A-570-979
Administrative Review
POR: 12/1/2015 - 11/30/2016
Public Document
E&C/IV: KH, JP

DATE: July 11, 2018

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final 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

---

SUMMARY

On January 9, 2018, the Department of Commerce (Commerce) published its *Preliminary Results* in the 2015-2016 administrative review of the antidumping duty (AD) order of crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells) from the People's Republic of China (China).[1] The period of review (POR) is December 1, 2015, through November 30, 2016. This administrative review covers one mandatory respondent: Trina Solar, consisting 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., which we preliminarily determined to treat as a single entity with Trina Solar (Hefei) Science and Technology Co., Ltd. (collectively, Trina). Based on our analysis of the comments received, we made certain changes to our margin calculations for Trina and the companies granted separate rate status that we did not individually examine. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues for which we received comments:

[1] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2015–2016*, 83 FR 1018 (January 9, 2018) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

Comment 1. Whether Commerce Should Apply Partial Adverse Facts Available to Trina's Unreported Factors of Production for Purchased Solar Cells
Comment 2. Ministerial Error Allegations
Comment 3. Whether Commerce Should Adjust the U.S. Price for "USDUTYU" Expenses
Comment 4. Whether Commerce Should Include Trina's Sale to a Salvage Company in the Margin Calculation
Comment 5. Whether Commerce Should Adjust U.S. Price for the Export Buyer's Credits Program
Comment 6. Zero-quantity Import Data
Comment 7. Surrogate Value for Aluminum Frames
Comment 8. Surrogate Value for International Freight
Comment 9. Surrogate Value for Nitrogen
Comment 10. Selection of Surrogate Financial Statements
Comment 11. Surrogate Value for Labor
Comment 12. Separate Rate Status for LONGi Solar Technology Co. Ltd.
Comment 13. Differential Pricing

BACKGROUND

As noted above, on January 9, 2018, Commerce published its *Preliminary Results* in the 2015-2016 administrative review of the AD order of solar cells from China.[2] On January 23, 2018, Commerce exercised its discretion to toll all deadlines affected by the duration of the closure of the Federal Government from January 20 through 22, 2018.[3] Subsequently, Commerce extended the deadline for the final results of this review until July 11, 2018.[4]

---

[2] *See Preliminary Results* and accompanying PDM. Prior to the *Preliminary Results*, Commerce conducted the verification of U.S. sales and factors of production (FOPs) reported by Trina from November 6, 2017, to November 10, 2017, and the constructed export price (CEP) verification of Trina's U.S. affiliate, Trina Solar (U.S.), Inc. (TUS), from November 14, 2017, to November 16, 2017. *See* Memorandum, "Verification of the Sales and Factors Questionnaire 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./ Trina Solar (Hefei) Science and Technology 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 (China Verification Report); *see also* 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 (CEP Verification Report).
[3] *See* Memorandum, "Deadlines Affected by the Shutdown of the Federal Government," dated January 23, 2018 (Tolling Memorandum). All deadlines in this segment of the proceeding have been extended by three days. We note that the fully extended deadline falls on May 12, 2018, which is a Saturday. Commerce's practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. *See* Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended, 70 FR 24533 (May 10, 2005).
[4] *See* Memorandum, "2015-2016 Antidumping Duty Administrative Review of Certain Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review," dated May 8, 2018.

On February 12, 2018, SolarWorld Americas Inc. (the petitioner), Trina, Goal Zero LLC (Goal Zero), Sunpreme Inc. (Sunpreme), LERRI Solar Technology Co., Ltd. (LERRI) and LONGi Solar Technology Co. Ltd. (LONGi) submitted case briefs.[5] Additionally, JA Solar Technology Yangzhou Co., Ltd., JingAo Solar Co., Ltd. and Shanghai JA Solar Technology Co., Ltd. (collectively, JA companies) submitted a letter in lieu of a case brief, and concurred with, and incorporated, by reference to, the arguments made by all other respondent parties in their February 12, 2018, case briefs.[6] On February 23, 2018, the petitioner and Trina submitted rebuttal case briefs.[7] The JA Companies, LERRI and LONGi submitted letters in lieu of rebuttal case briefs, and concurred with, and incorporated, by reference to, the arguments made by Trina in its February 23, 2018, rebuttal case brief.[8] Sumec Hardware & Tools Co., Ltd. (Sumec) also submitted a letter in lieu of a rebuttal case brief, and concurred with, and incorporated, by reference to, the arguments made by Trina, Goal Zero, and Sunpreme in their February 12, 2018, case briefs.[9] On February 28, 2018, and March 5, 2018, the petitioner resubmitted its case brief and rebuttal case brief, respectively.[10] On February 12, 2018, the petitioner and Trina requested a hearing,[11] but on March 27, 2018, both parties withdrew their requests.[12]

On May 24, 2018, Commerce issued a supplemental questionnaire to LERRI requesting additional information regarding its name change to LONGi.[13] On May 30, 2018, LONGi submitted its response to Commerce's May 24, 2018 supplemental questionnaire regarding the name change.[14] On June 18, 2018, we issued the post-preliminary analysis memorandum with respect to the name change, and preliminarily found that LONGi is the successor-in-interest to

---

[5] *See* Trina's February 12, 2018 case brief (Trina's case brief); *see also* Goal Zero's February 12, 2018 case brief (Goal Zero's case brief); *see also* Sunpreme's February 12, 2018 case brief (Sunpreme's case brief); *see also* LERRI and LONGi's February 12, 2018 case brief (LERRI and LONGi's case brief).
[6] *See* the JA companies' February 12, 2018 Letter in Lieu of a case brief.
[7] *See* Trina's February 23, 2018 Rebuttal case brief (Trina's rebuttal case brief).
[8] *See* the JA companies', LERRI's, and LONGi's February 23, 2018 letters in lieu of a rebuttal case brief.
[9] *See* Sumec's February 23, 2018 letter in lieu of a rebuttal case brief.
[10] *See* the petitioner's February 28, 2018 case brief (the petitioner's case brief); *see also* the petitioner's March 5, 2018 rebuttal case brief (the petitioner's rebuttal case brief). Commerce found untimely filed new factual information in the petitioner's original February 12, 2018, and February 23, 2018 case brief and rebuttal case brief, respectively. *See* Commerce's Letter re: Petitioner's February 12, 2018, case brief, dated February 23, 2018; *see also* Commerce's Letter re: Petitioner's February 23, 2018, Rebuttal case brief, dated March 1, 2018.
[11] *See* the petitioner's February 12, 2018 request for hearing letter; *see also* Trina's February 12, 2018 request for hearing letter.
[12] *See* the petitioner's February 12, 2018 request for hearing letter; *see also* Trina's February 12, 2018 request for hearing letter.
[13] *See* Commerce Letter: Antidumping Duty Administrative Review of Certain Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules (Solar Cells), from the People's Republic of China (PRC), dated May 24, 2018.
covering the period December 1, 2015 through November 30, 2016," dated May 24, 2018.
[14] *See* LONGi's letter to Commerce regarding "Administrative Review of the Antidumping Order on Crystalline Silicon Photovoltaic Cells. Whether Or Not Assembled into Modules from the People's Republic of China: Third Supplemental Questionnaire Response" dated May 30, 2018.

LERRI.[15] We invited interested parties to comment on the post-preliminary results.[16] On June 25, 2018, LONGi submitted comments supporting Commerce's post-preliminary results.[17] No rebuttal comments were submitted on this issue.

SCOPE OF THE ORDER

The merchandise covered by the 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.

The 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 the order. Excluded from the scope of the order are thin film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS).

Also excluded from the scope of the order are crystalline silicon photovoltaic cells, not exceeding 10,000 mm^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.

Additionally, excluded from the scope of this order are panels with surface area from 3,450 mm^2 to 33,782 mm^2 with one black wire and one red wire (each of type 22 AWG or 24 AWG not more than 206 mm in length when measured from panel extrusion), and not exceeding 2.9 volts, 1.1 amps, and 3.19 watts. For the purposes of this exclusion, no panel shall contain an internal battery or external computer peripheral ports.

---

[15] *See* Memorandum, "Decision Memorandum for the Post-Preliminary Successor-in- Interest Analysis: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China," dated June 18, 2018 (Post-Preliminary Results).
[16] *Id*.
[17] *See* LONGi's letter to Commerce regarding "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China: Comments on the Department's Decision Memorandum for the Post-Preliminary Successor-in-Interest Analysis," dated June 25, 2018.

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

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

DISCUSSION OF THE ISSUES

Comment 1: Whether Commerce Should Apply Partial Adverse Facts Available to Trina's Unreported Factors of Production for Purchased Solar Cells

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

Goal Zero and Sunpreme:

- Commerce has found use of AFA to be inappropriate where, as shown here, the respondent is unable to provide the information requested, but instead provides "a reasonable approximation."[18] Trina has reported FOPs for its self-produced solar cells. These FOPs serve as the best proxy for the missing FOP data, as Commerce has found in prior segments of this proceeding.[19]
- Trina made significant and documented efforts to obtain the FOP information from its suppliers.[20]
- The United States Court of Appeals for the Federal Circuit (CAFC) and the Court of International Trade (CIT) have previously determined that a respondent's inability to

[18] *See* Goal Zero's case brief at 4 *(citing Certain Oil Country Tubular Goods from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances,* 79 FR 41983 and accompanying Issues and Decision Memorandum (IDM) at Comment 10 (July 18, 2014) (declining to apply AFA where a respondent could not "compel it affiliates to provide . . . data" or "force its affiliates to comply with its requests for information").

[19] *See* Goal Zero's case brief at 4 *(citing Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Affirmative Preliminary Determination of Critical Circumstances,* 77 FR 31309 (May 25, 2012) (*Solar Cells INV Preliminary Determination*) (In this determination, Commerce used Trina Solar's own FOPs for solar cell production). Commerce notes that while what Goal Zero states is accurate, the documents supporting its contention are the following: C*rystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part*, 77 FR 63791 (October 17, 2012) (*Solar Cells Investigation Final*) and accompanying IDM at Comment 19 and *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2012-2013*, 80 FR 40998 (July 14, 2015) (*Solar Cells AR1 Final*) and accompanying IDM at Comment 16.

[20] *See* Goal Zero's case brief at 4 (citing the Unreported FOP Memorandum at 6.).

provide the information requested by Commerce does not automatically trigger an adverse inference if the respondent tried to obtain the information requested, albeit unsuccessfully.[21]

- In *Itochu Building Products*, the CIT found that Commerce erred when it applied an adverse inference to a respondent for the missing data from its unaffiliated supplier.[22] The CIT discussed at length the CAFC's decision in *Mueller*: "But, 'if the cooperating entity has no control over the noncooperating suppliers, a resulting adverse inference is potentially unfair to the cooperating party.' *Mueller,* 753 F.3d at 1235 (citing *SKF USA Inc. v. United States*, 630 F.3d 1365, 1375 (Fed. Cir. 2011)). The Federal Circuit, therefore, cautioned that, in using AFA to compute the margin of a cooperating party, 'Commerce cannot confine itself to a deterrence rationale and also must carry out a case-specific analysis of the applicability of deterrence and similar policies,' and also should evaluate if there is a 'direct adverse effect' on the non-cooperating party."[23]
- For all the reasons stated above, rather than applying the highest reported consumption quantity as partial AFA, Commerce should use as facts available the FOP data that Trina already provided in place of the missing purchased cell FOP information.

Petitioner:

- Presented with highly similar facts as here, the CIT has sustained Commerce's AFA determination in the second review of this order.[24]
- Goal Zero categorizes Commerce's application of *Mueller* as too broad. But as was the case in the second and third reviews of this order, the record in this review clearly indicates that Trina had the means to influence and induce cooperation from its suppliers. Commerce noted in the preliminary results of review that it chose Trina as a mandatory respondent in the investigation, in two prior administrative reviews in this proceeding, and in this administrative review, because it was one of the largest exporters of subject merchandise to the United States. Commerce stated that Trina's size and the quantity of its solar cell purchases enables it to induce cooperation from its suppliers.[25]
- The fact that certain of Trina's suppliers responded and provided data to Commerce demonstrates that Trina is in a position to induce cooperation; otherwise, all of its suppliers likely would have refused to provide FOPs.

---

[21] *See SKF USA Inc. v. United States*, 675 F. Supp. 2d 1264, 1268 (CIT 2009) (*SKF*); *Nippon Steel Corp. v. United States*, 337 F.3d 1373 (Fed. Cir. 2003). Goal Zero and Sunpreme argue that in SKF, the CIT overturned Commerce's application of adverse inferences to a respondent as a result of an unaffiliated supplier's lack of cooperation in providing cost of production data. *See* SKF at 1268, 1276. "The court cannot accept a construction of 19 U.S.C. § 1677e(b) under which the party who suffers the effect of the adverse inference is not the party who failed to cooperate." SKF, 675 F.Supp.2d. at 1275, 1277. Goal Zero cites to the CIT stating that "{f}ailing to provide data requested by Commerce is not the same as being unable to provide the requested data and providing a reasonable alternative."11).

[22] *See* Goal Zero's case brief at 5 *(citing Itochu Building Products Co., Inc. v. United States*, 2017 WL 2703810, *15 (CIT June 22, 2017) (*Itochu Building Products*).

[23] *See* Goal Zero's case brief at 5 *(citing Mueller Commercial De Mexico, S. De R.L. De C.V. v. United States,* 753 F.3d 1227, 1233 (Fed. Cir. 2014) (*Mueller*)).

[24] *See* Solar World's Rebuttal case brief at 17 (citing *Solar World Americas, Inc., et al.* v. *United States, et al.,* No. 16-00134, Slip Op. 17-143 at 41 (CIT Oct. 18,2017).

[25] *See* Solar World's Rebuttal case brief at 18 (citing Unreported FOP Memo at 7).

- As was the case in the second and third reviews, the record indicates that Trina's long-term, established relationships with its cell suppliers makes it reasonable to conclude that the company has in place some business mechanism to induce its suppliers to cooperate.[26]
- Based on the previous reviews of this proceeding in which it was a respondent and the CIT's recent ruling in litigation involving the second review results, Trina, and its suppliers were all aware of (or should have been aware of) the reporting requirements. The issue is not whether Trina had influence, but its failure to use that influence to induce cooperation.
- Contrary to Goal Zero's assertion, Commerce's application of partial AFA is not contrary to the statute. In *Xiping*, the CIT explained the CAFC's opinion in *Mueller* where, if a cooperating party was in a position to induce a noncooperating party to supply needed information and failed to do so, AFA could be used to determine the cooperating party's rate if a cooperating party is in a position where it could and should induce another party's cooperation by refusing to do business with it.[27]
- Trina's non-cooperating solar cell suppliers may not be mandatory respondents in this review, but they are interested parties that produce subject merchandise. Commerce's AFA application thus has a direct impact on Trina's noncooperating suppliers, and the potential for evasion of antidumping duties clearly exists. As such, Commerce appropriately interpreted and applied Mueller to the facts of this case.

Commerce's Position: We disagree with Goal Zero and Sunpreme, and have continued to apply partial AFA to the unreported FOPs of Trina's unaffiliated solar cell suppliers.[28] Section 776(a) of the Tariff Act of 1930, as amended (the Act) provides that, subject to section 782(d) of the Act, Commerce shall apply "facts otherwise available" if: (1) necessary information is not on the record; or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Moreover, section 776(b) of the Act provides that Commerce may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

Section 771(9)(A) of the Act defines an interested party as, among other things, a foreign manufacturer of subject merchandise. Trina's unaffiliated solar cell suppliers are interested parties because they manufacturers of solar cells, which are subject merchandise. These

---

[26] *See* Solar World's Rebuttal case brief at 17 (citing Trina's June 5, 2017 response at Exhibit DA-9.
[27] *See* Solar World's Rebuttal case brief at 20 (citing *Xiping Opeck Food Co.* v. *United States,* 34 F. Supp. 3d 1331, 1348 (CIT 2014) (*Xiping*)).
[28] *See* Memorandum, "Antidumping Duty Administrative Review of Certain Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Preliminary Analysis Memorandum for 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.," dated January 2, 2018. (Preliminary Analysis Memorandum) at 3-4.

unaffiliated suppliers would not provide their FOPs and, thus, they were uncooperative and withheld requested information. Commerce requested that Trina obtain the required information from its suppliers.[29] Additionally, Commerce issued its AD questionnaire to Trina's largest six solar cell suppliers.[30] However, certain suppliers did not respond to the questionnaire, and to requests by Trina to provide their factors of production.[31] Thus, certain suppliers withheld requested information and failed to cooperate by not acting to the best of their ability to comply with a request for information pursuant to sections 776(a)(2)(A) and 776(b) of the Act. In such situations, the statute allows Commerce to use AFA in place of the missing information.

Contrary to Goal Zero's and Sunpreme's claims, Commerce's determination to apply partial AFA in this case is consistent with its practice regarding the valuation of unreported FOPs. For instance, in *Narrow Woven Ribbons*, Commerce applied partial AFA to a respondent because its unaffiliated ribbon suppliers declined to report their costs related to subject merchandise and, thus, failed to cooperate with Commerce's requests for information.[32] Commerce determined that the application of partial AFA was appropriate in this case because the unaffiliated ribbon suppliers produced ribbons and then sold the ribbons to the mandatory respondent who, after further processing, exported the ribbons to the United States during the POR and, thus, they were interested parties within the meaning of section 771(9)(A) of the Act. Similarly, in *Certain Steel Nails*, Commerce applied partial AFA in determining a respondent's dumping margin because its unaffiliated supplier did not provide FOP data. Commerce noted that "it is crucial for suppliers of subject merchandise to provide their own FOP data because suppliers actually provide finished merchandise independently subject to the Order, in contrast to tollers who only perform a process at one stage of the production."[33]

Our determination is distinguishable from cases where Commerce has not applied AFA in valuing missing FOPs, including Commerce's treatment of Yingli,[34] a mandatory respondent in the second administrative review of this proceeding, and Trina, a mandatory respondent in the investigation of this proceeding. In the second administrative review and in the investigation in this proceeding, Commerce did not apply AFA to Yingli or Trina's purchased solar cells for

[29] *See* Appendix XII of the March 31, 2013 antidumping questionnaire issued to Trina at 5.
[30] *See* Commerce's June 10, 2016, questionnaires issued to Trina's largest solar cell suppliers.
[31] *See* Trina's June 5, 2017, Section D response at D-4 and Exhibit D-2.
[32] *See Narrow Woven Ribbons With Woven Selvedge from Taiwan; Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 19635 (April 13, 2015) (*Narrow Woven Ribbons*) and accompanying IDM at Comment 7.
[33] *See Certain Steel Nails from the People's Republic of China: Final Results and Final Partial Rescission of the Second Antidumping Duty Administrative Review*, 77 FR 12556 (March 1, 2012) (*Certain Steel Nails*) and accompanying IDM at Comment.
[34] In the second administrative review, Commerce treated the mandatory respondent Yingli Energy (China) Company Limited and the following eight companies as a single entity: (1) Baoding Tianwei Yingli New Energy Resources Co., Ltd.; (2) Tianjin Yingli New Energy Resources Co., Ltd.; (3) Hengshui Yingli New Energy Resources Co., Ltd.; (4) Lixian Yingli New Energy Resources Co., Ltd.; (5) Baoding Jiasheng Photovoltaic Technology Co., Ltd.; (6) Beijing Tianneng Yingli New Energy Resources Co., Ltd.; (7) Hainan Yingli New Energy Resources Co., Ltd.; (8) Shenzben Yingli New Energy Resources Co., Ltd. (collectively "Yingli"). *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2013–2014*, 81 FR 39905 (June 20, 2016) (*Solar Cells AR2 Final*).

which they failed to report FOPs, due to the relatively small quantity of the solar cells in question.[35] Here, the percentage of solar cells provided by Trina's uncooperative suppliers is a substantial percentage of all solar cells that Trina used to make solar modules during the POR.[36] We do not find this percentage to be relatively small, insignificant, or reasonably characterized as being of limited quantity.

Further, contrary to Goal Zero's and Sunpreme's arguments, Commerce's application of partial AFA is consistent with *Mueller*.[37] The CAFC agreed with Commerce that the respondent in *Mueller* had an existing relationship with the supplier and, thus, could have "refused to do business" with that company "in the future as a tactic to force" that company to cooperate. The CAFC, thus, held that because the respondent in *Mueller* and other exporters could refuse "to export goods produced" by the unaffiliated supplier, such a relationship could "potentially induce" the supplier "to cooperate." The CAFC indicated in *Mueller* that fairness or accuracy, rather than deterrence, is the overriding purpose of the antidumping statute.[38] Yet the CAFC recognized that Commerce may apply AFA in order to induce cooperation by other interested parties whose information is needed to calculate a respondent's dumping margin, in situations where the respondent has a mechanism to induce the non-cooperating parties to cooperate.[39]

Here, Commerce finds that evidence supports our finding that Trina could induce compliance on the part of its solar cell suppliers. Specifically, Commerce chose Trina as a mandatory respondent in the investigation of this proceeding, as well as in the previous two administrative reviews and this administrative review, because it was one of the largest two exporters of subject merchandise to the United States.[40] Further, Trina identified itself as the largest solar manufacturer in the world during the prior POR,[41] and Trina purchased a substantial quantity of solar cells from its suppliers in this POR.[42] Based on Trina's large size and the quantity of solar cells that it purchased from suppliers, it is reasonable to conclude that Trina is an important customer to its Chinese solar cell suppliers. Given the extent of Trina's business with the solar cell suppliers, Commerce finds that Trina is in a position to exercise leverage over its solar cell suppliers to induce them to cooperate in this review. Trina itself noted that it has a "long-term business relationship" with the solar cell suppliers providing the largest quantity of solar cells

[35] *See Solar Cells AR2 Final* and accompanying IDM (Solar Cells AR2 IDM) at Comment 19; *see also Solar Cells AR1 Final* and accompanying IDM at Comment 19.
[36] *See* Trina's July 28, 2017 submission at Exhibit 9. *See also* Trina's June 5, 2017, Appendix XII response at 14.
[37] *See Mueller*, 753 F.3d at 1235.
[38] *Id.*
[39] *Id.*
[40] *See Solar Cells INV Preliminary Determination*; *see also Solar Cells AR2 Final* and accompanying IDM (Solar Cells AR2 IDM) at Comment 19; *see also Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014–2015*, 82 FR 29033 (June 27, 2017) (*Solar Cells AR3 Final*) and accompanying IDM (Solar Cells AR3 IDM) at 8; s*ee also* Memorandum "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 6.
[41] *See* Solar Cells AR3 IDM at Comment 1.
[42] *See* Memorandum, "Unreported Factors of Production," dated January 2, 2018 (Trina FOP Memo) at 6-7 (citing to Trina's October 13, 2017 submission at Exhibit 13. *See also* Trina's June 5, 2017, Appendix XII response at 14).

during the previous two PORs.[43] Based on the above, we find that Trina is in a position to exercise leverage over its solar cell suppliers to induce its suppliers to cooperate. Trina may choose not to do business with such suppliers in the future due to their lack of cooperation and/or select suppliers that are willing to participate in an AD proceeding. By applying AFA with respect to the missing data, Commerce is relying on the statutory means that it has available to induce the cooperation of these parties so that Commerce has the information necessary to calculate accurate dumping margins.

As we noted in the preliminary results of this review, presented with facts nearly identical to those in the instant review, in a prior segment of this proceeding Commerce cited *Mueller* in an identical manner as it has here and the CIT sustained Commerce's determination to apply AFA with respect to unreported FOPs from Trina's unaffiliated solar cell suppliers.[44] Specifically, the CIT upheld Commerce's application of partial AFA based upon Trina's failure to report FOPs for certain purchased solar cells and its perceived ability to induce compliance from the suppliers of those solar cells to provide the required information.[45] Goal Zero and Sunpreme have not distinguished the situation in the instant review from that in the second administrative review of this proceeding. As we noted above, the facts in the second AD administrative review of this proceeding and the reference to *Mueller* in that review are nearly identical to the facts and reference to *Mueller* in the instant review.

Comment 2: Ministerial Error Allegations

Trina states that Commerce should correct the following errors for the final results:

- Commerce incorrectly used the polysilicon variable mB_PURCH_POLYSILICON, which relates to Trina's self-produced bricks and ingots, when calculating the polysilicon input for purchased bricks, purchased ingots, and tolled ingots. Commerce should have used the polysilicon variables for purchased bricks (mB_PURCH_POLYSILICON_PB), purchased ingots (mB_PURCH_POLYSILICON_PI), and tolled ingots (mB_PURCH_POLYSILICON_TI) in this calculation.
- Trina reported a character variable in the INTNFRU field in its sales database.[46] However, Commerce assigned a numeric value to this field.[47] The SAS software does not correctly process mathematical equations when a numeric value is assigned to a variable that has been defined as a character variable.[48] To correct the error, Commerce should assign the surrogate value for ocean freight to a new variable name not previously used.

[43] *See* Trina's June 5, 2017, Section D response at Exhibit DA-32; *see also* Solar Cells AR3 IDM at Comment 1; *see also* Solar Cells AR2 IDM at Comment 19.
[44] *See* Trina FOP Memo at 7 (citing *Solar World Americas, Inc., et al. v. United States, et al.*, 2017 WL 4844276, Slip Op. 17-143 (CIT 2017)).
[45] *Id.* at 37-40.
[46] *See* Trina's October 31, 2017 Supplemental Response at the data file containing the FOP database.
[47] *See* Preliminary Analysis Memorandum at Attachment I.
[48] *Id.*

- Commerce incorrectly deducted the dollar per kilogram surrogate value for brokerage and handling from a unit price expressed in dollars per watt.[49] In addition, Trina reported a character variable in the DBROKU field.[50] However, Commerce assigned a numeric value to this field.[51] As noted above, the SAS software does not correctly process mathematical equations when a numeric value is assigned to a variable that has been defined as a character variable. To correct these two errors, Commerce should convert the surrogate value for brokerage and handling to a per watt amount, assign this surrogate value to a new variable name not previously used, and deduct the amount from the reported gross unit price.
- Commerce revised the reported distance to the port.[52] However, it made an error when it assigned the revised distance to the variable "DINLFTPU" rather than the variable used in the SAS margin program to identify the distance to the port, "DINLFTPU_TRUCK."[53] Commerce should assign the revised truck distances to the port to the variable "DINLFTPU_TRUCK".
- Commerce incorrectly calculated labor costs related to all production, other than the production of solar cells, by failing to multiple total labor costs by the percentage of labor related to other production.[54]
- Commerce incorrectly calculated the cost of market economy purchases by Trina because it applied the brokerage and handling surrogate value for exports[55] in its calculation but should have applied the brokerage and handling surrogate value for imports since Trina purchased imported materials.
- Commerce failed to convert the surrogate value for the resin brush and print tape inputs from Thai baht per number to Thai baht per kilogram.[56]
- Commerce should include the "M_SILICON_GLUE_BP" and "W_OH_SAND_SLURRY_SCRAP" factors in the margin calculation.

Goal Zero and Sunpreme support Trina's arguments. The petitioner did not comment on the above ministerial error allegations.

Commerce's Position: We agree with Trina that each of the errors specified above were made and should be corrected as it suggests, except as noted below with respect to the "M_SILICON_GLUE_BP" and "W_OH_SAND_SLURRY_SCRAP" factors. We have made these corrections for these final results of review.[57] In addition, in calculating the market

---

[49] *See* Preliminary Analysis Memorandum at Attachment I; *see also* 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 January 2, 2018 (Preliminary Results Surrogate Value Memorandum) at Attachment II.
[50] *See* Trina's October 5, 2017 Supplemental Response at the data file containing the U.S. sales database.
[51] *See* Preliminary Analysis Memorandum at Attachment I.
[52] *Id.* at 5.
[53] *Id.* at Attachment I.
[54] *Id.* at 3-4 and Attachment I.at 3-4 and Attachment I.
[55] *Id.* at Attachments I and III.
[56] *See* the Preliminary Results Surrogate Value Memorandum at Attachment II.
[57] For further details concerning the above calculations, *see* Memorandum, "Antidumping Duty Administrative Review of Certain Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the

purchase price for wafers, we used the surrogate value for wafers rather than the average market purchase price reported by Trina. We have corrected this error as well.[58]

With respect to the "M_SILICON_GLUE_BP" and "W_OH_SAND_SLURRY_SCRAP" factors, we note that Trina provided certain SAS programming language in its case brief, which appeared to request that Commerce value these two factors as by-products. Trina reported these factors in its October 31, 2017, in a supplemental questionnaire response, shortly before verification.[59] The supplemental questionnaire requested Trina report purchased suspension and recycled suspension separately in its FOP database; however, even though not solicited in Commerce's supplemental questionnaire, Trina also reported sand slurry scrap in response to this question.[60] Furthermore, Trina reported "M_SILICON_GLUE_BP" in its October 31, 2017 response.[61] Commerce's original Section D questionnaire, issued on March 31, 2017, requested information pertaining to any by-products offsets sought to be claimed.[62] By providing the information at such a late stage of the review, Trina prevented Commerce and the petitioner from analyzing the data prior to verification. Commerce officials departed for verification on November 3, 2017, and conducted verification from November 6, 2017 through November 10, 2017.[63]

Further, Commerce's practice is to grant an offset for by-products generated during the production of the merchandise under consideration if evidence is provided that such a by-product has commercial value.[64] By-product offsets are only granted for merchandise that is either sold or reintroduced into production during the POR, up to the amount of that by-product actually produced during the POR.[65] Moreover, parties requesting a by-product offset have the burden of presenting to Commerce not only evidence that the generated by-product is sold or re-used in the production of the subject merchandise, but also all the information necessary for Commerce to incorporate such offsets into the margin calculation.[66] In the *Preliminary Results*, Commerce did not incorporate the claimed by-product offsets into the margin calculation.[67] Upon further review, we continue to find that the record does not support Trina's request. Specifically, the AD questionnaire issued to Trina explicitly asked for both production records and sales records

People's Republic of China: Final Results Analysis Memorandum," dated concurrently with this memorandum (Final Results Analysis Memorandum).

58 For further details concerning the above calculations, *see* Final Results Analysis Memorandum.

59 *See* Trina's October 31, 2017 Supplemental Response at 6-7.

60 *Id*.

61 Id. at Exhibit 3.

62 *See* Commerce's May 31, 2017 AD questionnaire at D-9 and D-10 (By-products or Co-products).

63 *See* China Verification Report.

64 *See Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 35245 (June 12, 2013) and accompanying IDM at Issue 10.

65 *See, e.g., Certain Steel Nails from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments and Final Partial Rescission; 2014-2015*, 82 FR 14344 (March 20, 2017), and accompanying IDM at Comment 6.

66 *See Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances,* 74 FR 40485 (July 15, 2008), and accompanying IDM at Comment 34.

67 *See* Preliminary Analysis Memorandum.

demonstrating that the by-product was both produced and sold during the POR. The questionnaire asked that Trina complete an Excel chart showing, "identifying, by month, the quantity produced, sold, reintroduced into production, or otherwise disposed of" and requested "production records demonstrating production of each by-product/co-product during one month of the POR."[68] Furthermore, the questionnaire asks that Trina provide a description of the by-product, as well as provide calculations used to derive the claimed offset with detailed explanations.[69] While Trina provided such information as requested by Commerce for its other by-products,[70] it did not submit this information for these two FOPs. Without reviewing the information identified above, Commerce is unable to ascertain whether Trina is eligible for by-product offsets for these two factors. The burden of establishing eligibility for an offset falls squarely on Trina. Trina has failed to meet its burden of proof to show that it is entitled to the by-product offsets.[71] Therefore, we have continued to disregard these two factors for the final results.

Comment 3: Whether Commerce Should Adjust the U.S. Price for "USDUTYU" Expenses

Petitioner:

- In calculating the net U.S. price, Commerce did not deduct USDUTYU fees (*i.e.*, U.S. customs duty expense) from the gross price because it found at verification that these customs fees were reported in the R_INLFWCU field, which reflects Trina's "combined" freight expenses.[72]
- However, Trina reported that the R_INLFWCU field accounts for the freight expenses reported in the INLFWPU, USOTRU, USBROKU, INLFWCU and USOTRCU fields but made no mention of the USDUTYU field.[73]
- Commerce described in the verification report how Trina demonstrated the accuracy of the .4714 percentage applied to entered value to derive the merchandise processing fees (MPF) and harbor maintenance fees (HMF) fees reported under the USDUTYU field.
- Commerce's list of all component parts of the R_INLFWCU field, provided in Attachment VII of the Preliminary Analysis Memorandum, does not include the USDUTYU field.[74]
- Given that the R_INLFWCU field does not account for the customs fees reported under the USDUTYU field, Commerce should adjust its calculation accordingly.

---

[68] *See* Commerce's May 31, 2017 AD questionnaire at D-9 and D-10 (By-products or Co-products).
[69] *Id*.
[70] *See* Trina's June 5, 2017 Section D questionnaire response at D-26 to D-28, and Exhibits 11.1 to 11.4; *see* Trina's August 24, 2017, supplemental Section D questionnaire response at 13 to 16, and Exhibits 19 to 24.
[71] *See Certain Steel Nails from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 83 FR 11683 (March 16, 2018) and accompanying IDM at Comment 10; *see also Certain Cased Pencils from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review; 2014-2015*, 81 FR 74764 (October 27, 2016) and accompanying IDM at Comment 3.
[72] *See* the petitioner's case brief at 21 (*citing* the CEP Verification Report at 16, 18-19).
[73] *See* the petitioner's case brief at 22 (*citing* Trina's October 5, 2017, Second Section C Supplemental Questionnaire Response at Supp C2-7, Supp C2-8).
[74] *See* the petitioner's case brief at 22 (*citing* the Preliminary Analysis Memorandum at Attachment VII).

Trina:

- Sales verification exhibits demonstrate that U.S. duty expenses, specifically MPF and HMF fees from Trina's accounting system (freight account), are included in the R_INLFWCU field.[75] As a result, Commerce should not deduct the USDUTYU field in the net price calculation; deducting the USDUTYU field would deduct the same expense twice.

Commerce's Position: We agree with Trina. Commerce confirmed at verification that Trina Solar (U.S.), Inc. (TUS) recorded MPF and HMF in its domestic freight expense account (*i.e.*, account code 6102010000), and that the amounts recorded in account code 6102010000 are actual MPF and HMF incurred by TUS,[76] rather than the calculated amounts of MPF and HMF reported in the USDUTYU field.[77] We confirmed this by tying the U.S. customs duty expense (*i.e.*, MPF and HMF) identified on a selected U.S. Customs and Border Protection (CBP) Form 7501 to the related expense detail for a logistics vendor for June 2016, which tied to account code 6102010000 for June 2016.[78] Account code 6102010000 is the basis for the values reported in the R_INLFWCU field.[79] While the petitioner is correct that Attachment VII to the Preliminary Analysis Memorandum does not list MPF and HMF as costs included in the R_INLFWCU field,[80] this Attachment was based on Trina's submissions made prior to verification and does not reflect our findings at verification. Because MPF and HMF were included in the R_INLFWCU field (which reflects the INLFWCU (*i.e.*, port to warehouse and warehouse to customer expenses), USBROKU (*i.e.*, brokerage and handling expense), USOTRU (*i.e.*, general port charges), and USDUTYU fields),[81] and because these amounts reflect the fees that TUS actually paid, Commerce will continue to disregard the USDUTYU field in calculating the net U.S. price.

Comment 4: Whether Commerce Should Include Trina's U.S. Sale to a Salvage Company in the Margin Calculation

Petitioner:

- Commerce did not provide a rationale for excluding Trina's U.S. sales of modules to a salvage company from its dumping margin calculation, stating only that it excluded the sale based on its findings at verification.[82]

---

[75] *See* Trina's rebuttal case brief at 19-20 (*citing* the CEP Verification Report at Exhibit 18).
[76] *See* CEP Verification Report at 19 and Exhibit 18.
[77] *Id.* at 19 states that Trina reported the amount in the USDUTYU field by multiplying the entered value by 0.4714 percent, which Trina said represented the harbor maintenance and merchandise processing fees.
[78] *See* CEP Verification Report at 19 and Exhibit 18.
[79] *See* CEP Verification Report at 23.
[80] *See* Preliminary Analysis Memorandum at 6 and Attachment VII.
[81] *Id.* at 19.
[82] *See* the petitioner's case brief at 20 (citing Preliminary Analysis Memorandum at 5; China Verification Report at 2).

- Commerce's established practice is to exclude U.S. sales from its calculations only where the record demonstrates the transactions are unusual or aberrational, and where the respondent demonstrates that including such sales is distortive.[83]
- Commerce found in *Wire Rod Final Results* that damaged or defective merchandise, by itself, does not demonstrate that the sale is exceptional.[84]

Trina:

- Commerce should continue to exclude sales of scrapped modules from its dumping margin calculation. While the petitioner cites *Wire Rod Final Results,* where Commerce included in the dumping margin calculation a sale of damaged merchandise, wire rod and solar modules are not similar products. While a damaged or non-prime wire rod might still fit within the scope of the AD order on wire rod, a damaged solar module is something so different from a functioning solar module that it is no longer subject merchandise.[85]
- Commerce has valued scrapped modules sold in China using aluminum scrap as a surrogate.[86] Treating the sale of the scrapped modules at issue as a sale of subject merchandise cannot be reconciled with the treatment of scrapped modules sold in China.

Commerce's Position: We agree with Trina. The issue here is whether the modules sold by Trina were defective, non-prime modules or damaged to such an extent that they were considered scrap. The appropriate analysis was described in *Plate from Taiwan*[87] where Commerce explained:

> First, we must determine whether the products at issue are non-prime or scrap. We analyze non-prime products on a case by case basis to determine whether downgraded products remain in the scope, and likewise can still be used in the same applications as the subject merchandise (*i.e.*, capable of use as CTL plate). As the Department has stated in previous cases, the downgrading of a product from one grade to another will vary from case to case. At times the downgrading is minor and the product remains within a product group (*i.e.*, remains scope merchandise), while at other times *the downgraded product differs significantly, no longer remains subject merchandise, and is not capable of being used for the same applications*.

[83] *See* the petitioner's case brief at 20 (citing *Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago; Final Results of Antidumping Duty Administrative Review*, 74 FR 10722 (March 12, 2009) (*Wire Rod Final Results*) and accompanying IDM at Comment 1; *Chang Tieh Indus. Co., Ltd., et. al v. United States*, 840 F. Supp. 141, 145 (CIT 1993); *see also Notice of Final Results of the Tenth Administrative Review and New Shipper Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea,* 70 FR 12443 (March 14, 2005), and accompanying IDM at Comment 6).
[84] *Id.*
[85] *See* Trina's rebuttal case brief at 18-19.
[86] *See* Trina's rebuttal case brief at 18 (citing Preliminary Results Surrogate Value Memorandum at Attachment II).
[87] *See Certain Carbon and Alloy Steel Cut-To-Length Plate from Taiwan: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 82 FR 16372 (April 4, 2017) (*Plate from Taiwan*) and accompanying IDM at Comment 16.

(Emphasis added.)

The sale at issue involves modules that were damaged during transit from China to the United States.[88] Trina did not attempt to deliver these solar modules to the U.S. customer. Rather, they remained in a warehouse until they were sold as scrap to a salvage company for a fraction of the market price of prime modules.[89] TUS was also reimbursed by the freight company for the damage to the solar modules in question.[90] TUS did not provide a warranty for the scrapped modules and characterized them as suitable only for salvage.[91] The facts indicate the modules were a downgraded product that differed significantly from prime modules and were not capable of being used for the same applications as prime or non-prime modules.

Trina has explained that material recycling companies purchase scrapped modules, and that these companies "…specialize in salvaging parts and obtaining the maximum value for the various parts (cells, junction box, frames, *etc*.) and base materials."[92] Thus, Trina indicates that the salvage company dismantles the scrapped modules into their salvageable components. Additional evidence classified as proprietary clearly demonstrates that there is little commonality or comparability between this sale of scraped solar modules to a salvage company and sales of prime solar modules to a very different category of solar module customers.[93]

Significantly, even the petitioner has implicitly acknowledged that scrapped solar modules are significantly different than, and have a different value from, useable solar modules.[94] Trina sells scrapped solar modules in China. The petitioner argued that these modules should be valued as scrap (not as a useable module) using the scrap value of one of their salvageable component materials, aluminum.[95]

In *Wire Rod Final Results*, Commerce found that "{i}n this particular instance, the circumstances of AMPL's sale of the defective merchandise in the U.S. market do not make the sale unusual nor do they make the sale aberrational." In explaining its decision, Commerce stated that "{t}he Department's exclusion or inclusion of sales in the ordinary course of business is applicable only to home market sales and not to U.S. sales"; further noting that "the CIT has held, in two separate decisions, that U.S. sales both within and outside the ordinary course of trade are to be included in the U.S. price calculations."[96] There is no indication that Commerce found the defective merchandise in that proceeding anything other than non-prime merchandise. In fact, the U.S. sale at issue in *Wire Rod Final Results* was repeatedly described as non-prime

[88] *See* CEP Verification Report at 2.
[89] *Id.*
[90] *Id.*
[91] *See* Memorandum, "Proprietary Information Publicly Summarized in the Final 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," dated concurrently with this memorandum (BPI Document) at BPI Note 1.
[92] *See* Trina's August 24, 2017, Supplemental Section D Questionnaire Response at 16.
[93] *See* the BPI Document at BPI Note 2.
[94] *Id.* at BPI Note 3.
[95] *See* the petitioner's July 10, 2017 surrogate values submission at Exhibit 1.
[96] *See Wire Rod Final Results* and accompany IDM at Comment 1.

merchandise rather than scrap.[97] While the wire rod may have been less than prime, there is no indication that it was no longer usable as wire rod. Further, the sales at issue were compared to a sale of non-prime wire rod in the home market.[98]

Unlike *Wire Rod Final Results*, where Commerce found the defective merchandise to be non-prime merchandise rather than scrap because the merchandise was still usable as wire rod, the scrapped solar modules at issue in this review were sold to a salvage company where the record information indicates that such modules are dismantled into their salvageable components. Thus, because the damaged merchandise was no longer usable as modules, we have continued to exclude the U.S. sale in question from the dumping margin calculation on that basis.

Comment 5: Whether Commerce Should Adjust U.S. Price for the Export Buyer's Credits Program

Goal Zero and *Sunpreme*:

- Commerce should increase the U.S. price by the amount of export subsidy conferred through the Export Buyer's Credit program.[99] Section 772(c)(1)(C) of the Act provides that "{T}he price used to establish export price and constructed export price shall be (1) increased by … (c) the amount of any countervailing duty imposed on the subject merchandise under part I of this subtitle to offset an export subsidy."[100]
- The Export Buyer's Credit program is well-known to Commerce and has been investigated in every segment of this proceeding.[101] For the first time in the history of this order, Commerce has elected not to provide an offset for this program.
- In the investigation of the companion countervailing duty (CVD) proceeding, Commerce applied AFA with respect to the EX-IM Bank Buyer's Credit Program in determining that this program is countervailable.[102] While the petitioner argued that Commerce should not offset the cash deposit rate in the AD investigation, Commerce properly adjusted the AD cash deposits for export subsidies, which included the Export Buyer's Credit program.[103] Similarly, in the CVD review, as AFA, Commerce found that the Export Buyer's Credit program confers a countervailable subsidy.

[97] While the comment header is titled "Whether {Commerce} Should Exclude the Single Sale of Scrap Merchandise" in *Wire Rod Final Results*, the U.S. sale at issue is only described as non-prime, rather than scrap, in the discussion.
[98] *See Welded Line Pipe from Korea* and accompanying IDM at Comment 9
[99] *See* Goal Zero's case brief at 2; *see also* Sunpreme's case brief at 2.
[100] *See* Goal Zero's case brief at 7-8; *see also* Sunpreme's case brief at 7-8.
[101] *Id.*; *see also* Goal Zero's case brief at 6-7; *see also* Sunpreme's case brief at 6-7.
[102] *See* Goal Zero's case brief at 7 and Sunpreme's case brief at 7 (both citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012) (*CVD Investigation Final*) and accompanying IDM at 20, Comment 18, and Comment 20).
[103] *See* Goal Zero's case brief at 7 and Sunpreme's case brief at 7 (both citing *Solar Cells Investigation Final*).

- Commerce has previously found that the features of the Export Buyer's Credit program – a grant of export credits by the government– clearly suggest that the subsidy is an export subsidy.[104]
- Under Article VI (5) of the General Agreement on Tariffs and Trade (GATT), "no product . . . shall be subject to both anti-dumping and countervailing duties to compensate for the same situation of dumping or export subsidization." Since this program was found to be countervailable, the failure to offset the AD margin with the amount of the export subsidization would clearly violate U.S. obligations under GATT Article VI (5).

Trina:

- Commerce has agreed that the purpose of adding countervailed export subsidies to U.S. prices is to prevent AD duties from constituting a second remedy for export subsidies.[105] In *CFS Paper* and in other cases, Commerce has acknowledged that the export subsidy offset is statutorily required, stating, "the statute plainly requires {Commerce} to add the full amount of CVDs imposed to offset export subsidies to the U.S. price."[106]
- In *CVD Investigation Final*, Commerce countervailed the Ex-Im Buyer's Credit Program.[107] Although Commerce preliminarily determined that Trina did not use the Ex-Im Buyer's Credit Program, in the final determination Commerce countervailed the program, as AFA, because the Ex-Im Bank of China did not permit Commerce's verifiers full access to its records and data systems. In explaining its rationale for countervailing the Ex-Im Buyer's Credit program, Commerce emphasized that "EX-IM Bank provides loans at preferential rates *for the purchase of exported goods from {China}*."[108]
- Similarly, in *Solar Products CVD Investigation Final*, Commerce countervailed the Ex-Im Buyer's Credit program.[109] The petitioner argued that Commerce should not offset AD deposit rates based on the export subsidy rates determined in *Solar Products CVD Investigation Final* because the countervailing duty determined for the Ex-Im Buyer's Credit program was based on AFA.[110] Commerce rejected the petitioner's argument, and acknowledged that the Ex-Im Buyer's Credit program countervailed in *Solar Products CVD Investigation Final* was an export subsidy for which the statute required an adjustment in calculating the net U.S. price.[111]

---

[104] *See* Goal Zero's case brief at 8 and Sunpreme's case brief at 8 (both citing *CVD Investigation Final* and accompanying IDM at 20; Item (k) of Annex I of the WTO Subsidies and Countervailing Measures Agreement).
[105] *See* Trina's case brief at 12 (citing *e.g., Final Determination in the Less-Than-Fair-Value Investigation of Coated Free Sheet Paper from the People's Republic of China*, 72 FR 60632, (October 17, 2007) (*CFS Paper*), and accompanying IDM at Comment 2).
[106] *Id.*
[107] *See* Trina's case brief at 12-13 (citing *CVD Investigation Final* and accompanying IDM at 20).
[108] *Id.*
[109] *See* Trina's case brief at 13 (citing *Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014) (*Solar Products CVD Investigation Final*), and accompanying IDM at 30).
[110] *See* Trina's case brief at 13-14 (citing *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 76970 (December 23, 2014) (*Solar Products AD Investigation Final*) and accompanying IDM at Comment 3.
[111] *Id.*

- On appeal, Commerce defended its decision to adjust the AD cash deposit rate for the AFA export subsidy rate determined in *Solar Products CVD Investigation Final*. The CIT sustained Commerce's decision.[112]
- Commerce's determination in *Solar Products CVD Investigation Final* and the CIT's decision in *Jinko Solar* establish that the countervailing duty applied to the Ex-Im Buyer's Credit program was appropriately offset in the AD case as an export subsidy regardless of whether the countervailing duty rate was based on AFA or calculated.

Petitioner:

- Commerce should not increase Trina's constructed export price (CEP) to offset countervailed export subsidies. In the most recently completed segment of the companion CVD proceeding, Commerce discovered additional information regarding revisions to the Export Buyer's Credit program that were made in 2013 that raised several questions about the nature of the program and Commerce's understanding of the program. Given the Government of China's failure to provide information, Commerce concluded that the record was not only incomplete, but that its "understanding on this program" was "unreliable."[113]
- Thus, unlike prior solar AD proceedings cited by respondents, Commerce now faces a different scenario where it lacks certain facts regarding the specifics of the Export Buyer's Credit program. Thus, there is no basis for Commerce to find the program export contingent.

Commerce's Position: 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. However, Commerce did not make a determination in the most recently completed CVD administrative review of solar cells from China that the Export Buyer's Credit program was an export subsidy. Rather, Commerce's determination to countervail the program was based on facts otherwise available with an adverse inference, as a result of non-cooperation by the Government of China. Commerce did not make a determination that the program in question was contingent on export performance.[114] In other words, Commerce did not determine that the subsidies in question were export subsidies, as required for an offset under section 772(c)(1)(C) of the Act. Thus, we disagree with the respondents' argument that Commerce should make an adjustment pursuant to section 772(c)(1)(C) of the Act for this program. In *Pakistan CWP Investigation*, Commerce found that "…without a determination in the companion CVD investigation that a program is an export subsidy, it is not appropriate to make an offset to the cash deposit rates in this AD investigation pursuant to section 772(c)(1)(C) of the Act."[115]

---

[112] *See* Trina's case brief at 14 (citing *Jinko Solar Co., Ltd. et al, v. United States*, 229 F.Supp.3d 1333, 1357-1361 (CIT May 2017), Slip Op. 17–62 (*Jinko Solar*) at 39-42).
[113] *See* the petitioner's rebuttal case brief at 22 (citing *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) (*CVD Solar Cells/PRC 2014 Final*) and accompanying IDM at Comment 1).
[114] *See CVD Solar Cells/PRC 2014 Final* and accompanying IDM at Comment 1.
[115] See *Circular Welded Carbon-Quality Steel Pipe from Pakistan: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination and Extension of Provisional Measures*, 81 FR 36867 (June 8, 2016) and accompanying PDM at 13, unchanged in *Circular Welded Carbon-Quality Steel Pipe from Pakistan: Final Affirmative Determination of Sales at Less Than Fair Value*, 81 FR 75028 (October 28, 2016).

Without a determination in the most recently completed CVD administrative review that the Export Buyer's Credit program provides a subsidy that is contingent on export performance (*i.e.*, an export subsidy), we continue to find it is not appropriate to increase Trina's U.S. prices pursuant to section 772(c)(1)(C) of the Act.

Comment 6: Zero-Quantity Import Data

Trina:

- Commerce should exclude zero-quantity imports when calculating average unit values (AUVs) for surrogate valuation purposes.
- In *SolarWorld Americas, Inc. v. United States,* a case concerning the second AD administrative review of this proceeding, the CIT remanded the issue to Commerce concluding:

  > "There may be a reasonable explanation as to why the zero-quantity imports have values that are not within range of low-quantity inputs elsewhere in the database. But Commerce has not provided such an explanation here. Without further explanation, Commerce's assumption that the zero quantities were the result of rounding is not reasonable."[116]

  As in the second review of this proceeding, the record here lacks a basis to conclude that all zero-quantity imports are explained by rounding an import quantity of less than one to zero or that their inclusion in the calculation improves accuracy.
- Rounding neither explains the zero quantity imports nor the average unit value (AUV) of those imports.
- The data show there are a far greater number of imports expressed as zero quantity imports than there are other small quantity imports expressed as a quantity of one unit of measure. The data show 897 imports have zero quantities and 323 imports have a quantity of one. If the 897 imports reflect quantities below 0.5 units of measure rounded to zero, it is reasonable to expect that double that quantity (*e.g.*, approximately 1800 observations) would be between 0.5 and 1.49 units of measure rounded to one unit. However, as noted, there are only 353 imports with a quantity of one.
- The total value of zero-quantity imports is 28,338,421 Baht. Assuming the quantity of each import is 0.49 kilograms, the AUV for zero-quantity imports is 57,833,512 Baht per kilogram, or approximately 1.82 million dollars per kilogram. In contrast, the AUV where the imported quantity is 1 kilogram is 12,887 baht per kilogram, or approximately 400 hundred dollars per kilogram.[117] Rounding does not explain how the AUV of zero-quantity imports could be 4,000 times higher than the AUV of imports with a quantity of one.
- The unexplained occurrence of zero-quantity imports is pervasive. Seventy-nine percent of all HTS classifications used by Commerce include zero-quantity imports.[118]

---

[116] *See* Trina's case brief at 17 *(citing SolarWorld Americas, Inc. v United Sate*s, CIT Slip-Op 17-143, at 34).
[117] *Id.* at 18 and at data file attachment (*summarizing* data in Preliminary Results Surrogate Value Memorandum at Attachment I).
[118] *Id.*

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

Petitioner:
- Commerce has repeatedly declined to exclude zero-quantity import data.
- Trina offers no explanation or evidence demonstrating what would cause the zero quantities other than rounding.
- In accordance with record evidence, and consistent with its long-standing position on the issue, Commerce should decline to make any such adjustment for the final results.

Commerce's Position: We continue to find no basis to conclude that the zero-quantity import data included in our surrogate value calculations are errors or that these zero-quantity imports result in unreliable and distortive surrogate values. The CIT was presented with a similar argument by Trina in the second review of this proceeding and ruled that "it is reasonable for Commerce to conclude that the zero-quantity values are not the result of error but are the result of rounding quantities between 0.01 and 0.49 down to zero, and to determine that the data is reliable."[119] In the instant review, we determine that the zero-quantity import data, which are within the range of other low-quantity data on the record, are reliable and usable for purposes of our surrogate value calculations.

As explained previously by Commerce, if the zero quantities were the result of errors, we would expect such errors to also occur with respect to the reported *value* in at least some instances; however, there are no imports in the surrogate value data with a zero value.[120] Moreover, if Trina is correct that the zero-quantity imports are erroneous data points, which, based on the import data collected for this review, occur approximately 7 percent of the time, this suggests substantive error rates in the import statistics, as reported by Global Trade Atlas (GTA), even before considering the error rate for value data. No party has suggested that the GTA data, taken as a whole, are unreliable and we have no basis for reaching such a conclusion. Rather, we find the zero-quantity imports attributable to rounding small import quantities to zero. The GTA reports quantities as whole numbers.[121] Rounding has both upward and downward effects. Some quantities are rounded to the next lower whole number (*e.g.*, zero), and some quantities are rounded to the next higher whole number. This results in an offsetting effect. It is not clear such rounding significantly distorts the data. Therefore, we do not believe Trina's contention that zero-quantity data are errors is supported by the evidence.

