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Administrative Review
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July 24, 2019

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

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

SUBJECT: Issues and Decision Memorandum for the Final Results of the
2016-2017 Antidumping Duty Administrative Review and Final
Determination of No Shipments of Crystalline Silicon Photovoltaic
Cells, Whether or Not Assembled into Modules, From the People's
Republic of China

I. SUMMARY

On December 28, 2018, the Department of Commerce (Commerce) published its *Preliminary Results* in the 2016-2017 administrative review of the antidumping duty (AD) order of crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells) from the People's Republic of China (China).¹ The period of review (POR) is December 1, 2016 through November 30, 2017. This administrative review covers two mandatory respondents: Chint Solar Zhejiang Co., Ltd. (Chint Solar)² and Risen Energy Co., Ltd. (Risen)³ Based on our analysis of the comments received, we made certain changes to our margin calculations for Chint Solar and Risen and the companies granted separate rate status that we did not individually examine. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues for which we received comments:

¹ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2016–2017*, 83 FR 67222 (December 28, 2018) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

² As stated in the *Preliminary Results*, we are treating Chint Energy (Haining) Co., Ltd.; Chint Solar (Jiuquan) Co., Ltd.; Chint Solar (Hong Kong) Company Limited; and Chint Solar as a single entity. Henceforth, we have referred to the collapsed entity as "Chint Solar."

³ As stated in the *Preliminary Results*, we are treating Risen (Wuhai) New Energy Co., Ltd.; Zhejiang Twinsel Electronic Technology Co., Ltd.; Risen (Luoyang) New Energy Co., Ltd.; Jiujiang Shengchao Xinye Technology Co., Ltd.; Jiujiang Shengzhao Xinye Trade Co., Ltd. Ruichang Branch; Risen Energy (Hong Kong) Co., Ltd.; and Risen Energy Co., Ltd. as a single entity. Henceforth, we have referred to the collapsed entity as "Risen."



- Comment 1. Unreported Factors of Production for Purchased Solar Cells and Modules
- Comment 2. Export Buyer's Credit Program
- Comment 3. Weights of Chint Solar Inputs
- Comment 4. Ministerial Error – Chint Solar
- Comment 5. Treatment of Warranties Provided by Chint Solar
- Comment 6. Treatment of Reported Data by Risen's Cooperative Unaffiliated Suppliers
- Comment 7. Treatment of LERRI/LONGi
- Comment 8. Surrogate Value for Aluminum Frames – I
- Comment 9. Surrogate Value for Aluminum Frames – II
- Comment 10. Surrogate Value for Silver Paste
- Comment 11. Surrogate Value for Welding Wire
- Comment 12. Surrogate Value for Backsheet
- Comment 13. Surrogate Value for Nitrogen
- Comment 14. Selection of Surrogate Financial Statements
- Comment 15. Selection of Surrogate Labor Data Source
- Comment 16. Surrogate Value for Ocean Freight

II. BACKGROUND

As noted above, on December 28, 2018, Commerce published its *Preliminary Results* in the 2016-2017 administrative review of the AD order of solar cells from China.⁴ On January 28, 2019, Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from December 22, 2018 through January 27, 2019.⁵ Subsequently, Commerce extended the deadline for the final results of this review until July 16, 2019 and extended the final results a second time until July 24, 2019.⁶

On March 11, 2019, LERRI Solar Technology Co., Ltd.(LERRI) and LONGi Solar Technology Co. Ltd. (LONGi);⁷ Canadian Solar, Inc., Canadian Solar International Limited, Canadian Solar Manufacturing (Changshu), Inc., Canadian Solar Manufacturing (Luoyang), Inc., CSI Cells Co., Ltd., CSI-GCL Solar Manufacturing (YanChaing) Co., Ltd., and Canadian Solar (USA) Inc.

⁴ See *Preliminary Results* PDM. Prior to the *Preliminary Results*, Commerce conducted the verification of U.S. sales and factors of production (FOPs) reported by Chint Solar and one of its suppliers. See Memorandum, "Verification of the Sales and Factors Questionnaire Responses of Chint Solar (Zhejiang) Co., Ltd. in the Antidumping Duty Administrative Review of Crystalline Silicon Photovoltaic Solar cells, Whether or Not Assembled Into Solar modules, from the People's Republic of China," dated December 11, 2018 (China Verification Report); see also Memorandum, "Verification of the Factors Responses of {Chint Solar's Supplier} in the Antidumping Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China," dated December 11, 2018.

⁵ See Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

⁶ See Memoranda, "Extension of Deadline for Final Results of Antidumping Duty Administrative Review," dated May 23, 2019; and "Second Extension of Deadline for Final Results of Antidumping Duty Administrative Review," dated July 11, 2019.

⁷ See LONGi's Case Brief, "Case Brief," dated March 11, 2019 (LONGi's Case Brief).

(collectively Canadian Solar), Shanghai BYD Co., Ltd. and BYD (Shangluo) Industrial Co., Ltd. (collectively BYD), and JA Solar Technology Yangzhou Co., Ltd., Jingao Solar Co., Ltd., and Shanghai JA Solar Technology Co., Ltd. (collectively JA Solar);⁸ Chint Solar,⁹ Risen,¹⁰ SolarWorld Americas Inc. (the petitioner),¹¹ and Sunpreme Inc.¹² submitted case briefs. Also on March 11, 2019, Jinko Solar Co., Ltd., JinkoSolar (U.S.) Inc., Jinko Solar Import and Export Co., Ltd., JinkoSolar International Limited, and Zhejiang Jinko Solar Co., Ltd. (collectively Jinko),¹³ submitted a case brief stating that they support the arguments of the mandatory and other separate rate respondents. On March 18, 2019, the petitioner,¹⁴ Chint Solar,¹⁵ and Risen,¹⁶ submitted rebuttal case briefs.¹⁷ Also on March 18, 2019, BYD and Canadian Solar,¹⁸ JA Solar,¹⁹ and Sumec Hardware & Tools Co., Ltd. submitted letters in lieu of rebuttal case briefs stating that they supported arguments made by the mandatory and other separate rate respondents.²⁰ On January 3, 2019, Chint Solar requested a hearing, and on January 28, 2019, the petitioner, JA Solar and Canadian Solar requested a hearing. All hearing requests were subsequently withdrawn.

III. SCOPE OF THE ORDER

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

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

Merchandise under consideration may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, modules, laminates, panels, building-integrated modules, building-integrated panels, or other finished

⁸ See Canadian Solar, BYD, and JA Solar's Case Brief "Case Brief of JA Solar, Canadian Solar, and BYD" dated March 11, 2019 (BYD/Canadian Solar/JA Solar's Joint Case Brief).

⁹ See Chint Solar's Case Brief, "Chint Solar's Case Brief", dated March 11, 2019 (Chint Solar's Case Brief).

¹⁰ See Risen's Case Brief, "Case Brief", dated March 11, 2019 (Risen's Case Brief).

¹¹ See Petitioner's Case Brief, "Case Brief", dated March 11, 2019 (Petitioner's Case Brief).

¹² See Sunpreme's Case Brief, "Sunpreme Inc.'s Case Brief", dated March 11, 2019 (Sunpreme's Case Brief).

¹³ See Jinko's Case Brief, "Jinko's Case Brief", dated March 11, 2019.

¹⁴ See Petitioner's Rebuttal Brief, "Rebuttal Brief," dated March 18, 2019 (Petitioner's Rebuttal Brief).

¹⁵ See Chint Solar's Rebuttal Brief, "Chint Solar's Rebuttal Brief," dated March 18, 2019 (Chint Solar's Rebuttal Brief).

¹⁶ See Risen's Rebuttal Brief, "Rebuttal Brief," dated March 18, 2019.

¹⁷ Lightway Green New Energy Co., Ltd. also filed a rebuttal case brief but it was rejected. See Memorandum, "Removal of Submission from the Record," dated April 5, 2019.

¹⁸ See BYD's and Canadian Solar's Letter, "Letter in Lieu of Rebuttal Brief of Canadian Solar and BYD," dated March 18, 2019.

¹⁹ See JA Solar's Letter, "Letter in Lieu of Rebuttal Brief," dated March 18, 2019.

²⁰ See Sumec's Letter, "Rebuttal Brief," dated February 23, 2019, filed in lieu of a rebuttal case brief.

goods kits. Such parts that otherwise meet the definition of merchandise under consideration are included in the scope of the order.

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

Also excluded from the scope of the order are crystalline silicon photovoltaic cells, not exceeding 10,000mm² 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.

Additionally, excluded from the scope of the order are panels with surface area from 3,450 mm² to 33,782 mm² with one black wire and one red wire (each of type 22 AWG or 24 AWG not more than 206 mm in length when measured from panel extrusion), and not exceeding 2.9 volts, 1.1 amps, and 3.19 watts. For the purposes of this exclusion, no panel shall contain an internal battery or external computer peripheral ports.

Also excluded from the scope of the order are:

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

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

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

- (A) a total power output of 100 watts or less per panel;
- (B) a maximum surface area of 8,000 cm² per panel;
- (C) do not include a built-in inverter;
- (D) must include visible parallel grid collector metallic wire lines every 1-4 millimeters across each solar cell; and
- (E) each panel is
 - 1. permanently integrated into a consumer good;
 - 2. encased in a laminated material without stitching, or
 - 3. has all of the following characteristics: (i) the panel is encased in sewn fabric with visible stitching, (ii) includes a mesh zippered storage pocket,

and (iii) includes a permanently attached wire that terminates in a female USB-A connector.

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

Merchandise covered by the order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 8501.61.0000, 8507.20.80, 8541.40.6015, 8541.40.6020, 8541.40.6025, 8541.40.6030, 8541.40.6035, 8541.40.6045, and 8501.31.8000. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of the order is dispositive.

IV. DISCUSSION OF THE ISSUES

Comment 1: Unreported Factors of Production for Purchased Solar Cells and Modules

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

BYD/Canadian Solar/JA Solar:

- The statute requires that, in order to apply AFA, Commerce must make a finding that a party did not cooperate to the best of its ability. Here, Chint Solar and Risen made significant and documented efforts to obtain the FOP information from its suppliers.²¹ Thus, Commerce’s application of AFA was impermissible.
- While Commerce cites, in part, to *Mueller* for justification of its application of AFA, the facts are different here than in *Mueller*.²² The unaffiliated supplier in *Mueller* was a mandatory respondent receiving a total AFA rate, and Commerce was concerned that it “could evade its own AFA rate . . . by exporting its goods through *Mueller* if *Mueller* were assigned a favorable dumping rate.”²³
- The “evasion rationale” supporting Commerce’s application of AFA at issue in *Mueller* is not present here as none of the unaffiliated suppliers to which Commerce assigned AFA are mandatory respondents. In this respect, the circumstances confronting Commerce with respect to Chint and Risen are similar to those addressed by the U.S. Court of International Trade (CIT) in *Itochu*,²⁴ where the CIT stated that, “unlike in *Mueller*,

²¹ See BYD/Canadian Solar/JA Solar’s Joint Case Brief at 8 (citing Chint Solar’s June 25, 2018, Section D response (Chint Solar’s Section D response) at Exhibit AD-15; and Risen’s May 15, 2018, Section D response (Risen’s Section D response) at XII-12 and Exhibit D-21).

²² *Id.* at 7-8 (citing *Mueller Commercial De Mexico, S. De R.L. De C.V. v. United States*, 753 F.3d 1227 (Fed. Cir. 2014) (*Mueller*)).

²³ *Id.* (citing *Mueller* at 1232-1233).

²⁴ *Id.* (citing *Itochu Building Products Co., Inc. v. United States*, 2017 WL 2703810, *15 (CIT June 22, 2017) (*Itochu*)).

where the non-cooperating supplier might benefit if Commerce did not apply an adverse inference to the fully-cooperating respondent that purchased {subject merchandise} from it because the noncooperating supplier was also a mandatory respondent with an AFA margin, the same concern does not appear present here.”²⁵

- As in *Itochu*, Commerce’s final results should adequately address how the application of AFA to the FOPs of unaffiliated suppliers “would directly and adversely affect” the suppliers’ interests.
- Commerce incorrectly claimed that the purchase volumes and long-term supplier relationships reported by Chint Solar and Risen suggested their ability to induce cooperation from their unaffiliated suppliers. Neither their reported purchase quantities, nor their existing supplier relationships, indicate an ability by either Chint Solar or Risen to induce cooperation on the part of its unaffiliated suppliers.²⁶
- Commerce misplaces its reliance on the length of time of supplier relationships as an indicator of Chint Solar and Risen’s abilities to induce compliance on the part of their suppliers. The CIT has previously held this argument to be “unpersuasive” because “{u}nder such a standard, it would be impossible to separate respondents who have control from those that do not.”²⁷
- Commerce’s request for FOP information from Chint Solar and Risen’s suppliers contradicts its explanation that Chint Solar and Risen had the ability to induce cooperation from unaffiliated suppliers as the *Itochu* court previously held.²⁸

Risen:

- In reporting all of its own FOP data, Risen cooperated to the best of its ability concerning the data over which it exercised control. Thus, in Risen’s case, Commerce cannot justify the application of AFA to the company’s unreported FOPs.
- While *Mueller* holds that, where a respondent wields a certain amount of influence over a supplier to cooperate, Commerce may apply AFA, the Court of Appeals for the Federal Circuit (CAFC) held in *Changzhou* that where there is no reasonable deterrence benefit from applying the collateral adverse inference on the cooperating party, Commerce may not apply AFA.²⁹ Further, *Mueller* only allows deterrence as a justification for applying AFA to calculate a cooperating party’s dumping rate margin when “the application of deterrence policies is reasonable on the particular facts and the predominant interest in accuracy is properly taken into account as well.”³⁰
- In upholding Commerce’s application of AFA in the second POR of this proceeding to the solar cells for which the suppliers to the mandatory respondent, Changzhou Trina Energy Co., Ltd. (Trina), failed to provide FOPs, the CIT found that Commerce’s AFA decision “turned on the perceived ability of Trina to induce compliance from the

²⁵ *Id.* (citing *Itochu* at *n.32).

²⁶ *Id.* at 9 (citing Chint Solar’s Section D response at Exhibit D-7A and D-7P; and Risen’s Section D response at XII-12, Exhibit D-23 and D-25).

²⁷ *Id.* (citing *Itochu Bldg. Prods. Co. v. United States*, 2018 CIT LEXIS 26, at *27 (Mar. 22, 2018)).

²⁸ *Id.* at 10 (citing *Itochu* at *48).

²⁹ See Risen’s Case Brief at 4 (citing *Changzhou Wujin Fine Chem. Factory Co., Ltd. v. United States*, 701 F.3d 1367, 1379 (CAFC 2012) (*Changzhou*)).

³⁰ *Id.* at 14 (citing *Mueller* at 1233).

suppliers, due to what Trina acknowledged were long-standing business relationships between Trina and the suppliers.”³¹ The CIT found Commerce’s conclusion that Trina had commercial leverage over its suppliers reasonable and that the application of AFA was reasonable in light of Trina’s “apparent ability to induce compliance” of its largest suppliers.³²

- The record of this POR is distinguishable in key ways from the fact pattern that led the CIT to conclude that AFA was reasonable with respect to Trina’s unreported FOPs in the second POR.
- First, unlike indications concerning Trina’s ability to compel FOPs from its unaffiliated suppliers in the second POR, Risen, despite using all of its efforts to obtain the data from unaffiliated suppliers, including explicitly threatening to cut off commercial relations with suppliers, was unable to obtain the data. Risen was more successful than Trina³³ and other respondents in past solar cells reviews in compelling cooperation from its suppliers.³⁴ This success demonstrates Risen’s greater cooperation than demonstrated by previous respondents.
- Second, here, as opposed to the second POR in which Trina was a mandatory respondent, Commerce sampled Risen’s suppliers and that of the nine suppliers out of nearly 100,³⁵ chosen by Commerce, seven provided their full data. The two that did not supply data had compelling commercial reasons for not doing so: one was in bankruptcy, and the other had already severed commercial ties with Risen over a dispute. Thus, because Risen demonstrated that it had no actual way to coerce the information from the remaining two sampled suppliers, there is no deterrence policy served by applying an adverse inference to Risen with respect to their noncooperation. Further, because these nine selected suppliers were the largest suppliers to Risen, there is no evidence that the selected suppliers that provided data are not representative of Risen’s suppliers not queried by Commerce.
- If Commerce continues to apply AFA to Risen’s suppliers, then it should do so in proportion to the ratio of unresponsive suppliers to which Commerce issued FOP questionnaires to the total number of FOP questionnaires Commerce issue to Risen’s

³¹ *Id.* at 5 (citing *SolarWorld Ams. v. United States*, 273 F. Supp. 3d 1254, 1278 (CIT 2017) (*SolarWorld*)).

³² *Id.*

³³ See Risen’s Case Brief at 11 (citing *Crystalline Silicon Photovoltaic Cells Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2013-2014*, 80 FR 80746 (December 28, 2015) (*Solar Cells AR2 Prelim*) and accompanying PDM at 13, unchanged in *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2013–2014*, 81 FR 39905 (June 20, 2016) (*Solar Cells AR2 Final*)).

³⁴ *Id.* at 12 (citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014–2015*, 82 FR 29033 (June 27, 2017) (*Solar Cells AR3 Final*); see also *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 83 FR 35616 (July 27, 2018) (*Solar Cells AR4 Final*)).

³⁵ See Risen’s Case Brief at 3 (citing Risen’s April 13, 2018 Section A Questionnaire Response at Exhibits A-13 and A-14).

suppliers (*i.e.*, two out of nine), or to the relative portion of the willfully non-compliant supplier engaged in a business dispute with Risen (one out of nine).

Petitioner:

- It is Commerce’s practice to apply partial AFA to a respondent where its unaffiliated suppliers of subject merchandise fail to report their costs or provide FOP data.³⁶
- As Commerce has previously found and as again noted in its preliminary results, in *Mueller*, the CAFC recognized that Commerce may apply AFA in order to induce cooperation by other interested parties whose information is needed to ensure accurate margin calculations where the respondent has a mechanism to induce the non-cooperating parties to cooperate. Presented with highly similar facts as here, the CIT has sustained Commerce’s AFA determination in the second review of this order.³⁷
- Commerce noted in the *Preliminary Results* that it chose Chint Solar and Risen as mandatory respondents because they are among the largest exporters of subject merchandise to the United States during the POR.³⁸
- Commerce stated that Chint Solar and Risen’s size and the quantity of their solar cell and module purchases enables them to induce cooperation from its suppliers.³⁹
- The fact that certain of Chint Solar’s suppliers responded and provided data to Commerce demonstrates that Chint Solar is in a position to induce cooperation; otherwise, all of its suppliers likely would have refused to provide FOPs.
- As was the case in previous solar cell reviews, the record indicates that Chint Solar and Risen have several long-term, established relationships with their cell or module suppliers. This makes it reasonable to conclude that the company has in place some business mechanism to induce its suppliers to cooperate.⁴⁰
- The partial AFA here will have a direct impact on the non-cooperating suppliers, as it will work to induce their cooperation. Risen and Chint Solar may choose not to do business with such suppliers in the future due to their lack of cooperation and/or select suppliers that are willing to participate in an AD proceeding. Thus, by applying AFA with respect to the missing data, Commerce relies on the statutory means available to it to induce the cooperation of these parties to obtain the information necessary to calculate accurate dumping margins for this review.

³⁶ See Petitioner’s Rebuttal Brief at 13-14 (citing *Solar Cells AR4 Final* and accompanying Issues and Decision Memorandum (IDM) at Comment 1; see also *Narrow Woven Ribbons With Woven Selvedge from Taiwan, Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 19635 (April 13, 2015) (*Narrow Woven Ribbons*) and accompanying IDM at Comment 7; and *Certain Steel Nails From the People’s Republic of China: Final Results and Final Partial Rescission of the Second Antidumping Duty Administrative Review*, 77 FR 12556 (March 1, 2012) (*Steel Nails from China AR2 Final*) and accompanying IDM at Comment 5).

³⁷ *Id.* at 13-14 (citing Memorandum, “Unreported Factors of Production: Risen Energy Co. Ltd.,” dated December 20, 2018 (Risen FOP Memorandum) at 6-7; and Memorandum, “Unreported Factors of Production: Chint Solar (Zhejiang) Co., Ltd.” dated December 20, 2018 (Chint Solar FOP Memorandum) at 5).

³⁸ *Id.* at 14 (citing Memoranda, “Respondent Selection,” dated March 15, 2018; and “Selection of Additional Mandatory Respondent,” dated April 19, 2018).

³⁹ *Id.* at 14 (citing Chint Solar FOP Memorandum at 6; and Risen FOP Memorandum at 7-8).

⁴⁰ *Id.* at 14-15 (citing Chint Solar’s August 13, 2018, Supplemental Section D response at Exhibits SD-24 and SD-33; and Risen’s August 14, 2018, Supplemental Section D response at Exhibits SD3-2 and SD3-7).

- Based on the previous reviews of this proceeding in which it was a respondent and the CIT's recent ruling in litigation involving the second review results, Chint Solar, and its suppliers were all aware of (or should have been aware of) the reporting requirements. The issue is not whether Chint Solar had influence, but its failure to use that influence to induce cooperation.
- Contrary to Goal Zero's assertion, Commerce's application of partial AFA is not contrary to the statute. In *Xiping*, the CIT explained the CAFC's opinion in *Mueller* where, if a cooperating party was in a position to induce a noncooperating party to supply needed information and failed to do so, AFA could be used to determine the cooperating party's rate if a cooperating party is in a position where it could and should induce another party's cooperation by refusing to do business with it.⁴¹
- Chint Solar's noncooperating solar cell suppliers may not be mandatory respondents in this review, but they are interested parties that produce subject merchandise. Commerce's AFA application, thus, has a direct impact on Chint Solar's noncooperating suppliers, and the potential for evasion of antidumping duties clearly exists. As such, Commerce appropriately interpreted and applied *Mueller* to the facts of this case.
- Contrary to Risen's claims, Commerce never indicated any intention to "sample" or otherwise excuse Chint Solar or Risen from obtaining this critical data. Therefore, Commerce should reject Risen's argument to extrapolate the partial AFA to the relative portion of the non-sampled data represented by the non-compliance of the noncooperating parties, *i.e.*, 2/9 of the unreported data.

Commerce's Position: For the reasons described in detail below, we have continued to apply partial AFA by selecting the highest FOP consumption rates reported by Chint Solar's and Risen's as plugs for the FOPs that the suppliers failed to provide.⁴² Section 776(a) of the Act directs Commerce to use the facts otherwise available if necessary information is not available on the record or an interested party (or any other person) withholds information that has been requested, fails to provide such information by the deadline for submission, significantly impedes a proceeding, or provides such information but the information cannot be verified. It is undisputed that the FOPs in question have been withheld by Chint Solar and Risen's suppliers and, thus, that the application of facts otherwise available is warranted here.

Section 776(b) provides that, if Commerce finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting the facts otherwise available. In so

⁴¹ *Id.* at 20 (citing *Xiping Opeck Food Co. v. United States*, 34 F. Supp. 3d 1331, 1348 (CIT 2014) (*Xiping*)).

⁴² In the preliminary results, we inadvertently failed to apply AFA to the FOPs of one of Risen's suppliers that failed to provide FOPs for the majority of solar cells it provided Risen. Because the names of Risen's solar cell and solar module suppliers are business proprietary, we have not disclosed their names in this memorandum. The name of this supplier is disclosed in Memorandum, "Proprietary Information Publicly Summarized in the Final Results of the 2016-2017 Antidumping Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China," dated concurrently with this memorandum (BPI Memorandum) at Note 3. As we did with Risen's other suppliers, as partial AFA for the missing FOPs that this additional Risen supplier failed to provide, we have relied on the highest consumption quantity reported for each FOP that Risen used to produce solar cells.

doing, Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.⁴³

The SAA explains that Commerce may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”⁴⁴ The purpose of the adverse facts available statute is “to provide respondents with an incentive to cooperate” with Commerce’s investigation.⁴⁵ Because Commerce lacks subpoena power, Commerce’s ability to apply adverse facts available is an important one.⁴⁶

We find that our application of partial AFA in selecting plugs for the unreported FOPs of Chint Solar’s and Risen’s unaffiliated solar cell suppliers is in accordance with the statutory framework and the CAFC’s guidance in *Mueller*. In *Mueller*, the CAFC held that Commerce, in selecting from among facts available to calculate a cooperative respondent’s weighted-average dumping margin, may consider an adverse inference against non-cooperative suppliers (who failed to report production costs used in calculating the respondent’s margin) in certain circumstances. The CAFC in *Mueller* addressed a scenario where Commerce used an adverse inference to calculate the surrogate production cost for an uncooperative supplier and used the resulting surrogate cost in calculating the cooperative respondent’s dumping margin.⁴⁷ Specifically, Commerce used the “three highest margin transactions” of the available cost of production data submitted by one supplier, TUNA, as a surrogate for another supplier’s missing data, Ternium, in calculating the dumping margin for Mueller, a cooperating mandatory respondent.⁴⁸ Although the CAFC observed that Commerce was “acting primarily under subsection (a) {of section 776} in setting a margin for Mueller,” the CAFC “conclude{d} that Commerce may rely on such policies {as deterrence and evasion considerations} as part of a margin determination for a

⁴³ See section 776(b)(1)(B) of the Act.

⁴⁴ See *Statement of Administrative Action Accompanying the Uruguay Round Agreements Act*, H.R. Doc. 103-316, vol 1 (1994) (SAA) at 870; see also *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

⁴⁵ See *Essar Steel Ltd. v. United States*, 678 F.3d 1268, 1276 (CAFC 2012).

⁴⁶ *Id.*

⁴⁷ See *Mueller* at 1232 (acknowledging that Commerce “use{d} {an} adverse interference to calculate Ternium’s surrogate production cost.”); see also *Mueller Comercial De Mex., S. De R.L. De C.V. v. United States*, 887 F. Supp. 2d 1360, 1367 (CIT 2012) (“Commerce did not draw an adverse inference against Mueller, did not rely upon a dumping rate previously calculated for Mueller, or select a rate because it was adverse to Mueller. Rather, Commerce selected a ratio based on some of TUNA’s cost data as the best available information in place of Ternium’s missing cost data. When Commerce made the judgment as to what information available on the record was best to evaluate Mueller’s cost of production for Ternium products, Commerce considered the adverse inference that it had drawn against Ternium—a mandatory respondent to whom Commerce had assigned a margin reflecting an adverse inference.”); and *Certain Circular Welded Non-Alloy Steel Pipe From Mexico: Final Results of Antidumping Duty Administrative Review*, 76 FR 36086 (June 21, 2011) and accompanying IDM at 15-16 (“We have continued to apply adverse facts available to Ternium’s cost information for the final results... The Department has found that the necessary information is absent from the record because Ternium failed to cooperate, and has not made a finding that Mueller failed to cooperate. Accordingly, the Department has not applied an adverse inference against the interest of Mueller.”).

⁴⁸ See *Mueller*, 753 F. 3d at 1232.

cooperating party...as long as the application of those policies is reasonable on the particular facts and the predominant interest in accuracy is properly taken into account....”⁴⁹

The statutory framework and *Mueller’s* guidance informs that Commerce acts primarily under subsection (a) of section 776 of the Act, in calculating the dumping margin for a cooperative respondent. Commerce properly draws an adverse inference against a non-cooperative interested party to fill gaps in the record resulting from the non-cooperative party’s failure to provide requested information, and Commerce may consider these gap-fillers as part of the margin calculation for a cooperative respondent. In doing so, Commerce may rely on policies of deterring non-cooperation and duty evasion. A remedy that collaterally impacts a cooperative mandatory respondent has the potential to account for evasion and encourage cooperation.⁵⁰

Commerce has consistently recognized that a number of Chint Solar and Risen’s suppliers, interested parties to the proceeding, failed to cooperate by not acting to the best of their ability to comply with Commerce’s request for information.⁵¹ With respect to Chint Solar and Risen, Commerce considered that the CAFC in *Mueller* concluded that Commerce “may rely on such policies {as inducement of cooperation and evasion considerations} as part of a margin determination for a cooperating party.”⁵²

Commerce is acting primarily under subsection (a) in calculating Chint Solar and Risen’s dumping margin. There is no dispute that Chint Solar’s and Risen’s unaffiliated suppliers: (1) are interested parties within the meaning of section 771(9)(A) of the Act, because they are subject merchandise producers (Chinese solar cells, as well as solar modules containing Chinese solar cells, are subject merchandise); and, (2) failed to comply with Commerce’s information requests. This left an information gap with respect to some of Chint Solar and Risen’s production costs, leading Commerce to resort to facts otherwise available and further, draw an adverse inference against the uncooperative suppliers. When, as here, necessary information is not available and an interested party has withheld information requested by Commerce, the statute requires that Commerce “shall . . . use the facts otherwise available in reaching the applicable determination.”⁵³ There is no dispute that Commerce properly resorted to “facts available” to fill the information gap.

The statute authorizes Commerce, in place of missing cost data needed to determine Chint Solar and Risen’s dumping margin, to consider the adverse inference against non-cooperative suppliers when selecting from among the facts otherwise available.⁵⁴ “The statute on its face does not preclude Commerce from relying on the same considerations under subsection (a) for an AFA determination as under subsection (b).”⁵⁵ Consistent with *Mueller*, Commerce next re-evaluates whether, in selecting from among the facts available to fill the information gap, the record supports consideration of the adverse inference drawn against the uncooperative suppliers (to, as

⁴⁹ *Id.* at 1233.

⁵⁰ See *KYD, Inc. v. United States*, 607 F. 3d 760,768 (CAFC 2010) (*KYD*).

⁵¹ See Chint Solar FOP Memorandum at 5; see also Risen FOP Memorandum at 7.

⁵² See *Mueller*, 753 F. 3d at 1233.

⁵³ See section 776(a) of the Act.

⁵⁴ See *Mueller*, 753 F. 3d at 1233-1234.

⁵⁵ *Id.* at 1234.

noted above, fill in gaps in the record as a result of missing FOP information), in calculating Chint Solar's and Risen's dumping margins.

With regard to the first policy consideration—duty evasion—Commerce finds that there exists a real possibility that the parties involved could obtain a more favorable result by not cooperating because the uncooperative suppliers' consumption rates could be even higher than Chint Solar and Risen's rates. Absent a separate rate, or selling through Chint Solar and Risen, the uncooperative solar module and solar cell suppliers without their own dumping rate would be subject to the 238.95 percent China-wide rate. By not reporting any higher consumption rates, the uncooperative suppliers—producers of subject merchandise—are able to take advantage of the separate rate of Chint Solar and Risen. Thus, the uncooperative suppliers can avoid the appropriate dumping margins that should apply to the subject merchandise they produced by failing to cooperate, similar to the concern in *Mueller*. Chint Solar and Risen's dumping margin in the review was assessed on merchandise which includes the uncooperative suppliers' solar cells and modules, so the suppliers' merchandise is directly affected by Commerce's determination.

With regard to the second policy consideration—deterrence of non-cooperation—Commerce further considers, in light of the remand order, whether Chint Solar and Risen could and should have induced the suppliers' cooperation. Both Chint Solar and Risen are significant producers in the solar market with significant sales during the POR and they are the largest two exporters of subject merchandise to the United States during the relevant period and have purchased a substantial quantity of solar cells and solar modules from suppliers.

Consistent with *Mueller*, and in addition to Commerce's observations regarding the first policy consideration, we find that Chint Solar and Risen's exposure to enhanced antidumping duties and the relationship between Chint Solar and Risen and the unaffiliated suppliers could *potentially* induce the cooperation of the suppliers.⁵⁶ As the CAFC reasoned in *KYD*, “the importers' exposure to enhanced antidumping duties seems likely to have the effect of either directly or indirectly inducing cooperation from the exporters with whom the importers deal or doing so indirectly, by leaving uncooperative exporters without importing partners who are willing to deal in their products.”⁵⁷ This reasoning applies equally here: Chint Solar and Risen's exposure to enhanced antidumping duties seems likely to have the effect of directly inducing cooperation from the suppliers of solar cells and solar modules with whom Chint Solar and Risen deal or leaving uncooperative suppliers without customers.

By resorting to partial AFA, Chint Solar and Risen are incentivized to source from and conduct business with cooperative suppliers, and the uncooperative suppliers are affected by their own non-cooperation. By applying AFA only with respect to the transactions between Chint Solar and Risen and their uncooperative suppliers, Commerce has made these transactions less attractive to Chint Solar and Risen. Commerce's application of AFA to these transactions encourages and induces cooperation by incentivizing Chint Solar and Risen to not purchase solar cells and solar modules from suppliers that refuse to provide FOP data. We emphasize that the

⁵⁶ *Id.* at 1235.

⁵⁷ *See KYD*, 607 F. 3d at 768.

CAFC has explained that a relationship between a cooperating respondent and non-cooperating interested party where the cooperating respondent refuses to export goods supplied by the non-cooperating interested party “would *potentially induce* {the non-cooperating party} to cooperate.”⁵⁸ The CAFC has contrasted the requisite relationship with one in which “the cooperating entity has *no control* over the non-cooperating suppliers.”⁵⁹ Here, the existence of a plausible threat of refusing to purchase subject merchandise from suppliers refusing to provide FOPs when asked provides Chint Solar and Risen with leverage to ensure that their suppliers cooperate.⁶⁰

As the CAFC held in *Mueller*, Commerce’s application of policy considerations is reasonable where the predominant interest in accuracy is properly taken into account, as well.⁶¹ Here, by only applying AFA precisely to and commensurate with the amount of uncooperation by the suppliers, it is solely the purchases from uncooperative suppliers that are the cause for the increased antidumping duties. Thus, Commerce has made it clear to potential buyers and sellers of solar modules and solar cells that will be shipped to the United States the actions that cause the increased dumping duties (*i.e.*, not reporting FOP data and purchasing from parties that refuse to provide FOPs), and the actions that will end the application of these increased dumping duties (reporting the FOP data and not purchasing from parties that refuse to provide FOP data).

Additionally, the CAFC has recognized that Commerce may apply AFA in determining a respondent’s dumping margin even though there may be collateral effects on other cooperative parties. In *KYD*, the court held that an importer was required to pay duties based on an AFA dumping margin imposed on an uncooperative producer/exporter that supplied its merchandise.⁶² The CAFC reasoned, *inter alia*, that to allow otherwise would mean uncooperative foreign

⁵⁸ See *Mueller*, 753 F. 3d at 1235.

⁵⁹ *Id.* (emphasis added).

⁶⁰ Commerce’s experience in this proceeding, as evidenced by this administrative review, has been that a mandatory respondent may not report all of its FOPs as a result of its unaffiliated suppliers’ failure to provide the requested information. See *Solar Cells AR2* IDM at Comment 19; see also *Solar Cells AR3* IDM at Comments 1 and 3; and *Solar Cells AR4* IDM at Comment 1. We have previously concluded, as we do here, that the application of partial AFA serves to incentivize the respondent to conduct business with cooperative suppliers, and that the respondent has the potential to induce cooperation by its suppliers in that it has the ability to not purchase solar cells and modules from suppliers that do not cooperate with Commerce’s request for information. We would anticipate that respondents for whom we used partial AFA to calculate their weighted-average dumping margin would take the necessary steps to avoid exposure to enhanced antidumping duties as a result of their suppliers’ failure to cooperate, such as declining to purchase from the supplier in the future, or making their purchases contingent on guarantees of cooperation in any potential administrative review. As such, in future administrative reviews, we intend to examine whether respondents who have been individually examined (if a review of such companies is requested), including Chint Solar and Risen, continue to do business with suppliers who have previously failed to cooperate in providing FOP information. Evaluating the circumstances of the business relationship between the respondent and its supplier in such circumstances is appropriate because it is the respondent who is subject to the review, and thus it is the responsibility of the respondent to provide requested information that is necessary for Commerce’s antidumping duty analysis. Depending on the circumstances, continued purchases of merchandise from unaffiliated suppliers who have previously failed to cooperate, and who continue to be uncooperative in response to Commerce’s information requests, may indicate that the respondent has failed to take the appropriate steps to ensure that it is able to cooperate with Commerce’s requests for information in the event that it is examined in an administrative review.

⁶¹ See *Mueller*, 753 F. 3d at 1233.

⁶² See *KYD*, 607 F. 3d at 768.

exporters could avoid a dumping margin based on AFA by selecting an unrelated importer and would “result in easy evasion of the means Congress intended for Commerce to use to induce cooperation with its antidumping investigations.”⁶³ In addition, the CAFC also recognized that the importers’ exposure to enhanced antidumping duties seemed “likely to have the effect of either directly inducing cooperation from the exporters with whom the importers deal or doing so indirectly, by leaving the uncooperative exporters without importing partners who are willing to deal in their products.”⁶⁴

Commerce’s determination to apply partial AFA in this case is consistent with its practice regarding the valuation of unreported FOPs. For instance, in *Narrow Woven Ribbons*, Commerce applied partial AFA to a respondent because its unaffiliated ribbon suppliers declined to report their costs related to subject merchandise and, thus, failed to cooperate with Commerce’s requests for information.⁶⁵ Commerce determined that the application of partial AFA was appropriate in this case because the unaffiliated ribbon suppliers produced ribbons and then sold the ribbons to the mandatory respondent who, after further processing, exported the ribbons to the United States during the POR and, thus, they were interested parties within the meaning of section 771(9)(A) of the Act. Similarly, in *Certain Steel Nails*, Commerce applied partial AFA in determining a respondent’s dumping margin because its unaffiliated supplier did not provide FOP data. Commerce noted that “it is crucial for suppliers of subject merchandise to provide their own FOP data because suppliers actually provide finished merchandise independently subject to the Order, in contrast to tollers who only perform a process at one stage of the production.”⁶⁶

Risen incorrectly construes our sending of nine FOP questionnaires to its largest nine uncooperative suppliers as evidence that we were “sampling” its suppliers. Contrary to Risen’s claims, Commerce never indicated any intention to “sample” or otherwise excuse Chint or Risen from obtaining this critical data. We sent the questionnaires directly to these nine suppliers because they were the largest suppliers. However, we continuously requested all FOPs from all of Risen’s suppliers of subject merchandise and incorporated the FOPs from all Risen’s suppliers providing FOPs in calculating its preliminary results dumping margin.⁶⁷

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ See *Narrow Woven Ribbons* IDM at Comment 7.

⁶⁶ See *Steel Nails from China AR2 Final* IDM at Comment 12.

⁶⁷ The record contains many examples of where we requested the FOPs from all Risen suppliers. Just three of our numerous requests for all FOP data from all suppliers of solar cells and modules are the Section D Questionnaire, dated March 15, 2018, at Appendix XII at the section entitled “Reporting Consumption Amounts,” “Solar Cell Production and Purchases,” and “Solar Module Production and Purchases”; see also Commerce’s Letter, “Section D Supplemental Questionnaire,” dated July 2, 2018, in which we requested at page 6 that “{f} or all tollers and suppliers of subject merchandise not providing FOPs, please again attempt to obtain FOP data from tollers and suppliers...”; Commerce’s Letter, “Unreported Factors of Production Supplemental Questionnaire,” dated July 20, 2018, at page 8. Further, our calculation of the preliminary results margin included the FOPs from all suppliers. See Risen FOP Memorandum at Attachment I.

Comment 2: Export Buyer's Credit Program

Chint Solar/Sunpreme/ BYD/Canadian Solar/JA Solar:

- Commerce should provide an export subsidy adjustment to Chint Solar's U.S. price for the Export Buyer's Credit subsidy program. Section 772(c)(1)(C) of the Act provides that Commerce increases the U.S. price by the amount of any countervailing duty imposed to offset an export subsidy. In the most recently completed review of the companion solar cells countervailing duty (CVD) order, Commerce assigned a rate of 5.46 percent for the Export Buyer's Credit program.⁶⁸
- The Export Buyer's Credit program has been involved in virtually every CVD investigation and review against China since *Utility Scale Wind Towers* in 2012,⁶⁹ and in most of those cases, Commerce applied AFA to this program while offsetting the rate in the companion dumping case at the same time.⁷⁰
- In the original Solar Products CVD investigation, like in many other cases, Commerce found the Export Buyer's Credit program to be specific, pursuant to section 771(5a)(B) of the Act, because the program provided loans for exported products and, thus, was a subsidy contingent on export performance. Because of this finding, Commerce was required to offset the export subsidy rate pursuant to section 772(c)(1)(C) in the companion AD investigation, which it did.⁷¹ This decision was upheld by the CIT.⁷² In its decision the CIT stated that "Commerce's practice of offsetting the AD cash deposit rate by an export subsidy, even one based on AFA, in the companion CVD investigation is reasonable because Commerce's practice is calculated to ensure that the adverse inference is applied only once."⁷³
- The CIT has stated that Commerce must determine how a given program is specific in order to countervail it.⁷⁴

⁶⁸ See Chint Solar's Case Brief at 54 (citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2015*, 83 FR 34828 (July 23, 2018) (*Solar Cells CVD Final Results 2015*)).

⁶⁹ *Id.* at 55-56 (citing *Utility Scale Wind Towers From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012) and accompanying IDM at 14; see also *Utility Scale Wind Towers From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 75992 (December 26, 2012) and accompanying IDM at Comment 5).

⁷⁰ *Id.* at 56 (citing, e.g., *Certain Aluminum Foil From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282, 9283 (March 5, 2018); *Countervailing Duty Investigation of Certain Aluminum Foil From the People's Republic of China: Final Affirmative Determination*, 83 FR 9274 (March 5, 2017) (offsetting the AFA rate of 10.54 percent for the Export Buyer's Credit program); *Antidumping Duty Investigation of Certain Amorphous Silica Fabric From the People's Republic of China: Final Affirmative Determination of Sales at Less-Than-Fair Value, and Final Affirmative Determination of Critical Circumstance*, 82 FR 8399, 8400-01 (January 25, 2017); and *53-Foot Domestic Dry Containers From the People's Republic of China: Final Determination of Sales at Less Than Fair Value; Final Negative Determination of Critical Circumstances*, 80 FR 21203, 21205 (April 17, 2015)).

⁷¹ *Id.* at 53 (citing *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 76970 (December 23, 2014) (*Solar Products Investigation Final*) and accompanying IDM at Comment 3).

⁷² *Id.* (citing *Jinko Solar Co. v. United States*, 229 F. Supp. 3d 1333, 1359 (CIT 2017)).

⁷³ *Id.*

⁷⁴ See BYD/Canadian Solar/JA Solar's joint Case Brief at 2 (citing *Changzhou Trina Solar Energy Co. v. United States*, 2018 Ct. Intl. Trade LEXIS 180, at *46-*48 (November 30, 2018)).

- In a recent decision, the CIT dismissed Commerce’s position that “Commerce must increase Trina’s U.S. selling prices by the amount countervailed to offset the export subsidy.”⁷⁵

Petitioner:

- In the *Preliminary Results*, Commerce made clear that in the most recently completed companion CVD review, it did not determine that the Export Buyer’s Credit program was export contingent;⁷⁶ therefore, Commerce determined in the instant AD review that it had no basis to adjust CEP for this program.
- Respondents overlook the critical point that Commerce’s determination not to adjust CEP was based not only on the fact that the subsidy program’s rate was based on AFA, but that because of recently discovered revisions to the program and the GOC’s failure to cooperate,⁷⁷ the agency lacked sufficient understanding of the program to even determine its countervailability, let alone whether it was export contingent.
- The recent Court opinion to which respondents cite was based on a different factual record, and was explicitly premised on the fact that the agency did not base its specificity finding with respect to the Export Buyer’s Credit program on AFA.⁷⁸ However, in the most recently completed CVD review of solar cells at issue here the agency explicitly noted that its specificity finding was based on AFA.⁷⁹ Commerce did not find that the program was export contingent, and as a result, Commerce is not required to grant the requested offset.

Commerce’s Position: We disagree with the petitioner. In the *Preliminary Results*, we noted the following:

The non-cooperation by the GOC in the most recently completed CVD administrative review resulted in the application of facts available with an adverse inference with respect to the Export Buyer’s Credit program; however, Commerce did not determine that the program in question was export contingent.⁸⁰ Without a determination in the most recently completed CVD administrative review that this program provides an export subsidy, we find it is not appropriate to increase Chint Solar’s and Risen’s U.S. prices pursuant to section 772(c)(1)(C) of the Act.⁸¹

⁷⁵ *Id.* at 2-3 (citing *Changzhou Trina Solar Energy Co. v. United States*, at *25 (CIT 2019)).

⁷⁶ See Petitioner’s Rebuttal Brief at 31 (citing *Preliminary Results PDM* at 32-33).

⁷⁷ *Id.* at 32 (citing *Solar Cells CVD Final Results 2015 IDM* at Comment 2).

⁷⁸ *Id.* at 34 (citing *Changzhou Trina Solar Energy Co v. United States*, No. 17-00199, slip op. 19-12 (CIT January 25, 2019) at 17).

⁷⁹ *Id.* at 32 (citing *Solar Cells CVD Final Results 2015 IDM* at Comment 2; *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China: Preliminary Results of Countervailing Duty Administrative Review, and Rescission of Review, in Part; 2015*, 83 FR 1235 (January 10, 2018) (*Solar Cells CVD Prelim Results 2015*) and accompanying PDM at 32-33).

⁸⁰ *Id.*

⁸¹ See *Preliminary Results PDM* at 32 (citing *Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China; 2014-2016*, 82 FR 32170 (July 5, 2017) (*Solar Products ARI Final*) and accompanying IDM at Comment 2).

However, we have reevaluated Commerce’s explanation of its determination in the most recently completed CVD solar cells review (*Solar Cells CVD Final Results 2015*) and conclude that Commerce did determine that the Export Buyer’s Credit program is export contingent. Specifically, in the preliminary results of that review, Commerce stated:

Finally, the receipt of loans under this program is tied to export performance and, therefore, this program is specific pursuant to sections 771(5A)(A)-(B) of the Act.⁸²

The petitioner is correct that in the final results of the above referenced CVD review, Commerce stated that following:

As AFA, we determine that this program provides a financial contribution, is specific, and provides a benefit to the respondent companies within the meaning of sections 771(5)(D), 771(5A), and 771(5)(E), respectively, of the Act.⁸³

Although Commerce resorted to overall AFA with respect to this program because of the lack of Chinese government cooperation, there is no indication in the final results of the CVD review that Commerce changed its finding that the program is tied to export performance.⁸⁴ Based on this finding, we have concluded that the program provides an export subsidy. Pursuant to section 772(c)(1)(C) of the Act, Commerce increases the U.S. price by the amount of any countervailing duty imposed to offset an export subsidy. Therefore, we have adjusted the U.S. price by the amount of the countervailing duty imposed to offset the export subsidy provided by the Export Buyer’s Credit program in the most recently completed solar cells CVD review, *Solar Cells CVD Final Results 2015*.

Comment 3: Weights of Chint Solar Inputs

Petitioner:

- At the verification of Chint Solar, Commerce manually weighed various direct material and packing inputs to determine the accuracy of the reported per unit weights used to convert material usage from a per-piece basis to a per kilogram basis. Commerce found that Chint Solar underreported the per-piece weight of its aluminum frame input and its silicon glue input.⁸⁵ Commerce should increase these reported FOPs accordingly.

Chint Solar:

- Commerce should not make an adjustment for these inputs. In its verification report, Commerce specifically notes that it randomly selected sample Chint Solar inputs to weigh during the course of verification.⁸⁶ The fact that the randomly selected inputs

⁸² See *Solar Cells CVD Prelim Results 2015* PDM at 29, unchanged in *Solar Cells CVD Final Results 2015*.

⁸³ See *Solar Cells CVD Final Results* IDM at Comment 2.

⁸⁴ See *Solar Cells CVD Final Results* at the section entitled “Changes Since the Preliminary Results; see also *Solar Cells CVD Final Results* IDM at Comment 2.

⁸⁵ See Petitioner’s Case Brief at 35 (citing China Verification Report at FOP Verification Exhibit 12).

⁸⁶ See Chint Solar’s Rebuttal Case Brief at 43-44 (citing FOP Verification at 52).

only deviated in weight by a small amount⁸⁷ is not necessarily surprising, or in any way outrageous. In fact, Commerce might readily anticipate finding such minor weight differences when physically weighing inputs at a verification. Such minor weight differences can simply be viewed as within a reasonable tolerance and therefore ignored, particularly when Commerce only weighs a single sample.

- If, however, Commerce nonetheless decides to increase the weight of Chint Solar's reported aluminum frame and silicon glue FOPs, it should also decrease the weight of Chint Solar's glass, wood pallet, and corrugated carton FOPs based on the same sample verification weight findings.⁸⁸ Making these corresponding adjustments would provide consistency with respect to Commerce's verification findings.

Commerce's Position: At verification, we weighed samples of the inputs in question and found minor variations with the reported weights.⁸⁹ Some of the samples of the inputs that we tested weighed less than the reported weights, while samples of other inputs weighed more than the reported weights. Based on the specific results of our verification, we have not found it necessary to adjust the per-unit weights reported by Chint Solar. This is consistent with the approach taken in other cases.⁹⁰ For example, in *Natural Bristle Paint Brushes*, Commerce noted the following:

The differences between the verified weights and the weights reported by Founder are small. ... We also note that the differences between the reported weights and the verified weights were not strictly favorable for Founder. There were several instances in which the weights of the brush components submitted in the response were greater than the weights of the brush components recorded at verification. Therefore, since the variations between the reported weights and the verified weights were small, and were not in a uniform direction, we consider the reported weights to have been verified, and have continued to use the weights reported by Founder for these final results of review.⁹¹

Comment 4: Ministerial Error – Chint Solar

Chint Solar, JA Solar, Canadian Solar, and BYD:

- In the Chint Solar preliminary results margin calculation program, Commerce neglected to insert the necessary parentheses in the formula used to calculate the total delivered cost of inputs. This resulted in not multiplying input quantities by surrogate freight costs, which significantly overstated input freight costs.

⁸⁷ *Id.* at FOP Verification Exhibit 12.

⁸⁸ *Id.* at FOP Verification Exhibit 12.

⁸⁹ *Id.* at 52 and FOP Verification Exhibit 12.

⁹⁰ See *First Administrative Review of Steel Wire Garment Hangers From the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 27994 (May 13, 2011) and accompanying IDM at Comment 4D.

⁹¹ See *Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 65 FR 45753 (July 25, 2000) and accompanying IDM at Comment 5.

Commerce’s Position: We agree with Chint Solar and have corrected this error by inserting the necessary parentheses so that we are now multiplying the material input quantity by the sum of the material surrogate value and the freight surrogate value.

Comment 5: Treatment of Warranties Provided by Chint Solar

Petitioner:

- In the preliminary results, Commerce adjusted the U.S. price for Chint Solar’s reported constructed export price (CEP) transactions for warranty expenses incurred for U.S. sales during the POR.
- However, the warranties reported in the sales database are significantly different than the estimated warranty costs Chint Solar reported for 2014 through 2016 for all foreign markets.⁹² Because the three-year average warranty expense for all foreign markets is more representative of the respondent’s experience, Commerce should base warranty costs on the three-year average warranty expense for all foreign markets.
- Commerce should add to this the cost of insurance reported by Chint Solar to cover the future warranty costs of POR sales of subject merchandise.

Chint Solar:

- As acknowledged by the petitioner, Chint Solar did not accrue warranties; therefore, Commerce should rely on the actual warranties Chint Solar reported in its sales database.
- While at Commerce’s request, Chint Solar estimated the warranty expenses for sales of solar modules to the United States and to all international markets, these amounts are only estimates. They are not accrued amounts, which Commerce relied on in past reviews of this proceeding.⁹³
- Commerce should not reduce Chint Solar’s reported price by the insurance costs identified at verification, because the surrogate sales, general, and administrative (SG&A) expenses already deducted from reported gross unit price includes amounts for “Goods Insurance Premium,” and “insurance premium.”⁹⁴
- If Commerce decides to deduct estimated warranty expenses, because this case is a U.S. antidumping case concerning sales to the United States, Commerce should only deduct expenses related to U.S. sales. Further, it should not deduct both actual and estimated warranty expenses, as this would be double counting. Further, if it deducts warranty expenses, Commerce should only deduct warranty costs from CEP sales.

Commerce’s Position: Commerce’s practice is to rely on a company’s POR warranty expenses, unless those expenses are distortive and not representative of a respondent’s historical experience, in which case Commerce relies on a three-year average of the respondent’s

⁹² See Petitioner’s Case Brief at 33 (citing Chint Solar’s August 29, 2018, response at 3 and Exhibit SSC-8).

⁹³ See Chint Solar’s Rebuttal Brief at 36 (citing *Solar Cells AR2 Final IDM* at Comment 25).

⁹⁴ See Chint Solar’s Rebuttal Brief at 41 (citing Memorandum, “2016-2017 Antidumping Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China: Factor Valuation Memorandum,” dated December 20, 2018 (Preliminary Results Surrogate Value Memorandum) at 8-9 and Attachment XII).

warranty expenses in place of the POR accrued warranty expenses, thereby mitigating the impact of warranty claims that may, by nature, occur at irregular intervals.⁹⁵

However, because warranties of solar panels typically extend for 25 years, Chint Solar's sales volume has changed rapidly in the previous years,⁹⁶ and other factors, the discussion of which would disclose proprietary information, we find both Chint Solar's reported warranty costs for the POR and for the three years prior to the POR, as well as its estimated future warranty costs for POR sales, are not the most accurate reflection of Chint Solar's actual warranty costs.⁹⁷ Instead, we find that the most accurate information on the record of the future warranty costs for POR sales is the insurance costs accrued by Chint Solar to cover the future warranty costs of POR international sales. We verified that these insurance costs cover all warranty costs of subject merchandise during the POR.⁹⁸ The insurance costs are the only amounts on this record related to the actual costs of meeting the warranties on POR sales of subject merchandise.

Although Chint Solar reported that warranty claims on U.S. sales are paid by Chint Solar in China and, thus, they are NME expenses and unusable, we are using insurance costs which, due to the reasons described above, and due to reasons described in the BPI Memorandum,⁹⁹ we find to be a more reliable indicator of market economy warranty costs than any other information on the record. Further, the insurance explicitly covers the warranty expenses of subject merchandise sold in the United States during the POR and, thus, is relevant to commercial activities occurring in the United States. Therefore, we find that the warranty insurance expenses are expenses incurred in the United States.

Basing warranty costs on the insurance covering future warranty obligations, even if the insurance is paid by a respondent company located outside the United States, is consistent with Commerce's approach in previous segments of this proceeding. In *Solar Cells AR3 Final*, Commerce noted that it adjusts the price of U.S. sales by "expenses associated with commercial activities in the United States that relate to the sale to an unaffiliated purchaser, no matter where or when paid." Hence, in that case, Commerce included in its adjustment of U.S. prices insurance expenses paid in Canada.¹⁰⁰ In *Solar Products Investigation Final*, Commerce addressed a similar issue.¹⁰¹ In that proceeding, the respondent paid insurance expenses outside of the United States to cover the U.S. affiliate's sales of solar panels. However, Commerce determined that, because the cost of insurance was associated with commercial activities in the United States, an adjustment to U.S. prices for the insurance expenses was appropriate.¹⁰²

⁹⁵ See *Solar Production Investigation Final* IDM at Comment 28.

⁹⁶ See Chint Solar's May 30, 2018, Section A response at Exhibit A-10; see also Chint Solar's June 15, 2018, response at 10-11; and *Solar Cells Investigation Final* IDM at Comment 28

⁹⁷ For a detailed description of the reasons why we find both Chint Solar's reported warranty costs and estimated warranty costs to be unreliable see BPI Memorandum at Note 1.

⁹⁸ See China Verification Report at 30.

⁹⁹ See BPI Memorandum at Notes 1 and 2.

¹⁰⁰ *Id.*

¹⁰¹ See *Solar Products Investigation Final* IDM at Comment 12.

¹⁰² *Id.*

Additionally, we disagree with Chint Solar’s contention that we should not deduct warranty expenses from U.S. prices because those expenses are included in the surrogate SG&A expenses. However, neither warranty nor warranty insurance expenses are specifically identifiable in the surrogate financial statements for Full Solar Company Limited.¹⁰³ While the financial statements for Full Solar Company Limited include amounts for “Goods Insurance Premium,” and “insurance premium,”¹⁰⁴ there is no indication that these insurance amounts relate to warranty expenses and, in particular, warranty expenses of U.S. or international sales. These expenses only account for approximately 0.01 percent of Full Solar Company Limited’s costs of goods sold¹⁰⁵ and, thus, do not appear to relate to warranties on solar module sales, which, based on prior segments of this proceeding, are approximately one percent of costs.¹⁰⁶ Moreover, we are not required to match the experience of the surrogate company perfectly with that of the respondent in determining financial ratios. Additionally, Commerce’s long-standing practice is to accept data in the surrogate producer’s financial statements *in toto*, rather than performing a line-by-line analysis of the types of expenses included in each expense category in the surrogate financial statements.¹⁰⁷

The petitioner argues that we should deduct the estimated warranty expenses reported by Chint Solar in addition to the insurance costs accrued for warranty expenses. However, because deducting both the estimated future warranty costs and the insurance to cover the future warranty costs would be double counting, we have only deducted the accrued insurance when calculating net U.S. price. Likewise, we have not deducted the actual warranty costs reported by Chint Solar, as we find that these costs are not necessarily representative of warranty costs on POR sales of subject merchandise, given the long warranty periods for solar cells and modules.

Comment 6: Treatment of Reported Data by Risen’s Cooperative Unaffiliated Suppliers

Petitioner:

- Risen’s unaffiliated suppliers’ submissions contain critical discrepancies in every response with regard to essential elements of FOP reporting, including: (1) unreconciled and unsupported labor, electricity, and water consumption amounts; (2) missing audited financial statements and incomplete and unexplained reconciliations; (3) unexplained negative consumption quantities used to offset total consumption reported for important raw material inputs; (4) additional layers of unreported FOPs for tollers that toll-processed for the responding suppliers and unaffiliated cell and module producers that supplied the responding suppliers; and (5) materials likely used in the production of

¹⁰³ See Preliminary Results Surrogate Value Memorandum at 8-9 and Attachment XII.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ See Commerce’s Letter, “Antidumping Questionnaire,” dated April 19, 2018, at Appendix X, page 5.

¹⁰⁷ See *Certain Uncoated Paper From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 81 FR 3112 (January 20, 2016) and accompanying IDM at Comment 1; *Certain Activated Carbon From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 70163 (November 25, 2014) (*Certain Activated Carbon 2012-2013*) and accompanying IDM at Comment 6; see also *Rhodia, Inc. v. United States*, 240 F. Supp. 2d 1247, 1250-1251 (CIT 2002) (Commerce is “neither required to ‘duplicate the exact production experience of the Chinese manufacturers,’ nor undergo ‘an item-by-item analysis in calculating factory overhead.’” (citations omitted)).

subject cells and modules for which no FOPs were reported. The petitioner submitted these deficiencies in September 2018.

- The CAFC clarified that the “best of its ability” standard of section 776(b) of the Act means to put forth maximum effort to provide full and complete answers to all inquiries, and that “{t}he statutory trigger for {the Department’s} consideration of an adverse inference is simply a failure to cooperate to the best of respondent’s ability, regardless of motivation or intent.”¹⁰⁸
- Commerce’s practice is to apply AFA where a company fails to provide information critical in the calculation of the dumping margin.¹⁰⁹ Commerce should apply partial AFA to the FOPs for Risen’s responding suppliers by assigning to the FOPs for each supplier the highest consumption quantity reported for that FOP.

Risen:

- Commerce scrutinized the responses of the cooperating unaffiliated suppliers, and issued supplemental questionnaires to the suppliers. Through Risen’s efforts, these companies answered the questionnaires to the best of their ability. Commerce has not identified further deficiencies that critically undermine the reliability of the data in those questionnaire responses.
- Even if some information is missing, there is no merit to the allegation that the unaffiliated suppliers did not cooperate to the best of their ability in the circumstances, rendering resort to section 776(b) of the Act unwarranted.

Commerce’s Position: We find that the application of partial AFA to Risen’s cooperative solar cell and solar module suppliers is not warranted in this case. Section 776(a)(1) and (2) of the Act provides that, if necessary information is missing from the record, or if an interested party: (A) withholds information that has been requested by Commerce; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the AD statute; or (D) provides such information but the information cannot be verified, Commerce shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Where Commerce determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that Commerce will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency.

If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, Commerce may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that Commerce “shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority” if the information is timely, can be verified, and is not so incomplete

¹⁰⁸ See Petitioner’s Case Brief at 28 (citing *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003)).

¹⁰⁹ *Id.* (citing *Biodiesel from Indonesia: Final Determination of Sales at Less Than Fair Value*, 83 FR 8835 (March 1, 2018) and accompanying IDM at 49).

that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires Commerce to use the information if it can do so without undue difficulties.

We issued a Section D questionnaire and Appendix XII requesting all FOP data and description how these data were obtained and calculated to nine of Risen's largest unaffiliated suppliers of solar cells and solar modules based on quantity of solar cells or solar modules each supplied who had not provided FOPs. Of these nine suppliers, seven suppliers responded to the questionnaire and reported their FOPs. Further, we issued supplemental questionnaires to these seven suppliers to address certain deficiencies, and received timely responses to the supplemental questionnaires from all of them. We address each of the petitioner's arguments below.

The petitioner asserts that the suppliers provided unreconciled and unsupported labor, electricity, and water consumption amounts. First, while we did not ask for supporting source documentation (*e.g.*, attendance sheets, meter readings, etc.) in our supplemental questionnaire, it is not mandatory that we request such documentation; rather, Commerce generally reviews such records at verification. Second, all seven companies described the steps used in their cost reconciliations in their Section D responses. Six of the seven companies performed the basic steps of reconciling profit and loss statements to cost of goods sold, cost of production, and POR raw material consumption. Where we asked certain suppliers to reconcile the audited financial statements to their cost reconciliations, these suppliers performed this step. Therefore, although the petitioner asserts that the suppliers provided unreconciled labor, electricity, and water consumption amounts, and incomplete and unexplained costs reconciliations, the suppliers did reconcile reported costs to the costs of goods sold and the cost of production and we did not consider it necessary to issue additional questions regarding these reconciliations. However, the seventh supplier failed to supply all of the FOP information for its solar cells and for that reason, as discussed in Comment 1, we are applying AFA with respect to the missing information from this supplier.

The petitioner also identified concerns of missing audited financial statements. Commerce requested audited financial statements from all seven suppliers in supplemental questionnaires. Where a supplier maintained audited financial statements, the supplier submitted such financial statements to Commerce.

The cost reconciliations for a number of companies include inventory-out details which identify negative quantities. All but one of the suppliers to whom we issued a supplemental questionnaire regarding these negative quantities explained that the negative quantities comprise returns into inventory of items that were not consumed in production. The suppliers also submitted credit notes and return slips demonstrating that these quantities of materials were returned into inventory. The remaining company stated, and demonstrated through tracing the steps in the cost reconciliation, that the negative withdrawals pertained to transferring expenses from production to research and development but, nonetheless, the corresponding quantities were included in the reported POR consumption. Therefore, the negative quantities were sufficiently explained.

Furthermore, we sought clarification from three suppliers as to why certain materials identified in their inventory-out details, and submitted as part of their cost-reconciliations, were excluded from their reported consumption. In certain instances, these materials are the same inputs used by Risen and the supplier to produce subject merchandise; however a portion of these materials were not reported. In other instances, while the materials had different names, they appeared to be the same or similar inputs used to produce merchandise under consideration. In both instances, the companies responded that these materials were either not used in the production of merchandise supplied to Risen, or that they were used for reasons other than production (*e.g.*, testing, power, etc.). Commerce finds these responses to be satisfactory.

As described above, we find that the six cooperative suppliers acted to the best of their ability and that the information provided by these suppliers is sufficient to calculate an accurate margin for Risen. Moreover, we do not find that the suppliers withheld information that had been requested or significantly impeded the proceeding under section 776(a)(2)(C) of the Act, because they responded to Commerce's requests for information by providing the requested information. However, as noted above, and explained in Comment 1, in addition to continuing to apply AFA to the eighth and ninth suppliers, who provided no information, we have also applied AFA with respect to the missing information from the seventh supplier.

Comment 7: Treatment of LERRI/LONGi

LONGi:

- In the preliminary results, Commerce found that only LERRI had no shipments.¹¹⁰ We did not find that LONGi, which was recognized by Commerce to be the successor in interest to LERRI effective March 23, 2017,¹¹¹ likewise had no sales. This incorrect finding was also reflected in the draft customs instructions, which only noted that LERRI had no shipments during the POR.¹¹²
- The petitioner requested a review of LERRI. Because LONGi was the successor in interest and this transition took place during this POR, LONGi should have also been considered under review.
- Therefore, Commerce must revise its draft customs instructions to reflect that LONGi had no shipments of subject merchandise during the period of review.

Commerce's Position: While no party requested a review of LONGi, we recognize that a review was requested of LERRI and that LONGi was recognized by Commerce as the successor in interest to LERRI effective March 23, 2017.¹¹³ Further, LONGi has reported that it had no shipments during the POR.¹¹⁴ Based on the no shipment certifications of both LERRI and LONGi and our analysis of the results of the U.S. Customs and Border Protection (CBP) data

¹¹⁰ See LONGi's Case Brief at 1 (citing *Preliminary Results*, 83 FR at 67223).

¹¹¹ *Id.* at 2 (citing *Solar Cells AR4 Final IDM* at Comment 12).

¹¹² *Id.* at 1 (citing Memorandum, "Draft Customs Instructions for U.S. Customs and Border Protection," dated March 1, 2019).

¹¹³ See *Solar Cells AR4 Final IDM* at Comment 12.

¹¹⁴ See LERRI/LONGi's Letter, "No Shipment Certification of LERRI Solar Technology Co., Ltd.," dated March 26, 2018.

queries,¹¹⁵ we determine that neither LERRI nor LONGi had any shipments during the POR and will issue CBP instructions reflecting this finding.

Comment 8: Surrogate Value for Aluminum Frames - I

Petitioner:

- Commerce incorrectly used Thai Harmonized Tariff Schedule (HTS) 7604.29.90, which covers “aluminum alloy bars, rods and profiles, other, other than hollow profiles, other, other profiles” to value Chint Solar and Risen’s aluminum frames. While unprocessed aluminum tubes and profiles, with a uniform cross section along their whole length, are classified under HTS categories 7604 and 7608, further processed aluminum profiles are classified under HTS 7616 or other categories containing finished articles.
- Chint Solar and Risen’s frames have been further processed beyond the extrusion process, have lost their character as a simple aluminum extrusion and have instead taken the form of a fabricated aluminum good – one that is classifiable under subheading 7616.99 of the HTS.
- CBP has classified U.S. imports of aluminum frames by a mandatory respondent in the underlying investigation of this proceeding under HTS 7616.99.¹¹⁶ CBP has also confirmed that solar frames from China and Malaysia are not simple extrusions but are finished goods that have assumed the identity of a product that is more advanced than an aluminum extrusion.¹¹⁷
- The record contains evidence that Risen’s tollers performed substantial processing, including feeding and sawing, when converting the aluminum frames into solar frames.¹¹⁸
- Risen’s specification sheets¹¹⁹ also identify processing that together with the processing performed by tollers identify Risen’s solar frames as highly engineered goods that must possess a number of unique features including durability, product longevity, and safety.
- Chint Solar’s specification sheets likewise indicate post-extrusion processing.¹²⁰

Chint Solar and Risen:

- Thai HTS 7604.29 provides the best choice to value Chint Solar’s aluminum frames. The petitioner’s argument has been rejected by Commerce in six different segments across two different proceedings and Commerce has been sustained by the CIT.¹²¹ Since those decisions were reached, nothing has changed that would warrant a different determination

¹¹⁵ See Memorandum, “Release of Customs and Border Protection Data,” dated February 23, 2018.

¹¹⁶ See Petitioner’s Case Brief at 25 (citing Petitioner’s August 15, 2018, Surrogate Value Comments (Petitioner’s SV Comments) at Exhibit 10, CBP Ruling N139353).

¹¹⁷ *Id.* at 21-22 (citing Petitioner’s SV Comments at Exhibit 1, CBP Ruling N238208).

¹¹⁸ *Id.* at 23-14 (citing Risen’s October 12, 2018, supplemental questionnaire response at Exhibit SQ5-1, Risen’s Section D response at Exhibits D-15 and D-19, and Risen’s July 30, 2018 supplemental questionnaire response at Exhibits SD-28 and 29).

¹¹⁹ *Id.* at 23 (citing Risen’s Section D response at Exhibit DA-13).

¹²⁰ *Id.* at 25 (citing Chint Solar’s Section D response at Exhibit AD-25).

¹²¹ See Risen’s Rebuttal Brief at 19-21 (citing *Solar Cells AR1 Final IDM* at Comment 36; *Solar Cells AR2 Final IDM* at Comment 8; *Solar Cells AR3 Final IDM* at Comment 10; *Solar Cells AR4 Final IDM* at Comment 7; *Solar Products Investigation Final IDM* at Comment 9; *Solarworld*, 273 F. Supp. 3d at 1266-1267; and *Jiangsu Jiasheng Photovoltaic Technology Co., Ltd. v. United States*, 28 F. Supp. 3d 1317, 1335-1338 (CIT 2014) (*Jiangsu*)).

in this segment of the proceeding. Commerce should again reject the petitioner's argument and value the aluminum frames using Thai imports under HTS 7604.29.

Chint Solar:

- Thai HTS 7604.29.90001, which covers “aluminum alloy bars, rods and profiles, other, other than hollow profiles, other, other profiles” provides the best choice to value Chint Solar's aluminum frames. HTS 7616.99, the surrogate value argued for by the petitioner, covers “all articles of aluminum – Others.” As such, it is a residuary and broad basket category encompassing myriad disparate and non-comparable goods, which has repeatedly been rejected by Commerce to value solar frames.
- The petitioner fails to explain how, pursuant to certain minor post-extrusion: (a) chemical processing such as application of oxide film or surface coating or painting; and (b) mechanical processing such as drilling cuts or punching holes into the frames to render them suitable for installation, Chint Solar's extruded aluminum frames had lost their essential character.
- The explanatory notes to the HTS explain that further processing such as those performed on Chint Solar's aluminum frames do not disturb its classification from a sub-heading under HTS 7604, so long as the essential character of the aluminum frames does not change so radically that the further processed frame matches the description under a new HTS heading.¹²²
- The petitioner's citation to a CBP ruling for a mandatory respondent in the underlying investigation of this proceeding in support of HTS 7616.99 is likewise unpersuasive. In selecting the best available HTS heading for obtaining the most accurate valuation of inputs, Commerce's concerns are different than CBP's concerns about accurate classification of goods for determination of the correct rate of customs duty.
- Even if, *arguendo*, the proper tariff heading of the aluminum frames in question is HTS 7616.99, in order to obtain an accurate valuation of aluminum frames, HTS 7604.29.90.001 is superior to the residual basket category HTS 7616.99. This is because there is no record evidence showing that the cost of such further minor processing significant adds to the cost of the unfinished aluminum frames. As such, the average unit value reported in HTS 7604.29.90.001 import data would approximate the cost of finished aluminum frames.

Risen:

- The aluminum frames used in Chint Solar's solar module production are aluminum profiles that have undergone minor processing, but do not even remotely resemble “nails, tacks, staples, screws, bolts, nuts, screw hooks, rivets, cotters, cotter pins, washers, knitting needles, bodkins, crochet hooks, embroidery stiletos, safety pins, other pins and chains, and cloth, grill and netting of aluminum wire” contained in HTS 7616.99, the surrogate value argued for by the petitioner.

¹²² See Chint Solar's Case Brief at 28 (citing Chint Solar's October 9, 2018, Surrogate Value Comments at Exhibit 3B).

- Not only Commerce, but also the CIT and CAFC, have examined and found unpersuasive the petitioner’s citation to a CBP ruling for a mandatory respondent in the underlying investigation of this proceeding in support of HTS 7616.99.¹²³

Commerce’s Position: We find that Thai HTS subheading 7604.29 (*i.e.*, aluminum alloy bars, rods and profiles, other, other than hollow profiles) is the best available information with which to value Chint Solar and Risen’s aluminum frames. The input in question is described by both respondents as non-hollow, aluminum profiles.¹²⁴ In the case of Chint Solar, Commerce has also verified that the input in question is a non-hollow, aluminum profile.¹²⁵ HTS 7604.29 covers non-hollow aluminum profiles such as those consumed by Chint Solar and Risen. No party has provided evidence challenging the description of the input on the record, and we found nothing on the record to contradict the respondents’ description of the input. Commerce’s made this same decision in the investigation of the instant proceeding and was sustained by the CIT and CAFC.¹²⁶

The petitioner argues the aluminum frames cannot be “aluminum profiles,” because they were further processed into a finished product. However, the U.S. International Trade Commission (ITC), in its application of HTS nomenclature, states that the term “profile” can be applied to goods “which have been subsequently worked after production.”¹²⁷ Commerce considered this same argument regarding the amount of finishing that aluminum profiles undergo to become aluminum frames in selecting an appropriate surrogate value for aluminum frames in its previous segments of this proceeding. In the *Solar Cells Investigation Final*, the *Solar Cells AR1 Final*, *Solar Cells AR2 Final*, the *Solar Cells AR3 Final*, and *Solar Cells AR4 Final*, Commerce stated:

Petitioner’s assertion that respondents’ aluminum frames are finished articles is not relevant to our decision. While CBP rulings on the record supporting the use of HTS 7604 concern unfinished aluminum articles, this does not necessarily mean that HTS 7604 would only contain unfinished aluminum profiles. While other HTS categories identify whether they contain finished or unfinished items, HTS 7604 does not specify whether it contains finished or unfinished aluminum profiles.¹²⁸

¹²³ See Risen’s Rebuttal Brief at 19-21 (citing *Solar Cells AR1 Final* IDM at Comment 36; *Solar Cells AR2 Final* IDM at Comment 8; *Solar Cells AR3 Final* IDM at Comment 10; *Solar Cells AR4 Final* IDM at Comment 7; *Solar Products Investigation Final* IDM at Comment 9; *Solarworld*, 273 F. Supp. 3d at 1266-1267; and *Jiangsu*, 28 F. Supp. 3d at 1335-1338).

¹²⁴ See Chint Solar’s Section D response at Appendix XII 27-29; *see also* Risen’s Section D response at Appendix XII 30-33.

¹²⁵ See China Verification Report at 64-65 and Exhibit 24.

¹²⁶ See *Solarworld*, 273 F. Supp. 3d at 1266-1267; and *Jiangsu*, 28 F. Supp. 3d at 1335-1338.

¹²⁷ See *Solar Cells AR3 Final* IDM at Comment 10.

¹²⁸ See *Solar Cells Investigation Final* IDM at Comment 16; *see also* *Solar Cells AR1 Final* IDM at Comment 36; *Solar Cells AR2 Final* IDM at Comment 8; *Solar Cells AR3 Final* IDM at Comment 10; *Solar Cells AR4 Final* IDM at Comment 1; *Solar Products Investigation Final* IDM at Comment 9; and *Solar Products AR1 Final* IDM at Comment 5.

Further, we noted in *Solar Products Investigation Final* that the “ITC definition of aluminum profiles cited by the petitioner {in the *Solar Products Investigation*} indicates that profiles may be cast, sintered, and worked after production.”¹²⁹ In sustaining Commerce’s determination with respect to aluminum frames, the CIT stated that “HTS 7604 includes aluminum bars, rods, and profiles, and products that have been *subsequently worked after production* . . . provided that they have not thereby assumed the character of articles or products of other headings” (emphasis added).¹³⁰ Thus, Commerce and the CIT have previously considered the fact that aluminum profiles used as aluminum frames have undergone further processing. While the petitioner argues that the coating, sawing, hole punching and other processing transforms the frames into something far different from a simple extrusion, it has provided no support for its claim that such processing would cause aluminum frames to be classified under HTS 7616.99 or more significantly, would add significant costs to the unprocessed aluminum frames. We do not find that the processing described by the petitioner transforms the frames into products of other HTS headings or adds significant costs to the aluminum frames.

Just as it did in the solar reviews and investigations noted above, in the instant review, the petitioner cited CBP rulings to support its position that the aluminum frames should not be classified under HTS 7604.¹³¹ However, Commerce is not bound by CBP rulings for U.S. imports when selecting import values from surrogate countries but, instead, must select the best available information on the record to value the FOP.¹³² One of the CBP rulings cited by the petitioner, which involves imports of Wuxi Suntech, states that the aluminum frames used to produce solar panels should be classified under HTS 7616.99 (articles of aluminum, not elsewhere specified or indicated);¹³³ however, this HTS category is an “other” category, which would only contain articles of aluminum not already identified elsewhere in the HTS. As stated above, alloyed aluminum profiles are identified under HTS 7604. Furthermore, HTS 7616 covers a number of items which are dissimilar to the aluminum frames used by Chint Solar, such as nails, screw, and bolts. Additionally, there was no explanation in the CBP ruling on Wuxi Suntech’s frames as to why the frames should be classified under HTS 7616.99.¹³⁴ Absent an explanation, we are unable to weigh the ruling against record evidence supporting Commerce’s use of an HTS category different from the one identified in the ruling.

The petitioner argues that HTS 7604 only covers unfinished aluminum profiles and assumes that finished aluminum profiles do not fit in any other HTS category; thus, the petitioner argues that HTS 7616, which covers aluminum articles not elsewhere specified or indicated, must be the catch-all category that includes the processed aluminum profiles at issue. We disagree with the petitioner’s interpretation. As we stated in both *Solar Cells Investigation Final* and *Solar Products Investigation Final*, while “other HTS categories identify whether they contain finished

¹²⁹ See *Solar Products Investigation Final* IDM at Comment 9.

¹³⁰ See *Jiangsu*, 28 F. Supp. 3d at 1337.

¹³¹ See *Solar Cells Investigation Final* IDM at Comment 16; see also *Solar Cells AR1 Final* IDM at Comment 36; *Solar Cells AR2 Final* IDM at Comment 8; *Solar Cells AR3 Final* IDM at Comment 10; *Solar Products Investigation Final* IDM at Comment 9; and *Solar Products AR1 Final* IDM at Comment 5.

¹³² See *Solar Cells AR2 Final* IDM at 19.

¹³³ See Petitioner’s Case Brief at 25 (citing Petitioner’s SV Comments at Exhibit 10, CBP Ruling N139353).

¹³⁴ *Id.*

or unfinished items, HTS 7604 does not specify whether it contains finished or unfinished aluminum profiles.”¹³⁵ Thus, we disagree with the petitioner’s conclusion that aluminum profiles that were further processed would not typically be classified under HTS 7604 or that such profiles would necessarily be classified under HTS 7616. Rather, we find that the products covered by HTS 7616 are different from the aluminum frames at issue in this case because this HTS “includes in particular... nails, tacks, staples, screws, bolts, nuts, screw hooks, rivets, cotters, cotter pins, washers, knitting needles, bodkins, crochet hooks, embroidery stilettos, safety pins, other pins and chains, and cloth, grill and netting of aluminum wire.”¹³⁶ This HTS description does not refer to items similar to the aluminum profiles that were further processed into frames and thus does not provide an accurate valuation of the aluminum profiles in question.

In identifying the best available surrogate value information, Commerce weighs available information on the record and makes a product-specific and case-specific decision as to what constitutes the “best available information” for a surrogate value for each input.¹³⁷ HTS 7616 covers items that are dissimilar to the non-hollow, aluminum profiles at issue while HTS 7604.29 expressly covers non-hollow aluminum profiles, which is the product used by Chint Solar and Risen. Furthermore, record information does not indicate that aluminum profiles that have been finished or further processed are excluded from this HTS category. Because the definition of HTS 7604 is more specific to the input at issue than the definition of HTS 7616, we continue to find that HTS 7604.29 constitutes the best available information with which to value Chint Solar and Risen’s aluminum frames.

Comment 9: Surrogate Value for Aluminum Frames - II

Sunpreme:

- In the *Preliminary Results*, Commerce used HTS 7604.29.90001 to value aluminum frames for Chint Solar. However, as explained by Chint Solar in its pre-preliminary comments, Chint Solar uses several types of extruded aluminum frames that may be either alloy or non-alloy grades of aluminum.¹³⁸
- Therefore, to be specific to the aluminum frames used by Chint Solar, Commerce should use an average of HTS 7604.10.90000 and 7604.29.90001 to cover the types of aluminum frames used by Chint Solar.

¹³⁵ See *Solar Cells Investigation Final* and accompanying IDM at Comment 16; see also *Solar Products Investigation Final* and accompanying IDM at Comment 9.

¹³⁶ See, e.g., descriptions of items contained under HTS 7616 listed in *Solar Cells Investigation Final* and accompanying IDM at Comment 16, and *Solar Cells AR3 Final* and accompanying IDM at Comment 10.

¹³⁷ See *Narrow Woven Ribbons With Woven Selvedge from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 41808 (July 19, 2010) and accompanying IDM at Comment 2; see also *Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part; 2010-2011*, 78 FR 22513 (April 16, 2013) and accompanying IDM at Comment 5.A.

¹³⁸ While Sunpreme cited to Commerce’s Preliminary Results Surrogate Value Memorandum (see Sunpreme’s Case Brief at 2), we believe it intended to cite to Chint Solar’s Letter “Chint Solar’s Pre-Preliminary Comments” at 9.

Petitioner:

- Chint Solar made no mention of non-alloyed grade frames in any of its original or supplemental questionnaire responses. Rather, the company indicated numerous times that its frames are specifically alloyed aluminum.¹³⁹ Similarly, at verification, Commerce reviewed and examined specification sheets from suppliers and found evidence of only an alloyed-frame input.¹⁴⁰

Commerce’s Position: We have not valued Chint Solar’s aluminum frames using HTS 7604.10.90000 (which is for non-alloy items) because Chint Solar reported,¹⁴¹ and we verified, that its aluminum frames consist of alloyed aluminum.¹⁴² Furthermore, there is no import data for HTS 7604.10.90000 or any other non-alloy aluminum values on the record. Therefore, we have continued to value Chint Solar’s aluminum frames using Thai imports of HTS 7604.29.90001.

Comment 10: Surrogate Value for Silver Paste

Chint Solar:

- In the preliminary results, Commerce explained why it valued Chint Solar’s silver paste using Thai imports of HTS 7115.90.10 (“Articles {not elsewhere specified} of precious metal or of metal clad with precious metal; Of gold or silver”). However, Commerce did not address Chint Solar’s arguments that its silver paste should be valued using Thai imports of HTS 2843.29.00090 (“Silver compounds, except silver nitrate, not elsewhere specified – Others”).
- The silver paste Chint Solar uses in the production of solar cells has a silver content of between 55 and 85 percent and the remainder does not consist of silver.
- In order to be classified under HTS 7115.90, the goods in question must first be referred to as an “article of silver” in commercial parlance. Further, such goods must also not be more specifically covered under another HTS heading.
- The articles of silver alloys referenced in HSN Explanatory Notes under HTS 7115.90 are meant to encompass such solid articles that are created by alloying silver with, typically, other metals. The silver paste Chint Solar uses is not an alloy of silver; instead, it is a chemical substance prepared by compounding silver with other organic and inorganic substances.
- Explanatory Notes explain that HTS 7115.90.10000 covers articles of gold and silver other than jewelry or goldsmiths’ or silversmiths’ wares.¹⁴³ Further, it provides an indicative list of products that are properly covered under the scope of this heading consisting of articles for technical or laboratory use such as gold/silver crucibles, cupels and spatulas, electroplating gold/silver anodes, and gold/silver handbags including those

¹³⁹ See Petitioner’s Rebuttal Brief at 5 (citing Chint Solar’s Section D response at Exhibit D-6A and 29).

¹⁴⁰ *Id.* (citing the China Verification Report at 65 and Exhibit 24).

¹⁴¹ See Chint Solar’s Section D response at Exhibit D-6A and 29.

¹⁴² See the China Verification Report at 65 and Exhibit 24.

¹⁴³ See Chint Solar’s Case Brief at 30 (citing Chint Solar’s August 15, 2018, Surrogate Value Comments (Chint Solar’s SV Comments) at Exhibit 4C).

incorporating precious stones.¹⁴⁴ Datamyne U.S. import data reported during 2016-18 evidences that goods imported under HTS 7115.90 encompass disparate goods such as perfumes and cosmetics, bracelets, furniture and household accessories, church supplies, acrylic angel water lamps, a Fisher-Price cash register, decorative wooden buoy, a whole gold pineapple cup with lid, metal butterfly wall décor, barking walking dog and tree of life deco pillow.¹⁴⁵ Notably, none of the entries evidence goods even remotely similar to an organic/inorganic chemical compound like silver paste. This fact confirms that the scope of HTS 7115.90.10000 does not cover industrial raw materials such as silver paste, which is not an article of silver, but rather, a compound of silver powder with organic and inorganic substances.

- While the record contains certain CBP rulings suggesting the tariff classification of silver paste under HTS 7115.90. CBP’s classification rulings are solely for purposes of the applicable rate of Customs’ duties. As such, Commerce, whose paramount concern is accurate valuation of inputs, is not bound by these classification rulings.
- HTS 2843.29, which covers inorganic and organic compounds of silver, other than silver nitrate, provides the most specific tariff heading for Chint Solar’s silver paste.
- HSN explanatory notes for HTS 2843 state that certain organic compounds of silver, such as silver citrate and silver acetate, are classifiable under HTS 2843.¹⁴⁶
- Record evidence shows that organic carrier in a silver paste includes a plasticizer, which “comprises at least one material selected from a group of tributyl citrate...and ethanol acetate.”¹⁴⁷
- If Commerce values silver paste under HTS 7115.90, then Mexican imports provide a better surrogate value than Thai imports because Mexico imports represent a larger quantity. Commerce’s policy to select a surrogate value that is based on highest import quantity was approved by the CIT in *Calgon Carbon Corp. v. United States*, 2017 Ct. Intl. Trade LEXIS 4, *4-5 (*Calgon*).

Petitioner:

- Chint Solar’s attempt to characterize its silver paste input as a chemical should be rejected, as Commerce has previously done in prior administrative reviews of this order. Commerce has long found the silver paste input to solar cell production not to be a chemical compound but an alloy of silver properly classified under HTS Chapter 71.¹⁴⁸ The record in this case confirms that the silver content of Chint Solar’s silver paste is within the same range as the content when CBP and Commerce have determined silver paste to be appropriately classified under HTS category 7115.90.¹⁴⁹
- Commerce should continue to rely on the Thai average unit value (AUV) for HTS number 7115.90.10 to value the input. It is Commerce’s long-standing practice to use an alternate country’s data only in cases where the surrogate value data in the selected surrogate country are unavailable or unreliable. Chint has provided no evidence that the

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 31 (citing Chint Solar’s SV Comments at Exhibit 4F).

¹⁴⁶ *Id.* at 33 (citing Chint Solar’s October 9, 2018, Surrogate Value Comments at Exhibit 4C).

¹⁴⁷ *Id.* at Exhibit 4D, page 99.

¹⁴⁸ See Petitioner’s Case Brief at 7 (citing *Solar Cells AR1 Final IDM* at Comment 13; *Solar Cells AR2 Final IDM* at Comment 18; and *Solar Cells AR3 Final IDM* at Comment 14).

¹⁴⁹ See Petitioner’s Case Brief at 7 (citing *Solar Cells AR3 Final IDM* at Comment 14).

Thai AUV is aberrational, and no basis for rejecting the Thai AUV for silver paste other than the larger import quantity for the Mexican AUV.

Commerce’s Position: In the preliminary results, we valued silver paste using Thai imports of HTS 7115.90.10000 (“Articles {not elsewhere specified} of precious metal or of metal clad with precious metal; Of gold or silver”). Chint Solar argues that we should have valued its silver paste using HTS 2843.29.00090 (“Silver compounds, except silver nitrate, not elsewhere specified – Others”). The explanatory notes of Chapter 71 of the HTSUS, which covers precious metals, states that a reference in the tariff schedule to precious metals, or to any particular precious metal, includes a reference to alloys treated as alloys of precious metal.¹⁵⁰ The notes also state that a good will be classified as an alloy of a precious metal if any one precious metal constitutes as much as 2 percent, by weight, of the alloy.¹⁵¹ The silver content of Chint Solar’s silver paste is between 55 and 85 percent and CBP classifies silver paste of between 40 and 85 percent under HTS category 7115.90¹⁵² despite the fact that HTS category 7115.90 is described to consist of articles of silver. While Commerce is not bound by CBP rulings for U.S. imports when selecting import values from surrogate countries, but instead must select the best available information on the record to value the FOP,¹⁵³ we find CBP’s classification in this instance informative, particularly given that less than pure solar paste (between 40 and 85 percent) may be considered a compound and an HTS number for silver compounds exist; yet, CBP did not find the HTS number for silver compounds to be appropriate for such a product. Clearly, while the silver paste is not purely silver, but contains a small amount of non-silver content and is, thus, an alloy, based on the explanatory notes cited above, silver paste of the type used by Chint Solar is classifiable under HTS Chapter 71. Based on the fact that CBP has ruled that silver paste would be included in HTS 7115.90.10, and also based on the fact that the other items included in HTS 7115.90.10000 are more similar to silver paste than the silver compounds included in HTS 2843.29.00090, we find that imports under HTS 7115.90.10000 provide a more accurate valuation of Chint Solar’s silver paste, and thus is the best available information with which to value the input.

While Chint Solar argues that Mexican imports of HTS 7115.90 are a better surrogate source than Thai imports of that category because they are greater in quantity than Thai imports of HTS 7115.90.10000, Commerce resorts to a secondary surrogate country only if data from the primary surrogate country are unavailable or unreliable.¹⁵⁴ Thai import data for HTS 7115.90.10000 are available and Chint Solar provided no evidence that the Thai AUV of HTS 7115.90.10000 is aberrational or that the Thai imports are of a non-commercial quantity or are otherwise unreliable.

¹⁵⁰ See Memorandum, “Documents Concerning the Classification of Certain Inputs,” dated August 20, 2018, at Attachment II.

¹⁵¹ *Id.* at Attachment III.

¹⁵² See *Solar Cells AR1 Final IDM* at n.216.

¹⁵³ See *Solar Cells AR2 Final IDM* at 19.

¹⁵⁴ See, e.g., *Certain Steel Threaded Rod from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 69938 (November 12, 2015) (*Steel Threaded Rod 2013-2014*) and accompanying IDM at Comment 9A, citing *Jiaxing Brother Fastener Co. v. United States*, 11 F. Supp. 3d 1326, 1332-33 (CIT 2014) (*Jiaxing Brother*).

Chint Solar's claim that it is Commerce's "long-standing" practice to rely on quantity in selecting surrogate values is a misinterpretation of *Calgon*. In the final results of the review underlying *Calgon*, no usable contemporaneous data from the primary surrogate country was available and so an alternative surrogate value was required.¹⁵⁵ Here, contemporaneous surrogate value information from the primary surrogate country is available and no party has demonstrated that it is unreliable. Therefore, we have continued to rely on Thai imports of HTS 7115.90.10000 to value Chint Solar's silver paste.

Comment 11: Surrogate Value for Welding Wire

Chint Solar:

- Commerce should have valued Chint Solar's welding wire using Mexican imports rather than Thai imports. Commerce's policy is to select the best information available on the record instead of relying on its default choice of surrogate value data reported from the primary surrogate country.
- Of the six surrogate countries' imports of welding wire, Mexico imported the largest quantity, twice the quantity imported by Thailand.¹⁵⁶ Because Mexico satisfies the criteria of broad market average better than the Thai surrogate value data, it is superior to Thailand in terms of data quality.
- Among all six surrogate countries, Mexico had the largest amount of exports of comparable merchandise under HTS categories 850531, 850161 and 850720 both in terms of quantity and value during the POR. As such, Mexico is superior to Thailand in terms of being a significant producer of comparable merchandise.
- Commerce's policy to select a surrogate value that is based on the highest import quantity was approved by the Court in *Calgon*.

Petitioner:

- It is Commerce's long-standing practice to use an alternate country's data only in cases where the surrogate value data in the selected surrogate country are unavailable or unreliable. Given that Chint Solar has failed to point to any record evidence supporting an aberrational Thai AUV for the welding wire input, there is no basis for Commerce to look to an alternative country. Commerce should continue to rely on the Thai AUV for the final results.

Commerce's Position: We disagree with Chint Solar. As stated in our position to the prior comment, Commerce resorts to a secondary surrogate country only if data from the primary surrogate country are unavailable or unreliable.¹⁵⁷ Chint Solar provided no evidence that the Thai AUV for HTS 7408.29, which we used to value welding wire, is aberrational, nor did it provide any other basis for rejecting it other than the fact that Mexican imports a larger quantity

¹⁵⁵ See *Certain Activated Carbon 2012-2013* IDM at Comment 4.

¹⁵⁶ See Chint Solar's Case Brief at 30 (citing Chint Solar's SV Comments and accompanying chart).

¹⁵⁷ See, e.g., *Steel Threaded Rod 2013-2014* IDM at Comment 9A.

under HTS 7408.29. Chint Solar has cited no evidence that the Thai welding wire imports are of a non-commercial quantity or are otherwise unreliable.

Moreover, in *Steel Cylinders from China*,¹⁵⁸ Commerce addressed a similar issue. In that case, one party argued that Commerce should not value steel blooms and tubes using import data from the preferred surrogate country (*i.e.*, Ukraine) because all of the imports came from Russia and, therefore, they did not represent a broad market average. However, there we stated that “the Department has repeatedly held that country-wide data represent broad market averages,” regardless of the number of countries represented in that import data. Thus, Chint Solar’s arguments provide no basis for finding that the imports into Thailand are not representative of a broad market average.

As noted in our position to the prior comment, Chint Solar’s claim that it is Commerce’s “long-standing” practice to rely on quantity in selecting surrogate values is a misinterpretation of *Calgon*. In the final results of the review underlying *Calgon*, no usable contemporaneous data from the surrogate country was available and so an alternative surrogate value was required.¹⁵⁹ Here, contemporaneous surrogate value information from the primary surrogate country is available and no party has demonstrated that it is unreliable.

Lastly, although Chint Solar argues that Mexico is a better source for valuing welding wire because its exports of comparable merchandise are greater than those of Thailand, this is not a criterion for choosing surrogate values, nor is it a criterion for selecting a surrogate country. In the LTFV investigation of Wooden Bedroom Furniture from China, Commerce noted, citing Policy Bulletin 04.1,¹⁶⁰ that “{t}he extent to which a country is a significant producer should not be judged against the NME country’s production level or the comparative production of the five or six countries on the {Office of Policy’s} surrogate country list.”¹⁶¹ We selected, and Chint Solar has not challenged using, Thailand as the primary surrogate country. Therefore, we have continued to rely on Thai imports of HTS 7408.29 to value Chint Solar’s wire rod.

Comment 12: Surrogate Value for Backsheet

Petitioner:

- Commerce failed to consider that the respondents’ backsheets contain materials other than polyethylene terephthalate (PET). Rather than using HTS category 3290.62 (*i.e.*, plates, sheets, film, foil and strips of plastics composed of PET) to value all of the respondents’ backsheets, Commerce should value one layer of respondents’ backsheets

¹⁵⁸ See *High Pressure Steel Cylinders From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 26739 (May 7, 2012) (*Steel Cylinders from China*) and accompanying IDM at Comment 1.

¹⁵⁹ See *Certain Activated Carbon 2012-2013* IDM at Comment 4.

¹⁶⁰ See Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin 04.1).

¹⁶¹ See *Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture From the People’s Republic of China*, 69 FR 67313 (November 17, 2004) and accompanying IDM at Comment 2.

that is composed of a different material (which is not identified here because its name is BPI) based on the Thai HTS category for that material.¹⁶²

- This particular material is a more complex and valuable material when compared to PET and should be valued accordingly in the margin calculations.

Risen:

- Risen’s backsheets used in production are multi-layered plastic sheets. Risen has demonstrated that PET is the primary input in all its backsheets, and the other materials in these backsheets account for a very small percentage relative to PET.¹⁶³
- To value Risen’s backsheets using the petitioner’s recommendation is unreasonable. In *Pomeroy Collection*, the C.I.T. maintained that “...mixtures, composite goods, and sets which cannot be classified by reference to 3(a) {terms of the HTS heading} ... shall be classified as if they consisted of the material or component which gives them their essential character.”¹⁶⁴
- It is Commerce’s practice to value backsheets using the HTS category that corresponds to the primary material used in the backsheets.¹⁶⁵
- Commerce has previously denied the petitioner’s request to value a respondent’s backsheets using a simple average of the AUVs of HTS categories that cover various materials used in the backsheets, stating that “{respondents} bought whole backsheets, as opposed to assembling the various components themselves, {therefore,} we selected the best available information on the record for valuing backsheets, not for valuing the components of backsheets.”¹⁶⁶
- Similarly, Risen bought whole backsheets as opposed to assembling the different materials used in the backsheets itself. Commerce’s long-established practice is to value the input actually purchased by the respondent in normal circumstances based on the best available information, which in this case is an HTS category for PET sheets.

Chint Solar:

- Commerce confirmed the percentage of backsheets that are predominantly PET, ethylene-vinyl acetate (EVA), and where the material composition are not identified, during Chint Solar’s verification.¹⁶⁷
- The CIT has previously approved Commerce’s methodology to value the respondents’ backsheets based on the predominant material in the backsheet, given the absence of an HTS category specifically for backsheets.¹⁶⁸

¹⁶² Commerce has disclosed the name of this material and corresponding HTS category recommended by the petitioner in the BPI Memorandum at Note 4.

¹⁶³ See Risen’s Rebuttal Brief at 16 (citing Risen’s July 30, 2018, Section D supplemental response at 62 and Exhibit SD-30).

¹⁶⁴ *Id.* (citing *Pomeroy Collection, Ltd. v. United States*, 32 C.I.T. 526, 559 F. Supp. 2d 1374 (CIT 2008) (*Pomeroy Collection*)).

¹⁶⁵ *Id.* (citing *Solar Cells AR2 Final IDM* at Comment 14).

¹⁶⁶ *Id.*

¹⁶⁷ See Chint Solar’s Rebuttal Brief at 25 (citing China Verification Report at 65).

¹⁶⁸ *Id.* (citing *SolarWorld*, 273 F. Supp. 3d at 1270).

Commerce's Position: In the *Preliminary Results*, we valued Risen's and Chint Solar's backsheets using Thai HTS category 3920.62.00090 (*i.e.*, Other plates, sheets, film, foil and strip, of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other; Of poly(ethylene terephthalate); Other). For the final results, where appropriate and as explained below, we are valuing backsheets using Thai HTS categories 3920.62.00090 and 3920.10.00090 (*i.e.*, Other plates, sheets, film, foil and strip, of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other; Of polymers of ethylene; Other).

Risen purchased multiple types of backsheets, all in finished condition, during the POR.¹⁶⁹ Risen explained that four types of backsheets were used in the production of subject merchandise during the POR,¹⁷⁰ each comprising multiple layers.¹⁷¹ Risen stated that the predominant material for all four types of backsheet is PET,¹⁷² and specification sheets for several types of backsheet support this statement. Thus, record evidence indicates that PET is the predominant material of all backsheets that Risen consumed in production during the POR.

Chint Solar also purchased different types of backsheets, all in finished condition, during the POR.¹⁷³ We confirmed during verification that Chint Solar consumed backsheets that predominately comprise PET, backsheets that predominately comprise EVA, and backsheets where the material composition percentages are not identified.¹⁷⁴ Because we find it appropriate to value backsheet using an HTS category that most closely corresponds to the predominate material in the backsheet, for both Risen and Chint Solar in these final results, we are: 1) valuing the backsheets primarily comprising PET using HTS category 3920.62.00090 (*i.e.*, Other plates, sheets, film, foil and strip, of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other; Of poly(ethylene terephthalate); Other); 2) valuing the backsheets primarily comprising EVA using HTS category 3920.10.00090 (*i.e.*, Other plates, sheets, film, foil and strip, of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other; Of polymers of ethylene; Other); and 3) valuing the backsheets where the predominant material is unknown, using both HTS categories 3920.62.00090 and 3920.10.00090 based on a ratio of the quantity of PET and EVA backsheets consumed.

We disagree with the petitioner's view that we should separately value a particular layer of backsheets which consists of a different material using an HTS category specific to that material. First, this material represents a very small portion of the backsheets. Second, because record evidence shows that both Risen and Chint Solar bought finished backsheets, as opposed to assembling various component materials into backsheets, we sought the best available information on the record for valuing entire backsheets, not for valuing the components of backsheets. However, there are no SVs on the record specifically for backsheets. Backsheets are multilayered plastic sheets. Thus, we determined that the best available information on the

¹⁶⁹ See Risen's Appendix XII response at 37; and Chint Solar's Appendix XII response at 34.

¹⁷⁰ See Risen's July 31, 2018, Section D supplemental response at 62-63, and Exhibits SD-30 and SD-31.

¹⁷¹ See Risen's June 20, 2018, Section C supplemental response at 3.

¹⁷² See Risen's July 31, 2018, Section D supplemental response at Exhibit SD-30; *see also* Risen's Letter, "Risen Pre-Preliminary Comments," dated November 1, 2018, at 10.

¹⁷³ See Risen's Appendix XII response at 37; and Chint Solar's Appendix XII response at 34.

¹⁷⁴ See China Verification Report at 65.

record for valuing respondents' backsheets is the import value for the type of plastic sheet which most closely corresponds to the predominant material used in respondents' backsheets. Valuing the respondents' backsheets based on the predominant material in the backsheet is also consistent with CBP ruling N233581, where CBP found that the applicable subheading for certain flexible non-cellular transparent plastic sheeting, where PET predominates by weight, is HTS category 3920.62.0000.

Comment 13: Surrogate Value for Nitrogen

Petitioner:

- The Bulgarian AUV data are not the best information available with which to value the respondents' nitrogen input. Commerce's decision to reject the Thai AUV, simply because it is higher, in favor of the Bulgarian AUV is contrary to agency practice and not supported by record evidence.
- It is Commerce's long-standing practice to use an alternate country's data only in cases where the data in the selected surrogate country are unavailable or unreliable.¹⁷⁵ The existence of higher prices alone does not necessarily indicate that the prices are distorted or misrepresentative,¹⁷⁶ and parties must provide specific evidence showing that the value is aberrational.¹⁷⁷
- Commerce determines on a case-by-case basis whether an SV is aberrational. Commerce has previously accepted certain SVs that were over four times the average SV for a particular input.¹⁷⁸
- In *Solar Cells AR3 Final* and *Solar Cells AR2 Final*, Commerce found that the Thai AUV is reliable. In *Solar Cells AR3 Final*, Commerce found that the respondents' data points were not "appropriate benchmarks," and determined the Thai AUV for nitrogen to be within the range of the AUVs for the other potential surrogate countries.¹⁷⁹
- Commerce provides no explanation as to why the Global Trade Atlas (GTA) pricing information for Brazil, Bulgaria, and Romania, and non-GTA pricing information for Mexico, South Africa, or Thailand, are more appropriate benchmarks or otherwise superior to the GTA pricing information for Mexico, South Africa, or Thailand. Additionally, Commerce has not explained why the difference between the Thai GTA AUV and other benchmark data is significant enough to render the Thai AUV aberrational.
- The Thai AUV falls within the range of other potential surrogate countries.

¹⁷⁵ See Petitioner's Case Brief at 13 (citing *Solar Cells AR2 Final* IDM at Comment 21).

¹⁷⁶ *Id.* at 14 (citing *Solar Cells AR2 Final* IDM Comments 10 and 21).

¹⁷⁷ *Id.* (citing, e.g., *Steel Wire Garment Hangers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2012-2013*, 80 FR 13332 (March 13, 2015) (*Steel Wire Garment Hangers 2012-2013*) and accompanying IDM at Comment 5; see also *Carbazole Violet Pigment 23 from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 75 FR 36630* (June 28, 2010) (*CVP 23 from China*) and accompanying IDM at Comment 6).

¹⁷⁸ *Id.* at 15 (citing *Certain Cased Pencils from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 74 FR 33406* (July 13, 2009) and accompanying IDM at Comment 6).

¹⁷⁹ *Id.* (citing *Solar Cells AR3 Final* IDM at Comment 13).

- Only Thailand of the six potential surrogate countries reports nitrogen on a per kilogram basis. Thus, an additional layer of conversion to kilogram basis is required for comparison purposes. Commerce cannot assume that all conversions assume the same temperature and pressure. Depending on the mix of liquid and gas imports into a given country, the variety of conversion formulae applied, and the frequency at which conversions are necessary, one would expect to see a wide range of nitrogen AUVs across countries within a given time period.
- Thailand's AUV is not aberrational when compared with other countries previously on Commerce's list of potential surrogates for China or have a gross national income (GNI) within the range of economic comparability with China.
- Alternatively, Commerce should average the Thai import AUV and the Bulgarian import AUV. As a secondary alternative, Commerce should rely, instead, on the Thai AUV from *Solar Cells AR3 Final*, inflated to the current period.¹⁸⁰

Risen:

- Commerce correctly relied on the Bulgarian import value in the instant case. Where Commerce has found an import value as aberrant, Commerce has previously relied on the import value of the largest importer of this import with reliable values.¹⁸¹
- Thailand had an insignificant quantity of imports and very high AUVs compared to the listed surrogate countries which had significant imports and had AUVs in a small range under \$0.50/kg. The import quantity into Thailand during the POR is 0.2 percent of the total import quantity among the listed surrogate countries, and 1 percent of the average quantity imported into these countries. The quantity is even more insignificant when examining it on a monthly basis where the majority of shipments were under 50 kilograms.
- Commerce has used reliable recognized conversion metrics to make its comparison of import values. The record contains import statistics for at least five countries from the same source with the same unit value (USD/kg), therefore no conversions are required.

Chint Solar:

- Because the record contains another metric (*i.e.*, containerized cargo), it is possible to convert quantity information presented in different units of measurement (*e.g.*, kilogram, liter, cubic meter, etc.) into a common unit of "number of 20 ft containers" used for shipment. Doing so demonstrates that Thai import data are based on *de minimis* and non-commercial levels of imports and, thus, fail to satisfy the broad market average criteria.
- The Thai import data for 2016-2017 illustrate that Thai imports of nitrogen were only able to meet approximately .012 percent of total demand in the Thai market. This is corroborated by a statement from Business Manager of Linde (Thailand) Public Company Limited, which showed that Thai imports of nitrogen only met approximately .004 percent of local demand for 2015-2016.

¹⁸⁰ *Id.*

¹⁸¹ See Risen's Rebuttal Brief at 15 (citing *Solar Cells AR4 Final* IDM at 38; and *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*; 2016-2017, 83 FR 53214 (October 22, 2018) (*Activated Carbon 2016-2017*) and accompanying IDM at 10-11).

- The Bulgarian imports of nitrogen for the POR represent the largest quantity of all the potential surrogate countries, and offers a commercially reliable SV. The Bulgarian AUV is corroborated by the Romanian and Brazilian AUVs (i.e., AUVs from the second and third ranked countries in terms of quantity). The countries with the lowest import quantities (i.e., Thailand, South Africa, and Mexico) offer aberrationally high AUVs and are less representative of broad market average prices.
- The Thai import AUV of 10.05 \$/kg in HTS 2804.30 is unreliable, and this fact is confirmed by Datamyne data.
- The Thai import data shows that the United States contributes the highest quantity of imports (i.e., 25,031 kg). This quantity is corroborated by Datamyne data, which shows a similar quantity of 25,729 kg for U.S. exports of nitrogen to Thailand in HTS 2804.30. The Datamyne data, which provide detailed particulars for all individual export shipments, reveal that none of these entries pertain to liquid nitrogen. Commerce’s policy is to not use such data as a surrogate value source in such circumstances where a substantial proportion of imports, even though less than a majority, are directly impeached by credible data.¹⁸²
- Nitrogen gas price data from the U.S. domestic market contained on the record (e.g., Airgas Inc. price list) are approximately 56 times lower when compared to the average U.S. origin data in the Thai import data. This fact establishes that U.S. origin data in the Thai import data are unreliable.
- Similarly, prices from the GasWorld Thailand 2016 and Linde (Thailand) 2016 data (i.e., Thai domestic prices) are 75 times and 157 times lower, respectively, when compared with Thai import data. Under such circumstances, the CIT has noted a preference for domestic data over import data, where the producer is unlikely to use the imported factor and where the import price is significantly greater than the domestic price.¹⁸³
- The record contains statements from Industrial gas experts (i.e., Linde (Thailand)’s Business Manager and John Raquet, a consultant on the industrial gas markets) who confirm that the Thai AUV is aberrationally high. John Raquet explained that the Thai AUV is aberrational in part because imports constitute ultra-high purity nitrogen.
- Pricing from the GasWorld 2016 South Africa report is approximately 108 times lower when compared with import data.
- The petitioner’s assertion to limit the analysis to GTA import data from previous years, and only from six listed countries, is unpersuasive and contrary to established precedent. The choice of benchmark price data is not limited solely to GTA import data. The CIT has previously noted that “If the agency’s surrogate prices diverge violently from credible benchmark prices, Commerce must explain why it chose to reject plaintiff’s data while crediting its own.”¹⁸⁴
- Commerce should reject the petitioner’s argument to “rely on the Thai AUV from the third review period, i.e. 9.36 USD/kg, inflated to the current period.” The data sources on the record in the instant review demonstrate that the Thai AUV is aberrational.

¹⁸² See Chint Solar’s Rebuttal Brief at 19 (citing *Calgon Carbon Corp. v. United States*, 2011 Ct. Intl. Trade LEXIS 21 (CIT 2011) at *28; and *Zhengzhou Harmoni Spice Co. v. United States*, 617 F. Supp. 2d 1281, 1325 (CIT 2009)).

¹⁸³ *Id.* at 20 (citing *Hebei Metals & Minerals Imp. & Exp. Corp. v. United States*, 29 C.I.T. 288, 300 (CIT 2005)).

¹⁸⁴ *Id.* at 20 (citing *Blue Field (Sichuan) Food Indus. Co. v. United States*, 949 F. Supp. 2d 1311, 1326 (CIT 2013)).

Commerce's Position: For the reasons explained below, we have continued to use Bulgarian import data under HTS category 280430 to value nitrogen. Commerce evaluates SV information on a case-by-case basis, and, in accordance with section 773(c)(1) of the Act, selects the best available information from an appropriate surrogate country to value FOPs. When selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, it is Commerce's practice to select SVs which, to the extent practicable, are product-specific, representative of a broad-market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties.¹⁸⁵ Moreover, it is Commerce's well-established practice to rely upon the primary surrogate country for all SVs, whenever possible, and to only resort to a secondary surrogate country if data from the primary surrogate country are unavailable or unreliable.¹⁸⁶ We have multiple surrogate sources on the record for valuing nitrogen. Specifically, the record contains: 1) POR import data for HTS category 280430 from all of the potential surrogate countries identified on the surrogate country list (*i.e.*, Brazil, Bulgaria, Mexico, Romania, South Africa, and Thailand).¹⁸⁷

Although Commerce's preference is to value all FOP in a single primary surrogate country, we did not use Thai data to value nitrogen because the available data are either price quotes¹⁸⁸ or consist of significantly disparate prices. Generally, Commerce does not use price quotes if other suitable publicly available data for valuing SVs are on the record because: (1) price quotes do not represent actual prices or broad ranges of data; and (2) we do not know the conditions under which such prices were solicited and whether or not they are self-selected from a broader range of quotes.¹⁸⁹ Additionally, the Thai GTA import data and GasWorld prices present significantly

¹⁸⁵ See, e.g., *Fuwei Films (Shandong) Co. v. United States*, 837 F. Supp. 2d 1347, 1350-51 (CIT 2012) (citing *Certain Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008) and accompanying IDM at Comment 10; and *Electrolytic Manganese Dioxide from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 48195 (August 18, 2008) and accompanying IDM at Comment 2); and *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 62088 (September 8, 2016) (*Activated Carbon China 2014-2015*) and accompanying IDM at Comment 3.

¹⁸⁶ See 19 CFR 351.408(c)(2); see also *Steel Wire Garment Hangers from the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the Second Antidumping Duty Administrative Review*, 76 FR 66903 (October 28, 2011), unchanged in *Steel Wire Garment Hangers from the People's Republic of China: Final Results and Final Partial Rescission of Second Antidumping Duty Administrative Review*, 77 FR 12553 (March 1, 2012) (*Steel Wire Garment Hangers AR2 Final*); and *Activated Carbon China 2014-2015* IDM at Comment 3.

¹⁸⁷ See Petitioner's August 22, 2018, Rebuttal Surrogate Value Comments (Petitioner's Rebuttal SV Comments) at Exhibit 3A; see also Chint Solar's SV Comments at Exhibit 4; and Risen's August 15, 2018, Surrogate Value Comments (Risen's SV Comments) at Exhibit SV-4. We also have on the record: 1) a liquid nitrogen price sheet published by the University of Arkansas (see Chint Solar's SV Comments at Exhibit 4B; see also Petitioner's Rebuttal SV Comments at Exhibit 3E); 2) U.S. pricing information published by the University of Illinois dated prior to the POR (see Chint Solar's SV Comments at Exhibit 4D); 3) U.S. price quotes and price sheets from vendors (see Chint Solar's SV Comments at Exhibit 4E; see also Chint Solar's October 9, 2018, Surrogate Value Comments at Exhibits 5H, 5I, and 5J); 4) POR export data obtained from Descartes Datamyne for U.S. exports of nitrogen to Thailand (see Chint Solar's SV Comments at Exhibit 4); and 5) POR import data from countries not on the surrogate country list. However, parties have not argued to use these data sources as an SV for nitrogen.

¹⁸⁸ See Chint Solar's SV Comments at Exhibit 4A.

¹⁸⁹ See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Sixth Antidumping*

dissimilar prices, and raise questions as to which Thai data on the record, namely the Thai import data or the GasWorld Thailand data, reflect the actual broad market average price of nitrogen in Thailand. Specifically, the AUV of Thai imports is \$10.05/kg, whereas GasWorld Thailand domestic prices for nitrogen are \$0.13/kg (*i.e.*, liquid nitrogen) and \$0.05/kg (*i.e.*, nitrogen gas).

The same pattern of significantly disparate prices exists for two other potential surrogate countries on the surrogate country list, namely South Africa and Mexico. Specifically, the AUVs of South African imports obtained from GTA and the South African Revenue Service are \$23.28/kg, whereas GasWorld South Africa domestic prices for nitrogen are \$0.09/kg (*i.e.*, liquid nitrogen) and \$0.03/kg (*i.e.*, nitrogen gas). Similarly, the AUV of Mexico imports obtained from GTA is \$255.51/kg whereas the AUV of Mexico imports obtained INEGI and SIAVI are approximately \$0.24/kg. Given these wide variations in the available SVs, we are unable to determine which South African and Mexican prices correctly reflect the actual broad market average prices. Because the conflicting data and significant disparity calls into question the reliability of the Thai, South African, and Mexican pricing data on the record, we have continued to disregard pricing data from these countries for the final results. Next, we turn to import data from the remaining countries on the list of potential surrogate countries.

Those countries, Brazil, Bulgaria, and Romania, are all at a level of economic development comparable to China, significant producers of comparable merchandise, and provide the same data quality.¹⁹⁰ Given this equality, we must determine a methodology for selecting which country provides the best available information for valuing nitrogen. Policy Bulletin 04.1 does not address how to “break the tie” between multiple competing SV sources that meet the economic and production criteria and are of the same data quality.¹⁹¹ This supports the discretion that Commerce has “to determine what constitutes the best available information, as this term is not defined by statute.”¹⁹² As such, Commerce will determine, on a case-by-case basis, the appropriate methodology to select among equally valid SV choices from a secondary surrogate country. Commerce has, in certain instances, turned to significant production of comparable merchandise as an analysis tool in SV selection when selecting SVs from countries other than the primary surrogate country in limited circumstances when the competing values are of equal quality.¹⁹³ On the other hand, Commerce has also utilized analysis of import volumes.¹⁹⁴ In *Chlor Isos 2013-2014*, *Chlor Isos 2012-2013*, *Activated Carbon China 2015-2016*, and *Activated Carbon China 2014-2015*, Commerce ranked the alternate surrogate countries by volume of imports for the particular input, and selected the country with the largest

Duty Administrative Review and Sixth New Shipper Review, 76 FR 15941 (March 22, 2011) and accompanying IDM at 9.

¹⁹⁰ *Id.*

¹⁹¹ See Policy Bulletin 04.1.

¹⁹² See *Jiaxing Brother Fastener Co. v. United States*, 961 F. Supp. 2d 1323, 1328 (CIT 2014).

¹⁹³ See *Ad Hoc Shrimp Trade Action Comm. v. United States*, 145 F. Supp. 3d 1349 (CIT January 21, 2016) (*Ad Hoc Shrimp*).

¹⁹⁴ See *Certain Activated Carbon From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 51607 (November 7, 2017) (*Activated Carbon 2015-2016*), and accompanying IDM at Comment 4.

volume of imports as the appropriate SV source.¹⁹⁵ In the previous segment of this proceeding, Commerce followed this same methodology and selected the Mexican import AUV to value the respondents' nitrogen inputs.¹⁹⁶ We find no reason to deviate from this approach in this segment of the proceeding.

Therefore, we ranked the alternate surrogate countries (Brazil, Bulgaria, and Romania) by volume of imports of nitrogen. We find that Bulgarian imports of nitrogen exceed that of the remaining countries. Specifically, the data on the record show that the imports of nitrogen into Bulgaria (*i.e.*, 11,731,250 cubic meters) are larger than those into the other countries (*i.e.*, ranging from 13,705 cubic meters to 5,353,345 cubic meters). Thus, among the remaining countries, we continue to determine that Bulgaria is the best source for an SV for nitrogen.

While no party argued for their use, we have on the record POR import data from certain other countries not on the surrogate country list (*i.e.*, China, Colombia, India, Indonesia, Japan, Malaysia, the Philippines, South Korea, Taiwan, Turkey, Ukraine, and the United Kingdom). However, Commerce relies on SVs from countries outside of the GNI band¹⁹⁷ only when the potential surrogate countries are not significant producers or if the data from the potential surrogate countries are unreliable.¹⁹⁸ We do not have this situation in this review.

The petitioner questions Commerce's decision to rely on Bulgarian data. Specifically, the petitioner: 1) mistakenly claims that our decision was taken because we found the Thai AUV aberrational; 2) questions how we could give more weight to certain pricing data from Mexico, South Africa, or Thailand (*e.g.*, INEGI, GasWorld South Africa, GasWorld Thailand) than the import data from Mexico, South Africa or Thailand; 3) alleges Commerce provided no explanation for finding import data from Brazil, Bulgaria and Romania superior to import data from Mexico, South Africa or Thailand. We address each of these points below.

First, although the petitioner questions why the difference between the Thai import AUV and other benchmark data (*i.e.*, GasWorld Thailand) is significant enough to render the Thai import AUV aberrational, we made no determination that the Thai import AUV or data from GasWorld Thailand are aberrational. Rather, we found that the 770 percent difference between the Thai

¹⁹⁵ See *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 1167 (January 11, 2016) (*Chlor Isos 2013-2014*) and accompanying IDM at Comment 1; see also *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 4539 (January 28, 2015) (*Chlor Isos 2012-2013*) and accompanying IDM at Comment 2; *Activated Carbon 2015-2016* IDM at Comment 4; and *Activated Carbon China 2014-2015* IDM at Comment 3.

¹⁹⁶ See *Solar Cells AR4 Final*.

¹⁹⁷ Although the record contains data from countries not on the surrogate country list (*i.e.*, Colombia, India, Indonesia, Japan, Malaysia, the Philippines, South Korea, Turkey, Ukraine, and the United Kingdom), only Colombia is within the GNI band. However, Colombia did not import more nitrogen during the POR than the other potential surrogate countries that we considered (Brazil, Bulgaria, and Romania). Taiwan data are also on the record. However, there are no GNI data for Taiwan on the record nor is there information as to whether it is a significant producer of comparable merchandise.

¹⁹⁸ See *Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 77323 (December 14, 2015) (*Citric Acid from China 2013-2014*) and accompanying IDM at Comment 2; see also *Activated Carbon China 2014-2015* IDM at Comment 2.

import AUV (*i.e.*, \$10.05/kg) and GasWorld Thailand pricing data (*i.e.*, \$0.13/kg for liquid nitrogen) is so significant that the Thai data on the record present conflicting evidence as to the actual broad market price for nitrogen in Thailand and, therefore, we found it inappropriate to rely on any of the Thai data.¹⁹⁹

Second, we did not necessarily give more weight to other pricing data from Mexico, South Africa, or Thailand than import data from those countries, nor did we state that such pricing data are superior to import data. Rather, we gave due weight to the pricing data and found that the significant differences between that data and import data raises concerns regarding the actual broad market price of nitrogen in those countries.

Third, we have explained why we found SV data from Mexico, South Africa, and Thailand questionable and therefore, determined it was appropriate to consider, and ultimately value nitrogen using, SV import data from either Brazil, Bulgaria, and Romania. As noted above, pricing data from Mexico, South Africa, and Thailand raise concerns regarding the actual broad market price of nitrogen in those countries and therefore we considered SV import data from Brazil, Bulgaria and Romania for valuing nitrogen.

The petitioner recommends that Commerce average the Thai import AUV with the Bulgarian import AUV to value the respondents' nitrogen. However, we have determined that the Thai pricing data on the record are unreliable, thus ,averaging the Thai import AUV with the Bulgarian import AUV would result in a flawed value. Alternatively, the petitioner argues that Commerce should inflate the Thai import AUV used in *Solar Cells AR3 Final* (*i.e.*, \$9.36/kg) to this POR should Commerce disregard the Thai import data for this POR. However, there is still a significant difference between the inflated Thai AUV and the GasWorld Thai prices which continues to call into question which price reflects the actual broad market average price of nitrogen in Thailand for this POR. Moreover, there are usable and contemporaneous import data from other potential surrogate countries on the record, which satisfy the breadth of Commerce's surrogate value criteria and do not require application of an inflator.

Finally, the petitioner speculates that the import data quantities from the reporting countries, and subsequently the converted values to kilograms calculated by Commerce for comparison purposes, may contain embedded conversion errors because the import data contain a possible mix of liquid and gaseous forms of nitrogen. However, the record contains no evidence that the reporting country compiled the information incorrectly even if the imports comprise multiple units of measures. Moreover, no party has suggested that GTA data, taken as a whole, are unreliable, and we have no basis for reaching such a conclusion. There is also no evidence that Commerce's conversions are incorrect. Rather, we relied upon conversion factors specifically for nitrogen, which takes into consideration the weight of nitrogen, to convert nitrogen to a kilogram basis for comparison purposes.

Consequently, we have continued to use Bulgarian import data under HTS category 280430 to value nitrogen.

¹⁹⁹ See Preliminary Results Surrogate Value Memorandum at 4.

Comment 14: Selection of Surrogate Financial Statements

Petitioner:

- Full Solar Co., Ltd.’s (Full Solar) 2017 financial statements are not the best available information upon which to calculate surrogate financial ratios.
- Commerce should, instead, rely on the financial data of Hana Microelectronics Public Co., Ltd. (Hana), KCE Electronics Public Company Limited (KCE), or Ekarat Engineering (Public) Co., Ltd. (Ekarat); these companies have a greater similarity to Risen and Chint Solar’s business operations. Alternatively, Commerce should rely on the financial statements of an Indonesian producer of identical merchandise, PT Sky Energy Indonesia TBK (PT Sky).
- Commerce weighs several factors in choosing between statements available on the record, including: (1) similarity of the potential surrogate company’s business operations and products to the respondent; (2) the extent to which the financial data of the surrogate company reflects sales in the United States as well as the home market; (3) the contemporaneity of the surrogate data to the period of review (POR); and (4) the similarity of the customer base.²⁰⁰ In applying this test, Commerce consistently takes the position that “the greater the similarity in business operations and products, the more likely that there is a greater correlation in the profit experience of the companies.”²⁰¹
- Full Solar appears to be a single, small solar cell producer with no indication of any affiliations or a complex business or legal structure. Meanwhile, Risen and Chint Solar are multi-layered corporations with numerous subsidiaries and worldwide affiliations that engage in an array of activities, investments, and transactions.
- The 2017 Guide to Thailand’s Board of Investment (BOI) details the “A2” incentives granted to solar producers. Several of these incentives, such as exemptions from import duties and other non-tax incentives, likely would not be readily apparent in financial statements as basic and undetailed as Full Solar’s.
- In several ARs of this proceeding, Styromatic’s financial statements made no mention of countervailable subsidies. Yet, in *Solar Cells AR3 Final*, it was revealed that the company had in fact benefitted from countervailable subsidies for some time, a fact discovered only as a result of a more detailed and complete Styromatic financial statements provided for the 2015 period.²⁰² Thus, there is a strong basis to conclude that Full Solar receives the same BOI incentives as any other Thai solar company, and the lack of a specific reference to these incentives in the financial statements does not mean the company did not benefit as a BOI-promoted company.

²⁰⁰ See Petitioner’s Case Brief at 6 (citing *Certain Steel Nails From the United Arab Emirates: Final Determination of Sales at Less Than Fair Value*, 77 FR 17029 (March 23, 2012) (*Steel Nails from the UAE*) and accompanying IDM at 26-27; see also *Certain Lined Paper Products From India: Notice of Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 10876 (February 28, 2011) and accompanying IDM at Comment 3; *Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium From Israel*, 66 FR 49349 (September 27, 2001) and accompanying IDM at Comment 8; and *Mid Continent Nail Corp. v. United States*, 999 F. Supp. 2d 1307, 1324-26 (CIT 2014)).

²⁰¹ *Id.* (citing *Steel Nails from the UAE* IDM at 27).

²⁰² *Id.* at 9 (citing *Solar Cells AR3 Final* IDM at 69).

- Commerce’s practice is to rely on financial statements with evidence of countervailable subsidies if those financial statements represent the best available information on the record.²⁰³
- It is Commerce’s practice to rely on multiple financial statements when determining surrogate ratios.²⁰⁴ If Commerce continues to find it reasonable to rely on Full Solar’s 2017 financial data, it must adhere to agency practice and include the financial data for Hana, KCE, and/or Ekarat as well.
- Alternatively, Commerce should rely on the financial statements of an Indonesian producer of identical merchandise, Sky Energy. There is no record evidence that it benefitted from countervailable subsidies or is otherwise an unreliable basis for the surrogate ratio calculations.

Risen:

- Commerce properly found that Full Solar’s 2017 financial statements were the best available information as the only Thai producer of identical merchandise with no evidence of countervailable subsidies.
- Commerce does not consider the number of affiliates and revenue of a company in examining the representativeness of a surrogate producer. Commerce “favors the financial statements of surrogates that produce the identical merchandise, consume the identical raw material, and have identical or comparable production experience.”²⁰⁵
- Full Solar primarily produces solar cells and modules and thus consumes the same raw materials as respondents to produce that merchandise. Full Solar has selling expenses, marketing expenses, and development expenses. Full Solar’s expenses are not dissimilar to Risen’s merely because Full Solar is a smaller company.
- Commerce examines how similar a proposed surrogate producer’s production experience is to the NME producer’s production experience.²⁰⁶
- The CIT has found it was reasonable for Commerce to select the financial statements of a company that produced identical merchandise, despite given certain other concerns pertaining to the financial statements, when compared with an alternate surrogate producer that produced the less exact comparable merchandise.²⁰⁷

²⁰³ *Id.* (citing *Solar Cells AR4 Final IDM* at 49).

²⁰⁴ *Id.* at 11 (citing *Steel Wire Garment Hangers From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 2010-2011*, 78 FR 28803 (May 16, 2013) and accompanying IDM at 14-15; *Solar Cells AR4 Final IDM* at 49; *Fresh Garlic from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 34082 (June 13, 2005) (*Fresh Garlic from China 2002-2003*) and accompanying IDM at Comment 5).

²⁰⁵ See Risen’s Rebuttal Brief at 4 (citing *Fresh Garlic from the People’s Republic of China: Final Results and Final Rescission, in Part, of the 2008-2009 Antidumping Duty Administrative Review*, 76 FR 37321 (June 27, 2011) and accompanying IDM at Comment 6).

²⁰⁶ *Id.* at 4 (citing *Chlorinated Isocyanurates from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 5243 (February 6, 2017) and accompanying IDM at 13).

²⁰⁷ *Id.* at 5 (citing *Tianjin A. Wanhua, Co., Ltd. v. United States*, 2017 WL 315888 (CIT 2017) at *7).

- While the petitioner argues that Full Solar is a BOI promoted company, Commerce has consistently found that this fact is not enough to demonstrate a company actually benefited from countervailable subsidies. Not all BOI privileges are countervailable.²⁰⁸
- Commerce’s preference to rely upon multiple financial statements only applies when the statements are of equal quality,²⁰⁹ and to “normalize any potential distortions.”²¹⁰ Including financial statements that benefited from countervailable subsidies introduces distortion.
- Indonesia is not at the same level of economic development as China. Commerce has a consistent practice of relying on data from a secondary surrogate country only when it has no usable or reliable data in the primary surrogate country.²¹¹
- Commerce has consistently found that data from a country not at the same level of economic development are inherently less quality data.²¹²

Chint Solar:

- The petitioner provides no support or a developed argument on why Full Solar’s relatively smaller scale operation would necessarily result in the ratios for manufacturing overhead, SGA expenses and profits being so widely different as to be unrepresentative of the financial ratios of Chint Solar or Risen.
- A larger company would have higher expenses and profits when compared with a smaller company. However, in financial ratio calculations, a larger company’s higher numerator would be divided by a correspondingly higher denominator.
- Commerce has a long-standing practice of adhering to “size-neutrality” in the selection of surrogate financials, not rejecting financial statements based on company size alone.²¹³ This practice has been upheld by the Courts.²¹⁴
- The petitioner’s arguments that Full Solar’s financial statements are less detailed when compared with the other Thai financial statements on the record and belief of presumed BOI subsidy benefits are based on mere speculation. Arguments based on mere speculation have been rejected by the Courts.²¹⁵

²⁰⁸ *Id.* at 6 (citing *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 3396 (January 16, 2013) and accompanying IDM at Comment 2).

²⁰⁹ *Id.* at 7-8 (citing, e.g., *Fresh Garlic from China 2002-2003 IDM* at Comment 5).

²¹⁰ *Id.* at 7 (citing *Steel Nails from China*).

²¹¹ *Id.* at 8 (citing *Solar Cells AR4 Final IDM* at 46).

²¹² *Id.* (citing *Clearon Corp. v. United States*, LEXIS 91 (CIT 2015) at *14).

²¹³ See Chint Solar’s Rebuttal Brief at 4 (citing *Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People’s Republic of China*, 65 FR 33805 (May 25, 2000) (*Bulk Aspirin Final Determination*) and accompanying IDM at Comment 4; see also *Folding Metal Tables and Chairs From the People’s Republic of China: Final Results of 2007-2008 Deferred Antidumping Duty Administrative Review and Final Results of 2008-2009 Antidumping Duty Administrative Review*, 76 FR 2883, (January 18, 2011) and accompanying IDM at Comment 2D).

²¹⁴ *Id.* at 3 (citing *Dorbest Ltd. v. United States*, 604 F.3d 1363, 1374-1375 (Fed. Cir. 2010)).

²¹⁵ *Id.* at 6 (citing, e.g., *Lucent Techs., Inc. v. Gateway, Inc.*, 580 F.3d 1301, 1327 (Fed. Cir. 2009); *Asociacion Colombiana Exportadores de Flores v. United States*, 40 F. Supp. 2d 466, 472 (CIT 1999); and *Zhejiang Native Produce and Animal By-Products Imp. & Exp. Grp. Corp. v. United States*, 32 C.I.T. 673, 687 (CIT 2008)).

- The fact that one solar producer's financial statements explicitly referenced receipt of BOI benefits in *Solar Cells AR4 Final* cannot be construed to infer that every other Thai solar producer is also a recipient of BOI benefits.
- In *Solar Cells AR4 Final*, Commerce relied on KCE's financial data, which contained evidence of countervailable subsidies, because that review did not proffer any other suitable financial statements. In contrast, in the instant review, Full Solar's financial statements are not only unsubsidized, but the company is also a producer of identical merchandise.
- Commerce has a long-standing preference to derive SVs from the primary surrogate country if there are useable data from that country.²¹⁶
- Indonesia is not economically comparable to China and thus fails to meet the first statutory criteria of economic comparability.
- Hana's, KCE's, Ekarat's, and Sky Energy's financial statements suffer from serious data quality issues. These financial statements fail to provide a breakout for certain costs (e.g., energy costs), consist of hybrid line items (e.g., raw materials and consumables used), or consist of undescriptive or broad line items.

Commerce's Position: For the final results, we are continuing to rely on the Thai company, Full Solar's, year-end 2017 financial statements to calculate surrogate financial ratios. In calculating surrogate financial ratios, it is Commerce's practice, in accordance with 19 CFR 351.408(c)(4), to use nonproprietary complete financial statements, showing a profit, contemporaneous with the data used to calculate production factors, gathered from producers of identical or comparable merchandise in the surrogate country, which do not indicate receipt of countervailable subsidies.²¹⁷

The record contains financial statements from five Thai producers of identical or comparable merchandise: Hana,²¹⁸ KCE,²¹⁹ Styromatic (Thailand) Co., Ltd. (Styromatic),²²⁰ Full Solar,²²¹ and Ekarat.²²² All of the Thai financial statements, with the exception of Full Solar's financial statements, show evidence of countervailable subsidies.²²³ When Commerce has reason to believe or suspect that a company may have received countervailable subsidies, financial ratios

²¹⁶ *Id.* at 6 (citing 19 CFR 351.408(c)(2); and *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Metal from the Russian Federation*, 68 FR 6885 (February 11, 2003), and accompanying IDM at Comment 7).

²¹⁷ *See Silicon Metal from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 75 FR 1592 (January 12, 2010) and accompanying IDM at 36; *See Dorbest Ltd. v. United States*; 604 F. 3d 1363, 1374 (Fed. Cir. 2010).

²¹⁸ *See* Risen's SV Comments at Exhibit 12; *see also* Petitioner's SV Comments at Exhibit 9; and Chint Solar's October 9, 2018, Surrogate Value Comments at Exhibit 6A. Risen, Chint Solar, and the petitioner all submitted Hana's 2017 statements.

²¹⁹ *See* Petitioner's SV Comments at Exhibit 9; *see also* Chint Solar's October 9, 2018, Surrogate Value Comments at Exhibit 6B. Both the petitioner and Chint Solar submitted KCE's 2017 statements.

²²⁰ *See* Chint Solar's SV Comments at Exhibit 7B (Styromatic's 2016 statements).

²²¹ *Id.* at Exhibit 7A (Full Solar's 2016 statements); *see also* Risen's October 9, 2018, Surrogate Value Comments at Exhibit SV2-3 (Full Solar's 2017 statements).

²²² *See* Petitioner's October 9, 2018, Surrogate Value Comments at Exhibit 3G (Ekarat's 2017 statements).

²²³ *See* Note 25 of Hana's financial statements, Note 29 of KCE's financial statements, Note 18 of Styromatic's financial statements, and Note 33 of Ekarat's financial statements.

derived from that company's financial statements may not constitute the best available information with which to calculate surrogate financial ratios.²²⁴ Consequently, Commerce does not rely on financial statements that contain references to programs it previously found to be countervailable when there are other sufficiently reliable and representative data on the record for purposes of calculating surrogate financial ratios.²²⁵ On the other hand, Full Solar's financial statements are the best information for calculating surrogate financial ratios, because they are contemporaneous non-proprietary statements, for a company within the selected surrogate country that produces identical merchandise, which show a profit, and do not indicate receipt of countervailable subsidies.

We disagree with the petitioner's assumption that Full Solar benefited from countervailable subsidies, or that the lack of identifiable countervailable subsidies in its statements is the result of allegedly less detail therein. The information which designates Full Solar as a BOI-promoted company²²⁶ alone does not demonstrate that Full Solar benefited from a BOI program, which Commerce has previously found to be a countervailable subsidy program. In order to determine whether a surrogate producer benefited from such programs, Commerce reviews information such as investment promotion certificate numbers and descriptions of the benefit which are typically noted in the financial statements.²²⁷ However, there is no such reference in Full Solar's financial statements or record evidence supporting the petitioner's claim.

Furthermore, the petitioner attempts to draw parallels to *Solar Cells AR3 Final*, where Styromatic's 2015 financial statements revealed that Styromatic benefited from countervailable subsidies in 2014 and earlier years even though such information was absent in Styromatic's 2014 financial statements. We do not have such evidence, such as another set of financial statements, demonstrating that Full Solar benefited from countervailable subsidies. On the contrary, the record contains Full Solar's 2016 and 2017 financial statements, and neither financial statement mentions countervailable subsidies.

Moreover, we disagree with the petitioner's claim that there is a strong basis to conclude that Full Solar receives the same BOI incentives as any other Thai *solar* company. The record only contains financial statements from one additional Thai producer of identical merchandise (*i.e.*, Ekarat), which is an insufficient basis to conclude that all Thai solar companies benefited from countervailable subsidies.

Furthermore, we disagree with the petitioner that Full Solar's financial statements are basic and lack detail. Full Solar's financial statements identify the costs for materials, labor, energy, overhead, trade and finished goods, and SG&A and interest expenses that Commerce typically relies upon to calculate surrogate financial ratios. The financial statements also identify costs

²²⁴ See *Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2014-2015*, 82 FR 17634 (April 12, 2017) and accompanying IDM at Comment 1.

²²⁵ *Id.* at 11.

²²⁶ See Petitioner's Rebuttal SV Comments at Exhibit 2B.

²²⁷ See *Citric Acid from China 2013-2014 IDM* at Comment 3; see also *Certain Frozen Warmwater Shrimp From Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013) and corresponding IDM at Comment 2.

associated with different types of inventory movement which allows us to assign such costs under the proper cost component in the financial ratios calculation.

The petitioner asserts that Commerce should disregard Full Solar's financial statements because its business operations are smaller than those of Risen and Chint Solar, which are multi-layered corporations with numerous subsidiaries and worldwide affiliations. However, Commerce does not examine the ancillary layers of the respondents' business operations since we are only concerned with their production in China and sales of merchandise under consideration in the United States. Moreover, large surrogate companies with diverse operations could involve non-comparable merchandise or may have affiliates with locations outside of Thailand. Therefore, there is no basis for selecting a parallel surrogate company with large operations. Further, Commerce has long found that disparate production volume alone does not render unreasonable data from a surrogate producer.²²⁸ In other proceedings, the CAFC has upheld Commerce's decision to not exclude the financial ratios of smaller companies from consideration.²²⁹ The petitioner has presented no evidence that smaller companies affect the calculation of surrogate financial ratios.

The record also contains financial statements from two Indonesian companies, PT Sky and PT Len Industri (Persero) (PT Len).²³⁰ However, Commerce has a preference for using financial statements from countries at the same level of economic development as China,²³¹ and PT Sky's and PT Len's financial statements come from companies operating in a country that has not been found to be at the same level of economic development as the China. Specifically, Indonesia's 2016 per capita GNI (*i.e.*, \$3,400) is outside the range of 2016 per capita GNI of the countries on the Surrogate Country List (\$5,480 to \$9,470).²³² Because we have financial statements from countries at the same level of economic development, we need not consider countries outside the GNI bookends identified on the Surrogate Country List.

Comment 15: Selection of Surrogate Labor Data Source

Chint Solar:

- The Thai National Statistics Office's (NSO) labor cost data reported for the general manufacturing sector (POR NSO Labor Force Survey), which consists of 21 broad basket categories of economic activity and hundreds of divergent manufacturing and other industry segments, provides data for the entire manufacturing sector.

²²⁸ See, e.g., *Steel Wire Garment Hangers AR2 Final* and accompanying IDM at Comment 4; see also *Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 68 FR 68030 (December 5, 2003) and accompanying IDM at Comment 1; and *Bulk Aspirin Final Determination* IDM at Comment 4.

²²⁹ See *Dorbest Ltd. v. United States*, 604 F. 3d 1363, 1373-74 (Fed. Cir. 2010).

²³⁰ See Petitioner's October 9, 2018, Surrogate Value Comments at Exhibit 3E (PT Len's 2016 statements) and Exhibit 3F (PT Sky's 2017 statements).

²³¹ See *Activated Carbon China 2014-2015* IDM at Comment 2.

²³² See Commerce's Letter, "Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information," dated July 6, 2018, 'at Attachment I.

- Meanwhile, the NSO labor cost data for the industry-specific sector, *i.e.*, Code 27909 (Manufacture of Other Electric Equipments, n.e.c.) (2011 NSO Industrial Census) offers more precise and industry-specific data. This sub-classification represents one of 464 distinct sectors of manufacturing industries and includes all other electric equipment not covered elsewhere including solar panels.
- The 2011 NSO Industrial Census is more comprehensive, because it captures all of the elements of both direct and indirect labor cost. The POR NSO Labor Force Survey fails to account for portions of indirect labor cost.
- Commerce should not select the POR NSO Labor Force Survey based merely on its contemporaneity. Contemporaneity alone is an insufficient justification for dismissing better surrogates were data appear flawed.²³³
- Commerce has a preference for NSO Industrial Census data over NSO Labor Survey data on the grounds of specificity and completeness of data.²³⁴
- In *Diamond Sawblades 2012-2013 Preliminary Results*, Commerce used 2006 NSO Industrial Census data and inflated the data to the POR.²³⁵ This methodology has been sustained by the CIT.²³⁶
- Commerce has a preference for industry-specific labor data over broader general manufacturing labor data.²³⁷
- In certain prior cases where the record lacked critical information, such as *PVLT Investigation*, Commerce preferred general manufacturing data reported in the NSO Labor Survey over the industry specific data in the NSO Industrial Census.²³⁸ However, the NSO clarification letter submitted on the record of this case confirms that the industry-specific Code 27909 labor cost data from the 2011 NSO Industrial Census is superior to the general manufacturing NSO labor data in terms of specificity and data quality. The record also includes information on Thai minimum wages.
- In *PVLT Investigation*, Commerce preferred the NSO general manufacturing labor cost data over the NSO industry-specific labor cost data, citing the allegedly closer match of the former data to Chapter 6A Labor Cost in Manufacturing, from the International Labor Organization’s Yearbook of Labor Statistics (ILO Chapter 6A labor data). Contrary to

²³³ See *Chint Solar’s Case Brief* at 38 (citing *Blue Field (Sichuan) Food Indus. Co. v. United States*, 949 F. Supp. 2d 1311, 1332 (CIT 2013)).

²³⁴ *Id.* at 41 (citing *Activated Carbon 2015-2016 IDM* at Comment 7; and *Activated Carbon 2016-2017 IDM* at Comment 5).

²³⁵ *Id.* at 42 (citing *Diamond Sawblades and Parts Thereof from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012- 2013*, 79 FR 71980, 71982 (December 4, 2014) (*Diamond Sawblades 2012-2013 Prelim*)).

²³⁶ *Id.* at 43 (citing *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 2394 (January 16, 2015) and accompanying IDM at Comment 16, and *Taian Ziyang Food Company, Ltd. vs. United States*, 918 F. Supp. 2d 1345, 1357 (CIT 2013)).

²³⁷ *Id.* (citing *Silicon Metal from the People’s Republic of China: Final Results and Partial Rescission of the 2008-2009 Administrative Review of the Antidumping Duty Order*, 76 FR 3084, 3086 (January 19, 2011) (*Silicon Metal 2008-2009*) and accompanying IDM).

²³⁸ *Id.* at 44 (citing, *e.g.*, *Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, In Part*, 80 FR 34893, 34899 (June 18, 2015) (*PVLT Investigation*)).

Commerce’s findings, the 2011 NSO Industrial Census does encompass “other miscellaneous items” and recruitment costs under “fringe benefits.”

- The 2011 NSO Industrial Census specifically includes “employer’s contributions to social security,” a component of indirect labor cost, which the POR NSO Labor Force Survey does not. The NSO clarification also reveals that the Quarterly Labor Force Survey reports do not include the “Employers contribution to Social Security.”
- Commerce has previously emphasized that the NSO Industrial Census data provide a fully loaded labor cost.²³⁹
- The 2011 NSO Industrial Census is collected by interviewing all of the manufacturing sector employers at a given factory, while the POR NSO Labor Force Survey is collected by interviewing only a tiny sample of the employees at their homes. Thus, it is reasonable to conclude the cost of indirect labor cost elements would likely be unreported or underreported in the POR NSO Labor Force Survey since an individual employee being interviewed at home may not have access to (or may be unaware of) all of the indirect labor cost elements.
- The NSO clarification concludes that “for purposes of accurate and reliable average total labor cost for the manufacturing sector, the 2012 Industrial Census report is a far better source as compared to the Quarterly Labor Force Survey reports.”²⁴⁰
- In *PVLT Investigation*, Commerce did not use the contemporaneous 2011 NSO Industrial Census in part because the data predated the 2013 wage increase in the Thai manufacturing sector. However, the 2013 wage increase to 300 Baht/day does not affect the labor cost for the Thai solar panel industry since the 2012 industry-specific labor cost was significantly higher at 460.72 Baht. Commerce has previously acknowledged that the 2013 wage increase is unlikely to impact wages that are already significantly above 300 Baht.²⁴¹
- Commerce has a preference for using the consumer price index (CPI) as an inflator for labor costs;²⁴² thus, it should inflate the labor cost data from the 2011 NSO Industrial Census to the POR. The Official NSO Clarification also supports this methodology.

Petitioner:

- While Commerce has a preference for industry-specific labor rates from the primary surrogate country, this does not mean that other sources for labor rates may not be considered.²⁴³

²³⁹ *Id.* at 47 (citing *Activated Carbon 2015-2016 IDM* at Comment 7).

²⁴⁰ *Id.* (citing Chint Solar’s SV Comments at Exhibit 5D).

²⁴¹ *Id.* at 49-50 (citing *Activated Carbon 2015-2016 IDM* at Comment 7).

²⁴² *Id.* at 50-51 (citing *Steel Wire Garment Hangers AR2 Final*; and *Certain Activated Carbon from the People’s Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review*, 75 FR 70208, 70211 (November 17, 2010)).

²⁴³ See Petitioner’s Rebuttal Brief at 28 (citing *Steel Racks and Parts Thereof From the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 84 FR 7326 (March 4, 2019) and accompanying PDM at 11; and *Steel Wire Garment Hangers From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 65616 (November 5, 2014) and accompanying PDM at 11).

- To determine the most appropriate labor cost data to use, Commerce applies a number of filters including contemporaneity.²⁴⁴
- The POR NSO Labor Force Survey is the “best information available” in accordance with Section 773(c) of the Act since it covered an overwhelming majority of the POR and is thus contemporaneous. In contrast, Chint Solar recommends data from six years prior to the POR.
- While Chint Solar claims that the industrial code 27909 (“Manufacture of Other Electric Equipment”) provides the 2011 NSO Industrial Census with greater specificity relative to the “Manufacturing” sector in the POR NSO Labor Force Survey, it has failed to demonstrate whether this sub-classification includes solar panels.
- Regarding the *Diamond Sawblades 2013-2014 AR*, the CIT affirmed Commerce’s reliance on Thai NSO Labor Force Survey data and rejected respondents’ premise that specificity in labor data is necessarily superior to contemporaneity.²⁴⁵
- The CIT recently found that Commerce has the authority to decline to rely on “NSO Clarification Letter” of the 2011 NSO Industrial Census based on its limited probity.²⁴⁶

Commerce’s Position: The record of this review contains two surrogate sources for valuing labor: quarter-specific 2017 Labor Force Survey data,²⁴⁷ and 2011 Industrial Census data which were released in 2012.²⁴⁸ While both sets of data are publicly available, representative of a broad market average, the 2017 Labor Force Survey data are contemporaneous with the POR, while the 2011 Industrial Census data are specific to a narrower range of manufacturing (electric equipment).²⁴⁹ However, for the reasons discussed below, we continue to find that the POR Labor Force Survey data are the best available information on the record with which to value labor.

First, the Labor Force Survey data cover 2017 and, thus, they are contemporaneous with the POR. The Industrial Census data are not contemporaneous with the POR, because they are for 2011.

Second, the 2017 Labor Force Survey data better reflect the full spectrum of labor (*i.e.*, fully loaded, direct and indirect) costs expressed within ILO Chapter 6A data. In *Labor Methodologies*, Commerce found that ILO Chapter 6A contains the data that best account for all

²⁴⁴ *Id.* (citing *Antidumping Methodologies in Proceedings Involving Noon-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092-36094 (June 21, 2011) (*Labor Methodologies*)).

²⁴⁵ *Id.* at 29-30 (citing *Diamond Sawblades Mfrs. Coal. v. United States*, 301 F. Supp. 3d 1326 (CIT 2018) at 27-28 (*Diamond Sawblades Mfrs. Coal.*)).

²⁴⁶ *Id.*

²⁴⁷ See Petitioner’s SV Comments at Exhibit 4.

²⁴⁸ See Chint Solar’s SV Comments at Exhibit 5. Risen also submitted Labor Force Survey data for the third quarter of 2016 (*i.e.*, outside of the POR) which we disregarded since the record contains contemporaneous Labor Force Survey data. See Risen’s SV Comments at Exhibit 5.

²⁴⁹ See *Diamond Sawblades Mfrs. Coal.* at 27, quoting *Shakeproof Assembly Components Div. of Ill. Tool Works, Inc. v. United States*, 30 C.I.T. 1173, 1177-78 (CIT 2006) (“Commerce’s reliance on valuation information from within that specific time period is clearly an appropriate means of fulfilling {its} statutory directive.”).

direct and indirect labor costs.²⁵⁰ However, since ILO Chapter 6A data for Thailand are not on the record of this review, we compared the direct and indirect labor cost elements in the 2011 Industrial Census data and the 2017 Labor Force Survey data to the same elements described in the ILO Chapter 6A definition to determine which source better reflects the full spectrum of labor costs.²⁵¹

ILO Chapter 6A data comprise compensation of employees, employers' expenditure for vocational training and welfare services (*e.g.*, training), the cost of recruitment and other miscellaneous items (*e.g.*, work clothes, food, housing), and taxes.²⁵² The Labor Force Survey data include cash for average wage, bonus, overtime, and other income, as well as in kind compensation for food, clothes, housing, and others.²⁵³ The 2011 Industrial Census data include wages, salaries, overtime bonus, fringe benefits (medical care, others), and employer's contribution to social security.²⁵⁴ We find that the POR Labor Force Survey data provide categories of direct and indirect labor costs that match more closely to costs covered by the ILO Chapter 6A labor data than the 2011 Industrial Census data. Although Appendix B of the 2011 Industrial Census data explains that fringe benefits "{r}efer to all payments in addition to wages or salaries paid to employees such as food, beverages, lodgings, rent, medical care, transportation recreational and entertainment services, etc.,"²⁵⁵ the 2011 Industrial Census data identify fringe benefits only as "Medical care" and "Others" but do not specify whether work clothes, food, and housing are in fact included in the "Others" category of fringe benefits. Due to this lack of specificity, it is not clear that the 2011 Industrial Census data reflect comprehensive labor costs as do ILO Chapter 6A labor data. On the other hand, Labor Force Survey data do reflect comprehensive labor costs.²⁵⁶ Therefore, we find that the general manufacturing labor data in the POR Labor Force Survey provide the best available information for valuing labor.

This approach is similar to the one taken in *Tool Chests and Cabinets from China*, where Commerce examined whether to value labor using the NSO Labor Force Survey covering a similar POR (*i.e.*, October 1, 2016, through March 31, 2017) or 2011 Industrial Census data.²⁵⁷ In that case, Commerce found that the Labor Force Survey provided superior data when compared with the Industrial Census data, because the Labor Force Survey data were contemporaneous with the POR and better matched the labor cost categories in ILO Chapter 6A. In *Tool Chests and Cabinets from China*, the better specificity of the Industrial Census data did not warrant relying on that data, given that the data were less detailed when compared with the Labor Force Survey data.

²⁵⁰ See *Labor Methodologies*, 76 FR at 36092-93.

²⁵¹ See *PVLT Investigation* IDM at Comment 13.

²⁵² *Id.*

²⁵³ See Petitioner's SV Comments at Exhibit 4.

²⁵⁴ See Chint Solar's SV Comments at Exhibit 5.

²⁵⁵ *Id.*

²⁵⁶ See *Diamond Sawblades 2013-2014* IDM at Comment 16, *aff'd*, remanded on other grounds, *Diamond Sawblades Mfrs. Coal.* at 21-32.

²⁵⁷ See *Certain Tool Chests and Cabinets from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 15365 (April 10, 2018) (*Tool Chests and Cabinets from China*) and accompanying IDM at Comment 12.

We did not rely on the NSO clarification letter, because it does not describe the methodology the NSO used to compile labor data for the POR.²⁵⁸ The NSO clarification was issued in September 2015 (more than a year prior to the beginning of the POR) and it explains only the difference in methodology between the 2011 Labor Force Survey and the 2011 Industrial Census data, not the difference in methodology between the POR Labor Force Survey and the 2011 Industrial Census data. The NSO clarification letter is merely an “opinion, albeit an official one, and it is not dispositive as to which of the two sets of data Commerce could choose as the best information available on the record.”²⁵⁹

We do not find *Activated Carbon 2015-2016* and *Activated Carbon 2016-2017* persuasive, because the 2011 Industrial Census data in those cases contained a labor category that explicitly included the production of activated carbon, whereas the 2011 Industrial Census data in this review do not contain a labor category that explicitly includes solar cells or solar modules. Therefore, the 2011 Industrial Census data are not as specific as they were in *Activated Carbon 2015-2016* and *Activated Carbon 2016-2017*.

Additionally, we do not find that the *Diamond Sawblades 2012-2013 Prelim* undermines our position in this review. In the subsequent administrative reviews of the AD order on diamond sawblades from China, Commerce valued labor using Labor Force Survey data instead of 2011 Industrial Census data. Commerce did so for the same reasons explained above, and because the 2011 Industrial Census data did not reasonably reflect labor costs, even after the adjustment for inflation, whereas the POR-contemporaneous Labor Force Survey data did without any adjustment.²⁶⁰ The CIT sustained Commerce’s decision to select the Labor Force Survey data over the 2011 Industrial Census data in *Diamond Sawblades 2013-2014*.²⁶¹

Lastly, in *Silicon Metal 2008-2009*, Commerce valued labor using industry-specific wage data because the data were more specific to the merchandise under review when compared to the general manufacturing data.²⁶² However, the issue at hand differs from the instant case. Specifically, in *Silicon Metal 2008-2009*, parties did not argue which labor source is most comprehensive and better reflects the broad spectrum of labor costs.

For the above reasons, we are relying on the POR Labor Force Survey data to value labor for these final results.

²⁵⁸ See Chint Solar’s SV Comments at Exhibit 5C.

²⁵⁹ See *Diamond Sawblades Mfrs. Coal.* at 27.

²⁶⁰ See *Diamond Sawblades 2013-2014 IDM* at Comment 16, aff’d, remanded on other grounds, *Diamond Sawblades Mfrs. Coal.* at 21-32, and *Diamond Sawblades and Parts Thereof from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 26912 (June 12, 2017) and accompanying IDM at Comment 14.

²⁶¹ See *Diamond Sawblades 2013-2014 IDM* at Comment 16, aff’d, remanded on other grounds, *Diamond Sawblades Mfrs. Coal.* at 21-32.

²⁶² See *Silicon Metal 2008-2009 IDM* at Comment 8.

Comment 16: Surrogate Value for Ocean Freight

Risen:

- The “USPRICES.sas7bdat” dataset output indicates that a rounded value was applied to each observation in the U.S. sales database, instead of the actual international freight values on the record and averaged at Attachment IV of Risen’s preliminary analysis memorandum. Using the rounded figures should be corrected to calculate a margin as accurately as possible.²⁶³
- The Maersk data for February 2017 are highly aberrant and should be disregarded. Commerce has previously disregarded such aberrant values and values with artificial spikes.²⁶⁴ Normal commercial businesses would not choose to ship in February when it would cost 300-450 percent more than shipping a few weeks earlier or later.²⁶⁵
- The Descartes data for February 2017 supports a finding that the Maersk rates are not representative of February 2017 ocean freight rates.
- Commerce should give equal weight to both Maersk and Descartes data; doing so is consistent with Commerce’s approach to obtain a broad-market average.²⁶⁶ Chinese exporters would have access to both sources equally in selecting an ocean freight carrier. A surrogate value must be as representative of the situation in the NME country as is feasible.²⁶⁷
- The most accurate way to calculate and apply the ocean freight to Risen’s sales is on a monthly basis. This methodology for applying the ocean freight fulfills Commerce’s strong preference for contemporaneity.²⁶⁸ In CVD cases, Commerce applies ocean freight on a monthly basis to monthly benchmarks. Similarly, Commerce applied a daily

²⁶³ See *Risen’s Case Brief* at 17 (citing *Parkdale Int’l v. United States*, 475 F.3d 1375, 1380 (Fed. Cir. 2007) (citing *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1191 (Fed. Cir. 1990)); *Juancheng Kangtai Chem. Co. v. United States*, 2015 Ct. Intl. Trade LEXIS 94, 37 Int’l Trade Rep. (BNA) 2011, SLIP OP. 15-93 (CIT 2015) at *25; and *Shakeproof Assembly Components Div. of Ill. Tool Works v. United States*, 268 F.3d 1376, 1382 (Fed. Cir. 2001)).

²⁶⁴ *Id.* at 17-18 (citing *Peer Bearing Company-Changshan v. United States*, 752 F. Supp. 2d 1353 (January 28, 2011); *Itochu Bldg. Prods. Co. v. United States*, 2017 Ct. Intl. Trade LEXIS 74, *20-23 (CIT 2017); *Shakeproof Assembly Components Div. of Illinois Tool Works, Inc. v. United States*, 59 F. Supp. 2d 1354, 1360 (CIT 1999) (*Shakeproof Assembly*), quoting *Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People’s Republic of China; Final Results of Antidumping Duty Administrative Reviews*, 63 FR 16758, 16761 (April 6, 1998)).

²⁶⁵ *Id.* at 18 (citing S. Rep. No. 100-71 at 106 (1987); *Juancheng Kangtai Chem. Co. v. United States*, 2015 Ct. Intl. Trade LEXIS 94, *65-66, 78 (CIT 2015); and *Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1999)).

²⁶⁶ *Id.* at 24 (citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2015-2016*, 83 FR 1018 (January 9, 2018) and accompanying PDM at 23, unchanged in *Solar Cells AR4 Final*; see also *Certain Steel Racks Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination*, 83 FR 62297 (December 3, 2018) and accompanying PDM at 33).

²⁶⁷ *Id.* (citing *Nation Ford Chemical v. United States*, 166 F. 3d 1373 (Fed. Cir. 1999); and *Rhodia, Inc. v. United States*, 185 F. Supp. 2d 1343, 1351 (CIT 2001)).

²⁶⁸ *Id.* at 21 (citing *Changzhou Trina Solar Energy Co. v. United States*, 255 F. Supp. 3d 1312, 1323 (CIT 2017); and *Certain Hot-Rolled Carbon Steel Flat Products from Romania: Final Results of Antidumping Duty Administrative Review*, 70 FR 34448, 34450 (June 15, 2005) (*Hot-Rolled Steel from Romania*)).

exchange rate to convert surrogate values from baht to U.S. dollars based on the date of sale of the subject merchandise.²⁶⁹

- Commerce has previously relied only on Maersk data, because Maersk data were the only ocean freight rate source on the record.²⁷⁰ Commerce has never found that it, *per se*, has a preference for Maersk ocean freight data, and has never selected Maersk over Descartes in previous reviews of solar cells. When Commerce puts ocean freight rates on the record, it obtains the data from Descartes.²⁷¹
- The Descartes data placed on the record by Chint Solar fulfills Commerce’s preferences because it is contemporaneous, reflects routes from China to the United States, and pertains to 40-foot container shipments. The data are more specific to subject merchandise than Maersk data.
- The Court has upheld Commerce’s preference to use the most specific surrogate data.²⁷²
- Commerce has a practice of relying upon both 20-foot and 40-foot containers, regardless of which container size the respondents primarily use. By calculating the price on a per-kilogram basis, Commerce can reliably use all Descartes data on the record comprising of 20-foot and 40-foot containers.
- If Commerce relies on Maersk data, it should rely only on basic freight rates, instead of “total price” from Maersk. In *Solar Cells AR4 Final*, Commerce removed such “double counted brokerage and handling expenses” from the Maersk data.²⁷³

Chint Solar:

- Commerce should rely on Chint Solar’s product-specific and contemporaneous Descartes data, Risen’s contemporaneous Descartes data, and the petitioner’s non-aberrational Maersk data, to obtain ocean freight SVs.

²⁶⁹ *Id.* at 23 (citing 19 CFR 351.415(a)).

²⁷⁰ See Risen’s Rebuttal Brief at 9-10 (citing *Crystalline Silicon Photovoltaic Cells Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2012-2013*, 80 FR 40998 (July 14, 2015) (*Solar Cells from China 2012-2013*) and accompanying IDM at Comment 15; *Solar Cells AR2 Final IDM* at 65; and *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments, 2014-2015*, 81 FR 93888 (December 22, 2016) (*Solar Cells AR3 Prelim*) and accompanying PDM at 26).

²⁷¹ *Id.* at 10 (citing *Freshwater Crawfish Tail Meat Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review; 2014-2015*, 81 FR 24656 (October 12, 2016) and accompanying PDM at 18, unchanged in *Freshwater Crawfish Tail Meat From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2014-2015*, 82 FR 17634 (April 12, 2017); *1-Hydroxyethylidene-1, 1-Diphosphonic Acid Affirmative Preliminary Determination of Sales at Less Than Fair Value, and Postponement of Final Determination*, 81 FR 76916 (November 4, 2016) and accompanying PDM at 24, unchanged in *1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People’s Republic of China: Final Determination of Sales at Less than Fair Value*, 82 FR 14876 (March 23, 2017); *Certain Steel Nails Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments, 2016-2017*, 83 FR 45883 (September 11, 2018) and accompanying PDM at 28; and *Carton-Closing Staples Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures*, 82 FR 51213 (November 3, 2017) and accompanying PDM at 24).

²⁷² *Id.* at 10 (citing *Taian Ziyang Food Co. v. United States*, 783 F. Supp. 2d 1292, 1330 (CIT 2011), citing *Hebei Metals & Minerals Imp. & Exp. Corp. v. United States*, 366 F. Supp. 2d 1264, 1273-74 (CIT 2005); *Qingdao SeaLine Trading Co. v. United States*, 766 F. 3d 1378, 1386 (Fed. Cir. 2014); and *Ad Hoc Shrimp Trade Action Comm. v. United States*, 618 F. 3d 1316, 1320 (Fed. Cir. 2010)).

²⁷³ *Id.* at 10 (citing *Solar Cells AR4 Final IDM* at Comment 8).

- The Maersk data are comprised of price quotes instead of actual transactions. Commerce’s well-established policy is to reject price quotes in favor of actual transaction price data.²⁷⁴
- Maersk price quotes raise the following reliability and data quality concerns. All of the Maersk data generally conform to a uniform boilerplate, whereas the Descartes price sheets are distinct from one another. The Maersk quotes are submitted as proprietary information; Commerce has had a long-standing preference for publicly available information in the selection of SV data. The Maersk data reflect a set of disparate goods different from identical merchandise, whereas Chint Solar’s Descartes price sheets pertain to solar panels or very similar goods. The payload for a Maersk price for a 40-foot high cube container is unrealistically low when compared to the prescribed industry standard payload, whereas the payload for Descartes data is corroborated by independent record evidence. Commerce should rely on the industry standard payload for 40-foot containers.
- The CIT has repeatedly held that “the objective of establishing antidumping margins as accurately as possible is achieved only when Commerce’s choice of what constitutes the best available information evidences “a rational and reasonable relationship to the factor of production it represents.”²⁷⁵
- Commerce should consider both Risen’s Descartes data and the petitioner’s Maersk data as failing to meet the specificity criteria. The petitioner fails to provide any evidence that its Maersk data are specific to the subject merchandise.
- The “chemical products” based Descartes data submitted by Risen is qualitatively superior to the “electronics” based Maersk data.
- Product specificity is the most important of the criteria when evaluating the attributes of SV data.²⁷⁶
- Commerce incorrectly excluded data for a certain container size simply because Risen and Chint Solar shipped their merchandise predominantly in a different container size. A container of a different size has a payload appropriate for that container, and there should be no discernible difference on a per-kilogram basis. Moreover, Chint Solar used the container size which Commerce excluded.
- The Maersk data were presented on a quarterly basis and only reflect four months. This results in a serious gap in the Maersk data, since ocean freight charges generally fluctuate on a monthly basis.
- Commerce incorrectly calculated the ocean freight SV by averaging the rates from multiple months together. Rather, computation should be done first on a monthly basis, then averaged together on a POR-wide basis.
- Commerce used an unusual hybrid methodology, using publicly available ocean freight data with Chint Solar’s U.S. sales database, to compute dollar-per-watt ocean freight values. This methodology yields distorted results, since there may not be a one-to-one correlation between the nature of goods and their quantity that underlie Maersk or

²⁷⁴ See Chint Solar’s Case Brief at 12 (citing *Chlor Isos 2013-2014* IDM at Comment 2).

²⁷⁵ *Id.* at 15-16 (citing *Hebei Metals & Minerals Imp. & Exp. Corp. v. United States*, 28 Ct. Int’l Trade 1185, 1191 (2004)).

²⁷⁶ *Id.* at 16 (citing *Taian Ziyang Food Co. v. United States*, 783 F. Supp. 2d 1292, 1330 (CIT 2011)).

Descartes ocean freight charges and Chint Solar's reported solar modules and their quantity per container.

- Commerce should exclude all line items other than “Basic ocean freight” from Maersk data consistent with past practice.²⁷⁷
- The Maersk data offer inconsistent price quotes for February 2017, which also demonstrate that most of the February 2017 price quotes are aberrationally high and should be disregarded. Commerce's well-established practice to disregard aberrational or outlier data has been repeatedly affirmed by the CIT.²⁷⁸

Petitioner:

- Commerce should value ocean freight using only Maersk data for the final results.
- Commerce has previously recognized Maersk as the most appropriate and accurate source for ocean freight rates which provides the best available information to value NME ocean freight.²⁷⁹
- The Maersk data should be treated as proprietary information to protect the respondents' ocean freight routes.
- The respondents fail to provide any evidence that Maersk data suffer from various anomalies, and completely ignore Commerce's long-standing practice to rely on these rates.
- There is no evidence that the Descartes data reflect actual transaction-specific freight charges.
- The Descartes rates provided by Risen are specific to chemical products and, thus, unrelated to the rates actually incurred for identical or comparable merchandise. The Descartes data provided by Chint Solar are primarily outside the POR. The few shipments during the POR cover routes from the United States to China. Maersk data pertain to “electronics” commodity group and are more specific to subject merchandise.
- The Maersk data on the record are contemporaneous, cover products more specific to subject merchandise, cover specific routes, and offer greater transparency.
- Given Commerce's preference for freight data that provide the greatest specificity for the merchandise under consideration, the Maersk data are superior.²⁸⁰
- The respondents fail to demonstrate that the February 2017 Maersk data are aberrational. Commerce has found that the existence of higher prices alone does not necessarily

²⁷⁷ *Id.* at 21 (citing *Solar Cells AR4 Final IDM* at Comment 8).

²⁷⁸ *Id.* at 23 (citing *Tri Union Frozen Prods. v. United States*, 2017 Ct. Intl. Trade LEXIS 72, 15-16 (CIT 2017)).

²⁷⁹ See Petitioner's Rebuttal Brief at 18 (citing *Solar Cells AR4 Final IDM* at Comment 8; *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2012-2013*, 80 FR 1021 (January 8, 2015) and accompanying PDM at 33, unchanged in *Solar Cells from China 2012-2013; Solar Cells AR2 Prelim* and accompanying PDM at 26, unchanged in *Solar Cells AR2 Final; Solar Cells AR3 Prelim* and accompanying PDM at 26, unchanged in *Solar Cells AR3 Final*; and *Certain Polyester Staple Fiber From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2012-2013*, 80 FR 4542, 4543 (January 28, 2015)).

²⁸⁰ *Id.* at 21 (citing, e.g., *Seamless Refined Copper Pipe and Tube from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 27688 (June 16, 2017) and accompanying IDM at Comment 1).

indicate that the prices are distorted or misrepresentative and, thus, it is not a sufficient basis upon which to exclude a particular SV.²⁸¹

- Risen’s comparison of the Maersk data to its Descartes data is not an apples-to-apples comparison, because the data reflect shipments of different merchandise.
- Commerce should continue to exclude shipments of a certain container size. Specifically, one respondent did not ship using this container size, the other respondent used this container size in only a few instances. Inclusion of these containers would distort and understate the SV calculations.
- Commerce does not have a default practice of monthly data calculation. Commerce’s well-established and long-standing practice is to calculate period-wide SVs.²⁸²
- Risen fails to provide any analysis, data, or evidence to support the nature of freight rates as being so time sensitive that Commerce needs to reject its established methodology.
- Risen fails to demonstrate how the variation of freight data on the record correlates with quarterly time periods or to time, in general.
- Commerce correctly applied an alternative calculation methodology that recognizes the inherent inconsistency in the weights reported for given container sizes, which vary by source.
- The preliminary margin program confirms that Commerce did not round its per-container ocean freight rates for Risen.
- It is unclear whether Chint Solar incurred the same types of expenses as those detailed in the Maersk price quotes. Thus, Commerce cannot be fully certain that removing these line items relate to expenses that were actually incurred. Commerce should remove only those items specifically and clearly related to brokerage and handling.

Commerce’s Position: We valued ocean freight using Descartes freight rates that are contemporaneous with the POR, for a container size used by the respondents, and, where possible, product specific (*i.e.*, rates for shipping solar panels and other solar products).²⁸³ Where product-specific Descartes rates for shipments to certain U.S. regions are not on the record, but Descartes freight rates for shipping other products to such regions are on the record, (in this case rates for shipping chemical products), we valued ocean freight using those rates.

We disregarded the petitioner’s Maersk rates, because they were treated as proprietary information on the record of this review. In Policy Bulletin 04.1, Commerce explained that “in assessing data and data sources, it is the Department’s stated practice to use investigation or review period-wide price averages, prices specific to the input in question, prices that are net of taxes and import duties, prices that are contemporaneous with the period of investigation or review, and *publicly available data*.” {emphasis added}.²⁸⁴

²⁸¹ *Id.* at 22 (citing, *e.g.*, *Steel Wire Garment Hangers 2012-2013* IDM at Comment 5; *CVP 23 from China* IDM at Comment 6).

²⁸² *Id.* at 22 (citing Policy Bulletin 04.1; *see also Hot-Rolled Steel from Romania* IDM at Comment 1).

²⁸³ We disregarded Chint Solar’s August 14, 2018, Descartes ocean freight rates because they are either pre-POR rates or rates for a container size that is not representative of the containers used by the respondents.²⁸³

²⁸⁴ *See* Policy Bulletin 04.1.

The respondents expressed concerns with Commerce's freight rate calculation, including whether rates for all container sizes have been used, whether Commerce properly averaged the rates, the calculation basis, and whether Commerce made certain ministerial errors in its ocean freight rate calculations. We have addressed each of these points below.

With respect to the ocean freight SV calculations, we have continued to exclude rates of a certain container size from our ocean freight SV calculations. Specifically, one respondent did not use this particular container size during the POR, and the other respondent only used this container size in very limited instances. Using rates from this particular container size is not appropriate, because it is not reflective of the respondents' business experience. The respondents argue that it is Commerce's practice to use data reflecting different container sizes, and that the container size has no bearing on freight calculations. However, they provide no support for this assertion. On the contrary, as stated in *Citric Acid from China 2012-2013*, it is Commerce's preference to use ocean freight SV data which reflect the container size used by the respondent.²⁸⁵

We disagree with Risen's argument that we should apply the monthly average ocean freight rates to the respondents' sales on a month-specific basis. Commerce applies a majority of SVs on a POR basis, including valuation of raw materials, brokerage and handling, labor, and the financial ratios. While Commerce does rely on daily or monthly values in some instances, as Chint Solar noted, Chint Solar has failed to explain why we should treat the ocean freight SV differently from the majority of other SVs which are applied to the margin calculations on a POR basis.

While the respondents argue that it is Commerce's preference to calculate the ocean freight SV on a per-kilogram basis, they provide no support for this assertion. As an initial matter, Commerce did not rely on container weights to calculate the ocean freight SV in these final results and, thus, the arguments on the appropriate kilogram payload for a particular container size are moot. Rather, Commerce calculated price on a per-watt basis, using prices from the Descartes data, and the number of modules, and subsequently the number of watts, from the respondents' own containers. As Chint Solar itself noted, the payload for a particular container size may vary across different sources. Accordingly, Commerce finds it is more accurate to rely on the respondent's own container payload.

Finally, we agree with Risen that we made an error in calculating ocean freight expense in the *Preliminary Results*. In the *Preliminary Results*, the ocean freight rates (*i.e.*, the surrogate price quotes) were incorrectly read by the margin program. Specifically, the four-digit ocean freight rates were read as three-digit character variables instead of four-digit numeric variables. We have adjusted the SAS language for ocean freight (*i.e.*, INTNFRU) in the margin program so that ocean freight rates are being read as four-digit numeric variables.

²⁸⁵ See *Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 65182 (November 3, 2014) and accompanying IDM at Comment 3.

V. RECOMMENDATION

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

Agree

Disagree

7/24/2019

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance