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Administrative Review  
POR: 12/1/2017 – 11/30/2018  
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September 28, 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:** Issues and Decision Memorandum for the Final 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

On February 10, 2020, the Department of Commerce (Commerce) published its *Preliminary Results* in the 2017-2018 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).<sup>1</sup> The period of review (POR) is December 1, 2017 through November 30, 2018. This administrative review covers two mandatory respondents: Trina<sup>2</sup> and Risen.<sup>3</sup> Based on our analysis of the comments received, we made certain changes to our dumping margin calculations for Risen and Trina and the rate assigned to the companies

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<sup>1</sup> See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017–2018*, 85 FR 7531 (February 10, 2020) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

<sup>2</sup> As stated in the *Preliminary Results*, 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. No party comment on the treatment of these companies as a single entity. Accordingly, we have adopted this determination for the final results. Henceforth, we have referred to the collapsed entity as “Trina.”

<sup>3</sup> As stated in the *Preliminary Results*, we are treating Risen (Wuhai) New Energy Co., Ltd.; Zhejiang Twinsel Electronic Technology Co., Ltd.; Risen (Luoyang) New Energy Co., Ltd.; Jiujiang Shengchao Xinye Technology Co., Ltd.; Jiujiang Shengzhao Xinye Trade Co., Ltd. Ruichang Branch; Risen Energy (Hong Kong) Co., Ltd.; and Risen Energy Co., Ltd. as a single entity. No party comment on the treatment of these companies as a single entity. Accordingly, we have adopted this determination for the final results. Henceforth, we have referred to the collapsed entity as “Risen.”

granted separate rate status that we did not individually examine. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues for which we received comments:

- Comment 1. Unreported Factors of Production for Purchased Solar Cells and Modules
- Comment 2. The Appropriate Surrogate Value for Silver Paste
- Comment 3. The Appropriate Surrogate Value for Solar Glass
- Comment 4. The Appropriate Surrogate Country
- Comment 5. The Appropriate Surrogate Value for Ocean Freight
- Comment 6. Selection of Surrogate Financial Statements
- Comment 7. The Appropriate Surrogate Value for Aluminum Frames
- Comment 8. The Appropriate Surrogate Value for Junction Boxes
- Comment 9. The Appropriate Surrogate Value for Backsheet
- Comment 10. The Appropriate Surrogate Value for Ethylene Vinyl Acetate (EVA) Sheet
- Comment 11. Adjusting the Surrogate Financial Ratio Calculations
- Comment 12. Error in Calculating Market Economy Purchase Prices
- Comment 13. Error in Calculating the International Freight Surrogate Value
- Comment 14. Error in Calculating the Domestic Brokerage and Handling Surrogate Value
- Comment 15. Failure to Adjust the U.S. Price for Subsidies

## II. BACKGROUND

As noted above, on February 10, 2020, Commerce published its *Preliminary Results* in the 2017-2018 administrative review of the AD order of solar cells from China. On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days, thereby extending the deadline for these results of review until July 28, 2020.<sup>4</sup> On July 21, 2020, Commerce tolled all preliminary and final results in administrative reviews by an additional 60 days, thereby extending the deadline for these final results until September 28, 2020.<sup>5</sup>

On March 13, 2020, Canadian Solar, Inc.; Canadian Solar International Limited; Canadian Solar Manufacturing (Changshu), Inc.; Canadian Solar Manufacturing (Luoyang), Inc.; CSI Cells Co., Ltd.; CSI-GCL Solar Manufacturing (YanCheng) Co., Ltd.; and Canadian Solar (USA) Inc. (collectively, Canadian Solar) and Shanghai BYD Co., Ltd.; and BYD (Shangluo) Industrial Co., Ltd. (collectively BYD);<sup>6</sup> SunPower Manufacturing Oregon, LLC (petitioner);<sup>7</sup> Risen;<sup>8</sup> and Trina<sup>9</sup> submitted case briefs. Also, on March 13, 2020, JA Solar Technology Yangzhou Co.,

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<sup>4</sup> See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19,” dated April, 24, 2020.

<sup>5</sup> See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,” dated July 21, 2020.

<sup>6</sup> See Canadian Solar and BYD’s Letter “Case Brief of Canadian Solar and BYD,” dated March 13, 2020 (Canadian Solar/BYD’s Joint Case Brief).

<sup>7</sup> See Petitioner’s Letter, “Case Brief,” dated March 13, 2020 (Petitioner’s Case Brief).

<sup>8</sup> See Risen’s Letter, “Case Brief,” dated March 13, 2020 (Risen’s Case Brief).

<sup>9</sup> See Trina’s Letter, “Trina’s Case Brief,” dated March 13, 2020 (Trina’s Case Brief).

Ltd.; Jingao Solar Co., Ltd.; and Shanghai JA Solar Technology Co., Ltd. (collectively JA Solar),<sup>10</sup> and Shenzhen Sungold Solar Co., Ltd. (Sungold)<sup>11</sup> submitted letters in lieu of case briefs stating that they support the arguments of the mandatory and other separate rate respondents.

On March 23, 2020, the petitioner,<sup>12</sup> Trina,<sup>13</sup> and Risen,<sup>14</sup> submitted rebuttal briefs. Also on March 23, 2020, Canadian Solar<sup>15</sup> and JA Solar,<sup>16</sup> submitted letters in lieu of rebuttal briefs stating that they supported arguments made by the mandatory respondents. On March 11, 2020 Risen requested a hearing<sup>17</sup> and on April 2, 2020, Risen withdrew its hearing request.<sup>18</sup> No other party requested a hearing.

### III. SCOPE OF THE ORDER<sup>19</sup>

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

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

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

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<sup>10</sup> See JA Solar's Letter, "Letter in Lieu of Case Brief," dated March 13, 2020.

<sup>11</sup> See Sungold's Letter, "Case Brief," dated March 13, 2020.

<sup>12</sup> See Petitioner's Letter, "Rebuttal Brief," dated March 23, 2020 (Petitioner's Rebuttal Brief).

<sup>13</sup> See Trina's Letter, "Trina's Rebuttal Brief," dated March 23, 2020 (Trina's Rebuttal Brief).

<sup>14</sup> See Risen's Letter, "Rebuttal Brief," dated March 23, 2020.

<sup>15</sup> See BYD and Canadian Solar's Letter, "Letter in Lieu of Rebuttal Brief of Canadian Solar and BYD," dated March 23, 2020.

<sup>16</sup> See JA Solar's Letter, "Letter in Lieu of Rebuttal Brief," dated March 23, 2020.

<sup>17</sup> See Risen's Letter, "Request for Hearing," dated March 11, 2020.

<sup>18</sup> See Risen's Letter, "Withdrawal of Request for Hearing," dated April 2, 2020.

<sup>19</sup> The scope was most recently updated in *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Results of Changed Circumstances Reviews, and Revocation of the Antidumping and Countervailing Duty Orders*, 83 FR 65344 (December 20, 2018).

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

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

Also excluded from the scope of this order are:

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

- (A) a total power output of 100 watts or less per panel;
- (B) a maximum surface area of 8,000 cm<sup>2</sup> per panel;
- (C) do not include a built-in inverter;
- (D) must include a permanently connected wire that terminates in either an 8mm male barrel connector, or a two-port rectangular connector with two pins in square housings of different colors;
- (E) must include visible parallel grid collector metallic wire lines every 1-4 millimeters across each solar cell; and
- (F) must be in individual retail packaging (for purposes of this provision, retail packaging typically includes graphics, the product name, its description and/or features, and foam for transport); and

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

- (A) a total power output of 100 watts or less per panel;
- (B) a maximum surface area of 8,000 cm<sup>2</sup> per panel;

(C) do not include a built-in inverter;

(D) must include visible parallel grid collector metallic wire lines every 1-4 millimeters across each solar cell; and

(E) each panel is

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

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

Merchandise covered by this order is currently classified in the Harmonized Tariff System (HTS) of the United States under subheadings 8501.61.0000, 8507.20.80, 8541.40.6020, 8541.40.6030, and 8501.31.8000. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of this order is dispositive.<sup>20</sup>

#### **IV. DISCUSSION OF THE ISSUES**

##### **Comment 1. Unreported Factors of Production for Purchased Solar Cells and Modules**

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

*Canadian Solar/JA Solar/Risen/Trina:*

- The statute requires that, in order to apply AFA, Commerce must make a finding that a party did not cooperate to the best of its ability. Risen and Trina made significant and

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<sup>20</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); *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Countervailing Duty Order*, 77 FR 73017 (December 7, 2012). (footnote omitted).

documented efforts to obtain the FOP information from its suppliers,<sup>21</sup> and both Risen and Trina reported all FOPs of the solar cells and panels they produced. Further, Risen and Trina contacted all of its suppliers on at least two different occasions requesting that the companies provide their FOP information.<sup>22</sup> Thus, Commerce cannot justify the application of AFA to the companies' unreported FOPs.

- Commerce's claim that Risen and Trina deliberately chose to do business with "uncooperative producers/suppliers" is false. There is no evidence on the record of this review that Risen or Trina knew at the time they purchased the cells and/or modules that these entities were "uncooperative," or that Risen or Trina could have predicted that these suppliers would ultimately refuse to cooperate with the information requests. Commerce faulting Risen and Trina with deciding to do business with suppliers contingent upon their cooperation to provide FOP data several years in advance of this administrative review far exceeds any reasonable understanding of the meaning of section 776(b) of the Tariff Act of 1930, as amended (the Act). The Court of Appeals for the Federal Circuit (CAFC) has stated that ("{b}efore making an adverse inference, Commerce must examine respondent's actions and assess the extent of respondent's abilities, efforts, and cooperation in responding to Commerce's requests for information."<sup>23</sup> Commerce's logic presumes, without basis in the record, that Risen and Trina had reason to believe that its suppliers would not comply with Commerce's future requests for information. This conclusion further relies on the implicit assumption that Risen and Trina's solar cell and solar modules suppliers were the same suppliers that had failed to provide the requested information in prior reviews. Commerce points to no information to support this assumption or to otherwise support its premise that Trina should have been charged with knowledge that its solar cell and modules suppliers would not cooperate in providing the requested information.
- In *Solar Cells AR3*, the Court of International Trade (CIT) did not uphold Commerce's application of AFA, finding that while Commerce may incorporate an adverse inference in calculating a cooperative respondent's margin, it can only do so if doing so will yield an accurate rate, promote cooperation, and thwart duty evasion and that under analysis under section 776(a) of the Act, Commerce's predominant concern must be accuracy.<sup>24</sup> In this review, Commerce applied, in the same manner as this review, AFA to missing

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<sup>21</sup> See Canadian Solar/BYD's Joint Case Brief at 4 (citing Trina's Letter, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China: Section D Response by Trina's Unaffiliated Cell and Module Supplier," dated November 25, 2019 (Trina's DQR) at 1-2; and Risen's Letter "Crystalline Silicon Photovoltaic Cells from the People's Republic of China – Unaffiliated Supplier FOP Questionnaire Responses," dated December 3, 2019 at 1-2).

<sup>22</sup> See Risen's Case Brief at 27 (citing Risen's Letter, "Risen's Section D Questionnaire Response & Appendices V & XII," dated July 2, 2019 (Risen's DQR) at Exhibit D-21); and Trina's Case Brief at 30 (citing Trina's DQR at Appendix XII at 10–11 and Exhibit D-2).

<sup>23</sup> See Risen's Case Brief at 29 (citing *Nippon Steel Corp. & United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (*Nippon Steel*)).

<sup>24</sup> See Risen's Case Brief at 30 (citing *Canadian Solar International Limited et al. v. United States*, 378 F. Supp. 3d 1292 (CIT 2019) (*Canadian Solar*); and *Mueller Comercial de Mexico, S. de R.L. De C.V. v. United States*, 753 F.3d 1227, 1232-36 (Fed. Cir. 2014) (*Mueller*)).

that the respondent, Canadian Solar, failed to report. The CIT found Commerce’s justification for applying AFA to the cooperating Canadian Solar wholly unreasonable and unsupported by the statute and caselaw: “The accuracy analysis required by *Mueller* is missing here. Commerce fails to adequately address the overarching concern of accuracy and therefore its redetermination is contrary to law. . . . Further, Commerce’s view that the policy considerations of duty evasion and deterrence support the use of the adverse information in calculating the facts available rate is unsupported by this record.”<sup>25</sup>

- The CAFC has ruled that Commerce may only apply an adverse inference where it is reasonable to expect more forthcoming responses to have been made.<sup>26</sup>
- The accuracy analysis identified by the CIT in *Canadian Solar* is missing here. In the PDM, Commerce fails to address whether the data that Commerce applies promotes accuracy. Specifically, Commerce fails to explain why the obvious alternative – here, applying neutral facts to the FOPs – would not promote better accuracy and there is no justification of policy considerations for the particular circumstances of unaffiliated suppliers.
- Commerce cannot apply an adverse inference against a respondent under section 776(b) of the Act based on the theory that the respondent failed to induce compliance by a non-cooperating supplier where the record lacks information to support that the respondent had the sort of relationship with its suppliers that would give it leverage in the marketplace.<sup>27</sup> While the statute may allow Commerce to consider deterrence of non-cooperation and thwarting duty evasion to support its use of an adverse inference, the balancing of policy considerations required under the statute could nonetheless render it unfair to employ an adverse inference against a party that had no control over a non-cooperating supplier.<sup>28</sup>
- In initially holding the use of AFA to be unsupported, the CIT concluded in *Canadian Solar* that the record does not demonstrate the respondent had the type of long-standing relationships with its non-cooperating suppliers that would give it leverage in the marketplace.<sup>29</sup> This same conduct by Risen and Trina’s non-cooperating suppliers is giving rise to Commerce’s use of AFA here. The only thing that has changed in Commerce’s analysis is that, rather than concluding that Risen and Trina were cooperative and applying an AFA against Risen and Trina for their suppliers’ non-cooperation, Commerce charges Risen and Trina with non-cooperation based on its failure to require their suppliers’ cooperation as a condition of purchasing from the supplier. If Commerce could not reasonably apply AFA to a respondent for its suppliers’ lack of cooperation without evidence that it had leverage over those suppliers, Commerce

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<sup>25</sup> See Risen’s Case Brief at 30-31 (citing Results of Remand Redetermination, *Canadian Solar International Limited, et al. v. United States*, Court No. 17-00173, Slip. Op. 19-47 (CIT April 16, 2019) (July 15, 2019) (*Canadian Solar Remand Results*) at 15-29).

<sup>26</sup> See Trina’s Case Brief at 27 (citing *Nippon Steel*, 337 F.3d at 1373, 1382).

<sup>27</sup> *Id.* (citing *Canadian Solar*, 378 F. Supp. 3d at 1319–20).

<sup>28</sup> *Id.* at 30 (citing *Mueller*, 753 F.3d 1227, 1235).

<sup>29</sup> *Id.* at 28 (citing *Canadian Solar*, 378 F. Supp. 3d at 1319–20).

cannot reasonably conclude that Risen and Trina failed to cooperate based on their suppliers' conduct based on precisely the same factual circumstances. Commerce has pointed to no specific record evidence that Risen and Trina would have had the leverage to restrict its purchases to suppliers they knew would provide the requested information.

