A-570-979
Administrative Review
12/1/2016 - 11/30/2017
Public Document
E&C/IV: JDP/KH

DATE: December 20, 2018

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

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: Decision Memorandum for the Preliminary Results of the 2016-2017 Antidumping Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or not Assembled into Modules, From the People's Republic of China

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SUMMARY

In response to requests from interested parties, the Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells), from the People's Republic of China (China) covering the period December 1, 2016 through November 30, 2017 (the period of review (POR)). The administrative review covers 44 exporters of subject merchandise and two mandatory respondents: Chint Solar Zhejiang Co., Ltd. (CSZ)[1] and Risen Energy Co., Ltd. (Risen Energy).[2]

Commerce preliminarily determines that 22 companies, which include the collapsed mandatory respondents, have established their entitlement to separate rate status and have sold subject merchandise in the United States at prices below normal value (NV) during the POR. Commerce also preliminarily determines that 13 companies failed to establish their entitlement to separate rates status. We have made a preliminary determination that the record supports the claims of

[1] As will be discussed in detail below, we are treating Chint Energy (Haining) Co., Ltd., Chint Solar (Jiuquan) Co., Ltd., Chint Solar (Hong Kong) Company Limited, and CSZ as a single entity. Henceforth, we have referred to the "collapsed" entity as "Chint Solar."
[2] As will be discussed in detail below, we are treating Risen (Wuhai) New Energy Co., Ltd., Zhejiang Twinsel Electronic Technology Co., Ltd., Risen (Luoyang) New Energy Co., Ltd., Jiujiang Shengchao Xinye Technology Co., Ltd., Jiujiang Shengzhao Xinye Trade Co., Ltd. Ruichang Branch, Risen Energy (HongKong) Co., Ltd., and Risen Energy as a single entity. Henceforth, we have referred to the "collapsed" entity as "Risen."

seven of nine companies making no shipment claims, while information exists contradicting the no shipment claims of the two other companies.

BACKGROUND

On December 4, 2017, Commerce notified interested parties of the opportunity to request an administrative review of orders, findings, or suspended investigations with anniversaries in December 2017, including the AD order on solar cells from China.[3] SolarWorld Americas Inc. (the petitioner), as well as various exporters and U.S. importers, requested that Commerce conduct an administrative review of certain exporters covering the POR. On February 23, 2018, Commerce published a notice initiating an AD administrative review of solar cells from China covering 45 companies/company groupings and the period December 1, 2016, through November 30, 2017.[4]

In the *Initiation Notice*, Commerce stated that, if it limited the number of respondents for individual examination, it intended to select respondents based on volume data contained in responses to its quantity and value (Q&V) questionnaire.[5] Further, Commerce noted that it intended to limit the number of Q&V questionnaires issued in the review based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the POR.[6] On February 14 and 15, 2018, Commerce issued a Q&V questionnaire to the 11 companies or company groupings with the largest shipments during the POR, by value, according to information gathered from CBP. Including the 11 companies to which we issued the Q&V questionnaire, we received Q&V questionnaire responses from 16 companies or company groupings named in the *Initiation Notice*. In addition to these Q&V questionnaire responses, we also received no shipment letters or Q&V questionnaire responses indicating no shipments from nine companies.

In March and April 2018, 22 companies submitted separate rate applications and certifications. Commerce issued supplemental questionnaires to a number of companies requesting separate rate status and received responses to its separate rate supplemental questionnaires.

On March 15, 2018, Commerce selected Risen and Trina[7] as mandatory respondents.[8] On March

[3] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 82 FR 57219 (December 4, 2017).
[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 8058 (February 23, 2018) (Initiation Notice) at http://enforcement.trade.gov/frn/index.html.
[5] *Id*.
[6] *Id*.
[7] Consistent with our findings in *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), and accompanying Preliminary Decision Memorandum (AR4 PDM), unchanged in *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016-2017*, 83 FR 35616 (July 27, 2018) (*AR4 Final FR*), the group identified as "Trina" consists 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.
[8] *See* the Commerce memorandum entitled "Respondent Selection," dated March 15, 2018, (Respondent Selection

15, 2018, Commerce issued its AD questionnaire and a questionnaire regarding double remedies to Risen and Trina. On April 4, 2018, and April 5, 2018, Trina and the petitioner, respectively, timely withdrew their request for an administrative review of Trina.[9] No other party requested an administrative review of Trina. On April 19, 2018, Commerce selected CSZ, the next largest exporter of solar cells based on Q&V data, as a mandatory respondent.[10] On April 19, 2018, Commerce issued its AD questionnaire and a questionnaire regarding double remedies to CSZ.

Between April 2018 and November 2018, Chint Solar and Risen submitted responses to Commerce's AD questionnaire, the questionnaire regarding double remedies, and supplemental questionnaires. During this time period, the petitioner also submitted comments on Chint Solar's and Risen's questionnaire and supplemental questionnaire responses. In response to Commerce's July 6, 2018, request for comments on surrogate country selection and surrogate values (SVs),[11] the petitioner, Chint Solar and Risen submitted comments and rebuttal comments on surrogate country selection and SVs from August 2018 through December 2018.

As noted above, Trina and the petitioner timely withdrew their requests for an administrative review of Trina. Therefore, on July 27, 2018, Commerce rescinded the review with respect to Trina.[12]

On March 7, 2018, the petitioner requested that Commerce conduct verification of the respondents selected in this review.[13] Between September 11 and 21, 2018, Commerce conducted a verification of the information provided by Chint Solar.[14] On August 20, 2018, September 30, 2018, and November 21, 2018, Commerce placed on the record information

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Memorandum) at 7.

[9] *See* Letter from SolarWorld Americas, Inc., "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Withdrawal of Request for Administrative Review and Request for Selection of Additional Mandatory Respondent," dated April 5, 2018 (Petitioner's Withdrawal Request); *see also* Letter from Changzhou Trina Solar Energy Co., Ltd., Yancheng Trina Solar Energy Technology Co., Ltd., and Changzhou Trina Solar Yabang Energy Co., Ltd., "Crystalline Silicon Photovoltaic Cells, Whether Or Not Assembled into Modules from the People's Republic of China – Withdrawal of Request for Review," dated April 4, 2018 (Trina's Withdrawal Request).

[10] *See* the Commerce memorandum entitled "Selection of Additional Mandatory Respondent," dated April 19, 2018 (Second Respondent Selection Memorandum).

[11] *See* Commerce's Letter to Interested Parties re: Antidumping Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information, dated July 6, 2018 (Request for SC and SV Comments).

[12] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 35620 (July 27, 2018) (*Rescission Notice*).

[13] *See* the petitioner's March 7, 2018, letter entitled "Comments on CBP Data and Respondent Selection and Request for Verification."

[14] *See* the Commerce memorandum entitled" Verification of the Sales and Factors Questionnaire Responses of Chint Solar (Zhejiang) 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 December 11, 2018. *See also* the Commerce memorandum "Verification of the Factors Responses of {one of Chint Solar's unaffiliated solar cell suppliers (the identity of the solar cell supplier verified is proprietary)} 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 December 11, 2018.

concerning shipments during the POR[15] to which parties responded in September, October, and November 2018.

On August 8, 2018, Commerce extended the time limit for completing the preliminary results of this review by 64 days.[16] On November 1, 2018, Chint Solar, Risen, and the petitioner submitted comments for consideration in the preliminary results. On November 7, 2018, Commerce extended the time limit for completing the preliminary results of this review by 28 days, until December 6, 2018.[17] On November 30, 2018, Commerce extended the time limit for completing the preliminary results of this review by 14 days, until December 20, 2018.[18]

SCOPE OF THE ORDER

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

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

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

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

Also excluded from the scope of this order are crystalline silicon photovoltaic cells, not exceeding 10,000mm2 in surface area, that are permanently integrated into a consumer good whose function is other than power generation and that consumes the electricity generated by the integrated crystalline silicon photovoltaic cell. Where more than one cell is permanently

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[15] *See* Commerce's August 30, 2018 memorandum entitled "No shipment inquiry with respect to the companies below during the period 12/01/2016 through 11/30/2017," Commerce's September 20, 2018 memorandum entitled "Release of U.S. Customs and Border Protection Information Relating to No Shipment Claims" and Commerce's November 21, 2018 memorandum entitled "Release of U.S. Customs and Border Protection Information Relating to No Shipment Claims Made in the 2014-2015 Administrative Review of Crystalline Silicon Photovoltaic Cells from the People's Republic of China."
[16] *See* the Commerce memorandum "2016-2017 Antidumping Duty Administrative Review of Certain Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated August 8, 2018.
[17] *See* the Commerce memorandum "Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated November 7, 2018.
[18] *See* the Commerce memorandum "Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated November 30, 2018.

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 these Orders are panels with surface area from 3,450 mm to 33,782 mm 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.

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

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, 8541.40.6015, 8541.40.6020, 8541.40.6025, 8541.40.6030, 8541.40.6035, 8541.40.6045, and 8501.31.8000. Although these HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

PRELIMINARY DETERMINATION OF NO SHIPMENTS

Anji DaSol Solar Energy Science & Technology Co., Ltd., BYD (Shangluo) Industrial Co., Ltd., Jiawei Solarchina Co., Ltd., LERRI Solar Technology Co., Ltd., Ningbo ETDZ Holdings, Ltd., Sunpreme Solar Technology (Jiaxing) Co., Ltd., Toenergy Technology Hangzhou Co., Ltd., Wuxi Suntech Power Co., Ltd/Luoyang Suntech Power Co., Ltd., and Zhejiang ERA Solar Technology Co., Ltd. (*i.e.*, nine companies or company groupings in total) reported no shipments of subject merchandise to the United States during the POR.[19] To test the no-shipment claims we reviewed information obtained from a CBP data query[20] and issued a no-shipment inquiry to CBP requesting that it provide any information that contradicted the no-shipment claims of these companies. CBP responded with certain information concerning the no-shipment claims of certain companies.[21] We requested entry documents based on information in the data query and the CBP response and placed the documents on the record.[22] Based on the information we received from the data query and the no shipment query we requested entry documents from CBP. While Wuxi Suntech Power Co., Ltd/Luoyang Suntech Power Co., Ltd. and Zhejiang ERA Solar Technology Co., Ltd. reported that they had no shipments during the POR, the entry documents, CBP data query, and information provided by CBP contained information indicated that both companies made shipments of subject merchandise for which they received remuneration. While Zhejiang ERA Solar Technology Co., Ltd. commented on the information,

[19] *See* Respondent Selection Memorandum at 2.
[20] *See* Commerce's February 23, 2018 memorandum entitled "Release of Customs and Border Protection Data."
[21] *See* Commerce's August 30, 2018 memorandum entitled "No shipment inquiry with respect to the companies below during the period 12/01/2016 through 11/30/2017."
[22] *See* Commerce's September 20, 2018 memorandum entitled "Release of U.S. Customs and Border Protection Information Relating to No Shipment Claims" and Commerce's November 21, 2018 memorandum entitled "Release of U.S. Customs and Border Protection Information Relating to No
Shipment Claims Made in the 2014-2015 Administrative Review of Crystalline Silicon Photovoltaic Cells from the People's Republic of China."

it provided no evidence contradicting the information that it had a shipment and that it requested remuneration for the shipment.[23]

Based on the no shipment certifications of the other seven companies listed above, our analysis of the results of the CBP data queries, and the fact that CBP did not identify any information that contradicted the no-shipment claims, we preliminarily determine Anji DaSol Solar Energy Science & Technology Co., Ltd., BYD (Shangluo) Industrial Co., Ltd., LERRI Solar Technology Co., Ltd., Ningbo ETDZ Holdings, Ltd., Sunpreme Solar Technology (Jiaxing) Co., Ltd. and Toenergy Technology Hangzhou Co., Ltd. did not have any shipments during the POR. However, consistent with Commerce's practice in non-market economy (NME) cases, we have not rescinded the review with respect to these companies, but will continue the review of these companies and issue instructions to CBP based on the final results of the review.[24]

SELECTION OF RESPONDENTS

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

As we noted above, in its Respondent Selection Memorandum, Commerce determined, pursuant to section 777A(c)(2) of the Act, that given the large number of producers or exporters for which a review was initiated and Commerce's current resource constraints, it would not be practicable to individually examine all known exporters/producers.[25] Therefore, in accordance with section 777A(c)(2)(B) of the Act, Commerce selected for individual examination the two exporters under review accounting for the largest volume of subject merchandise exported from China during the POR, Risen Energy and Trina.[26] On April 4, 2018, and April 5, 2018, Trina and the petitioner, respectively timely withdrew their request for an administrative review of Trina.[27] No other party requested an administrative review of Trina; accordingly, Commerce rescinded the review of this company. On April 19, 2018, Commerce selected CSZ, the next largest exporter of solar cells based on Q&V data, as a mandatory respondent.[28]

SINGLE ENTITY TREATMENT

Section 771(33)(E) of the Act provides that any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization shall be considered to be affiliated. Additionally, section 771(33)(F) of the Act provides that two or more persons directly or indirectly controlling,

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[23] *See* Zhejiang ERA Solar Technology Co., Ltd.'s November 28, 2018 memorandum entitled "Comments on Release of U.S. Customs and Border Protection Information Relating to No Shipment Claims."
[24] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011).
[25] *See* Respondent Selection Memorandum at 4.
[26] *Id*. at 5.
[27] *See* Petitioner's Withdrawal Request; *see also* Trina's Withdrawal Request.
[28] *See* Second Respondent Selection Memorandum.

controlled by, or under common control with, any person shall be considered affiliated.[29] Section 771(33) of the Act further states that a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

To the extent that Commerce's practice does not conflict with section 773(c) of the Act, Commerce has, in prior cases, treated certain NME exporters and/or producers as a single entity if the facts of the case supported such treatment.[30] Pursuant to 19 CFR 351.401(f)(1), Commerce will treat producers as a single entity, or "collapse" them, where: (1) those producers are affiliated; (2) the producers have production facilities for producing similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities; and (3) there is a significant potential for manipulation of price or production.[31] In determining whether a significant potential for manipulation exists, 19 CFR 351.401(f)(2) indicates that Commerce may consider various factors, including: (1) the level of common ownership; (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (3) whether the operations of the affiliated firms are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.[32]

Chint Solar

We preliminarily determine that the following companies are affiliated, pursuant to section 771(33)(E) of the Act: Chint Solar (Zhejiang) Co., Ltd. (CSZ), Chint Energy (Haining) Co., Ltd. (CEH), Chint Solar (Jiuquan) Co., Ltd. (CSJ), and Chint Solar (Hong Kong) Company Limited (CHK) and Zhejiang Chint New Energy Development Co., Ltd. (New Energy Development). This determination is based on record evidence demonstrating that CSZ, the entity selected as the mandatory respondent, entirely owns CEH, CSJ, and CHK,[33] and evidence demonstrating that New Energy Development is the sole shareholder of CSZ.[34]

Additionally, in accordance with 19 CFR 351.401(f), we are preliminarily determining that CSZ, CEH, CSJ, and CHK should be treated as a single entity. The first criterion in 19 CFR 351.401(f)(1), affiliation, is met because, as explained above, we are preliminarily finding CSZ, CEH, CSJ, and CHK to be affiliated. The second criterion in 19 CFR 351.401(f)(1) is also met. The record also shows that CSZ, CEH, and CSJ are all producers of subject merchandise,[35] and

[29] *See* section 771(33)(F) of the Act.
[30] *See Certain Steel Nails From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances and Postponement of Final Determination*, 73 FR 3928, 3932 (January 23, 2008), unchanged in *Certain Steel Nails From the People's Republic of China: Amended Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 7254 (February 7, 2008) and *Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 (June 16, 2008).
[31] *See, e.g., Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review*, 63 FR 12764, 12774-12775 (March 16, 1998).
[32] *See also, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Taiwan*, 62 FR 51427, 51436 (October 1, 1997).
[33] *See* CSZ's Section A Response at 13.
[34] *Id*. at 8.
[35] *Id*. at 1-2.

thus these producers have production facilities for similar or identical products and do not require substantial retooling of their facilities in order to restructure manufacturing priorities. However, the affiliated companies under evaluation also include CHK, which is located in Hong Kong, and resells the solar modules to the United States.[36] Where non-producing entities (e.g., exporters) are affiliated, and there exists a significant potential for manipulation of prices and/or export decisions, Commerce has found it appropriate to treat such entities, as well as other affiliated entities (where appropriate), as a single company.[37] Likewise, the CIT has held that once a finding of affiliation is made, affiliated exporters can be considered a single company where their relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise.[38] Given that CSZ, CEH, and CSJ are affiliated with CHK, we have examined whether the third criterion in 19 CFR 351.401(f)(1), a significant potential for manipulation of price or production, has been met with respect to these four companies.

The record in this case demonstrates that New Energy Development, the sole shareholder of CSZ, performs the sales functions for CSZ, CEH, CSJ and CHK.[39] New Energy Development acts as the headquarters of all companies affiliated with CSZ and so during the POR, the Crystalline Silicon Manufacturing Department of New Energy Development is where pricing, sales and production decisions are made for CSZ, CEH, CSJ,[40] and CHK.[41] Through New Energy Development, price, quantity and customer information can be shared among CSZ, CEH, CSJ, and CHK,[42] the financial activities of CSZ, CEH, CSJ, and CHK were handled by the financial department of New Energy Development.[43] Therefore, we preliminarily find that, consistent with 19 CFR 351.401(f)(2)(i) and (iii), there is a significant potential for the manipulation of price or production based upon the level of common ownership and intertwined operations. Because we find that the third criterion of 19 CFR 351.401(f)(1) is met, we are preliminarily treating CSZ, CEH, CSJ, and CHK as a single entity for the preliminary determination and calculating an antidumping margin for this single entity.

Risen

Based on record evidence, we also preliminarily find that Risen Energy, Risen (Wuhai) New Energy Co., Ltd., Zhejiang Twinsel Electronic Technology Co., Ltd., Risen (Luoyang) New

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[36] *Id*.
[37] *See e.g.*, *Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil: Notice of Final Determination at Sales at Less Than Fair Value*, 65 FR 5554 (February 4, 2000); *Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 63 FR 55578 (October 16, 1998) and accompanying Issues and Decision Memorandum at Comment 2; *Automotive Replacement Glass Windshields from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 69 FR 25545 (May 7, 2004); *Automotive Replacement Glass Windshields from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 69 FR 61790 (October 21, 2004); *Certain Preserved Mushrooms from the People's Republic of China: Final Results of Sixth Antidumping Duty New Shipper Review and Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review*, 69 FR 54635 (September 9, 2004) and accompanying Issues and Decision Memorandum at Comment 1; *see also Hontex Enterprises v. United States*, 248 F. Supp. 2d 1323, 1343 (CIT 2003) (*Hontex*).
[38] *See Hontex*, 248 F. Supp. 2d at 1232-34.
[39] *See* CSZ's Section A Response at Appendix X at 9.
[40] *Id*. at Appendix X at 10.
[41] *Id*. at 8.
[42] *Id*.
[43] *Id*. While CSJ and CEH had their own finance departments, these departments were under the management of the Finance Department of New Energy Development. See Chint Solar Zhejiang's August 13, 2018 submission at 3.

Energy Co., Ltd., Jiujiang Shengchao Xinye Technology Co., Ltd., Jiujiang Shengzhao Xinye Trade Co., Ltd. Ruichang Branch, and Risen Energy (HongKong) Co., Ltd. are affiliated with Risen Energy pursuant to sections 771(33)(E) and 771(33)(F) of the Act.[44] These affiliates sold subject merchandise to the United States during the POR or operate production facilities that produce similar or identical products that would not require substantial retooling of their facilities in order to restructure manufacturing priorities.[45] Also, there is a significant potential for the manipulation of price or production among these companies as evidenced by the level of common ownership, the degree of directorial and managerial overlap, and the intertwined nature of the operations of these companies.[46] Thus, we have preliminarily treated these companies as a single entity pursuant to 19 CFR 351.401(f)(1)-(2).[47]

DISCUSSION OF THE METHODOLOGY

Non-Market Economy Country

Commerce considers China to be an NME country.[48] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Therefore, Commerce will continue to treat China as an NME country for purposes of these preliminary results of review. Commerce calculated NV using a factors of production (FOP) methodology in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rates

In all proceedings involving NME countries, Commerce maintains a rebuttable presumption that all companies within China are subject to government control and, thus, should be assigned a single antidumping duty rate.[49] In the *Initiation Notice*, Commerce notified parties of the application process by which exporters or exporter/producers may obtain separate rate status in

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[44] Our affiliation and collapsing analysis is based on information that has been designated business proprietary information. For additional detail, *see* Commerce Memorandum: Preliminary Affiliation and Collapsing Memorandum for Risen Energy Co. Ltd., Risen (Wuhai) New Energy Co., Ltd., Zhejiang Twinsel Electronic Technology Co., Ltd., Risen (Luoyang) New Energy Co., Ltd., Jiujiang Shengchao Xinye Technology Co., Ltd., Jiujiang Shengzhao Xinye Trade Co., Ltd. Ruichang Branch, and Risen Energy (HongKong) Co., Ltd. (Risen Single Entity Memorandum), issued concurrently with this memorandum.
[45] *See* 19 CFR 351.401(f)(1); *see also* Risen Single Entity Memorandum at 6-8.
[46] *See* 19 CFR 351.401(f)(2). *See also* Risen Single Entity Memorandum.
[47] *Id*.
[48] *See Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination*, 82 FR 50858, 50861 (November 2, 2017) (citing Memorandum, "China's Status as a Non-Market Economy," dated October 26, 2017 (China NME Status Memo)), unchanged in *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).
[49] *See Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039, 55040 (September 24, 2008); *see also Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079, 53082 (September 8, 2006); *see also Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303, 29307 (May 22, 2006).

NME proceedings.[50] It is Commerce's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, Commerce analyzes each exporting entity in an NME country under the test established in *Sparklers*,[51] as amplified by *Silicon Carbide*.[52] However, if Commerce determines that a company is wholly foreign-owned or located in a market economy (ME) country, then analysis of the *de jure* and *de facto* criteria are not necessary to determine whether the company is independent from government control and eligible for a separate rate.[53]

Commerce continues to evaluate its practice with regard to the separate rates analysis in light of the diamond sawblades from China AD proceeding, and Commerce's determinations therein.[54] In particular, in litigation involving the diamond sawblades proceeding, the U.S. Court of International Trade (CIT) found Commerce's existing separate rates analysis deficient in the circumstances of that case, in which a government-controlled entity had significant ownership in the respondent exporter.[55] Following the CIT's reasoning, we have concluded that where a government entity holds a majority equity ownership, either directly or indirectly, in the respondent exporter, this interest in and of itself means that the government exercises or has the potential to exercise control over the company's operations generally. This may include control over, for example, the selection of board members and management, a key factor in determining whether a company has sufficient independence in its export activities to merit a separate rate.[56]

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[50] *See Initiation Notice*, 83 FR 8058.

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

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

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

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

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

[56] *See, e.g., Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part*, 79 FR 53169 (September 8, 2014), and accompanying Preliminary Decision Memorandum

Consistent with normal business practices, we would expect any majority shareholder, including a government, to have the ability to control, and possess an interest in controlling, the operations of the company, including the selection of board members, management, and the profitability of the company.

Separate Rate Applicants

As noted above, Commerce initiated this review with respect to 45 companies or company groupings.[57] Interested parties timely withdrew all of their requests for a review of Trina, and Commerce rescinded this review with respect to Trina.[58] Of the remaining 44 companies/company groupings, as noted above, nine companies have reported making no shipments. The separate rates status of the remaining 35 companies or company groupings is discussed below:

Mandatory Respondents:

1. Chint Solar
2. Risen

Separate Rate Respondents:

3. Canadian Solar International Limited/ Canadian Solar Manufacturing (Changshu), Inc./Canadian Solar Manufacturing (Luoyang)Inc./CSI Cells Co., Ltd./CSI-GCL Solar Manufacturing (YanCheng) Co., Ltd./CSI Solar Power (China) Inc.
4. ET Solar Energy Limited
5. Hengdian Group DMEGC Magnetics Co., Ltd.
6. JA Solar Technology Yangzhou Co., Ltd.
7. Jiangsu High Hope Int'l Group
8. Jiawei Solarchina (Shenzhen) Co., Ltd.
9. JingAo Solar Co., Ltd.
10. Jinko Solar Import and Export Co., Ltd.
11. Nice Sun PV Co., Ltd.
12. Ningbo Qixin Solar Electrical Appliance Co., Ltd.
13. Shanghai BYD Co., Ltd.
14. Shanghai JA Solar Technology Co., Ltd.
15. Shenzhen Sungold Solar Co., Ltd.
16. Shenzhen Topray Solar Co., Ltd.
17. Sumec Hardware & Tools Co., Ltd.

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

[57] *See Initiation Notice*, 83 FR 8058.

[58] *See Rescission Notice*.

18. Taizhou BD Trade Co., Ltd.
19. Wuxi Tianran Photovoltaic Co., Ltd.
20. Xiamen Eco-sources Technology Co., Ltd.
21. Yingli Energy (China) Company Limited/Baoding Tianwei Yingli New Energy Resources Co., Ltd./Tianjin Yingli New Energy Resources Co., Ltd./Hengshui Yingli New Energy Resources Co., Ltd./Lixian Yingli New Energy Resources Co., Ltd./Baoding Jiasheng Photovoltaic Technology Co., Ltd./Beijing Tianneng Yingli New Energy Resources Co., Ltd./Hainan Yingli New Energy Resources Co., Ltd./ Shenzhen Yingli New Energy Resources Co., Ltd.
22. Zhejiang Sunflower Light Energy Science & Technology Limited Liability Company

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

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

a. Absence of *De Jure* Control

Commerce considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) legislative enactments decentralizing control over export activities of the companies; and (3) other formal measures by the government decentralizing control over export activities of companies.[59]

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

b. Absence of *De Facto* Control

Typically, Commerce considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) whether the export sales prices are set by, or are subject to the approval of, a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.[60] Commerce has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a

[59] *See Sparklers*, 56 FR at 20589.
[60] *See Silicon Carbide*, 59 FR at 22586-87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

degree of government control which would preclude Commerce from assigning them separate rates.

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

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

2. Wholly Foreign-Owned

For the companies in the above list that provided evidence that they are wholly foreign, there is no record evidence indicating that these companies are under the control of the Government of China (GOC). Thus, it is not necessary for Commerce to conduct a separate rate analysis to determine whether these companies are independent from government control.[61] Therefore, Commerce has preliminarily granted separate rate status to these companies.

3. Companies Not Receiving a Separate Rate

Commerce has not granted the following companies a separate rate because they did not file a separate rate application or certification, which, as stated in the *Initiation Notice*,[62] they were required to do to in order to be considered for separate-rate status. Because Commerce preliminarily determines that the companies listed below are not eligible for separate rate status, we are treating them as part of the China-wide entity. Because no party requested a review of the China-wide entity, the entity is not under review[63] and the entity's rate (*i.e.*, 238.95 percent)[64] is not subject to change.

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[61] *See, e.g., Seamless Refined Copper Pipe and Tube from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 26716, 26720 (May 12, 2010), unchanged in *Seamless Refined Copper Pipe and Tube from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 60725 (October 1, 2010).
[62] *See Initiation Notice*, 83 FR 8058.
[63] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963, 65969-70 (November 4, 2013).
[64] The China-wide entity rate was last changed in the first administrative review of this proceeding, and has been the applicable rate for the entity in each subsequent review, including the one most recently completed. *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; 2012-2013,* 80 FR 40998, 41002 (July 14, 2015) (*AR1 Final*); *AR4 Final FR,* 83 FR at 35618.

23. De-Tech Trading Limited HK
24. Dongguan Sunworth Solar Energy Co., Ltd.
25. Eoplly New Energy Technology Co., Ltd.
26. ERA Solar Co., Ltd.
27. Hangzhou Sunny Energy Science and Technology Co., Ltd.
28. Jinko Solar Co., Ltd.
29. Jinko Solar International Limited
30. LightWay Green New Energy Co., Ltd.
31. Systemes Versilis, Inc.
32. tenKsolar (Shanghai) Co., Ltd.
33. Yingli Green Energy Holding Company Limited
34. Yingli Green Energy International Trading Company Limited
35. Zhejiang Jinko Solar Co., Ltd.

4. Separate Rate for Eligible Non-Selected Respondents

The statute and Commerce's regulations do not address the establishment of a rate to be applied to individual respondents not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents which were not individually examined in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally "an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely {on the basis of facts available}." Accordingly, when only one weighted-average dumping margin for the individually investigated respondents is above *de minimis* and not based entirely on facts available, the separate rate will be equal to that single above *de minimis* rate.[65] However, when the weighted-average dumping margins established for all individually investigated respondents are zero, *de minimis*, or based entirely on facts available, section 735(c)(5)(B) of the Act permits Commerce to "use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated."

In these preliminary results, Commerce has calculated a rate for the mandatory respondents Chint Solar and Risen which are not zero, *de minimis*, or based entirely on facts available. Consistent with the practice noted above, we based the weighted-average dumping margin for the separate rate recipients not individually examined on the weighted-average of the dumping margins calculated for the mandatory respondents using the public values for U.S. exports of subject merchandise reported by each mandatory respondent.[66]

[65] *See Longkou Haimeng Mach. Co. v. United States*, 581 F. Supp. 2d 1344, 1357-60 (Ct. Int'l Trade 2008) (affirming Commerce's determination to assign a 4.22 percent dumping margin to the separate rate respondents in a segment where the three mandatory respondents received dumping margins of 4.22 percent, 0.03 percent, and zero percent, respectively); *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 36656, 36660 (July 24, 2009).
[66] *See* the Commerce memorandum entitled "2016-2017 Administrative Review of the Antidumping Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or not Assembled into Modules, from the People's Republic of China: Calculation of the Dumping Margin for Respondents Not Selected for Individual Examination," dated concurrent with this memorandum.

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

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

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

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

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.[67]
When selecting an AFA margin, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an "alleged commercial reality" of the interested party.

Certain unaffiliated tollers of inputs used to produce subject merchandise, as well as certain unaffiliated suppliers of solar cells and modules failed to provide FOP data necessary for calculating a weighted-average dumping margin for Chint Solar and Risen. As a result, in accordance with section 776(a)(1) of the Act, Commerce is preliminarily applying FA with respect to the unreported FOPs from the unaffiliated tollers. The record indicates that the tolled portions either represent relatively small percentages of the inputs consumed, the tollers only performed a relatively small portion of the total processing involved in producing the input, or the input accounts for a relatively small share of the overall costs of a solar module and thus

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

Commerce has used facts available, without adverse inferences, in place of the missing tolling information. However, Commerce preliminarily determines that it is appropriate to apply AFA, pursuant to sections 776(a) and 776(b) of the Act, with respect to the unreported FOPs for purchased solar cells and solar modules. These unreported FOPs for solar cells and solar modules represent a material amount of necessary FOP information. For details regarding these determinations with regard to purchases of solar cell and solar modules, as well as the tolling services, *see* the memoranda regarding unreported FOPs of Chint Solar and Risen.[68]

Surrogate Country Selection

Legal and Regulatory Framework

When Commerce investigates imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's FOPs, valued in a surrogate ME country or countries considered to be appropriate by Commerce. In accordance with section 773(c)(4) of the Act, in valuing the FOP, Commerce shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.[69] Further, pursuant to 19 CFR 351.408(c)(2), Commerce will normally value FOPs in a single country.

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

Interested Parties' Comments

On July 6, 2018, Commerce sent interested parties a letter inviting comments on surrogate country selection and SV data.[70] The petitioner, Chint Solar and Risen submitted comments in July and August 2018. The petitioner contends that Commerce should select Thailand as the primary surrogate country, consistent with the surrogate country selected in all previous administrative reviews of this order. The petitioner also noted that Thailand: 1) has a per capita gross national income (GNI) that is within a close proximate range to that of China; 2) is a substantial producer and exporter of identical and comparable merchandise; and 3) has usable, quality data to value all or virtually all inputs used to manufacture subject merchandise.[71] Risen maintains that Commerce should select either Bulgaria or Thailand as the primary surrogate

[68] *See* Commerce Memoranda entitled "Unreported Factors of Production: Chint Solar (Zhejiang) Co., Ltd." and "Unreported Factors of Production: Risen Energy Co. Ltd." issued concurrently with and hereby adopted by this notice. *See* the Commerce memorandum entitled "2016-2017 Administrative Review of the Antidumping Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or not Assembled into Modules, from the People's Republic of China: Calculation of the Dumping Margin for Respondents Not Selected for Individual Examination," dated concurrently with this notice.
[69] *See* Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin).
[70] *See* the Commerce memorandum entitled "Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information," dated July 6, 2018 (Request for SC and SV Comments).
[71] *See* letter from the petitioner entitled "Comments on Surrogate Country Selection," dated July 25, 2018.

country, noting that both countries are on the list of economically comparable countries, have at least one producer of solar modules, have been relied upon as the primary surrogate country in other cases, and that parties have submitted full surrogate values records sourced in Thailand and Bulgaria in the past reviews of this order.[72] Chint Solar asserted that Commerce should apply a flexible approach to its selection of surrogate values, rather than limited values from countries on its initial surrogate country list.[73] Chint Solar stated later that because all six countries on the surrogate country list are significant producers of comparable merchandise, the choice of surrogate country should be based on the best surrogate value data for material inputs and best quality financial statements of producers of identical merchandise.[74] Our surrogate country analysis is below.

Economic Comparability

In Commerce's July 6, 2018, request for surrogate country and SV Comments, Commerce identified six countries as being at the level of economic development of China for the POR. The countries identified in that memorandum are Brazil, Bulgaria, Mexico, Romania, South Africa and Thailand.[75]

Commerce determined economic comparability based on per capita GNI, as reported in the most current annual issue of the *World Development Report*.[76] The countries identified above are not ranked and are considered equivalent in terms of economic comparability to China.

Significant Producers of Identical or Comparable Merchandise

While the statute does not define "significant" or "comparable," Commerce's practice is to evaluate whether production is significant based on characteristics of world production of, and trade in, comparable merchandise (subject to the availability of data on these characteristics) and to determine whether merchandise is comparable on a case-by-case basis.[77] Where there is no production information, Commerce has relied upon export data from potential surrogate countries. With respect to comparability of merchandise, in all cases, if identical merchandise is produced in a country, the country qualifies as a producer of comparable merchandise. Where

[72] *See* letter from Risen entitled "China Surrogate Country Comments," dated July 25, 2018.
[73] *See* letter from Chint Solar entitled "Chint Solar's Surrogate Country Comments," dated July 25, 2018.
[74] *See* letter from Chint Solar entitled "Chint Solar's Comments on the List of Economically Comparable Countries," dated July 13, 2018.
[75] *See* Request for SC and SV Comments at Attachment.
[76] *See* Policy Bulletin at 2 (endnotes omitted); *see e.g.*, *Utility Scale Wind Towers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 75992 (December 26, 2012) and the accompanying Issues and Decision Memorandum at Comment 1. Although 19 CFR 351.408(b) instructs Commerce to rely on gross domestic product ("GDP") data in such comparisons, it is Commerce's practice to use "per capita GNI, rather than per capita GDP, because while the two measures are very similar, per capita GNI is reported across almost all countries by an authoritative source (the World Bank), and because Commerce finds that the per capita GNI represents the single best measure of a country's level of total income and thus level of economic development." *See Antidumping Methodologies in Proceedings Involving Non-Market Economy Countries: Surrogate Country Selection and Separate Rates*, 72 FR 13246, 13246 n.2 (March 21, 2007).
[77] *See Xanthan Gum from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 78 FR 2252 (January 10, 2013) and accompanying Preliminary Decision Memorandum at 4-7, unchanged in *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33350 (June 4, 2013).

there is no evidence of production of identical merchandise in a potential surrogate country, Commerce has determined whether merchandise is comparable to the subject merchandise on the basis of similarities in physical form and the extent of processing or on the basis of production factors (physical and non-physical) and factor intensities. Since these characteristics are specific to the merchandise in question, the standard for 'significant producer' will vary from case to case.[78]

There are no country-wide statistics regarding the production of merchandise that is identical or comparable to subject merchandise on the record of this review for any of the economically comparable countries identified above. However, the record does contain information indicating that manufacturers of merchandise identical to subject merchandise are located in certain potential surrogate countries. Specifically, the record shows that Thailand has several manufacturers that not only assemble solar cells into solar modules, but also produce solar cells.[79] While the record shows that Bulgaria had an assembler of solar modules, there is no evidence that Bulgaria had any producers of solar cells.

Moreover, the record also contains evidence of production of comparable merchandise in the form of export data, which is one of the factors we consider in determining whether a country is a significant producer of comparable merchandise. Export data from UN Comtrade demonstrates that Brazil, Bulgaria, Mexico, Romania, South Africa, and Thailand exported merchandise during the POR that is identical or comparable to subject merchandise.[80]

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

Data Availability and Quality

When evaluating SV data, Commerce considers several factors including whether the SVs are publicly available, contemporaneous with the period under consideration, broad-market averages, from an appropriate surrogate country, tax and duty-exclusive, and specific to the input being valued.[81] Commerce's preference is to satisfy the breadth of these aforementioned selection factors.[82]

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

[79] *See* letter from the petitioner entitled "Comments on Surrogate Country Selection," dated July 25, 2018 at Exhibit 1.

[80] *Id.* at Exhibit 3.

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

[82] *Id.*

Parties have placed on the record import data from only Thailand that provide prices with which to value nearly all of the inputs used by Chint Solar and Risen in producing subject merchandise.[83] An examination of the import data submitted by parties indicates that the Thai data are publicly available, contemporaneous with the period under consideration, broad-market averages, tax and duty-exclusive and are specific to the inputs that we are valuing given that these manufacturers could be importing inputs actually used in the production of solar cells.[84]

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

Date of Sale

Commerce will normally, in accordance with 19 CFR 351.401(i), "use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business," as the date of sale. The regulation provides further that Commerce may use a date other than the date of the invoice if the Secretary is satisfied that a different date better reflects the date on which the material terms of sale are established.[85] Finally, Commerce has a long-standing practice of finding that, where the shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.[86]

Both Chint Solar and Risen reported that the date of sale was the earlier of the invoice date or the shipment date from the factory for sales to its unaffiliated U.S. customers.[87] Therefore, we used the earlier of the invoice date or the shipment date as the date of sale for Chint Solar and Risen, in accordance with our regulation and practice.

Fair Value Comparisons

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

Determination of Comparison Method

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[83] *See* the petitioner, Chint Solar, and Risen's surrogate value comments placed on the record August 14, 2018 and October 9, 2018. See also the petitioner's surrogate value comments placed on the record August 24, 2018.
[84] *See* Chint Solar's June 25, 2018 Section D Response and Risen's May 15, 2018 Section D Response.
[85] *See* 19 CFR 351.401(i); see also Allied Tube & Conduit Corp. v. United States, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).
[86] *See, e.g., Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 11 (Shrimp from Thailand); *see also Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2 (SBB from Germany); *see also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Preliminary Results and Preliminary Rescission of New Shipper Review; 2015-2016*, 82 FR 31301 (July 6, 2017).
[87] *See* Risen's June 20, 2018, Supplemental Section C questionnaire response at 4 and Chint Solar's June 15, 2018 Supplemental Section C questionnaire response at 16.

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates dumping margins by comparing weighted-average NVs to weighted-average export prices (EPs) or constructed export prices (CEPs) (the average-to-average comparison method) unless Commerce determines that another method is appropriate in a particular situation. In AD investigations, Commerce examines whether to compare weighted-average NVs to the prices of individual export transactions (the average-to-transaction comparison method) as an alternative comparison method using an analysis consistent with section 777A(d)(l)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce's examination of this question in the context of administrative reviews, Commerce nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in AD investigations.[88]

In recent investigations and reviews, Commerce applied a "differential pricing" analysis to determine whether the application of average-to-transaction comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.[89] Commerce finds the differential pricing analysis used in those recent investigations and reviews may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review.[90] Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average comparison method in calculating weighted-average dumping margins.

The differential pricing analysis used in these preliminary results of review requires a finding of a pattern of prices (*i.e.*, EPs or CEPs) for comparable merchandise that differs significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average comparison method to calculate the weighted-average dumping margin. The differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported customer names. Regions are defined using the reported destination code (*i.e.*, city name, zip code, *etc.*) and are grouped based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR

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

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

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

being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region and time period, that Commerce uses in making comparisons between EP or CEP and NV for the individual dumping margins.

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

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

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

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

Results of the Differential Pricing Analysis

The results of the differential pricing analysis for Chint Solar demonstrate that more than 33 percent but less than 66 percent of the company's U.S. sales pass the Cohen's *d* test. However, Commerce finds that there is not a meaningful difference in the weighted-average dumping margins calculated using the average-to-average comparison method and the average-to-transaction comparison method when both methods are applied to all sales. Accordingly, for these preliminary results, Commerce is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Chint Solar.

The results of the differential pricing analysis for Risen demonstrate that more than 66 percent of the company's U.S. sales pass the Cohen's *d* test. However, Commerce finds that there is not a meaningful difference in the weighted-average dumping margins calculated using the average-to-average comparison method and the average-to-transaction comparison method when both methods are applied to all sales. Accordingly, for these preliminary results, Commerce is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Risen.

U.S. Price

In accordance with section 772(b) of the Act, CEP is "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d)." Section 772(a) of the Act defines EP as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c)."

Constructed Export Price

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

Export Price

In accordance with section 772(a) of the Act, we calculated an EP for certain U.S. sales reported by Chint Solar and all sales by Risen. We calculated EP based on the packed prices at which subject merchandise was sold to unaffiliated purchasers in the United States, or sold for exportation to the United States. We made deductions from U.S. price for movement expenses, as appropriate (*e.g.*, foreign inland freight from the plant to the port of exportation, domestic brokerage, international freight to the port of importation), in accordance with section 772(c)(2)(A) of the Act. Where foreign inland freight or foreign brokerage and handling fees were provided by Chinese service providers or paid for in renminbi, we based those charges on surrogate value rates. Where applicable, we also adjusted U.S. price by the value of certain materials provided free of charge.

Value-Added Tax (*VAT*)

Commerce's recent practice, in NME cases, is to subtract from CEP or EP the amount of any un-refunded (irrecoverable) VAT in accordance with section 772(c)(2)(B) of the Act.[91] Where the irrecoverable VAT is a fixed percentage of the U.S. price, Commerce makes a tax-neutral dumping calculation by reducing the U.S. price by this percentage.[92] Thus, Commerce's methodology essentially amounts to performing two basic steps: (1) determining the amount (or rate) of the irrecoverable VAT tax on subject merchandise, and (2) reducing U.S. price by the amount (or rate) determined in step one.

The Chinese VAT schedule placed on the record of this review demonstrates that the VAT rate is 17 percent and the rate for rebating VAT on subject merchandise upon exportation is 17 percent.[93] Thus, the record indicates that there is no irrecoverable VAT associated with the exportation of subject merchandise. For the purposes of these preliminary results of review, therefore, we have not reduced U.S. prices for VAT.

<u>Normal Value</u>

Section 773(c)(1) of the Act provides that Commerce shall determine NV using an FOP methodology if the merchandise is exported from an NME country and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. Commerce bases NV in an NME case on FOPs because the presence of government controls on various aspects of NME countries renders price comparisons and the calculation of production costs invalid under Commerce's normal methodologies.[94] Under section 773(c)(3) of the Act, FOPs include, but are not limited to: (1)

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[91] *See Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings,* 77 FR 36481, 36483-84 (June 19, 2012).
[92] *Id.*
[93] *See* Chint Solar's June 15, 2018, Section C Response at 43 and Exhibit C-15.1.
[94] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products from the People's Republic of China*, 71 FR 19695, 19703 (April 17, 2006), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's*

hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs.

Factor Valuation Methodology

In accordance with section 773(c) of the Act and 19 CFR 351.408(c)(1), we calculated NV by multiplying the reported per-unit FOPs consumption rates by publicly available SVs.[95] When selecting SVs, Commerce considered, among other criteria, whether the SV data on the record were publicly available, broad market averages, contemporaneous with the period under consideration or closest in time to that period, product-specific, and tax-exclusive.[96] As appropriate, Commerce adjusted FOP costs by including freight costs to make them delivered values. Specifically, Commerce added a surrogate freight cost, where appropriate, to surrogate input values using the shorter of the reported distance from the domestic supplier to the respondent's factory or the distance from the nearest seaport to the respondent's factory.[97] In those instances where we could not value FOPs using SVs that are contemporaneous with the POR, we adjusted the SVs using inflation indices. An overview of the SVs used to calculate the weighted-average dumping margin for Chint Solar and Risen is below. A detailed description of all SVs used to calculate the weighted-average dumping margin for Chint Solar and Risen can be found in the Preliminary Surrogate Value Memorandum.[98]

Direct and Packing Materials

The record shows that Global Trade Atlas (GTA) import statistics from the primary surrogate country, Thailand, are generally contemporaneous with the POR, publicly available, product-specific, tax-exclusive, and represent broad market average prices.[99] Thus, except as noted below, we based SVs for Chint Solar and Risen's direct materials and packing materials on these import values and, where appropriate, valued other items, such as certain movement expenses, using other publicly available Thai data on the record.[100]

We disregarded certain import values when calculating SVs. We have continued to apply Commerce's long-standing practice of disregarding import prices that we have reason to believe

Republic of China, 71 FR 53079 (September 8, 2006).

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

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

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

[98] *See* the Commerce memorandum entitled "Factor Valuation Memorandum," dated concurrently with this memorandum (Preliminary Surrogate Value Memorandum).

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

[100] *See* Preliminary Surrogate Value Memorandum.

or suspect are subsidized or dumped.[101] In this regard, Commerce previously found that it is appropriate to disregard prices of imports from India, Indonesia, South Korea, and Thailand because it determined that these countries maintain broadly available, non-industry specific export subsidies.[102] Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, Commerce finds that it is reasonable to infer that all exporters in India, Indonesia, and South Korea may have benefitted from these subsidies. Therefore, we have not used the prices of Thai imports of goods from India, Indonesia, and South Korea in calculating the import-based SVs. Additionally, in selecting import data for SVs, we disregarded prices from NME countries.[103] Finally, we excluded from our calculation of the average import value any imports that were labeled as originating from an "unspecified" country, because we could not be certain that they were not from either an NME country or a country with generally available export subsidies.[104]

We valued wafers and monocrystalline rods using international prices from *Bloomberg New Energy Finance*.[105] There are a number of factors, which when considered together, weigh in favor of valuing wafers using international prices rather than Thai import values. First, the international prices on the record are specific to the solar-grade wafers used by Chint Solar and Risen in producing subject merchandise. The Thai HTS category covering silicon wafers – HTS 3818 (chemical elements doped for use in electronics, in the form of discs, wafers or similar forms; chemical compounds doped for use in electronics) – is not further itemized and covers a wide range of products that may not specifically reflect the cost of solar-grade wafers.[106] Second, wafers for solar cells are primarily made of polysilicon. As stated above, in the investigation and first four administrative reviews of this proceeding, we found that differences in silicon purity levels can result in significant price differences.[107] Given the wide range of

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

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

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

[104] *Id.*

[105] *See* Chint Solar's August 14, 2018, SV Comments at Exhibit 3.

[106] *See* the Preliminary Surrogate Value Memorandum at Exhibit 1, Imports_Extract tab.

[107] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part*, 77 FR 63791, 63795 (October 17, 2012) (*Solar Cells Investigation*) and accompanying Issues and Decision Memorandum at Comment 24 ("As explained in the *Preliminary Determination,* and reiterated in Comment 9 addressing the surrogate value for wafers, there is substantial evidence on the record leading

products covered by the Thai HTS number covering wafers, it is more likely that the Thai imports include products with a silicon purity level that significantly differs from the silicon purity level required for wafers used to manufacture solar cells. By contrast, the international prices are specific to wafers used in solar products because they are from a publication that covers the solar industry.[108]

Given this unique combination of facts, we preliminarily find, for purposes of this administrative review, and consistent with the prior four administrative review of this proceedings, it is appropriate to value wafers using international wafer prices. Because monocrystalline rods are similar to wafers, we also preliminarily find it appropriate to value monocrystalline rods using international wafer prices.[109] For all of the above reasons, we are preliminarily valuing wafers and monocrystalline rods using equally weighted prices from *Bloomberg New Energy Finance*. We did not inflate or deflate the prices because they are contemporaneous with the POR.[110]

Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from an ME supplier in meaningful quantities and pays for the inputs in an ME currency, Commerce uses the actual price paid by the respondent to value those inputs, except when prices may have been distorted by findings of dumping and/or subsidization.[111] Where Commerce finds ME purchases to be of significant quantities (*i.e.*, 85 percent or more of total purchases of the input), in accordance with

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Commerce to question whether the import prices are representative of the price of polysilicon. The purity level required for polysilicon used in manufacturing solar cells is very precise. The import data from the potential surrogate countries are from an HTS category that covers silicon products with various levels of purity. Moreover, record evidence indicates that there are dramatic price differences between silicon with different purity levels. Also, there are extreme variations in the AUVs for the applicable HTS category both between and within potential surrogate countries indicating that that imports may at times primarily consist of lower purity silicon, possibly not of a solar grade, or extremely high purity electronics grade polysilicon, neither of which is the input being valued."); *see also Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2012-2013*, 80 FR 1021 (January 8, 2015) (*AR1 Prelim*) and accompanying Preliminary Decision Memorandum at the section entitled "Direct and Packing Materials," unchanged in *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2012- 2013*, 80 FR 40998 (July 14, 2015) (*AR1 Final*), and accompanying Issues and Decision Memorandum at Comment 14. *see also Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2013-2014*, 80 FR 80746 (December 28, 2015) (*AR2 Prelim*) and accompanying Preliminary Decision Memorandum at the section entitled "Direct and Packing Materials," unchanged in *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2013-2014*, 81 FR 39905 (June 20, 2016) (*AR2 Final*); *see also Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2014-2015,* 81 FR 93888 (December 22, 2016), and accompanying Preliminary Decision Memorandum at the section entitled "Direct and Packing Materials," unchanged in in *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014-2015,* 82 FR 29033 (June 27, 2017); *see also* AR4 PDM at the section entitled "Direct and Packing Materials," unchanged in *AR4 Final FR*.

[107] *See* Preliminary Surrogate Value Memorandum.

[108] *See* Chint Solar's August 14, 2018, SV Comments at Exhibit 3.

[109] *See* Risen's July 31, 2018, supplemental questionnaire response at 64.

[110] *See* Chint Solar's August 14, 2018, SV Comments at Exhibit 3. *See also* Preliminary Surrogate Value Memorandum at 2, 3, and Exhibit III.

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

the statement of policy as outlined in *Antidumping Methodologies: Market Economy Inputs*,[112] Commerce uses the actual purchase prices to value the inputs. Alternatively, when the volume of an NME firm's purchases of an input from ME suppliers during the period is below 85 percent of its total volume of purchases of the input during the period, but where these purchases are otherwise valid and there is no reason to disregard the purchase prices, Commerce will typically weight-average the ME purchase prices with an appropriate SV, according to their respective shares of the total volume of purchases.[113] When a firm's ME purchases may have been based on dumped or subsidized sales, are not *bona fide*, or are otherwise not acceptable for use in a dumping calculation, Commerce will exclude them from its calculation to determine whether there were significant quantities of ME purchases (the 85 percent threshold).[114]

Risen provided evidence of ME purchases of inputs during the POR that were paid for in an ME currency.[115] Chint Solar reported making no market purchases of inputs during the POR. Thus, consistent with 19 CFR 351.408(c)(1), we used Risen's reported ME purchase prices in valuing certain FOPs, either in whole or in part, based upon purchase volume.[116]

Utilities

We valued electricity using Thai data from the Provincial Electricity Authority (PEA), as compiled by the Board of Investment of Thailand (BOI).[117] We valued water using data from Thailand's Metropolitan Waterworks Authority (MWA), as compiled by the BOI.[118] We did not inflate or deflate the prices because they are contemporaneous with the POR.[119]

Labor

We valued Chint Solar and Risen's labor based on Thailand's National Statistical Office (NSO) data from surveys concerning wages during the POR.[120] Because these rates were in effect during the POR, we did not inflate or deflate them.[121]

Movement Services

[112] *See Use of Market Economy Input Prices in Nonmarket Economy Proceedings*, 78 FR 46799 (August 2, 2013) (*Market Economy Inputs*).
[113] *Id.*
[114] *Id.*
[115] *See* Risen's May 15, 2018 Section D Response at D-6 and Exhibit D-6.
[116] *See* Memorandum entitled Preliminary Results Analysis Memoranda - Risen, dated concurrently with this memorandum.
[117] *See* the Preliminary Surrogate Value Memorandum at Exhibit VII.
[118] *See* the petitioner's August 14, 2018, SV submission at Exhibit 6.
[119] *See* the Preliminary Surrogate Value Memorandum at Exhibits IV and VI.
[120] *See* the petitioner's August 14, 2018, SV submission at Exhibit 4.
[121] *See* the Preliminary Surrogate Value Memorandum at Exhibit V.

We valued foreign inland truck freight services using the World Bank's publication, *Doing Business 2018 (Thailand*).[122] We did not inflate or deflate the inland truck freight rate in this report because the report covered a period contemporaneous with the POR.[123]

We valued U.S. inland truck freight services using the World Bank's publication, *Doing Business 2018 (U.S.*).[124] We did not inflate or deflate the inland truck freight rate in this report because the report covered a period contemporaneous with the POR.[125]

We valued foreign brokerage and handling services using the World Bank's publication, *Doing Business 2018 (Thailand*).[126] We did not inflate or deflate the brokerage and handling charge in this publication because the survey used to obtain the charge requested data from a period contemporaneous with the POR.[127]

We valued U.S. brokerage and handling services using the World Bank's publication, *Doing Business 2018 (U.S.*).[128] We did not inflate or deflate the brokerage and handling charge in this publication because the survey used to obtain the charge requested data from a period contemporaneous with the POR.[129]

We valued domestic inland insurance using data placed on the record by Chint Solar, which consists of publicly ranged domestic inland insurance prices reported by the respondent PT Cheil Jedang Indonesia in the antidumping investigation of Monosodium Glutamate from Indonesia.[130]

We valued marine insurance expense using a rate offered by RJG Consultants.[131] RJG Consultants is a ME provider of marine insurance. The rate is a percentage of the value of the shipment; thus, we did not inflate or deflate the rate. Because there are no source data for domestic inland insurance on the record, we also valued domestic inland insurance using the marine insurance rate.

We valued ocean freight based on rates identified by Maersk Line at its website,[132] and by Descartes identified at its website.[133] These rates are publicly available and cover a wide range of shipping routes which are reported on a daily basis. We did not inflate or deflate the rates because the rates on which we based the surrogate values are contemporaneous with the POR.

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[122] *See* the petitioner's August 14, 2018, SV submission at Exhibit 7; *see also* Risen's August 14, 2018 SV submission at Exhibit 8.
[123] *See* the Preliminary Surrogate Value Memorandum at Exhibit X.
[124] *Id* at Exhibit XIII.
[125] *Id* at Exhibit XI.
[126] *See* the petitioner's August 14, 2018, SV submission at Exhibit 7; *see also* Risen's August 14, 2018 SV submission at Exhibit 8.
[127] *See* the Preliminary Surrogate Value Memorandum at Exhibit VIII.
[128] *Id.* at Exhibit XIII.
[129] *Id.* at Exhibit IX.
[130] *See* Chint Solar's August 14, 2018, SV submission at Exhibit 8B.
[131] *See* the petitioner's August 14, 2018, SV submission at Exhibit 8.
[132] *See* the petitioner's August 14, 2018 submission at Exhibit 11 and petitioner's October 29, 2018 submission at Exhibit 11.
[133] *See* Risen's August 14, 2018 submission at Exhibit 10 and its October 29, 2018 submission at Exhibit 10.

Overhead and Financial Expenses

Pursuant to 19 CFR 351.408(c)(4), Commerce values overhead, selling, general and administrative (SG&A) expenses, and profit using publicly available information gathered from producers of identical or comparable merchandise in the surrogate country. The record contains financial statements from five Thai companies, (Hana Microelectronics Public Co., Ltd. (Hana),[134] KCE Electronics Public Company Limited (KCE),[135] Styromatic (Thailand) Co., Ltd. (Styromatic),[136] Full Solar Co., Ltd. (Full Solar),[137] and Ekarat Engineering (Public) Co., Ltd. (Ekarat).[138] The record also contains financial statements from two Indonesian companies, PT Sky Energy Indonesia TBK (PT Sky)[139] and PT Len Industri (Persero) (PT Len).[140] All of these financial statements show a profit and cover a period contemporaneous with the POR. Hana, KCE, and Styromatic are manufacturers and assemblers of electronic components and circuit boards which Commerce has considered to be comparable merchandise in the investigation in this proceeding.[141] Full Solar's and Ekarat's financial statements indicate that these companies produce identical merchandise; specifically, Full Solar produces solar cells and Ekarat manufactures solar modules and can produce solar cells.[142] Because we have preliminarily relied on Full Solar's 2017 financial statements as discussed in greater detail below, we have not considered the financial statements of Indonesian companies because Indonesia is not on the list of potential surrogate countries.[143]

Hana's, KCE's, Styromatic's, and Ekarat's financial statements indicate that these companies received subsidies which Commerce has found to be countervailable.[144] However, Full Solar's financial statements do not indicate that Full Solar benefited from countervailable subsidies. While the petitioner submitted information which designates Full Solar as a Thai Board of Investment (BOI) promoted company,[145] neither this information, nor the financial statements, demonstrate that Full Solar benefited from a BOI program which Commerce has previously found to be a countervailable subsidy program. Commerce's practice is not to rely on financial statements where there is evidence that the company received countervailable subsidies when there are other reliable and representative data on the record for purposes of calculating surrogate financial ratios.[146] Accordingly, because Full Solar's financial statements do not show evidence

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[134] *See* Risen's August 15, 2018, SV Submission at Exhibit 12; *see also* the petitioner's August 15, 2018 SV submission at Exhibit 9; *see also* Chint Solar's October 9, 2018, SV Comments at Exhibit 6A. Risen, Chint Solar, and the petitioner all submitted Hana's 2017 statements.
[135] *See* the petitioner's August 15, 2018 SV submission at Exhibit 9; *see also* Chint Solar's October 9, 2018, SV Comments at Exhibit 6B. Both the petitioner and Chint Solar submitted KCE's 2017 statements.
[136] *See* Chint Solar's August 15, 2018, SV submission at Exhibit 7B (Styromatic's 2016 statements).
[137] *See* Chint Solar's August 15, 2018, SV submission at Exhibit 7A (Full Solar's 2016 statements); see also Risen's October 9, 2018, SV submission at Exhibit SV2-3 (Full Solar's 2017 statements)
[138] *See* the petitioner's October 9, 2018, SV submission at Exhibit 3G (Ekarat's 2017 statements)
[139] *See* the petitioner's October 9, 2018, SV submission at Exhibit 3F (PT Sky's 2017 statements)
[140] *See* the petitioner's October 9, 2018, SV submission at Exhibit 3E (PT Len's 2016 statements)
[141] *See Solar Cells Investigation* and accompanying Issues and Decision Memorandum at Comment 2.
[142] *See* Full Solar's 2016 and 2017 financial statements at Note 1; *see also* Ekarat's 2017 statements at 12.
[143] Request for SC and SV Comments at Attachment I.
[144] See Note 25 of Hana's financial statements, Note 29 of KCE's financial statements, Note 18 of Styromatic's financial statements, and Note 33 of Ekarat' financial statements.
[145] *See* the petitioner's August 22, 2018 Rebuttal SV comments at Exhibit 2B.
[146] *See, e.g., Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2009-2010*, 78 FR 11143 (February 15, 2013) and accompanying Issues and Decision Memorandum at Comment 14.

of countervailable subsidies, are contemporaneous with the POR, audited, and reflect a producer of merchandise comparable to the subject merchandise in the primary surrogate country, Commerce preliminarily finds that Full Solar's 2017 financial statements constitute the best available information for calculating surrogate financial ratios.[147]

Adjustments for Countervailable Subsidies

In applying section 777A(f) of the Act, Commerce examines: (1) whether a countervailable subsidy (other than an export subsidy) has been provided with respect to a class or kind of merchandise, (2) whether such countervailable subsidy has been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period, and (3) whether Commerce can reasonably estimate the extent to which that countervailable subsidy, in combination with the use of NV determined pursuant to section 773(c) of the Act, has increased the weighted-average dumping margin for the class or kind of merchandise.[148] For a subsidy meeting these criteria, the statute requires Commerce to reduce the dumping margin by the estimated amount of the increase in the weighted-average dumping margin due to a countervailable subsidy, subject to a specified cap.[149] In conducting this analysis, Commerce has not concluded that concurrent application of NME dumping duties and countervailing duties (CVDs) necessarily and automatically results in overlapping remedies. Rather, a finding that there is an overlap in remedies, and any resulting adjustment, is based on a case-by-case analysis of the totality of facts on the administrative record for that segment of the proceeding as required by the statute.

For purposes of our analysis under sections 777A(f)(1)(A) and (f)(1)(C) of the Act, Commerce requested firm-specific information from Chint Solar and Risen.[150] The information sought included information regarding whether countervailed subsidies were received during the relevant period, information on costs, and information regarding the respondent's pricing policies and practices. Additionally, the respondents were required to provide documentary support for the information provided. On May 2, 2018, and May 29, 2018, Chint Solar and Risen, respectively, submitted responses to Commerce's firm-specific double remedies questionnaire.[151] The responses included information concerning countervailable subsidies received during the relevant period, as well as information regarding Chint Solar and Risen's costs and pricing policies and practices.

Analysis

In performing the analysis under section 777A(f)(1)(B) of the Act for this review, Commerce examined whether International Trade Commission (ITC) import data showed a reduction in the price of imports of the class or kind of merchandise during the relevant period. In this case, merchandise covered by the AD order is classified under the following HTSUS subheadings:

[147] S*ee* Preliminary Surrogate Value Memorandum.
[148] *See* Section 777A(f)(1)(A)-(C) of the Act.
[149] *See* Section 777A(f)(1)-(2) of the Act.
[150] *See* Commerce's Letter re: Double Remedies Questionnaire, issued to Resin on March 15, 2018 and to Chint Solar on April 19, 2018.
[151] *See* Risen's April 23, 2018, Double Remedies Questionnaire Response. *See also* Chint Solar's May 29, 2018, Double Remedies Questionnaire Response.

8501.31.8000 (Other DC motors; DC generators: Of an output not exceeding 750 W: Motors: Generators), 8501.61.0000 ("AC generators (alternators): Of an output not exceeding 75 kVA"), 8507.20.80 (Other lead-acid storage batteries: Other), 8541.40.6020 (Solar Cells: Assembled into modules or made up into modules), and 8541.40.6030 (Solar Cells: Other).[152] While imports of subject merchandise may enter under any of these five HTSUS subheadings, the descriptions of categories 8501.31.8000, 8501.61.0000, and 8507.20.80 suggest that imports classified in these categories would be likely to include imports of a significant amount of non-subject merchandise. As a result, import data for these particular HTSUS subheadings may be unreliable for purposes of determining whether a reduction in the price of imports of the class or kind of merchandise under review may have occurred during the relevant period. Conversely, the descriptions of HTSUS subheadings 8541.40.6020 and 8541.40.6030 closely match the description of subject merchandise which suggests that these subheadings would be likely to cover primarily subject merchandise.

After reviewing the relevant import data for the relevant period, we find that both HTSUS subheadings 8541.40.6020 (solar modules) and 8541.40.6030 (solar cells) show a general decrease in the average import price.[153] Based on this analysis, Commerce has preliminarily determined that ITC import data for the subject merchandise shows a general decrease in the U.S. average import price during the relevant period, *i.e.*, the POR.[154] Thus, Commerce preliminarily finds that the requirement under section 777A(f)(1)(B) of the Act has been met.

In accordance with section 777A(f)(1)(A) of the Act, Commerce examined whether a countervailable subsidy (other than an export subsidy) has been provided with respect to a class or kind of merchandise. Chint Solar provided monthly costs associated with its purchases of polysilicon, solar glass, aluminum extrusions, and electricity.[155] Risen also provided monthly costs associated with its purchases of polysilicon, solar glass, aluminum extrusions, and electricity.[156] Because Commerce found the provision of polysilicon, solar glass, aluminum extrusions, and electricity for less than adequate remuneration (LTAR) to be countervailable with respect to the class or kind of merchandise under consideration in the most recently completed CVD review, Commerce preliminarily finds that the requirement of section 777A(f)(1)(A) of the Act has been met.

Additionally, in accordance with 777A(f)(1)(C) of the Act, Commerce examined whether Chint Solar and Risen demonstrated: (1) a subsidies-to-cost link, *i.e.*, a subsidy effect on the cost of manufacturing (COM) the merchandise under consideration; and (2) a cost-to-price link, *i.e.*, respondent's prices were dependent on changes in the COM. With respect to the subsidies-to-

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[152] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order*, 77 FR 73018 (December 7, 2012).
[153] *See* Commerce memorandum "2016-2017 Antidumping Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Domestic Subsidy Adjustment Analysis Memorandum," (Double Remedies Memorandum) dated concurrently with this memorandum. We note that the ITC import data indicates that there were no imports of merchandise under HTSUS subheading 8541.40.6030 (solar cells) from China during December 2016 and February 2017. Absent these per-unit price points for December 2016 and February 2017, we find that HTSUS subheading 8541.40.6030 shows a general decrease in the average import price during the POR.
[154] *Id*.
[155] *See* Chint Solar's May 29, 2018, Double Remedy Questionnaire Response at Exhibits DR-1 through DR-8.
[156] *See* Risen's April 23, 2018, Double Remedy Questionnaire Response at Exhibits DR-3 and DR-4.

cost link, in the Double Remedies Questionnaire Response, Chint Solar and Risen reported that they consumed polysilicon, solar glass, aluminum extrusions, and electricity in the production of subject merchandise. Furthermore, Chint Solar and Risen demonstrated that changes in the costs of these inputs occurred on a monthly basis, and they provided information indicating that the subsidy programs affected its COM on a monthly basis. Additionally, Risen provided "Inventory Out Slip Details" of raw materials generated by their electronic accounting system which demonstrated that solar glass, polysilicon material, and aluminum frames costs are reflected in the cost of production (COP) ledger and thus impact Risen's cost of production. Thus, Commerce preliminarily concludes that Chint Solar and Risen has established a subsidies-to-cost link because subsidies for the provision of polysilicon, solar glass, aluminum extrusions, and electricity for LTAR impact Chint Solar and Risen's costs for producing subject merchandise.

For the cost-to-price link, Commerce examined whether Chint Solar and Risen demonstrated that changes in costs affected, or were taken into consideration when setting, prices. Chint Solar explained that the sales department receives weekly cost of production reports from the finance department, and that they primarily rely upon the cost of production reports when setting prices. The COP reports take into consideration various factors such as raw material pricing, inventory data, production data, and module and cell efficiency data. Chint Solar also stated that, to a lesser degree, it also communicates with customers to gauge the market price of products. Risen explained that the primary factors it considered when setting the prices of exports of subject merchandise to the United States are the cost of sales, including the COP (which included the costs of all materials inputs), COM overheads (which included the cost of electricity and other energies), and the costs of labor.

Based on the above, Commerce finds that Chint Solar and Risen provided adequate information to establish a linkage between subsidies (the provisions of polysilicon, solar glass, aluminum extrusions, and electricity), costs, and prices. Because the record indicates that factors other than the cost of polysilicon, solar glass, aluminum extrusions, electricity affect Chint Solar's and Risen's prices to customers, Commerce is using a documented ratio of cost-price changes for the Chinese manufacturing sector as a whole, which is based on data provided by Bloomberg Finance L.P., to estimate the extent of the subsidy pass-through.[157] Therefore, Commerce is making a pass-through adjustment in its calculation of the weighted-average dumping margin for Chint Solar and Risen.[158]

Export Subsidy Adjustment

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. The non-cooperation by the GOC in the most recently completed CVD administrative review resulted in the application of facts

[157] *See* Double Remedies Memorandum at Exhibit 1.
[158] *Id.* at Exhibit 2.

available with an adverse inference with respect to the Export Buyer's Credits program;[159] however, Commerce did not determine that the program in question was export contingent.[160] Without a determination in the most recently completed CVD administrative review that this program provides an export subsidy, we find it is not appropriate to increase Chint Solar's and Risen's U.S. prices pursuant to section 772(c)(1)(C) of the Act.[161]

Separate Rate Companies

In this review, as we are basing the dumping margin for the non-individually examined exporters granted separate rate status on the weighted-average dumping margins of Chint Solar and Risen. In *Solar Cells CVD Final Results 2015*, Commerce did not individually examine the non-individually examined respondents in this review that are preliminarily eligible for separate rates.[162] Therefore, the adjustment to account for domestic subsidies for these exporters is based on the domestic subsidy pass-through determined for Chint Solar and Risen.[163]

Currency Conversion

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

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[159] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2015, 83 FR 34828 (July 23, 2018) (Solar Cells CVD Final Results 2015)* and accompanying Issues and Decision Memorandum at Comment 2.
[160] *Id*.
[161] *See Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China*; *2014-2016*, 82 FR 32170 (July 5, 2017), and accompanying Issues and Decision Memorandum at Comment 2.
[162] *See Solar Cells CVD Final Results 2015*, amended in *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Amended Final Results of Countervailing Duty Administrative Review; 2015*, 83 FR 54566 (October 30, 2018).
[163] *See* Double Remedies Memorandum at 2.

RECOMMENDATION

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

☒	☐
Agree	Disagree

12/20/2018

X

Signed by: PRENTISS SMITH

P. Lee Smith
Deputy Assistant Secretary
For Policy and Negotiations