C-570-011
Administrative Review
POR: 01/01/2017-12/31/2017
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October 10, 2019

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of Countervailing Duty Administrative Review: Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China; 2017

I. Summary

The Department of Commerce (Commerce) has completed the administrative review of the countervailing duty (CVD) order on certain crystalline silicon photovoltaic products (solar products) from the People's Republic of China (China), for the period of review January 1, 2017, through December 31, 2017 (POR). We conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). Consistent with the *Preliminary Results*,[1] we continue to find that the use of adverse facts available (AFA), in accordance with section 776(a) and (b) of the Act, is warranted in determining the countervailable subsidy rate of 94.83 percent *ad valorem* for each of the mandatory respondents, Risen Energy Co., Ltd.; Shenzhen Sungold Solar Co., Ltd.; and Sol-Lite Manufacturing Co., Ltd. These rates are unchanged from the *Preliminary Results*.

We recommend that you approve the position described in the "Discussion of the Issue" section of this memorandum. Below is the issue for which we received comments and rebuttal comments from interested parties:

Discussion of the Issue: Whether to Rescind Review for Trina Solar

[1] *See Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review, and Rescission of Review in Part; 2017*, 84 FR 15585 (April 16, 2019) (*Preliminary Results*) and accompanying Preliminary Determination Memorandum.

II. Background

On April 16, 2019, we published the *Preliminary Results* of this administrative review in the *Federal Register* and invited comments from interested parties on the *Preliminary Results*. On May 8, 2019, Changzhou Trina Solar Energy Co., Ltd. and Trina Solar (Changzhou) Science and Technology Co., Ltd. (collectively, Trina Solar), a company subject to this administrative review but not selected for individual examination, submitted a letter requesting that Commerce either rescind the review with respect to Trina Solar based on its claim of no shipments that it filed prior to the *Preliminary Results*, or issue a supplemental questionnaire to Trina Solar to substantiate its no shipments claim.[2] On May 10, 2019, SolarWorld Americas, Inc. (the petitioner in the underlying CVD investigation), responded to Trina Solar's Rescission Request, stating that Commerce properly determined in the *Preliminary Results* that Trina Solar is subject to this administrative review.[3]

On May 16, 2019, Trina Solar submitted timely comments on the *Preliminary Results* and requested a hearing.[4] On May 21, 2019, the petitioner filed timely rebuttal comments regarding Trina Solar's Case Brief.[5] On July 31, 2019, we extended the deadline for these final results until October 10, 2019.[6]

On August 28, 2019, we placed U.S. Customs and Border Protection (CBP) entry summary information on the record regarding Trina Solar's claim of no shipments and invited interested parties to supplement their case and rebuttal briefs on this information.[7] To confirm the information in Trina Solar's CBP Entry Summary, on August 29, 2019, we issued a no shipment inquiry to CBP with regard to U.S. imports of solar products from China that were "produced and/or exported" by Trina Solar during the POR. On September 3, 2019, CBP responded to our August 28, 2019, no shipment inquiry, providing information consistent with the information in Trina Solar's CBP Entry Summary.[8]

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[2] *See* Trina Solar's Letter, "Certain Crystalline Silicon Photovoltaic Products from China: Request to Rescind the Review for Trina Solar or Seek Clarification Regarding Trina's No Shipment Claim," dated May 8, 2019 (Trina Solar's Rescission Request).

[3] *See* Petitioner's Letter, "Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Response to Trina's Request to Rescind the Review or Seek Clarification Regarding No Shipment Claim," dated May 10, 2019.

[4] *See* Trina Solar's Letter, "Certain Crystalline Silicon Photovoltaic Products from China: Request for a Hearing and Case Brief," dated May 16, 2019 (Trina Solar's Case Brief).

[5] *See* Petitioner's Letter, "Crystalline Silicon Photovoltaic Products from the People's Republic of China: SolarWorld America's Rebuttal Brief," dated May 21, 2019 (Petitioner's Rebuttal Brief).

[6] *See* Memorandum, "Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Extension of Deadline for Final Results of Countervailing Duty Administrative Review," dated July 31, 2019.

[7] *See* Memorandum, "Administrative Review of the Countervailing Duty Order on Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China; U.S. Customs and Border Protection Entry Summary Information: Changzhou Trina Solar Energy Co., Ltd.," dated August 28, 2019 (Trina Solar's CBP Entry Summary).

[8] *See* Memorandum, "Certain Solar Products from China (C-570-011); No Shipment Inquiry with Respect to the Company Below During the Period 01/01/2017 through 12/31/2017," dated September 9, 2019.

On September 9, 2019, Trina Solar filed a timely supplemental case brief on Trina Solar's CBP Entry Summary.[9] On September 16, 2019, domestic interested party SunPower Manufacturing Oregon LLC (SunPower) timely submitted a rebuttal response to Trina Solar's Supplemental Case Brief.[10] Finally, on September 19, 2019, Trina Solar withdrew its request for a hearing.[11]

III. Scope of the Order

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

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

Excluded from the scope of 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 modules, laminates and/or panels assembled in China, consisting of crystalline silicon photovoltaic cells, not exceeding 10,000mm^2 in surface area, that are permanently integrated into a consumer good whose function is other than power generation and that consumes the electricity generated by the integrated crystalline silicon photovoltaic cells. Where more than one module, laminate and/or panel is permanently integrated into a consumer good, the surface area for purposes of this exclusion shall be the total combined surface area of all modules, laminates and/or panels that are integrated into the consumer good. Further, also excluded from the scope of this order are any products covered by the existing antidumping and countervailing duty orders on crystalline silicon photovoltaic cells, whether or not assembled into modules, laminates and/or panels, from China.

Merchandise covered by this order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 8501.61.0000, 8507.20.8030, 8507.20.8040, 8507.20.8060, 8507.20.8090, 8541.40.6020, 8541.40.6030, 8501.31.8000, 8501.31.8010, 8501.32.6010, 8501.61.0010, 8541.40.6015, and 8541.40.6035. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of this order is dispositive.

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[9] *See* Trina Solar's Letter, Certain Crystalline Silicon Photovoltaic Products from China: Supplemental Case Brief," dated September 9, 2019 (Trina Solar's Supplemental Case Brief).

[10] *See* SunPower's Letter, "Crystalline Silicon Photovoltaic Products from the People's Republic of China: Supplemental Rebuttal Brief," dated September 16, 2019 (SunPower's Supplemental Rebuttal Brief).

[11] *See* Trina Solar's Letter, "Certain Crystalline Silicon Photovoltaic Products from China: Withdrawal of Request for a Hearing," dated September 19, 2019.

IV. Subsidy Rate for Non-Selected Companies Under Review

The statute and Commerce's regulations do not directly address the establishment of rates to be applied to companies not selected for individual examination where Commerce limits its examination in an administrative review pursuant to section 777A(e)(2) of the Act. However, Commerce normally determines the rates for non-selected companies in reviews in a manner that is consistent with section 705(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation. Section 705(c)(5)(A)(ii) of the Act provides that if the countervailable subsidy rates established for all individually-examined exporters/producers are *de minimis* or based entirely on adverse facts available under section 776 of the Act, Commerce may use any reasonable method to establish a subsidy rate for exporters/producers that were not individually-examined, including averaging the weighted-average countervailable subsidy rates determined for the individually-examined exporters and producers.

In this review, the countervailable subsidy rates calculated for the three mandatory respondents are based entirely on facts available pursuant to section 776 of the Act.[12] Accordingly, and consistent with the *Preliminary Results*, we continue to find that it is reasonable to rely on the rates established for the mandatory respondents as the rate for the non-selected companies subject to this review, particularly because there is no other information on the record that can be used to determine the rate for the non-selected companies.[13] This method is consistent with our past practice.[14]

V. Discussion of the Issue: Whether to Rescind Review for Trina Solar

Trina Solar's Initial Comments:

- Commerce should rescind this review with respect to Trina Solar. The *Preliminary Results* identified Trina Solar as one of the non-selected companies under review and acknowledged that Trina Solar timely filed a letter certifying it had no exports during the POR.[15]
- However, Commerce explained that it did not intend to rescind the review with respect to Trina Solar because the CBP data used for respondent selection indicated that Trina Solar

[12] *See* Preliminary Decision Memorandum at 11-15. Appendix I of the Preliminary Decision Memorandum contains the AFA subsidy rate calculations.
[13] *Id*. The Appendix to the instant Issues and Decision Memorandum contains a list of the non-selected companies that are subject to the instant administrative review.
[14] *See*, *e.g.*, *Circular Welded Carbon-Quality Steel Pipe from Pakistan: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 81 FR 20619 (April 8, 2016), unchanged in *Circular Welded Carbon-Quality Steel Pipe from Pakistan: Final Affirmative Countervailing Duty Determination*, 81 FR 75045 (October 28, 2016) (assigning the sole mandatory respondent's rate, which was based on adverse facts available, as the all-others rate), and *Circular Welded Carbon-Quality Steel Pipe from India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 77 FR 19192 (March 30, 2012), unchanged in *Circular Welded Carbon-Quality Steel Pipe from India: Final Affirmative Countervailing Duty Determination*, 77 FR 64468 (October 22, 2012) (assigning the average of the mandatory respondents' rates, which were based solely on adverse facts available, as the all-others rate).
[15] *See* Trina Solar's Case Brief at 1.

made an entry during the POR.[16] Commerce's preliminary decision not to rescind the review as to Trina Solar was erroneous and a departure from Commerce's practice.

- Commerce recognized a contradiction between Trina Solar's claim of no shipment and the confidential CBP data used for respondent selection, but it did not inquire as to how the two pieces of record evidence could be reconciled.[17]
- In instances where there is a contradiction between the CBP data and a company's claim of no shipments, Commerce's practice is to either seek entry summary information from CBP, issue a supplemental questionnaire to the party claiming no shipments, or issue a memorandum to the parties claiming no shipments that the CBP data might indicate otherwise.[18]
- The alleged evidence contradicting Trina Solar's claim of no shipments was CBP data placed on the record under the Administrative Protective Order (APO). However, because Trina Solar's counsel did not apply for access to the APO in this segment of the proceeding, neither Trina Solar, nor its counsel, were aware of the potential conflict between the CBP data used for respondent selection and Trina Solar's no shipment claim.[19]
- An interested party cannot be expected to rebut or clarify information for which it is unaware even exists.[20]
- Because Trina Solar's understanding was that it had no exports subject to this review, Trina Solar saw no need to expend resources applying for an APO in this administrative review, or that there was a regulatory basis for Trina Solar to seek counsel for this segment of the proceeding.[21]
- Accordingly, Commerce must either rescind the review for Trina Solar, in accordance with Trina Solar's claim of no shipments, or provide Trina Solar an opportunity to support its no shipment claim.[22]

The Petitioner's Initial Rebuttal Comments:

- Commerce properly determined in the *Preliminary Results* that Trina Solar is subject to this administrative review.[23] Commerce explained that, despite Trina Solar's claim that it made no shipments of subject merchandise during the POR, the CBP data on the record indicate that Trina Solar made POR entries of subject merchandise.
- The fact that Trina Solar's counsel did not apply for APO access for this administrative review and, thus, had not seen the CBP entry data, did not require Commerce to give Trina Solar special notice regarding the released CBP entry data that were used for respondent selection.[24]
- Commerce's decision that Trina Solar should remain subject to this review is supported by its past practice. Commerce has previously determined that respondent parties were subject to

[16] *Id*.
[17] *Id*. at 2.
[18] *Id*.
[19] *Id*. at 3.
[20] *Id*. at 3-4.
[21] *Id*. at 4.
[22] *Id*.
[23] *See* Petitioner's Rebuttal Brief at 1.
[24] *Id*. at 2.

an administrative review when CBP data showed the parties had entries of subject merchandise during the relevant POR, despite no shipment claims to the contrary.[25]
- Commerce should maintain its preliminary decision for the final results and ensure that Trina Solar is subject to the final subsidy rate calculated for the non-selected companies under review.[26]

Trina Solar's Supplemental Comments:

- Commerce obtained information from CBP related to the entry that appeared to be related to Trina Solar. This information confirms that Trina Solar did not have any exports, shipments, or sales of subject merchandise during the POR.[27] Accordingly, Commerce must rescind the review of Trina Solar, in accordance with Trina Solar's no shipment claim.

SunPower's Supplemental Rebuttal Comments:

- Contrary to Trina Solar's claim that it made no shipments of subject merchandise during the POR, Trina Solar's CBP Entry Summary confirms that Trina Solar did, in fact, have entries of subject merchandise during the POR.[28] Trina Solar's argument misses the point.
- In determining the universe of sales to include in an investigation, the Act directs Commerce to investigate, for purposes of determining export price, the price from the "first party in the chain of distribution which has knowledge of the U.S. destination of the merchandise . . . either directly to a U.S. purchaser or to an intermediary such as a trading company."[29]
- In determining whether an entity has knowledge that its merchandise is destined for the United States, Commerce considers "documentary or physical evidence that the producer knew or should have known its goods were destined for the United States, because this type of evidence is more probative, reliable, and verifiable than unsubstantiated statements or declarations."[30]
- Despite an opportunity to provide rebuttal factual information responding to Trina Solar's CBP Entry Summary, Trina Solar offered no evidence to suggest that it was unaware that its sales of subject merchandise at issue would ultimately be destined for the United States.[31]
- Commerce should continue to determine that Trina Solar is subject to this administrative review, as Commerce has previously determined that respondent parties had entries of subject merchandise during the relevant POR and, thus, these parties were subject to review when CBP data showed such entries, despite no shipment claims to the contrary.[32]

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[25] *Id*. at 2 (citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2012-2013*, 80 FR 40998 (July 14, 2015) and accompanying Issues and Decision Memorandum (IDM) at Comments 5 and 6 (*China Solar Cells 2012-2013 AD Review)*).
[26] *See* Petitioner's Rebuttal Brief at 2.
[27] *See* Trina Solar's Supplemental Case Brief at 1-2.
[28] *See* SunPower's Supplemental Rebuttal Brief at 1.
[29] *Id*. at 2 (citing *Certain Crystalline Silicon Photovoltaic Products from Taiwan: Final Determination of Sales at Less Than Fair Value*, 79 FR 7966 (December 23, 2014) and accompanying IDM at 31-32).
[30] *Id*.
[31] *See* SunPower's Supplemental Rebuttal Brief at 2.
[32] *Id*. (citing *China Solar Cells 2012-2013 AD Review*).

Commerce's Position: The *Initiation Notice* for this administrative review, which listed 11 Chinese producers/exporters subject to this review, instructed producers or exporters named in that notice to notify Commerce if they had no exports, sales, or entries during the POR.[33] We explained that, in the event we limited the number of respondents for individual examination, we intended to select respondents based on CBP entry data for U.S. imports of subject merchandise during the POR.[34] On May 15, 2018, we released the CBP entry data for imports of subject merchandise into the United States during the POR to parties under the APO for this review, which indicated that Trina Solar made entries of subject merchandise during the POR.[35] On May 16, 2018, Trina Solar timely filed its claim of no shipments and requested that we rescind the review with respect to Trina Solar.[36] However, we explained in the *Preliminary Results* that we did not intend to rescind the review for Trina Solar, because the CBP entry data we relied on for respondent selection contradicted Trina Solar's claim of no shipments.[37]

As explained in the "Background" section above, after we issued the *Preliminary Results*, we placed Trina Solar's Entry Summary information on the record,[38] and invited comments from interested parties. We also inquired with CBP as to whether it had any information on POR entries of subject merchandise into the United States that was either produced and/or exported by Trina Solar. Our review of the CBP entry data used for respondent selection, Trina Solar's Entry Summary information, and CBP's response to our no shipment inquiry regarding Trina Solar's entries leads us to conclude that, contrary to Trina Solar's claim of no shipments, subject merchandise produced and/or exported by Trina Solar entered the United States during the POR.

In its initial case brief, Trina Solar states that it had no knowledge that its merchandise entered the United States during the POR and, therefore, that it was not an interested party to this review as defined by 19 CFR 351.102(a)(29) and 19 CFR 351.102(a)(36).[39] Thus, Trina Solar seems to argue that interested parties must have knowledge that subject merchandise produced and/or exported by such parties entered the United States during the POR in order to be subject to subject to an administrative review. SunPower's Supplemental Rebuttal Brief appears to focus on a similar issue, arguing that Trina Solar is subject to this review because it provided no evidence to suggest that it was unaware that its sales of subject merchandise were ultimately destined for the United States.[40] Both Trina Solar's and SunPower's arguments are off point; the issue of producer knowledge of U.S. sales for the purposes of determining reviewable entries and respondent selection only arises in the antidumping duty (AD) context, not the CVD context.

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[33] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 16298 (April 16, 2018) (*Initiation Notice*).
[34] *Id*. at the section, "Notice of No Sales."
[35] *See* Memorandum, "Administrative Review of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China; Release of Customs and Border Protection Data for Respondent Selection," dated May 15, 2018.
[36] *See* Trina Solar's Letter, "Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Notice of No Sales," dated May 16, 2018.
[37] *See* Preliminary Determination Memorandum at 7.
[38] Because the discussion of Trina Solar's Entry Summary involves business proprietary information, we have placed our analysis of this information on the record in a separate memorandum. *See* Memorandum, "Discussion Pertaining to Business Proprietary Information," dated concurrently with the instant Issues and Decision Memorandum (BPI Memorandum).
[39] *See* Trina Solar's Case Brief at 4.
[40] *See* SunPower's Supplemental Rebuttal Comments at 2.

Specifically, section 731(1) of the Act, which concerns the imposition of antidumping duties, describes foreign merchandise that is *sold* in the United States for less than fair value.[41] The statute's emphasis on merchandise *sold* necessarily requires an examination of sales and the prices set by the party that sold the goods (*i.e.*, the price discriminator). To determine whether merchandise is being sold in the United States at less than fair value, Commerce must compare the export price (or constructed export price) of the subject merchandise in the United States with the normal value of the foreign like product in the home market.[42] Under section 772(a) of the Act, the term "export price" means the price at which the merchandise is *first* sold (or agreed to be sold) before the date of importation by the producer or exporter of the 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. Thus, the basis for export price is the price at which the first party in the chain of distribution who sells the subject merchandise with knowledge that the merchandise is destined for sale in the United States, either directly to a U.S. purchaser or to an intermediary such as a trading company.[43]

At times, it may be unclear from the chain of distribution which party (*e.g.*, a producer or reseller) *first* sold the subject merchandise to, or for exportation to, the United States. To carry out the purpose of the AD statute and to identify this party (*i.e.*, the price discriminator), Commerce established what is known as the "knowledge test," under which Commerce's practice is to consider documentary or physical evidence that the producer knew (actual knowledge) or should have known (constructive knowledge) at the time of sale that the ultimate destination of the products it sold was in the United States.[44] This test, because it comes from sections 772(a) and 731 of the Act, applies only to AD proceedings.[45] Commerce provided the following explanation in the *Antidumping Duty Assessment Policy* regarding why identifying the price discriminator is key in the context of an AD proceeding:

> Within this context, the rate we determine for a producer is based on that particular producer's pricing practices. These are not necessarily the same pricing practices as those of the reseller. Resellers virtually always determine their own pricing and marketing policies with no input from the producer. Indeed, the producer may have no knowledge of that product after it leaves the producer's possession. Therefore, to use that producer's pricing practices to determine the reseller's final duty rate is inappropriate and does not address the pricing practices of the price discriminator for the sales to the United States. To permit the reseller to claim the producer's rate

[41] *See* section 731(1) of the Act: " . . . the administering authority determines that a class or foreign merchandise is being or is likely to be, sole in the United States at less than its fair value . . ."
[42] *See* sections 773(a) and 771(35)(A) of the Act; *see also* 19 CFR 351.401(a).
[43] *See* Statement of Administrative Action Accompanying the Trade Agreements Act of 1979, H.R. Rep. No. 4537, 388, 411, reprinted in 1979 U.S.C.C.A.N. 665, 682 (providing that the Act's definition of export price "makes clear that if the producer knew or had reason to know the goods were destined for sale to an unrelated U.S. buyer, and the terms of sale were fixed or determined from events beyond the control of the parties as of the date of importation, the producer's sales price will be used as 'purchased price' to be compared with that producer's foreign market value.").
[44] *See Certain Crystalline Silicon Photovoltaic Products from Taiwan: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 30401 (June 28, 2018) and accompanying IDM at Comment 1.
[45] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 3954 (May 6, 2003) (*Antidumping Duty Assessment Policy*).

> when the reseller is the price discriminator for the U.S. sale allows the reseller to sell subject merchandise in the United States without the appropriate discipline of an antidumping duty order.[46]

Thus, in AD cases, a respondent's sales of subject merchandise to a reseller are reviewable if the respondent knew, or should have known, that its merchandise was destined for sale in the United States.[47] Conversely, a respondent's sales of subject merchandise to a reseller are not reviewable if the respondent had no knowledge that the merchandise was destined for sale in the United States (*i.e.*, where a respondent believes the ultimate consumer for its sales is a customer in the home market or third country).[48]

The statute's emphasis on merchandise sold in the United States is notably absent in the CVD context. Specifically, section 701(a) of the Act, which deals with the imposition of countervailing duties, describes foreign merchandise that benefits from countervailable subsidies with respect to the manufacture, production, or export of merchandise imported, or sold (or likely to be sold) for importation, into the United States.[49] As explained above, the knowledge test is employed in AD proceedings to ascertain the identity of the party in the chain of distribution that made the first sale to, or for exportation to, the United States.[50] However, as stated in the *Antidumping Duty Assessment Policy*, the issue of whether a respondent possessed knowledge that its merchandise was destined for the United States "does not arise in the subsidy enforcement context."[51] A respondent's knowledge is not a necessary condition in the CVD context, because countervailing duties are not imposed on merchandise that is sold at less than fair value in the United States. Rather, duties under a CVD order are imposed on imports of merchandise that benefit from countervailable subsidies. When Commerce conducts a CVD review, it is conducting a review of the producer's merchandise, not the producer's U.S. sales. Thus, the knowledge test is inapplicable in the context of CVD proceedings because Commerce does not examine a producer's selling practices in such proceedings. Perhaps more importantly, there is no statutory basis to conduct a knowledge test in a CVD proceeding, because section 772(a) of the Act applies only to AD proceedings, and there is no corollary in the Act that is applicable to CVD proceedings.

By statute, a subsidy is countervailable if the following elements are satisfied: (1) a government or public entity has provided a financial contribution; (2) to a specific enterprise or industry; and (3) a benefit is thereby conferred.[52] The statutory analysis is focused on whether a company's merchandise enjoys the benefit of government subsidies; it does not concern subsequent sales of the merchandise or the effect that a countervailable subsidy might have on the sales price of

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[46] *Id*. at 23960-61.
[47] *Id*. at 23954.
[48] *Id*.
[49] *See* section 701(a) of the Act: " . . . the administering authority determines that the government of a country or any public entity within the territory of a country is providing, directly or indirectly, a countervailable subsidy with respect to the manufacture, production, or export of a class or kind of merchandise imported or sold (or likely to be sold) for importation into the United States."
[50] *See* section 772(a) of the Act.
[51] *See Antidumping Duty Assessment Policy*, 68 FR at 23961.
[52] *See* section 771(5)(A)-(B) of the Act.

merchandise sold in the United States.[53] The statutes focus on subsidies related to the manufacture, production, and exportation of goods reflected in the *CVD Preamble* on the CVD regulations, which defines subsidy benefits as those that enhance revenue or reduce production inputs:

> {W}e will normally consider a benefit to be conferred where a firm pays less for its inputs (*e.g.*, money, a good, or a service) than it otherwise would pay in the absence of the government program or received more revenues than it otherwise would earn.
>
> We have adopted this because it captures an underlying theme behind the definition of benefit contained in section 771(5)(E) of the Act and, in our estimation, reflects the fundamental principles that we have articulated over the years with respect to the programs and practices that we have determined confer either direct or indirect countervailable subsidies . . . {I}n the overwhelming majority of cases, the recipient of a government financial contribution, income or price support, or indirect subsidy, enjoys a reduction in input costs or revenue enhancement that it would not otherwise have enjoyed absent that government action.
>
> {A} determination on whether a firm's costs have been reduced or revenues have been enhanced bears no relation to the effect of those cost reductions or revenue enhancements on the firm's subsequent performance, such as its prices or output. In analyzing whether a benefit exists, we are concerned with what goes into a company, such as enhanced revenues and reduced-cost inputs in the broad sense that we have used the term, not with what a company does with the subsidy.[54]

We note that the Court of International Trade recently evaluated and sustained the above explanation that "knowledge is not relevant in a no shipment certification analysis."[55]

Accordingly, we find that whether Trina Solar had knowledge that its subject merchandise entered the United States during the POR is not a necessary condition for purposes of determining whether there were reviewable entries of Trina Solar's subject merchandise during the POR of the instant CVD administrative review. Further, and consistent with our findings in the *Preliminary Results*, we continue to find that record evidence demonstrates that: (1) subject merchandise produced and/or exported by Trina Solar entered the United States during the POR of the instant CVD review; (2) such shipments constitute reviewable entries with respect to a CVD administrative review; (3) it would be inappropriate for Commerce to rescind this administrative review for Trina Solar under 19 CFR 351.213(d)(3) based on Trina Solar's no shipment claim; and (4) it is appropriate to assign Trina Solar the "non-selected rate" of 94.83 percent *ad valorem*, which is the rate received by the selected mandatory respondents in this review.

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[53] *See* section 771(5)(C) of the Act ("The administering authority is not required to consider the effect of the subsidy in determining whether a subsidy exists under this paragraph."); *see also* Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol 1 (1994) at 926..

[54] *See Countervailing Duties; Final Rule*, 63 FR 65348, 65359-61 (November 25, 1998) (*CVD Preamble*).

[55] *Tosçelik Profil Ve Sac Endüstrisi A.S. and Erbosan Erciyas Boru Sanayi Ve Ticaret A.S., v. United States*, Consol. Court No. 17-00255, Slip Op. 19-124 (CIT 2019).

VI. Recommendation

Based on our analysis of the comments we received, we recommend adopting the above position. If accepted, we will publish these final results of the administrative review in the *Federal Register*.

☒	☐
Agree	Disagree

10/10/2019

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Signed by: JEFFREY KESSLER

Appendix

Non-Selected Companies Under Review

1. Changzhou Trina Solar Energy Co., Ltd.
2. Chint Solar (Zhejiang) Co., Ltd.
3. Hefei JA Solar Technology Co., Ltd.
4. Ri Shen Products (SZ) Ltd.
5. Shanghai JA Solar Technology Co., Ltd.
6. Sunny Apex Development Limited
7. Trina Solar (Changzhou) Science & Technology Co., Ltd.