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Administrative Review
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January 2, 2018

MEMORANDUM TO: P. Lee Smith
Deputy Assistant Secretary for Policy and Negotiations

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

SUBJECT: Decision Memorandum for the Preliminary Results of the 2015-2016 Antidumping Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or not Assembled into Modules, From the People's Republic of China

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SUMMARY

In response to requests from interested parties, the Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells), from the People's Republic of China (China) covering the period December 1, 2015 through November 30, 2016 (the period of review (POR)). The administrative review covers 38 exporters of subject merchandise and one mandatory respondent: the collapsed entity Changzhou Trina Solar Energy Co., Ltd./Trina Solar (Changzhou) Science & Technology Co., Ltd./Yancheng Trina Solar Energy Technology Co., Ltd./Changzhou Trina Solar Yabang Energy Co., Ltd./Turpan Trina Solar Energy Co., Ltd./Hubei Trina Solar Energy Co., Ltd. (collectively, Trina), which we have preliminarily continued to treat as a single entity with Trina Solar (Hefei) Science and Technology Co., Ltd.

Commerce preliminarily determines that 22 companies, which include the collapsed mandatory respondent, have established their entitlement to separate rate status and have sold subject merchandise in the United States at prices below normal value (NV) during the POR. Commerce also preliminarily determines that eight companies failed to establish their entitlement to separate rates status and eight other companies made no shipments of subject merchandise during the POR.

BACKGROUND

On December 1, 2016, Commerce notified interested parties of the opportunity to request an administrative review of orders, findings, or suspended investigations with anniversaries in

December 2016, including the AD order on solar cells from China.[1] Between December 21, 2016, and January 3, 2017, SolarWorld Americas Inc. (the petitioner), as well as various exporters and U.S. importers, requested that Commerce conduct an administrative review of certain exporters covering the period December 1, 2015, through November 30, 2016. On February 13, 2017, Commerce published a notice initiating an AD administrative review of solar cells from China covering 47 companies/company groupings and the period December 1, 2015 through November 30, 2016.[2]

In the *Initiation Notice*, Commerce stated that if it limited the number of respondents for individual examination, then it intended to select respondents based on volume data contained in responses to its quantity and value (Q&V) questionnaire.[3] Further, Commerce noted that it intended to limit the number of Q&V questionnaires issued in the review based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the POR.[4] On February 13, 2017, Commerce issued a Q&V questionnaire to the six companies or company groupings with the largest shipments during the POR, by value, according to information gathered from CBP.[5] In February and March 2017, Commerce received Q&V questionnaire responses from these six companies, and an additional two companies or company groupings which reported shipments during the POR.[6] In addition, twelve companies or company groupings submitted no shipment letters or Q&V questionnaire responses indicating no shipments.[7]

Numerous companies submitted separate rate applications and certifications in February and March 2017. In July 2017, Commerce issued supplemental questionnaires to a number of companies requesting separate rates status. Commerce received responses to its separate rates supplemental questionnaires in July and August 2017.

On March 28, 2017, Commerce selected Canadian Solar International Limited (Canadian Solar) and Trina as mandatory respondents.[8] On March 31, 2017, Commerce issued its AD questionnaire and a questionnaire regarding double remedies to Canadian Solar and Trina. On May 1, 2017, Canadian Solar Inc. and its affiliated U.S. importer, Canadian Solar (USA) Inc., timely withdrew their request for an administrative review of Canadian Solar.[9] No other party requested an administrative review of Canadian Solar. On May 12, 2017, Commerce selected

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[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 81 FR 86694 (December 1, 2016).
[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 10457 (February 13, 2017) (*Initiation Notice*).
[3] *Id*.
[4] *Id*.
[5] *See* February 13, 2017 letters to Canadian Solar International Limited, ET Solar Energy Limited, Shanghai JA Solar Technology Co., Ltd., Trina, Yingli Energy (China) Company Limited et. al., and Shanghai BYD Co., Ltd.
[6] Commerce stated in the *Initiation Notice* that any party subject to the review could submit a Q&V questionnaire response by the applicable deadline if it desired to be included in the pool of companies from which Commerce would select mandatory respondents; *Id.*; *see also* DOC memorandum: 2015-2016 Antidumping Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Respondent Selection, dated March 28, 2017 (Respondent Selection Memorandum) at Attachment.
[7] *See* Respondent Selection Memorandum at 2.
[8] *Id.* at 6.
[9] *See* Canadian Solar Inc.'s and Canadian Solar (USA) Inc.'s May 1, 2017, Letter re: Withdrawal Notice of Canadian Solar.

Shanghai BYD Co., Ltd. (Shanghai BYD), the next largest exporter of solar cells based on Q&V data, as a mandatory respondent.[10] On May 15, 2017, Shanghai BYD and the petitioner withdrew their requests for an administrative review of Shanghai BYD. No other party requested a review of Shanghai BYD.[11]

Between May 2017 and December 2017, Trina submitted responses to Commerce's AD questionnaire, the questionnaire regarding double remedies, and supplemental questionnaires. During this time period, the petitioner also submitted comments on Trina's questionnaire and supplemental questionnaire responses. In response to Commerce's May 5, 2017, request for comments on surrogate country selection and surrogate values (SVs),[12] the petitioner and Trina submitted comments and rebuttal comments on surrogate country selection and SVs from June 2017 through August 2017 and again in November 2017.

Nine companies, including Canadian Solar and Shanghai BYD, timely withdrew their requests for an administrative review. Therefore, on September 18, 2017, Commerce rescinded the review with respect to these nine companies.[13]

On May 24, 2017, the petitioner requested that Commerce conduct verification of the respondents selected in this review.[14] Between November 6, 2017, and November 16, 2017, Commerce conducted a verification of the information provided by Trina. Trina presented certain minor corrections at verification.[15]

On August 29, 2017, Commerce extended the time limit for completing the preliminary results of this review by 90 days.[16] On November 8, 2017, the petitioner submitted comments for consideration in the the preliminary results. On November 28, 2017, Commerce extended the time limit for completing the preliminary results of this review by 28 days.[17] The current extended deadline for completing the preliminary results of this review is January 2, 2018.

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[10] *See* DOC Memorandum: 2015-2016 Antidumping Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Selection of Mandatory Respondent After Withdrawal of Review Request," dated May 12, 2017.
[11] *See* the petitioner's May 15, 2017, Letter re: Withdrawal of Request for Administrative Review; *see also* Shanghai BYD's May 15, 2017, Letter re: Withdrawal Notice of Shanghai BYD and Shangluo BYD.
[12] *See* Commerce's Letter to Interested Parties re: Antidumping Duty Review of Crystalline Silicon Photovoltaic Cells from the People's Republic of China: Request for Surrogate Country and Surrogate Value Comments and Information, dated May 5, 2017 (Request for SC and SV Comments).
[13] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review*, 82 FR 43516 (September 18, 2017) (*Rescission Notice*).
[14] *See* the petitioner's May 24, 2017, Letter re: Request for Verification.
[15] *See* DOC Memorandum: Verification of the Sales and Factors Responses of Changzhou Trina Solar Energy Co., Ltd./Trina Solar (Changzhou) Science and Technology Co., Ltd./Yancheng Trina Solar Energy Technology Co., Ltd./Changzhou Trina Solar Yabang Energy Co., Ltd./Turpan Trina Solar Energy Co., Ltd./Hubei Trina Solar Energy Co., Ltd. in the Antidumping Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China, dated January 2, 2018; *see also* DOC Memorandum: Verification of Trina Solar (U.S.) Inc. in the Antidumping Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China, dated January 2, 2018.
[16] *See* DOC Memorandum: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review, dated August 29, 2017.
[17] *See* DOC Memorandum: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review, dated November 28, 2017.

SCOPE OF THE ORDER

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

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

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

Excluded from the scope of this order are thin film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS). Also excluded from the scope of this order are crystalline silicon photovoltaic cells, not exceeding 10,000mm^2 in surface area, that are permanently integrated into a consumer good whose function is other than power generation and that consumes the electricity generated by the integrated crystalline silicon photovoltaic cell. Where more than one cell is permanently integrated into a consumer good, the surface area for purposes of this exclusion shall be the total combined surface area of all cells that are integrated into the consumer good.

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

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

PRELIMINARY DETERMINATION OF NO SHIPMENTS

BYD (Shangluo) Industrial Co., Ltd., De-Tech Trading Investment Limited, Dongguan Sunworth Solar Energy Co., Ltd., Jiawei Solarchina Co., Ltd., Luoyang Suntech Power Co., Ltd., Ningbo ETDZ Holdings, Ltd., Shenzhen Sungold Solar Co., Ltd., Taizhou BD Trade Co., Ltd., Toenergy Technology Hangzhou Co., Ltd., Turpan Trina Solar Energy Co., Ltd., Hubei Trina Solar Energy Co., Ltd., and Wuxi Tianran Photovoltaic Co., Ltd. (*i.e.*, twelve companies in total) reported no shipments of subject merchandise to the United States during the POR.[18] Because all parties withdrew their review requests for BYD (Shangluo) Industrial Co., Ltd., we rescinded the administrative review with respect to BYD (Shangluo) Industrial Co., Ltd. on September 18, 2017.[19] Luoyang Suntech Power Co., Ltd, Turpan Trina Solar Energy Co., Ltd., and Hubei Trina Solar Energy Co., Ltd. are part of collapsed entities that are currently under review that reported shipments (*i.e.*, Wuxi Suntech Power Co., Ltd./Luoyang Suntech Power Co., Ltd, and the mandatory respondent Trina). To test the no-shipment claims of the other companies, specifically, De-Tech Trading Investment Limited, Dongguan Sunworth Solar Energy Co., Ltd., Jiawei Solarchina Co., Ltd., Ningbo ETDZ Holdings, Ltd., Shenzhen Sungold Solar Co., Ltd., Taizhou BD Trade Co., Ltd., Toenergy Technology Hangzhou Co., Ltd., and Wuxi Tianran Photovoltaic Co., Ltd., we reviewed information obtained from two CBP data queries and issued a no-shipment inquiry to CBP requesting that it provide any information that contradicted the no-shipment claims of these companies.[20]

Based on the no shipment certifications of the companies listed above, our analysis of the results of two CBP data queries,[21] and the fact that CBP did not identify any information that contradicted the no-shipment claims, we preliminarily determine that De-Tech Investment Limited, Dongguan Sunworth Solar Energy Co., Ltd., Jiawei Solarchina Co., Ltd., Ningbo ETDZ Holdings, Ltd., Shenzhen Sungold Solar Co., Ltd., Taizhou BD Trade Co., Ltd., Toenergy Technology Hangzhou Co., Ltd., and Wuxi Tianran Photovoltaic Co., Ltd., did not have any reviewable transactions during the POR. However, consistent with Commerce's practice in non-market economy (NME) cases, we have not rescinded the review with respect to these companies, but will continue the review of these companies and issue instructions to CBP based on the final results of the review.[22]

SELECTION OF RESPONDENTS

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

In its Respondent Selection Memorandum, Commerce determined, pursuant to section 777A(c)(2) of the Act, that given the large number of producers or exporters for which a review was initiated and Commerce's current resource constraints, it would not be practicable to individually examine all known exporters/producers.[23] Therefore, in accordance with section 777A(c)(2)(B) of the Act, Commerce selected for individual examination the two exporters accounting for the largest volume of subject merchandise exported from China during the POR,

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[18] *See* Respondent Selection Memorandum at 2.
[19] *See Rescission Notice*, 82 FR 43517.
[20] *See* February 15, 2017 Memorandum entitled "Release of Customs and Border Protection Data" and November 8, 2017 Customs Query.
[21] *Id*.
[22] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011).
[23] *See* Respondent Selection Memorandum at 5.

Canadian Solar and Trina.[24] As noted above, on May 1, 2017, Canadian Solar Inc. and its affiliated U.S. importer, Canadian Solar (USA) Inc., timely withdrew their request for an administrative review of Canadian Solar.[25] No other party requested a review of Canadian Solar. On May 12, 2017, Commerce selected Shanghai BYD, the next largest exporter of solar cells based on Q&V data, as a mandatory respondent.[26] On May 15, 2017, Shanghai BYD and the petitioner withdrew their requests for an administrative review of Shanghai BYD. No other party requested a review of Shanghai BYD.[27] Accordingly, Trina remains the sole mandatory respondent in this review.

SINGLE ENTITY TREATMENT

To the extent that Commerce's practice does not conflict with section 773(c) of the Act, Commerce has, in prior cases, treated certain NME exporters and/or producers as a single entity if the facts of the case supported such treatment.[28] Pursuant to 19 CFR 351.401(f)(1), Commerce will treat producers as a single entity, or "collapse" them, where: (1) those producers are affiliated; (2) the producers have production facilities for producing similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities; and (3) there is a significant potential for manipulation of price or production.[29] In determining whether a significant potential for manipulation exists, 19 CFR 351.401(f)(2) indicates that Commerce may consider various factors, including: (1) the level of common ownership; (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (3) whether the operations of the affiliated firms are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.[30]

Section 771(33)(F) of the Act identifies persons that shall be considered "affiliated" or "affiliated persons," as two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.[31] Section 771(33) of the Act further states that a person shall

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[24] *Id*. at 5.
[25] *See* Canadian Solar Inc.'s and Canadian Solar (USA) Inc.'s May 1, 2017, Letter re: Withdrawal Notice of Canadian Solar.
[26] *See* DOC Memorandum: 2015-2016 Antidumping Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Selection of Mandatory Respondent After Withdrawal of Review Request," dated May 12, 2017.
[27] *See* the petitioner's May 15, 2017, Letter re: Withdrawal of Request for Administrative Review; *see also* Shanghai BYD's May 15, 2017, Letter re: Withdrawal Notice of Shanghai BYD and Shangluo BYD.
[28] *See Certain Steel Nails From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances and Postponement of Final Determination*, 73 FR 3928, 3932 (January 23, 2008), unchanged in *Certain Steel Nails From the People's Republic of China: Amended Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 7254 (February 7, 2008) and *Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 (June 16, 2008).
[29] *See*, *e.g.*, *Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review*, 63 FR 12764, 12774-12775 (March 16, 1998).
[30] *See also*, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Taiwan*, 62 FR 51427, 51436 (October 1, 1997).
[31] *See* section 771(33)(F) of the Act.

be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

In previous segments of this proceeding, Commerce treated Trina (*i.e.*, Changzhou Trina Solar Energy Co., Ltd./Trina Solar (Changzhou) Science & Technology Co., Ltd./Yancheng Trina Solar Energy Technology Co., Ltd./Changzhou Trina Solar Yabang Energy Co., Ltd./Turpan Trina Solar Energy Co., Ltd./Hubei Trina Solar Energy Co., Ltd.) as a single entity pursuant to 19 CFR 351.401(f).[32] Based on record evidence, we recommend preliminarily finding that the six aforementioned companies and Trina Solar (Hefei) Science and Technology Co., Ltd. are affiliated within the meaning of section 771(33) of the Act. We also recommend preliminarily finding that these companies, which are involved in the production, sale, and distribution of solar cells from China should be treated as a single entity, pursuant to 19 CFR 35l.40l(f). These affiliated companies operate production facilities that produce similar or identical products that would not require substantial retooling of their facilities in order to restructure manufacturing priorities.[33] Also, there is a significant potential for the manipulation of price or production among these companies as evidenced by the level of common ownership, the degree of directorial and managerial overlap, and the intertwined nature of the operations of these companies.[34] Thus, we have preliminarily treated these companies as a single entity.[35]

DISCUSSION OF THE METHODOLOGY

Non-Market Economy Country

Commerce considers China to be a NME country.[36] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Therefore, Commerce will continue to treat China as an NME country for purposes of these preliminary results of review. Commerce calculated NV using a factors of production (FOP) methodology in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rates

In all proceedings involving NME countries, Commerce maintains a rebuttable presumption that all companies within China are subject to government control and, thus, should be assigned a

[32] *See* Trina's May 2, 2017 Section A Response (Section A Response) at Exhibit A-31 (*i.e.*, the 2013-2014 single entity memorandum).
[33] *See* 19 CFR 351.401(f)(1); *see also* DOC Memorandum: Affiliation and Single Entity Status of Changzhou Trina Solar Energy Co., Ltd., Trina Solar (Changzhou) Science and Technology Co., Ltd., Yancheng Trina Solar Energy Technology Co., Ltd., Changzhou Trina Solar Yabang Energy Co., Ltd., Turpan Trina Solar Energy Co., Ltd., Hubei Trina Solar Energy Co., Ltd., and Trina Solar (Hefei) Science and Technology Co., Ltd., dated concurrently with this memorandum (Trina Single Entity Memorandum).
[34] *See* 19 CFR 351.401(f)(2). *See also* Trina Single Entity Memorandum at 7-8.
[35] *Id*.
[36] *See Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination,* 82 FR 50858, 50861 (November 2, 2017) and accompanying decision memorandum, *China's Status as a Non-Market Economy*.

single antidumping duty rate.[37] In the *Initiation Notice*, Commerce notified parties of the application process by which exporters or exporter/producers may obtain separate rate status in NME proceedings.[38] It is Commerce's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, Commerce analyzes each exporting entity in an NME country under the test established in *Sparklers*,[39] as amplified by *Silicon Carbide*.[40] However, if Commerce determines that a company is wholly foreign-owned or located in a market economy (ME) country, then analysis of the *de jure* and *de facto* criteria are not necessary to determine whether the company is independent from government control and eligible for a separate rate.[41]

Commerce continues to evaluate its practice with regard to the separate rates analysis in light of the diamond sawblades from China AD proceeding, and Commerce's determinations therein.[42] In particular, in litigation involving the diamond sawblades proceeding, the U.S. Court of International Trade (CIT) found Commerce's existing separate rates analysis deficient in the circumstances of that case, in which a government-controlled entity had significant ownership in the respondent exporter.[43] Following the CIT's reasoning, we have concluded that where a

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

[38] *See Initiation Notice*, 82 FR at 10458.

[39] *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*).

[40] *See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

[41] *See*, *e.g.*, *Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China*, 72 FR 52355, 52356 (September 13, 2007).

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

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

government entity holds a majority equity ownership, either directly or indirectly, in the respondent exporter, this interest in and of itself means that the government exercises or has the potential to exercise control over the company's operations generally. This may include control over, for example, the selection of board members and management, a key factor in determining whether a company has sufficient independence in its export activities to merit a separate rate.[44] Consistent with normal business practices, we would expect any majority shareholder, including a government, to have the ability to control, and poses an interest in controlling, the operations of the company, including the selection of board members, management, and the profitability of the company.

Separate Rate Applicants

As noted above, Commerce initiated this review with respect to 47 companies.[45] Interested parties timely withdrew all of their requests for a review of nine companies or company groupings, and Commerce rescinded this review with respect to these nine companies or groups of companies.[46] Of the remaining 38 companies/company groupings, as noted above, Commerce preliminarily determined that eight of the companies not already collapsed with other entities who had separate rates applicable to this POR did not have any reviewable transactions during the POR. The separate rates status of the remaining 30 companies is discussed below:

Mandatory Respondent:

1. Changzhou Trina Solar Energy Co., Ltd./ Trina Solar (Changzhou) Science and Technology Co., Ltd./Yancheng Trina Solar Energy Technology Co., Ltd./Changzhou Trina Solar Yabang Energy Co., Ltd./Turpan Trina Solar Energy Co., Ltd./Hubei Trina Solar Energy Co., Ltd./Trina Solar (Hefei) Science and Technology Co., Ltd.

Separate Rate Respondents:

2. Anji DaSol Solar Energy Science & Technology Co., Ltd.
3. Chint Solar (Zhejiang) Co., Ltd.
4. ET Solar Energy Limited
5. Hangzhou Sunny Energy Science and Technology Co., Ltd.
6. Hengdian Group DMEGC Magnetics Co. Ltd.
7. JA Solar Technology Yangzhou Co., Ltd.
8. Jiawei Solarchina (Shenzhen) Co., Ltd.

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[44] *See, e.g.*, *Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part*, 79 FR 53169 (September 8, 2014), and accompanying Preliminary Decision Memorandum at 5-9; unchanged in *Carbon and Certain Alloy Steel Wire Rod From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 79 FR 68860 (November 19, 2014), *see also Truck and Bus Tires from the People's Republic of China: Final Affirmative Determinations of Sales at Less Than Fair Value and Critical Circumstances*, 82 FR 8559 (January 27, 2017) (Truck and Bus Tires), and accompanying I&D Memo at Comment 2; *see also Diamond Sawblades Manufacturers Coalition v. United States*, 866 F.3d 1304 (Fed. Cir. 2017), *see also Diamond Sawblades Manufacturers Coalition v. United States*, Court Nos. 2016-1254, 1255, 2017 WL 3381909, 2017 U.S. App. LEXIS 14472 (Fed. Cir. 2017).

[45] *See Initiation Notice*, 82 FR at 10459, 10460.

[46] *See* Respondent Selection Memorandum; *see also Rescission Notice*.

9. JingAo Solar Co., Ltd.
10. LERRI Solar Technology Co., Ltd.
11. Lightway Green New Energy Co., Ltd.
12. Ningbo Qixin Solar Electrical Appliance Co., Ltd.
13. Risen Energy Co., Ltd.
14. Shanghai JA Solar Technology Co., Ltd.
15. Shenzhen Topray Solar Co., Ltd.
16. Sumec Hardware & Tools Co., Ltd.
17. Sunpreme Jiaxing Ltd.
18. tenKsolar (Shanghai) Co., Ltd.
19. Wuxi Suntech Power Co., Ltd/Luoyang Suntech Power Co., Ltd.
20. Yingli Energy (China) Company Limited/Baoding Tianwei Yingli New Energy Resources Co., Ltd./Tianjin Yingli New Energy Resources Co., Ltd./Hengshui Yingli New Energy Resources Co., Ltd./Lixian Yingli New Energy Resources Co., Ltd./Baoding Jiasheng Photovoltaic Technology Co., Ltd./Beijing Tianneng Yingli New Energy Resources Co., Ltd./Hainan Yingli New Energy Resources Co., Ltd.
21. Zhejiang ERA Solar Technology Co., Ltd.
22. Zhejiang Sunflower Light Energy Science & Technology Limited Liability Company

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

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

a. Absence of *De Jure* Control

Commerce considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) legislative enactments decentralizing control over export activities of the companies; and (3) other formal measures by the government decentralizing control over export activities of companies.[47]

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

[47] *See Sparklers*, 56 FR at 20589.

b. Absence of *De Facto* Control

Typically, Commerce considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) whether the export sales prices are set by, or are subject to the approval of, a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.[48] Commerce has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude Commerce from assigning them separate rates.

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

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

2. Wholly Foreign-Owned

For the companies in the above list that provided evidence that they are wholly foreign, there is no record evidence indicating that these companies are under the control of the Government of China (GOC). Thus, it is not necessary for Commerce to conduct a separate rate analysis to determine whether these companies are independent from government control.[49] Therefore, Commerce has preliminarily granted separate rate status to these companies.

3. Companies Not Receiving a Separate Rate

Commerce has not granted the following companies a separate rate because they did not file a separate rate application or certification, which, as stated in the *Initiation Notice*,[50] they were

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[48] *See Silicon Carbide*, 59 FR at 22586-87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).
[49] *See*, *e.g.*, *Seamless Refined Copper Pipe and Tube from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 26716, 26720 (May 12, 2010), unchanged in *Seamless Refined Copper Pipe and Tube from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 60725 (October 1, 2010).
[50] *See Initiation Notice*, 82 FR at 10458.

required to do to in order to be considered for separate-rate status. Because Commerce preliminarily determines that the companies listed above are not eligible for separate rate status, we are treating them as part of the China-wide entity. Because no party requested a review of the China-wide entity, the entity is not under review and the entity's rate (*i.e.*, 238.95 percent) is not subject to change.[51]

23. Eoplly New Energy Technology Co., Ltd.
24. ERA Solar Co., Ltd.
25. ET Solar Industry Limited
26. Hangzhou Zhejiang University Sunny Energy Science and Technology Co., Ltd.
27. Jiangsu High Hope Int'l Group
28. Jiangsu Sunlink PV Technology Co., Ltd.
29. Systemes Versilis, Inc.
30. Zhongli Talesun Solar Co. Ltd.

4. Separate Rate for Eligible Non-Selected Respondents

The statute and Commerce's regulations do not address the establishment of a rate to be applied to individual respondents not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents which were not individually examined in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally "an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely {on the basis of facts available}." Accordingly, when only one weighted-average dumping margin for the individually investigated respondents is above *de minimis* and not based entirely on facts available, the separate rate will be equal to that single above *de minimis* rate.[52] However, when the weighted-average dumping margins established for all individually investigated respondents are zero, *de minimis*, or based entirely on facts available, section 735(c)(5)(B) of the Act permits Commerce to "use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated."

In these preliminary results, Commerce has calculated a rate for the sole mandatory respondent, Trina that is not zero, *de minimis*, or based entirely on facts available. Consistent with the practice noted above, we based the weighted-average dumping margin for the separate rate

[51] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014-2015*, 82 FR 29033 (June 27, 2017) (AR3 Final), unchanged in *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 40560 (August 25, 2017).
[52] *See Longkou Haimeng Mach. Co. v. United States*, 581 F. Supp. 2d 1344, 1357-60 (Ct. Int'l Trade 2008) (affirming Commerce's determination to assign a 4.22 percent dumping margin to the separate rate respondents in a segment where the three mandatory respondents received dumping margins of 4.22 percent, 0.03 percent, and zero percent, respectively); *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 36656, 36660 (July 24, 2009).

recipients not individually examined on the weighted-average dumping margin calculated for Trina, the sole mandatory respondent.

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

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

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

Section 776(b) of the Act provides that Commerce may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, Commerce is not required to determine, or make any adjustments to, a weighted average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information. Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the less than fair value investigation, a previous administrative review, or other information placed on the record.

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.[53]
When selecting an AFA margin, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an "alleged commercial reality" of the interested party.

Certain unaffiliated tollers of inputs used by Trina to produce subject merchandise, and unaffiliated suppliers of solar cells, failed to provide FOP data. Commerce preliminarily determines that it is appropriate to apply AFA, pursuant to section 776(b) of the Act, with respect to the unreported FOPs for purchased solar cells. These unreported FOPs for solar cells represent a material amount of necessary FOP information. However, in accordance with section 776(a)(1) of the Act, Commerce is applying FA with respect to the unreported FOPs from the unaffiliated tollers. The record indicates that the tolled portions either represent relatively small

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

percentages of the inputs consumed, the tollers only performed a relatively small portion of the total processing involved in producing the input, or the input accounts for a relatively small share of the overall costs of a solar panel. For details regarding these determinations, *see* the memorandum regarding unreported FOPs.[54]

Surrogate Country Selection

Legal and Regulatory Framework

When Commerce investigates imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's FOPs, valued in a surrogate ME country or countries considered to be appropriate by Commerce. In accordance with section 773(c)(4) of the Act, in valuing the FOP, Commerce shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.[55] Further, pursuant to 19 CFR 351.408(c)(2), Commerce will normally value FOPs in a single country.

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

Interested Parties' Comments

On May 5, 2017, Commerce sent interested parties a letter inviting comments on surrogate country selection and SV data.[56] On June 16, 2017, the petitioner and Trina submitted surrogate country comments.[57] The petitioner submitted rebuttal surrogate country comments on June 22, 2017.[58] The petitioner contends that Commerce should select Thailand as the primary surrogate country, consistent with the surrogate country selected in the first, second, and third administrative reviews of this order.[59] The petitioner also noted that Thailand: 1) has a per capita gross national income (GNI) that is within a close proximate range to that of China; 2) is a substantial producer and exporter of identical and comparable merchandise; and 3) has usable, quality data to value all or virtually all inputs used to manufacture subject merchandise.[60] Trina maintains that each of the countries identified by Commerce as being at the level of economic

[54] *See* DOC Memorandum: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Unreported Factors of Production, dated concurrently with this memorandum.
[55] *See* Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin).
[56] *See* Request for SC and SV Comments.
[57] *See* the petitioner's June 16, 2017, Letter re: Comments on Surrogate Country Selection (the petitioner's June 16, 2017, SC Comments); *see also* Trina's June 16, 2017, Letter re: Comment on Countries with Significant Production of Identical and Comparable Merchandise (Trina's June 16, 2017, SC Comments).
[58] *See* the petitioner's June 22, 2017, Letter re: Rebuttal to Trina's Surrogate Country Selection Comments.
[59] *See* the petitioner's June 16, 2017, SC Comments at 5.
[60] *Id.* at 3.

development of China is potentially a significant producer of merchandise that is identical or comparable to subject merchandise.[61] Our surrogate country analysis is below.

Economic Comparability

In Commerce's May 5, 2017, request for surrogate country and SV Comments, Commerce identified six countries as being at the level of economic development of China for the POR. The countries identified in that memorandum are Brazil, Bulgaria, Mexico, Romania, South Africa and Thailand.[62]

Commerce determined economic comparability based on per capita GNI, as reported in the most current annual issue of the *World Development Report*.[63] The countries identified above are not ranked and are considered equivalent in terms of economic comparability to China.

Significant Producers of Identical or Comparable Merchandise

While the statute does not define "significant" or "comparable" Commerce's practice is to evaluate whether production is significant based on characteristics of world production of, and trade in, comparable merchandise (subject to the availability of data on these characteristics) and to determine whether merchandise is comparable on a case-by-case basis.[64] Where there is no production information, Commerce has relied upon export data from potential surrogate countries. With respect to comparability of merchandise, in all cases, if identical merchandise is produced in a country, the country qualifies as a producer of comparable merchandise. Where there is no evidence of production of identical merchandise in a potential surrogate country, Commerce has determined whether merchandise is comparable to the subject merchandise on the basis of similarities in physical form and the extent of processing or on the basis of production factors (physical and non-physical) and factor intensities. Since these characteristics are specific to the merchandise in question, the standard for 'significant producer' will vary from case to case.[65]

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[61] *See* Trina's June 16, 2017, SC Comments at 2.
[62] *See* Request for SC and SV Comments at Attachment.
[63] See Policy Bulletin at 2 (endnotes omitted); *see e.g.*, *Utility Scale Wind Towers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 75992 (December 26, 2012) and the accompanying Issues and Decision Memorandum at Comment 1. Although 19 CFR 351.408(b) instructs Commerce to rely on gross domestic product ("GDP") data in such comparisons, it is Commerce's practice to use "per capita GNI, rather than per capita GDP, because while the two measures are very similar, per capita GNI is reported across almost all countries by an authoritative source (the World Bank), and because Commerce finds that the per capita GNI represents the single best measure of a country's level of total income and thus level of economic development." *See Antidumping Methodologies in Proceedings Involving Non-Market Economy Countries: Surrogate Country Selection and Separate Rates*, 72 FR 13246, 13246 n.2 (March 21, 2007).
[64] *See Xanthan Gum from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 78 FR 2252 (January 10, 2013) and accompanying Preliminary Decision Memorandum at 4-7, unchanged in *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33350 (June 4, 2013).
[65] *See* Policy Bulletin 04.1. *See e.g.*, *Hardwood and Decorative Plywood from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 58273 (September 23, 2013) and the accompanying Issues and Decision Memorandum at Comment 7.

There are no country-wide statistics regarding the production of merchandise that is identical or comparable to subject merchandise on the record of this review for any of the economically comparable countries identified above. However, the record does contain information indicating that manufacturers of merchandise identical to subject merchandise are located in certain potential surrogate countries. Specifically, the record shows that Thailand has several manufacturers that not only assemble solar cells into solar panels, but also produce solar cells.[66] While the record shows that Bulgaria had an assembler of solar panels, there is no evidence that Bulgaria had any producers of solar cells.

Moreover, the record also contains evidence of production of comparable merchandise in the form of export data, which is one of the factors we consider in determining whether a country is a significant producer of comparable merchandise. Export data from UN Comtrade demonstrates that Brazil, Bulgaria, Mexico, Romania, South Africa, and Thailand exported merchandise during the POR that is identical or comparable to subject merchandise.[67]

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

Data Availability and Quality

When evaluating SV data, Commerce considers several factors including whether the SVs are publicly available, contemporaneous with the period under consideration, broad-market averages, from an appropriate surrogate country, tax and duty-exclusive, and specific to the input being valued.[68] Commerce's preference is to satisfy the breadth of these aforementioned selection factors.[69]

Parties have placed on the record import data from Bulgaria and Thailand that provide prices with which to value nearly all of the inputs used by Trina in producing subject merchandise.[70] An examination of the import data submitted by parties indicates that the data are equal in terms of being publicly available, contemporaneous with the period under consideration, broad-market averages, from an appropriate surrogate country, and tax and duty-exclusive. However, we have determined that the Thai data provide greater specificity for many inputs when compared with the Bulgarian data. Specifically, a greater portion of Bulgarian import data on the record are

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[66] *See* the petitioner's June 16, 2017, Submission at Exhibit 1.
[67] *Id.* at Exhibit 3.
[68] *See*, *e.g.*, *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews*; 2010-2011, 78 FR 17350 (March 21, 2013), and accompanying Issues and Decision Memorandum at Comment I(C).
[69] *Id*.
[70] *See* the petitioner's and Trina's July 10, 2017, SV Comments; *see also* the petitioner's and Trina's July 17, 2017, International Freight SV Submissions; *see also* Trina's July 20, 2017, SV Submission; *see also* Trina's July 20, 2017, Rebuttal SV Comments; *see also* the petitioner's July 31, 2017, Rebuttal SV Comments; *see also* the petitioner's August 7, 2017, Submission of New Factual Information; *see also* Trina's August 21, 2017, Rebuttal New Factual Information.

itemized only to the sixth digit of the Bulgarian Harmonized Tariff Schedule (HTS) when compared with the Thai import data, which are generally itemized to the eleventh digit.[71] Consequently, the Thai import data allow for greater specificity in selecting SVs for inputs. Additionally, as noted above, there is record evidence that not only solar module assemblers, but solar cell manufacturers are located in Thailand. This also supports the conclusion that Thai import data are specific to the inputs that we are valuing given that these manufacturers could be importing inputs actually used in the production of solar cells.[72]

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

Date of Sale

Commerce will normally, in accordance with 19 CFR 351.401(i), "use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business" as the date of sale unless the evidence indicates that there is another date which better reflects the date on which the material terms of sales are established. Trina reported the sales invoice date as the date of sale.[73] Because there is no other information on the record indicating that a different date better reflects the date on which the material terms of sales are established, Commerce has preliminarily determined to use the sales invoice date as the date of sale.

Fair Value Comparisons

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

Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates dumping margins by comparing weighted-average NVs to weighted-average export prices (EPs) or constructed export prices (CEPs) (the average-to-average comparison method) unless Commerce determines that another method is appropriate in a particular situation. In AD investigations, Commerce examines whether to compare weighted-average NVs to the prices of individual export transactions (the average-to-transaction comparison method) as an alternative comparison method using an analysis consistent with section 777A(d)(l)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce's examination of this question in the context of administrative reviews, Commerce nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in AD investigations.[74]

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[71] *See* generally the Thai and Bulgarian import data, and specifically Trina's July 20, 2017, SV Submission at Exhibit 1, and the petitioner's August 7, 2017, Submission of New Factual Information at Exhibit 1.
[72] *See* Trina's June 5, 2017, Section D Response which details each stage of solar cell production and subsequent assembly of the solar cells into solar modules.
[73] *See* Trina's May 25, 2017, Section C Response at C-14.
[74] *See Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012), and accompanying Issues and Decision Memorandum at Comment 1.

In recent investigations and reviews, Commerce applied a "differential pricing" analysis to determine whether the application of average-to-transaction comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.[75] Commerce finds the differential pricing analysis used in those recent investigations and reviews may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review.[76] Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average comparison method in calculating weighted-average dumping margins.

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

In the first stage of the differential pricing analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen's *d* test is applied when the test and comparison groups of data each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is calculated to evaluate the extent to which the net prices to a particular purchaser, region or in a time period differ significantly from the net prices of all other sales of

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

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

comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large. Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant, and the sales in the test group were found to have passed the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

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

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

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

Results of the Differential Pricing Analysis

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

U.S. Price

Constructed Export Price

In accordance with section 772(b) of the Act, CEP is "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d)." Trina reported that during the POR, it made sales through its U.S. affiliate Trina Solar (U.S.).[77] Trina did not report making EP sales.[78] Because Trina reported that its U.S. affiliate made the U.S. sales and there is no indication that the sales are EP sales, we treated all sales as CEP sales.

In accordance with section 772(b) of the Act, we calculated CEPs for Trina by deducting from the reported gross unit sales pricemovement expenses, where applicable, in accordance with section 772(c)(2)(A) of the Act, indirect selling expenses, credit expenses, warranty expenses, and inventory carrying costs, all of which relate to commercial activity in the United States, in accordance with section 772(d)(1) of the Act, and CEP profit, in accordance with sections 772(d)(3) and 772(f) of the Act. Where applicable, we reduced movement expenses by freight revenue.

Value Added Tax (*VAT*)

Commerce's recent practice, in NME cases, is to subtract from CEP or EP the amount of any un-refunded (irrecoverable) VAT in accordance with section 772(c)(2)(B) of the Act.[79] Where the irrecoverable VAT is a fixed percentage of the U.S. price, Commerce makes a tax-neutral dumping calculation by reducing the U.S. price by this percentage.[80] Thus, Commerce's methodology essentially amounts to performing two basic steps: (1) determining the amount (or rate) of the irrecoverable VAT tax on subject merchandise, and (2) reducing U.S. price by the amount (or rate) determined in step one.

The Chinese VAT schedule placed on the record of this review demonstrates that the VAT rate is 17 percent and the rate for rebating VAT on subject merchandise upon exportation is 17 percent.[81] Thus, the record indicates that there is no irrecoverable VAT associated with the exportation of subject merchandise. For the purposes of these preliminary results of review, therefore, we have not reduced U.S. prices for VAT.

Normal Value

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[77] *See* Trina's May 25, 2017, Section C Response at C-14.
[78] *Id*.
[79] *See Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings,* 77 FR 36481, 36483-84 (June 19, 2012).
[80] *Id.*
[81] *See* Trina's May 25, 2017, Section C Response at C-37 and Exhibits C-12, C-13, and C-14.

Section 773(c)(1) of the Act provides that Commerce shall determine NV using an FOP methodology if the merchandise is exported from an NME country and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. Commerce bases NV in an NME case on FOPs because the presence of government controls on various aspects of NME countries renders price comparisons and the calculation of production costs invalid under Commerce's normal methodologies.[82] Under section 773(c)(3) of the Act, FOPs include, but are not limited to: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs.

Factor Valuation Methodology

In accordance with section 773(c) of the Act and 19 CFR 351.408(c)(1), we calculated NV by multiplying the reported per-unit FOPs consumption rates by publicly available SVs.[83] When selecting SVs, Commerce considered, among other criteria, whether the SV data on the record were publicly available, broad market averages, contemporaneous with the period under consideration or closest in time to that period, product-specific, and tax-exclusive.[84] As appropriate, Commerce adjusted FOP costs by including freight costs to make them delivered values. Specifically, Commerce added a surrogate freight cost, where appropriate, to surrogate input values using the shorter of the reported distance from the domestic supplier to the respondent's factory or the distance from the nearest seaport to the respondent's factory.[85] In those instances where we could not value FOPs using SVs that are contemporaneous with the POR, we adjusted the SVs using inflation indices. An overview of the SVs used to calculate the weighted-average dumping margin for Trina is below. A detailed description of all SVs used to calculate the weighted-average dumping margin for Trina can be found in the Preliminary Surrogate Value Memorandum.

Direct and Packing Materials

The record shows that Global Trade Atlas (GTA) import statistics from the primary surrogate country, Thailand, are generally contemporaneous with the POR, publicly available, product-specific, tax-exclusive, and represent broad market average prices.[86] Thus, except as noted below, we based SVs for Trina's direct materials and packing materials on these import values

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

[83] *See* DOC Memorandum: 2015-2016 Antidumping Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Factor Valuation Memorandum, dated concurrently with this memorandum (Preliminary Surrogate Value Memorandum).

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

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

[86] *See* Preliminary Surrogate Value Memorandum at Attachment I.

and, where appropriate, valued other items, such as certain movement expenses, using other publicly available Thai data on the record.[87]

We disregarded certain import values when calculating SVs. We have continued to apply Commerce's long-standing practice of disregarding import prices that we have reason to believe or suspect are subsidized or dumped.[88] In this regard, Commerce previously found that it is appropriate to disregard prices of imports from India, Indonesia, South Korea, and Thailand because it determined that these countries maintain broadly available, non-industry specific export subsidies.[89] Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, Commerce finds that it is reasonable to infer that all exporters in India, Indonesia, and South Korea may have benefitted from these subsidies. Therefore, we have not used the prices of Thai imports of goods from India, Indonesia, and South Korea in calculating the import-based SVs. Additionally, in selecting import data for SVs, we disregarded prices from NME countries.[90] Finally, we excluded from our calculation of the average import value any imports that were labeled as originating from an "unspecified" country, because we could not be certain that they were not from either an NME country or a country with generally available export subsidies.[91]

Consistent with the approach taken in the investigation and first, second, and third administrative reviews of this proceeding, and after considering comments from both Trina and the petitioner, we valued polysilicon using international prices from market surveys of solar-grade polysilicon.[92] In the underlying investigation and in the first three administrative reviews of this proceeding, we valued polysilicon using international prices because we found that the import data from the potential surrogate countries were not necessarily specific to the polysilicon used by respondents.[93] Polysilicon used to produce solar cells requires extremely precise purity levels

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[87] *See* Preliminary Surrogate Value Memorandum.

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

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

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

[91] *Id.*

[92] This year we relied on international market surveys published by *Bloomberg New Energy Finance* and *GTM Research. See* Preliminary Surrogate Value Memorandum.

[93] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part*, 77 FR 63791, 63795 (October 17, 2012) (*Solar Cells Investigation*) and accompanying

(*e.g.*, purity levels as high as 99.999999 percent).[94] We determined in the investigation in this proceeding that the dramatic price differences due to purity levels and the purity range of the HTS category that covers polysilicon indicates that this HTS category could include a substantial number of products that differ significantly from the polysilicon used by the respondents.[95] Additionally, as noted above, in the first three administrative reviews of this proceeding, we found, consistent with our determination in the investigation, that it was appropriate to rely on international prices to value polysilicon. We preliminarily continue to find it appropriate, given the facts considered in the investigation, to rely on international prices in this review to value polysilicon. Specifically, the record contains international prices for polysilicon from *Bloomberg New Energy Finance* and *GTM Research*.[96] Because there is no indication of any difference in the quality of these data and in order to obtain a broad sample of international prices, we used both sources to value polysilicon. Because these prices are contemporaneous with the POR, we did not inflate or deflate them.[97]

Similarly, we valued wafers using international prices from *Bloomberg New Energy Finance*. There are a number of factors, which when considered together, weigh in favor of valuing wafers using international prices rather than Thai import values. First, the international prices on the record are specific to the solar-grade wafers used by Trina in producing subject merchandise. The Thai HTS category covering silicon wafers – HTS 3818 (chemical elements doped for use in electronics, in the form of discs, wafers or similar forms; chemical compounds doped for use in

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Issues and Decision Memorandum at Comment 24 ("As explained in the *Preliminary Determination*, and reiterated in Comment 9 addressing the surrogate value for wafers, there is substantial evidence on the record leading Commerce to question whether the import prices are representative of the price of polysilicon. The purity level required for polysilicon used in manufacturing solar cells is very precise. The import data from the potential surrogate countries are from an HTS category that covers silicon products with various levels of purity. Moreover, record evidence indicates that there are dramatic price differences between silicon with different purity levels. Also, there are extreme variations in the AUVs for the applicable HTS category both between and within potential surrogate countries indicating that that imports may at times primarily consist of lower purity silicon, possibly not of a solar grade, or extremely high purity electronics grade polysilicon, neither of which is the input being valued."); *see also Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2012-2013*, 80 FR 1021 (January 8, 2015) (*AR1 Prelim*) and accompanying Preliminary Decision Memorandum at the section entitled "Direct and Packing Materials," unchanged in *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) (*AR1 Final*), and accompanying Issues and Decision Memorandum at Comment 14. *see also Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2013-2014*, 80 FR 80746 (December 28, 2015) (*AR2 Prelim*) and accompanying Preliminary Decision Memorandum at the section entitled "Direct and Packing Materials," unchanged in *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) (*AR2 Final*); *see also Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2014-2015*, 81 FR 93888 (December 22, 2016), unchanged in *AR3 Final*.

[94] *See* Preliminary Surrogate Value Memorandum.

[95] *See Solar Cells Investigation*, 77 FR at 63795, and accompanying Issues and Decision Memorandum at Comment 24.

[96] *See* Trina's July 10, 2017, SV Comments at Exhibit 10; *see also* the petitioner's July 10, 2017, SV Comments at Exhibit 4.

[97] *See* Preliminary Surrogate Value Memorandum at 3.

electronics) – is not further itemized and covers a wide range of products that may not specifically reflect the cost of solar-grade wafers.[98] Second, wafers for solar cells are primarily made of polysilicon. As stated above, in the investigation and first three administrative reviews of this proceeding, we found that differences in silicon purity levels can result in significant price differences.[99] Given the wide range of products covered by the Thai HTS number covering wafers, it is more likely that the Thai imports include products with a silicon purity level that significantly differs from the silicon purity level required for wafers used to manufacture solar cells. By contrast, the international prices are specific to wafers used in solar products because they are from publications that cover the solar industry.

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

While the record contains international prices for wafers from both *Bloomberg New Energy Finance* and *GTM Research*, wafers are sold in different sizes and the *GTM Research* data do not specify the size of the wafer.[100] For all of the above reasons, we are preliminarily valuing wafers using equally weighted prices from *Bloomberg New Energy Finance*. We did not inflate or deflate the prices because they are contemporaneous with the POR.[101]

For the reasons described in detail in the surrogate value memorandum,[102] we find that import data for Mexico provide the most appropriate value for nitrogen.

Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from a ME supplier in meaningful quantities and pays for the inputs in a ME currency, Commerce uses the actual price paid by the respondent to value those inputs, except when prices may have been distorted by findings of dumping and/or subsidization.[103] Where Commerce finds ME purchases to be of significant quantities (*i.e.*, 85 percent or more of total purchases of the input), in accordance with the statement of policy as outlined in *Antidumping Methodologies: Market Economy Inputs*,[104] Commerce uses the actual purchase prices to value the inputs. Alternatively, when the volume of a NME firm's purchases of an input from ME suppliers during the period is below 85 percent of its total volume of purchases of the input during the period, but where these purchases are otherwise valid and there is no reason to disregard the purchase prices, Commerce will typically weight-average the ME purchase prices with an appropriate SV, according to their respective shares of the total volume of purchases.[105] When a firm's ME purchases may have been based

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98 *See* the petitioner's July 10, 2017, SV Comments at Exhibit 3.
99 *See Solar Cells Investigation*, 77 FR at 63795, and accompanying Issues and Decision Memorandum at Comment 24.
100 *See* Trina's July 10, 2017, SV Comments at Exhibit 10; *see also* the petitioner's July 10, 2017, SV Comments at Exhibit 4.
101 *Id.*
102 *See* Preliminary Surrogate Value Memorandum
103 *See*, *e.g.*, *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997).
104 *See Use of Market Economy Input Prices in Nonmarket Economy Proceedings*, 78 FR 46799 (August 2, 2013) (*Market Economy Inputs*).
105 *Id.*

on dumped or subsidized sales, are not *bona fide*, or are otherwise not acceptable for use in a dumping calculation, Commerce will exclude them from its calculation to determine whether there were significant quantities of ME purchases (the 85 percent threshold).[106]

Trina provided evidence of ME purchases of inputs during the POR that were paid for in a ME currency.[107] Thus, consistent with 19 CFR 351.408(c)(1), we used Trina's reported ME purchase prices in valuing certain FOPs, either in whole or in part, based upon purchase volume.[108]

Utilities

We valued electricity using Thai data from the Provincial Electricity Authority (PEA), as compiled by the Board of Investment of Thailand (BOI).[109] We valued water using data from Thailand's Metropolitan Waterworks Authority (MWA), as compiled by the BOI.[110] Because the PEA and MWA data were in effect before the POR (*i.e.*, May 2015), we inflated the SVs using the Thai Consumer Price Index as published in the IMF's International Financial Statistics.

Labor

We valued Trina's labor based on Thailand's National Statistical Office (NSO) data from surveys concerning wages fourth quarter 2015 and the first three quarters of 2016.[111] Because these rates were in effect during the POR, we did not inflate or deflate them.

Movement Services

We valued inland truck freight services using the World Bank's publication, *Doing Business 2017 (Thailand*).[112] We did not inflate or deflate the inland truck freight rate in this report because the report covered a period contemporaneous with the POR. Because there are no inland water freight rates on the record, we also valued inland water freight services using the inland truck freight rate.

We valued brokerage and handling services using the World Bank's publication, *Doing Business 2017 (Thailand*).[113] We did not inflate or deflate the brokerage and handling charge in this publication because the survey used to obtain the charge requested data from a period contemporaneous with the POR.

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[106] *Id.*
[107] *See* Trina's June 5, 2017, Section D Response at Exhibit D-6.
[108] *See* Memorandum entitled Preliminary Results Analysis Memoranda, dated concurrently with this memorandum.
[109] *See* Trina's July 20, 2017 SV Submission at Exhibit 7; *see also Preliminary* Surrogate Value Memorandum; *see also Preliminary* Surrogate Value Memorandum.
[110] *See* the petitioner's July 10, 2017, SV Comments at Exhibit 10; *see also* Trina's July 20, 2017 SV Submission at Exhibit 7; *see also* Preliminary Surrogate Value Memorandum.
[111] *See* the petitioner's July 10, 2017, SV Comments at Exhibit 5; *see also* Trina's July 20, 2017, SV Submission at Exhibit 3; *see also* the petitioner's August 7, 2017, Submission of New Factual Information at Exhibit 9; *see also Preliminary* Surrogate Value Memorandum.
[112] *See* the petitioner's July 10, 2017, SV submission at Exhibit 8; *see also* Trina's July 20, 2017 SV submission at Exhibit 4; *see also Preliminary* Surrogate Value Memorandum.
[113] *Id.*

We valued marine insurance expense using a rate offered by RJG Consultants.[114] RJG Consultants is a ME provider of marine insurance. The rate is a percentage of the value of the shipment; thus we did not inflate or deflate the rate. Because there are no source data for domestic inland insurance on the record, we also valued domestic inland insurance using the marine insurance rate.

We valued ocean freight expenses using rates from the website https://my.maerskline.com, which lists international ocean freight rates offered by Maersk Line. These rates are publicly available and cover a wide range of shipping routes which are reported on a daily basis. We did not inflate or deflate the rates because they are contemporaneous with the POR.[115]

We valued air freight expenses using price quotations from United Parcel Service.[116] Because the UPS data were in effect after the POR and thus not contemporaneous, we deflated the air freight rate.

Overhead and Financial Expenses

Pursuant to 19 CFR 351.408(c)(4), Commerce values overhead, selling, general and administrative (SG&A) expenses, and profit using publically available information gathered from producers of identical or comparable merchandise in the surrogate country. The record contains financial statements from four Thai companies, (Hana Microelectronics Public Co., Ltd. (Hana),[117] KCE Electronics Public Company Limited (KCE),[118] Leonics Co., Ltd. (Leonics),[119] and Styromatic (Thailand) Co., Ltd., (Styromatic)[120]). The record also contains two financial statements from Bulgarian companies, SolarPro Holdings AD (SolarPro) and Steca Electronik Bulgaria EOOD (Steca Electronik).[121] All of these financial statements show a profit and cover a period contemporaneous with the POR. Hana, KCE, and Styromatic are manufacturers and assemblers of electronic components and circuit boards which Commerce has considered to be comparable merchandise in the investigation in this proceeding.[122] With respect to the Bulgarian companies and Leonics, Commerce is unable to conclude whether they are producers of comparable or identical merchandise.

All of the Thai financial statements indicate that the companies received subsidies which Commerce has found to be countervailable.[123] Commerce's practice is not to rely on financial statements where there is evidence that the company received countervailable subsidies when there are other reliable and representative data on the record for purposes of calculating surrogate

[114] *See* the petitioner's July 10, 2017, SV submission at Exhibit 9; *see also Preliminary* Surrogate Value Memorandum.
[115] *See* the petitioner's November 2, 2017 submission at Exhibit 1; *see also Preliminary* Surrogate Value Memorandum.
[116] *See* Trina's July 20, 2017 SV Submission at Exhibit 6; *see also Preliminary* Surrogate Value Memorandum.
[117] *See* the petitioner's August 7, 2017, Submission of New Factual Information at Exhibit 4.
[118] *Id*.
[119] *See* the petitioner's August 7, 2017, Submission of New Factual Information at Exhibit 6.
[120] *See* Trina's July 20, 2017 SV Submission at Exhibit 10.
[121] *See* the petitioner's August 7, 2017, Submission of New Factual Information at Exhibit 7; *see also* Trina's July 20, 2017 SV Submission at Exhibit 11.
[122] *See Solar Cells Investigation* and accompanying Issues and Decision Memorandum at Comment 2.
[123] See Note 29 of KCE's financial statements, Note 24 of Hana's financial statements, Note 18 of Styromatic's financial statements, and Note 16 of Leonics' financial statements.

financial ratios.[124] However, Commerce has previously relied on financial statements with evidence of countervailable subsidies if these financial statements represented the best available information on the record.[125] Accordingly, because Hana's, KCE's, and Styromatic's financial statements are contemporaneous, audited, and reflect a producer of merchandise comparable to the subject merchandise in the primary surrogate country, Commerce preliminarily finds Hana's, KCE's, and Styromatic's financial statements consititute the best available information for calculating surrogate financial ratios.[126]

Adjustments for Countervailable Subsidies

In applying section 777A(f) of the Act, Commerce examines: (1) whether a countervailable subsidy (other than an export subsidy) has been provided with respect to a class or kind of merchandise, (2) whether such countervailable subsidy has been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period, and (3) whether Commerce can reasonably estimate the extent to which that countervailable subsidy, in combination with the use of NV determined pursuant to section 773(c) of the Act, has increased the weighted-average dumping margin for the class or kind of merchandise.[127] For a subsidy meeting these criteria, the statute requires Commerce to reduce the dumping margin by the estimated amount of the increase in the weighted-average dumping margin due to a countervailable subsidy, subject to a specified cap.[128] In conducting this analysis, Commerce has not concluded that concurrent application of NME dumping duties and countervailing duties (CVDs) necessarily and automatically results in overlapping remedies. Rather, a finding that there is an overlap in remedies, and any resulting adjustment, is based on a case-by-case analysis of the totality of facts on the administrative record for that segment of the proceeding as required by the statute.

For purposes of our analysis under sections 777A(f)(1)(A) and (f)(1)(C) of the Act, Commerce requested firm-specific information from Trina.[129] The information sought included information regarding whether countervailed subsidies were received during the relevant period, information on costs, and information regarding the respondent's pricing policies and practices. Additionally, the respondent was required to provide documentary support for the information provided. On May 2, 2017, Trina submitted a response to Commerce's firm-specific double remedies questionnaire.[130] The response included information concerning countervailable subsidies received during the relevant period, as well as information regarding Trina's costs and pricing policies and practices.

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[124] *See, e.g., Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2009-2010*, 78 FR 11143 (February 15, 2013) and accompanying Issues and Decision Memorandum at Comment 14.
[125] *See 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.
[126] S*ee* Preliminary Surrogate Value Memorandum.
[127] *See* Section 777A(f)(1)(A)-(C) of the Act.
[128] *See* Section 777A(f)(1)-(2) of the Act.
[129] *See* Commerce's Letter re: Double Remedies Questionnaire, dated March 31, 2017.
[130] *See* Trina's May 2, 2017, Double Remedies Questionnaire Response.

Analysis

In performing the analysis under section 777A(f)(1)(B) of the Act for this review, Commerce examined whether International Trade Commission (ITC) import data showed a reduction in the price of imports of the class or kind of merchandise during the relevant period. In this case, merchandise covered by the AD order is classified under the following HTSUS subheadings: 8501.31.8000 (Other DC motors; DC generators: Of an output not exceeding 750 W: Motors: Generators), 8501.61.0000 ("AC generators (alternators): Of an output not exceeding 75 kVA"), 8507.20.80 (Other lead-acid storage batteries: Other), 8541.40.6020 (Solar Cells: Assembled into modules or made up into panels), and 8541.40.6030 (Solar Cells: Other).[131] While imports of subject merchandise may enter under any of these five HTSUS subheadings, the descriptions of categories 8501.31.8000, 8501.61.0000, and 8507.20.80 suggest that imports classified in these categories would be likely to include imports of a significant amount of non-subject merchandise. As a result, import data for these particular HTSUS subheadings may be unreliable for purposes of determining whether a reduction in the price of imports of the class or kind of merchandise under review may have occurred during the relevant period. Conversely, the descriptions of HTSUS subheadings 8541.40.6020 and 8541.40.6030 closely match the description of subject merchandise which suggests that these subheadings would be likely to cover primarily subject merchandise.

After reviewing the relevant import data for the relevant period, we find that both HTSUS subheadings 8541.40.6020 (solar panels) and 8541.40.6030 (solar cells) show a general decrease in the average import price.[132] Based on this analysis, Commerce has preliminarily determined that ITC import data for the subject merchandise shows a general decrease in the U.S. average import price during the relevant period, *i.e.*, the POR.[133] Thus, Commerce preliminarily finds that the requirement under section 777A(f)(1)(B) of the Act has been met.

Trina

In accordance with section 777A(f)(1)(A) of the Act, Commerce examined whether a countervailable subsidy (other than an export subsidy) has been provided with respect to a class or kind of merchandise. Trina reported that it received countervailable subsidies during the most recently completed segment of the companion CVD proceeding.[134] During the most recently completed companion CVD administrative review, it was determined that Trina, one of the mandatory respondents in that review, received countervailable subsidies with respect to the provision of polysilicon, solar glass, aluminum extrusions, electricity, and land for less than

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[131] *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).

[132] *See* DOC Memorandum, "2015-2016 Antidumping Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Domestic and Export Subsidy Adjustments Analysis Memorandum," (Double Remedies Memorandum) dated concurrently with this memorandum.

[133] *Id*.

[134] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review; 2014*, 82 FR 32678 (July 17, 2017) (*Solar Cells CVD Final Results 2014*) and accompanying Issues and Decision Memorandum at 7-8.

adequate remuneration (LTAR), as well as Import Tariff and VAT Exemptions for Use of Import Equipment – Encouraged Industries provision.[135] Trina provided monthly costs associated with its purchases of polysilicon, solar glass, aluminum extrusions, electricity and land, as well as costs associated with the depreciation of fixed assets.[136] Because Commerce found the provision of polysilicon, solar glass, aluminum extrusions, electricity, and land for LTAR, as well as the Import Tariff and VAT Exemptions for Use of Import Equipment – Encouraged Industries provision, to be countervailable with respect to the class or kind of merchandise under consideration in the companion CVD review, Commerce preliminarily finds that the requirement of section 777A(f)(1)(A) of the Act has been met.

Additionally, in accordance with 777A(f)(1)(C) of the Act, Commerce examined whether Trina demonstrated: (1) a subsidies-to-cost link, *i.e.*, a subsidy effect on the cost of manufacturing (COM) the merchandise under consideration; and (2) a cost-to-price link, *i.e.*, respondent's prices were dependent on changes in the cost of manufacturing (COM). With respect to the subsidies-to-cost link, in the Double Remedies Questionnaire Response, Trina reported that it consumed polysilicon, solar glass, aluminum extrusions, and electricity in the production of subject merchandise and that it received subsidies for these inputs.[137] Furthermore, Trina demonstrated that changes in the costs of these inputs occurred on a monthly basis,[138] and it provided information indicating that the subsidy programs affected its COM on a monthly basis. Specifically, Trina provided per-unit cost reports associated with material purchases, cost analysis tables for purchases of raw materials, and general ledgers.[139] Trina also reported that it received subsidies based on the amortization of land use rights and the depreciation of fixed assets.[140] Thus, Commerce preliminarily concludes that Trina has established a subsidies-to-cost link because subsidies for the provision of polysilicon, solar glass, aluminum extrusions, electricity, and land for LTAR impact Trina's costs for producing subject merchandise.

For the cost-to-price link, Commerce examined whether Trina demonstrated that changes in costs affected, or were taken into consideration when setting, prices. Trina reported that it sets prices based on market conditions, freight and insurance expenses, expected profit margin, and overall cost of production considerations (including the cost of raw materials, energy, overhead, etc.).[141] Furthermore, Trina reported that changes in the costs of inputs affects pricing, in that a cost increase brings pressure to raise prices, while a cost decrease results in the flexibility to lower prices.[142] Additionally, Trina reported that changes in the costs for polysilicon, solar glass, aluminum extrusions, electricity, and land is one of the primary factors that it considers in its pricing decisions.[143] Moreover, Trina reported that its sales department uses quarterly cost

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[135] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review; 2014*, 82 FR 32678 (July 17, 2017) (*Solar Cells CVD Final Results 2014*) and accompanying Issues and Decision Memorandum at 7-8.
[136] *See* Trina's May 2, 2017, Double Remedy Questionnaire Response at Exhibits DR-2, DR-3, DR-4, DR-5, DR-10, DR-11, and DR-12.
[137] *See* Trina's May 2, 2017, Double Remedy Questionnaire Response at 4.
[138] *See* Trina's May 2, 2017, Double Remedy Questionnaire Response.
[139] *Id.*
[140] *Id.* at 5.
[141] *See* Trina's May 2, 2017, Double Remedy Questionnaire Response at 2-3.
[142] *Id.* at 2.
[143] *Id.* at 6.

forecasts, together with several other factors, to set sales prices.[144] Finally, Trina provided an internal "Price Review and Determination Process" instruction form, which stipulates that Trina's finance department shall provide cost forecasts using a formula which is modified according to cost changes."[145] Trina stated that its sales department uses such cost forecasts to set sales prices.

Based on the above, Commerce finds that Trina provided adequate information to establish a linkage between subsidies (the provision of polysilicon, solar glass, aluminum extrusions, electricity, and land for LTAR, as well as the Import Tariff and VAT Exemptions for Use of Import Equipment – Encouraged Industries provision), costs, and prices. Because the record indicates that factors other than the cost of polysilicon, solar glass, aluminum extrusions, electricity, and land for less than adequate remuneration (LTAR), as well as Import Tariff and VAT Exemptions for Use of Import Equipment – Encouraged Industries provision, affect Trina's prices to customers, Commerce is using a documented ratio of cost-price changes for the Chinese manufacturing sector as a whole, which is based on data provided by Bloomberg Finance L.P., to estimate the extent of the subsidy pass-through.[146] Therefore, Commerce is making a pass-through adjustment in its calculation of the dumping margin for Trina.[147]

Separate Rate Companies

In this review, as we are applying the dumping margin calculated for Trina to the non-individually examined exporters granted separate rates status. In *Solar Cells CVD Final Results 2014*, Commerce did not individually examine the non-individually examined respondents in this review that are preliminarily eligible for separate rates. Therefore, the adjustment to account for domestic and export subsidies for these exporters is based on the domestic subsidy pass-through and export subsidy amount determined for Trina.

<u>Export Subsidy Adjustment</u>

Pursuant to section 772(c)(1)(C) of the Act, Commerce increases the U.S. price by the amount of any countervailing duty imposed to offset an export subsidy. As a result of non-cooperation by the GOC in the companion CVD administrative review, as facts available with an adverse inference, Commerce determined that Trina benefited from the Export Buyer's Credits Program,[148] but did not determine that the program in question was export contingent.[149] Without a determination in the companion CVD administrative review that this program provides an export subsidy, we find it is not appropriate to increase Trina's U.S. prices pursuant to section 772(c)(1)(C) of the Act.[150]

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[144] *See* Trina's May 2, 2017, Double Remedy Questionnaire Response at 2-3.
[145] *Id.* at 3 and Exhibit DR-1.
[146] *See* January 2, 2018 Domestic Subsidy Adjustment Analysis Memorandum at Attachment II.
[147] *Id.* at 1-2.
[148] *See Solar Cells CVD Final Results 2014* and accompanying Issues and Decision Memorandum at Comment 2.
[149] *Id*.
[150] *See Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China*; *2014-2016*, 82 FR 32170 (Dep't of Commerce July 5, 2017), and accompanying Issues and Decision Memorandum at Comment 2.

Currency Conversion

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

RECOMMENDATION

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

☒ ☐

Agree Disagree

1/2/2018

X

Signed by: PRENTISS SMITH