Trina argues that if the 897 zero-quantity imports (we note that Commerce only identified 834 zero-quantity imports)[122] in the data reflect imports with quantities below 0.5 units of measure that are rounded to zero, it is reasonable to expect that double that number of imports (*e.g.*, approximately 1,800 imports) would have between 0.5 and 1.49 units of measure and be rounded

[119] *See Canadian Solar Inc. et al. v. United States*, No. 16-00134, Slip Op. 18-53, at 11.
[120] *See e.g.*, Solar Investigation IDM at Comment 8; Solar Cells AR2 IDM at Comment 22; and Solar Cells AR3 IDM at Comment 23.
[121] *See* Attachment I of the Preliminary Results Surrogate Value Memorandum.
[122] *Id.*

to a quantity of one. However, Trina notes that there are only 353 imports with a quantity of one. Trina's argument appears to be based on the conclusion that there are 897 observations (imports) for every 0.5 interval in unit of measure. However, there is no basis for concluding that every 0.5 interval in unit of measure will have 897 imports associated with it. Hence, we do not believe this line of reasoning supports a finding that the zero-quantity imports are reported in error.

Additionally, Trina's argument that rounding does not explain how the AUV of zero-quantity imports could be 4,000 times higher than the AUV of imports with a quantity of one is based on an inaccurate calculation. Instead of calculating the AUV for the zero-quantity imports by dividing the total value of those imports, 28,338,421 Baht, by the total presumed quantity of 439.53 kilograms (0.49 kilograms times 897 imports with zero quantity, or 439.53 kilograms), which is the calculation that Trina described, Trina divided the total value of 28,338,421 Baht by 0.49 kilograms. If calculated properly, the presumed AUV of the zero-quantity imports is not 4,000 times higher than the AUV of imports with a quantity of one but approximately only five times higher. Further, we note that the AUVs of all low quantity imports are higher than the AUVs of higher quantity imports.[123] Specifically, the import values where the stated quantity is zero are instances of relatively low import values that are typically in the range of import values from other countries where the imported quantity is very small. Given the low import values for the zero quantity imports, the fact that these values are generally consistent with low volume imports, and given that Thai import quantities collected by GTA are all rounded to the nearest whole number, these instances appear to involve rounding import quantities to zero.

Moreover, other statistics call into question Trina's conclusion. The zero-quantity imports account for 834 out of the 10,902 data points used to calculate surrogate values,[124] or 7.68 percent of the total data points.[125] If 7.68 percent of the data points within the entire dataset were chosen at random, knowing nothing else about the data set, logically, the value of those data would not deviate significantly from 7.68 percent of the total value of the entire dataset. Instead, the zero-quantity data represent only 0.03 percent of the total value of the dataset,[126] which is approximately 250 times less[127] than the value expected for a sample of 834 observations. This statistic, which takes into account all observations for all HTS categories, identifies the relatively low overall value of the zero-quantity imports and supports Commerce's finding that the zero-quantity imports are attributable to rounding small import quantities to zero.

---

[123] *See* Attachment I of the Preliminary Results Surrogate Value Memorandum.

[124] There is a discrepancy between the figures presented in Trina's case brief and the import data obtained by Commerce. In Attachment I of the Preliminary Results Surrogate Value Memorandum, there are over 13,300 observations identified in the import data used to calculate surrogate values. 10,902 of these observations, with a value of 89,273,047,591 baht were from market economies that do not have widely available subsidies, and 834 of these observations, with a value of 22,950,418 baht, pertained to zero-quantity imports.

[125] 834/10,902=7.68 percent.

[126] 22,950,418/ 89,273,047,591=.03 percent.

[127] 7.68/.03=256.

Comment 7: Surrogate Value for Aluminum Frames

Petitioner:

- Commerce incorrectly used Thai HTS 7604.29.90001, which covers "aluminum alloy bars, rods and profiles, other, other than hollow profiles, other, other profiles" to value Trina's aluminum frames. While unprocessed aluminum tubes and profiles, with a uniform cross section along their whole length,[128] are classified under HTS categories 7604 and 7608, further processed aluminum profiles are classified under HTS 7616 or other categories containing finished articles.
- Frames purchased by Trina for use in producing subject modules are fabricated aluminum products that have been further manufactured such that they are more advanced than an aluminum extrusion classifiable under HTS 7604. Trina's schematics of its aluminum frames demonstrate that they have undergone several extensive processes, including processing necessary to resist corrosion.[129]
- The aluminum frames Trina purchases have already undergone all of the above-described processing and thus are ready for immediate incorporation into a solar module. Commerce verified that the aluminum frames undergo no further processing after being purchased by Trina.[130]
- CBP has classified U.S. imports of aluminum frames by Wuxi Suntech, a sales affiliate of a mandatory respondent in the underlying investigation of this proceeding, under HTS 7616.99.[131] CBP has also confirmed that solar frames from China and Malaysia are not simple extrusions but are finished goods that have assumed the identity of a product that is more advanced than an aluminum extrusion.[132]
- In an effort to bring the true nature of the respondent's aluminum frame input to light in this review, in its verification comments, SolarWorld urged Commerce to examine Trina's frames on site in China as purchased from the supplier to determine the extent to which the frames underwent post-extrusion processes such as cutting, drilling, punching, bending, coating, stamping or any other post-extrusion process, and the extent to which the frames can no longer be considered a mere extrusion.[133]
- While Commerce is not bound by CBP rulings, it has nevertheless relied on CPB rulings to guide the classification of material inputs in other proceedings and other segments of this proceeding.[134]

---

[128] *See* the petitioner's case brief at 11 (*citing* the petitioner's July 10, 2017 Submission at Exhibit 1, CBP Ruling NY R01215).
[129] *See* the petitioner's case brief at 13-14 (*citing* Trina's June 5, 2016 Section D Questionnaire Response at Exhibit DA-13).
[130] *See* the petitioner's case brief at 12 (*citing* China Verification Report at Exhibit 10, pages 24-25).
[131] *Id*. at 11-12 (*citing* the petitioner's July 10, 2017 Submission at Exhibit 1, CBP Ruling N139353).
[132] *See* the petitioner's case brief at 12 (*citing* the petitioner's July 10, 2017 Submission at Exhibit 1, CBP Ruling N238208).
[133] *Id*. at 12 (citing Letter from Wiley Rein LLP to Sec'y Commerce Re: *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China: Pre-Verification Comments,* dated October 24, 2017).
[134] *Id*. at 14 (citing *Polyethylene Retail Carrier Bags from the People's Republic of China,* 74 Fed. Reg. 6,857 (Dep't Commerce Feb. 11, 2009), and accompanying IDM at 5 ("Therefore, in our preliminary results, we did not select the

Trina:

- The petitioner's argument has been rejected by Commerce in five different segments across two different proceedings and Commerce has been sustained by the CIT.[135] Since those decisions were reached, nothing has changed that would warrant a different determination in this segment of the proceeding. Commerce should again reject the petitioner's argument and value the aluminum frames using Thai imports under HTS 7604.29.90001.
- In the third review of this proceeding, Commerce explained again that, "{the p}etitioner's assertion that respondents' aluminum frames are finished articles is not relevant to our decision."
- Aluminum profiles classified under HTS 7604 include those that have been further-worked or finished.[136] The petitioner contends than the corrosion resistant coating "transforms the frame into something far different from a simple extrusion."[137] The fact that the frame has a corrosion resistant coating is not new, not surprising, and does nothing to change the classification of the material.
- Contrary to implications by the petitioner, Commerce did not find anything at verification indicating that the aluminum frames were anything other than how Trina described them in its submissions[138] and did not note any discrepancy between Trina's descriptions of the aluminum frames or the pictures of the frames at Exhibit DA-14 of its June 5, 2017 Appendix XII response.

Commerce's Position: We find that HTS subheading 7604.29.90001, which covers non-hollow aluminum profiles, is the best available information with which to value Trina's aluminum frames. The input in question is described by Trina as non-hollow, aluminum profiles.[139] Trina has further demonstrated and Commerce has verified that the input in question is a non-hollow, aluminum profile.[140] HTS 7604.29 (*i.e.*, aluminum alloy bars, rods and profiles, other, other than hollow profiles) covers non-hollow aluminum profiles such as those consumed by Trina in this review period. No party has provided evidence challenging the description of the input on the

---

appropriate HTS subheading for valuing the input at issue. For the final results, we find that we should value the input at the surrogate value of calcium carbonate masterbatch. According to the record evidence and relying on Customs Ruling HQ 962505 (Oct. 15, 1999) for guidance, the appropriate surrogate-value price for the input at issue is categorized under HTS subheading 3901.90.90.)"; *Magnesium Metal from the People's Republic of China*, 73 Fed. Reg. 40,293 (Dep't Commerce July 14,2008) and accompanying IDM at Comment 2).

[135] *See* Trina's rebuttal case brief at 10 (*citing* Solar Investigation IDM at Comment 16; *Solar Cells AR1 Final* and accompanying IDM at Comment 36; Solar Cells AR2 IDM at Comment 8; Solar Cells AR3 IDM at Comment 10; *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 76970 (December 23, 2014) (*Solar Production Investigation Final*) and accompanying IDM (Solar Products Investigation IDM) at Comment 9; and *Jiangsu Jiasheng Photovoltaic Technology Co., Ltd. v. United States*, 28 F. Supp. 3d 1317, 1335-1338 (CIT 2014)(*Jiangsu*)).

[136] *See* Trina's rebuttal case brief at 12 (citing Solar Cells AR3 IDM at Comment 10).

[137] *See* Trina's rebuttal case brief at 12 (citing the petitioner's case brief at 13.

[138] *See* Trina's rebuttal case brief at 10 (*citing* China Verification Report at Exhibit 10, which Trina claims is the exact same type of schematic provided in the original response on June 5, 2017 at Exhibit DA-13.

[139] *See* Trina's June 5, 2016 Section D Questionnaire Response at Appendix XII-28.

[140] *See* Trina's June 5, 2017 submission at Exhibit DA-13 and DA-14 (containing diagrams showing the frames to be non-hollow profiles) and China Verification Report at Exhibit 10.

record, and Commerce has found nothing on the record to contradict Trina's description of the input.

The petitioner has made essentially the same arguments concerning valuing aluminum frames in four different reviews of both the solar cells and solar products orders as well as in the investigations of both proceedings. Commerce has rejected its arguments each time.[141] Commerce's decision in the investigation of the instant proceeding was sustained by the CIT.[142] Again, the petitioner argues the input in question cannot be defined as "aluminum profiles" based on the degree to which it was further processed. However, the U.S. International Trade Commission (ITC), in its application of HTS nomenclature, states that "profile" can be applied to goods "which have been subsequently worked after production."[143]

Commerce considered the amount of finishing that aluminum profiles undergo to become aluminum frames in selecting an appropriate surrogate value for aluminum frames in its previous determinations. In the *Solar Cells Investigation Final*, *Solar Cells AR1 Final*, *Solar Cells AR1 Final*, and *Solar Cells AR3 Final*, Commerce stated:

> Petitioner's assertion that respondents' aluminum frames are finished articles is not relevant to our decision. While CBP rulings on the record supporting the use of HTS 7604 concern unfinished aluminum articles, this does not necessarily mean that HTS 7604 would only contain unfinished aluminum profiles. While other HTS categories identify whether they contain finished or unfinished items, HTS 7604 does not specify whether it contains finished or unfinished aluminum profiles.[144]

Further, we noted in *Solar Products Investigation Final* that the "ITC definition of aluminum profiles cited by the petitioner {in the *Solar Products Investigation*} indicates that profiles may be cast, sintered, and worked after production."[145] In sustaining Commerce's determination with respect to aluminum frames, the CIT stated that "HTS 7604 includes aluminum bars, rods, and profiles, and products that have been *subsequently worked after production* . . . provided that they have not thereby assumed the character of articles or products of other headings" (emphasis

---

[141] *See* Solar Investigation IDM at Comment 16; *Solar Cells AR1 Final* and accompanying IDM at Comment 36; Solar Cells AR2 IDM at Comment 8; Solar Cells AR3 IDM at Comment 10; Solar Products Investigation IDM at Comment 9; *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014-2015*, 82 FR 32170 (July 12, 2017) and accompanying IDM (Solar Products AR1 IDM) at Comment 5. We note that Commerce's decision was also sustained in the first and second administrative reviews of the instant proceeding. Litigation on the first administrative review is currently pending before the CAFC, and there is an ongoing remand on separate issues pending before the CIT with respect to the second administrative review. *See SolarWorld Americas, Inc. v. United States*, 243 F. Supp. 3d 1286 (CIT June 28, 2017), opinion after remand, 273 F. Supp. 3d 1314 (CIT 2017); *see also SolarWorld Americas, Inc. v. United States*, 234 F. Supp. 3d 1286 (CIT June 28, 2017).
[142] *See Jiangsu*, 28 F. Supp. 3d at 1317, 1337.
[143] *See* Solar Cells AR3 IDM at Comment 10.
[144] *See Solar Cells Investigation Final* and accompanying IDM at Comment 16; *Solar Cells AR1 Final* and accompanying IDM at Comment 36; Solar Cells AR2 IDM at Comment 8; Solar Cells AR3 IDM at Comment 10; Solar Products Investigation IDM at Comment 9; Solar Products AR1 IDM at Comment 5.
[145] *See* Solar Products Investigation IDM at Comment 9.

added).[146] Thus, Commerce and the CIT have previously considered the fact that aluminum profiles used as aluminum frames have undergone further processing. While the petitioner argues that corrosion resistant coating "transforms the frame into something far different from a simple extrusion" it has provided no support for its claim that such coating would cause aluminum frames to be classified under HTS 7616.99. We do not find that the application of corrosion resistant coating transforms the frames into products of other HTS headings.

The petitioner further implies that aluminum profiles should not be valued using HTS 7604 because they are not uniform in cross section along their entire length. Commerce has consistently found that while certain aluminum frames purchased by the respondents contain corners, they are nevertheless uniform in cross section, and corners do not change their classification as aluminum profiles.[147] Exhibit DA-13 of Trina's June 5, 2017 Section D questionnaire response and Exhibit 10 of the verification report include a diagram of the frame showing it to have uniform cross section along each side, thereby countering the petitioner's claim.

Just as it did in the reviews and investigations noted above with respect to solar cells and solar products from China, the petitioner cited CBP rulings to support its position that the aluminum frames should not be classified under HTS 7604.[148] However, Commerce is not bound by CBP rulings for U.S. imports when selecting import values from surrogate countries, but instead must select the best available information on the record to value the FOP.[149] One of the CBP rulings cited by the petitioner states that the aluminum frames used to produce solar panels should be classified under HTS 7616.99 (articles of aluminum, not elsewhere specified or indicated);[150] however, this HTS is an "other" category, which would only contain articles of aluminum not already identified elsewhere in the HTS. As stated above, alloyed aluminum profiles are identified under HTS 7604. Furthermore, HTS 7616 covers a number of items which are dissimilar to the aluminum frames used by Trina, such as nails, screw, and bolts. Additionally, there was no explanation in the CBP ruling on Wuxi Suntech's frames as to why the frames should be classified under HTS 7616.99.[151] Absent an explanation, we are unable to weigh the ruling against record evidence supporting Commerce's use of an HTS category different from the one identified in the ruling.

The petitioner argues that HTS 7604 only covers unfinished aluminum profiles and assumes that finished aluminum profiles do not fit in any other HTS category; thus, the petitioner argues that HTS 7616, which covers aluminum articles not elsewhere specified or indicated, must be the

---

[146] *See Jiangsu*, 28 F. Supp. 3d at 1337.
[147] *See e.g.,* Solar Cells AR2 IDM at Comment 8 and Solar Cells AR3 IDM at Comment 10.
[148] *See* Solar Investigation IDM at Comment 16; *Solar Cells AR1 Final* and accompanying IDM at Comment 36; Solar Cells AR2 IDM at Comment 8; Solar Cells AR3 IDM at Comment 10; Solar Products Investigation IDM at Comment 9; *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014-2015,* 82 FR 32170 (July 12, 2017) and accompanying IDM (Solar Products AR1 IDM) at Comment 5.
[149] *See* Solar Cells AR2 IDM at 19.
[150] *See* the petitioner's case brief at 12 (*citing* the petitioner's July 10, 2017 Submission at Exhibit 1, CBP Ruling N139353).
[151] *Id*.

catch-all category that includes the processed aluminum profiles at issue. We disagree with the petitioner's interpretation. As we stated in both *Solar Cells Investigation Final* and *Solar Products Investigation Final*, while "other HTS categories identify whether they contain finished or unfinished items, HTS 7604 does not specify whether it contains finished or unfinished aluminum profiles."[152] Thus, we disagree with the petitioner's conclusion that aluminum profiles that were further processed would not typically be classified under HTS 7604 and we disagree that such profiles would necessarily be classified under HTS 7616. Rather, we find that the products covered by HTS 7616 are different from the aluminum frames at issue in this case because this HTS "includes in particular… nails, tacks, staples, screws, bolts, nuts, screw hooks, rivets, cotters, cotter pins, washers, knitting needles, bodkins, crochet hooks, embroidery stilettos, safety pins, other pins and chains, and cloth, grill and netting of aluminum wire."[153] This HTS description does not refer to items similar to the aluminum profiles that were further processed into frames.

For these final results, we continue to find that HTS 7604 covers items far more similar to Trina's aluminum frames than the items imported under HTS 7616. Thus, imports under HTS 7604 constitute the best available information with which to value Trina's aluminum frames, consistent with section 773(c)(1) of the Act. In identifying the best available information, Commerce weighs available information on the record and makes a product-specific and case-specific decision as to what constitutes the "best available information" for a surrogate value for each input.[154] HTS 7616 covers items that are dissimilar to the non-hollow, aluminum profiles at issue while HTS 7604.29 expressly covers non-hollow aluminum profiles, which is the product used by Trina. Furthermore, record information does not indicate that aluminum profiles that have been finished or further processed are excluded from this HTS category. Because the definition of HTS 7604 is more specific to the input at issue than the definition of HTS 7616, Commerce continues to find that HTS 7604.29.90001 constitutes the best available information with which to value Trina's aluminum frames.

Comment 8: Surrogate Value for International Freight

Trina:

- Commerce should rely on data from Xeneta, a market research firm in the logistics field, rather than quotes from Maersk Line (Maersk), a transport and logistics company, to value international freight.
- The Maersk quotes do not reflect actual transactions. Maersk's own rate request disclosure states that the "rate information provided is an estimate only and may be

[152] *See Solar Cells Investigation Final* and accompanying IDM at Comment 16; *see also* Solar Products IDM at Comment 9.
[153] *See, e.g.*, descriptions of items contained under HTS 7616 listed in *Solar Cells Investigation Final* and accompanying IDM at Comment 16, and Solar Cells AR3 IDM at and accompanying IDM at Comment 10.
[154] *See Narrow Woven Ribbons With Woven Selvedge from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 41808 (July 19, 2010) and accompanying IDM at Comment 2; *see also Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part; 2010-2011*, 78 FR 22513 (April 16, 2013) (*OTR Tires 2010-2011)* and accompanying IDM at Comment 5.A.

subject to change."[155] The Maersk rate quote sheets also state, "Rate information is an indication only."[156]

- Commerce generally does not rely on price quotes when other useable data are on the record because: (1) price quotes are not actual prices nor do they reflect broad ranges of prices and (2) it is difficult to determine whether the quotations were self-selected from a broader range of quotes.[157]
- The Maersk quotes are only for a few days of the POR which means they are not broad market averages. Moreover, they do not cover certain shipping routes used by Trina; therefore, they do not represent the freight expenses for a majority of Trina's reported sales.[158]
- Unlike Maersk, the Xeneta rates cover December 1, 2015 through November 30, 2016[159] and are based on several hundred thousand rates per month in Xeneta's comprehensive user-base. Xeneta provides freight rates for the routes not covered by the Maersk data. Before releasing any market information, a minimum of 4 rates per route, per day, per equipment, is required.[160] Thus Xeneta's data represent a broad market average.
- The Maersk quotes are drastically out of line with the Maersk quotes relied on in the prior administrative review of this proceeding. In that review, the average Maersk rates per high cube 40-foot container ranged from $6,550 to $8,964,[161] but in the current review the average per container Maersk rate is $14,725 with port to port averages ranging from $9,756 to $18,134 per container.[162]
- The Xeneta data does not allow the user to select particular days of the period and disregard others. In this way, the data are not susceptible to cherry-picking favorable data.
- If the Maersk rates are used, they should be reduced by U.S. and export brokerage fees (DBROKU) to avoid double-counting, and then averaged with the Xeneta rates to derive the surrogate value for international freight expenses. Export brokerage fees were already valued with a separate surrogate value.
- Xeneta is the only information on the record to value freight for two of the port to port routes.[163]

---

[155] *See* Trina's case brief at 21 (*citing* Trina's November 1, 2017 submission at Exhibit 1).
[156] *See* Trina's case brief at 21 (*citing* the petitioner's November 1, 2017 submission at Exhibit 1).
[157] *See* Trina's case brief at 21 (*citing* e.g., *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723, June 24, 2014, and accompanying IDM at Comment 12.
[158] *See* Trina's case brief at Enclosure in which Trina claims that it has calculated that 68 percent of the quantity of its U.S. sales of subject merchandise are not covered by the Maersk data and that of the shipments covered by the freight route data submitted by the petitioner, these data are based on quotes concerning shipments on either two or four days of the POR.
[159] *Id.* at Exhibit 3.
[160] *See* Trina's case brief at 23 (*citing* Trina's July 17, 2017 submission at Exhibits 1-3).
[161] *See* Trina's case brief at 23 (*citing* Trina's July 20, 2017 submission at Exhibit 2).
[162] *See* Trina's case brief at 21 (*citing* the petitioner's November 1, 2017 submission at Exhibit 1).
[163] *See* Trina's case brief at 25 (citing Preliminary Analysis Memorandum).

Petitioner:

- Contrary to Trina's assertions, the Maersk data are the best available information to value Trina's international freight. Commerce has used Maersk data to value international freight in the prior reviews of this order, as well as in other cases.[164]
- The Maersk data are commodity specific and therefore allow Commerce to apply rates most specific to subject cells and modules.[165] The Xeneta data, on the other hand, make no commodity distinctions and instead appear to reflect average rates.
- The Maersk data offer greater transparency by separately detailing the freight charges, the terminal and handling charges, and other fees.[166] The Xeneta data provide only a single all-encompassing rate.[167]
- While Xeneta is an untested and unknown source, Commerce has long recognized Maersk as an appropriate and accurate source that frequently provides the best available information to value non-market economy ocean freight.
- Trina has provided no basis for finding the Maersk rates anomalous, aberrational, or cherry-picked. Commerce has repeatedly found that surrogate value data are not anomalous or otherwise unreliable simply because they may be higher than some other data point on the record.[168]
- Although some relevant routes are not specified in the Maersk data, Commerce appropriately used the closest route available in place of the missing routes.[169]
- Commerce should rely only on the Maersk rates and should ignore Trina's proposed deductions for export brokerage and handling charges (the charges incurred in China). The record does not indicate that the "Origin" expenses detailed in the Maersk freight rates[170] correspond to brokerage and handling charges incurred in China.

Commerce's Position: Commerce evaluates potential surrogate values by examining whether they are contemporaneous with the period under consideration, specific to the input in question,

---

[164] *See Crystalline Silicon Photovoltaic Cells. Whether or Not Assembled Into Modules. from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2012-2013*, 80 FR 1021 (January 8, 2015) and accompanying PDM at 33, unchanged in *Solar Cells AR1 Final; see also Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2013-2014*, 80 FR 80746 (December 28, 2015) and accompanying PDM at 26, unchanged in *Solar Cells 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), and accompanying PDM at 26, unchanged in *Solar Cells AR3 Final; see also Certain Polyester Staple Fiber from the People's Republic of China*, 80 FR at 4543 ("We calculated international freight movement charges using route-specific freight quotes from MAERSK").

[165] *See* the petitioner's rebuttal case brief at 4-5 (*citing* the petitioner's July 17, 2017 submission).

[166] *See* the petitioner's rebuttal case brief at 5 (*citing* Trina's case brief at Enclosure 4).

[167] *Id.*

[168] *See, e.g.,* Solar Cells AR2 IDM at Comments 10 and 21.

[169] *See* the petitioner's rebuttal case brief at 7 (*citing* Preliminary Analysis Memorandum at Attachment I, SAS log at lines 2101, 2103, and 2105).

[170] *See* the petitioner's rebuttal case brief at 6-7 (*citing* the petitioner's July 17, 2017 submission).

net of taxes and import duties, representative of a broad market average,[171] and publicly available.[172] We have employed these criteria in our analysis below.

Contemporaneity: Both the Maersk and Xeneta data are contemporaneous with the POR.

Specificity: Both data sources provide rates that are specific to international freight. These rates cover all of the services associated with international shipping including terminal handling charges and all other surcharges applicable to a shipment from China to the United States.[173] Specifically, the Maersk data includes, but itemizes, charges identified as documentation, export, and terminal handling fees (for both origin and destination), and charges associated with freight such as low sulfur surcharge and bunker adjustment factor.[174] The Xeneta data includes charges identified as bunker adjustment factor, currency adjustment factor, canal surcharges, and terminal handling charges.[175] The specific amounts included in the international shipping rate for these services are itemized by Maersk but not by Xeneta.[176] This allows the Maersk rate to be adjusted to reflect the actual services that must be valued with a surrogate (in this case international freight expenses without the U.S. brokerage fees which Trina reported as a market economy expense that it incurred)[177] whereas the same cannot be said of the Xeneta rates. The Xeneta data cover all shipping routes used by Trina while the Maersk data cover all but two routes. The Maersk rates are for shipping electronic goods, which would include solar panels, while the Xeneta rates are not for shipping a particular type of product. While Maersk documentation indicates that the "rate information provided is an estimate only and may be subject to change,"[178] and the "{r}ate information is an indication only,"[179] the documentation also states that the rate information is calculated on the current rates, charge, surcharges, and applicable exchange rates for the requested services, and the change in prices may be due to a difference between the current rates and rates applicable on the Price Calculation Date (PCD).[180] Xeneta documentation indicates its rates are based on prices from short- and long-term contracts.[181]

Taxes: There is no indication that either the Maersk or Xeneta rates include taxes or duties.

---

[171] *See, e.g., Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the First Administrative Review,* 71 FR 14170 (March 21, 2006) and accompanying IDM at Comment 3.
[172] *See* Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin), available at http://ia.ita.doc.gov/policy/index.html) at page 4 of the website version.
[173] *Id.*
[174] *See* the petitioner's November 1, 2017, Surrogate Value Comments at Exhibit 1.
[175] *See* Trina's July 17, 2017 submission at Exhibit 1.
[176] *Id.*
[177] *See* Trina's Section C response at 27; *see also* Trina's October 5, 2017, response at 7, *see also* Trina's July 17, 2017 submission at Exhibits 1-3 and the petitioner's November 1, 2017 submission at Exhibit 1.
[178] *See* Trina's November 13, 2017 submission at Exhibit 1.
[179] *Id.*
[180] *See* Trina's November 13, 2017 submission at Exhibit 1.
[181] *See* Trina's November 1, 2017 submission at Exhibit 1.

Broad Market Average: The Xeneta rates cover the entire POR. The description of the methodology used in compiling the Xeneta data indicates that Xeneta gathers several hundred thousand rates per month and that before releasing any market information, a minimum of 4 rates per route, per day, per equipment, is required. The Maersk data consists of 32 rates covering a few days of the POR.[182]

Publicly Available: Both the Maersk and Xeneta data are publicly available.

While the Xeneta rates appear to be a broader average rate than the Maersk rates, we find the Maersk rates to be a preferable surrogate value for the international freight expenses incurred by Trina. First, the Maersk rates are for shipping electronic goods while the Xeneta data do not specify the products. Second, while the Maersk rates are itemized, the Xeneta rates are not itemized (*e.g*., charges identified as documentation, export, and terminal handling fees for both origin and destination, and charges associated with freight), and thus cannot be adjusted. We note that Trina reported U.S. brokerage and handling expense (*i.e.*, the USBROKU variable) together with other U.S. movement expenses under the R_INLFWCU variable.[183] Moreover, the record does not contain the information to segregate U.S. brokerage and handling expense (*i.e.*, the USBROKU variable) from the other U.S. movement expenses reported in the R_INLFWCU variable. Because the Xeneta data includes U.S. handling expense and cannot be adjusted to remove this charge,[184] and the U.S. brokerage and handling expense (*i.e.*, the USBROKU variable) cannot be segregated from the other U.S. movement expenses reported in the R_INLFWCU variable, using the Xeneta rate would double count Trina's handling charge when calculating net U.S. price. This is not true when it comes to the Maersk data, which itemizes the amount of the handling charge. Hence, we can remove the handling charge when calculating the net U.S. price.[185] Trina argues that the Xeneta data is preferable to Maersk because the record contains Xeneta data, but not Maersk data for two port-to-port routes. However, as noted above, Commerce would double count U.S. handling charges if we rely on the Xeneta data. Therefore, we find that using the closest route for which Maersk data is available for these two port-to-port routes is reasonable and importantly, does not result in double counting. Accordingly, for these reasons, we have continued to rely only on Maersk data for the final results.

We agree with Trina that we double counted brokerage and handling expenses. The Maersk rates that we used to value international freight expenses in the *Preliminary Results* include brokerage and handling expenses incurred in China. However, we also separately valued brokerage and handling incurred in China using the World Bank's publication, *Doing Business 2017 (Thailand*) and subtracted both the international freight expenses and the separate brokerage and handling expenses from the gross U.S. price when calculating the net U.S.

---

[182] *See* Trina's July 17, 2017 submission at Exhibits 1-3 and the petitioner's November 1, 2017 submission at Exhibit 1.
[183] *See* Trina's Section C response at 27; *see also* Trina's October 5, 2017, response at 7.
[184] *See* Trina's July 17, 2017 submission at Exhibit 1 under the section "Terminal Handling Charges."
[185] *See* Trina's July 17, 2017 submission at Exhibits 1-3 and the petitioner's November 1, 2017 submission at Exhibit 1.

price.[186] We have corrected this error in these final results.[187]

We disagree with the petitioner that the fees included in the Maersk international freight rate which are labeled as "Documentation Fee - Origin" and "Terminal Handling Service – Origin" are not brokerage and handling fees. Preparing documentation for export is part of the broker's fees, and terminal handing service, as its name indicates, corresponds to handling. The surrogate value for brokerage and handling advocated by both the petitioner and Trina was identified as "Cost to Export. Border compliance" and "Cost to Export. Documentary compliance" in the *Doing Business 2017 (Thailand*) publication.[188]

Comment 9: Surrogate Value for Nitrogen

Petitioner:

- In the preliminary results, Commerce based the surrogate value for Trina's nitrogen input on Mexican import statistics under HTS number 2804.30 despite its selection of Thailand as the primary surrogate country for this review.[189]
- Commerce's decision to reject the Thai imports as a surrogate value in favor of the Mexican imports is contrary to agency practice and not supported by record evidence.
- In comparing the Thai AUV to other "benchmark" pricing data Trina placed on the record, Commerce noted significant differences. Given this "conflicting evidence," Commerce determined it was not clear which prices correctly reflect the broad market average price of nitrogen in Thailand."[190] After examining the AUV for HTS 2804.30 for the other countries on the surrogate country list, Commerce excluded the South African AUV because it was also significantly different from other benchmark data.[191]
- Commerce's longstanding practice is to use an alternate country's data only in cases where the data in the selected surrogate country are unavailable or unreliable. Commerce has found that the existence of higher prices alone does not necessarily indicate that the prices are distorted or misrepresentative, and thus it is not a sufficient basis upon which to exclude a particular surrogate value.[192] Rather, interested parties must provide specific evidence showing that the value is aberrational.[193]

[186] *See* the Preliminary Results Surrogate Value Memorandum at 7.
[187] For further details concerning the above calculations, *see* Final Results Analysis Memorandum.
[188] *See* the petitioner's July 10, 2017, Surrogate Value submission at Exhibit 8; *see also* Trina's July 20, 2017 surrogate value submission at Exhibit 4.
[189] *See* the petitioner's case brief at 15 (citing Preliminary Results Surrogate Value Memorandum at 4).
[190] *Id*.
[191] *Id*.
[192] *See* the petitioner's case brief at 16 (citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2013-2014*, 81 FR 39905 (June 20, 2016) (*Solar Cells AR2 Final*) and accompanying IDM at Comments 10 and 21.
[193] *See* the petitioner's case brief at 16 (citing *e.g., Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2012-2013*, 80 FR 13332 (March 13, 2015) (*Hangers from China*) and accompanying IDM at Comment 5; *Carbazole Violet Pigment 23 from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 36630 (June 28, 2010) (*CVP 23 from China*) and accompanying IDM at Comment 6).

- Commerce's longstanding practice is to examine benchmark GTA import data from the same HTS number for: (a) the surrogate country over multiple years to determine if the current data appear aberrational compared to historical values, and/or (b) POR-specific data from other potential surrogate countries for a given case.[194] To determine whether a surrogate value is aberrational, the surrogate value must be "substantially" higher than the appropriate benchmark data on the record. Commerce makes this determination on a case-by-case basis. For example, in *Pencils from China*, Commerce accepted certain surrogate values that were over four times the average surrogate value for a particular input.[195]
- In evaluating the nitrogen AUV in the third administrative review of this proceeding, Commerce applied its established practice to find that respondents' data points were not "appropriate benchmarks," and determined the Thai AUV for nitrogen to be within the range of the AUVs for the other potential surrogate countries in that review.[196]
- In this review, Commerce provides no explanation for why the GasWorld pricing information is an appropriate benchmark or otherwise a superior benchmark compared to the AUVs from the other potential surrogate countries. Commerce also does not offer any analysis demonstrating that the difference between the AUV of Thai imports and other benchmark data is significant enough to render the Thai imports aberrational.
- The AUVs for imports of nitrogen into each of the potential surrogate countries range from .076 USD per kilogram (for Bulgaria) to 42.70 USD per kilogram (for South Africa).[197] Thailand's AUV of 27.099 USD per kilogram falls clearly within this range, like the second and third administrative reviews of this proceeding. While the AUVs of Bulgarian, Romanian and Mexican imports are lower than that of Thailand, the AUV of the Thai imports is not the highest of the import values from the six comparable countries on Commerce's list of potential surrogate countries.
- Moreover, the Thai AUV is consistent with the AUVs for several other countries that, while not on Commerce's list of potential surrogates for this review, either have been on that list previously or have a gross national income (GNI) within the range of economic comparability with China.[198]
- In the event that Commerce continues to find that the Thai AUV for this review period is an inappropriate value for nitrogen, it should value nitrogen using the Thai AUV from the previous administrative review (*i.e.*, 9.36 USD per kilogram), inflated to a value for the current period.

---

[194] *See* the petitioner's case brief at 16 (citing *Hangers from China; CVP 23 from China*).
[195] *See* the petitioner's case brief at 17 (citing *Certain Cased Pencils from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 33406 (July 13, 2009) (*Pencils from China*) and accompanying IDM at Comment 6).
[196] *See* the petitioner's case brief at 18.
[197] *Id*. (citing Trina's July 20, 217, Rebuttal Surrogate Value Comments at Exhibit 3).
[198] *See* the petitioner's case brief at 19 (citing the petitioner's November 1, 2017, NFI Submission at Exhibit 4).

Trina:

- Although Commerce's valuation of nitrogen using Mexican import data is supported by substantial evidence, Trina's nitrogen inputs are more accurately valued using GasWorld's Thailand pricing data for liquid nitrogen and compressed nitrogen gas.[199]
- The GasWorld Thailand report contains 2016 data for liquid nitrogen and compressed nitrogen gas. Trina reported nitrogen consumption separately as compressed nitrogen and liquid nitrogen, and Commerce verified these factors. The GasWorld data are more specific than the Mexican data and results in a more accurate calculation of NV.
- Trina provided eleven exhibits of factual information, including GasWorld reports and statements by an industrial gas expert, rebutting the reliability of the Thai and South African import data.[200] Despite abundant opportunity, the petitioner did not provide any information to rebut the accuracy of the information submitted by Trina with respect to liquid nitrogen and compressed nitrogen pricing.
- Linde Thailand (*i.e.*, a producer of nitrogen in Thailand) explained that industrial gas, such as nitrogen, is rarely transported internationally and that the high Thai import AUV for nitrogen does not reflect the price of industrial nitrogen in Thailand.[201]
- Consistent with this, the imports into Thailand and South Africa during the POR were 27.6 tons and 6.9 tons, respectively, while the imports into Mexico during the same period exceeded 31,000 tons.[202] The combined import quantity into Thailand and South Africa is less than 1 percent of all imports of nitrogen into all the potential surrogate countries.[203] On the other hand, the robust production of industrial gases domestically in South Africa and Thailand, is demonstrated by web-excerpts to identify significant producers of nitrogen in each country.[204]
- Statements by the industrial gas expert further explain the inaccuracies and unreliability of the Thai and South African import data, provide analysis of the import data for all potential surrogate countries, and explain how GasWorld collects and determines pricing for industrial gases.[205]

Commerce's Position: In the *Preliminary Results*, we valued Trina's nitrogen inputs (*i.e.*, compressed nitrogen gas and liquid nitrogen) using Mexican import data for HTS category 280430 (*i.e.*, Hydrogen, rare gases and other non-metals; Nitrogen) because we found the contemporaneous Thai import data for nitrogen to be unreliable. For the reasons explained below, we have continued to use Mexican import data under HTS category 2804.30 to value nitrogen. Irrespective of country, both Trina and the petitioner agree that HTS category 2804.30 is the appropriate HTS category to use to value nitrogen should Commerce value nitrogen using import data.

---

[199] *See* Trina's rebuttal case brief at 13.
[200] *Id.* at 14.
[201] *Id.* at 15-16 (citing Trina's July 20, 2017 Surrogate Value Rebuttal at Exhibit 12).
[202] *Id.* (citing Statement by Industrial Gas Expert from Trina's October 27, 2017 Submission).
[203] *Id.*
[204] *See* Trina's rebuttal case brief at 15 (citing Trina's July 20, 2017 Surrogate Value Rebuttal at Exhibits 8-9).
[205] *See* Trina's rebuttal case brief at 16.

Commerce evaluates surrogate value information on a case-by-case basis, and, in accordance with section 773(c)(1) of the Act, selects the best available information from an appropriate surrogate country to value FOPs. When selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, it is Commerce's practice to select surrogate values which, to the extent practicable, are product-specific, representative of a broad-market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties.[206] Moreover, it is Commerce's well-established practice to rely upon the primary surrogate country for all surrogate values, whenever possible, and to only resort to a secondary surrogate country if data from the primary surrogate country are unavailable or unreliable.[207]

The petitioner mistakenly claims that Commerce did not select Thai import data simply because the corresponding Thai AUV is aberrational. Commerce made no such determination. The petitioner relies on Commerce's determination to value Trina's nitrogen input using the Thai AUV in the second and third administrative reviews of the proceeding; however, the facts here differ. As noted in the *Preliminary Results*, the Thai data on the record presents conflicting evidence, unlike in prior reviews.[208] Commerce did not use Thai data because the two Thai sources we considered for valuing nitrogen present significantly dissimilar prices, and raise questions as to which Thai data on the record, namely the Thai import data or the GasWorld Thailand data, reflect the actual broad market average price of nitrogen in Thailand. Specifically, the Thai AUV is $27.10 per kilogram, whereas Thai GasWorld domestic prices for nitrogen are $0.14 per kilogram (*i.e.*, liquid nitrogen) and $0.05 per kilogram (*i.e.*, nitrogen gas). Due to this significant disparity, it is unclear which price correctly reflects the actual broad market average price of nitrogen in Thailand. While Commerce agrees with the petitioner that the Thai AUV (*i.e.*, $27.10 per kilogram) falls within benchmark data on the record, this comparison is moot because we find the Thai data for nitrogen on the record, including the Thai import data, contradictory, and therefore, unreliable. Additionally, the petitioner asserts that Commerce provided no explanation why the GasWorld data is an appropriate benchmark in concluding that the Thai data on the record is unreliable. We note Commerce did not benchmark the Thai import data using GasWorld data. Rather, as explained above, we examined all pricing information on the record from which to value nitrogen, and observed that the GasWorld data and Thai import data present disparate prices. Additionally, the GasWorld data are contemporaneous with the POR, product-specific, and reflects a broad-market average from the

---

[206] *See, e.g., Fuwei Films (Shandong) Co. v. United States*, 837 F. Supp. 2d 1347, 1350-51 (CIT 2012) (citing *Certain Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008) and accompanying IDM at Comment 10; *Electrolytic Manganese Dioxide from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 48195 (August 18, 2008) and accompanying IDM at Comment 2); *see also Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*; 2014-2015, 81 FR 62088 (September 8, 2016) and accompanying IDM at Comment 3.

[207] *See* 19 CFR 351.408(c)(2); *see also Steel Wire Garment Hangers from the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the Second Antidumping Duty Administrative Review*, 76 FR 66903 (October 28, 2011); unchanged in *Steel Wire Garment Hangers from the People's Republic of China: Final Results and Final Partial Rescission of Second Antidumping Duty Administrative Review*, 77 FR 12553 (March 1, 2012); *see also Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*; 2014-2015, 81 FR 62088 (September 8, 2016) and accompanying IDM at Comment 3.

[208] *See* Preliminary Results Surrogate Value Memorandum at 4.

primary surrogate country. The pricing information is also publicly available. Thus, the GasWorld data is an appropriate reference point in our examination of the broad-market average price of nitrogen in Thailand.

The petitioner argues that Commerce should inflate the Thai AUV used in the prior POR, which is based on import data, to this POR should Commerce disregard the Thai import data for this POR. We note that the inflated Thai AUV from the prior POR is $9.22/kg. This price further contradicts the record evidence when compared with the AUVs obtained from GasWorld data and Thai import data for this POR, and further calls into question which price reflects the actual broad market average price of nitrogen in Thailand for this POR. Moreover, we consider that there are usable and contemporaneous import data from other potential surrogate countries, which satisfy the breadth of Commerce's surrogate value criteria and do not require application of an inflator.

We also note that the same fact pattern exists for South African prices on the record (*i.e.*, South African import data and GasWorld South Africa); thus, Commerce is unable to determine which South African price correctly reflects the actual broad market average price. Because the conflicting data calls into question the reliability of the Thai and South African pricing data, we have disregarded the potential Thai and South African import values and GasWorld prices.

Beyond the potential Thai and South African surrogate values, the record contains Thai invoices for POR purchases of nitrogen from a Thai supplier by one of Trina's affiliates in Thailand,[209] POR export data obtained from the U.S. ITC Dataweb,[210] POR import data for HTS category 2804.30 from other potential surrogate countries identified on the surrogate country list (*i.e.*, Brazil, Bulgaria, Mexico, and Romania),[211] and POR import data from certain other countries not on the surrogate country list (*i.e.*, Colombia, India, Taiwan, and Turkey).[212] We address each of these potential surrogate sources in turn below.

Individual prices, such as the Thai purchase prices submitted by Trina, are not representative of a broad market average and may suffer from potential biases. Generally, Commerce's preference is to use published prices that are widely available instead of individual prices or price quotes because: (1) individual prices and price quotes may not represent actual prices or broad ranges of data; and, (2) we do not know the conditions under which they are solicited and whether or not they are self-selected from a broader range of quotes.[213] Therefore, Commerce does not find the Thai purchase prices to be the best available information. Furthermore, because we are unable to ascertain which Thai AUV correctly reflects the actual broad market price of nitrogen in

---

[209] *See* Trina's July 20, 2017, Surrogate Value Comments at Exhibit 9.
[210] *See* Trina's July 20, 2017, Rebuttal Surrogate Value Comments at Exhibit 4.
[211] *See* Trina's July 10, 2017, Surrogate Value Comments at Exhibit 1; *see also* Trina's July 20, 2017, Rebuttal surrogate value Comments at Exhibit 3; *see also* the petitioner's July 10, 2017, Surrogate Value Comments at Exhibit 1.
[212] *See* the petitioner's November 1, 2017, Surrogate Value Comments at Exhibit 4.
[213] *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Sixth Antidumping Duty Administrative Review and Sixth New Shipper Review*, 76 FR 15941 (March 22, 2011) and the accompanying IDM at 9.

Thailand, and in light of the disparate prices, we did not consider the export data obtained from the U.S. ITC Dataweb, which pertains to U.S. exports of nitrogen to Thailand, for benchmarking purposes.[214] Separately, we note that parties did not argue that Commerce use the ITC Dataweb data as a surrogate value.

Section 773(c)(4) of the Act requires Commerce to value the FOPs, to the extent possible, in a surrogate country that is (a) at a level of economic development comparable to the country being examined, and (b) a significant producer of comparable merchandise.[215] On this basis, Thailand was chosen as the primary surrogate country. Brazil, Bulgaria, Mexico and Romania are other potential surrogate countries identified on the surrogate country list. With respect to Colombia, India, Taiwan and Turkey, these countries are not on the surrogate country list.[216] However, Commerce finds that Colombia is at a level of economic development comparable to China and is a significant producer of comparable merchandise.[217]

In *Pure Magnesium*, while Commerce indicated that the omission of India from the surrogate country list did not preclude the use of Indian data to value FOPs, Commerce did not use FOP data from India because the necessary FOP data was available from a surrogate country identified on the surrogate country list of that case.[218] Commerce relies on surrogate values from countries outside of the GNI band only when the potential surrogate countries are not significant producers or if the data from the potential surrogate countries are unreliable.[219] In the instant case, Thailand is listed as one of the potential primary surrogate countries based on 2015 GNI data, is a significant producer of comparable merchandise, and, as in *Pure Magnesium*, the record contains reliable Thai surrogate value data for nearly all inputs, with the exception of one input for which there is data from a country on the surrogate country list, so there is no need to obtain data from a country not identified on the surrogate country list of this case.[220] Moreover, as explained in further detail below, Commerce selected the country for which to value Trina's

---

[214] *See Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 37715 (July 2, 2014) and accompanying IDM at Issue 1.
[215] *See* Policy Bulletin 04.1.
[216] *See* Trina's June 16, 2017, Surrogate Country Comments; *see also* the petitioner's June 16, 2017, Surrogate Country Comments. India's and Turkey's per capita GNI for 2015 are outside the GNI band of the countries on the surrogate country list. The GNI band for the countries on the surrogate country list range from $5,620 to $9,850. *See* Commerce's Letter re: Request for Surrogate Country and Surrogate Value Comments and Information, dated May 5, 2017. However, India's and Turkey's per capita GNI are $1,590 and $9,950, respectively. *See* the petitioner's November 1, 2017, Surrogate Value Comments at Exhibit 4. The record does not contain data on Taiwan with respect to whether Taiwan is a significant producer or its GNI data.
[217] *See* Commerce's Letter re: Request for Surrogate Country and Surrogate Value Comments and Information, dated May 5, 2017. Colombia's per capita GNI of $7,130 GNI is within the GNI band.
[218] *See Pure Magnesium from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*; 2011-2012, 78 FR 34646 (June 10, 2013) (*Pure Magnesium*).
[219] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 77323 (December 14, 2015) (*Citric Acid*) and accompanying IDM at Comment 2; *see also Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*; 2014-2015, 81 FR 62088 (September 8, 2016) and accompanying IDM at Comment 2.
[220] *See Jiaxing Brother Fastener Co. v. United States*, 961 F. Supp. 2d 1323, 1328, 1335 (Ct. Int'l Trade 2014) (*Jiaxing Brother Fastener Co.*), aff'd 822 F.3d 1289, 1293 (Fed. Cir. 2016).

nitrogen inputs based on largest quantity of imports. In this respect, we note as well that Colombia's import volume of 3,070 kilograms of nitrogen during the POR does not represent the largest quantity of imports when compared with the potential surrogate countries.

As noted above, the record contains import data from Brazil, Bulgaria, Mexico, and Romania, all countries on the list of potential surrogate countries which Commerce finds to be both at a level of economic development comparable to China and significant producers of comparable merchandise.[221] Policy Bulletin 04.1 does not address how to "break the tie" between multiple competing surrogate values that meet the economic and production criteria and are of the same data quality.[222] This supports the discretion that Commerce has "to determine what constitutes the best available information, as this term is not defined by statute."[223] As such, Commerce will determine, on a case-by-case basis, the appropriate methodology to select among equally valid surrogate value choices from a secondary surrogate country. Commerce has, in certain instances, turned to significant production of comparable merchandise as an analysis tool in surrogate value selection when selecting surrogate values from countries other than the primary surrogate country in limited circumstances when the competing values are of equal quality.[224] On the other hand, Commerce has also utilized analysis of import volumes.[225] In *Chlor Isos from China 2016, Chlor Isos from China 2015, Activated Carbon from China 2017, and Activated Carbon from China 2016*, Commerce ranked the alternate surrogate countries by volume of imports for the particular input, and selected the country with the largest volume of imports.[226] Similarly, in this administrative review, we ranked the alternate surrogate countries (Brazil, Bulgaria, Mexico and Romania) by volume of imports of nitrogen. We found that Mexican imports of nitrogen exceed that of the remaining countries. Specifically, the data on the record show that the imports of nitrogen into Mexico (*i.e.*, 31,131,924 kilograms) are so much larger than those into the other countries (*i.e.*, ranging from 3,070 kilograms to 10,243,352 kilograms) that it demonstrates a much broader market average for this input.[227] Thus, among the remaining countries, we continue to determine for these final results of review that Mexico is the best source for a surrogate value for nitrogen.

---

[221] *Id.*
[222] *See* Policy Bulletin 04.1.
[223] *See Jiaxing Brother Fastener Co*., 961 F. Supp. 2d at1328.
[224] *See Ad Hoc Shrimp Trade Action Comm. v. United States*, 145 F. Supp. 3d 1349 (CIT January 21, 2016) (*Ad Hoc Shrimp*).
[225] *See Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 51607 (November 7, 2017) and accompanying IDM at Comment 4 (*Activated Carbon from China 2017).*
[226] *See Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 1167 (January 11, 2016) (*Chlor Isos from the PRC 2016*) and accompanying IDM at Comment 1; *see also Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 4539 (January 28, 2015) (*Chlor Isos from the PRC 2015*), and accompanying IDM at Comment 2; *see also Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 51607 (November 7, 2017) (*Activated Carbon from the PRC 2017)* and accompanying IDM at Comment 4*; see also Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 62088 (September 8, 2016) (*Activated Carbon from the PRC 2016*) and accompanying IDM at Comment 3.
[227] *See* the petitioner's November 1, 2017, Surrogate Value Comments at Exhibit 4; *see also* Trina's July 20, 2017, Rebuttal surrogate value Comments at Exhibit 3.

Comment 10: Selection of Surrogate Financial Statements

Trina:

- Commerce should only use Styromatic (Thailand) Co., Ltd.'s (Styromatic) 2016 financial statements to determine financial ratios for overhead, selling, general and administrative (SG&A), and profit.
- Hana Microelectronics Public Co., Ltd.'s (Hana) and KCE Electronics Public Company Limited's (KCE) 2016 financial statements do not contain a complete and correct itemization of all cost elements and expenses; therefore, it is not possible to assign costs to the proper categories in order to calculate financial ratios.[228] Commerce has a long-standing practice not to use financial statements that lack the requisite detail to calculate ratios accurately.[229]
- Hana's and KCE's financial statements also combine certain elements of costs in the income statement (for example, "materials and consumables") that Commerce normally segregates into direct production costs and overhead expenses in calculating financial ratios.[230]
- Hana's and KCE's financial statements insufficient detail is evident from the petitioner's creation of financial statement line-items "Residual cost of sales" and "Residual admin expenses" in its calculation of Hana's financial ratios and "Residual cost of sales" and "Other admin" in its calculation of KCE's financial ratios.[231] Without an understanding of these unidentified costs, there is no basis to consider these costs as overhead expenses rather than, for example, material costs, labor costs, or energy costs.
- Hana's and KCE's financial statements should be disregarded as both companies benefited from countervailable subsidies during 2016.[232] Commerce has previously declined to use Hana's and KCE's financial statements for this reason.[233]

---

[228] *See* Trina's case brief at 26 (citing the petitioner's July 18, 2017, Surrogate Value Submission, at Exhibit 11).
[229] *See* Trina's case brief at 26 (citing *e.g.*, *Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2010–2011*, 78 FR 28803 (May 16, 2013) and accompanying IDM at Comment I.D; *Folding Metal Tables and Chairs from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 77 FR 13539, 13543, (March 7, 2012)).
[230] *See* Trina's case brief at 26 (citing the petitioner's July 10, 2017, Surrogate Value Submission, at Exhibit 10).
[231] *Id.*
[232] *See* Trina's case brief at 28 (citing *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand*, 66 FR 50410-01 (October 3, 2001) and accompanying IDM at Section II; *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) and accompanying IDM at Comment 12, footnote 180; *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) and accompanying PDM at 27, footnote 109).
[233] *See* Trina's case brief at 28 (citing *Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 73 FR 76336-01 (December 16, 2008) and accompanying IDM at Comment 6; *Certain Frozen Warmwater Shrimp from Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379-01 (August 19, 2013) and accompanying IDM at Comment 1-2; *Final Negative Countervailing Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin from Thailand*, 70 FR 13462-01 (March 21, 2005) and accompanying IDM at Section III.

- KCE's consolidated statements include the financial statements of KCE America, Inc. and KCE Taiwan Co., Ltd, companies incorporated in the United States and Taiwan, respectively. Relying on KCE's consolidated statements would conflict with Commerce's regulations, which provides that Commerce will normally base overhead, general expenses, and profit on information from producers of identical or comparable merchandise "in the surrogate country."[234]
- KCE's consolidated financial statements reflect chemical and laminate production.[235] Thus, reliance on KCE's consolidated financial statements would distort the comparability of the ratios by capturing the financial experience of producers of non-comparable merchandise.
- The overhead ratio of KCE's subsidiaries is 115 percent.[236] The record of this case and Commerce's experience in this proceeding does not support a conclusion that overhead expenses might reasonably be expected to reach 115 percent of the direct material, labor, and energy costs of manufacturing subject merchandise.
- The petitioner's argument that KCE's consolidated statements, which reflect the operating results of its affiliates, are more representative because Trina also has affiliates is without merit. Just because KCE has affiliates, as does Trina, has no bearing on whether KCE's affiliates provide an accurate estimate of Trina's expected overhead, SG&A, and profit expenses.
- Commerce should reject the petitioner's arguments to use SolarPro Holdings AD's (SolarPro) 2016 financial statements to calculate financial ratios. Record evidence indicates that SolarPro is a holding company that currently does not produce solar cells or solar modules.[237] A statement from a market researcher indicates that a subsidiary of SolarPro, SolarPro JSC, once produced solar modules, but halted production in 2012.[238] SolarPro's website describes the company's activities as including the installation and maintenance of photovoltaic power plants and power systems, but not the production of photovoltaic cells or modules.[239]
- SolarPro's 2016 financial statements do not indicate that SolarPro, or any of its subsidiaries, are manufacturers or producers of goods, let alone producers of merchandise identical to subject merchandise.[240]
- The petitioner calculated overhead, SG&A, and profit ratios for SolarPro of 72 percent, 101 percent, and 33 percent, respectively.[241] These ratios are unreasonable and contradict Commerce's previously calculated financial ratios for solar cell and solar module producers.
- In the previous review of this order, Commerce declined to use SolarPro's financial statements because: 1) it was unable to conclude whether SolarPro, or its subsidiaries,

[234] *See* Trina's rebuttal case brief at 3 (citing 19 C.F.R. §351.408(c)(4)).
[235] *See* Trina's rebuttal case brief at 3 (citing the petitioner's July 10, 2017, Surrogate Value Submission, at Exhibit 10; the petitioner's August 7, 2017 Factual Information Submission, at Exhibit 4).
[236] *See* Trina's rebuttal case brief at 4.
[237] *Id.* at 3 (citing Trina's August 21, 2017, Rebuttal Submission at Exhibits A-1 to A-4).
[238] *Id.* at Exhibits A-1 and A-2.
[239] *Id.* at Exhibit A-4.
[240] *See* Trina's rebuttal case brief at 7 (citing the petitioner's August 7, 2017 Submission at Exhibit 7-F).
[241] *See* Trina's rebuttal case brief at 8.

were producers of identical or comparable merchandise, and 2) SolarPro is located in Bulgaria and thus outside the primary surrogate country.[242]

- SolarPro's financial statements lack information to form a reliable basis for calculating surrogate ratios for overhead, SG&A, and profit. The petitioner was only able to calculate surrogate financial ratios by making numerous assumptions and adjustments.[243] Commerce's practice is not to go behind financial statements and try to engineer adjustments.[244]

Petitioner:

- KCE's consolidated financial statements, rather than the unconsolidated KCE financial statements used in the *Preliminary Results*, best reflect KCE's experience as a Thai producer of comparable merchandise.
- In calculating surrogate financial ratios, it is Commerce's longstanding practice to use data from surrogate companies based on the "…specificity, contemporaneity, and quality of the data."[245]
- KCE's annual report demonstrates that the parent company is not the only KCE entity involved in the production and sale of comparable merchandise (printed circuit boards (PCBs)) in Thailand. Two of its subsidiaries - KCE International Co. Ltd. and KCE Technology Co. Ltd. - are also located in Thailand and manufacture PCBs. A third subsidiary - KCE (Thailand) Co. Ltd. - is the local distributor of KCE's PCBs in Thailand. When Commerce derived KCE's financial ratios based on the financial experience of the parent company alone, it omitted critical financial data for three additional KCE affiliates involved in the production and sale of PCBs in Thailand.
- Like KCE, Trina is composed of several affiliated entities that produce subject merchandise, and all of these entities are subsidiaries of a large, multilayered parent corporation called Trina Solar Limited (TSL).
- While the KCE group has two other business segments - laminates and chemicals - the PCB segment dominates the group's operations and consolidated results, accounting for 97.6 percent of the group's 2016 sales revenue.[246] Thus, in relying on KCE's consolidated results, Commerce would not only best capture the totality of KCE's PCB operations in Thailand, there would be very little to no distortion caused by noncomparable business operations.

---

[242] *See* Trina's rebuttal case brief at 8-9 (citing *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014-2016*, 82 FR 32170 (July 12, 2017) and accompanying IDM at Comment 16.
[243] *See* Trina's rebuttal case brief at 9 (citing the petitioner's August 7, 2017, Submission, Exhibit 7-A, SolarPro Holding Ratio Calculation).
[244] *See* Trina's rebuttal case brief at 9 (citing *Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews*, 74 FR 41374 (August 17, 2009) and accompanying IDM at Comment 14).
[245] *See* the petitioner's case brief at 6-7 (citing *e.g., Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303 (May 22,2006) and accompanying IDM at Comment 1).
[246] *See* the petitioner's case brief at 7 (citing the petitioner's August 7, 2017, NFI Submission at Exhibit 4 (KCE's Annual Report) at 236)

- Given that Hana, KCE, and Styromatic all received countervailable subsidies in 2016, and all three financial statements are audited, Trina provides no evidence that Styromatic's financial data are preferable to that of Hana and KCE.
- Styromatic is listed as a Board of Investment of Thailand (BOI) promoted company on the BOI's website.[247] Information from the Management System Certification Institute (Thailand) shows that the Thai government subsidized Styromatic to enable the company to reach ISO 9001:2008 status.[248] Styromatic was listed as a beneficiary of an investment project that was sponsored by the BOI with additional support from the European Union.[249] The Bangkok Post also identified Styromatic as a BOI-promoted company.[250] Note 18 in Styromatic's 2016 financial statements confirms that Styromatic received countervailable subsidies in the form of an exemption from income taxes, under the Investment Promotion Act (IPA) program since 2009.[251]
- Note 19 of Styromatic's financial statements indicates that Styromatic is able to claim double deductions for certain expenses. As detailed in "A Guide to the Board of Investment 2017," there are a variety of tax exemptions under the IPA program, including "double deductions from the costs of transportation, electricity and water supply."[252]
- Commerce has previously relied on financial statements with evidence of countervailable subsidies if such financial statements represent the best available information on the record.[253]
- With respect to Trina's concerns regarding KCE's and Hana's financial ratio calculations, Commerce's practice does not require surrogate financial ratio calculations to contain all of the detail necessary to perfectly classify and allocate each line item to a given cost component.[254]
- Commerce readily calculates financial ratios from financial data that contain *sufficient* detail to yield accurate results.[255]
- Hana's and KCE's unconsolidated and consolidated financial statements contain extensive detail, and provide the specificity necessary to account for each of Commerce's cost components and to generate accurate financial ratios.[256]

---

[247] *See* the petitioner's rebuttal case brief at 11 (citing the petitioner's July 31, 2017, Rebuttal Surrogate Value Comments at Exhibit 1C).
[248] *See* the petitioner's rebuttal case brief at 11 (citing the petitioner's July 31, 2017, Rebuttal Surrogate Value Comments at Exhibit 1B).
[249] *Id.*
[250] *Id.*
[251] *See* the petitioner's rebuttal case brief at 12-13 (citing Trina's July 20, 2017 Surrogate Value Submission at Exhibit 10).
[252] *See* the petitioner's rebuttal case brief at 13 (citing the petitioner's July 31, 2017 Rebuttal Surrogate Value Comments at Exhibit 1A, 6.).
[253] *See* the petitioner's rebuttal case brief at 14 (citing *Solar Cells AR3 Final* and accompanying IDM at Comment 16; *Preliminary Results* and accompanying PDM at 26-27).
[254] *See* the petitioner's rebuttal case brief at 8.
[255] *See* the petitioner's rebuttal case brief at 9 (citing *Hand Trucks and Certain Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission of Review in Part; 2012–2013*, 80 FR 33246 (June 11, 2015) and accompanying IDM at Comment 2.
[256] *See* the petitioner's rebuttal case brief at 9.

- The residual amounts used in calculating Hana and KCE's financial ratios represent a mere 1.4 percent and 2.6 percent, respectively, of the company's total cost of sales.[257] Lack of details for these minor percentages of expenses has virtually no impact on the financial ratio calculations and does not warrant disregarding Hana's and KCE's financial statements.
- In the investigation of this proceeding, Commerce relied on Hana's and KCE's financial statements, finding them "sufficiently detailed to allow the Department to calculate financial ratios."[258]
- Given that all of the Thai producers for which there are financial statements on the record received countervailable subsidies, in the alternative to relying on these Thai producers' financial statements, Commerce should rely on the 2016 financial statements of SolarPro, a Bulgarian producer of identical merchandise and the only producer of identical merchandise on the record.
- While it is Commerce's preference to value all FOPs in a single surrogate country pursuant to 19 C.F.R. 351.408(c)(2),[259] Commerce has deviated from this practice where there are no financial statements for the surrogate country on the record or the financial statements on the record are not the best information available for calculating financial ratios.[260]
- Commerce has recently stated: "there is no need to consider using a company that makes only comparable merchandise {to calculate surrogate financial ratios} when there are usable financial statements on the record from companies that produce identical merchandise."[261] The financial statements of a producer of identical merchandise are the "best available information" to use as the basis for surrogate financial ratios,[262] all else being equal. Commerce's practice reflects a preference for the use of information from producers of identical merchandise.[263]

Commerce's Position: In the *Preliminary Results*, we based the financial ratios on a simple average of the ratios calculated from information in Hana's, KCE's, and Styromatic's year-end 2016 financial statements. For the final results, we have used only KCE's and Styromatic's

---

[257] *See* the petitioner's rebuttal case brief at 10 (citing Prelim Surrogate Value Memo at Attachment XI).
[258] *See* the petitioner's rebuttal case brief at 10 (citing *Solar Cells Investigation Final* and accompanying IDM at 12).
[259] *See* the petitioner's case brief at 9 (citing *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013–2014*, 80 FR 61172 (October 9, 2015) and accompanying IDM at 12).
[260] *See* the petitioner's case brief at 9-10 (citing *Crystalline Silicon Photovoltaic Cells. Whether or Not Assembled Into Modules. from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2012-2013*, 80 FR 1021 (January 8, 2015) (*Solar Cells AR1 Prelim*) and accompanying PDM at 33-34, unchanged in *Solar Cells AR1 Final*.
[261] *See* the petitioner's case brief at 9 (citing *Certain Steel Nails from the People's Republic of China: Final Results of the Fourth Antidumping Duty Administrative Review*, 79 FR 19316 (April 8, 2014) and accompanying IDM at Comment 2; *Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 6836 (February 9, 2005) and accompanying IDM at Comment 1).
[262] *See* the petitioner's case brief at 8 (citing section 773(c)(l) of the Act).
[263] *See* the petitioner's case brief at 8 (citing *e.g.*, *Zhaoqing Tifo New Fibre Co. v. United States*, 60 F. Supp. 3d 1328, 1333 (Ct. Int'l Trade 2015)).

financial statements for calculating surrogate financial ratios because they comprise the best available information.[264]

In selecting surrogate values for FOPs, section 773(c)(1) of the Act instructs Commerce to select "the best available information" from the appropriate market economy (ME) country to value FOPs. Commerce normally will use publicly available information to value FOPs, pursuant to 19 CFR 351.408(c)(1). In determining the suitability of surrogate values, we carefully consider the available evidence with respect to the particular facts of each case and evaluate the suitability of each source on a case-by-case basis. Accordingly, when examining the merits of financial statements on the record, we do not have an established hierarchy that automatically gives certain characteristics (*i.e*., contemporaneity or specificity) more weight than others. Rather, we must weigh available information with respect to each situation and make a product-and case-specific decision as to what constitutes the "best available information." Furthermore, the Courts have recognized the wide discretion given to Commerce in selecting the best surrogate values on the record.[265] In calculating surrogate financial ratios, it is Commerce's practice, in accordance with 19 CFR 351.408(c)(4), to use nonproprietary complete financial statements showing a profit, contemporaneous with the data used to calculate production factors, gathered from producers of identical or comparable merchandise in the surrogate country.[266] When Commerce has reason to believe or suspect that a company may have received countervailable subsidies, financial ratios derived from that company's financial statements may not constitute the best available information with which to calculate surrogate financial ratios.[267] Consequently, Commerce does not rely on financial statements that contain references to programs it previously found to be countervailable when there are other sufficiently reliable and representative data on the record for purposes of calculating surrogate financial ratios.[268]

The record contains complete nonproprietary financial statements from four Thai companies (*i.e.*, Hana, KCE, Styromatic, and Leonics Co., Ltd. (Leonics)) and two financial statements from Bulgarian companies (*i.e.*, SolarPro and Steca Electronik Bulgaria EOOD (Steca Electronik)).[269]

---

[264] *See* Memorandum, "Antidumping Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Results Factor Valuation Memorandum," dated concurrently with this memorandum.

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

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

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

[268] *Id.* at 11.

[269] *See* the petitioner's August 7, 2017, Submission of New Factual Information at Exhibit 4 (Hana's and KCE's financial statements); *see also* the petitioner's August 7, 2017, Submission of New Factual Information at Exhibit 6 (Leonics' financial statements); *see also* Trina's July 20, 2017 surrogate value Submission at Exhibit 10 (Styromatic's financial statements); *see also* the petitioner's August 7, 2017, Submission of New Factual Information at Exhibit 7 (SolarPro's financial statements) ; *see also* Trina's July 20, 2017 surrogate value

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 considered to be comparable merchandise in the investigation in this proceeding.[270] In this review, we continue to find manufacturers and assemblers of electronic components and circuit boards to be producers of merchandise comparable to solar cells and solar modules. Specifically, as noted in the investigation of this proceeding, both circuit boards and merchandise under consideration are manufactured from similar processes, which involve putting together a variety of sensitive components onto a single base or board using both robotics and manual labor, using similar inputs (*i.e.*, silicon base materials and various types of joining parts).[271] For the reasons explained below, we do not find Leonics, Steca Electronik, or SolarPro to be producers of merchandise comparable to solar cells and solar modules.

Record evidence does not demonstrate that Leonics produced identical or comparable merchandise. The International Energy Agency's *National Survey Report of PV Power Applications in Thailand 2015* states that Leonics manufactures inverters.[272] Furthermore, Trina submitted a statement from an attorney located in Thailand, dated August 2017, wherein the attorney states that she contacted and confirmed with Leonics that the company only produces inverters and chargers, not solar cells or modules.[273] The record does not contain information that inverters and chargers are comparable merchandise. While Leonics' company web-site indicates that it is involved in the solar energy business; the web-site describes the nature of the business as "…design, installation and management of remote power monitoring for energy conservation systems, including both stand-alone and grid-tied solar energy systems, hybrid power systems, solar thermal systems and energy saving systems,"[274] Commerce cannot conclude from this description that Leonics produces solar cells or solar modules, or comparable merchandise. Moreover, Leonics' financial statements do not specify which products Leonics produces, only noting that it is involved in "…manufacturing, retailing and importing of electronic products."[275] While the notes to the financial statements state that Leonics was granted promotional certificates for "PCB Assembly" in 2000, this likewise does not demonstrate that Leonics manufactured or assembled circuit boards during the POR.[276] Moreover, as noted in the *Preliminary Results*, Leonics also benefited from countervailable subsidies.[277]

With respect to the Bulgarian companies, record evidence does not demonstrate that Steca Electronik is a producer of identical or comparable merchandise. Steca Electronik's financial statements describe the company's main activity as "…production of cables and cable confection

---

Submission at Exhibit 11 (Steca Electronik's financial statements).
[270] *See Preliminary Results* and accompanying PDM at 26-27.
[271] *See Solar Cells Investigation Final* and accompanying IDM at Comment 2.
[272] *See* the petitioner's June 16, 2017 Surrogate Country Comments at Exhibit 1.
[273] *See* Trina's August 21, 2017, letter, regarding "Rebuttal to Petitioner's August 7, 2017 Factual Information Submission," at Exhibits D-1 and D-2.
[274] *See* the petitioner's August 7, 2017, Submission of New Factual Information at Exhibit 6.
[275] *Id*.
[276] *See* Leonics' financial statements at Note 16.
[277] *See Preliminary Results* and accompanying PDM at 26.

as well production of electronics."[278] Steca Electronik's company brochure indicates that the company is an electronics service provider and has product lines in electronics such as solar inverters and chargers.[279] Record evidence does not demonstrate that solar inverters or chargers are comparable merchandise.

SolarPro's 2016 consolidated annual report states that SolarPro was involved in the "development, engineering and construction (EPC) of solar electric power stations and installations, project management, as well as management and maintenance of already established solar parks and installations."[280] SolarPro's annual report does not explicitly state that it produces solar cells or solar modules, and the aforementioned description does not clearly indicate the production of comparable merchandise. Furthermore, the descriptions of the main activities of SolarPro's subsidiaries found in its 2016 consolidated annual report do not indicate that these subsidiaries are producers of identical or comparable merchandise.[281] Specifically, SolarPro's financial statements indicate that the subsidiaries are involved with the acquisition, construction, exploitation and management of photovoltaic power stations and energy projects.[282]

While SolarPro's company profile from the Financial Times website states that SolarPro produces solar panels, the company profile focuses on certain events that occurred with respect to SolarPro in 2012. Specifically, the profile notes that "{o}n July 9, 2012, the Company sold its whole stake in Solarpro-S OOD. On November 20, 2012, the Company opened its first solar plant in Macedonia."[283] Given that the profile only describes events that occurred five years ago and nothing more recent, the Financial Times profile does not appear to describe the company's business activities during the POR.

Although the petitioner provided a web-page directory listing solar panel manufacturers around the world, which identifies SolarPro as a solar panel manufacturer,[284] a news article dated 2012 reported that SolarPro, a solar panel manufacturer in the Balkans, was halting its operations.[285] Additionally, SolarPro's 2012 activity report indicates that one of SolarPro's subsidiaries (SolarPro JSC), which halted its production of thin-film panels in 2012, was partially sold to a foreign investor.[286]

Thus, the record does not demonstrate that SolarPro produced identical or comparable merchandise during the POR. In addition to lack to evidence that Steca Electronik or SolarPro produced identical or comparable merchandise during the POR, both companies are located in Bulgaria and, thus, outside of the primary surrogate country.

[278] *See* Trina's July 20, 2017 Surrogate Value Submission at Exhibit 11 (Steca Electronik's financial statements).
[279] *See* Trina's July 20, 2017 surrogate value Submission at Exhibit 11 for Steca Electronik's company brochure.
[280] *See* SolarPro's financial statements at Exhibit 7-B.
[281] *Id.* at Exhibit 7-F.
[282] *Id.*
[283] *Id.* at Exhibit 7-M.
[284] *Id.* at Exhibit 7-M.
[285] *See* Trina's August 21, 2017, Rebuttal Factual Information Submission at Exhibit A-1.
[286] *Id.* at Exhibit A-2.

While Hana, KCE, and Styromatic are manufacturers of merchandise comparable to subject merchandise, all of these companies received subsidies which Commerce found to be countervailable.[287] Specifically, Hana, KCE, and Styromatic benefited from promotional privileges offered through the IPA program.[288] In *Warmwater Shrimp from Thailand CVD*,[289] Commerce determined that benefits provided under the IPA were export contingent under sections 771(5A)(A) and (B) of the Act. Thus, Commerce has found this program to provide a countervailable subsidy. As noted above, Commerce does not rely on financial statements that contain references to programs it previously found to be countervailable when there are other sufficiently reliable and representative data on the record for purposes of calculating surrogate financial ratios.[290] In this review, we do not find that there are other sufficiently reliable or representative financial statements on the record for purposes of calculating surrogate financial ratios. Specifically, it would not be appropriate to calculate surrogate financial ratios for a solar cell and module producer using the financial statements of companies that produce inverters, cables and cable confection, as well other unspecified electronics, or develops and constructs solar electric power stations when, as explained above, there is insufficient evidence demonstrating that any of these products are comparable to subject merchandise. It is Commerce's practice to rely on financial statements from producers of comparable merchandise, as relying on financial statements from a producer of non-comparable merchandise would create distortion in the financial ratio calculations due to dissimilar production processes from that of the respondent. Although all of the remaining financial statements indicate each company received countervailable subsidies, Commerce has previously relied upon such statements when they were the only useable financial statements on the record.

Trina asserts that Hana's and KCE's financial statements lack sufficient detail to calculate surrogate financial ratios and do not contain complete and correct itemizations of all costs. Trina also asserts that Commerce should reject Hana's and KCE's financial statements, in part, due to unidentified "residual" costs used in the petitioner's financial ratio calculations. We agree with Trina, in part. Although we relied on Hana's financial statements along with other financial statements in calculating surrogate financial ratios in the *Preliminary Results*, we have not used Hana's financial statements in these final results because energy costs are not separately listed in the financial statements. This decision is consistent with recent determinations where Commerce disregarded financial statements that did not separately identify energy costs.[291] It is Commerce's practice to avoid double counting expenses.[292] If Commerce valued a respondent's FOPs, including energy, and calculated financial ratios using energy costs (because they could

---

[287] 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.
[288] *See* Trina's July 20, 2017 surrogate value Submission at Exhibit 10 (Styromatic's financial statements) at Note 18 which states that the company is exempt from income tax due to its investment promotion certificate.
[289] *See Frozen Warmwater Shrimp from Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013) (*Warmwater Shrimp from Thailand CVD*) and accompanying IDM at Comment 2.
[290] *Id.* at 11.
[291] *See Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 2014-2015, 82 FR 18115 (April 17, 2017) and accompanying IDM at Comment 2; *see also Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 23272 (April 20, 2016) and accompanying IDM at Comment 8.
[292] *See Drawn Stainless Steel Sinks from the People's Republic of China: Investigation, Final Determination*, 78 FR 13019 (February 26, 2013) (Stainless Steel Sinks) at Comment 4.

not be removed from the surrogate company's expenses), it would be double counting energy expenses. Therefore, we have not relied on Hana's financial statements in these final results.

On the other hand, KCE's financial statements, as well as Styromatic's financial statements, equally provide sufficient detail for us to calculate surrogate financial ratios. Specifically, KCE's financial statements identify the costs for labor, energy, trade and finished goods, interest, and SG&A that Commerce typically relies upon to calculate surrogate financial ratios. The financial statements also identify costs associated with different types of inventory movement which allows Commerce to assign such costs under the proper cost component in the financial ratios calculation. Similarly, Styromatic's financial statements identify the costs for raw materials, labor, overhead, energy, interest, and SG&A. While Trina argues that KCE's financial statements are not acceptable because they contain a single line item for "raw materials and consumables used," instead of separate line items for raw materials and consumables, Commerce has previously relied on financial statements with such combined expenses. For example, in *Certain Tool Chests and Cabinets/China* and *Chlor Isos 2012-2013*, Commerce relied on financial statements with a combined expense line item for raw materials and consumables.[293] With respect to the "residual" cost assumptions, we agree with the petitioner that these "residual" costs, which are part of the cost of sales are not so significant as to warrant rejecting the KCE's financial statement.[294] As noted above, KCE's financial statements identify the cost for the primary categories used in the financial ratios calculations, and are sufficiently detailed.

The petitioner argues that Commerce should use KCE's consolidated financial statements rather than the unconsolidated financial statements because the consolidated financial statements cover subsidiaries that produce comparable merchandise and almost all of the group's 2016 revenue pertain to sales of comparable merchandise.[295] However, the consolidated financial statements also include several subsidiaries that are located outside of Thailand (*i.e.*, Taiwan, Singapore, and United States), and subsidiaries that do not produce comparable merchandise (*i.e.*, laminates and chemical solutions).[296] Meanwhile, there is no evidence that KCE's unconsolidated statements reflect operations outside of Thailand. There is also no evidence that KCE's unconsolidated statements reflect production of non-comparable merchandise; rather, KCE's financial statements indicate that KCE only produced PCBs.[297] Commerce has previously selected unconsolidated financial statements over the consolidated financial statements where the consolidated financial statements reflect operations outside the surrogate country.[298] Additionally, Commerce has a preference for using financial statements which reflect production of comparable merchandise over non-comparable merchandise. While the petitioner suggests that Commerce rely on KCE's consolidated financial statements to capture additional affiliates

---

[293] *See Chlor Isos from the PRC 2015* and accompanying IDM at Comment 2; see also Certain Tool Chests and Cabinets from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, 83 FR 15365 (April 10, 2018) and accompanying IDM at Comment 13.
[294] The "residual" cost assumptions comprise 2.62 percent of the total cost of sales: 128,622,453 / 4,902,759,724 = 2.62 percent.
[295] *See* KCE's 2016 financial statements at 236.
[296] *Id.* at 232 and 237.
[297] *Id.* at 232.
[298] *See Sodium Hexametaphosphate from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 59375 (September 27, 2012) and accompanying IDM at Comment I and footnote 24.

that produce comparable merchandise, doing so would also include producers of non-comparable merchandise, and companies from countries that are not economically comparable to China. The petitioner has not demonstrated why the consolidated statements are preferable when the financial ratios calculated using the unconsolidated statements are a better reflection of Trina's operations that are related to subject merchandise because they relate to production of only comparable merchandise. Thus, we have continued to rely only on KCE's unconsolidated financial statements in calculating surrogate financial ratios.[299]

Given the above, we find that KCE's and Styromatic's 2016 financial statements constitute the best available information on the record for calculating surrogate financial ratios, because they are nonproprietary complete financial statements showing a profit, contemporaneous with the data used to calculate production factors, and for producers of identical or comparable merchandise in the primary surrogate country. While these statements show evidence of countervailable subsidies, Commerce has previously relied on financial statements with evidence of countervailable subsidies if these financial statements represented the best available information on the record.[300] Moreover, using KCE's and Styromatic's financial statements in this review is consistent with Commerce's preference for using multiple financial statements to determine surrogate financial ratios.[301] Using multiple financial statements allows Commerce to average the factory overhead, SG&A, and profit ratios and, thus, to normalize any potential distortions that may arise from using financial statements of a single producer. Thus, by using the average of multiple surrogate companies, we arrive at a broader-based surrogate valuation that minimizes the particular circumstances of any one producer. This is consistent with section 773(c)(3)(D) of the Act, which stipulates that when calculating NV, Commerce should use representative capital costs.[302]

Comment 11: Surrogate Value for Labor

Petitioner:

- Commerce should calculate the per-unit labor rate by dividing the monthly surrogate value rate by four to derive a weekly rate, and divide the weekly rate by 40 to derive an hourly rate. Such a revision is consistent with Commerce's standard methodology for calculating an hourly labor rate.

---

[299] *See Sodium Hexametaphosphate from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 59375(September 27, 2012) and accompanying IDM at Comment I; *see also* Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2015-2016, 82 FR 51607 (November 7, 2017) and accompanying IDM at Comment 8.
[300] *See CVP 23 from the PRC* and accompanying IDM at Comment 1.
[301] *See Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 42314 (June 29, 2016) and accompanying IDM at Comment 30.
[302] *Id.*; *see also Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 34082 (June 13, 2005), and accompanying IDM at Comment 5.

Trina:

- Commerce should continue to calculate the hourly labor rate as it did in the *Preliminary Results*. This calculation methodology presumes that there are 24 working days in a month and eight working days in a year.
- Commerce's labor calculation is consistent with its practice, and follows the methodology applied in the prior segment (*i.e.*, third administrative review) of this proceeding.[303]

Commerce's Position: We disagree with the petitioner and have continued to calculate the hourly labor rate following the methodology used in the *Preliminary Results*. Contrary to the petitioner's assertion, in the *Preliminary Results* Commerce applied its standard methodology in converting the Thai monthly labor rate to an hourly rate.[304] In *Labor Methodologies*, Commerce explained that if surrogate labor rates are "…not available on a per-hour basis, {Commerce} converts that data to an hourly basis based on the premise that there are 8 working hours per day, 5.5 working days a week and 24 working days per month."[305] Commerce used this methodology to convert the Thai monthly labor rate to an hourly rate. Moreover, as Trina correctly states, the methodology applied in the *Preliminary Results* is consistent with the methodology applied in the prior segment of this proceeding.[306] For the foregoing reasons, for the final results, Commerce has made no changes to labor rate calculation.

Comment 12: Separate Rate Status for LONGi Solar Technology Co. Ltd.

LERRI and LONGi:

- Commerce correctly assigned a separate rate to LERRI but failed to use the name LONGi, as well, when doing so, even though LERRI reported that it had changed its name to LONGi.
- Commerce examines changed circumstances within the context of administrative reviews and, in this review, the companies reported that there were no changes to the leadership, management structure, production facilities, supplier relationships, or customer base of LERRI after the company changed its name to LONGi on March 23, 2017.
- LERRI is not requesting that Commerce grant LONGi a separate rate for POR entries, but that it recognize that a name change occurred after the POR, and therefore instruct CBP that LONGi is entitled to the same cash deposit rate as LERRI going forward.

---

303 *See* Trina's rebuttal case brief at 20 (citing Trina's Letter, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China: Rebuttal to Petitioner's Comments on Selection of Surrogate Values," dated July 20, 2017, at Exhibit 2.)

304 In the instant review Commerce valued labor based on Thailand's National Statistical Office (NSO) data from surveys concerning wages in 2015 and 2016. *See* Preliminary Results Surrogate Value Memorandum at 5 and Attachment V.

305 *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (Labor Methodologies).

306 *See* Trina's July 20, 2017 Submission at Exhibit 2.

Petitioner:

- The alleged name change occurred after the POR, *i.e.*, on March 23, 2017. The only entity that existed during the POR is LERRI; therefore, LERRI is the only entity entitled to a separate rate.
- The proper avenue to recognize a name change is a changed circumstances review which provides Commerce with the opportunity to thoroughly examine LERRI's change in status and determine whether LONGi is entitled to LERRI's dumping margin.

Commerce's Position: For reasons explained in our post-preliminary analysis memorandum, we continue to find that LONGi is the successor-in-interest to LERRI.[307] While Commerce agrees with the petitioner that successor-in-interest determinations are normally made in changed circumstances reviews in accordance with 19 CFR 351.216, Commerce has made successor-in-interest determinations in the context of administrative reviews and investigations.[308] Moreover, Commerce has previously recognized a name change in a segment of a proceeding even though the change occurred after the period being examined in that segment.[309] In the instant review, LERRI submitted information in its separate rate application[310] and three supplemental questionnaire responses[311] which demonstrated that its name was changed to LONGi on March 23, 2017[312] and that there were no changes to the leadership, management structure,[313] production facilities,[314] supplier relationships, or customer base[315] of LERRI after the company name change to LONGi. This information indicates that LONGi is the successor-in-interest to LERRI.[316] No party has disputed LERRI/LONGi's contention that the name change took place, or that there were no material changes resulting from the name change.[317]

---

[307] *See* Post-Preliminary Results at 6-7

[308] *See e.g., Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018) and accompanying IDM at 1-2 (*Aluminum Foil from China LTFV*); *see also Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires 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*, 80 FR 34893 (June 18, 2015) and accompanying IDM at Comment 24; *Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 34335 (June 7, 2013) and accompanying PDM at 1-2.

[309] *See Aluminum Foil from China LTFV*, 83 FR 9282, and accompanying IDM at 1.

[310] *See* LERRI's March 13, 2017 SRA.

[311] *See* LERRI/LONGi's August 16, 2017, October 11, 2017, and May 30, 2018, responses; *see also* Post-Preliminary Results at 6-7.

[312] *See* LERRI/LONGi's October 11, 2017 response at Exhibits S2-7, S2-8, and S2-9.

[313] *See* LERRI's March 13, 2017 SRA at Exhibit 14.

[314] *See* LERRI/LONGi's October 11, 2017 response at 2 and Exhibits S2-7 and S2-9.

[315] *See* LERRI/LONGi's October 11, 2017 response at Exhibits S2-1, S2-2, S2-3, S2-4, S2-5, and S2-6.

[316] *See e.g., Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Multilayered Wood Flooring from the People's Republic of China*, 79 FR 48117, 48118 (August 15, 2014), unchanged in *Multilayered Wood Flooring from the People's Republic of China: Final Results of Changed Circumstances Review*, 79 FR 58740 (September 30, 2014) where Commerce stated that in determining whether one company is the successor to another for purposes of AD cash deposits, Commerce examines a number of factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) suppliers; and (4) customer base.

[317] While LERRI/LONGi issued comments concerning the post-preliminary analysis memorandum (*see* LERRI/LONGi's June 25, 2018 submission), it raised no disagreement with the findings in this memorandum.

Therefore, we find that that LONGi is the successor-in-interest to LERRI, and thus it is entitled to the same cash deposit rate as LERRI. We will issue instructions to CBP consistent with this finding.

Comment 13: Differential Pricing

Trina:

- Commerce should eliminate its differential pricing analysis for the final results because it is contrary to the United States' World Trade Organization (WTO) obligations.
- A WTO dispute settlement panel confirmed that Commerce's differential pricing analysis violates the United States' obligations under Article 2.4.2 of the Anti-Dumping Agreement.[318] Specifically, in *US-Washing Machines (Korea)*, the WTO dispute settlement panel examined Commerce's differential pricing analysis and held that the analysis impermissibly identifies patterns across purchasers, regions and time periods rather than "among purchasers, or time periods" because it is impossible to discern a "regular and intelligible form or sequence" across these factors.[319]
- The WTO dispute panel also held that if Commerce does find a pattern, it may apply an average-to-transaction (A-T) methodology only to those sales identified as part of the pattern; it cannot apply an A-T methodology to all sales.[320]
- The WTO dispute panel also found that zeroing of negative dumping margins is not permitted even when the A-T methodology is justified.[321]
- Lastly, the WTO dispute panel stated that Commerce must provide a qualitative explanation that examines the circumstances that render a weighted average or transaction-to-transaction comparison insufficient for taking into account the differences in the export prices that form the pattern.[322]
- The WTO dispute panel ordered the United States to implement these rulings by December 26, 2017. Therefore, Commerce's continued application of the differential pricing analysis is inconsistent with the United States' WTO obligations.

Petitioner:

- WTO Appellate Body reports are not self-executing.[323] Congress provided a procedure through which Commerce may change a regulation or practice in response to WTO reports.[324]
- With regard to the use of Commerce's differential pricing analysis in administrative reviews, the United States has not adopted a change to its established practice in response

[318] *See* Trina's case brief at 20.
[319] *Id*. at 20 (citing *United States-Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea*, Appellate Body Report, WT/DS464/AB/R (adopted September 26, 2016) at paragraph 5.34-36, 6.2-3 (*US-Washers (Korea)*)).
[320] *See* Trina's case brief at 20.
[321] *Id*.
[322] *Id*.
[323] *See* the petitioner's rebuttal case brief at 23.
[324] *Id*. at 24.

to the WTO findings upon which Trina relies.[325] Therefore, the cited WTO report provides no reason for Commerce to alter its practice regarding differential pricing for the final results. Accordingly, the proper methodology to use in this review is Commerce's differential pricing analysis.[326]

Commerce's Position: We disagree with Trina regarding the effect that the WTO Appellate Body's findings in *US - Washing Machines (Korea)* has on Commerce's methodology utilized in this review. As a general matter, the CAFC has held that WTO reports are without effect under U.S. law, "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the Uruguay Round Agreements Act (URAA).[327] In fact, Congress adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports.[328] Indeed, the Statement of Administrative Action (SAA) noted that "WTO dispute settlement panels will have no power to change U.S. law or order such a change. Only Congress and the Administration can decide whether to implement a WTO panel recommendation and, if so, how to implement it."[329] As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of Commerce's discretion in applying the statute.[330] Commerce has not revised or changed its use of the differential pricing methodology, nor has the United States adopted changes to its methodology pursuant to the URAA's implementation procedure. Accordingly, citation to the WTO's conclusions in *US - Washers (Korea)* does not undermine the adherence of the differential pricing methodology to U.S. law. Therefore, Commerce will continue applying its differential pricing analysis in the final results of this review.

[325] *Id*.
[326] *Id*.
[327] *See Corus Staal BV v. U.S. Dep't of Commerce, 395 F 3d. 1343, 1347-49 (Fed. Cir. 2005), cert. denied 126 S. Ct. 1023 (2006); accord Corus Staal BV v. United States, 502 F.3d 1370, 1375 (Fed. Cir. 2007).*
[328] *See, e.g.,* 19 U.S.C. § 3533*, 3538 (sections 123 and 129 of the URAA).*
[329] *See SAA at 659.* ("WTO dispute settlement panels will have no power to change U.S. law or order such a change. Only Congress and the Administration can decide whether to implement a WTO panel recommendation and, if so, how to implement it.").
[330] *See, e.g.,* 19 U.S.C. § 3538*(b)(4) (implementation of WTO reports is discretionary).*

RECOMMENDATION

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

☒	☐
Agree	Disagree

7/11/2018

X 

Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance