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Administrative Review  
12/1/2017 - 11/30/2018  
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January 31, 2020

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

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

**SUBJECT:** Decision Memorandum for the Preliminary Results of the 2017-2018 Antidumping Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or not Assembled into Modules, From the People's Republic of China

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## I. SUMMARY

In response to requests from interested parties, the Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells), from the People's Republic of China (China) covering the period December 1, 2017 through November 30, 2018, the period of review (POR). The administrative review covers 53<sup>1</sup> exporters of subject merchandise including the two mandatory respondents: Trina Solar Co., Ltd<sup>2</sup> and Risen Energy Co., Ltd. (Risen Energy).<sup>3</sup>

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<sup>1</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 9297 (March 14, 2019) (*Initiation Notice*). The *Initiation Notice* identified 54 exporters of subject merchandise that were covered in this administrative review. However, Shenzhen Yingli New Energy Resources Co., Ltd. was listed twice in the initiation notice.

<sup>2</sup> As discussed in detail below, we are treating Trina Solar Co., Ltd. (formerly, Changzhou Trina Solar Energy Co., Ltd.), Trina Solar (Changzhou) Science and Technology Co., Ltd., Yancheng Trina Guoneng Photovoltaic Technology Co., Ltd (formerly, Yancheng Trina Solar Energy Technology Co., Ltd.), Changzhou Trina Solar Yabang Energy Co., Ltd., Turpan Trina Solar Energy Co., Ltd., Hubei Trina Solar Energy Co., Ltd., Trina Solar (Hefei) Science and Technology Co., Ltd., and Changzhou Trina Hezhong Photoelectric Co., Ltd. as a single entity (collectively, Trina).

<sup>3</sup> As discussed in detail below, we are treating Risen Energy Co., Ltd. (Risen Energy), Risen (Wuhai) New Energy Co., Ltd. (Wuhai), Zhejiang Twinsel Electronic Technology Co., Ltd. (Twinsel), Risen (Luoyang) New Energy Co., Ltd. (Luoyang), Jiujiang Shengchao Xinye Technology Co., Ltd. (Jiujiang), Jiujiang Shengzhao Xinye Trade Co., Ltd. Ruichang Branch (Jiujiang Ruichang Branch), and Risen Energy (HongKong) Co., Ltd. (Hong Kong Risen) as a single entity (collectively, Risen).



Commerce preliminarily determines that 18 companies, which include the collapsed mandatory respondents, have established their entitlement to separate rate status and have sold subject merchandise in the United States at prices below normal value (NV) during the POR. Commerce also preliminarily determines that 16 companies failed to establish their entitlement to separate rates status and that the record supports the claims of the five companies making no shipment claims.

## II. BACKGROUND

On December 3, 2018, Commerce notified interested parties of the opportunity to request an administrative review of orders, findings, or suspended investigations with anniversaries in December 2018, including the AD order on solar cells from China.<sup>4</sup> SolarWorld Americas Inc. (the petitioner), as well as various exporters and U.S. importers, requested that Commerce conduct an administrative review of certain exporters covering the POR.<sup>5</sup> On March 14, 2019, Commerce published a notice initiating an AD administrative review of solar cells from China covering 53 companies/company groupings for the period December 1, 2017 through November 30, 2018.<sup>6</sup>

In the *Initiation Notice*, Commerce stated that, if it limited the number of respondents for individual examination, it intended to select respondents based on volume data contained in responses to its quantity and value (Q&V) questionnaire.<sup>7</sup> Further, Commerce noted that it intended to limit the number of Q&V questionnaires issued in the review based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the POR.<sup>8</sup>

In April 2018, aside from the mandatory respondents, 16 companies that remain under review submitted separate rate applications or certifications. An additional five companies submitted no shipment letters. Commerce issued supplemental questionnaires to a number of companies requesting separate rate status and received responses to its separate rate supplemental questionnaires.

On May 6, 2019, Commerce selected Risen and Trina as mandatory respondents.<sup>9</sup> On May 7, 2019, and September 10, 2019, Commerce issued its AD questionnaire and double remedies questionnaire, respectively, to Risen and Trina.

Between May 2019 and January 2020, Risen and Trina submitted responses to Commerce's AD questionnaire, double remedies questionnaire, and supplemental questionnaires. During this time period, the petitioner also submitted comments on Risen and Trina's questionnaire and supplemental questionnaire responses.

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<sup>4</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 83 FR 62293 (December 3, 2018).

<sup>5</sup> See Petitioner's Letter "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Request for Administrative Review," dated December 31, 2018.

<sup>6</sup> See *Initiation Notice*.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> See Memorandum, "Respondent Selection," dated May 6, 2019, (Respondent Selection Memorandum) at 5.

Between August 2019 and January 2020, Risen, Trina, and the petitioner filed comments and factual information for consideration by Commerce in selecting the primary surrogate country and surrogate values (SVs).

On September 11, 2019, Commerce extended the time limit for completing the preliminary results of this review by 120 days, until January 31, 2020.<sup>10</sup> On September 18, 2019, Commerce rescinded this review with respect to 14 respondents.<sup>11</sup>

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

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

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

Also excluded from the scope of this order are crystalline silicon photovoltaic cells, not exceeding 10,000mm<sup>2</sup> 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 these Orders are panels with surface area from 3,450 mm to 33,782 mm with one black wire and one red wire (each of type 22 AWG or 24 AWG not more than 206 mm in length when measured from panel extrusion), and not exceeding 2.9 volts, 1.1 amps, and 3.19 watts. For the purposes of this exclusion, no panel shall contain an internal battery or external computer peripheral ports.

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<sup>10</sup> See Memorandum “2017-2018 Antidumping Duty Administrative Review of Certain Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,” dated September 11, 2019.

<sup>11</sup> See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review; 2017–2018*, 84 FR 49092 (September 18, 2019).

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

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

#### **IV. PRELIMINARY DETERMINATION OF NO SHIPMENTS**

BYD (Shangluo) Industrial Co., Ltd., LERRI Solar Technology Co., Ltd., Ningbo ETDZ Holdings, Ltd., Sumec Hardware & Tools Co., Ltd., and Sunpreme Solar Technology (Jiaxing) Co., Ltd. (*i.e.*, five companies or company groupings in total) reported no shipments of subject merchandise to the United States during the POR. To test the no-shipment claims we reviewed information obtained from a CBP data query<sup>12</sup> and issued a no-shipment inquiry to CBP requesting that it provide any information that contradicted the no-shipment claims of these companies. CBP responded with certain information concerning POR shipments that supported the no-shipment claims of certain companies.<sup>13</sup>

Based on their no shipment certifications, our analysis of the results of the CBP data queries, and the fact that CBP did not identify any information that contradicted the no-shipment claims, we preliminarily determine BYD (Shangluo) Industrial Co., Ltd., LERRI Solar Technology Co., Ltd., Ningbo ETDZ Holdings, Ltd., Sumec Hardware & Tools Co., Ltd., and Sunpreme Solar Technology (Jiaxing) Co., Ltd. did not have any shipments of subject merchandise to the United States during the POR. However, consistent with Commerce's practice in non-market economy (NME) cases, we have not rescinded the review with respect to these companies, but will continue the review of these companies and issue instructions to CBP based on the final results of the review.<sup>14</sup>

#### **V. SELECTION OF RESPONDENTS**

Section 777A(c)(1) of the Tariff Act of 1930, as amended (the Act), directs Commerce to calculate an individual weighted-average dumping margin for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives Commerce discretion to limit its examination to a reasonable number of exporters or producers if it is not practicable to make individual weighted-average dumping margin determinations for each known exporter and producer because of the large number of exporters and producers involved in the review.

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<sup>12</sup> See Memorandum, "Release of Customs and Border Protection Data," dated March 29, 2019.

<sup>13</sup> See Memorandum, "No shipment inquiry with respect to the companies below during the period 12/01/2017 through 11/30/2018," dated August 29, 2019.

<sup>14</sup> See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011).

As noted above and explained in the Respondent Selection Memorandum, Commerce determined, pursuant to section 777A(c)(2) of the Act, that given the large number of producers and/or exporters for which a review was initiated, and Commerce's current resource constraints, it would not be practicable to individually examine all known exporters/producers.<sup>15</sup> Therefore, in accordance with section 777A(c)(2)(B) of the Act, Commerce selected for individual examination the two exporters under review accounting for the largest volume of subject merchandise exported from China to the United States during the POR, Risen and Trina.<sup>16</sup>

## **VI. SINGLE ENTITY TREATMENT**

Section 771(33)(E) of the Act provides that any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization shall be considered to be affiliated. Additionally, section 771(33)(F) of the Act provides that two or more persons directly or indirectly controlling, controlled by, or under common control with, any person shall be considered affiliated. Section 771(33) of the Act further states that a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

To the extent that Commerce's practice does not conflict with section 773(c) of the Act, Commerce has, in prior cases, treated certain NME exporters and/or producers as a single entity if the facts of the case supported such treatment.<sup>17</sup> Pursuant to 19 CFR 351.401(f)(1), Commerce will treat producers as a single entity, or "collapse" them, where: (1) those producers are affiliated; (2) the producers have production facilities for producing similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities; and (3) there is a significant potential for manipulation of price or production.<sup>18</sup> In determining whether a significant potential for manipulation exists, 19 CFR 351.401(f)(2) indicates that Commerce may consider various factors, including: (1) the level of common ownership; (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (3) whether the operations of the affiliated firms are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.<sup>19</sup>

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<sup>15</sup> See Respondent Selection Memorandum at 4.

<sup>16</sup> *Id.* at 5.

<sup>17</sup> See *Certain Steel Nails From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances and Postponement of Final Determination*, 73 FR 3928, 3932 (January 23, 2008), unchanged in *Certain Steel Nails From the People's Republic of China: Amended Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 7254 (February 7, 2008) and *Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 (June 16, 2008).

<sup>18</sup> See, e.g., *Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review*, 63 FR 12764, 12774-12775 (March 16, 1998).

<sup>19</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Taiwan*, 62 FR 51427, 51436 (October 1, 1997).

## Trina

Pursuant to 19 CFR 351.401(f), we have preliminarily treated the following companies as a single entity: Trina Solar Co., Ltd. (formerly, Changzhou Trina Solar Energy Co., Ltd.) (TCZ), Trina Solar (Changzhou) Science and Technology Co., Ltd. (TST), Yancheng Trina Guoneng Photovoltaic Technology Co., Ltd (formerly, Yancheng Trina Solar Energy Technology Co., Ltd.) (TYC), Changzhou Trina Solar Yabang Energy Co., Ltd. (TYB), Turpan Trina Solar Energy Co., Ltd. (TLF), Hubei Trina Solar Energy Co., Ltd. (THB), Changzhou Trina Hezhong Photoelectric Co., Ltd. (THZ), and Trina Solar (Hefei) Science and Technology Co., Ltd. (THFT).<sup>20</sup> The first criterion for single entity treatment in 19 CFR 351.401(f)(1) requires that the companies treated as a single entity be affiliated. As explained in the accompanying affiliation and single entity memorandum, we preliminarily find all seven companies are affiliated pursuant to section 771(33)(E) of the Act.<sup>21</sup> The second criterion for single entity treatment in 19 CFR 351.401(f)(1) requires the companies to have production facilities for producing similar or identical products or the ability to restructure manufacturing priorities without substantial retooling. This requirement is also met. The record shows that TYB, TCZ, TYC, TST, THFT, THZ, THB and TLF are all producers of subject merchandise or have the capacity to produce similar or identical products to subject merchandise without substantial retooling of their production facilities.<sup>22</sup> We further determine that the third criterion in 19 CFR 351.401(f)(1) is met because there exists a significant potential for manipulation of price or production with respect to these seven companies.<sup>23</sup> Because we find that all of the criteria for collapsing in 19 CFR 351.401(f) are met, we are preliminarily treating TYB, TCZ, TYC, TST, THFT, THZ, THB and TLF as a single entity and calculating a dumping margin for this single entity.

## Risen

Pursuant to 19 CFR 351.401(f), we have preliminarily treated the following companies as a single entity: Risen Energy Co., Ltd. (Risen Energy), Risen (Wuhai) New Energy Co., Ltd. (Wuhai), Zhejiang Twinsel Electronic Technology Co., Ltd. (Twinsel), Risen (Luoyang) New Energy Co., Ltd. (Luoyang), Jiujiang Shengchao Xinye Technology Co., Ltd. (Jiujiang), Jiujiang Shengzhao Xinye Trade Co., Ltd. Ruichang Branch (Jiujiang Ruichang Branch), Risen Energy (Changzhou) Co., Ltd. (Changzhou), and Risen Energy (HongKong) Co., Ltd. (Hong Kong Risen) (collectively, Risen).<sup>24</sup> The first criterion for single entity treatment in 19 CFR

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<sup>20</sup> Our affiliation and collapsing analysis is based on information that has been designated business proprietary information. For additional detail, *see* Memorandum “Affiliation and Single Entity Status of Trina Solar Co., Ltd. (formerly, Changzhou Trina Solar Energy Co., Ltd.), Trina Solar (Changzhou) Science and Technology Co., Ltd., Yancheng Trina Guoneng Photovoltaic Technology Co., Ltd (formerly, Yancheng Trina Solar Energy Technology Co., Ltd.), Changzhou Trina Solar Yabang Energy Co., Ltd., Turpan Trina Solar Energy Co., Ltd., Hubei Trina Solar Energy Co., Ltd., Trina Solar (Hefei) Science and Technology Co., Ltd., and Changzhou Trina Hezhong Photoelectric Co., Ltd.,” issued concurrently with this notice.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 7.

<sup>23</sup> *Id.* at 7-9.

<sup>24</sup> Our affiliation and collapsing analysis is based on information that has been designated business proprietary information. For additional detail, *see* Memorandum “Affiliation and Single Entity Status of Risen Energy Co. Ltd., Risen (Wuhai) New Energy Co., Ltd., Zhejiang Twinsel Electronic Technology Co., Ltd., Risen (Luoyang) New Energy Co., Ltd., Jiujiang Shengchao Xinye Technology Co., Ltd., Jiujiang Shengzhao Xinye Trade Co., Ltd. Ruichang Branch, Risen Energy (HongKong) Co., Ltd. and Risen Energy (Changzhou) Co., Ltd. (Changzhou),”

351.401(f)(1) requires that the companies treated as a single entity be affiliated. As explained in the accompanying affiliation and single entity memorandum, we preliminarily find all eight companies are affiliated pursuant to sections 771(33)(E) and 771(33)(F) of the Act. The second criterion for single entity treatment in 19 CFR 351.401(f)(1) requires the companies to have production facilities for producing similar or identical products or the ability to restructure manufacturing priorities without substantial retooling. This requirement is also met. The record shows that Risen Energy, Wuhai, Twinsel, Luoyang, Jiujiang, Jiujiang Ruichang Branch, and Hong Kong Risen and Changzhou are all producers of subject merchandise or have the capacity to produce similar or identical products to subject merchandise without substantial retooling of their production facilities.<sup>25</sup> We have further determined that the third criterion in 19 CFR 351.401(f)(1) is met because there exists a significant potential for manipulation of price or production with respect to these seven companies.<sup>26</sup> Because we find that all of the criteria for collapsing in 19 CFR 351.401(f) are met, we are preliminarily treating Risen Energy, Wuhai, Twinsel, Luoyang, Jiujiang, Jiujiang Ruichang Branch, Hong Kong Risen and Changzhou as a single entity and calculating a dumping margin for this single entity.

## **VII. DISCUSSION OF THE METHODOLOGY**

### Non-Market Economy Country

Commerce considers China to be an NME country.<sup>27</sup> In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Therefore, Commerce will continue to treat China as an NME country for purposes of these preliminary results of review. We calculated NV using a factors of production (FOP) methodology in accordance with section 773(c) of the Act, which applies to NME countries.

### Separate Rates

In all proceedings involving NME countries, Commerce maintains a rebuttable presumption that all companies within China are subject to government control and, thus, should be assigned a single antidumping duty rate.<sup>28</sup> In the *Initiation Notice*, Commerce notified parties of the application process by which exporters or exporter/producers may obtain separate rate status in

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issued concurrently with this notice.

<sup>25</sup> *Id.* at 7.

<sup>26</sup> *Id.* at 7-9.

<sup>27</sup> See *Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination*, 82 FR 50858, 50861 (November 2, 2017) (citing Memorandum, "China's Status as a Non-Market Economy," dated October 26, 2017 (China NME Status Memo)), unchanged in *Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018).

<sup>28</sup> See *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039, 55040 (September 24, 2008); see also *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079, 53082 (September 8, 2006); and *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303, 29307 (May 22, 2006).

NME proceedings.<sup>29</sup> It is Commerce’s policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, Commerce analyzes each exporting entity in an NME country under the test established in *Sparklers*,<sup>30</sup> as amplified by *Silicon Carbide*.<sup>31</sup> However, if Commerce determines that a company is wholly foreign-owned or located in a market economy (ME) country, then analysis of the *de jure* and *de facto* criteria are not necessary to determine whether the company is independent from government control and eligible for a separate rate.<sup>32</sup>

Commerce continues to evaluate its practice with regard to the separate rates analysis in light of the diamond sawblades from China AD proceeding, and Commerce’s determinations therein.<sup>33</sup> In particular, in litigation involving the diamond sawblades proceeding, the U.S. Court of International Trade (CIT) found Commerce’s existing separate rates analysis deficient in the circumstances of that case, in which a government-controlled entity had significant ownership in the respondent exporter.<sup>34</sup> Following the CIT’s reasoning, we have concluded that where a government entity holds a majority equity ownership, either directly or indirectly, in the respondent exporter, this interest in and of itself means that the government exercises or has the potential to exercise control over the company’s operations generally. This may include control over, for example, the selection of board members and management, a key factor in determining whether a company has sufficient independence in its export activities to merit a separate rate.<sup>35</sup>

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<sup>29</sup> See *Initiation Notice*.

<sup>30</sup> See *Final Determination of Sales at Less Than Fair Value: Sparklers from the People’s Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*).

<sup>31</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People’s Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

<sup>32</sup> See, e.g., *Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People’s Republic of China*, 72 FR 52355, 52356 (September 13, 2007).

<sup>33</sup> See *Final Results of Redetermination Pursuant to Remand Order for Diamond Sawblades and Parts Thereof from the People’s Republic of China* (May 6, 2013) in *Advanced Technology & Materials Co., Ltd., et al. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012), affirmed in *Advanced Technology & Materials Co., Ltd., et al. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013). This remand redetermination is on the Enforcement and Compliance website at <http://enforcement.trade.gov/remands/12-147.pdf>; see also *Diamond Sawblades and Parts Thereof from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 77098 (December 20, 2013) and accompanying Preliminary Decision Memorandum at 7, unchanged in *Diamond Sawblades*, 79 FR 35723 (June 24, 2014) and accompanying Issues and Decision Memorandum at Comment 1.

<sup>34</sup> See, e.g., *Advanced Technology & Materials Co., Ltd. v. United States*, 885 F. Supp. 2d 1343, 1349 (CIT 2012) (“The court remains concerned that Commerce has failed to consider important aspects of the problem and offered explanations that run counter to the evidence before it.”); *Id.* at 1351 (“Further substantial evidence of record does not support the inference that SASAC’s {state-owned assets supervision and administration commission} ‘management’ of its ‘state-owned assets’ is restricted to the kind of passive-investor *de jure* ‘separation’ that Commerce concludes.”) (footnotes omitted); *Id.* at 1355 (“The point here is that ‘governmental control’ in the context of the separate rate test appears to be a fuzzy concept, at least to this court, since a ‘degree’ of it can obviously be traced from the controlling shareholder, to the board, to the general manager, and so on along the chain to ‘day-to-day decisions of export operations,’ including terms, financing, and inputs into finished product for export.”); *Id.* at 1357 (“AT&M itself identifies its ‘controlling shareholder’ as CISRI {owned by SASAC} in its financial statements and the power to veto nomination does not equilibrate the power of control over nomination.”) (footnotes omitted).

<sup>35</sup> See, e.g., *Carbon and Certain Alloy Steel Wire Rod from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part*, 79 FR 53169 (September 8, 2014), and accompanying Preliminary Decision Memorandum

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

As noted above, Commerce initiated this review with respect to 53 companies or company groupings. Five companies have reported making no shipments. We rescinded the review of 14 companies and another 16 companies have been non-responsive. The separate rates status of the remaining 18 companies or company groupings is discussed below:

Mandatory Respondents:

1. Trina
2. Risen

Separate Rate Respondents:

3. Anji DaSol Solar Energy Science & Technology Co., Ltd.
4. Canadian Solar International Limited/Canadian Solar Manufacturing (Changshu), Inc./Canadian Solar Manufacturing (Luoyang) Inc./CSI Cells Co., Ltd./CSI-GCL Solar Manufacturing (YanCheng) Co., Ltd./CSI Solar Power (China) Inc. (Canadian Solar)
5. JA Solar Technology Yangzhou Co., Ltd.
6. Jiawei Solarchina Co., Ltd.
7. JingAo Solar Co., Ltd.
8. Jinko Solar Co., Ltd. (Jinko)
9. Jinko Solar Import and Export Co., Ltd. (Jinko I&E)
10. Jinko Solar International Limited (Jinko Int'l)
11. Shanghai BYD Co., Ltd.
12. Shanghai JA Solar Technology Co., Ltd.
13. Shenzhen Portable Electronic Technology Co., Ltd.
14. Shenzhen Sungold Solar Co., Ltd.
15. Wuxi Tianran Photovoltaic Co., Ltd.
16. Yingli Energy (China) Company Limited/Baoding Tianwei Yingli New Energy Resources Co., Ltd./Tianjin Yingli New Energy Resources Co., Ltd./Hengshui Yingli New Energy Resources Co., Ltd./Lixian Yingli New Energy Resources Co., Ltd./Baoding Jiasheng Photovoltaic Technology Co., Ltd./Beijing Tianneng Yingli New Energy Resources Co., Ltd./Hainan Yingli New Energy Resources Co., Ltd./Shenzhen Yingli New Energy Resources Co., Ltd.
17. Zhejiang Jinko Solar Co., Ltd.
18. Zhejiang Sunflower Light Energy Science & Technology Limited Liability Company

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

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

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

### a. Absence of *De Jure* Control

Commerce considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) legislative enactments decentralizing control over export activities of the companies; and (3) other formal measures by the government decentralizing control over export activities of companies.<sup>36</sup>

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

### b. Absence of *De Facto* Control

Typically, Commerce considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) whether the export sales prices are set by, or are subject to the approval of, a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.<sup>37</sup> Commerce has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude Commerce from assigning them separate rates.

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

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<sup>36</sup> See *Sparklers*, 56 FR at 20589.

<sup>37</sup> See *Silicon Carbide*, 59 FR at 22586-87; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

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

## 2. Wholly Foreign-Owned

For the companies in the above list that provided evidence that they are wholly foreign-owned, there is no record evidence indicating that these companies are under the control of the Government of China (GOC). Thus, it is not necessary for Commerce to conduct a separate rates analysis to determine whether these companies are independent from government control.<sup>38</sup> Therefore, Commerce has preliminarily granted separate rate status to these companies.

## 3. Companies Not Receiving a Separate Rate

Commerce has not granted the following companies a separate rate because they did not file a separate rate application or certification, which, as stated in the *Initiation Notice*,<sup>39</sup> they were required to do so in order to be considered for separate-rate status. Because Commerce preliminarily determines that the companies listed below are not eligible for separate rate status, we are treating them as part of the China-wide entity. Because no party requested a review of the China-wide entity, the entity is not under review<sup>40</sup> and the entity's rate (*i.e.*, 238.95 percent)<sup>41</sup> will remain unchanged in this review.

19. De-Tech Trading Limited HK
20. Dongguan Sunworth Solar Energy Co., Ltd.
21. Eoply New Energy Technology Co., Ltd.
22. ERA Solar Co., Ltd.
23. ET Solar Energy Limited
24. Hangzhou Sunny Energy Science and Technology Co., Ltd.
25. Hengdian Group DMEGC Magnetics Co., Ltd.
26. Jiangsu High Hope Int'l Group
27. Jiawei Solarchina (Shenzhen) Co., Ltd.
28. LightWay Green New Energy Co., Ltd.
29. Ningbo Qixin Solar Electrical Appliance Co., Ltd.

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<sup>38</sup> See, e.g., *Seamless Refined Copper Pipe and Tube from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 26716, 26720 (May 12, 2010), unchanged in *Seamless Refined Copper Pipe and Tube from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 60725 (October 1, 2010).

<sup>39</sup> See *Initiation Notice*.

<sup>40</sup> See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963, 65969-70 (November 4, 2013).

<sup>41</sup> The China-wide entity rate was last changed in the first administrative review of this proceeding and has been the applicable rate for the entity in each subsequent review, including the one most recently completed. See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2012-2013*, 80 FR 40998, 41002 (July 14, 2015) (*AR1 Final*); see also *AR4 Final FR*, 83 FR at 35618.

30. Systemes Versilis, Inc.
31. tenKsolar (Shanghai) Co., Ltd.
32. Toenergy Technology Hangzhou Co., Ltd.
33. Wuxi Suntech Power Co., Ltd/Luoyang Suntech Power Co., Ltd.
34. Zhejiang ERA Solar Technology Co., Ltd.

#### 4. Separate Rate for Eligible Non-Selected Respondents

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

Because we calculated preliminary dumping margins for the mandatory respondents Risen and Trina which are not zero, *de minimis*, or based entirely on facts available, consistent with Commerce’s practice and section 735(c)(5)(A) of the Act, we assigned the separate rate recipients a dumping margin equal to the weight average of Risen and Trina’s preliminary dumping margins. We weight averaged Risen and Trina’s preliminary dumping margins using the public values of their reported sales of subject merchandise to the United States during the POR.<sup>42</sup>

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

Section 776(a)(1) and (2) of the Act provides that, if necessary information is missing from the record, or if an interested party: (A) withholds information that has been requested by Commerce, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to sections 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 section 782(d) of the Act, use the 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

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<sup>42</sup> See Memorandum “2017-2018 Administrative Review of the Antidumping Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or not Assembled into Modules, from the People’s Republic of China: Calculation of the Dumping Margin for Respondents Not Selected for Individual Examination,” dated concurrent with this memorandum.

response and will, to the extent practicable, provide that party with an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, Commerce may disregard all or part of the original and subsequent responses, as appropriate.

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

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.

Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.<sup>43</sup>

When selecting an AFA rate, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.

Each of the mandatory respondents purchased inputs from certain tollers and subject merchandise from certain producers, with which they are not affiliated, and which failed to provide FOP data necessary for determining NV. As a result, in accordance with section 776(a)(1) of the Act, Commerce is preliminarily applying FA with respect to the unreported FOPs from the unaffiliated tollers. The record indicates that the tolled portions of the subject merchandise either represent relatively small percentages of the inputs consumed, the tollers only performed a relatively small portion of the total processing involved in producing the input, or the input accounts for a relatively small share of the overall costs of a solar module, and thus Commerce has used FA, without adverse inferences, in place of the missing tolling information in calculating weighted-average dumping margins for Risen and Trina.

However, Commerce preliminarily determines that it is appropriate to apply AFA, pursuant to sections 776(a) and 776(b) of the Act, with respect to the unreported FOP data for purchased solar cells and solar modules not provided by the unaffiliated producers. The unreported FOPs for solar cells and solar modules represent a material amount of necessary FOP information and the producers are interested parties (as opposed to the tollers). For details regarding these determinations, *see* the memoranda regarding unreported FOPs of Risen and Trina.<sup>44</sup>

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<sup>43</sup> *See* Statement of Administrative Action Accompanying the Uruguay Round Agreements Act (SAA), H.R.Rep. No. 103-316, vol. 1(1994) at 870.

<sup>44</sup> *See* Memorandum, “Unreported Factors of Production: Risen Energy Co. Ltd.” and “Unreported Factors of Production: Trina Solar Co., Ltd.,” issued concurrently with and hereby adopted by this notice.

## Surrogate Country Selection

### *Legal and Regulatory Framework*

When Commerce investigates imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's FOPs, valued in a surrogate ME country or countries considered to be appropriate by Commerce. In accordance with section 773(c)(4) of the Act, in valuing the FOP, Commerce shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.<sup>45</sup> Further, pursuant to 19 CFR 351.408(c)(2), Commerce will normally value FOPs in a single country.

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

### *Interested Parties' Comments*

On July 31, 2019, Commerce issued a memorandum inviting comments on surrogate country selection and SV data.<sup>46</sup> The petitioner, Risen, and Trina submitted comments in August and September 2019 and in January 2020.<sup>47</sup> The petitioner contends that Commerce should select Brazil or Malaysia as the primary surrogate country for this administrative review.<sup>48</sup> The petitioner notes that: (1) Brazil and Malaysia are on Commerce's list of potential surrogate countries and each has a per capita gross national income (GNI) close to China's GNI; (2) Brazil and Malaysia are substantial producers and exporters of merchandise identical or comparable to

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<sup>45</sup> See Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin).

<sup>46</sup> See Memorandum "Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information," dated July 31, 2019 (Request for SC and SV Comments).

<sup>47</sup> See Risen's Letter, "Comments on the Surrogate Country List," dated August 12, 2019; *see also* Petitioner's Letter, "Comments on Surrogate Country Selection," dated August 26, 2019 (Petitioner's SC Comments); Risen's Letter, "Surrogate Country Comments," dated August 26, 2019; Petitioner's Letter, "Submission of Surrogate Values," dated September 19, 2019 (Petitioner SV Comments); Risen's Letter, "Risen Preliminary Surrogate Value submission," dated September 19, 2019 (Risen's SV Comments); Trina's Letter, "Response to Request for Surrogate Value Information," dated September 19, 2019 (Trina's SV Comments); Petitioner's Letter, "Submission of information to Rebut, Clarify, or Correct Information Pertaining to Surrogate Values," dated September 26, 2019; Risen's Letter, "Risen Rebuttal Surrogate Value Submission," dated September 26, 2019; Trina's Letter, "Rebuttal to Petitioner's Comments on Selection of Surrogate Values," dated September 26, 2019; Risen's Letters "Risen Final Surrogate Value Submission - PART I" and "Risen Final Surrogate Value Submission - PART II," both dated January 2, 2020 (respectively, Risen's January 2, 2020 SV Submissions Part I and Risen's January 2, 2020 SV Submissions Part II); Trina's Letter, "Publicly Available Information to Value Trina's Factors of Production Using Romania as the Surrogate Country," dated January 2, 2020; Petitioner's Letter, "Submission of Additional Surrogate Values," dated January 2, 2020; Risen's Letter, "Risen's Preliminary Comments," dated January 3, 2020 (Risen's Prelim Comments); Trina's Letter, "Comments for the Preliminary Results of Review," dated January 3, 2020 (Trina's Prelim Comments); and Petitioner's Letter, "Comments in Advance of the Preliminary Results," dated January 3, 2020 (Petitioner's Prelim Comments).

<sup>48</sup> See Petitioner's SC Comments at 4.

subject merchandise;<sup>49</sup> and (3) there are Brazilian and Malaysian SVs on the record for valuing all of the solar cell FOPs that must be valued.<sup>50</sup>

Risen maintains that Commerce should consider Bulgaria and Thailand to be at the same level of economic development as China and should consider both countries as potential surrogate countries in this review. Risen notes that both countries' GNIs are only slightly less than that of China, and the differences between Bulgaria and Thailand's GNIs and China's GNI are within the differences between China's GNI and that of the other countries on Commerce's surrogate country list.<sup>51</sup> Risen adds that both countries are significant producers of comparable merchandise; Thailand has been selected as the primary surrogate country for several reviews, including the most recently completed review, in this proceeding; Thailand has quality data, and parties have submitted full SV data for Thailand and Bulgaria in other cases.<sup>52</sup>

Trina provided information indicating that Commerce should select Bulgaria as the primary surrogate country.<sup>53</sup>

Both Risen and Trina argue that Bulgaria is the best surrogate country for this review because they contend that record evidence shows that a Bulgarian company produces merchandise identical to subject merchandise and the best available data for valuing silver paste and solar glass are the Bulgaria SVs.<sup>54</sup> While Bulgaria is not on Commerce's list of potential surrogate countries, both respondents argue that the GNI for Bulgaria is comparable to that of China.<sup>55</sup> Both respondents also argue that if Commerce does not choose Bulgaria as the primary surrogate country, it should choose Romania as the primary surrogate country.<sup>56</sup>

The petitioner argues that Bulgaria is not on Commerce's list of potential surrogate countries because its GNI is outside the band of GNI used to select surrogate countries for this review. The petitioner notes that Commerce has a practice of only relying on countries not on Commerce's list of potential surrogate countries when no surrogate country on the list has usable data with which to value the production of subject merchandise.<sup>57</sup>

### *Economic Comparability*

In Commerce's July 31, 2019, request for surrogate country and SV Comments, Commerce identified six countries as being at the level of economic development of China for the POR. The countries identified in that memorandum are Brazil, Kazakhstan, Malaysia, Mexico, Romania, and Russia.<sup>58</sup> Commerce determined economic comparability based on per capita

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<sup>49</sup> See Petitioner SC Comments.

<sup>50</sup> See Petitioner's Prelim Comments.

<sup>51</sup> See Risen's SCL Comments.

<sup>52</sup> *Id.*; see also Risen's SC Comments.

<sup>53</sup> See Trina's SV Comments.

<sup>54</sup> See Risen's Prelim Comments; see also Trina's Prelim Comments.

<sup>55</sup> See Risen's Prelim Comments; see also Trina's Prelim Comments.

<sup>56</sup> See Risen's Prelim Comments; see also Trina's Prelim Comments. As stated above, Risen also argues that Thailand is a suitable surrogate country.

<sup>57</sup> *Id.*

<sup>58</sup> See Memorandum, "Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information," dated July 31, 2019, at Attachment I.

GNI, as reported in the most current annual issue of the *World Development Report*.<sup>59</sup> The countries identified above are not ranked and are considered equivalent in terms of economic comparability to China. While Risen and Trina contend that Bulgaria and Thailand are economically comparable to China, and thus each country should be considered as a potential surrogate country, Bulgaria and Thailand's GNI are outside the band of GNI used by Commerce to select surrogate countries for this review.<sup>60</sup> It is Commerce's policy not to rely on countries outside the listed surrogate countries unless none of the listed surrogate countries can be relied upon as the primary surrogate country.<sup>61</sup>

### *Significant Producers of Identical or Comparable Merchandise*

While the statute does not define "significant" or "comparable," Commerce's practice is to evaluate whether production is significant based on characteristics of world production of, and trade in, comparable merchandise (subject to the availability of data on these characteristics) and to determine whether merchandise is comparable on a case-by-case basis.<sup>62</sup> Where there is no production information, Commerce has relied upon export data from potential surrogate countries in making its determination. With respect to comparability of merchandise, in all cases, if identical merchandise is produced in a country, the country qualifies as a producer of comparable merchandise. Where there is no evidence of production of identical merchandise in a potential surrogate country, Commerce has determined whether merchandise is comparable to subject merchandise on the basis of similarities in physical form and the extent of processing or on the basis of production factors (physical and non-physical) and factor intensities. Since these characteristics are specific to the merchandise in question, the standard for 'significant producer' will vary from case to case.<sup>63</sup>

There are no country-wide statistics regarding the production of merchandise that is identical or comparable to subject merchandise on the record of this review for any of the economically comparable countries identified above. However, the record does contain information indicating that manufacturers of merchandise identical to subject merchandise are located in certain potential surrogate countries. Specifically, the record shows that Malaysia has several

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<sup>59</sup> See Policy Bulletin at 2 (endnotes omitted); see, e.g., *Utility Scale Wind Towers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 75992 (December 26, 2012) and the accompanying Issues and Decision Memorandum at Comment 1. Although 19 CFR 351.408(b) instructs Commerce to rely on gross domestic product (GDP) data in such comparisons, it is Commerce's practice to use "per capita GNI, rather than per capita GDP, because while the two measures are very similar, per capita GNI is reported across almost all countries by an authoritative source (the World Bank), and because Commerce finds that the per capita GNI represents the single best measure of a country's level of total income and thus level of economic development." See *Antidumping Methodologies in Proceedings Involving Non-Market Economy Countries: Surrogate Country Selection and Separate Rates*, 72 FR 13246, 13246 n.2 (March 21, 2007).

<sup>60</sup> See Request for SC and SV Comments.

<sup>61</sup> See *Certain Activated Carbon From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 61172 (October 9, 2015) and accompanying Issue and Decision Memoranda at 6-7.

<sup>62</sup> See *Xanthan Gum from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 78 FR 2252 (January 10, 2013) and accompanying Preliminary Decision Memorandum at 4-7, unchanged in *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33350 (June 4, 2013).

<sup>63</sup> See Policy Bulletin 04.1; see, e.g., *Hardwood and Decorative Plywood from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 58273 (September 23, 2013) and the accompanying Issues and Decision Memorandum at Comment 7.

manufacturers of solar panels and at least one of these manufactures not only assembles solar cells into solar modules, but also produces solar cells.<sup>64</sup> While the record also shows that Brazil has a manufacturer of solar modules, this same source does not demonstrate that the manufacturer produces solar cells.<sup>65</sup>

Moreover, the record also contains evidence of production of comparable merchandise in the form of export data, which is one of the sources of information that we consider in determining whether a country is a significant producer of comparable merchandise. Export data from UN Comtrade demonstrates that Brazil, Kazakhstan, Malaysia, Mexico, Romania, and Russia, exported merchandise during the POR that is identical or comparable to subject merchandise.<sup>66</sup>

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

#### *Data Availability and Quality*

When evaluating SV data, Commerce considers several factors including whether the SVs are publicly available, contemporaneous with the period under consideration, broad-market averages, from an appropriate surrogate country, tax and duty-exclusive, and specific to the input being valued.<sup>67</sup> Commerce's preference is to satisfy the breadth of these aforementioned selection factors.<sup>68</sup>

Parties have placed on the record import data from Malaysia, Brazil, Bulgaria, Romania with which to value nearly all of the inputs used by Risen and Trina in producing subject merchandise. An examination of the import data submitted by parties indicates that all four countries' data are publicly available, contemporaneous with the period under consideration, broad-market averages, tax and duty-exclusive and are specific to the inputs that we are valuing given that these countries and that the level of specificity among the import data used as SVs for each country is comparable. However, as noted above, there is record evidence that not only solar module assemblers, but also solar cell manufacturers are located in Malaysia. In fact, Malaysia is the only potential surrogate country for which there is evidence of solar cell

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<sup>64</sup> See Risen's January 2, 2020 SV Submission Part at Exhibit SV2-8 which identifies the production of Hanwha Q-Cells as: "The principal activities of the Company are those relating to design, development and manufacture of silicon photovoltaic wafers, cells and modules."

<sup>65</sup> See Petitioner's January 2, 2020 SV Submission at Exhibit 10.

<sup>66</sup> See Petitioner's SC Comments at Exhibit 2.

<sup>67</sup> See, e.g., *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews*; 2010-2011, 78 FR 17350 (March 21, 2013), and accompanying Issues and Decision Memorandum at Comment I(C).

<sup>68</sup> *Id.*

production.<sup>69</sup> Financial statements for a Malaysian producer of solar cells and solar modules is on the record.<sup>70</sup>

We find the Malaysian SV data to be superior in quality compared to the SV data from the other potential surrogate countries because we have financial statements on the record for a Malaysian producer of both solar cells and solar modules, while there are no financial statements on the record for both a solar cells and a solar module producer from the other potential surrogate countries. The fact that we have evidence that there is a Malaysian producer of both solar cells and solar modules also supports finding the Malaysian import data to be of a higher quality than import data from the other potential surrogate countries for SV purposes because it is more likely these data are specific to the inputs that we are valuing given that there is a manufacturer in this country that could be importing inputs actually used in the production of solar cells. Based on the foregoing, Commerce has preliminarily selected Malaysia as the primary surrogate country for this review. A detailed description of the Malaysia SVs selected by Commerce is provided below in the “Normal Value” section of this memorandum.

### Date of Sale

Commerce will normally, in accordance with 19 CFR 351.401(i), “use the date of invoice, as recorded in the exporter or producer’s records kept in the ordinary course of business,” as the date of sale. The regulation provides further that Commerce may use a date other than the date of the invoice if it is satisfied that a different date better reflects the date on which the material terms of sale are established.<sup>71</sup> Finally, Commerce has a long-standing practice of finding that, where the shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.<sup>72</sup>

In accordance with our regulations and practice, we used Risen and Trina’s reported date of U.S. sales, which is the earlier of the invoice or shipment date, as the date of sale in these preliminary results of review.<sup>73</sup>

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<sup>69</sup> See Risen’s January 2, 2020 SV Submission Part at Exhibit SV2-8 which identifies the production of Hanwha Q-Cells as: “The principal activities of the Company are those relating to design, development and manufacture of silicon photovoltaic wafers, cells and modules.”

<sup>70</sup> *Id.*

<sup>71</sup> See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

<sup>72</sup> See, e.g., *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 11 (Shrimp from Thailand); see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2 (SBB from Germany); and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People’s Republic of China: Preliminary Results and Preliminary Rescission of New Shipper Review; 2015-2016*, 82 FR 31301 (July 6, 2017).

<sup>73</sup> Risen’s date of shipment was always after its invoice date. See Risen’s June 20, 2019, Section C questionnaire response (Risen June 20, 2019 CQR) at 17. Trina’s invoice date is the same as its shipment date. See Trina’s June 20, 2019, Section C questionnaire response (Trina June 20, 2019 CQR) at 15.

## Fair Value Comparisons

To determine whether Risen and Trina sold subject merchandise in the United States during the POR at less than NV, we compared net U.S. sales prices to NV, as described in the “U.S. Price” and “Normal Value” sections below.

### *Determination of Comparison Method*

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates dumping margins by comparing weighted-average NVs to weighted-average export prices (EPs) or constructed export prices (CEPs) (the average-to-average comparison method) unless Commerce determines that another comparison method is appropriate in a particular situation. In AD investigations, Commerce examines whether to compare weighted-average NVs to the prices of individual export transactions (the average-to-transaction comparison method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce’s examination of this question in the context of administrative reviews, Commerce nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in AD investigations.<sup>74</sup>

In recent investigations and reviews, Commerce applied a “differential pricing” analysis to determine whether the application of average-to-transaction comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.<sup>75</sup> Commerce finds the differential pricing analysis used in those recent investigations and reviews may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review.<sup>76</sup> Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce’s additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average comparison method in calculating weighted-average dumping margins.

The differential pricing analysis used in these preliminary results of review requires a finding of a pattern of prices (*i.e.*, EPs or CEPs) for comparable merchandise that differs significantly

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<sup>74</sup> See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012), and accompanying Issues and Decision Memorandum at Comment 1.

<sup>75</sup> See *Hardwood and Decorative Plywood from the People’s Republic of China: Antidumping Duty Investigation*, 78 FR 25946 (May 3, 2013), unchanged in *Hardwood and Decorative Plywood From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 58273 (September 23, 2013); see also *Certain Steel Threaded Rod from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 21101 (April 9, 2013), unchanged in *Certain Steel Threaded Rod from the People’s Republic of China: Final Results of Third Antidumping Duty Administrative Review; 2011-2012*, 78 FR 66330 (November 5, 2013); and *Certain Lined Paper Products from the People’s Republic of China: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 34640 (June 10, 2013), unchanged in *Certain Lined Paper Products from the People’s Republic of China: Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 65274 (October 31, 2013).

<sup>76</sup> See, *e.g.*, *Activated Carbon from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 26748 (May 8, 2013), unchanged in *Certain Activated Carbon from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 70533 (November 26, 2013), and accompanying Issues & Decision Memorandum at Comment 4.

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

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

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

If both tests in the first stage (*i.e.*, the Cohen’s *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, Commerce examines

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

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

### *Results of the Differential Pricing Analysis*

Based on the results of the differential pricing analysis for Risen and Trina we find that the value of U.S. sales passing the Cohen's *d* test for each respondent is less than 33 percent and so does not confirm the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Thus, the results of the Cohen's *d* and ratio tests do not support consideration of an alternative to the average-to-average transaction method. Accordingly, we preliminarily determine to apply the average-to-average transaction method for all U.S. sales to calculate the weighted-average dumping margin for Risen and Trina.<sup>77</sup>

### U.S. Price

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

### *Constructed Export Price*

We have treated all sales made by Trina after importation as CEP sales. In accordance with section 772(b) of the Act, we calculated CEPs for Trina by deducting from the reported gross unit U.S. sales price movement expenses, where applicable, in accordance with section 772(c)(2)(A) of the Act, indirect selling expenses, credit expenses, warranty expenses, and inventory carrying costs, all of which relate to commercial activity in the United States, in

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<sup>77</sup> See Memoranda “Preliminary Results Analysis Memoranda - Risen,” and “Preliminary Results Analysis Memoranda - Trina,” both dated concurrently with this memorandum.

accordance with section 772(d)(1) of the Act, and CEP profit, in accordance with sections 772(d)(3) and 772(f) of the Act. Where applicable, we reduced movement expenses by freight revenue.

### *Export Price*

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

### *Value-Added Tax (VAT)*

Commerce's recent practice, in NME cases, is to subtract from CEP or EP the amount of any un-refunded (irrecoverable) VAT in accordance with section 772(c)(2)(B) of the Act.<sup>78</sup> Where the irrecoverable VAT is a fixed percentage of the U.S. price, Commerce makes a tax-neutral dumping calculation by reducing the U.S. price by this percentage.<sup>79</sup> Thus, Commerce's methodology essentially amounts to performing two basic steps: (1) determining the amount (or rate) of the irrecoverable VAT tax on subject merchandise, and (2) reducing U.S. price by the amount (or rate) determined in step one.

The Chinese VAT schedule placed on the record of this review demonstrates that the VAT rate related to subject merchandise and the rate for rebating VAT on subject merchandise upon exportation were the same throughout the POR.<sup>80</sup> Thus, the record indicates that there is no irrecoverable VAT associated with the exportation of subject merchandise. For the purposes of these preliminary results of review, therefore, we have not reduced U.S. prices for VAT.

### *Normal Value*

Section 773(c)(1) of the Act provides that Commerce shall determine NV using an FOP methodology if the merchandise is exported from an NME country and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. Commerce bases NV in an NME case on FOPs because the presence of government controls on various aspects of NME countries renders price comparisons and the calculation of production costs invalid under Commerce's normal methodologies.<sup>81</sup> Under section 773(c)(3) of the Act, FOPs include, but are not limited to: (1)

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<sup>78</sup> See *Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481, 36483-84 (June 19, 2012).

<sup>79</sup> *Id.*

<sup>80</sup> See Risen June 20, 2019 CQR at 37 and Exhibit 7; see also Trina June 20, 2019 CQR at 39 and Exhibits 12, 13, and 14.

<sup>81</sup> See, *e.g.*, *Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In*

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

### *Factor Valuation Methodology*

In accordance with section 773(c) of the Act and 19 CFR 351.408(c)(1), we calculated NV by multiplying the reported per-unit FOPs consumption rates by publicly available SVs.<sup>82</sup> When selecting SVs, Commerce considered, among other criteria, whether the SV data on the record were publicly available, broad market averages, contemporaneous with the period under consideration or closest in time to that period, product-specific, and tax-exclusive.<sup>83</sup> As appropriate, Commerce adjusted FOP costs by including freight costs to make them delivered values. Specifically, Commerce added a surrogate freight cost, where appropriate, to surrogate input values using the shorter of the reported distance from the domestic supplier to the respondent's factory or the distance from the nearest seaport to the respondent's factory.<sup>84</sup> In those instances where we could not value FOPs using SVs that are contemporaneous with the POR, we adjusted the SVs using inflation indices. An overview of the SVs used to calculate the weighted-average dumping margins for Risen and Trina is below. A detailed description of all SVs used to calculate the weighted-average dumping margins for Risen and Trina can be found in the Preliminary SV Memorandum.<sup>85</sup>

### *Direct Materials and Packing Materials*

The record shows that Global Trade Atlas (GTA) import statistics from the primary surrogate country, Malaysia, are generally contemporaneous with the POR, publicly available, input-specific, tax-exclusive, and represent broad market average prices.<sup>86</sup> Thus, except as noted below, we based SVs for Risen and Trina's direct materials and packing materials on these import values and, where appropriate, valued other items, such as certain movement expenses, using other publicly available Malaysian data on the record.<sup>87</sup>

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

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

<sup>82</sup> See Memorandum "2015-2016 Antidumping Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Factor Valuation Memorandum," dated concurrently with this memorandum (Preliminary SV Memorandum).

<sup>83</sup> See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004).

<sup>84</sup> See *Sigma Corp. v. United States*, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997).

<sup>85</sup> See Preliminary SV Memorandum

<sup>86</sup> *Id.* at Attachment I.

<sup>87</sup> See Preliminary SV Memorandum.

or suspect are subsidized or dumped.<sup>88</sup> In this regard, Commerce previously found that it is appropriate to disregard prices of imports from India, Indonesia, South Korea, and Thailand because we determined that these countries maintain broadly available, non-industry specific export subsidies.<sup>89</sup> Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, Commerce finds that it is reasonable to infer that all exporters in India, Indonesia, South Korea and Thailand may have benefitted from these subsidies. Therefore, we have not used the prices of Malaysian imports of goods from India, Indonesia, South Korea, and Thailand in calculating the import-based SVs. Additionally, in selecting import data for SVs, we disregarded prices from NME countries.<sup>90</sup> Finally, we excluded from our calculation of the average import value any imports that were labeled as originating from an “unspecified” country, because we could not be certain that they were not from either an NME country or a country with generally available export subsidies.<sup>91</sup>

We valued polysilicon and monocrystalline rods using international prices from *Bloomberg New Energy Finance* and *Wood Mackenzie/Green Tech Media PV Pulse* data. There are a number of factors, which when considered together, weigh in favor of valuing polysilicon using international prices rather than Malaysian import values. In the investigation in this proceeding, Commerce determined that solar grade polysilicon requires purity levels as high as 99.999999% and electronics grade silicon requires even higher purity levels.<sup>92</sup> Because the Malaysian HTS category for polysilicon – HTS 2804.61 (silicon, containing by weight not less than 99.99% of silicon) – covers polysilicon with a silicon purity level as low as 99.99 percent, we determined that the international prices on the record for solar-grade polysilicon provide a more accurate SV since they are specific to the solar-grade polysilicon in the wafers used by Risen and Trina in producing subject merchandise.<sup>93</sup>

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<sup>88</sup> Section 773(c)(5) of the Act permits Commerce to disregard price or cost values without further investigation if it has determined that certain subsidies existed with respect to those values. *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793, 46795 (August 6, 2015); *see also* Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) at 590.

<sup>89</sup> *See, e.g., Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order*, 75 FR 13257 (March 19, 2010), and accompanying Issues and Decision Memorandum at 4-5; *Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review*, 70 FR 45692 (August 8, 2005), and accompanying Issues and Decision Memorandum at 4; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at 17, 19-20; and *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand*, 66 FR 50410 (October 3, 2001), and accompanying Issues and Decision Memorandum at 23.

<sup>90</sup> *See, e.g., Certain Kitchen Appliance Shelving and Racks from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 74 FR 9591, 9600 (March 5, 2009), unchanged in *Certain Kitchen Appliance Shelving and Racks from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 36656 (July 24, 2009) and *Certain Kitchen Appliance Shelving and Racks from the People’s Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Notice of Antidumping Duty Order*, 74 FR 46971 (September 14, 2009).

<sup>91</sup> *Id.*

<sup>92</sup> *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part*, 77 FR 63791, 63795 (October 17, 2012) (*Solar Cells Investigation Final*) and accompanying Issues and Decision Memorandum at Comment 9.

<sup>93</sup> *See* Preliminary SV Memorandum at Exhibit IV.

Further, we valued wafers using international prices from *Bloomberg New Energy Finance*.<sup>94</sup> The HTS category covering silicon wafers – HTS 3818 (chemical elements doped for use in electronics, in the form of discs, wafers or similar forms; chemical compounds doped for use in electronics) – is not further itemized and covers a wide range of products that may not specifically reflect the cost of solar-grade wafers.<sup>95</sup> Also, wafers for solar cells are primarily made of polysilicon. In the investigation and first five administrative reviews of this proceeding, we found that differences in silicon purity levels can result in significant price differences. Therefore, in each of these segments of the proceeding, we relied on international prices in valuing either polysilicon or wafers, or both.<sup>96</sup> Given the wide range of products covered by the Malaysian HTS number for wafers, it is more likely that the Malaysian imports include products with a silicon purity level that significantly differs from the silicon purity level required for

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<sup>94</sup> See Trina’s September 19, 2019 Letter “Response to Request for Surrogate Value Information” (Trina’s 9.19 SV Submission) at Exhibits 10, 11, 12, and 13.

<sup>95</sup> See Preliminary SV Memorandum at Exhibit V.

<sup>96</sup> See *Solar Cells Investigation Final* IDM at Comment 24 (“As explained in the *Preliminary Determination* and reiterated in Comment 9 addressing the SV for wafers, there is substantial evidence on the record leading Commerce to question whether the import prices are representative of the price of polysilicon. The purity level required for polysilicon used in manufacturing solar cells is very precise. The import data from the potential surrogate countries are from an HTS category that covers silicon products with various levels of purity. Moreover, record evidence indicates that there are dramatic price differences between silicon with different purity levels. Also, there are extreme variations in the AUVs for the applicable HTS category both between and within potential surrogate countries indicating that that imports may at times primarily consist of lower purity silicon, possibly not of a solar grade, or extremely high purity electronics grade polysilicon, neither of which is the input being valued.”); see also *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2012-2013*, 80 FR 1021 (January 8, 2015) (*AR1 Prelim*) and accompanying Preliminary Decision Memorandum at section “Direct and Packing Materials,” unchanged in *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2012- 2013*, 80 FR 40998 (July 14, 2015) (*AR1 Final*), and accompanying Issues and Decision Memorandum at Comment 14; *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2013-2014*, 80 FR 80746 (December 28, 2015) (*AR2 Prelim*) and accompanying Preliminary Decision Memorandum at the section entitled “Direct and Packing Materials,” unchanged in *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2013-2014*, 81 FR 39905 (June 20, 2016) (*AR2 Final*); *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2014-2015*, 81 FR 93888 (December 22, 2016), and accompanying Preliminary Decision Memorandum at section “Direct and Packing Materials,” unchanged in in *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014-2015*, 82 FR 29033 (June 27, 2017); *AR4 PDM* at section “Direct and Packing Materials,” unchanged in *AR4 Final FR*; and *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2016-2017*, 83 FR 67222 (December 28, 2018), and accompanying Preliminary Decision Memorandum at section “Direct and Packing Materials,” unchanged in in *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016-2017*, 84 FR 36886 (July 30, 2019)

<sup>96</sup> See Preliminary SV Memorandum.

wafers used to manufacture solar cells. By contrast, the international prices are specific to wafers used in solar products because they are from a publication that covers the solar industry.<sup>97</sup>

Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from an ME supplier in meaningful quantities and pays for the inputs in an ME currency, Commerce uses the actual price paid by the respondent to value those inputs, except when prices may have been distorted by findings of dumping and/or subsidization.<sup>98</sup> Where Commerce finds ME purchases to be of significant quantities (*i.e.*, 85 percent or more of total purchases of the input), in accordance with the statement of policy as outlined in *Antidumping Methodologies: Market Economy Inputs*,<sup>99</sup> Commerce uses the actual purchase prices to value the inputs. Alternatively, when the volume of an NME firm's purchases of an input from ME suppliers during the period is below 85 percent of its total volume of purchases of the input during the period, but where these purchases are otherwise valid and there is no reason to disregard the purchase prices, Commerce will typically weight-average the ME purchase prices with an appropriate SV, according to their respective shares of the total volume of purchases.<sup>100</sup> When a firm's ME purchases may have been based on dumped or subsidized sales, are not *bona fide*, or are otherwise not acceptable for use in a dumping calculation, Commerce will exclude them from its calculation to determine whether there were significant quantities of ME purchases (the 85 percent threshold).<sup>101</sup>

Risen and Trina provided evidence of ME purchases of inputs during the POR that were paid for in an ME currency.<sup>102</sup> Thus, consistent with 19 CFR 351.408(c)(1), we used Risen and Trina's reported ME purchase prices in valuing certain FOPs, either in whole or in part, based upon purchase volume.<sup>103</sup>

### *Utilities*

We valued electricity and water using Malaysian data from the Malaysian Investment Development Authority's publication *Costs of Doing Business*.<sup>104</sup> We did not inflate or deflate the electricity and water rates because they are contemporaneous with the POR.<sup>105</sup>

### *Labor*

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<sup>97</sup> See Trina's August 14, 2018, SV Comments at Exhibit 3.

<sup>98</sup> See, *e.g.*, *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997).

<sup>99</sup> See *Use of Market Economy Input Prices in Nonmarket Economy Proceedings*, 78 FR 46799 (August 2, 2013) (*Market Economy Inputs*).

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> See Risen's July 2, 2019 Section D Response at Exhibit 6; see also Trina's July 1, 2019 Section D Response at Exhibit 7.

<sup>103</sup> See Memoranda "Preliminary Results Analysis Memoranda - Risen," and "Preliminary Results Analysis Memoranda - Trina," both dated concurrently with this memorandum.

<sup>104</sup> See Petitioner SV Comments at Exhibit 6 and Risen's Letter "Risen Final Surrogate Value Submission - PART I" at Exhibit 2SV-10.

<sup>105</sup> See Petitioner SV Comments at Exhibit 6 and Risen's Letter "Risen Final Surrogate Value Submission - PART I" at Exhibit 2SV-10.

We valued Risen and Trina's labor using Malaysia's Department of Statistics' publication *Monthly Manufacturing Statistics, Malaysia December 2017*.<sup>106</sup> Because these labor rates were in effect during the POR, we did not inflate or deflate them.<sup>107</sup>

#### *Movement Services*

We valued foreign inland truck freight and brokerage and handling services using the World Bank's publication, *Doing Business 2019 (Malaysia)*.<sup>108</sup> We did not inflate or deflate the inland truck freight and brokerage and handling rates in this report because the report covers a period contemporaneous with the POR.<sup>109</sup>

We valued marine insurance and domestic inland insurance expenses using a rate offered by RJG Consultants.<sup>110</sup> RJG Consultants is a ME provider of marine insurance. The rate is a percentage of the value of the shipment; thus, we did not inflate or deflate the rate.<sup>111</sup>

We valued ocean freight using rates identified by Descartes at their respective websites.<sup>112</sup> These rates are publicly available and cover a wide range of shipping routes which are reported on a daily basis. We did not inflate or deflate the rates because the rates on which we based the SVs are contemporaneous with the POR.<sup>113</sup>

#### *Overhead and Financial Expenses*

Pursuant to 19 CFR 351.408(c)(4), Commerce values overhead, selling, general and administrative (SG&A) expenses, and profit using publicly available information gathered from producers of identical or comparable merchandise in the surrogate country. The record contains financial statements from five Malaysian companies, Globetronics Technology Bhd. (Globetronics),<sup>114</sup> Malaysian Pacific Industries (MPI),<sup>115</sup> Unisem (M) Berhad (Unisem),<sup>116</sup> Inari Amertron Berhad (Inari),<sup>117</sup> and Hanwha Q Cells (Hanwha).<sup>118</sup> All of these financial statements show a profit and cover a period contemporaneous with the POR and none of the companies' financial statements indicate that these companies received subsidies which Commerce has found to be countervailable. Globetronics, MPI, Unisem and Inari are manufacturers and assemblers of semiconductor components and circuit boards which Commerce has considered to be comparable to subject merchandise in the investigation in this proceeding.<sup>119</sup> However, Hanwha's financial statements identify it as a producer of identical merchandise; specifically,

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<sup>106</sup> See Petitioner SV Comments at Exhibit 3.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.* at Exhibits 7 and 8.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.* at Exhibit 9.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.* at 4.

<sup>113</sup> *Id.*

<sup>114</sup> See Petitioner SV Comments at Exhibit 11-A.

<sup>115</sup> *Id.* at Exhibit 11-C.

<sup>116</sup> *Id.* at Exhibit 11-D.

<sup>117</sup> *Id.* at Exhibit 11-B.

<sup>118</sup> See Risen's January 2, 2020 SV Submissions Part I at Exhibit SV2-8; see also Petitioner SV Comments at Exhibits 11-A, 11-B, 11-C, and 11-D.

<sup>119</sup> See *Solar Cells Investigation* and accompanying Issues and Decision Memorandum at Comment 2.

Hanwha produces solar cells and solar modules.<sup>120</sup> Because Hanwha's financial statements do not show evidence of countervailable subsidies, are contemporaneous with the POR, audited, and reflect a producer of merchandise comparable to the subject merchandise in the primary surrogate country, Commerce preliminarily finds that Hanwha's 2018 financial statements constitute the best available information for calculating surrogate financial ratios.

### Adjustments for Countervailable Subsidies

In applying section 777A(f) of the Act, Commerce examines: (1) whether a countervailable subsidy (other than an export subsidy) has been provided with respect to a class or kind of merchandise, (2) whether such countervailable subsidy has been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period, and (3) whether Commerce can reasonably estimate the extent to which that countervailable subsidy, in combination with the use of NV determined pursuant to section 773(c) of the Act, has increased the weighted-average dumping margin for the class or kind of merchandise.<sup>121</sup> For a subsidy meeting these criteria, the statute requires Commerce to reduce the dumping margin by the estimated amount of the increase in the weighted-average dumping margin due to a countervailable subsidy, subject to a specified cap.<sup>122</sup> In conducting this analysis, Commerce has not concluded that concurrent application of NME dumping duties and countervailing duties (CVDs) necessarily and automatically results in overlapping remedies. Rather, a finding that there is an overlap in remedies, and any resulting adjustment, is based on a case-by-case analysis of the totality of facts on the administrative record for that segment of the proceeding as required by the statute.

For purposes of our analysis under sections 777A(f)(1)(A) and (f)(1)(C) of the Act, Commerce requested firm-specific information from Risen and Trina.<sup>123</sup> The information sought included information regarding whether countervailed subsidies were received during the relevant period, information on costs, and information regarding the respondent's pricing policies and practices. Additionally, the respondents were required to provide documentary support for the information provided. On September 30, 2019, Risen and Trina submitted responses to Commerce's firm-specific double remedies questionnaire.<sup>124</sup> The responses included information concerning countervailable subsidies received during the relevant period, as well as information regarding Risen and Trina's costs and pricing policies and practices.

### *Analysis*

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

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<sup>120</sup> See Risen's January 2, 2020 SV Submissions Part I at Exhibit SV2-8.

<sup>121</sup> See Section 777A(f)(1)(A)-(C) of the Act.

<sup>122</sup> See Section 777A(f)(1)-(2) of the Act.

<sup>123</sup> See Commerce's Letters issued to Trina and Risen "Double Remedies Supplemental Questionnaire," dated September 10, 2019.

<sup>124</sup> See Risen and Trina's September 30, 2019 Double Remedies Questionnaire Responses (Risen and Trina's DR Responses).

8501.31.8000 (Other DC motors; DC generators: Of an output not exceeding 750 W: Motors: Generators), 8501.61.0000 (“AC generators (alternators): Of an output not exceeding 75 kVA”), 8507.20.80 (Other lead-acid storage batteries: Other), 8541.40.6020 (Solar Cells: Assembled into modules or made up into modules), and 8541.40.6030 (Solar Cells: Other).<sup>125</sup> While imports of subject merchandise may enter under any of these five HTSUS subheadings, the descriptions of categories 8501.31.8000, 8501.61.0000, and 8507.20.80 suggest that imports classified in these categories would likely include a significant amount of non-subject merchandise. As a result, import data for these particular HTSUS subheadings may be unreliable for purposes of determining whether a reduction in the price of imports of the class or kind of merchandise under review may have occurred during the relevant period. Conversely, the descriptions of HTSUS subheadings 8541.40.6020 and 8541.40.6030 closely match the description of subject merchandise which suggests that these subheadings would likely cover primarily subject merchandise.

After reviewing the relevant import data for the relevant period, we find that both HTSUS subheadings 8541.40.6020 (solar modules) and 8541.40.6030 (solar cells) show an overall general decrease in the average import price.<sup>126</sup> Based on this analysis, Commerce has preliminarily determined that ITC import data for the subject merchandise shows a general decrease in the U.S. average import price during the relevant period, *i.e.*, the POR.<sup>127</sup> Thus, Commerce preliminarily finds that the requirement under section 777A(f)(1)(B) of the Act has been met.

In accordance with section 777A(f)(1)(A) of the Act, Commerce examined whether a countervailable subsidy (other than an export subsidy) has been provided with respect to a class or kind of merchandise. Trina provided monthly costs associated with its purchases of polysilicon, solar glass, aluminum extrusions, electricity, land, imported equipment, and Chinese-Made Equipment.<sup>128</sup> Risen provided monthly costs associated with its purchases of polysilicon, solar glass, aluminum extrusions, and electricity.<sup>129</sup> Because Commerce found the provision of polysilicon, solar glass, aluminum extrusions, and electricity for less than adequate remuneration (LTAR) to be countervailable with respect to the class or kind of merchandise under consideration in the most recently completed CVD review, Commerce preliminarily finds that the requirement of section 777A(f)(1)(A) of the Act has been met.

Additionally, in accordance with 777A(f)(1)(C) of the Act, Commerce examined whether Risen and Trina demonstrated: (1) a subsidies-to-cost link, *i.e.*, a subsidy effect on the cost of manufacturing (COM) the merchandise under consideration; and (2) a cost-to-price link, *i.e.*, respondent’s prices were dependent on changes in the COM. With respect to the subsidies-to-cost link, in their Double Remedies Questionnaire Responses, Trina reported that it consumed

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<sup>125</sup> See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order*, 77 FR 73018 (December 7, 2012).

<sup>126</sup> See Memorandum “2017-2018 Antidumping Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Domestic and Export Subsidy Adjustment Analysis Memorandum,” (Double Remedies and Export Subsidy Memorandum) dated concurrently with this memorandum.

<sup>127</sup> *Id.*

<sup>128</sup> See Trina’s DR Response at Exhibits 2-5 and 10-12.

<sup>129</sup> See Risen’s DR Response at Exhibits DR-1, DR-3 and DR-4.

polysilicon, solar glass, aluminum extrusions, electricity, land, imported equipment, and Chinese-Made Equipment<sup>130</sup> and Risen reported that it consumed polysilicon, solar glass, aluminum extrusions, and electricity.<sup>131</sup> Furthermore, Risen and Trina demonstrated that changes in the costs of these inputs occurred on a monthly basis, and they provided information indicating that the subsidy programs affected their COM on a monthly basis.<sup>132</sup> Thus, Commerce preliminarily concludes that Trina has established a subsidies-to-cost link because subsidies for the provision of polysilicon, solar glass, aluminum extrusions, electricity, land, imported equipment, and Chinese-Made Equipment for LTAR impact Trina's COM for subject merchandise. We also preliminarily conclude that Risen has established a subsidies-to-cost link because subsidies for the provision of polysilicon, solar glass, aluminum extrusions, and electricity for LTAR impact Risen's COM for subject merchandise.

For the cost-to-price link, Commerce examined whether Risen and Trina demonstrated that changes in costs affected, or were taken into consideration when setting, prices. Trina explained that its sales department receives quarterly cost of production reports from the finance department, and that it relies upon the cost of production reports as a primary factor when setting prices.<sup>133</sup> The COP reports take into consideration various factors such as raw material pricing, historical costs, and other expenses such as warranties and transportation expenses. Trina also stated that it also communicates with customers to gauge the market price of products in setting prices. Risen explained that the primary factors it considered when setting the prices of exports of subject merchandise to the United States are the cost of sales, including the COP (which includes the cost of all materials inputs), COM overheads (which include the cost of electricity and other energies), and the cost of labor.<sup>134</sup>

Based on the above, Commerce finds that Risen and Trina provided adequate information to establish a linkage between subsidies (the provisions of polysilicon, solar glass, aluminum extrusions, and electricity), costs, and prices. Because the record indicates that factors other than the cost of polysilicon, solar glass, aluminum extrusions, and electricity affect Risen and Trina's prices to customers, Commerce is using a documented ratio of cost-price changes for the Chinese manufacturing sector as a whole, which is based on data provided by Bloomberg Finance L.P., to estimate the extent of the subsidy pass-through.<sup>135</sup> Therefore, Commerce is making a pass-through adjustment in its calculation of the weighted-average dumping margin for Risen and Trina.<sup>136</sup>

### Export Subsidy Adjustment

Pursuant to section 772(c)(1)(C) of the Act, Commerce increases the U.S. price by the amount of any countervailing duty imposed to offset an export subsidy. This adjustment is based on the

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<sup>130</sup> See Trina's DR Response at Exhibits 2-5 and 10-12.

<sup>131</sup> See Risen's DR Response at Exhibits DR-1, DR-3 and DR-4.

<sup>132</sup> See Trina's DR Response at Exhibits DR-6, DR-7, DR-8, DR-9, DR-10, DR-11 and DR-12 and Risen's DR Response at Exhibits DR-1, DR-3 and DR-4.

<sup>133</sup> *Id.* at 2-3.

<sup>134</sup> See Risen's DR Response at 2.

<sup>135</sup> See Double Remedies and Export Subsidy Memorandum at Attachment II.

<sup>136</sup> *Id.*

export subsidy amount determined for Risen and Trina with respect to the Export Buyer's Credits and Export Seller's programs.<sup>137</sup>

### Separate Rate Companies

We are basing the dumping margin for the non-individually examined exporters to which we granted separate rate status on the weighted-average dumping margins of Risen and Trina. However, aside from Canadian Solar, Jinko, Jinko I&E, and Jinko Int'l, in *Solar Cells CVD Final Results 2016*, Commerce did not individually examine the non-individually examined respondents in this review that are preliminarily eligible for separate rates.<sup>138</sup> Therefore, we based the subsidy adjustments for these exporters on the export subsidy and domestic subsidy pass-through determined for Risen and Trina.<sup>139</sup> Meanwhile, because Canadian Solar, Jinko, Jinko I&E, and Jinko Int'l were under review in the *Solar Cells CVD Final Results 2016*, we calculated subsidy adjustments for these companies based on each company's own export and domestic subsidy rates.

### Currency Conversion

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

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<sup>137</sup> See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of Countervailing Duty Administrative Review and Rescission of Review, in Part; 2016, 84 FR 45125 (August 28, 2019) (Solar Cells CVD Final Results 2016)* and accompanying Issues and Decision Memorandum at Comment 1.

<sup>138</sup> See *Solar Cells CVD Final Results 2015*, amended in *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Amended Final Results of Countervailing Duty Administrative Review; 2015, 83 FR 54566 (October 30, 2018)*.

<sup>139</sup> See Double Remedies Memorandum at 2.

**VIII. RECOMMENDATION**

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

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

1/31/2020

**X**   
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Signed by: JEFFREY KESSLER

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Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance