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Administrative Review
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December 18, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh *OPM*
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Preliminary Results of the 2013-2014
Antidumping Duty Administrative Review of Crystalline Silicon
Photovoltaic Cells, Whether or not Assembled into Modules, From
the People's Republic of China

SUMMARY

In response to requests from interested parties, the Department of Commerce ("Department") is conducting an administrative review of the antidumping duty ("AD") order on crystalline silicon photovoltaic cells, whether or not assembled into modules ("solar cells"), from the People's Republic of China ("PRC") covering the period December 1, 2013 through November 30, 2014 (the period of review ("POR")). The administrative review covers 32 exporters of the subject merchandise, including two mandatory respondents, Yingli Energy (China) Company Limited ("Yingli") and Changzhou Trina Solar Energy Co., Ltd. and Trina Solar (Changzhou) Science & Technology Co., Ltd. ("Trina"). The Department preliminarily finds that 15 companies, in addition to the eight and four companies that we are treating as a single entity with the two mandatory respondents, respectively, have established their entitlement to separate rate status and have sold subject merchandise in the United States at prices below normal value ("NV") during the POR. The Department also preliminarily determines that two companies made no shipments of subject merchandise during the POR.

Background

On December 7, 2012, the Department published in the Federal Register the amended final determination and AD order on solar cells from the PRC.¹ On December 2, 2014, the

¹ 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).



Department notified interested parties of their opportunity to request an administrative review of orders, findings, or suspended investigations with anniversaries in December 2014, including the AD order on solar cells from the PRC.² In December 2014, SolarWorld Americas Inc. (“Petitioner”), as well as various exporters and U.S. importers, requested that the Department conduct an administrative review of certain exporters covering the period December 1, 2013 through November 30, 2014. On February 4, 2015, the Department published a notice initiating an AD administrative review of solar cells from the PRC covering 78 companies and the period December 1, 2013 through November 30, 2014.³

In the Initiation Notice, the Department stated that if it limited the number of respondents for individual examination it intended to select respondents based on volume data contained in responses to its quantity and value (“Q&V”) questionnaire. Further, the Department noted that it intended to limit the number of Q&V questionnaires issued in the review based on U.S. Customs and Border Protection (“CBP”) data for U.S. imports during the POR.⁴ On February 4, 2015, the Department issued a Q&V questionnaire to 12 companies. In February 2015, the Department received Q&V questionnaire responses from 17 companies.⁵ On March 13, 2015, the Department selected Yingli and Trina as mandatory respondents.⁶

On March 18, 2015, the Department issued its AD questionnaire to Yingli and Trina. These companies submitted responses to the Department’s questionnaire and supplemental questionnaires from April 2015 through October 2015. During this time period, Petitioners also submitted comments on these companies’ questionnaire and supplemental questionnaire responses. In addition to the two mandatory respondents, 16 respondents submitted separate rate certifications and applications in April 2015.

Petitioner withdrew its requests for the Department to review 50 companies. However, four of these companies also had requested reviews of themselves, which were not withdrawn. Therefore, on August 4, 2015, the Department rescinded the review with respect to 46 companies.⁷

² See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review, 79 FR 71382 (December 2, 2014) (“Opportunity to Request Administrative Review”).

³ See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 80 FR 6041 (February 4, 2015) (“Initiation Notice”).

⁴ Id. at 6041.

⁵ The Department stated in the Initiation Notice that any party subject to the review could submit a Q&V questionnaire response by the applicable deadline if it desired to be included in the pool of companies from which the Department would select mandatory respondents. Id.

⁶ See the March 13, 2015 memorandum from Jeff Pedersen, Senior International Trade Compliance Analyst, Office 4, to Abdelali Elouaradia, Director, Office 4 regarding the 2013-2014 Antidumping Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or not Assembled into Modules from the People’s Republic of China: Respondent Selection (“Respondent Selection Memorandum”).

⁷ See Crystalline Silicon Photovoltaic Cells, Whether or not Assembled into Modules from the People’s Republic of China: Partial Rescission of Antidumping Duty Administrative Review, 80 FR 46245 (August 4, 2015) (“Rescission Notice”).

In response to the Department's May 18, 2015 request for comments on surrogate country selection and surrogate values ("SVs"),⁸ Petitioner, Yingli, and Trina submitted comments and/or rebuttal comments on surrogate country selection and SVs from June 2015 through October 2015.

On April 6, 2015, the Department issued a questionnaire regarding double remedies to the two mandatory respondents. On May 4 and 6, 2015, Trina and Yingli, respectively, submitted responses to the double remedies questionnaire.

The Department extended the time limit for completing the preliminary results of this review until November 17, 2015.⁹ On November 17, 2015, the Department further extended the time limit for completing the preliminary results of this review until December 11, 2015.¹⁰ On December 10, 2015, the Department further extended the time limit for completing the preliminary results of this review until December 18, 2015.¹¹

In September 2015, the Department issued supplemental questionnaires to a number of companies requesting separate rates status. The Department received responses to its separate rates supplemental questionnaires in September 2015.

In response to the Department's September 28, 2015 request for comments for consideration in these preliminary results of review, a number of interested parties, including the Petitioner and mandatory respondents, submitted comments in October 2015.

Jiangsu Sunlink PV Technology Co., Ltd. and Shanghai JA Solar Technology Co., Ltd., parties for which the Department initiated this administrative review, reported that they made no shipments of subject merchandise to the United States during the POR. On September 22, 2015, the Department placed on the record entry documentation relating to the no shipment claims which it obtained from CBP.¹² On September 29, 2015 interested parties commented on the entry documents that the Department placed on the record September 22, 2015.

⁸ See the May 18, 2015 memorandum to "All Interested Parties" regarding the "Antidumping Duty Review of Crystalline Silicon Photovoltaic Cells from the People's Republic of China: Request for Surrogate Country and Surrogate Value Comments and Information."

⁹ See the July 31, 2015 memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, From Jeff Pedersen, Case Analyst, Office IV regarding 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.

¹⁰ See the November 17, 2015 memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, From Jeff Pedersen, Case Analyst, Office IV regarding 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.

¹¹ See the December 10, 2015 memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, From Jeff Pedersen, Case Analyst, Office IV regarding 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.

¹² See the September 22, 2015 memorandum to the File from Cara Lofaro, International Trade Analyst, regarding release of U.S. Customs and Border Protection Information Relating to No Shipment Claims Made in the 2013-2014 Administrative review of Crystalline Silicon Photovoltaic Cells from the People's Republic of China ("Entry Documents Memorandum").

Scope of the Order

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

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

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

Excluded from the scope of this order are thin film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS). Also excluded from the scope of this order are crystalline silicon photovoltaic cells, not exceeding 10,000mm² in surface area, that are permanently integrated into a consumer good whose function is other than power generation and that consumes the electricity generated by the integrated crystalline silicon photovoltaic cell. Where more than one cell is permanently integrated into a consumer good, the surface area for purposes of this exclusion shall be the total combined surface area of all cells that are integrated into the consumer good.

Modules, laminates, and panels produced in a third-country from cells produced in the PRC are covered by this order; however, modules, laminates, and panels produced in the PRC 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 of the United States (“HTSUS”) under subheadings 8501.61.0000, 8507.20.80, 8541.40.6020, 8541.40.6030, and 8501.31.8000. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of this order is dispositive.

Duty Absorption

Section 751(a)(4) of the Act provides for the Department, if requested, to determine during an administrative review initiated two or four years after publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. See also, 19 CFR 351.213(j). On March 6, 2015, Petitioners timely requested that the Department determine whether the mandatory respondents and separate-rate respondents had absorbed antidumping

duties for U.S. sales of solar cells made during the POR. Since the instant review was initiated two years after publication of the solar cells order, we have conducted a duty absorption analysis.

In determining whether the antidumping duties have been absorbed by the respondent, we examine the antidumping duties calculated in the administrative review in which the absorption inquiry is requested.¹³ The Department presumes the duties will be absorbed for those sales sold through their affiliated importers that have been made at less than NV. This presumption can be rebutted with evidence (e.g., an agreement between the affiliated importer and unaffiliated purchaser) that the unaffiliated purchaser will pay the full duty ultimately assessed on the subject merchandise.¹⁴ The Department requested that Trina and Yingli provide evidence that its unaffiliated U.S. purchaser will pay the full antidumping duties ultimately assessed on entries of subject merchandise.¹⁵ Neither Trina nor Yingli provided any evidence in response to the Department's request. Accordingly, based on the information on the record, we cannot conclude that the unaffiliated purchasers in the United States will ultimately pay the full assessed duties. Because Trina and Yingli did not rebut the duty-absorption presumption with evidence that their unaffiliated U.S. purchasers will pay the full duty ultimately assessed on the subject merchandise, we preliminarily find that antidumping duties have been absorbed by Trina and Yingli on all U.S. sales sold through their affiliated importers.

Because the Department does not individually review and determine company-specific margins for the separate rate respondents, we did not request information necessary to assess whether the separate-rate respondents absorbed antidumping duties. Therefore, there is no basis for making a duty absorption determination with respect to the separate-rate respondents.

Preliminary Determination of No Shipments

Among the companies under review, Jiangsu Sunlink PV Technology Co., Ltd. and Shanghai JA Solar Technology Co., Ltd. reported that they made no shipments of subject merchandise to the United States during the POR. To test these claims, the Department ran a CBP data query, issued a no-shipment inquiry to CBP requesting that it provide any information that contradicted the no-shipment claims, and obtained entry documents from CBP.¹⁶

Based on the certifications of the these two companies, our analysis of CBP information, and the fact that CBP did not identify any information that contradicted the no-shipment claims, we preliminarily determine that Jiangsu Sunlink PV Technology Co., Ltd. and Shanghai JA Solar Technology Co., Ltd. did not have any reviewable transactions during the POR. However, the

¹³ See 19 CFR 351.213(j)(3).

¹⁴ See, e.g., Seamless Refined Copper Pipe and Tube From Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 77651 (December 24, 2013) and accompanying Preliminary Decision Memorandum at 17, unchanged in Seamless Refined Copper Pipe and Tube From Mexico: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 36719, 36720 (June 30, 2014); Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part, 70 FR 39735, 39737 (July 11, 2005), unchanged in Notice of Final Results and Final Rescission in Part of Antidumping Duty Administrative Review: Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan, 70 FR 73727, 73728 (December 13, 2005).

¹⁵ See the Department's December 2, 2015 supplemental questionnaires sent to Yingli and Trina.

¹⁶ See Entry Documents Memorandum.

Department finds that consistent with its announced refinement to its assessment practice in non-market economy (“NME”) cases, it is not appropriate to rescind the review with respect to these companies but, rather, it is appropriate to complete the review with respect to these companies and issue instructions to CBP based on the final results of the review.¹⁷

Selection of Respondents

Section 777A(c)(1) of the Tariff Act of 1930 (the “Act”) directs the Department 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 the Department discretion to limit its examination to a reasonable number of exporters and producers if it is not practicable to make individual weighted-average dumping margin determinations because of the large number of exporters and producers involved in the review.

As noted above, on February 4, 2015 the Department issued a Q&V questionnaire to 12 companies and received Q&V questionnaire responses from 17 companies. On March 13, 2015, the Department determined that it was not practicable to examine individually all known exporters/producers because this number of respondents was too large to individually examine given the Department’s current resource constraints, pursuant to section 777A(c)(2) of the Act.¹⁸ Therefore, in accordance with section 777A(c)(2)(B) of the Act, the Department selected the two exporters accounting for the largest volume of subject merchandise exported from the PRC during the POR, Yingli and Trina.¹⁹

Single Entity Treatment

To the extent that the Department’s practice does not conflict with section 773(c) of the Act, the Department has, in prior cases, treated certain NME exporters and/or producers as a single entity if the facts of the case supported such treatment.²⁰ Pursuant to section 351.401(f)(1) of the Department’s regulations, the Department 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.²¹ In determining whether a significant potential for manipulation exists, section 351.401(f)(2) of the Department’s regulations states that the Department may consider various factors, including: (1) the level of common ownership; (2) the

¹⁷ See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties, 76 FR 65694 (October 24, 2011).

¹⁸ See Respondent Selection Memorandum.

¹⁹ Id.

²⁰ 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).

²¹ 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).

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.²²

Section 771(33) of the Act identifies persons that shall be considered “affiliated” or “affiliated persons,” including, *inter alia*, two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.²³ 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.

The Department has preliminarily determined that the following companies are affiliated pursuant to sections 771(33)(F) of the Act and that these companies should be treated as a single entity for AD purposes pursuant to 19 CFR 351.401(f): Yingli, 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., and Shenzhen Yingli New Energy Resources Co., Ltd.²⁴ The Department finds that these companies are under common control and, therefore, are affiliated, in accordance with section 771(33)(F) of the Act (which states that affiliated persons include “two or more persons directly or indirectly controlling, controlled by, or under common control with, any person”). Further, we find that these companies operate production facilities that produce similar or identical products that would not require substantial retooling of their facilities in order to restructure manufacturing priorities.²⁵ We also determine that there is a significant potential for the manipulation of price or production among these companies as evidenced by the level of common ownership, the degree of management overlap, and the intertwined nature of the operations of these companies.²⁶ Thus we have preliminarily treated these companies as a single entity.

In addition, the Department preliminarily determines that Trina, Yancheng Trina Solar Energy Technology Co., Ltd., Changzhou Trina Solar Yabang Energy Co., Ltd., Turpan Trina Solar Energy Co., Ltd., and Hubei Trina Solar Energy Co., Ltd. are affiliated pursuant to section 771(33)(F) of the Act and that these companies should be treated as a single entity for AD purposes pursuant to 19 CFR 351.401(f).²⁷ The Department finds that these companies are under common control and, therefore, are affiliated in accordance with section 771(33)(F) of the Act.

²² See also, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From Taiwan, 62 FR 51427, 51436 (October 1, 1997).

²³ See section 771(33)(F) of the Act.

²⁴ See the memorandum from Jeff Pedersen, International Trade Analyst, AD/CVD Operations Office IV to Abdelali Elouaradia, Director, AD/CVD Operations Office IV regarding “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Affiliation and Single Entity Status” dated concurrently with this memorandum.

²⁵ Id.; section 351.401(f)(1) of the Department’s regulations.

²⁶ Id. and section 351.401(f)(2) of the Department’s regulations.

²⁷ See the memorandum from Thomas Martin, International Trade Analyst, AD/CVD Operations Office IV to Abdelali Elouaradia, Director, AD/CVD Operations Office IV regarding “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Affiliation and Single Entity Status” dated concurrently with this memorandum.

Further, we find that these companies operate production facilities that produce similar or identical products that would not require substantial retooling of their facilities in order to restructure manufacturing priorities.²⁸ We have also determined that there is a significant potential for the manipulation of price or production among these companies as evidenced by the level of common ownership, the degree of management overlap, and the intertwined nature of the operations of these companies.²⁹ Thus we have preliminarily treated these companies as a single entity.

DISCUSSION OF THE METHODOLOGY

Non-Market Economy Country

The Department considers the PRC to be a non-market economy (“NME”) country.³⁰ In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Therefore, the Department will continue to treat the PRC as an NME country for purposes of these preliminary results of review. The Department calculated NV using the 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, the Department maintains a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single weighted-average dumping margin.³¹ In the Initiation Notice, the Department notified parties of the application process by which exporters or exporter/producers may obtain separate rate status in NME proceedings.³² It is the Department’s policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (de jure) and in fact (de facto), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in Sparklers,³³ as amplified by Silicon Carbide.³⁴ However, if the Department determines that a company is wholly foreign-owned or located in a

²⁸ Id.; section 351.401(f)(1) of the Department’s regulations.

²⁹ Id. and section 351.401(f)(2) of the Department’s regulations.

³⁰ See Hardwood and Decorative Plywood From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 58273 (September 23, 2013) and the accompanying Issues and Decision Memorandum at the Background section.

³¹ 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); 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); 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).

³² See Initiation Notice, 80 FR at 6042.

³³ 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”).

³⁴ 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”).

market economy (“ME”), then analysis of the de jure and de facto criteria are not necessary to determine whether the company is independent from government control and eligible for a separate rate.³⁵

The Department continues to evaluate its practice with regard to the separate rates analysis in light of the diamond sawblades from China AD duty proceeding, and the Department’s determinations therein.³⁶ In particular, we note that in litigation involving the diamond sawblades proceeding, the U.S. Court of International Trade found the Department’s existing separate rates analysis deficient in the circumstances of that case, in which a government-controlled entity had significant ownership in the respondent exporter.³⁷ Based on this, we have concluded that where a government entity holds a majority ownership share, either directly or indirectly, in the respondent exporter, the majority ownership holding in and of itself means that the government exercises or has the potential to exercise control over the company’s operations generally, which may include control over, for example, the selection of management, a key factor in determining whether a company has sufficient independence in its export activities to merit a separate rate. Consistent with normal business practices, we would expect any majority shareholder, including a government, to have the ability to control, and an interest in controlling, the operations of the company, including the selection of management and the profitability of the company. Accordingly, we have considered the level of government ownership where necessary.

Separate Rate Applicants

As noted above, the Department initiated this review with respect to 78 companies. Interested parties timely withdrew all of their requests for a review of 46 companies and the Department

³⁵ 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).

³⁶ See Final Results of Redetermination Pursuant to Remand Order for Diamond Sawblades and Parts Thereof from the People’s Republic of China (May 6, 2013) in Advanced Technology & Materials Co., Ltd., et al. v. United States, 885 F. Supp. 2d 1343 (CIT 2012), affirmed in Advanced Technology & Materials Co., Ltd., et al. v. United States, 938 F. Supp. 2d 1342 (CIT 2013). This remand redetermination is on the Enforcement and Compliance website at <http://enforcement.trade.gov/remands/12-147.pdf>. See also Diamond Sawblades and Parts Thereof from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review: 2011-2012, 78 FR 77098 (December 20, 2013) and accompanying Preliminary Decision Memorandum at 7, unchanged in Diamond Sawblades, 79 FR 35723 (June 24, 2014) and accompanying Issues and Decision Memorandum at Comment 1.

³⁷ See, e.g., Advanced Technology & Materials Co., Ltd. v. United States, 885 F. Supp. 2d 1343, 1349 (CIT 2012) (“The court remains concerned that Commerce has failed to consider important aspects of the problem and offered explanations that run counter to the evidence before it.”); id. at 1351 (“Further substantial evidence of record does not support the inference that SASAC’s {state-owned assets supervision and administration commission} ‘management’ of its ‘state-owned assets’ is restricted to the kind of passive-investor de jure ‘separation’ that Commerce concludes.”) (footnotes omitted); id. at 1355 (“The point here is that ‘governmental control’ in the context of the separate rate test appears to be a fuzzy concept, at least to this court, since a ‘degree’ of it can obviously be traced from the controlling shareholder, to the board, to the general manager, and so on along the chain to ‘day-today decisions of export operations,’ including terms, financing, and inputs into finished product for export.”); id. at 1357 (“AT&M itself identifies its ‘controlling shareholder’ as CISRI {owned by SASAC} in its financial statements and the power to veto nomination does not equilibrate the power of control over nomination.”) (footnotes omitted).

rescinded this review with respect to these 46 companies.³⁸ Of the remaining 32 companies, two companies reported no shipments (see the “Preliminary Determination of No Shipments” section of this memorandum above). The Department treated Yingli and eight of its affiliates as a single entity; only one of the eight companies, Shenzhen Yingli New Energy Resources Co., Ltd., was not one of the companies on which the Department initiated a review. The Department treated Trina and four of its affiliates a single entity; however, none of the other four companies were named in the initiation. Sixteen companies other than Yingli and Trina and their respective affiliates filed separate rate applications or separate rate certifications; five companies subject to the review did not file a separate rate application, separate rate certification, or no shipments letter. The two selected mandatory respondents and companies that form part of their respective single entities (numbers 1 and 2 below), as well as the 16 other companies which filed separate rate applications or separate rate certifications that had shipments during the POR, are listed below:

1. Yingli; 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.; and Hainan Yingli New Energy Resources Co., Ltd.; and Shenzhen Yingli New Energy Resources Co., Ltd.
2. Trina; Yancheng Trina Solar Energy Technology Co., Ltd.; Changzhou Trina Solar Yabang Energy Co., Ltd.; Turpan Trina Solar Energy Co., Ltd.; and Hubei Trina Solar Energy Co., Ltd.
3. BYD (Shangluo) Industrial Co., Ltd.
4. Dongguan Sunworth Solar Energy Co., Ltd.
5. ERA Solar Co., Ltd.
6. Jiangsu High Hope Int’l Group
7. Ningbo Qixin Solar Electrical Appliance Co., Ltd.
8. Shanghai BYD Co., Ltd.
9. Shenzhen Glory Industries Co., Ltd.
10. Shenzhen Topray Solar Co., Ltd.
11. Wuxi Suntech Power Co., Ltd./ Luoyang Suntech Power Co., Ltd.³⁹
12. Canadian Solar International Limited
13. Canadian Solar Manufacturing (Changshu) Inc.
14. Canadian Solar Manufacturing (Luoyang) Inc.
15. ET Solar Energy Limited
16. JA Solar Technology Yangzhou Co., Ltd.
17. JingAo Solar Co., Ltd.
18. ET Solar Industry Limited

³⁸ See Rescission Notice, 80 FR at 46246.

³⁹ The Department determined in the previous POR to treat Wuxi Suntech Power Co., Ltd. and Luoyang Suntech Power Co., Ltd as a single entity. 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, 41000 (July 14, 2015) (“AR1 Final”) and accompanying Issues and Decision Memorandum at 5-6. Because no information on this record contradicts this finding, we have continued to treat Wuxi Suntech Power Co., Ltd. and Luoyang Suntech Power Co., Ltd. as a single entity for purposes of this POR.

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

Companies one through 11, listed above, provided evidence that they are either Chinese joint-stock limited companies or wholly Chinese-owned companies. The Department analyzed whether these companies have demonstrated an absence of de jure and de facto government control over their respective export activities.

a. Absence of De Jure Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) legislative enactments decentralizing control over export activities of the companies; and (3) other formal measures by the government decentralizing control over export activities of companies.⁴⁰

The evidence provided by companies one through 11 in the above list supports a preliminary finding of an absence of de jure government control for each of these companies based on the following: (1) an absence of restrictive stipulations associated with the individual exporters' business and export licenses; (2) the existence of applicable legislative enactments decentralizing control of the companies; and (3) the implementation of formal measures by the government decentralizing control of Chinese companies.

b. Absence of De Facto Control

Typically, the Department considers four factors in evaluating whether a respondent is subject to de facto government control of its export functions: (1) whether the export prices ("EP") are set by, or are subject to the approval of, a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.⁴¹ The Department has determined that an analysis of de facto control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates.

The evidence provided by companies one through 11 in the above list supports a preliminary finding of an absence of de facto government control based on record statements and supporting documentation showing that the companies: (1) set their own EPs 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

⁴⁰ See Sparklers, 56 FR at 20589.

⁴¹ See Silicon Carbide, 59 FR at 22586-87; 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).

respective export sales and make independent decisions regarding disposition of profits or financing of losses.

Therefore, the evidence placed on the record of this administrative review by companies one through 11 in the above list demonstrates an absence of de jure and de facto government control under the criteria identified in Sparklers and Silicon Carbide. Accordingly, the Department preliminarily grants separate rate status to these companies.⁴²

2. Wholly Foreign-Owned

Companies 12 through 17 in the above list provided evidence that they are wholly owned by a company located in a ME country. Moreover, the Department has no record evidence indicating that these companies are under the control of the Government of China (“GOC”). For these reasons, it is not necessary for the Department to conduct a separate rate analysis to determine whether these companies are independent from government control.⁴³ Therefore, the Department has preliminarily granted separate rate status to these six companies.⁴⁴

3. Companies Not Receiving a Separate Rate

The Department has also not granted ET Solar Industry Limited (listed as company 18 in the above list) a separate rate because, although it submitted a separate rate certification, it had not previously been granted a separate rate in this proceeding and in this POR did not file a separate rate application, which, as stated in the Initiation Notice,⁴⁵ it was required to do to be considered for separate-rate status. Therefore, this record does not contain the information necessary to consider whether ET Solar Industry Limited should be eligible for a separate rate. In addition,

⁴² Parties commented regarding the bona fides of the sales that are the basis for the separate rate applications by Dongguan Sunworth Solar Energy Co., Ltd., and Jiangsu High Hope Int’l Group, Shenzhen Glory Industries Co., Ltd. (listed as companies 4, 6, and 9). However, the Department’s practice is not to perform a bona fides analysis on sales made by separate rate applicants that are not mandatory respondents. See, e.g., Certain New Pneumatic Off-the-Road Tires From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013, 80 FR 20197 (April 15, 2015) at Comment 3. Rather, we rely upon CBP data and/or CBP entry documentation to determine if the separate rate applicant had suspended entries during the POR. If there is record evidence of suspended entries, then the Department considers whether the documentation provided by the separate rate applicants establishes that they are entitled to a separate rate. See Aluminum Extrusions From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission, in Part, 2010/12, 79 FR 96 (January 2, 2014) and accompanying IDM at Comment 8. All three applicants placed CBP entry documentation on the record in their separate rate applications demonstrating that they had suspended entries during the POR and other information demonstrating an absence of de jure and de facto government control under the criteria identified in Sparklers and Silicon Carbide. Thus, we have preliminarily granted separate rate status to all three of these applicants.

⁴³ 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).

⁴⁴ See “Preliminary Determination” section below.

⁴⁵ In the Initiation Notice at 80 FR at 6042, the Department stated that “[e]ntities that currently do not have a separate rate from a completed segment of the proceeding should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding.” We further informed parties that did not currently have separate rate where the separate rate application could be found and stated that “Separate Rate Status Applications are due to the Department no later than 60 calendar days of publication of this Federal Register notice.”

the companies listed as 19 through 23 in the list below failed to provide separate rate applications or separate rate certifications necessary to establish their eligibility for a separate rate.

19. Canadian Solar Inc.
20. Yingli Green Energy Americas, Inc.
21. Yingli Green Energy Holding Co., Ltd.
22. Yingli Green Energy International Trading Company Limited
23. MS Solar Investments LLC

Because the Department preliminarily determined that the six companies discussed above are not eligible for separate rate status (listed as companies 18-23 in the lists above), we are treating them as part of the PRC-wide entity. Because no review request was made of the PRC-wide entity, the Department intends to rescind the review with respect to these 6 companies as part of the PRC-wide entity, at the final results.⁴⁶

4. Separate Rate for Companies Not Individually Examined

The statute and the Department's regulations do not address the establishment of a rate to be applied to individual respondents not selected for individual examination when the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, the Department 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 we did not examine individually in an administrative review.⁴⁷ Section 735(c)(5)(A) of the Act articulates a preference not to calculate an all-others rate using rates which are zero, de minimis or based entirely on facts available ("FA"). Accordingly, the Department's usual practice in determining the rate for separate-rate respondents not selected for individual examination has been to average the weighted-average dumping margins for the selected companies, excluding rates that are zero, de minimis, or based entirely on facts available.⁴⁸

In these preliminary results, the Department has calculated rates for the two mandatory respondents (i.e., Yingli and Trina) that are not zero, de minimis, or based entirely on facts available. Normally, the Department's practice is to assign to separate rate entities that were not individually examined a rate equal to the weighted average of the rates calculated for the individually examined respondents, excluding any rates that are zero, de minimis, or based

⁴⁶ 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) ("Conditional Review Announcement").

⁴⁷ See, e.g., 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, 63794 (October 17, 2012).

⁴⁸ See Longkou Haimeng Mach. Co. v. United States, 581 F. Supp. 2d 1344, 1357-60 (Ct. Int'l Trade 2008) (affirming the Department's determination to assign a 4.22 percent dumping margin to the separate rate respondents in a segment where the three mandatory respondents received dumping margins of 4.22 percent, 0.03 percent, and zero percent, respectively); Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 36656, 36660 (July 24, 2009).

entirely on adverse facts available (“AFA”).⁴⁹ Consistent with this practice, the Department has assigned to the companies that have not been individually examined but have demonstrated their eligibility for a separate rate a margin equal to the weighted-average margin using the ranged sales values which Yingli and Trina reported in the public versions of their questionnaire responses.⁵⁰

Application of Partial FA ad AFA

Due to the proprietary nature of the factual information concerning the following discussion, we have included detailed discussions of the following in separate business proprietary memoranda.⁵¹

Yingli reported that it was unable to obtain factor of production (“FOP”) data from its unaffiliated tolling processors and its unaffiliated suppliers of solar cells. Accordingly, necessary FOP information from Yingli’s unaffiliated tollers and solar cell suppliers is not on the record. Pursuant to section 776(a) of the Act, the Department will use FA in valuing the missing FOP data because Yingli documented its attempts to obtain the FOP information, there is usable information on the record to value the missing FOPs, and the unreported information was for a relatively small portion of production. For details regarding these determinations, see Yingli Unreported FOP Memorandum.

Trina reported in its original Section A response, and in subsequent responses, that it requested FOP information from unaffiliated suppliers and toll processors, but was unable to obtain FOPs from any, except for one, of these parties. Because the unreported FOPs for solar cells represented a significant quantity of missing information, the Department subsequently issued a questionnaire concerning FOPs to the largest five of Trina’s unaffiliated suppliers of solar cells, by quantity. In response, these suppliers stated that they would not respond to the Department’s questionnaire. Thus, necessary FOP information from Trina’s unaffiliated toll processors and solar cell suppliers is not on the record. Because necessary information is not available on the record, and in accordance with section 776(a)(1) of the Act, the Department is applying FA with respect to the FOPs from the unaffiliated tollers. Trina documented its attempts to obtain the

⁴⁹ See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People’s Republic of China, 71 FR 77373, 77377 (December 26, 2006), unchanged in Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People’s Republic of China, 72 FR 19690 (April 19, 2007).

⁵⁰ See the memorandum from Jeff Pedersen to Howard Smith, “2013-2014 Administrative Review of the Antidumping Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or not Assembled into Modules, from the People’s Republic of China: Calculation of the Margin for Respondents Not Selected for Individual Examination,” dated concurrently with this notice.

⁵¹ See the memorandum from Thomas Martin to Abdelali Elouaradia entitled “Unreported Factors of Production,” dated concurrent with this memorandum (“Trina Unreported FOP Memorandum”) and the memorandum from Jeff Pedersen to Abdelali Elouaradia entitled “Unreported Factors of Production,” dated concurrently with these preliminary results (“Yingli Unreported FOP Memorandum”).

information, and missing toller FOP data are related to relatively small percentages of the inputs or would represent minor values compared to the overall cost of manufacturing. However, we have determined that it is appropriate to apply AFA, pursuant to section 776(b) of the Act, with respect to the unreported FOPs for purchased solar cells because the Department finds that Trina’s suppliers failed to cooperate to the best of their ability in responding to the Department’s request for information and this missing information is related to a significant quantity of solar cells consumed during the period of review. For details regarding these determinations, see the Trina Unreported FOP Memorandum.⁵²

Surrogate Country

When the Department 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 FOP, valued in a surrogate ME country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOP, the Department shall utilize, to the extent possible, the prices or costs of FOP 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.⁵³ Further, pursuant to 19 CFR 351.408(c)(2), the Department will normally value FOP in a single country. On May 11, 2015, the Department issued a memorandum identifying six countries as being at the level of economic development of the PRC for the POR.⁵⁴ The countries identified in that memorandum are Romania, Bulgaria, South Africa, Ecuador, Thailand, and Ukraine.⁵⁵ Petitioner contends that the Department should select Thailand as the primary surrogate country, while both respondents argue that Bulgaria should be selected as the primary surrogate country. Our surrogate country analysis is below.

Economic Comparability

Consistent with Departmental practice, the Department identified a number of countries that are at the level of economic development of the PRC. The Department determined economic comparability based on per capita gross national income, as reported in the most current annual issue of the World Development Report (The World Bank).⁵⁶ The countries identified, namely

⁵² See the Trina Unreported FOP Memorandum.

⁵³ See Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (“Policy Bulletin”).

⁵⁴ See Letter from Howard Smith, Program Manager, AD/CVD Operations, Office IV, to All Interested parties “Antidumping Duty Review of Crystalline Silicon Photovoltaic Cells from the People’s Republic of China: Request for Surrogate Country and Surrogate Value Comments and Information” dated May 18, 2015 (“Surrogate Country List”) at the Attachment.

⁵⁵ Id.

⁵⁶ See Policy Bulletin at 2 (endnotes omitted); see e.g., Utility Scale Wind Towers From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 77 FR 75992 (December 26, 2012) and the accompanying Issues and Decision Memorandum at Comment 1. Although 19 CFR 351.408(b) instructs the Department to rely on gross domestic product (“GDP”) data in such comparisons, it is Departmental 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 the Department 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

Romania, Bulgaria, South Africa, Ecuador, Thailand, and Ukraine,⁵⁷ are not ranked and are considered equivalent in terms of economic comparability.

Significant Producers of Identical or Comparable Merchandise

While the statute does not define “significant” or “comparable” the Department’s practice is to evaluate whether production is significant based on characteristics of world production of, and trade in, comparable merchandise (subject to the availability of data on these characteristics) and to determine whether merchandise is comparable on a case-by-case basis.⁵⁸ Where there is no production information, the Department has relied upon export data from potential surrogate countries. With respect to comparability of merchandise, in all cases, if identical merchandise is produced in a country, the country qualifies as a producer of comparable merchandise. Where there is no evidence of production of identical merchandise in a potential surrogate country, the Department has determined whether merchandise is comparable to the subject merchandise on the basis of similarities in physical form and the extent of processing or on the basis of production factors (physical and non-physical) and factor intensities. Since these characteristics are specific to the merchandise in question, the standard for ‘significant producer’ will vary from case to case.⁵⁹

A comparison of production quantities of the comparable merchandise from each potential surrogate country in relation to world production was not possible because the record does not contain production quantities of comparable merchandise from each potential surrogate country. The Department next sought evidence of production of comparable merchandise in the form of export data, which is one of the factors we consider in determining whether a country is a significant producer of comparable merchandise. The Department obtained solar cells export data from the Global Trade Atlas (“GTA”) for Romania, Bulgaria, South Africa, Ecuador, Thailand, and Ukraine.⁶⁰ Based on these data, the Department has found that record evidence demonstrates that Romania, Bulgaria, South Africa, Thailand, and Ukraine are all significant producers of comparable merchandise.⁶¹ We next examined record SV data with respect to each of these countries which the Department found to be at a level of economic development comparable to that of the PRC in terms of per capita GNI and found to be significant producers of identical or comparable merchandise.

Data Availability

Countries: Surrogate Country Selection and Separate Rates, 72 FR 13246, 13246 n.2 (March 21, 2007).

⁵⁷ See Surrogate Country List at the Attachment.

⁵⁸ See Xanthan Gum from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 78 FR 2252 (January 10, 2013) and accompanying Preliminary Decision Memorandum at 4-7, unchanged in Xanthan Gum from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 33350 (June 4, 2013).

⁵⁹ See Policy Bulletin 04.1. See e.g., Hardwood and Decorative Plywood From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 58273 (September 23, 2013) and the accompanying Issues and Decision Memorandum at Comment 7.

⁶⁰ See Memorandum from Jeff Pedersen to the File, “World Export Data and Certain Customs Classifications of Inputs used in making Crystalline Silicon Photovoltaic Cells, Whether or not Assembled into Modules, 2013-2014,” dated concurrently with this memorandum.

⁶¹ Only Ecuador had no exports.

When evaluating SV data, the Department considers several factors including whether the SVs are publicly available, contemporaneous with the POR, a broad-market average, from an appropriate surrogate country, tax and duty-exclusive, and specific to the input.⁶² The Department's preference is to satisfy the breadth of these aforementioned selection factors.⁶³

Parties have placed on the record SV data from South Africa, Indonesia, Bulgaria and Thailand.⁶⁴ However, the only SV data from South Africa and Indonesia were financial data and information concerning domestic insurance. Although parties placed certain SV data for Bulgaria on the record, no party placed any financial data concerning Bulgaria on the record. Thus, Thailand is the only potential surrogate country for which we have complete, usable data on the record for valuing direct materials and packing materials. Further, we find these data are of an acceptable quality. The Thai data cover all inputs used to manufacture solar cells, are publicly available, contemporaneous with the POR, broad-market averages, tax and duty-exclusive, and for imports from HTS categories specific to the inputs being valued.

Given the above facts, the Department selects Thailand as the primary surrogate country for this review. Thailand is at the level of economic development of the PRC, is a significant producer of comparable merchandise, and has reliable and usable SV data. A detailed description of the Thai SVs selected by the Department is provided below in the "Normal Value" section of this memorandum.

Date of Sale

In identifying the date of sale of the merchandise under consideration, the Department will normally, in accordance with 19 CFR 351.401(i), "use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business." Yingli and Trina both reported the earlier of shipment date or invoice date as the date of sale. This is consistent with Department practice, pursuant to which the Department uses the shipment date as the date of sale when the shipment date predates the invoice date.⁶⁵ because there is no other information on the record indicating that a different date better reflects the date on which the material terms of sales are established,⁶⁶ the Department has preliminarily determined to use the earlier of shipment date or invoice date as the date of sale.

Fair Value Comparisons

To determine whether Yingli's and Trina's sales of subject merchandise were made at less than NV, and because neither company reported making any export price sales, the Department

⁶² See, e.g., Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2010-2011, 78 FR 17350 (March 21, 2013), and accompanying Issues and Decision Memorandum at Comment I(C).

⁶³ Id.

⁶⁴ See generally Petitioner, Trina, and Yingli's SV Submissions.

⁶⁵ See Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Final Results of the Antidumping Duty Administrative Review, 77 Fed. Reg. 34344 (June 11, 2012) and accompanying Issues and Decision Memorandum at Comment 2 ("the Department has a longstanding practice of finding that, where invoice date is the presumptive date of sale, but shipment date precedes invoice date, shipment date should be used as date of sale.").

⁶⁶ See Trina's April 17, 2015 submission at A-17 and Yingli's May 4, 2015 submission at C-14.

compared the constructed export price (“CEP”) to NV, as described in the “U.S. Price” and “Normal Value” sections below.⁶⁷ In particular, the Department compared monthly weighted-average CEPs with weighted-average NVs and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin.

Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates dumping margins by comparing weighted-average NVs to weighted-average EPs (or constructed export prices (“CEPs”)) (the average-to-average method) unless the Department determines that another method is appropriate in a particular situation. In AD investigations, the Department examines whether to compare weighted-average NVs to the prices of individual export transactions (the average-to-transaction 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 the Department’s examination of this question in the context of administrative reviews, the Department 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.⁶⁸ In recent investigations and reviews, the Department applied a “differential pricing” analysis to determine whether 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.⁶⁹ The Department 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.⁷⁰ The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department’s additional experience with addressing the potential masking of dumping that can occur when the

⁶⁷ In these preliminary results, the Department applied the assessment rate calculation method adopted in Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification, 77 FR 8101 (February 14, 2012) (“Final Modification for Reviews”). In particular, the Department compared monthly weighted-average U.S. prices with weighted-average NVs and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin; see also section 773(a)(1)(B)(ii) of the Act; 19 CFR 351.414(c)(1) and (d).

⁶⁸ See Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011, 77 FR 73415 (December 10, 2012), and accompanying Issues and Decision Memorandum at Comment 1.

⁶⁹ See Hardwood and Decorative Plywood From the People’s Republic of China: Antidumping Duty Investigation, 78 FR 25946 (May 3, 2013), unchanged in Hardwood and Decorative Plywood From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 58273 (September 23, 2013); see also Certain Steel Threaded Rod From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 21101 (April 9, 2013), unchanged in Certain Steel Threaded Rod From the People’s Republic of China; Final Results of Third Antidumping Duty Administrative Review; 2011-2012, 78 FR 66330 (November 5, 2013); see also Certain Lined Paper Products From the People’s Republic of China: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review; 2011-2012, 78 FR 34640 (June 10, 2013) unchanged in Certain Lined Paper Products From the People’s Republic of China: Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review; 2011-2012, 78 FR 65274 (October 31, 2013).

⁷⁰ 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 (Nov. 26, 2013), and accompanying Issues & Decision Memorandum at Comment 4.

Department uses the average-to-average method in calculating weighted-average dumping margins.

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

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

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average 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 method to those sales identified as passing the Cohen’s *d* test as an alternative to the average-to-average method, and application of the average-to-average 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 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, the Department examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, this demonstrates that the average-to-average 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 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, including arguments for modifying the group definitions used in this proceeding.

Results of the Differential Pricing Analysis

The results of the differential pricing analysis for both mandatory respondents demonstrate that more than 66 percent of each company's U.S. sales pass the Cohen's *d* test. Further, with regard to Trina, the Department finds that there is a meaningful difference in the weighted-average dumping margin when calculated using the A-A method and an alternative comparison method based on the A-to-T method applied to all U.S. sales (*e.g.*, relative margin change greater than or equal to 25%). Indeed, the A-to-A method cannot appropriately account for such differences because the resulting weighted-average dumping margin moves across the *de minimis* threshold. Accordingly, the Department has preliminarily determined to use the A-to-T method for all U.S. sales to calculate the weighted-average dumping margin for Trina. However, for Yingli, when comparing the weighted-average dumping margins calculated using the A-A method for all U.S. sales with the margin calculated using the A-to-T method for those sales that pass the Cohen's *d* test, there is not a meaningful difference in the results. Accordingly, the Department has preliminarily determined to use the A-to-A method in making comparisons of CEP to NV for Yingli.

U.S. Price

Constructed Export Price

In accordance with section 772(b) of the Act, CEP is “the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d).” Yingli and Trina reported that during the POR, they made CEP sales through their respective U.S. affiliates. Neither company reported making Export Price sales. In accordance with section 772(b) of the Act, we calculated a CEP for Yingli and Trina’s U.S. sales where the merchandise subject to this review was sold by the U.S. affiliates on behalf of the respondents to unaffiliated purchasers.

We calculated CEP for Yingli and Trina based on delivered prices to unaffiliated purchasers in the United States. We reduced the U.S. sales price by discounts and rebates. We also made deductions from the U.S. sales price, where applicable, for movement expenses in accordance with section 772(c)(2)(A) of the Act. In accordance with section 772(d)(1) of the Act, we also deducted from the U.S. price, direct and indirect selling expenses, credit, expenses, and inventory carrying costs, all of which relate to commercial activity in the United States. Where applicable, we reduced movement expenses by freight revenue. Finally, we deducted CEP profit, in accordance with sections 772(d)(3) and 772(f) of the Act.

VAT

The Department’s recent practice, in NME cases, is to subtract from CEP or EP the amount of any un-refunded (irrecoverable) Value Added Tax (“irrecoverable VAT”), in accordance with section 772(c)(2)(B) of the Act.⁷¹ Where the irrecoverable VAT is a fixed percentage of the U.S. price, the Department makes a tax-neutral dumping comparison by reducing the U.S. price by this percentage.⁷² Thus, the Department’s methodology essentially amounts to performing two basic steps: (1) determining the amount (or rate) of the irrecoverable VAT tax on subject merchandise, and (2) reducing U.S. price by the amount (or rate) determined in step one.

The Chinese VAT schedule placed on the record of this review demonstrates that, the VAT rate is 17 percent and the rebate rate for subject merchandise is 17 percent.⁷³ For the purposes of these preliminary results of review, therefore, we have not reduced the U.S. price because there is no difference between the rates.

Normal Value

Section 773(c)(1) of the Act provides that the Department 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. The Department bases NV in an NME context on FOPs because the presence of government controls on various aspects of NME countries renders price comparisons and the calculation of production costs invalid under the Department’s normal

⁷¹ 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).

⁷² Id.

⁷³ See Yingli’s May 4, 2015 submission at C-43 and Exhibit C-20 and Trina’s May 4, 2015 submission at C-40.

methodologies.⁷⁴ 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. 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.⁷⁵

Factor Valuations

As noted above, when selecting from among the available information for valuing FOPs, the Department's practice is to select, to the extent practicable, SVs which are publicly available, broad market averages, contemporaneous with the POR or closest in time to the POR, product-specific, and tax-exclusive.⁷⁶ In those instances where we could not value FOPs using publicly available information contemporaneous with the POR, we adjusted the SVs using inflation indices. In addition, as discussed in more detail below, where appropriate, the Department adjusted input prices by including freight costs to make them delivered prices. An overview of the surrogate values used to calculate weighted-average dumping margins for Yingli and Trina is below. A detailed description of all surrogate values used to calculate the weighted-average dumping margins for Yingli and Trina can be found in the Preliminary Surrogate Value Memorandum.

Direct and Packing Materials

The record shows that import statistics from the primary surrogate country, Thailand, which we obtained through GTA are generally contemporaneous with the POR, publicly available, product-specific, tax-exclusive, and represent a broad market average.⁷⁷ Thus, except as noted below, we based SVs for Yingli and Trina's direct materials and packing materials on these import values and, where appropriate, valued other items, such as certain movement expenses, using other publicly available Thai data on the record.⁷⁸

We disregarded certain import values when calculating SVs. We have continued to apply the Department's long-standing practice of disregarding import prices that we have reason to believe or suspect are subsidized or dumped.⁷⁹ In this regard, the Department previously found that it is

⁷⁴ See, e.g., Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products From the People's Republic of China, 71 FR 19695, 19703 (April 17, 2006), unchanged in Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079 (September 8, 2006).

⁷⁵ See Preliminary Surrogate Value Memorandum.

⁷⁶ 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).

⁷⁷ See Preliminary Surrogate Value Memorandum at Attachment I.

⁷⁸ See Preliminary Surrogate Value Memorandum.

⁷⁹ See section 505 of the Trade Preferences Extension Act of 2015, Pub. Law 114-27 (June 29, 2015) (amending section 773(c)(5) of the Act to permit the Department 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

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.⁸⁰ 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, the Department finds that it is reasonable to infer that all exporters in India, Indonesia, and South Korea may have benefitted from these subsidies. Therefore, we have not used prices of Thai imports from India, South Korea and Indonesia in calculating the import-based SVs. Additionally, in selecting import data for SVs, we disregarded prices from NME countries.⁸¹ Finally, we excluded from our calculation of the average import value imports that were labeled as originating from an “unspecified” country, because we could not be certain that they were not from either an NME country or a country with generally available export subsidies.⁸²

Consistent with the approach taken in the investigation and first administrative review of this proceeding, and after considering comments from both the mandatory respondents and Petitioner, we are valuing polysilicon using international prices from Bloomberg New Energy Finance and GTM Research. In the underlying investigation and in the first administrative review of this proceeding, we valued polysilicon using international prices because we found that the import data from the potential surrogate countries are not necessarily specific to the polysilicon used by respondents.⁸³ Polysilicon used to produce solar cells requires extremely

Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015, 80 FR 46793, 46795 (August 6, 2015); Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) at 590.

⁸⁰ See, e.g., Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order, 75 FR 13257 (March 19, 2010), and accompanying Issues and Decision Memorandum at 4-5; Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review, 70 FR 45692 (August 8, 2005), and accompanying Issues and Decision Memorandum at 4; Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at 17, 19-20; Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand, 66 FR 50410 (October 3, 2001), and accompanying Issues and Decision Memorandum at 23.

⁸¹ See, e.g., Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 74 FR 9591, 9600 (March 5, 2009), unchanged in Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 36656 (July 24, 2009) and Certain Kitchen Appliance Shelving and Racks from the People’s Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Notice of Antidumping Duty Order, 74 FR 46971 (September 14, 2009).

⁸² Id.

⁸³ See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part, 77 FR 63791, 63795 (October 17, 2012) (“Solar Cells Investigation”) and accompanying Issues and Decision Memorandum at Comment 24 (“As explained in the *Preliminary Determination*, and reiterated in Comment 9 addressing the surrogate value for wafers, there is substantial evidence on the record leading the Department to question whether the import prices are representative of the price of polysilicon. The purity level required for polysilicon used in manufacturing solar cells is very precise. The import data from the potential surrogate countries are from an HTS category that covers silicon products with various levels of purity. Moreover, record evidence indicates that there are dramatic price differences between silicon with different purity levels. Also, there are extreme variations in the AUVs for the applicable HTS category both between and within potential surrogate countries indicating that that imports may at times primarily consist of lower purity silicon, possibly not of a solar grade, or extremely high purity electronics grade polysilicon, neither of which is the input being valued.”); see also Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary

precise purity levels (e.g., purity levels as high as 99.999999 percent).⁸⁴ Numerous articles demonstrate that there are dramatic price differences between silicon with different purity levels.⁸⁵ We determined in the investigation in this proceeding that the dramatic price differences due to purity levels and the purity range of the HTS category that covers polysilicon indicates that this HTS category could include a substantial number of products that differ significantly from the polysilicon used by the respondents.⁸⁶ Additionally, in the first administrative review of this proceeding, we found, consistent with our determination in the investigation, that it was appropriate to rely on international prices to value polysilicon.⁸⁷ Thus, consistent with our determination in the investigation and in the first administrative review, we continue to find it appropriate, given the factors considered in the investigation, to rely on international prices to value polysilicon. Because the prices for polysilicon from Bloomberg New Energy Finance and GTM Research are contemporaneous with the POR, we did not inflate or deflate them.⁸⁸

Similarly, we are valuing wafers using international prices from Bloomberg New Energy Finance and GTM Research. There are a number of factors, which when considered together, weigh in favor of valuing wafers using international prices. First, international prices are more specific to the wafers used than import prices.⁸⁹ Second, wafers for solar cells are primarily made of polysilicon. In the previous review and in the investigation in this proceeding, we found that differences in silicon purity levels can result in significant price differences.⁹⁰ As we noted in the preliminary results of the previous solar cells review⁹¹, we find that the HTS category containing wafers consists of other products made from silicon (e.g., integrated circuit wafers) that differ significantly with respect to silicon purity level and function. By contrast, we believe the international prices are specific to wafers used in solar products because they are from publications that cover the solar industry. Given this unique combination of extreme price variations observed due to differences in silicon purity levels, our decision to value the primary input used to make wafers (polysilicon) with international prices, and the fact that international prices are more specific to the wafers used than import prices, we find, for purposes of this review, that it is appropriate to also value wafers using international prices. We are preliminarily

Determination of No Shipments; 2012-2013, 80 FR 1021 (January 8, 2015) (“AR1 Prelim”) and accompanying Preliminary Decision Memorandum at the section entitled “Direct and Packing Materials,” unchanged in AR1 Final, and accompanying Issues and Decision Memorandum at Comment 14.

⁸⁴ See Preliminary Surrogate Value Memorandum.

⁸⁵ Id.

⁸⁶ See Solar Cells Investigation, 77 FR at 63795, and accompanying Issues and Decision Memorandum at Comment 24.

⁸⁷ See AR1 Prelim, and accompanying Preliminary Decision Memorandum at the section entitled “Direct and Packing Materials,” unchanged in AR1 Final, and accompanying Issues and Decision Memorandum at Comment 14.

⁸⁸ See Preliminary Surrogate Value Memorandum at the section entitled “Polysilicon and Wafers.”

⁸⁹ Id.

⁹⁰ See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2012-2013, 80 FR 1021 (January 8, 2015), and Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Operations, “Decision Memorandum for the Preliminary Results of the 2012-2013 Antidumping Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China”, dated December 31, 2014, at 30. See also Preliminary Surrogate Value Memorandum at Attachment VII.

⁹¹ Id.

valuing wafers using equally weighted prices from Bloomberg New Energy Finance and GTM Research. We did not inflate or deflate the prices because they are contemporaneous with the POR.⁹²

Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from an ME supplier in meaningful quantities (i.e., not insignificant quantities) and pays in an ME currency, the Department 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.⁹³ Where the Department finds ME purchases to be of significant quantities (i.e., 85 percent or more), in accordance with our statement of policy as outlined in Antidumping Methodologies: Market Economy Inputs,⁹⁴ the Department uses the actual purchase prices to value the inputs. Alternatively, when the volume of an NME firm's purchases of an input from ME suppliers during the period is below 85 percent of its total volume of purchases of the input during the period, but where these purchases are otherwise valid and there is no reason to disregard the prices, the Department will weight-average the ME purchase price with an appropriate SV, according to their respective shares of the total volume of purchases, unless case-specific facts provide adequate grounds to rebut the presumption.⁹⁵ When a firm has made ME input purchases that may have been dumped or subsidized, are not *bona fide*, or are otherwise not acceptable for use in a dumping calculation, the Department will exclude them from the numerator of the ratio to ensure a fair determination of whether valid ME purchases meet the 85 percent threshold.⁹⁶

Yingli and Trina provided evidence of ME purchases of some inputs during the POR that were paid for in ME currency. Thus, consistent with 19 CFR 351.408(c)(1), we applied Yingli and Trina's reported ME purchase prices in valuing certain FOPs, either in whole or in part, based upon purchase volume.⁹⁷

Water

We are valuing water using Thai data from the Board of Investment of Thailand. We did not inflate or deflate the rates because they were in effect during the POR.⁹⁸

Energy

We are valuing electricity using Thai data from the Board of Investment of Thailand. We did not inflate or deflate the rates because they are contemporaneous with the POR.⁹⁹ We are valuing natural gas using Thai import values under HTS subheading 2711.21.¹⁰⁰ We did not inflate or

⁹² See Preliminary Surrogate Value Memorandum at the section entitled "Polysilicon and Wafers."

⁹³ See, e.g., Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27366 (May 19, 1997).

⁹⁴ See Use of Market Economy Input Prices in Nonmarket Economy Proceedings, 78 FR 46799 (August 2, 2013) ("Market Economy Inputs").

⁹⁵ Id.

⁹⁶ Id.

⁹⁷ See Yingli and Trina Analysis Memoranda.

⁹⁸ See Exhibit 5 of Petitioner's July 15, 2015 submission.

⁹⁹ Id.

¹⁰⁰ See Preliminary Surrogate Value Memorandum at Attachments I and II.

deflate the value because it is contemporaneous with the POR.

Labor

In Labor Methodologies,¹⁰¹ the Department determined that the best methodology to value labor is to use industry-specific labor rates from the primary surrogate country. We are valuing Yingli's and Trina's labor based on Thailand's National Statistical Office ("NSO") data from surveys taken in 2014. The International Labour Organization ("ILO") cites these data as sources of its labor data. The data are from 2014 for all manufacturing sectors. Because these rates were in effect during the POR, we did not inflate or deflate the value.¹⁰²

Movement Services

As appropriate, we added freight costs to SVs. Specifically, we added surrogate inland freight costs to import values used as SVs using the shorter of the reported distance from the domestic supplier to the factory that produced the subject merchandise or the distance from the nearest port to the factory that produced the subject merchandise, where appropriate. This adjustment is in accordance with the CAFC's decision in Sigma Corp.¹⁰³

We valued inland truck freight based on the results of a Thailand's Office of Transport and Traffic Policy and Planning report entitled "Strategic Development of Transport Infrastructure in Thailand Year 2015-2022." We did not inflate or deflate the truck rate because report covered a period contemporaneous with the POR.¹⁰⁴

We are valuing brokerage and handling expenses based on responses to a survey of these charges related to exporting and importing a standardized cargo of goods in and out of Thailand as published in the World Bank's 2015 Doing Business in Thailand. We did not inflate or deflate the expense because the survey requested data from a period contemporaneous with the POR.¹⁰⁵

We are valuing marine insurance using a marine insurance rate offered by RJG Consultants. RJG Consultants is an ME provider of marine insurance. The rate is a percentage of the value of the shipment; thus we did not inflate or deflate the rate.¹⁰⁶

We are valuing ocean freight using rates from the website <https://my.maerskline.com>, which lists international ocean freight rates offered by Maersk Line. These rates are publicly available and cover a wide range of shipping rates which are reported on a daily basis. We did not inflate or deflate the rates because they are contemporaneous with the POR.¹⁰⁷

¹⁰¹ See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, 76 FR 36092 (June 21, 2011) ("Labor Methodologies").

¹⁰² See Exhibit 4 of Petitioner's July 15, 2015 submission.

¹⁰³ See Sigma Corp. v. United States, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997) ("Sigma Corp.").

¹⁰⁴ See Yingli's July 29, 2015 submission at Exhibit SVR-7.

¹⁰⁵ See Exhibit 5 of Petitioner's July 15, 2015 submission.

¹⁰⁶ See Petitioner's July 15, 2015 submission at Exhibit 12.

¹⁰⁷ See Petitioner's October 19, 2015 submission at Exhibits 12A and 12B.

We are valuing domestic inland insurance based on publicly ranged costs of this expense submitted to the Department in the investigation of Monosodium Glutamate from Indonesia by the respondent Cheiljedang Indonesia. While Indonesia is not on our list of surrogate countries, this is the only source on the record to value domestic inland insurance. The resulting rate is a percentage of the value of the shipment; thus we did not inflate or deflate the rate.¹⁰⁸

No party submitted rates for inland water freight and we were unable to determine rates for inland water freight. Therefore, as a substitute, we valued inland water freight using the inland truck rate listed above.

We valued air freight using price quotations from United Parcel Service. We did not inflate or deflate the average rate because the price quotations are contemporaneous with the POR.¹⁰⁹

Overhead and Financial Expenses

Pursuant to 19 CFR 351.408(c)(4), the Department is directed to value overhead, selling, general and administrative (“SG&A”) expenses, and profit using non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country. The record contains financial statements from six Thai companies, (Team Precision Public Co. Ltd.,¹¹⁰ Hana Microelectronics Public Co., Ltd.,¹¹¹ Hitachi Tochigi Electronics (Thailand) Co., Ltd.,¹¹² KCE Electronics Public Company Limited,¹¹³ Ekarat Engineering Public Company Limited (“Ekarat”),¹¹⁴ and Styromatic (Thailand) Co., Ltd., (“Styromatic”),¹¹⁵ one Indonesian company, PT Len Industri (“Persero”),¹¹⁶ and one South African company, Mustek Limited.¹¹⁷ All of these financial statements show a profit and cover a period contemporaneous with the POR. Ekarat is a manufacturer of solar cells and modules, as well as a distributor and servicer of electrical transformers. The five other Thai companies are manufacturers and assemblers of electronic components and circuit boards. The Indonesian company manufactures solar panels and electronic equipment for railway systems, navigation systems, and defense. The South African company assembles and distributes computers and complementary products.

The Department has preliminarily selected Thailand as the surrogate country in this segment of the proceeding.¹¹⁸ Although all six Thai companies manufactured merchandise that the Department considers comparable to solar cells, the Department notes that five Thai financial statements indicate that the companies received subsidies the Department has determined to be countervailable. The Department’s practice is not to rely on financial statements where there is

¹⁰⁸ See Preliminary Surrogate Value Memorandum at Attachments III.

¹⁰⁹ *Id.* at Attachments VIII.

¹¹⁰ See Yingli’s July 29, 2015 submission at Exhibit 1.

¹¹¹ See Petitioner’s July 15, 2015 submission at Exhibits 13 and 14.

¹¹² See Yingli’s October 19, 2015 submission at Exhibit 1.

¹¹³ See Petitioner’s October 19, 2015 submission at Exhibits 3 and 4.

¹¹⁴ *Id.* at Exhibits 5 and 6.

¹¹⁵ See Yingli’s October 19, 2015 submission at Exhibit 2.

¹¹⁶ *Id.* at Exhibit 4.

¹¹⁷ *Id.* at Exhibit 3.

¹¹⁸ See Letter from Howard Smith, Program Manager, AD/CVD Operations, Office IV, to All Interested parties “Antidumping Duty Review of Crystalline Silicon Photovoltaic Cells from the People’s Republic of China: Request for Surrogate Country and Surrogate Value Comments and Information” dated May 18, 2015.

evidence that the company received countervailable subsidies and there are other, more reliable and representative data on the record for purposes of calculating surrogate financial ratios.¹¹⁹ Accordingly, the Department preliminarily finds that the Styromatic financial statement is more reliable and representative than the other five Thai financial statements. First, there is no evidence that Styromatic received countervailable subsidies. Moreover, Styromatic manufactures electronic circuits,¹²⁰ which the Department has considered to be comparable merchandise in the investigation in this proceeding.¹²¹

Adjustments for Countervailable Subsidies

In applying section 777A(f) of the Act, the Department 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 the Department can reasonably estimate the extent to which that countervailable subsidy, in combination with the use of normal value determined pursuant to section 773(c) of the Act, has increased the weighted-average dumping margin for the class or kind of merchandise.¹²² For a subsidy meeting these criteria, the statute requires the Department to reduce the AD by the estimated amount of the increase in the weighted-average dumping margin subject to a specified cap.¹²³ In conducting this analysis, the Department has not concluded that concurrent application of NME ADs 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, the Department requested firm-specific information from the mandatory respondents, Trina and Yingli.¹²⁴ The information sought included whether countervailed subsidies were received during the relevant period, information on cost accounts, and information regarding the respondents’ pricing policies and practices. Additionally, the respondents were required to provide documentary support for the information provided. Trina and Yingli submitted responses to the Department’s firm-specific double remedies questionnaires on May 4, 2015, and May 6, 2015, respectively.¹²⁵ The responses included information concerning countervailable

¹¹⁹ See, e.g., Diamond Sawblades and Parts Thereof from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2009-2010, 78 FR 11143 (February 15, 2013) and accompanying Issues and Decision Memorandum at Comment 14.

¹²⁰ See Yingli’s October 19, 2015, surrogate value filing at Exhibit 2 at 6.

¹²¹ See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part, 77 FR 63791 (October 17, 2012) and accompanying Issues and Decision Memorandum at Comment 2.

¹²² See section 777A(f)(1)(A)-(C) of the Act.

¹²³ See section 777A(f)(1)-(2) of the Act.

¹²⁴ See Letter to Trina from Howard Smith, Program Manager, AD/CVD Operations, Office IV, dated April 6, 2015; see also letter to Yingli from Howard Smith, Program Manager, AD/CVD Operations, Office IV, dated April 6, 2015.

¹²⁵ See Letter from Trina to the Secretary of Commerce, “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People’s Republic of China: Double Remedy Questionnaire Response,” dated

subsidies received during the relevant period, as well as information regarding the respondents' cost accounts and pricing policies and practices.

Analysis

In performing the analysis under section 777A(f)(1)(B) of the Act for this review, the Department examined whether International Trade Commission (“ITC”) import data showed a reduction in the price of imports of the class or kind of merchandise during the relevant period. In this case, merchandise covered by the AD order is classified under the following Harmonized Tariff Schedule of the United States (“HTS”) subheadings: 8501.31.800 (“Other DC motors; DC generators: Of an output not exceeding 750 W: Motors: Generators”), 8501.61.0000 (“AC generators (alternators): Of an output not exceeding 75 kVA”), 8507.20.80 (“Other lead-acid storage batteries: Other”), 8541.40.6020 (“Solar Cells: Assembled into modules or made up into panels”), and 8541.40.6030 (“Solar Cells: Other”).¹²⁶ While imports of subject merchandise may enter under any of these five HTS classifications, the descriptions of categories 8501.31.800, 8501.61.0000, and 8507.20.80 suggest that imports classified in these categories would be likely to also contain a significant amount of non-subject merchandise. As a result, import data for these particular HTS classifications may be unreliable for purposes of determining whether a reduction in the price of imports of the class or kind of merchandise may have occurred during the relevant period. Conversely, the descriptions of categories 8541.40.6020 and 8541.40.6030 closely match the subject merchandise and suggest that these categories would be likely to contain primarily subject merchandise.

After reviewing the import data listed in the scope corresponding to the relevant period, the Department notes that HTS categories 8541.40.6020 and 8541.40.6030 show a general decrease in the U.S. average import price.¹²⁷ Based on the above analysis, the Department has preliminarily determined that ITC import data for the subject merchandise showed a general decrease in the U.S. average import price during the relevant period, *i.e.*, the POR.¹²⁸ Thus, the Department preliminarily finds the requirement under section 777A(f)(1)(B) of the Act has been met.

Trina and Yingli

In accordance with section 777A(f)(1)(A) of the Act, the Department examined whether a countervailable subsidy (other than an export subsidy) has been provided with respect to a class

May 4, 2015 (“Trina Response”); *see also* letter from Yingli to the Secretary of Commerce, “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People’s Republic of China: Yingli’s Response to the Department’s Double Remedies Questionnaire,” dated May 6, 2015 (“Yingli Response”).

¹²⁶ *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).

¹²⁷ *See* Trina Analysis Memorandum; *see also* Yingli Analysis Memorandum.

¹²⁸ *Id.*

or kind of merchandise. During the most recently completed companion CVD administrative review, it was determined that, in addition to export subsidies, Lightway Green New Energy Co., Ltd. (“Lightway”) and Shanghai BYD Co. Ltd. (“Shanghai BYD”) received countervailable subsidies for the provision of certain goods for less than adequate remuneration (LTAR), including aluminum extrusions, polysilicon, solar glass, electricity, and land.¹²⁹ Trina provided the monthly costs associated with its purchases of aluminum extrusions, polysilicon, solar glass, and electricity,¹³⁰ and Yingli provided the monthly costs and cost analysis tables for its purchases of aluminum extrusions, polysilicon, solar glass, electricity, and float glass, as well as a general ledger regarding amortization of land use rights.¹³¹ Because the Department found the provision of aluminum extrusions, polysilicon, solar glass, electricity, and land for LTAR to be countervailable with respect to the class or kind of merchandise in question in the companion CVD proceeding, the Department preliminarily finds that the requirement of section 777A(f)(1)(A) of the Act has been met. However, because the Department did not find the provision of float glass for LTAR program countervailable in Solar CVD Final Results 2012, the requirement of section 777(f)(1)(A) has not been met. Thus, the Department has not continued its analysis of a domestic subsidy pass-through as it pertains to the provision of float glass for LTAR.

Additionally, in accordance with 777A(f)(1)(C) of the Act the Department examined whether respondents demonstrated: (1) a subsidies-to-cost link, e.g., subsidy impact on COM; and (2) a cost-to-price link, e.g., respondent’s prices changed as a result of changes in the COM. With respect to the subsidies-to-cost link, in their double remedy questionnaire responses, both Trina and Yingli stated that they consumed aluminum extrusions, electricity, polysilicon, and solar glass in the production of subject merchandise and that they received subsidies for these inputs.¹³² Yingli also stated that it received subsidies based on amortization of land use rights.¹³³ Furthermore, Trina and Yingli stated that changes in the costs of these inputs occurred on a monthly and quarterly basis, respectively.¹³⁴ Each respondent provided information indicating that the programs in question impacted its COM on a monthly and quarterly basis in the form of per unit cost reports associated with material purchases, cost analysis tables for purchases raw materials, and general ledgers.¹³⁵ Thus, the Department preliminarily concludes that subsidies for the provision of aluminum extrusions, electricity, polysilicon, and solar glass for LTAR impact Trina’s and Yingli’s costs for producing subject merchandise. The Department also preliminarily concludes that land use rights subsidies impact Yingli’s cost of producing subject merchandise.

For the cost-to-price link, the Department examined whether Trina and Yingli demonstrated that changes in cost affect, or are taken into consideration when setting, prices. While Trina acknowledged that it prefers not to lower the price of subject merchandise when input costs

¹²⁹ 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; 2012, 80 FR 41003 (July 14, 2015) (“Solar CVD Final Results 2012”) and accompanying Issues and Decision Memorandum at VIII.

¹³⁰ See Trina Response at Exhibits 1-4.

¹³¹ See Yingli Response at Exhibits 5-6 and 8-9.

¹³² See Trina Response at 4-7; see also Yingli Response 6-11.

¹³³ See Yingli Response at 6-11.

¹³⁴ See Trina Response at 5; see also Yingli Response at 8.

¹³⁵ See Trina Response at Exhibits 1-8; see also Yingli Response at Exhibits 5-6.

decrease, Trina stated that prices are set based on market conditions, competitive price information, and overall cost of production considerations (including raw materials, energy, overhead, etc.).¹³⁶ Furthermore, Trina stated that a change of cost for these items affects pricing, in that a cost increase brings pressure to raise prices, and a cost decrease grants flexibility to lower prices.¹³⁷ Additionally, Trina stated that changes in the cost of raw materials (such as aluminum extrusions, polysilicon, solar glass, and electricity) are one of the primary factors considered by Trina in its pricing decisions.¹³⁸ Moreover, Trina stated that its sales department uses monthly cost forecasts, together with several other factors, to set sales prices.¹³⁹ Finally, Trina provided an internal “Price Review and Determination Process” instruction form, which stipulates that Trina’s finance department shall provide cost forecasts using a formula which is modified according to cost changes.”¹⁴⁰ Trina stated that its sales department uses such cost forecasts to set sales prices.¹⁴¹

As for Yingli, the company stated that its U.S. sales are made through its U.S. affiliate, YGEA, and that YGEA’s prices to its unaffiliated customers are set and primarily based on market conditions and transfer price (which is, in turn, generally based on Yingli’s production cost).¹⁴² Yingli stated that it calculates new transfer prices approximately each quarter, which are based on updated cost data, including all costs incurred in the assembly of its modules, including the materials, energy, labor and manufacturing overhead in all production stages.¹⁴³ During the POR, Yingli identified a change in the COM and revised the transfer prices.¹⁴⁴ Yingli provided correspondence between Yingli and YGEA discussing the establishment of the second quarter 2014 transfer price, which identifies updated cost data, and demonstrates that, when subsidy programs impact the COM, the transfer prices are likewise revised.¹⁴⁵

Based on the above, the Department finds that Trina provided adequate information to establish a linkage between subsidies (the provision of aluminum extrusions, polysilicon, solar glass, and electricity for LTAR), costs, and prices, and that Yingli provided adequate information to establish the linkage between subsidies (the provision of aluminum extrusions, polysilicon, solar glass, electricity, and land), costs, and prices. Therefore, the Department is applying a pass-through adjustment for the respondents. In Solar CVD Final Results 2012, the Department did not determine program-specific rates for Trina and Yingli and, instead, applied a subsidy rate based on a weighted-average of the subsidy rates calculated for Lightway Green New Energy Co., Ltd. (Lightway) and Shanghai BYD Co., Ltd. (Shanghai BYD) using publicly-ranged sales data submitted by the company respondents.¹⁴⁶ Accordingly, in this review we are applying a pass-through adjustment based on a weighted average of the program-specific CVD rates found for Lightway and Shanghai BYD for the provision of aluminum extrusions, polysilicon, solar

¹³⁶ Id. at 2.

¹³⁷ See Trina Response at 2.

¹³⁸ Id.

¹³⁹ Id. at Exhibit 10.

¹⁴⁰ Id. at Exhibit 1.

¹⁴¹ Id. at 2.

¹⁴² See Yingli Response at 4 and Exhibits 1-2.

¹⁴³ Id. at 8.

¹⁴⁴ Id. at Exhibit 4.

¹⁴⁵ Id. at Exhibit 7.

¹⁴⁶ Solar CVD Final Results 2012, 80 FR at 41005

glass, land, and electricity for LTAR.¹⁴⁷ Furthermore, because the record indicates that factors other than the cost of aluminum extrusions, polysilicon, solar glass, electricity, and land impact Trina's and Yingli's prices to customers,¹⁴⁸ the Department is applying a documented ratio of cost-price changes for the Chinese manufacturing sector as a whole, which is based on data provided by Bloomberg, as the estimate of the extent of subsidy pass-through.¹⁴⁹

Additionally, In Solar CVD Final Results 2012, the Department determined that both Trina and Yingli benefitted from countervailable export subsidies.¹⁵⁰ Therefore, pursuant to section 772(c)(1)(C) of the Act, the Department made an adjustment for countervailable export subsidies.

Separate Rate Companies

For the non-individually examined companies, which are eligible for a separate rate, their weighted-average dumping margin is based on the weighted-average dumping margin of the mandatory respondents for which we calculated a weighted-average dumping margin in this review. In the companion CVD proceeding, the Department did not individually examine these non-mandatory respondents that are preliminarily eligible for separate rates in this review, except Shanghai BYD. Shanghai BYD was individually examined in Solar CVD Final Results 2012 and received its own calculated CVD rate.

Accordingly, in this review, as we are applying the weighted-average dumping margin calculated for Trina and Yingli to these exporters (other than Shanghai BYD), the adjustment to account for domestic subsidies is based on the domestic subsidy pass-through amount determined for Trina and Yingli, which, as described above, is based on the weighted-average of the program-specific countervailing duty rates found for the mandatory respondents for the provision of aluminum extrusions for LTAR, provision of electricity for LTAR, provision of land for LTAR, provision of polysilicon for LTAR, and provision of solar glass for LTAR in Solar CVD Final Results 2012. This adjustment is not more than the countervailing duty attributable to these countervailable subsidies for any of these exporters.

Although Shanghai BYD has its own company-specific CVD rate, its AD rate is based on the experience of Trina and Yingli in these preliminary results. Pursuant to section 777A(f)(2) of the Act, we "cap" any domestic subsidy adjustment, by adjusting only for a pass-through that eliminates any double remedy, but no more. Thus, for Shanghai BYD, a separate rate applicant individually examined in Solar CVD Final Results 2012, the adjustment will be the weighted-average domestic subsidy (pass-through) adjustment of the AD mandatory respondents in this review, on which Shanghai BYD's antidumping duty rate is based, capped by the CVD pass-through adjustment based on the countervailing duty rate applied to Shanghai BYD.¹⁵¹

¹⁴⁷ See Solar CVD Final Results 2012, and accompanying Issues and Decision Memorandum at VIII. The provision of land for LTAR is applicable to Yingli only.

¹⁴⁸ See generally, Trina Response; *see also generally*, Yingli Response.

¹⁴⁹ See Trina Analysis Memorandum; *see also* Yingli Analysis Memorandum.

¹⁵⁰ See Solar CVD Final Results 2012.

¹⁵¹ See Domestic and Export Subsidy Adjustments Analysis Memoranda dated concurrently with this memorandum.

As with the respondent-specific rates, the Department is applying a documented ratio of cost-price changes for the relevant manufacturing sector as a whole, which is based on data provided by Bloomberg, as the estimate of the extent of subsidy pass-through.

Additionally, we are applying to the weighted-average dumping margin calculated for Trina and Yingli to these exporters an adjustment to account for export subsidies. This adjustment is based on the export subsidy amount determined for Trina and Yingli, which, as described above, is based on the weighted average of the program-specific countervailing duty rates found for the mandatory respondents in Solar CVD Final Results 2012.

Currency Conversion

Where appropriate, the Department 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.

CONCLUSION

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

Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

18 DECEMBER 2015
Date