



A-570-979
Administrative Review
12/1/2018 – 11/30/2019
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April 16, 2021

MEMORANDUM TO: Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Results of the 2018-
2019 Antidumping Duty Administrative Review of Crystalline
Silicon Photovoltaic Cells, Whether or not Assembled into
Modules, From the People's Republic of China

I. SUMMARY

The Department of Commerce (Commerce) has preliminarily granted separate rate status to 11 companies/company groupings, including two mandatory respondents, and found that 10 of those companies/company groupings sold subject merchandise in the United States at prices below normal value (NV) during the period December 1, 2018, through November 30, 2019, the period of review (POR). Additionally, Commerce found that 25 companies failed to establish their entitlement to separate rates status, found that four companies had no shipments of subject merchandise to the United States during the POR, and rescinded this review with respect to three companies.

II. BACKGROUND

On December 6, 2019, Commerce notified interested parties of the opportunity to request an administrative review of orders, findings, or suspended investigations with anniversaries in December 2019, including 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).¹ In response to requests from multiple parties,² on February 3, 2019, Commerce

¹ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 84 FR 66880 (December 6, 2019).

² See Zhejiang Aiko Solar Energy Co., Ltd.'s (Zhejiang Aiko) Letter "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: Request Review," dated December 11, 2019; Anji DaSol Solar Energy Science & Technology Co., Ltd.'s (Anji DaSol) Letter, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules



initiated an administrative review of the AD order on solar cells from China covering 45 companies/company groupings and the period December 1, 2018, through November 30, 2019.³

In March 2020, multiple companies submitted either separate rate applications, separate rate certifications, or no shipment letters. We issued supplemental questionnaires to a number of companies requesting separate rate status, to which they timely responded.

After selecting Jinko Solar Import and Export Co., Ltd (Jinko IE)⁴ and Risen Energy Co., Ltd. (Risen Energy)⁵ as mandatory respondents,⁶ Commerce subsequently issued the AD questionnaire, double remedy questionnaire, and supplemental questionnaires to Jinko IE and Risen Energy and received timely responses thereto. Between May 2020 and February 2021 the petitioner⁷ commented on Jinko IE's and Risen Energy's questionnaire and supplemental questionnaire responses.

from the People's Republic of China; Request for Administrative Review, dated December 24, 2019; Jinko's Letter, "Antidumping Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules: Jinko's Request for Administrative Review, dated December 30, 2019; Yingli Green Energy Holding Company Limited's (YGE) Letter, "Antidumping Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules; Yingli's Request for Administrative Review; Shanghai BYD Co., Ltd. and BYD (Shangluo) Industrial Co., Ltd.'s Letter, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China: Request for Review – 2018-19 Review Period," dated December 31, 2019; Canadian Solar Inc.'s (Canadian Solar) Letter, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China: Request for Review – 2018-19 Review Period," dated December 31, 2019; Risen's Letter, "Crystalline Silicon Photovoltaic Cells from the People's Republic of China- Request for Administrative Review," dated December 31, 2019; LONGi Solar Technology Co., Ltd.'s (f/k/a LERRI Solar Technology Co., Ltd.) (LONGi), "LONGi Request for Administrative Review of the Antidumping Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules," dated December 31, 2019; SunPower Manufacturing Oregon, LLC's (SunPower) Letter, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China: Request for Administrative Review," dated December 31, 2019; Shenzhen Sungold Solar Co., Ltd.'s (Sungold) Letter, "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: Request for Review Shenzhen Sungold," dated December 31, 2019; and Wuxi Tianran Photovoltaic Co., Ltd.'s (Wuxi Tianran) Letter, "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: Request for Review by Wuxi Tianran," dated December 31, 2019.

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 6896 (February 6, 2020) (*Initiation Notice*).

⁴ As discussed in this memorandum, we are treating Jinko Solar Import and Export Co., Ltd. (Jinko IE); Jinko Solar Co., Ltd (Jiangxi Jinko); JinkoSolar Technology (Haining) Co., Ltd. (Haining Jinko); Yuhuan Jinko Solar Co., Ltd. (Yuhuan Jinko); Zhejiang Jinko Solar Co., Ltd. (Zhejiang Jinko); and Jiangsu Jinko Tiansheng Solar Co., Ltd. (Jiangsu Jinko) as a single entity (collectively, Jinko); see also Memorandum, "Antidumping Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or not Assembled into Modules, from the People's Republic of China: Affiliation and Collapsing Memorandum for Jinko Solar Import and Export Co., Ltd.," issued concurrently with this memorandum.

⁵ As discussed in this memorandum, we are treating Risen Energy Co. Ltd. (Risen Energy), Risen (Wuhai) New Energy Co., Ltd. (Risen Wuhai), Zhejiang Twinsel Electronic Technology Co., Ltd. (Zhejiang Twinsel), Risen (Luoyang) New Energy Co., Ltd. (Risen Luoyang), Jiujiang Shengchao Xinye Technology Co., Ltd. (Jiujiang Shengchao), Jiujiang Shengzhao Xinye Trade Co., Ltd. Ruichang Branch (Jiujiang Shengzhao), Risen Energy (HongKong) Co., Ltd. (Risen Hong Kong), Risen Energy (Changzhou) Co., Ltd. (Risen Changzhou) and Risen Energy (YIWU) Co., Ltd. (Risen Yiwu) as a single entity (collectively, Risen).

⁶ See Memorandum, "2018-2019 Antidumping Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China: Respondent Selection," dated April 29, 2020 (Respondent Selection Memorandum) at 5.

⁷ The petitioner is SunPower Manufacturing Oregon LLC.

In response to Commerce's request,⁸ from August to December 2020, interested parties submitted comments regarding the surrogate country list, and comments and rebuttal comments on surrogate country and surrogate value (SV) selection.

On April 24, 2020 and July 21, 2020, Commerce tolled all deadlines in administrative reviews by 50 days and 60 days respectively thereby extending the deadline for issuing the preliminary results of this review.⁹ On December 17, 2020,¹⁰ and again on March 9, 2021,¹¹ Commerce extended the time limit for completing the preliminary results of this review. The extended deadline for issuing the preliminary results of this review is April 16, 2021.

III. 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 cover 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 10,000 mm² 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

⁸ See Memorandum, "Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information," dated July 27, 2020 (Request for SC and SV Comments).

⁹ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19," dated April 24, 2020; and Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews," dated July 21, 2020.

¹⁰ See Memorandum, "2018-2019 Antidumping Duty Administrative Review of 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 December 17, 2020.

¹¹ See Memorandum, "2018-2019 Antidumping Duty Administrative Review of 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 March 9, 2021.

integrated crystalline silicon photovoltaic cell. Where more than one cell is permanently integrated into a consumer good, the surface area for purposes of this exclusion shall be the total combined surface area of all cells that are integrated into the consumer good.

Additionally, excluded from the scope of this order are panels with surface area from 3,450 mm² to 33,782 mm² 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.

Also excluded from the scope of this order are:

1) Off grid CSPV panels in rigid form with a glass cover, with the following characteristics:

- (A) a total power output of 100 watts or less per panel;
- (B) a maximum surface area of 8,000 cm² per panel;
- (C) do not include a built-in inverter;
- (D) must include a permanently connected wire that terminates in either an 8mm male barrel connector, or a two-port rectangular connector with two pins in square housings of different colors;
- (E) must include visible parallel grid collector metallic wire lines every 1-4 millimeters across each solar cell; and
- (F) must be in individual retail packaging (for purposes of this provision, retail packaging typically includes graphics, the product name, its description and/or features, and foam for transport); and

2) Off grid CSPV panels without a glass cover, with the following characteristics:

- (A) a total power output of 100 watts or less per panel;
- (B) a maximum surface area of 8,000 cm² per panel;
- (C) do not include a built-in inverter;
- (D) must include visible parallel grid collector metallic wire lines every 1-4 millimeters across each solar cell; and
- (E) each panel is

- 1. permanently integrated into a consumer good;

2. encased in a laminated material without stitching, or
3. has all of the following characteristics: (i) the panel is encased in sewn fabric with visible stitching, (ii) includes a mesh zippered storage pocket, and (iii) includes a permanently attached wire that terminates in a female USB-A connector.

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

Merchandise covered by this order is currently classified in the Harmonized Tariff System (HTS) of the United States under subheadings 8501.61.0010, 8507.20.80, 8541.40.6015, 8541.40.6025, and 8501.31.8010. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of this order is dispositive.¹²

IV. PARTIAL RESCISSION OF ADMINISTRATIVE REVIEW

All requests to review JA Solar Technology Yangzhou Co., Ltd., JingAo Solar Co., Ltd., and Shanghai JA Solar Technology Co., Ltd., have been timely withdrawn.¹³ Accordingly, Commerce is rescinding this review with respect to these companies. For further details see the accompanying *Federal Register* notice.

V. PRELIMINARY DETERMINATION OF NO SHIPMENTS

Three companies/company groupings, BYD (Shangluo) Industrial Co., Ltd., Trina,¹⁴ and Shanghai BYD Co., Ltd. reported that they made no shipments of subject merchandise to the United States during the POR. Moreover, information on the record indicates that a fourth company, Wuxi Suntech Power Co., Ltd./Luoyang Suntech Power Co., Ltd. (Wuxi Suntech) also made no shipments of subject merchandise during the POR.¹⁵

¹² See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order*, 77 FR 73018 (December 7, 2012); *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Countervailing Duty Order*, 77 FR 73017 (December 7, 2012) (footnote omitted).

¹³ See JA Solar Technology Yangzhou Co., Ltd., JingAo Solar Co., Ltd., and Shanghai JA Solar Technology Co., Ltd.'s Letter, "Request to Rescind Review," dated April 17, 2020; see also Petitioner's Letter, "Withdrawal of Request for Administrative Review," dated April 17, 2020.

¹⁴ Trina refers to the single entity Changzhou Trina Solar Energy Co., Ltd., Trina Solar (Changzhou) Science and Technology Co., Ltd., Yancheng Trina Solar Energy Technology Co., Ltd., Changzhou Trina Solar Yabang Energy Co., Ltd., Turpan Trina Solar Energy Co., Ltd., Hubei Trina Solar Energy Co., Ltd., and Trina Solar (Hefei) Science and Technology Co., Ltd.

¹⁵ See Wuxi Suntech's Letter, "Separate Rate Application Supplemental Questionnaire," dated September 15, 2020.

To test the no-shipment claims we obtained information from U.S. Customs and Border Protection (CBP),¹⁶ including entry documents,¹⁷ and obtained information from Trina.¹⁸ Based on the no shipment certifications of three of the four companies listed above (Wuxi Suntech did not claim no shipments), and information obtained from CBP and provided by these companies, we preliminarily determine that BYD (Shangluo) Industrial Co., Ltd., Shanghai BYD Co., Ltd., and Wuxi Suntech did not have any shipments during the POR.

Although Wuxi Suntech submitted a separate rate application, we found no evidence in the application, in the information obtained from CBP, or in Wuxi Suntech's Supplemental Questionnaire Response, that Wuxi Suntech had a shipment. We provided Wuxi Suntech an opportunity to demonstrate, with evidence, that it made a shipment during the POR,¹⁹ but Wuxi Suntech did not provide such evidence.

Trina demonstrated that its only entries during the POR were entries of samples of subject merchandise for which it received no remuneration.²⁰

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.²¹

VI. SELECTION OF RESPONDENTS

Section 777A(c)(1) 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 calculate weighted-average dumping margins for each known exporter and producer because of the large number of exporters and producers involved in the investigation or review.

Pursuant to section 777A(c)(2) of the Act, Commerce determined that given the large number of producers or exporters for which a review was initiated, and its current resource constraints, it would not be practicable to individually examine all known exporters/producers.²² Therefore, in accordance with section 777A(c)(2)(B) of the Act, Commerce selected for individual examination the two exporters under review that accounted for the largest volume of subject

¹⁶ See Memorandum, "Release of Customs and Border Protection Data," dated March 2, 2020 (CBP Data); *see also* Memorandum, "No Shipments Query," dated March 9, 2021.

¹⁷ See Memorandum, "Release of U.S. Customs and Border Protection Information Relating to No Shipment Claims Made in the 2018-2019 Administrative Review of Crystalline Silicon Photovoltaic Cells from the People's Republic of China," dated October 29, 2020.

¹⁸ See Commerce's Letter, "November 25, 2020 Supplemental Questionnaire," dated November 25, 2020.

¹⁹ See Commerce's Letter, "Separate Rate Application Supplemental Questionnaire," dated February 19, 2021.

²⁰ See Trina's Letters, "CBP Release Comments," dated November 9, 2020; and "No Shipment Inquiry Supplemental," dated December 7, 2020.

²¹ See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011).

²² See Respondent Selection Memorandum at 4.

merchandise exported from China during the POR, based on CBP data.²³ Those exporters are Jinko IE and Risen Energy.²⁴

VII. SINGLE ENTITY TREATMENT

To the extent that Commerce's practice does not conflict with section 773(c) of the Act, Commerce has, in prior cases, treated certain NME exporters and/or producers as a single entity if the facts of the case supported such treatment.²⁵ 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.²⁶

19 CFR 351.401(f)(2) indicates that Commerce may consider various factors in determining whether a significant potential for manipulation exists, 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.²⁷

Affiliated companies/persons are defined in section 771 of the Act. 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, controlled by, or under common control with, any person shall be considered affiliated. 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.

Jinko

We have preliminarily determined that the following companies are affiliated, pursuant to section 771(33)(F) of the Act and should be treated as a single entity pursuant to 19 CFR

²³ Commerce explained in the *Initiation Notice* that, if it limited the number of respondents for individual examination, it intended to select respondents based on CBP data for the POR.

²⁴ See Respondent Selection Memorandum at 5.

²⁵ 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).

²⁶ 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).

²⁷ See, 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).

351.401(f)(1): Jinko IE; Jiangxi Jinko; Haining Jinko; Yuhuan Jinko; Zhejiang Jinko; and Jiangsu Jinko (collectively, Jinko).²⁸

Risen

Consistent with Commerce's practice, we have continued to treat the following companies as a single entity: Risen Energy, Risen Wuhai, Zhejiang Twinsel, Risen Luoyang, Jiujiang Shengchao, Jiujiang Shengzhao, Risen HongKong, and Risen Changzhou.²⁹ Information on the record confirms that none of the facts that we relied on in the prior administrative review to find affiliation, identify producers, and find significant potential for the manipulation of price and/or production have changed.³⁰

In addition to the Risen companies identified above, another Risen company, Risen Yiwu, which produces solar modules,³¹ began operations during the POR.³² Risen Energy, which owns 100 percent of Risen Yiwu, is in charge of pricing and sales for the single entity described above as well as Yiwu.³³ Given this control, we find Risen Yiwu is affiliated with the single entity described above, pursuant to section 771(33)(E) of the Act.

Furthermore, Risen Yiwu and the single entity described above have production facilities for similar or identical products that would not require substantial retooling in order to restructure manufacturing priorities.³⁴ Additionally, we find that there is a significant potential for the manipulation of price or production with respect to these companies because: (1) there is a high level of common ownership;³⁵ (2) significant overlap of management and board members between Risen Yiwu and Risen Energy;³⁶ and (3) intertwined operations between Risen Yiwu and numerous entities within the Risen single entity.³⁷ Thus, the criteria of 19 CFR 351.401(f) are satisfied. Consequently we are treating all of the following companies as a single entity: Risen Energy, Risen Wuhai, Zhejiang Twinsel, Risen Luoyang, Jiujiang Shengchao, Jiujiang Shengzhao, Risen HongKong, Risen Changzhou, and Risen Yiwu.

²⁸ See Memorandum, "Antidumping Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or not Assembled into Modules, from the People's Republic of China: Affiliation and Collapsing Memorandum for Jinko Solar Import and Export Co., Ltd.," dated concurrently with this memorandum.

²⁹ We noted in the *Initiation Notice* that for "any company subject to the review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes; see also *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017–2018*, 85 FR 62275, 62276 (October 2, 2020) (*AR6 Final Results*).

³⁰ See Risen's Letter, "Section A & Appendix X Questionnaire Responses," dated May 29, 2020 (Risen's AQR) at X-9 to X-14, Exhibit A-20 to A-25; see also Risen's Letter, "Second Supplemental Questionnaire," dated November 25, 2020 at Exhibit 1-3.

³¹ *Id.* at X-5.

³² See Risen's AQR at 4 and X-10.

³³ *Id.*

³⁴ *Id.* at 2.

³⁵ *Id.* at 4.

³⁶ *Id.* at Exhibits A-2 and A-24.

³⁷ *Id.* at Exhibit A-25.

VIII. DISCUSSION OF THE METHODOLOGY

Non-Market Economy Country

Commerce considers China to be an NME country.³⁸ In accordance with section 771(18)(C)(i) of the Act, any determination that a 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 the NME country are subject to government control and, thus, should be assigned a single AD margin unless the company can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports.³⁹ In the *Initiation Notice*, we notified parties of the process by which exporters may obtain separate rate status in NME proceedings.⁴⁰ To establish whether a company is sufficiently independent to be entitled to a separate, company-specific dumping margin, Commerce analyzes each exporting entity in an NME country under the test established in *Sparklers*,⁴¹ as amplified by *Silicon Carbide*.⁴² 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 AD margin.⁴³

Commerce continues to evaluate its separate rates analysis practice in light of the diamond sawblades from China AD proceeding, and Commerce's determinations therein.⁴⁴ In particular,

³⁸ 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), 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).

³⁹ 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) (*Certain Lined Paper Products*); 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).

⁴⁰ See *Initiation Notice*.

⁴¹ 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*).

⁴² 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*).

⁴³ 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).

⁴⁴ 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*

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 where a government-controlled entity had significant ownership in the respondent exporter.⁴⁵ 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 dumping margin.⁴⁶ 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 that it owns, including the selection of board members, management, and the profitability of the company.

Excluding the three companies for which we preliminarily rescinded this review, the four companies with no shipments, and two companies listed in the initiation notice which we combined in a single entity with a third company listed in the initiation notice, there are 36 companies/company groupings (out of the 45 companies/company groupings for which we initiated this review) for which we conducted a separate rates analysis. Our analysis is below:

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 (PDM) at 7, unchanged in *Diamond Sawblades*, 79 FR 35723 (June 24, 2014), and accompanying Issues and Decision Memorandum (IDM) at Comment 1.

⁴⁵ 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-to-day 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).

⁴⁶ 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 PDM 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), and accompanying IDM 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).

Mandatory Respondents:

1. Jinko
2. Risen

Respondents not Individually Examined:

3. Anji DaSol Solar Energy Science & Technology Co., Ltd.
 4. 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.
 5. Chint Solar (Zhejiang) Co., Ltd., Chint Energy (Haining) Co., Ltd., Chint Solar (Jiuquan) Co., Ltd., Chint Solar (Hong Kong) Company Limited
 6. LONGi Solar Technology Co., Ltd.
 7. Shenzhen Sungold Solar Co., Ltd.
 8. Shenzhen Topray Solar Co., Ltd.
 9. Wuxi Tianran Photovoltaic Co., Ltd.
 10. 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.
 11. Zhejiang Aiko Solar Energy Technology Co., Ltd.
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 each company demonstrated an absence of *de jure* and *de facto* government control over its export activities.

a. Absence of *De Jure* Control

Commerce considers the following *de jure* criteria in determining whether to grant a company 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 companies; and (3) other formal measures by the government decentralizing control over export activities of companies.⁴⁷

Record evidence regarding the Chinese-foreign joint ventures and wholly Chinese-owned companies among the companies listed above supports preliminarily finding 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 companies; and (3)

⁴⁷ See *Sparklers*, 56 FR at 20589.

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

Record evidence regarding the Chinese-foreign joint ventures and wholly Chinese-owned companies among the companies listed above supports preliminarily finding an absence of *de facto* government control based on evidence 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.

Based on the foregoing, Commerce has preliminarily granted separate rate status to the Chinese-foreign joint ventures and wholly Chinese-owned companies among the companies listed above.

2. Wholly Foreign-Owned Companies

For the companies listed above that are wholly foreign owned, and for which there is no record evidence indicating that these companies are under the control of the Government of China (GOC) it is not necessary to conduct a separate rate analysis to determine whether these companies are independent from government control.⁴⁹ Based on evidence that these companies are wholly foreign owned and the lack of any evidence of GOC control, Commerce has preliminarily granted separate rate status to the wholly foreign-owned companies among the companies listed above.

⁴⁸ See *Silicon Carbide*, 59 FR at 22586-87; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

⁴⁹ See, e.g., *Seamless Refined Copper Pipe and Tube from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 26716, 26720 (May 12, 2010), unchanged in *Seamless Refined Copper Pipe and Tube from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 60725 (October 1, 2010).

3. Companies Not Receiving a Separate Rate

Because the following companies did not file a separate rate application or certification, as required,⁵⁰ Commerce has not granted them separate rate status and is 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 review⁵¹ and the entity's rate (*i.e.*, 238.95 percent)⁵² is not subject to change.

12. De-Tech Trading Limited HK
13. Dongguan Sunworth Solar Energy Co., Ltd.
14. Eoply New Energy Technology Co., Ltd.
15. ERA Solar Co., Ltd.
16. ET Solar Energy Limited
17. Hangzhou Sunny Energy Science & Technology Co., Ltd.
18. Hengdian Group DMEGC Magnetics Co., Ltd.
19. Jiangsu High Hope Int'l Group
20. Jiawei Solarchina (Shenzhen) Co., Ltd.
21. Jiawei Solarchina Co., Ltd.
22. JinkoSolar International Ltd.⁵³
23. LERRI Solar Technology Co., Ltd.
24. Lightway Green New Energy Co., Ltd.
25. Ningbo ETDZ Holdings, Ltd.
26. Ningbo Qixin Solar Electrical Appliance Co., Ltd.
27. Sumec Hardware & Tools Co., Ltd.
28. Sunpreme Solar Technology (Jiaxing) Co., Ltd.
29. Systemes Versilis, Inc.
30. Taizhou BD Trade Co., Ltd.
31. tenKsolar (Shanghai) Co., Ltd.
32. Tianneng Yingli New Energy Resources Co., Ltd.
33. Toenergy Technology Hangzhou Co., Ltd.
34. Yingli Green Energy International Trading Company Limited
35. Zhejiang ERA Solar Technology Co., Ltd.
36. Zhejiang Sunflower Light Energy Science & Technology Limited Liability Company

⁵⁰ See *Initiation Notice*.

⁵¹ 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).

⁵² 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*); see also *AR6 Final Results*.

⁵³ Jinko, the owner of JinkoSolar International Ltd., stated that it was closed prior to the POR. See Jinko Letter, "Jinko Supplemental Section A Questionnaire Response in the Seventh 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 (A-570-979)," dated March 4, 2021.

Moreover, Commerce's practice, as explained in the following passage from Commerce's Separate Rate Application, is to require that a respondent have a suspended entry of merchandise to be eligible for a separate rate:

Consequently, in this proceeding, Commerce will limit its consideration of separate-rate applications to firms that exported the merchandise to the United States. Further, to be considered for separate-rate treatment, the applicant must have a relevant U.S. sale of subject merchandise to an unaffiliated purchaser, and, for an administrative review, the applicant also must have a suspended entry of subject merchandise into the United States during POR. The sale to an unaffiliated purchaser generally must be during the period of investigation or review, or, in a review, a sale related to a suspended POR entry.

Accordingly, we have not considered Wuxi Suntech's Separate Rate Application because we have preliminarily determined that it did not make any shipments of subject merchandise to the United States during the POR.

4. Separate Rate for Eligible Non-Selected Respondents

The statute and Commerce's regulations do not identify the rate to be applied to respondents not selected for individual 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 "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* dumping margins, and any dumping margins determined entirely {on the basis of facts available}." When the weighted-average dumping margins established for all individually examined 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 respondent Jinko which is not zero, *de minimis*, or based entirely on facts available and a rate for Risen that is zero. Therefore, in accordance with section 735(c)(5)(A) of the Act and its prior practice, Commerce has preliminarily assigned Jinko's calculated rate (*i.e.*, 13.89 percent) as the separate rate for non-examined separate rate exporters.

Missing FOP Data

Jinko and Risen reported, and documented, that they were unable to obtain FOP information from unaffiliated producers of solar cells and unaffiliated tollers and producers of solar cells and

solar modules, respectively.⁵⁴ Both Jinko and Risen requested to be excused from reporting the FOPs of their solar cell and solar module suppliers.⁵⁵

Commerce recognizes that it is important for producers of subject merchandise to provide their FOP data because these companies actually provide merchandise that is subject to an order. However, where a respondent has a large number of producers that supply it with subject merchandise, Commerce has excused the respondent from reporting FOPs from some of its suppliers. In *Activated Carbon ARI*,⁵⁶ due to the large number of suppliers, Commerce excused the respondent from reporting FOP data for its smallest suppliers. Additionally, Commerce has excused a respondent from reporting FOP data from a producer where the FOP data are of limited quantity and the respondent reports that it produces comparable products.⁵⁷

The missing FOP data are limited in quantity⁵⁸ and there is usable information on the record that can be substituted for the missing FOP information (Jinko and Risen's own production information) without undue difficulties.⁵⁹ Hence, we are preliminarily granting Jinko and Risen's request and excusing them from reporting the FOP data for their solar cell and solar module suppliers that did not provide these data. Accordingly, necessary FOP information is not on the record.

With respect to tolling, where a respondent: (1) has a number of tollers; (2) identifies its tollers in a timely manner; (3) documents its unsuccessful attempts to obtain FOPs from its tollers; (4) demonstrates that the non-reporting tollers account for only a small portion of overall FOPs; and (5) there is usable FOP information from other sources that can serve as a substitute for the

⁵⁴ See Jinko's Letter, "Jinko Section D, Appendix XII Additional Section D, Section E, and Double Remedies Questionnaire Responses," dated July 7, 2020 (Jinko's July 7, 2020 Response) at Section D 17-18; see also Risen's Letters, "Section D & Appendix XII Questionnaire Responses," dated July 6, 2020 (Risen Section D Response) at Exhibit D-15; "Risen Unaffiliated Supplier Section D Questionnaires," dated December 7, 2020 (Risen Unaffiliated Supplier Response) at Exhibit RSC-6; and "Fifth Supplemental Questionnaire," dated March 16, 2021 (Risen's March 16, 2021 Response) at Exhibit SQ5-3. Jinko stated that it has been continuing its efforts to collect FOP databases from non-cooperating suppliers in Jinko's July 7, 2020 Response at 17-18. Risen documented its repeated attempts to obtain FOP data from tollers and subject merchandise suppliers in Risen Section D Response and Risen's Letter, "Second Unaffiliated Supplier Questionnaire," dated March 16, 2021.

⁵⁵ See Jinko's July 7, 2020 Response at 17-18; and Risen's Letter, "Risen Request for Partial Relief from FOP Reporting," July 24, 2020.

⁵⁶ See *Certain Activated Carbon from the People's Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review and Extension of Time Limits for the Final Results*, 74 FR 21317, 21320-21321 (May 7, 2009) (*Activated Carbon ARI Prelim*), unchanged in *First Administrative Review of Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 57995 (November 10, 2009) (*Activated Carbon ARI Final*).

⁵⁷ See *Activated Carbon ARI Prelim*, 74 FR at 21321, unchanged in *Activated Carbon ARI Final*.

⁵⁸ See the share of unreported solar cell production as a share of overall production and purchases by Jinko in its submission, Jinko's July 7, 2020 Response at Appendix XII at 22-24. See the share of unreported solar cell production as a share of overall production and purchases by Risen in its submission, Risen Unaffiliated Supplier Response at Exhibit RSC-6. See the share of unreported solar module production as a share of overall production and purchases by Risen in its submission, Risen's March 16, 2021 Response at Exhibit SQ5-3. See the share of unreported tolling as a share of overall production and purchases by Risen in its submission in Risen Section D Response at Exhibits D-14 and D-15.

⁵⁹ See Risen Section D Response at D-19 and D-24.

missing FOPs, Commerce has used facts available, without adverse inferences, in place of the missing information.⁶⁰ Risen meets these criteria.⁶¹

Section 776(a)(1) of the Act provides that, if necessary information is missing from the record, Commerce shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Based on the foregoing, we used facts available, without adverse inferences, in place of the missing FOP data. Specifically, we based the missing FOP data on Jinko and Risen's own experience producing the same type of solar cells and solar modules, and performing the same type of processing as the producers and tollers that failed to provide their FOP information.

Surrogate Country Selection

1. 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 FOPs, 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.⁶² 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

⁶⁰ See, e.g., *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) (*Solar AR2 Prelim*), and accompanying PDM at 14-15, 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) (*Solar AR2 Final*); *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part*, 77 FR 63791 (October 17, 2012) (*Solar Cells Investigation Final*), and accompanying IDM at Comment 19 (noting the impact of the unreported toller FOPs was relatively small and that the respondent produced nearly an identical input or performed an identical process); see also *Frontseating Service Valves from the People's Republic of China: Final Results of the 2008-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 76 FR 70706 (November 15, 2011), and accompanying IDM at Comment 12 (noting the record included FOP data from an adequate number of tollers vis-à-vis the total quantity of brass bar produced by each, relative to the total amount of the input produced by all the tollers); *Small Diameter Graphite Electrodes from the People's Republic of China: Final Results of the First Administrative Review of the Antidumping Duty Order and Final Rescission of the Administrative Review*, 76 FR 56397 (September 13, 2011), and accompanying IDM at Comment 9 (where Commerce requested FOP information for a select number of tollers out of more than 100, and determined it would not pursue data from an unaffiliated toller because it had sufficient data from another of the respondent's tollers).

⁶¹ See the share of unreported tolling as a share of overall production and purchases by Risen in its submission in Risen Section D Response at Exhibits D-14 and D-15.

⁶² See Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin).

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.

2. Interested Parties' Comments

On July 27, 2020, Commerce invited interested parties to comment on surrogate country and SV selection.⁶³ The petitioner, Jinko and Risen submitted comments and SV data from August to December 2020. All parties submitted SV information for Malaysia. The petitioner also submitted SV data for Brazil. Also, Jinko submitted a SV for Turkey. All parties recommending a surrogate country recommended selecting Malaysia as the primary surrogate country.

3. Economic Comparability

With respect to the first requirement for a surrogate country (economic comparability to China), based on per capita GNI, as reported in the most current annual issue of the *World Development Report*,⁶⁴ we identified Brazil, Bulgaria, Malaysia, Mexico, Russia, and Turkey as being at the level of economic development of China.⁶⁵ We consider these countries equivalent in terms of economic comparability to China.

4. Significant Producers of Identical or Comparable Merchandise

With respect to the second requirement for a surrogate country (significant producer of comparable merchandise), consistent with Commerce's practice, we evaluated whether production of comparable merchandise in the countries listed above was significant based on world production of, and trade in, comparable merchandise (subject to the availability of data) and determined whether the merchandise that was produced is comparable on a case-by-case basis.⁶⁶ Where there is no production information, Commerce's practice is to rely on export data from the potential surrogate countries. With respect to comparability of merchandise, in all cases, if merchandise identical to the merchandise under consideration is produced in a country, the country qualifies as a producer of comparable merchandise. Where there is no evidence of production of identical merchandise in a potential surrogate country, Commerce determines whether merchandise is comparable to the merchandise under consideration based on similarities in physical form and the extent of processing, or based on production factors

⁶³ See Request for SC and SV Comments.

⁶⁴ 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 accompanying IDM 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).

⁶⁵ See Request for SC and SV Comments at Attachment I.

⁶⁶ 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 PDM 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).

(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.⁶⁷

We do not have country-wide production statistics on the record for merchandise that is identical or comparable to the merchandise under consideration for any of the economically comparable countries identified above. However, we do have export data on the record for comparable merchandise for these countries and evidence that there are producers of solar modules and solar cells in certain of these countries. Record evidence shows that all six potential surrogate countries exported merchandise during the POR that is identical or comparable to the merchandise under consideration.⁶⁸ Moreover, the record shows that there are a number of manufacturers of solar modules in Malaysia, some of which produce solar cells.⁶⁹ While the record also shows that there is a manufacturer of solar modules in Brazil, there is no evidence that this manufacturer also produces solar cells.⁷⁰

Based on the foregoing, we have determined that Brazil, Bulgaria, Malaysia, Mexico, Russia, and Turkey 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.

5. 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.⁷¹ Commerce’s preference is to satisfy the breadth of these aforementioned selection factors.⁷²

SV data for Malaysia and Brazil are on the record, as well as SV data for silver paste for Turkey. Both countries’ data are publicly available, contemporaneous with the period under consideration, broad-market averages, and tax and duty-exclusive. However, there are no SVs

⁶⁷ See Policy Bulletin; see also, 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) (*Hardwood and Decorative Plywood*), and accompanying IDM at Comment 7.

⁶⁸ See Jinko’s August 31, 2020 Surrogate Country Comments at 4-5.

⁶⁹ See Risen’s Letter, “Preliminary Surrogate Value Submission”, dated September 14, 2020 (Risen’s First Surrogate Value Submission) at Exhibit SV- 10, which identifies the production of Hanwha Q-Cells as: “The principal activities of the Company are those relating to design, development and manufacture of silicon photovoltaic wafers, cells and modules.” See also Jinko’s Letter, “Final Surrogate Value Submission,” dated November 23, 2020 (Jinko’s November 23, 2020 SV Submission) at Exhibit 5c which identifies the production of Jinko Solar Technology as the “research and development and manufacturing and sales of solar energy cells and modules and their related auxiliary products,” and at Exhibit 5d which states that for JA Solar Malaysia the “principal activity of the Company is manufacture of photovoltaic solar cells.”

⁷⁰ See Petitioner’s November 23, 2020 SV Submission at Attachment 1, Exhibit 10.

⁷¹ 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 IDM at Comment I(C).

⁷² *Id.*

on the record for steam and rail freight in Brazil, and the Brazilian financial statements on the record are not fully translated, appear to be unaudited, and are for a company that does not produce solar cells.⁷³ Meanwhile, Malaysian import data may reflect imports of materials specifically used in solar cell production, given the evidence that solar cell manufacturers are in Malaysia.⁷⁴ Therefore, we preliminarily find the Malaysian SV data to be superior in quality to the Brazilian SV data.

Given the above analysis, Commerce has preliminarily selected Malaysia as the primary surrogate country. We identify specific Malaysia SVs selected by Commerce in the “Normal Value” section of this memorandum.

Date of Sale

In accordance with 19 CFR 351.401(i), Commerce normally uses the date of sales invoices as the date of sale unless another date better reflects the date on which the material terms of sale are established.⁷⁵ Additionally, if Commerce bases the date of sale on the invoice date, 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.⁷⁶

Both Jinko and Risen based the reported date of sale on the earlier of the sales invoice date or the shipment date.⁷⁷ We have preliminarily accepted this reporting and in accordance with Commerce’s regulations and practice, used the earlier of the sales invoice date or the shipment date as the date of sale.

⁷³ See Petitioner’s November 23, 2020 SV Submission at Attachment 1, Exhibit 10.

⁷⁴ See Risen’s Letter, “Final Surrogate Value Submission,” dated November 23, 2020 (Risen’s November 23, 2020 SV Submission) at Exhibit SV2-8 which identifies the production of Hanwha Q-Cells as: “The principal activities of the Company are those relating to design, development and manufacture of silicon photovoltaic wafers, cells and modules.”

⁷⁵ 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)).

⁷⁶ *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 IDM at Comment 11; *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 IDM at Comment 2; *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).

⁷⁷ *See* Risen’s Letter, “Section C & Appendix XI Questionnaire Responses,” dated June 25, 2020 (Risen’s Section C Response) at Exhibit C-1; *see also* Jinko’s Letter, “Jinko Section C and Appendix XI Additional Section C Questionnaire Responses in the Seventh 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 (A-570-979),” dated July 2, 2020 (Jinko’s Section C Response) at 16-17.

Fair Value Comparisons

To determine whether Jinko and Risen sold subject merchandise to the United States 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.

1. Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates dumping margins by comparing weighted-average NVs to weighted-average export prices (EPs) or constructed export prices (CEPs) (the average-to-average comparison method) unless Commerce determines that another method is appropriate in a particular situation. In AD investigations, Commerce examines whether to compare weighted-average NVs to the prices of individual export transactions (the average-to-transaction comparison method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(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.⁷⁸

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.⁷⁹ 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.⁸⁰ 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 that we 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 we find such a pattern, then the

⁷⁸ 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 IDM at Comment 1.

⁷⁹ 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*; 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); *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).

⁸⁰ 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 IDM at Comment 4.

using our differential pricing analysis we evaluated whether such differences can be taken into account when using the average-to-average comparison method to calculate the weighted-average dumping margin. In the differential pricing analysis used here, we evaluated all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. In our analysis, we incorporated default group definitions for purchasers, regions, time periods, and comparable merchandise. We based purchasers on the reported customer names. We defined regions using the reported destination code (*i.e.*, city name, zip code, *etc.*) and they were grouped based upon standard definitions published by the U.S. Census Bureau. We defined time periods by the quarter within the POR being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region, and time period, that Commerce uses in making comparisons between EP or CEP and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, we applied the “Cohen’s *d* test.” 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, we applied the Cohen’s *d* test 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, we calculated the Cohen’s *d* coefficient 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, we considered the difference 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, we used the “ratio test” to assess 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, we examined whether

using only the average-to-average comparison method can appropriately account for such differences. In considering this question, we tested 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 review.

2. Results of the Differential Pricing Analysis

For Jinko, we found that more than 66 percent of the company's U.S. sales pass the Cohen's *d* test but 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, we used the average-to-average comparison method for all U.S. sales to calculate the weighted-average dumping margin for Jinko.

For Risen, we found that the value of U.S. sales passing the Cohen's *d* test is less than 33 percent. This does not confirm the existence of a pattern of prices that differ significantly among purchasers, or time periods. Accordingly, we used the average-to-average comparison method for all U.S. sales to calculate the weighted-average dumping margin for Risen.

U.S. Price

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)." Section 772(b) of the Act, defines CEP as "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)."

1. Export Price

In accordance with section 772(a) of the Act, where Risen sold subject merchandise to a U.S. customer before the merchandise was imported into the United States, we calculated an EP for

the sale. We calculated EPs by subtracting movement expenses (*e.g.*, foreign inland freight from the plant to the port of exportation, domestic brokerage, international freight to the port of importation), from gross packed prices that Risen charged to U.S. customers, in accordance with section 772(c)(2)(A) of the Act. Where applicable, we also adjusted gross U.S. prices by the value of certain materials that were provided free of charge. If Chinese companies provided foreign inland freight or foreign brokerage and handling for a sale, or these services were paid for in renminbi, we based the expenses on SVs.

2. Constructed Export Price

In accordance with section 772(b) of the Act, where Jinko or Risen sold subject merchandise to a U.S. customer after the merchandise was imported into the United States, we calculated a CEP for the sale. We calculated CEPs for Jinko and Risen by subtracting from the reported gross unit U.S. sales price: (1) movement expenses, in accordance with section 772(c)(2)(A) of the Act; (2) indirect selling expenses, credit expenses, warranty expenses, inventory carrying costs, and further manufacturing costs, all of which relate to commercial activity in the United States, in accordance with section 772(d)(1) of the Act; and (3) CEP profit, in accordance with sections 772(d)(3) and 772(f) of the Act. Where applicable, we reduced movement expenses by freight revenue.

3. Value-Added Tax (VAT)

Commerce's practice, in calculating EP and CEP in NME cases, is to subtract from the gross U.S. sales price the amount of any un-refunded (irrecoverable) VAT, in accordance with section 772(c)(2)(B) of the Act.⁸¹ Where the irrecoverable VAT is a fixed percentage of the U.S. price, Commerce performs a tax-neutral dumping calculation by reducing the U.S. price by this percentage.⁸² 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 on the record demonstrates that the VAT rate and the rate for rebating VAT on subject merchandise upon exportation were the same throughout the POR.⁸³ Thus, the record indicates that there is no irrecoverable VAT associated with the exportation of subject merchandise. For purposes of these preliminary results of review, therefore, we have not reduced U.S. prices for VAT.

Normal Value

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

⁸¹ 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).

⁸² *Id.*

⁸³ See Risen's Section C Response at 38 and Exhibit C-5; see also Jinko's Section C Response at Exhibit C-10.

comparisons and the calculation of production costs invalid under Commerce's normal methodologies.⁸⁴ Under section 773(c)(3) of the Act, FOPs include, but are not limited to: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs.

1. 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.⁸⁵ When selecting SVs, we considered, among other criteria, whether the SVs are publicly available, broad market averages, contemporaneous with the period under consideration or closest in time to that period, product-specific, and tax-exclusive.⁸⁶ As appropriate, we adjusted FOP costs by including freight costs to make them delivered values. Specifically, we 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.⁸⁷ 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 margins for Jinko and Risen is below. A detailed description of all SVs used to calculate the weighted-average dumping margins for Jinko and Risen is in the Preliminary SV Memorandum.⁸⁸

Direct and Packing Materials

Except as noted below, we based SVs for Jinko and Risen's direct materials and packing materials on import values from Global Trade Atlas for Malaysia. These values are generally contemporaneous with the POR, publicly available, product-specific, tax-exclusive, and represent broad market average prices.⁸⁹

We disregarded certain import values when calculating SVs. We have continued to apply Commerce's long-standing practice of disregarding import prices that we have reason to believe or suspect are for subsidized or dumped merchandise.⁹⁰ In this regard, Commerce previously

⁸⁴ 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 *Certain Lined Paper Products*.

⁸⁵ See Memorandum "2018-2019 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 SV Memorandum).

⁸⁶ 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).

⁸⁷ See *Sigma Corp. v. United States*, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997).

⁸⁸ See Preliminary SV Memorandum

⁸⁹ *Id.* at Attachment I.

⁹⁰ 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*

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.⁹¹ 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, it is reasonable to infer that all exporters in India, Indonesia, South Korea and Thailand may have benefitted from these subsidies. Therefore, we have not used the prices of goods imported into Malaysia from India, Indonesia, South Korea, and Thailand to calculate import-based SVs. Additionally, we did use the prices of goods imported into Malaysia from NME and “unspecified” countries to calculate import-based SVs.⁹² We excluded imports from “unspecified” countries from our calculations because we could not be certain that these are not either NME countries or a countries with generally available export subsidies.⁹³

Consistent with each of the prior segments of this proceeding, we valued monocrystalline blocks and wafers using international prices from *Bloomberg New Energy Finance*.⁹⁴ There are a number of factors, which when considered together, weigh in favor of valuing polysilicon inputs using international prices, rather than Malaysian import prices.

Wafers that are used to produce solar cells are primarily made of polysilicon. Solar grade polysilicon has purity levels as high as 99.999999 percent, while electronics grade silicon has even higher purity levels.⁹⁵ Malaysian imports related to polysilicon – HTS 2804.61 (silicon, containing by weight not less than 99.99 percent of silicon) – can include silicon with a purity level as low as 99.99 percent. In contrast, the international prices on the record are specific to the solar-grade wafers used by Jinko and Risen to produce subject merchandise.⁹⁶ Differences in silicon purity levels can result in significant price differences.⁹⁷

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.

⁹¹ 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 IDM 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 IDM 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 IDM 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 IDM at 23.

⁹² See Preliminary SV Memorandum at Attachment I.

⁹³ *Id.*

⁹⁴ See Jinko’s Letter, “First Surrogate Value Comments,” dated September 14, 2020 (Jinko’s First Surrogate Value Submission) at Exhibit 3.

⁹⁵ See *Solar Cells Investigation Final* IDM at Comment 9.

⁹⁶ See Preliminary SV Memorandum at Attachment I; see also Jinko’s First Surrogate Value Submission at Exhibit 3.

⁹⁷ See *Solar Cells Investigation Final* IDM at Comment 24 (“As explained in the *Preliminary Determination* and reiterated in Comment 9 addressing the SV for wafers, there is substantial evidence on the record leading Commerce to question whether the import prices are representative of the price of polysilicon. The purity level required for polysilicon used in manufacturing solar cells is very precise. The import data from the potential surrogate countries are from an HTS category that covers silicon products with various levels of purity. Moreover, record evidence indicates that there are dramatic price differences between silicon with different purity levels. Also, there are extreme variations in the AUVs for the applicable HTS category both between and within potential surrogate countries indicating that that imports may at times primarily consist of lower purity silicon, possibly not of a solar grade, or extremely high purity electronics grade polysilicon, neither of which is the input being valued.”); see also

Given this unique combination of facts, we preliminarily find, for purposes of this administrative review, and consistent with all prior segments of this proceeding, that it is appropriate to value polysilicon, including 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. Specifically, we are preliminarily valuing polysilicon inputs using equally weighted prices from *Bloomberg New Energy Finance*. We did not inflate or deflate the prices because they are contemporaneous with the POR.⁹⁸

We preliminarily valued silver paste, using the value of imports into Turkey under HTS number 71159000022 (made from silver – other goods)⁹⁹ because the data are not only contemporaneous with the POR, publicly available, tax and duty-exclusivity, and represent a broad market average but are also more specific to silver paste than the other potential SVs on the record.

Market Economy Purchases

Jinko purchased inputs during the POR from a ME country and paid for the inputs in an ME currency.¹⁰⁰ 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.¹⁰¹ Where Commerce finds ME purchases to be of significant quantities (*i.e.*, 85 percent or more of total purchases of the input), in accordance with the statement of policy as outlined in *Antidumping Methodologies: Market Economy Inputs*,¹⁰² Commerce uses the actual purchase prices to value the inputs. Alternatively,

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2012-2013, 80 FR 1021 (January 8, 2015), and accompanying PDM at the section entitled “Direct and Packing Materials,” unchanged in *AR1 Final IDM* at Comment 14; *see also Solar AR2 Prelim; 2013-2014 PDM* at the section entitled “Direct and Packing Materials,” unchanged in *Solar 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) (*AR4 Prelim*), and accompanying PDM 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; 2014-2015*, 82 FR 29033 (June 27, 2017); *see also AR4 Prelim PDM* at the section entitled “Direct and Packing Materials,” unchanged in *AR4 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; 2016-2017*, 83 FR 67222 (December 28, 2018), and accompanying PDM 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; 2016-2017*, 84 FR 36886 (July 30, 2019)

⁹⁷ See Preliminary SV Memorandum.

⁹⁸ *Id.*

⁹⁹ See Jinko's First Surrogate Value Submission at Exhibit 4a.

¹⁰⁰ See Jinko's July 7, 2020 Response at Exhibit D-5.

¹⁰¹ See, e.g., *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997).

¹⁰² See *Use of Market Economy Input Prices in Nonmarket Economy Proceedings*, 78 FR 46799 (August 2, 2013) (*Market Economy Inputs*).

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.¹⁰³ 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).¹⁰⁴ Based on the foregoing, and consistent with 19 CFR 351.408(c)(1), we used Jinko's reported ME purchase prices in valuing certain FOPs, either in whole or in part, based upon purchase volume.¹⁰⁵

Utilities

We valued electricity and water using prices from the Malaysian Investment Development Authority's publication *Costs of Doing Business*.¹⁰⁶ We did not inflate or deflate the prices because they are contemporaneous with the POR.¹⁰⁷

We valued steam using Malaysian natural gas prices and the ratio of natural gas to steam costs determined in the less-than-fair-value investigation of *Steel Wheels from China*.¹⁰⁸ We did not inflate or deflate the prices because they are contemporaneous with the POR.¹⁰⁹

Labor

We valued labor using wage rates from Malaysia's Department of Statistics' publication *Monthly Manufacturing Statistics, Malaysia December 2020*.¹¹⁰ Because these rates were in effect during the POR, we did not inflate or deflate them.¹¹¹

Movement Services

We valued foreign inland truck freight services and brokerage and handling and U.S. inland truck freight services and brokerage and handling using the World Bank's publications, *Doing Business 2020 (Malaysia)*¹¹² and *Doing Business 2020 (United States)*,¹¹³ respectively. We did

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ See Memoranda, "Preliminary Results Analysis Memoranda – Risen," and "Preliminary Results Analysis Memoranda – Jinko," both dated concurrently with this memorandum.

¹⁰⁶ See Risen's First Surrogate Value Submission at Exhibit SV-5.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at Exhibit SV-3. See *Certain Steel Wheels from the People's Republic of China: Final Determination of Sales at Less-Than-Fair-Value*, 84 FR 11746 (March 28, 2019) (*Steel Wheels from China*).

¹⁰⁹ *Id.*

¹¹⁰ See Risen's First Surrogate Value Submission at Exhibit SV-4.

¹¹¹ *Id.*

¹¹² See Petitioner's First Surrogate Value Submission at Exhibits 7 and 8; see also Risen's First Surrogate Value Submission at Exhibits SV-7 and SV-8; and Jinko's First Surrogate Value Submission at Exhibits 8A and 8C.

¹¹³ See Jinko's First Surrogate Value Submission at Exhibits 8C and 8D.

not inflate or deflate the rates because the publications cover a period contemporaneous with the POR.

We valued ocean freight services using rates from Descartes¹¹⁴ and Xeneta.¹¹⁵ We valued ocean freight costs to ship to the west coast of the United States using Descartes data because they are the only publicly available data for the POR. We did not inflate or deflate the Descartes rates because they are contemporaneous with the POR.¹¹⁶ We valued ocean freight costs to ship to other areas of the United States using public Xeneta data because the data are for shipping to the U.S. ports that are closest to the ports to which the respondents shipped their merchandise. We inflated the Xeneta rates because they are from the previous administrative review in this proceeding.¹¹⁷

We valued international ocean and air transportation insurance and domestic inland transportation insurance using a rate from PAF Insurance Services LLC, a ME provider of marine insurance.¹¹⁸ The insurance rates are a percentage of the value of the shipment; thus, we did not inflate or deflate the rates.¹¹⁹

We valued air freight using rates from Freightos.¹²⁰ We did not inflate or deflate the prices because they are contemporaneous with the POR.¹²¹

We valued rail freight using the U.S. Department of Transportation's Bureau of Transportation Statistics.¹²² Because this rate overlaps part of the POR, we did not inflate or deflate the rate.¹²³

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. We valued overhead, SG&A expenses and profit using the 2019 financial statements of JA Solar Malaysia, a Malaysian manufacturer of solar cells and modules.¹²⁴

¹¹⁴ See Risen's First Surrogate Value Submission at Exhibit SV-9.

¹¹⁵ See Memorandum, "Surrogate Values," dated March 19, 2021 (March 19, 2021 Memo).

¹¹⁶ See Risen's First Surrogate Value Submission at Exhibit SV-9.

¹¹⁷ See March 19, 2021 Memo.

¹¹⁸ *Id.* at Exhibit 8F.

¹¹⁹ *Id.*

¹²⁰ See Jinko's November 23, 2020 SV Submission at Exhibit 6B.

¹²¹ *Id.*

¹²² See Risen's November 23, 2020 SV Submission at Exhibit SV2-13.

¹²³ *Id.*

¹²⁴ See Jinko's November 23, 2020 SV Submission at Exhibit 5D.

Adjustments for Countervailable Subsidies

Domestic Subsidies

1. Statutory Framework

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.¹²⁵ 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.¹²⁶ 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, we requested firm-specific information from Jinko and Risen.¹²⁷ We sought 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, we required Jinko and Risen to provide documents supporting the information provided. On May 29, 2020 and July 7, 2020, Risen and Jinko, respectively, submitted responses to Commerce's firm-specific double remedies questionnaire.¹²⁸ The responses included information concerning countervailable subsidies received during the relevant period, as well as information regarding Jinko and Risen's costs and pricing policies and practices.

2. Analysis

In performing the analysis under section 777A(f)(1)(B) of the Act, we examined whether import data show a reduction in the price of imports of the class or kind of merchandise during the relevant period. Imports of merchandise covered by the AD order in this proceeding are classified under the following HTSUS subheadings: (1) 8501.31.8000 (Other DC motors; DC generators: Of an output not exceeding 750 W: Motors: Generators); (2) 8501.61.0000 (AC generators (alternators): Of an output not exceeding 75 kVA); (3) 8507.20.80 (Other lead-acid storage batteries: Other); (4) 8541.40.6015 (Solar Cells: Assembled into modules or made up into modules); and (5) 8541.40.6025 (Solar Cells: Other). While imports of subject

¹²⁵ See section 777A(f)(1)(A)-(C) of the Act.

¹²⁶ See section 777A(f)(1)-(2) of the Act.

¹²⁷ See Commerce's Letters, "Double Remedies Supplemental Questionnaire," dated May 7, 2020.

¹²⁸ See Risen's Letter, "Double Remedy Questionnaire Responses," dated May 29, 2020 and Jinko's July 7, 2020 Response.

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 likely include 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 8541.40.6015 and 8541.40.6025 closely match the description of subject merchandise which suggests that these subheadings likely primarily cover subject merchandise.

Import data for HTSUS subheadings 8541.40.6015 (solar modules) and 8541.40.6025 (solar cells), the categories for a majority of U.S. imports of subject merchandise during the POR, show an overall increase in the U.S. average import price during that period, *i.e.*, the POR.¹²⁹ Thus, the requirement under section 777 A(f)(1)(B) of the Act has not been met, and we did not make an adjustment under section 777A(f) of the Act.

Export Subsidies

Pursuant to section 772(c)(1)(C) of the Act, when calculating EP or CEP, Commerce increases the reported U.S. price by the amount of any countervailing duty imposed to offset an export subsidy. We adjusted Risen's U.S. prices based on the export subsidy rate determined for Risen in the most recently completed CVD review. Because Jinko was not a mandatory respondent in the most recently completed CVD review, we adjusted its U.S. prices using the weight-average of the export subsidy rates determined for the mandatory respondents in the most recently completed CVD review.¹³⁰

Separate Rate Companies

Because Commerce has not individually examined the separate rate companies in the most recently completed CVD review, we based the subsidy adjustments for these companies on the export subsidy and domestic subsidy pass-through determined for Jinko and Risen.

Currency Conversion

Where appropriate, we 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.

¹²⁹ See Memorandum, "International Trade Commission Import Data and Bloomberg Data," dated March 23, 2021 at Attachment I.

¹³⁰ 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; 2017*, 85 FR 79163 (December 9, 2020), and accompanying IDM; see also Memorandum, "Documents from Most Recently Completed Countervailing Duty Administrative Review," dated March 18, 2021.

IX. RECOMMENDATION

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

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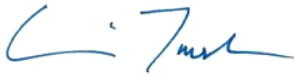
Agree

☐

Disagree

4/16/2021

X



Signed by: CHRISTIAN MARSH
Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance