to report your U.S. sales on a different basis, please contact the official in charge before doing so.[91]

However, the Preamble to the Department's regulations notes an exception to this practice, specifically that:

> Sales of merchandise that can be demonstrably linked with entries prior to the suspension of liquidation are not subject merchandise and therefore are not subject to review by the Department.[92]

While Trina claims that its POR CEP sales included sales of subject merchandise that entered the United States before the POR and thus prior to the suspension of liquidation of entries,[93] we agree with the petitioners that Trina has not demonstrably linked its POR sales with entries prior to suspension of liquidation. Specifically, Trina identified certain sales as being related to pre-POR entries, but did not provide any documentation to support the entry dates it claims.[94] Thus, notwithstanding *Steel Plate Taiwan Final* and *Wire Rod France Final,* where respondents identified and linked the sales to entries into United States before the relevant period, we find that in the instant review the record does not substantiate Trina's claim.

We note that Trina did not raise this issue to the Department until case briefing, notwithstanding that the Department's questionnaire states, "{i}f you believe there is a reason to report your U.S. sales on a different basis, please contact the official in charge before doing so." Trina reported that all of its U.S. sales are CEP sales that were made through its U.S. affiliate.[95] Trina confirmed that it reported its sales based on the date of sale, *i.e.,* the date of its U.S. affiliate's sales invoice to the first unaffiliated U.S. customer.[96] Furthermore, in its subsequent responses, Trina again noted that it reported its U.S. sales based on whether the date of sale occurred during the POR, as instructed by the questionnaire.[97] Trina did not contact the Department for the Department to consider whether its universe of CEP sales should be modified based on entry date. In fact, Trina did not file pre-preliminary comments. Thus, although Trina had numerous opportunities to raise this issue earlier in the proceeding, it did not do so. In any case, Trina has the burden of providing data, to advance and, where necessary, substantiate the positions it urges the Department to take.[98] In this review, Trina did not provide documentation to link POR sales to entries prior to the suspension of liquidation. Therefore, for the final results of the instant review, we have not revised Trina's universe of sales to exclude certain sales claimed by Trina as relating to merchandise entered into the United States before the suspension of liquidation began (*i.e.*, before the POR began).

Comment 8: Warranty Expenses

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[91] *See* Department's May 26, 2016 Initial Questionnaire at C-1.
[92] *See Preamble*, 62 FR 27296, 27314 (May 19, 1997).
[93] *See* Trina August 29, 2016 SQR at SuppQ1-10.
[94] *See id. at SuppQ1-9-10* and Trina June 24, 2016 AQR, at Exhibit A-23.
[95] *See* Trina August 29, 2016 SQR at SuppQ1-9.
[96] *See* Trina June 24, 2016 AQR.
[97] *Id*.
[98] *See CVD Food Co. v. United States*, 658 F.3d 1318, 1324 (Fed. Cir. 2011) ("{T}he burden of creating an adequate record lies with {interested parties} and not with Commerce.").

Petitioners

- Although Trina did not report a warranty expense field in its U.S. sales database, the Department calculated Trina's U.S. warranty expenses based on one percent of entered value. In the *Preliminary Results*, the Department adjusted U.S. price for accrued warranties by subtracting one percent of entered value from the price of each U.S. sale.
- In *Solar Cells AR2*, in justifying the warranty adjustment made to Trina's sales, the Department concluded that warranty expenses relate to commercial activities that occur in the United States. Given that these expenses pertain to subject merchandise as sold by the U.S. affiliate, the proper basis for calculating the warranty expense adjustment is to multiply the warranty expense ratio by the gross unit price reported by Trina's U.S. affiliate.

Trina

- While no warranty expenses should be deducted from Trina's U.S. prices, if the Department continues to deduct warranty expenses, it should not adopt the petitioners' suggested calculation of Trina's warranty expense.
- First, the rate the Department used in the *Preliminary Results* to calculate warranty expenses overstates the amount of those expenses, because Trina' financial records show its 2015 warranty expenses were 0.866% of its total sales to unaffiliated parties.
- Second, Trina accrues warranty expenses at the rate of one percent of the Chinese producer's sales prices, prices which, in the case of sales to Trina U.S., are the same as U.S. entered value. Hence, contrary to the petitioners' position that the Department should calculate warranty expenses as one percent of Trina U.S.' downstream price, if warranty expenses are deducted from the U.S. price, they should be calculated on the same basis that they are accrued, as one percent of entered value.

Department's Position: We agree with the petitioners, in part. Although Trina claims that it accrued warranty expenses with respect to Trina's U.S. sales based on one percent of the Chinese producer's sales prices which, in turn, are the same as entered value, we believe the most reliable information on the record for calculating warranty expenses is found in Trina Solar Limited's audited financial statements. The audited financial statements identify the company's warranty costs and sales revenue which allow the Department to calculate the average warranty cost per dollar of sales revenue (total warranty cost divided by total sales revenue). Given that the denominator in this ratio is sales revenue, the ratio should be multiplied by sales revenue to calculate warranty costs for a sale. Hence, we find it appropriate to calculate warranty expenses by multiplying the ratio of warranty costs to sales revenue from the audited financial statement by the gross unit price of sales reported to the Department, rather than multiplying one percent by the entered value of those sales. This is consistent with the approach taken in the *Solar Cells AR3 Final*.[99]

While Trina argues that no warranty expenses should be deduced from Trina's U.S. prices, as explained above, record evidence demonstrates otherwise. Specifically, Trina Solar Limited's

[99] *See Solar Cells AR3 Final* and accompanying Issues and Decision Memorandum at Comment 19.

audited financial statements identify a provision for warranty costs related to solar modules and Trina indicated that warranty costs were accrued with respect to sales to its U.S. affiliate.[100] Thus, these warranty costs relate to economic activity in the United States and should be deducted from the CEP, pursuant to section 772(d)(1)(B) of the Act. Accordingly, the Department is making an adjustment to CEP for these warranty expenses.

Comment 9: 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 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.[101] 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.[102]

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.

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[100] *See* Trina June 24, 2016 AQR at A-16 and Trina's Case Brief at 23.
[101] *See* Petitioner's Case Brief at 25 (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).
[102] *See* Petitioner's Case Brief at 25 (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).

- 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.[103]
- Indirect selling expenses neither result from, nor bear a direct relationship to, a particular sale.[104] 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."[105] 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.[106] 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

[103] *See* Trina's Rebuttal Case Brief at 19 (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."); *see also 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); *see also 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)).
[104] *See* Trina's Rebuttal Case Brief at 20 (citing Cf. section 772(d)(1)(B) with section 772(d)(1)(D); Torrington v. United States, 82 F.3d 1039, 1050 (Fed. Cir. 1996); Torrington v. United States, 68 F.3d 1347, 1353 (Fed. Cir. 1995).
[105] *See* Trina's Rebuttal Case Brief at 20 (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).
[106] *See* Trina's Rebuttal Case Brief at 21 (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).

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.[107]
- 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 were "not associated with making sales of the subject merchandise."[108] 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.[109] 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."[110] 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.[111] 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."[112] In this case, Trina did not provide sufficient information and the record is unclear regarding its debt restructuring agreement, such

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[107] *See* Trina's Rebuttal Case Brief at 22 (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).

[108] *See* Trina's Rebuttal Case Brief at 22 (citing *CFS Paper from Indonesia* and accompanying IDM at Comment 1.

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

[110] *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.

[111] *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.

[112] *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).

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.[113] The Department normally classifies bad-debt expense as indirect selling expenses because those expenses relate to the sales of a company.[114] 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.[115] The Department found it distortive that the respondent recorded the entire gain in the year of restructure, while 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.[116]

In the instant review, Trina provided Trina U.S.' 2015 income statements listing the amount of the debt restructuring income,[117] 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 10: 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.

[113] *See Glycine from India* and accompanying IDM at Comment 2.
[114] *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.
[115] *See Steel Beams from South Korea* and accompanying IDM at Comment 26.
[116] *See Mushrooms from India* and accompanying IDM at Comment 13; *see also LWRPT from Mexico* and accompanying IDM at Comment 28.
[117] *See* Letter from Trina to the Department, regarding "Crystalline Silicon Photovoltaic Products from the People's Republic of China: Section A Questionnaire Response," dated June 24, 2016 at Exhibit A-18.

- 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.[118] 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.
- Record evidence does not support the petitioner's request for the Department to use HTS category 7007.29.90. 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.[119]
- 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."[120] The specification sheets provided by Trina demonstrate that neither its tempered glass nor its coated glass are "sandwich glass" (*i.e.*, laminated glass).

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 *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 glass inputs using HTS category 7007.29.90, which reflects strengthened, laminated glass, other than for use in vehicles, aircraft or spacecraft.
- Trina indicated to the Department that its coated and tempered glass are both tempered.[121]
- Trina indicated that there are no significant differences between its glass and the glass found on specification sheets from other solar producers' websites.[122] 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.

Department's Position: In the *Preliminary Results*, we valued 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).[123] We

[118] *See* Trina's Case Brief at 16 (citing Trina's 1st Supplemental Response at 37 and Exhibit 20 (August 29, 2016); Trina 3rd Supplemental Response at 2 (January 4, 2017)).
[119] *See* Trina's Rebuttal Case Brief at 17 (citing Trina's Section D Response at Exhibit 13, (July 19, 2016); Trina's 1st Supplemental Response at Exhibit 20 (August 29, 2016)).
[120] *See* Trina's Rebuttal Case Brief at 17 (citing Trina's Rebuttal Information at 4, Exhibits C-1 and C-2 (January 30, 2017)).
[121] *See* Petitioner's Case Brief at 22 (citing Trina's January 4, 2017 Third SQR at 2).
[122] *See* Petitioner's rebuttal case brief at 11 (citing Trina's January 4, 2017 Third SQR at 3).
[123] *See* Letter from Petitioner to the Department, regarding "Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Submission of Surrogate Values," dated August 15, 2016 (Petitioner's SV Comments) at Exhibit 3.

disagree with Trina's and the petitioner's arguments that HTS category 7007.19.90000 is inappropriate for valuing Trina's solar module glass. Thus, we have continued to value Trina'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), float glass (*i.e.*, HTS category 7005.29.90001), and laminated safety glass (*i.e.*, HTS category 7007.29.90).[124] Thus, these are the three options available for selecting a SV for module glass. In its August 29, 2016, supplemental questionnaire response, Trina responded that it uses float glass when asked by the Department to describe its tempered glass.[125] In its December 12, 2016, questionnaire response, Trina confirmed that both its coated glass and tempered glass are tempered.[126] 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.[127] Thus, an examination of record information and Trina's own descriptions indicate that Trina's module glass is frequently described as tempered. Moreover, we note that in its case brief, Trina confirmed that it uses module glass that is tempered. Thus, we find that based on HTS descriptions, Trina's 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.

Moreover, we disagree with the petitioner's suggestion that 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."[128] Record evidence does not indicate that Trina's module glass is laminated glass that is composed

[124] *See* Petitioner's SV Comments at Exhibit 1; *see also* Letter from Trina to the Department, regarding "Crystalline Silicon Photovoltaic Products from the People's Republic of China: Response to Request for Surrogate Values Information," dated August 15, 2016 at Exhibit B-1.
[125] *See* Letter from Trina to the Department, regarding "Crystalline Silicon Photovoltaic Products from the People's Republic of China: First Supplemental Questionnaire Response," dated August 29, 2016 at 37.
[126] *See* Letter from Trina to the Department, regarding "Crystalline Silicon Photovoltaic Products from the People's Republic of China: Third Supplemental Questionnaire Response," dated January 4, 2017 at 2.
[127] *See* Letter from Trina to the Department, regarding "Crystalline Silicon Photovoltaic Products from the People's Republic of China: Section A Questionnaire Response," dated June 24, 2017 at Exhibit A-20.
[128] *See* Letter from Trina to the Department, regarding "Crystalline Silicon Photovoltaic Products from the People's Republic of China: Information for the Department's Consideration in the Preliminary Results," dated January 30, 2017, at Exhibit C-2.

of multiple layers of plastic and glass. The petitioner argues that HTS category 7007.29.90 is appropriate because Trina's 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.

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

Comment 11: Selection of Financial Statements

Trina:

- The Department should base the surrogate financial ratios only on Styromatic (Thailand) Co., Ltd.'s (Styromatic) 2015 financial statements. The period of review is covers eighteen months, the last five months of 2014, all of 2015, and the first month of 2016. Styromatic's 2014 financial statements cover only five months of the POR, whereas Styromatic's 2015 financial statements cover twelve 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 only use 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*).[129]
- The Department should reject the petitioner's arguments to use Ekarat Engineering Public Company Limited's (Ekarat) 2015 financial statements. 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.[130]

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[129] *See* Trina's Case Brief at 15 (citing *Dupont Teijin Film v. United States*, 997 F.Supp.2d 1338, 1346 (CIT 2013) (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), accompanying IDM at Comment 3-C, page 14, fn 78); *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.")).

[130] *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)).

- Ekarat's financial statements combine certain elements of costs in the income statement (for example, materials and consumables) that the Department normally segregates into direct production costs and overhead expenses.[131] 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. [132] 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% 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.[133] Note 4.1 of the auditor notes to the financial statements discusses a subsidy received related to the purchase price of electricity.[134] Note 22 discusses income tax benefits that the company received because of Thailand Board of Investment's (BOI)-related income that is not taxable. [135] 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.[136] 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.[137] 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

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[131] *See* Trina's Rebuttal Case Brief at 2 (citing Petitioner's July 18, 2016, Surrogate Value Submission, at Exhibit 11).
[132] *See* Trina's Rebuttal Case Brief at 4.
[133] *See* Trina's Rebuttal Case Brief at 6-7 (citing *Certain Frozen Warmwater Shrimp from Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013) and accompanying IDM).
[134] *See* Trina's Rebuttal Case Brief at 6 (citing Petitioner's Surrogate Value Submission, at Exhibit 10 (Ekarat Engineering Annual Report) at page 74) (August 15, 2016))
[135] *See* Trina's Rebuttal Case Brief at 6 (citing Ekarat Engineering Annual Report at 107).
[136] *See* Trina's Rebuttal Case Brief at 6 (citing Ekarat Engineering Annual Report at 118-119).
[137] *See* Trina's Rebuttal Case Brief at 7 (citing *Frozen Warmwater Shrimp from Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013) and accompanying IDM at Comment 1).

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. [138]
- 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. [139]
- 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%, 70.45%, and 61.30%, respectively, are unreasonable and contradict the Department's previously calculated financial ratios for solar cell and solar module producers.[140]
- 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.

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." [141]

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[138] *See* Trina's Rebuttal Case Brief at 8.
[139] *See* Trina's Rebuttal Case Brief at 6 (citing *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)).
[140] *See* Trina's Rebuttal Case Brief at 13.
[141] *See* Petitioner's Case Brief at 11 (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-

- The Department previously determined that the IPA program is a *per se* countervailable subsidy under sections 771(5A)(A) and (B) of the Act,[142] and that Styromatic was a recipient of countervailable subsidies.[143] 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.[144]
- Styromatic is listed as a BOI promoted company on the BOI's website.[145] 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.[146] Styromatic was listed as a beneficiary of an investment project that was sponsored by the BOI with additional support from the European Union.[147] 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.[148] The Bangkok Post also identified Styromatic as a BOI-promoted company.[149] 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.[150]
- 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.[151] It appears that in 2014 (encompassing a portion of the POR), Styromatic benefited from two subsidies, having taken the double deduction subsidy and then, still having taxable income, benefitted again from the income tax exemption.[152]
- 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. 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

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)).

[142] *See* Petitioner's Case Brief at 6 (citing *Certain Frozen Warmwater Shrimp From Thailand: Final Negative Countervailing Duty Determination,* 78 FR 50379 (August 19, 2013) and accompanying IDM at Comment 2.

[143] *See* Petitioner's Case Brief at 7 (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) and accompanying IDM at 12, 14-15).

[144] *See* Petitioner's Case Brief at 7 (citing Trina's August 15, 2016 SV Submission at Exhibit C-l; Trína's January 3, 2017 SV Submission at Exhibit 7; Petitioner's January 3, 2017 SV Submission at Exhibit 6E.).

[145] *See* Petitioner's Case Brief at 6 (citing Petitioner's January 3, 2017 SV Submission at Exhibits 6B and 6C).

[146] *See* Petitioner's Case Brief at 6 (citing Petitioner's January 3, 2017 SV Submission at Exhibit 6B).

[147] *See* Petitioner's Case Brief at 6 (citing Petitioner's January 3, 2017 SV Submission at Exhibit 6B).

[148] *See* Petitioner's Case Brief at 6 (citing Petitioner's January 3, 2017 SV Submission at Exhibits 6A and 6D).

[149] *See* Petitioner's Case Brief at 6 (citing Petitioner's January 3, 2017 SV Submission at Exhibit 6B).

[150] *See* Petitioner's Case Brief at 6 (citing Trína's January 3, 2017 SV Submission at Exhibit 7).

[151] *See* Petitioner's Case Brief at 8.

[152] *See* Petitioner's Case Brief at 8.

statements. It is Department practice to exclude incomplete financial statements from consideration in the calculation of financial ratios. [153]

- 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, the *National Survey Report of PV Power Applications in Thailand* for 2014, and the *Amata Times*.[154] Ekarat's website clearly demonstrates that the company operates modern, state-of-the- art solar production facilities in Amata, Thailand.[155] The Department also recognized Ekarat as a manufacturer of solar cells and modules in the *Preliminary Results*.
- The production process for subject merchandise is extremely complex, and is reflected in substantially higher production costs. 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 respondent's structure and financial experience.
- 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.[156] The Department also selected financial statements from a producer outside of the primary surrogate country in *Solar Cells AR1*.[157]
- 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.

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[153] See Petitioner's Rebuttal Case Brief at 10 (citing *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 14-15.

[154] *See* Petitioner's Case Brief at 11 (citing Petitioner's August 15, 2016 SV Submission at Exhibits 10 and 11).

[155] *See* Petitioner's Case Brief at 12 (citing Petitioner's August 15, 2016 SV Submission at Exhibit 11).

[156] *See* Petitioner's Case Brief at 14 (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).

[157] *See* Petitioner's Case Brief at 15-16 (citing *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) and accompanying PDM at 33-34 (unchanged for the final results).

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 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.[158]

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.[159]

When the Department has reason to believe or suspect that a company may have received countervailable subsidies, information derived from that company's financial statements may not constitute the best available information with which to calculate surrogate financial ratios.[160] 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.[161]

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);

[158] 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).
[159] *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 Final*), and accompanying IDM at 36; *see Dorbest Ltd. v. United States*; 604 F.3d 1363, 1374 (Fed. Cir. 2010).
[160] *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.
[161] *Id.*, at 11.

(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.[162] 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.[163]

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.[164] 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.[165] 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.[166]

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 refer to a "Note 18"; thus, it appears that the Notes to the financial statements are incomplete.[167] Moreover, we agree with Trina 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.[168] Styromatic's 2014 financial statements cover only five months of the POR, whereas its 2015 financial statements cover twelve months of the POR. 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.[169] 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

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[162] *See Preliminary Results* and accompanying PDM at 23.
[163] *See Preliminary Results* and accompanying PDM at 24.
[164] *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
[165] *See* Petitioner's January 3, 2017 SV Submission at Exhibit 8 for Hana's and KCE's 2015 financial statements.
[166] *See* Hana's financial statements at Note 24, and KCE's financial statements at Note 30.
[167] *See* Trina's August 15, 2016 SV submission at Exhibit C-1 for Styromatic's 2014 financial statements.
[168] *See Activated Carbon AR1 Final* and accompanying IDM at Comment 2c; *Citric Acid AR1 Final* and accompanying IDM at Comment 8.
[169] *See* Letter from Petitioner to the Department, regarding "Crystalline Silicon Photovoltaic Products from the People's Republic of China: Submission of Surrogate Values," dated August 15, 2016 at Exhibit 10 for Ekarat's 2015 financial statements.

electricity.[170] 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.[171] Additionally, the record does not contain evidence demonstrating that a company primarily manufacturing transformers and operating a solar farm is comparable to a manufacturer/seller of solar cells and modules. As a rule, we prefer to select financial statements from a producer that primarily produced comparable merchandise instead of a producer that primarily produced non-comparable merchandise.[172] 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."[173] However, Ekarat's financial statements note that Ekarat Solar had an operating loss in 2015. The Department has an established practice of rejecting financial statements from a company that is not profitable.[174] 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.[175]

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 a Bulgarian company which describes its main activities as development, engineering, construction, and maintenance of solar electric power stations and installations (*i.e.*, SolarPro). Styromatic's 2015 financial statements are complete,[176] 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. Trina 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

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170 *See* Ekarat's 2015 financial statements at 113.
171 *See* Ekarat's 2015 financial statements at 113.
172 *See, e.g., 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) and accompanying IDM at Comment 6.
173 *See* Ekarat's 2015 financial statements at 15 and 21.
174 *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.
175 *See* Ekarat's 2015 financial statements at 118 (Note 34).
176 *See* Trina's January 3, 2017 SV Submission at Exhibit 7 for Styromatic's 2015 financial statements; *see also* Petitioner' January 3, 2017 SV Submission at Exhibit 6F.

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*,[177] the Department determined that benefits provided under the IPA were export contingent under sections 771(5A)(A) and (B) of the Act. Thus, the 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."[178] 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.[179]

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."[180] 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."[181] This information makes it uncertain whether SolarPro's business activities described in the Financial Times source are 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

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177 *See Warmwater Shrimp from Thailand CVD* and accompanying IDM at Comment 2.
178 *See* Petitioner's January 3, 2017 SV Submission at Exhibit 9U.
179 *Id.* at Exhibit 9O.
180 *Id.* at Exhibit 9A.
181 *Id.* at Exhibit 9B.

web-page listing solar panel manufacturers in Bulgaria, which identify SolarPro as a solar panel manufacturer.[182] However, a news article dated 2012, reported that SolarPro, a solar panel manufacturer in the Balkans, was halting its operations.[183] Additionally, SolarPro's 2012 activity report indicates that one of SolarPro's subsidiaries (SolarPro JSC) was partially sold to a foreign investor.[184]

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, leave 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 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.[185] 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.[186] Thus, for the final results, we have calculated surrogate financial ratios using Styromatic's 2015 financial statements.

Comment 12: JA Solar Technology Co., Ltd.'s No Shipments Claim

JA Solar

- The entry documentation obtained by the Department from CBP regarding certain entries supports JA Solar's claim of no shipments.
- The Department must determine that the shipment related to the CBP entry documentation was not a shipment of subject merchandise exported by JA Solar.

[182] *Id.* at Exhibit 9C and 9E.
[183] *See* Trina's January 30, 2017 Information for Consideration in the Preliminary Results at Exhibit A-1.
[184] *Id.* at Exhibit A-2.
[185] *See 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).
[186] *See Carbazole Violet Pigment 23 from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 36630 (June 28, 2010) and accompanying IDM at Comment 1.

No other party commented on this issue.

Department's Position: We agree with JA Solar. Proprietary information obtained by the Department from CBP does not indicate that JA Solar sold subject merchandise to the United States during the POR.[187] Therefore, we continue to find that JA Solar made no shipments of subject merchandise to the United States during the POR.

RECOMMENDATION:

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

☒	☐
AGREE	DISAGREE

7/5/2017

X Carole Showers

Signed by: CAROLE SHOWERS

Carole Showers
Executive Director, Office of Policy
performing the duties of
Deputy Assistant Secretary for Enforcement and Compliance

[187] Due to the proprietary nature of the information relied upon, for further details see the memorandum from Jeff Pedersen to All Interested Parties dated April 25, 2017.

Table of Shortened Citations

Steel Wire Rod from Mexico Final	*Carbon and Certain Alloy Steel Wire Rod from Mexico: Final Results of Antidumping Duty Administrative Review;2010-2011*, 78 FR 28190 (May 14, 2013)
Pigment 23 Final	*Carbazole Violet Pigment 23 from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 36630 (June 28, 2010)
Tires Final	*Certain New Pneumatic Off-the-Road Tires from China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part; 2010-2011*, 78 FR 22513 (April 16, 2013)
Steel Wire Rods from France Final	*Certain Stainless Steel Wire Rods from France: Final Results of Antidumping Duty Administrative Review*, 61 FR 47874. (September 11, 1996)
Orange Juice Final	*Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review*, 74 FR 40167 (August 11, 2009)
Frozen Shrimp from Thailand	*Certain Frozen Warmwater Shrimp from Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013)
Frozen Shrimp AR4 Final from Vietnam	*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)
Frozen Shrimp AR6 Final from Vietnam	*Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 77 FR 55800 (September 11, 2012)
Steel Nails AR1 Final from the PRC	*Certain Steel Nails From the People's Republic of China: Final Results of the First Antidumping Duty Administrative Review*, 76 FR 16379 (March 23, 2011)
Steel Nails AR4 Final from the PRC	*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)
Steel Nails from Korea LTFV Prelim	*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)
Circular Welded Pipe Prelim	*Circular Welded Carbon-Quality Steel Pipe from Pakistan: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination and Extension of Provisional Measures*, 81 FR 368367 (June 8, 2016)
Citric Acid AR1 Final	*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 AR5 Final	*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)
CVD Solar Products Final	*Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014)
Solar Products Prelim	*Crystalline Silicon Photovoltaic Products From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2014-2016*, 81 FR 12793 (March 7, 2017)
Solar Products Investigation	*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 Cells Investigation	*Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order*, 77 FR 73018 (December 7, 2012)
Solar Cells AR1 Prelim	*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 Final	*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 AR2 Final	*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)
Diamond Sawblades	*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)
Sweaters LTFV Final	*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)
Ironing Tables Final	*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)
Folding Metal Tables and Chairs	*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)
Garlic Final	*Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 36168 (June 17, 2013)
Crawfish Final	*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)
Initiation Notice	*Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 20324 (April 7, 2016)
Ribbons LTFV Final	*Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 41808 (July 19, 2010)
CFS Paper LTFV Final	*Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from Indonesia,* 72 FR 60636 (October 25, 2007)
Cold-rolled Corrosion-resistant Carbon Steel Final	*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)
Glycine LTFV Final	*Notice of Final Determination of Sales at Less Than Fair Value: Glycine from India*, 73 FR 16640 (March 28, 2008)
Melamine Dinnerware LTFV Finals	*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)
Persulfates Final	*Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 70 FR 6836 (February 9, 2005)
Silicon Metal Final	*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)
Stainless Steel Plate Final	*Stainless Steel Plate in Coils From Taiwan: Final Rescission of Antidumping Duty Administrative Review*, 66 FR 18610, 18611-18612 (April 10, 2001)
Stainless Steel Sheet Prelim	*Stainless Steel Sheet and Strip from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less than Fair Value and Preliminary Affirmative Determination of Critical Circumstance*, 81 FR 64135 (September 19, 2016)
Steel Wire Hangers Final	*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)

Wooden Bedroom Furniture Final	*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)
Xanthan Gum LTFV Final	*Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 78 FR 33350 (June 4, 2013)