- While the record may demonstrate that Risen and Trina purchase a substantial quantity of cells and modules from its various suppliers, this does not demonstrate that it represents a substantial share of those suppliers' business. The fact that Risen and Trina purchase substantial quantities of cells and modules from its suppliers only demonstrates its reliance on those suppliers, not that those suppliers rely on Risen and Trina.
- The CIT has further noted that evidence of suppliers' potential stake in a respondent to which they sell having a lower dumping margin does not demonstrate a threat of duty evasion.<sup>30</sup> Further, Commerce's analysis contains no consideration or explanation of the potential for Risen and Trina's suppliers to avoid a higher AFA rate by selling to Risen or Trina or otherwise failing to cooperate in supplying the requested information.
- There is no applicable antidumping rate that Risen and Trina's suppliers would need to evade; and there is simply no evidence that these suppliers export, or that individual margins (calculated based on AFA or otherwise) have been assigned to Trina's suppliers.
- Instead of relying on AFA, for the solar cells and panels for which third parties failed to provide FOPs, Commerce should rely on Risen and Trina's own FOPs for the solar cells and panels the suppliers have failed to provide.

*Petitioner:*

- It is Commerce's practice to apply partial AFA to a respondent where its unaffiliated suppliers of subject merchandise fail to report their costs or provide FOP data and the respondents did not put forth maximum effort to provide Commerce with accurate FOP data.<sup>31</sup>
- Commerce's decision to apply AFA here was the result of respondents' failure to cooperate to the best of their abilities in ensuring that a material amount of FOP data is reported. Both mandatory respondents have extensive experience participating in reviews of this order. As such, each was aware that they would be required to provide FOP data for unaffiliated suppliers. Despite this knowledge, neither respondent took measures to ensure that its unaffiliated suppliers would report this information, such as

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<sup>30</sup> *Id.*

<sup>31</sup> See Petitioner's Rebuttal Brief at 3 (citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016-2017*, 84 FR 36886 (July 30, 2019) (*Solar AR5 Final*), and accompanying Issues and Decision Memorandum (IDM) at Comment 1; *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 83 FR 35616 (July 27, 2018) (*Solar AR4 Final*), and accompanying IDM at Comment 1; *Narrow Woven Ribbons With Woven Selvedge from Taiwan, Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 19635 (April 13, 2015) (*Narrow Woven Ribbons*), and accompanying IDM at Comment 7; and *Certain Steel Nails from the People's Republic of China: Final Results and Final Partial Rescission of the Second Antidumping Duty Administrative Review*, 77 FR 12556 (March 1, 2012), and accompanying IDM at Comment 5; and *Nippon Steel*, 337 F.3d at 1382).

refusing to do business with suppliers who would not promise their cooperation or otherwise using their leverage over suppliers to induce cooperation. This demonstrates that respondents did not put forth the maximum effort to ensure compliance.

- The fact that certain of Risen and Trina’s suppliers responded to Commerce and provided data demonstrates that the respondents are, in fact, in a position to induce cooperation. Major solar producers like Risen and Trina clearly have the leverage in the marketplace required to induce cooperation by their unaffiliated suppliers, had they put forth maximum effort to do so.
- Both of these respondents are highly sophisticated companies that have been routinely involved in administrative reviews before Commerce. As such, both companies are fully aware that they would need to report FOP data from these unaffiliated suppliers. By not making cooperation with Commerce’s proceedings a requirement from the outset of their relationship was another failure to cooperate with Commerce.
- Respondents’ reliance on *Canadian Solar* is premature and misguided. That proceeding is still ongoing at the CIT and the CIT has not yet issued a final order. Parties in that proceeding also have not yet had the opportunity to appeal the final order to the CAFC. Further, *Canadian Solar* is based on different facts than here, including the fact that Canadian Solar is not a mandatory respondent in this review.
- Canadian Solar is incorrect that Commerce’s application of AFA here does not promote accuracy. The rates Commerce relied on were the highest consumption figures for those same inputs that were reported by other suppliers or by the respondent and thus were actual rates on the record in this proceeding and Commerce restricted the rates used to the actual reported FOP information for the same input that the uncooperative suppliers failed to report.<sup>32</sup>
- As Canadian Solar acknowledged, while *Mueller* requires accuracy to be the predominant factor, it also acknowledges the need to consider other key factors.<sup>33</sup> The need for accuracy should be coupled with the policy considerations of inducing cooperation and deterring evasion. The threat of duty evasion does exist in this case because the solar cells and panels being supplied the respondents are subject merchandise and these companies would be subject to the much higher China-wide rate, or to a separate rate calculated based on the respondents’ rates, if they exported directly to the United States. Thus, they have an interest in keeping Risen and Trina’s dumping margins as low as possible.
- Commerce has a significant interest in applying AFA to induce cooperation. *Mueller* envisions that a respondent may induce cooperation through “potentially refus{ing} to do business” with unaffiliated suppliers.<sup>34</sup>

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<sup>32</sup> See Petitioner’s Rebuttal Brief at 8 (citing Memorandum, “Unreported Factors of Production: Risen Energy Co. Ltd.,” dated January 31, 2020 (Risen’s FOP Memorandum) at 7; and Memorandum, “Unreported Factors of Production: Trina Solar Co., Ltd.,” dated January 31, 2020 (Trina’s FOP Memorandum) at 7).

<sup>33</sup> *Id.* at 8 (citing *Mueller*, 753 F.3d at 1234).

<sup>34</sup> *Id.* at 9.

- If Commerce does not require respondents to use their control over their unaffiliated suppliers, it will essentially absolve respondents from ever reporting FOP data for unaffiliated suppliers.

**Commerce's Position:** For the reasons below, we have continued to apply partial AFA by selecting the highest FOP consumption rates reported by Risen and Trina, respectively, as plugs for the FOPs that their respective solar cell and panel suppliers failed to provide.

#### *Application of Facts Available*

Section 776(a) of the Act directs Commerce to use the facts otherwise available if necessary information is not available on the record or an interested party (or any other person) withholds information that has been requested, fails to provide such information by the deadline for submission, significantly impedes a proceeding, or provides such information but the information cannot be verified. It is undisputed that the FOPs in question are not available on the record, that the FOPs have been withheld by Risen and Trina's unaffiliated suppliers, and that Risen and Trina failed to report complete FOP information, as requested by Commerce. It is also undisputed that because these suppliers are producers of subject merchandise solar cells and panels, that they are interested parties within the meaning of section 771(9)(A) of the Act.<sup>35</sup> As a result, in accordance with sections 776(a)(1) and (2)(A)-(B) of the Act, Commerce is applying facts available in valuing the unreported FOPs.

#### *Application of AFA: Risen and Trina have Failed to Cooperate to the Best of their Abilities*

We are missing a significant quantity of FOPs for both respondents.<sup>36</sup> Thus, we are missing a material amount of data required to calculate normal value, and normal value constitutes half of the antidumping margin calculation. In the *Preliminary Results* we found that both the unaffiliated suppliers at issue, and Risen and Trina themselves, have failed to cooperate to the best of their ability, within the meaning of section 776(b) of the Act.<sup>37</sup> Specifically, we found that the unaffiliated suppliers (Risen's largest five suppliers, and Trina's largest five suppliers of solar cells and largest three suppliers of modules), which are interested parties within the meaning of section 771(9)(A) of the Act, failed to report their FOP information and thus failed to comply with Commerce's request for information. No party disputes this finding, and thus we continue to find that the unaffiliated suppliers failed to cooperate in this administrative review.

We also found that Risen and Trina failed to cooperate to the best of their ability because they withheld the missing FOPs by choosing to do business with suppliers that would not cooperate.<sup>38</sup> Although various parties assert that Commerce erred in finding that Risen and Trina failed to cooperate, and erred in applying partial AFA in valuing the missing FOP information, we

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<sup>35</sup> See, e.g., Risen's FOP Memorandum; and Trina's FOP Memorandum.

<sup>36</sup> See Risen's FOP Memorandum at 5; and Trina's FOP Memorandum at 5.

<sup>37</sup> See Risen's FOP Memorandum 5-6; Trina's FOP Memorandum at 5-6; and *Preliminary Results* PDM at 13.

<sup>38</sup> See Risen's FOP Memorandum 6; and Trina's FOP Memorandum 6.

disagree. Parties argue that in *Mueller* the CAFC indicated that there are only certain conditions for when we can apply AFA to cooperative respondent, and thus, that the use of AFA is not appropriate here. We find that *Mueller* is not relevant to the facts present in this administrative review because the record supports finding that the unaffiliated suppliers as well as Risen and Trina have failed to cooperate to the best of their abilities with respect to the missing FOP data. While certain respondents argue that there is no evidence on the record of this review that Risen or Trina knew at the time they purchased the cells and/or modules that these entities were “uncooperative,” or that Trina or Risen could have predicted that these suppliers would ultimately refuse to cooperate with the information requests, both Risen and Trina have been active in solar cell reviews since the investigation. This proceeding initiated in 2011, six years prior to the current POR.<sup>39</sup> Risen and Trina were respondents in the underlying investigation of this proceeding,<sup>40</sup> and both Risen and Trina have been separate rate or mandatory respondents in the previous four reviews, including both being mandatory respondents in the previous review.<sup>41</sup> We have applied AFA in calculating the weighted-average margin of respondents who failed to provide the FOPs of their unaffiliated suppliers since the second period of review.<sup>42</sup> We have consistently addressed these issues in prior reviews, and here we have applied AFA in calculating the respondent’s weighted average dumping margin as a result of Risen and Trina’s own actions related to the shipments under review. Given the history of this proceeding, and Risen’s and Trina’s own extensive involvement, they should have understood their responsibility, that if it were chosen as a mandatory respondents, they must provide complete FOP data.

Because Risen and Trina chose to sell merchandise to the United States that is subject to an antidumping order, they bore the responsibility to comply with any potential information requests from Commerce in connection with those shipments of merchandise. While Risen and Trina provided correspondence with their uncooperative suppliers in which they requested the FOP data, this minimal action does not absolve them of their reporting responsibility. The CAFC explained that a respondent acts to the best of its ability when it “does the maximum it is able to do.” The maximum effort could involve Risen and Trina taking a number of steps to ensure that they could obtain the FOP information, such as securing the cooperation of the

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<sup>39</sup> See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Initiation of Antidumping Duty Investigation*, 76 FR 70960 (November 16, 2011); *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2013-2014*, 81 FR 39905 (June 20, 2016) (*Solar AR2 Final*), and accompanying IDM at Comment 19; *Solar AR4 Final IDM* at Comment 1; and *Solar AR5 Final IDM* at Comment 1.

<sup>40</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 (October 17, 2012) (*Solar Cells Investigation Final*).

<sup>41</sup> See *Solar AR2 Final*; *Solar AR5 Final*; *Solar AR5 Final*; and *Solar AR5 Final*.

<sup>42</sup> See *Solar AR2 Final IDM* at Comment 19 (*aff’d Solarworld Ams., Inc. v. United States*, 273 F. Supp. 3d 1254, 1276-78 (CIT 2017)); *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014-2015*, 82 FR 29033 (June 27, 2017) (*Solar AR3 Final*), and accompanying IDM at Comments 1 and 3; *Solar AR4 Final IDM* at Comment 1; and *Solar AR5 Final IDM* at Comment 1.

supplier at the time that Risen and Trina agreed to purchase the solar cells and solar modules. Trina has had relationships with its customers for years,<sup>43</sup> and while Risen failed to answer Commerce's request for the length of its relationships with its customers,<sup>44</sup> considering the large number of suppliers from which it sources, it is unlikely that all of these suppliers are new. Meanwhile, the record contains information demonstrating that Trina has not ended relationships with suppliers due to a failure to provide FOPs, and Risen has not cited to any evidence that it actually followed through with its threats and severed ties with any of its many suppliers.<sup>45</sup> Thus, the relevant record information indicates that Risen and Trina have elected to do business with uncooperative producers/suppliers of solar cells and solar modules, rather than select suppliers contingent upon their cooperation in providing FOPs.

Just as we stated in *Stainless Steel Bar from India*, where Commerce applied partial AFA in determining the respondent's weighted-average margin because it the respondent failed to cooperate by not acting to the best of its ability in attempting to obtain its unaffiliated suppliers' COP data, it is not unreasonable for us to expect a respondent in Risen and Trina's situation to take a number of steps to ensure that it could obtain the FOP information, including, but not limited to: securing the cooperation of the supplier, or obtaining the requested information, at the time Risen and Trina agreed to purchase the solar cells and solar panels; removing that supplier from its list of suppliers for failing to provide the requested information; and/or increasing its production of subject merchandise inputs, to avoid the issue of obtaining the suppliers' COP information.<sup>46</sup>

Commerce has applied AFA in determining the weighted-average margin of respondents whose unaffiliated solar cell and solar module suppliers failed to provide FOPs since the second administrative review. This is the sixth administrative review. Risen and Trina therefore knew, or should have known, of the importance Commerce placed on the FOPs of any solar cell or panel they purchased from unaffiliated suppliers prior to buying from the parties at issue in this review. Risen and Trina could have communicated this importance to their suppliers and made their purchases contingent on cooperation should the FOPs be required for reporting to Commerce. While Risen and Trina have cited to correspondence between them and their suppliers requesting the FOP data, this correspondence was not effective; the result was that neither Risen nor Trina were able to obtain a large amount of FOP data.

By choosing to do business with suppliers that would not cooperate, Risen and Trina have withheld the missing FOP data from Commerce and failed to cooperate to the best of its ability in responding to a request for information. Section 776(b) of the Act calls for the use of adverse inferences when interested parties have failed to cooperate by not acting to the best of their

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<sup>43</sup> See Trina's DQR at Exhibits DA-11 and DA-36.

<sup>44</sup> See Commerce's Letter dated May 7, 2019 at Appendix XII; and Risen's DQR at 17, 20, and Appendices D-26 and D-30.

<sup>45</sup> See Trina's DQR at Exhibit DA-36.

<sup>46</sup> See *Stainless Steel Bar from India: Final Results of Administrative Review of the Antidumping Duty Order; 2017-2018*, 84 FR 56179 (October 21, 2019), and accompanying IDM at Comment 2.

ability to comply with a request for information from Commerce. In so doing, Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.<sup>47</sup> Rather, the SAA explains that Commerce may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>48</sup> The purpose of the adverse facts available statute is “to provide respondents with an incentive to cooperate” with Commerce’s investigation.<sup>49</sup> Because Commerce lacks subpoena power, Commerce’s ability to apply adverse facts available is an important one.<sup>50</sup> As noted above, the missing FOP data is significant in size and Commerce has no way of knowing what the FOPs of these solar cells and panels were. Unless Commerce applies partial AFA in valuing the missing FOP data, they will simply continue to do business with suppliers that refuse to provide FOPs, knowing that there will be no penalty for doing so. Therefore, application of partial AFA is appropriate here.

#### *Application of AFA Here is Still Consistent with Mueller*

Even if Risen and Trina were found to be acting to the best of their abilities, we still find that our application of partial AFA is in accordance with the statutory framework and the CAFC’s guidance in *Mueller*, where the CAFC recognized that Commerce may apply AFA in order to induce cooperation by other interested parties whose information is needed to calculate a respondent’s dumping margin, in situations where the respondent has a mechanism to induce the non-cooperating parties to cooperate.<sup>51</sup> Risen and Trina’s suppliers of solar cells and panels are interested parties pursuant to section 771(9)(A) of the Act because they are Chinese manufacturers of solar cells and solar modules. Although the CAFC observed that Commerce was “acting primarily under subsection (a) {of section 776} in setting a margin for Mueller,” the CAFC “conclude{d} that Commerce may rely on such policies {as deterrence and evasion considerations} as part of a margin determination for a cooperating party ... as long as the application of those policies is reasonable on the particular facts and the predominant interest in accuracy is properly taken into account ...”<sup>52</sup>

We have *met all* three criteria discussed by the CAFC in *Mueller*. With regard to duty evasion, Commerce finds that there exists a real possibility that the parties involved could obtain a more favorable result by not cooperating because the uncooperative suppliers’ consumption rates could be even higher than Risen and Trina’s rates. Absent a separate rate, or selling through Risen and Trina, the uncooperative solar module and solar cell suppliers without their own

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<sup>47</sup> See section 776(b)(1)(B) of the Act.

<sup>48</sup> See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol 1 (1994) (SAA) at 870; and *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

<sup>49</sup> See *Essar Steel Ltd. v. United States*, 678 F.3d 1268, 1276 (Fed. Cir. 2012).

<sup>50</sup> See *Mueller*, 753 F.3d at 1235.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 1233.

dumping rate would be subject to the 238.95 percent China-wide rate. By not reporting consumption rates (which, given their unwillingness to report the information, are likely higher than Risen's and Trina's), the uncooperative suppliers—producers of subject merchandise—are able to take advantage of the separate rate of Risen and Trina. Thus, the uncooperative suppliers can avoid the appropriate dumping margins that should apply to the subject merchandise they produced by failing to cooperate, similar to the concern in *Mueller*. Risen and Trina's dumping margin in the review was assessed on merchandise which includes the uncooperative suppliers' solar cells and modules, so the suppliers' merchandise is directly affected by Commerce's determination.

With regard to deterrence of non-cooperation, both Risen and Trina are significant producers in the solar market with significant sales during the POR and they are the largest two exporters of subject merchandise to the United States during the relevant period and have purchased a substantial quantity of solar cells and solar modules from suppliers. Consistent with *Mueller*, and in addition to Commerce's observations regarding the first policy consideration, we find that Risen and Trina's exposure to enhanced antidumping duties and the relationship between Risen and Trina and the unaffiliated suppliers could *potentially* induce the cooperation of the suppliers.<sup>53</sup> As the CAFC reasoned in *KYD*, "the importers' exposure to enhanced antidumping duties seems likely to have the effect of either directly or indirectly inducing cooperation from the exporters with whom the importers deal or doing so indirectly, by leaving uncooperative exporters without importing partners who are willing to deal in their products."<sup>54</sup> This reasoning applies equally here: Risen and Trina's exposure to enhanced antidumping duties seems likely to have the effect of directly inducing cooperation from the suppliers of solar cells and solar modules with whom Risen and Trina deal or leaving uncooperative suppliers without customers.

By Commerce's use of partial AFA here, Risen and Trina are incentivized to source from and conduct business with cooperative suppliers, and the uncooperative suppliers are affected by their own non-cooperation. By applying AFA only with respect to the transactions between Risen and Trina and their uncooperative suppliers, Commerce has made these transactions less attractive to Risen and Trina. Commerce's application of AFA in valuing the missing FOP data encourages and induces cooperation by incentivizing Risen and Trina to not purchase solar cells and solar modules from suppliers that refuse to provide FOP data. We emphasize that the CAFC has explained that a relationship between a cooperating respondent and non-cooperating interested party where the cooperating respondent refuses to export goods supplied by the non-cooperating interested party "would *potentially induce* {the non-cooperating party} to cooperate."<sup>55</sup> The CAFC has contrasted the requisite relationship with one in which "the cooperating entity has *no control* over the non-cooperating suppliers."<sup>56</sup> Here, the existence of a plausible threat of refusing to purchase subject merchandise from suppliers refusing to provide

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<sup>53</sup> *Id.* at 1235.

<sup>54</sup> *See KYD*, 607 F. 3d at 768.

<sup>55</sup> *See Mueller*, 753 F. 3d at 1235.

<sup>56</sup> *Id.* (emphasis added).

FOPs when asked provides Risen and Trina with leverage to ensure that their suppliers cooperate.<sup>57</sup>

Commerce's application of policy considerations here has been done in the context where the predominant interest in accuracy has been taken into account. As noted above, the missing information for both respondents is significant in size and Commerce has no way of knowing what these FOPs are and thus cannot determine what Risen and Trina's margins would be if the information had been reported. Further, by only applying AFA precisely to and commensurate with the lack of cooperation by the suppliers, it is solely the purchases from uncooperative suppliers (for which there are missing FOPs) that are the cause for the increased antidumping duties. Meanwhile, we have relied on Risen and Trina's own FOPs in applying AFA. Thus, our application of AFA takes accuracy into consideration as it is both tied to Risen and Trina's own reported information and the magnitude of our application of AFA is commensurate with the scale of the noncooperation.<sup>58</sup>

Further, the only feasible way for Commerce to consistently obtain more accurate information is by applying AFA. Otherwise, parties will continue to ignore Commerce's request for FOPs when it is inconvenient or possibly beneficial for parties not to provide this information. By applying AFA in this manner, Commerce has not only taken into consideration accuracy but has also

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<sup>57</sup> Commerce's experience in this proceeding, as evidenced by this administrative review, has been that a mandatory respondent may not report all of its FOPs as a result of its unaffiliated suppliers' failure to provide the requested information. See *Solar AR2 Final IDM* at Comment 19; *Solar Cells AR3 IDM* at Comments 1 and 3; and *Solar Cells AR4 IDM* at Comment 1. We have previously concluded, as we do here, that the application of partial AFA serves to incentivize the respondent to conduct business with cooperative suppliers, and that the respondent has the potential to induce cooperation by its suppliers in that it has the ability to not purchase solar cells and modules from suppliers that do not cooperate with Commerce's request for information. We would anticipate that respondents for whom we used partial AFA to calculate their weighted-average dumping margin would take the necessary steps to avoid exposure to enhanced antidumping duties as a result of their suppliers' failure to cooperate, such as declining to purchase from the supplier in the future, or making their purchases contingent on guarantees of cooperation in any potential administrative review. As such, in future administrative reviews, we intend to examine whether respondents who have been individually examined (if a review of such companies is requested), including Risen and Trina, continue to do business with suppliers who have previously failed to cooperate in providing FOP information. Evaluating the circumstances of the business relationship between the respondent and its supplier in such circumstances is appropriate because it is the respondent who is subject to the review, and thus it is the responsibility of the respondent to provide requested information that is necessary for Commerce's antidumping duty analysis. Depending on the circumstances, continued purchases of merchandise from unaffiliated suppliers who have previously failed to cooperate, and who continue to be uncooperative in response to Commerce's information requests, may indicate that the respondent has failed to take the appropriate steps to ensure that it is able to cooperate with Commerce's requests for information in the event that it is examined in an administrative review.

<sup>58</sup> *Nan Ya Plastics Corp. v. United States*, 810 F.3d 1333, 1344 (Fed. Cir. 2016) ("When Congress directs the agency to measure pricing behavior and otherwise execute its duties in a particular manner, Commerce need not examine the economic or commercial reality of the parties specifically, or of the industry more generally, in some broader sense. The statute, or Commerce's permissible interpretation of it, provides the backdrop against which we must review the agency's determination. Our case law and the statute thus teach that a Commerce determination (1) is "accurate" if it is correct as a mathematical and factual matter, thus supported by substantial evidence; and (2) reflects "commercial reality" if it is consistent with the method provided in the statute, thus in accordance with law." (citations omitted)).

made it clear to potential buyers and sellers of solar modules and solar cells that will be shipped to the United States the actions that cause the increased dumping duties (*i.e.*, not reporting FOP data and purchasing from parties that refuse to provide FOPs), and the actions that will end the application of these increased dumping duties (reporting the accurate FOP data and not purchasing from parties that refuse to provide the actual (and accurate) FOP data).

Commerce's determination to apply partial AFA in this case is also consistent with a recent Court ruling in *Fish Filets from Vietnam* where despite the respondent's efforts to contact the tollers and obtain their cooperation, the CIT noted that Commerce stated that the respondent could have done more to induce cooperation, "for example, [by] refusing to do business with Tollers A and B, who they had an ongoing business relationship with, unless they cooperated."<sup>59</sup> Here, both Risen and Trina argue that they contacted their respondents to obtain their business, but they did not stop doing business. Neither Risen nor Trina have cited to one instance where they stopped doing business because parties refused to provide them with FOPs. Further, the record here with regard to deterrence is likewise highly similar to that in *Fish Filets from Vietnam* where the CIT cited the proposition stated in *Mueller* that it was appropriate for Commerce to use deterrence as a justification for applying AFA to calculate a cooperating party's dumping rate margin, "as long as the application of {deterrence} policies is reasonable on the particular facts and the predominant interest in accuracy is properly taken into account as well," noted that in *Fish Filets from Vietnam* that uncooperative tollers could escape their own high cash deposit by selling through the respondent, and further noted that the cooperating party could have, but did not, use its influence to induce cooperation.<sup>60</sup> Here parties are selling their solar cells and solar panels to Risen and Trina, who then sell them to the United States, and thus, just as the uncooperative tollers in *Fish Filets from Vietnam* benefitted from the respondents' rates, the solar cell and solar panel suppliers benefit from Risen and Trina's rates. With regard to accuracy, the CIT acknowledged the legitimacy of Commerce's accuracy concerns in *Fish Filets from Vietnam* because the missing information amounted to 20 percent of all FOPs required.<sup>61</sup> Here, the amount of missing information is comparable.

### *Conclusion*

Due to the failure of Risen and Trina to obtain FOPs from their suppliers of subject merchandise, many of whom are surely the same suppliers that did not provide the FOPs previously, we find that Risen and Trina have failed to cooperate to the best of their abilities. Because the information they have failed to provide is substantial, we find that it would be inappropriate to substitute the FOP information provided by Risen and Trina to calculate a dumping margin. Therefore, we find that the lack of cooperation on the part of Risen and Trina warrants the application of AFA under section 776(b) of the Act. However, even if Risen and Trina were considered to have acted to the best of their abilities, Commerce's justified policy considerations

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<sup>59</sup> See *An Giang Fisheries Import And Export Joint Stock Company et al. v. United States*, Court No. 16-00072, Slip Op. 18-10 (CIT February 13, 2018) (*Fish Filets from Vietnam*) at 20.

<sup>60</sup> See *Fish Filets from Vietnam* at 20.

<sup>61</sup> *Id.* at 19-20.

of inducing cooperation and deterring evasion, as well as the inaccuracy caused by the refusal to provide the significant quantity of FOPs, justifies the application of AFA under section 776(a) of the Act.

## **Comment 2. Surrogate Value Selection for Silver Paste**

In the *Preliminary Results* we valued the respondents' silver paste consumption using Malaysian imports of Harmonized Tariff Schedule (HTS) 7115.90.1000 ("Articles Of Precious Metal Or Of Metal Clad With Precious Metal Nesoi, Other, of gold or silver.").

### *Risen and Trina*

- The Malaysian average unit value (AUV) is highly aberrational when compared to the other potential surrogate countries' import values, the historical AUVs used by Commerce for this input, the respondents' market economy (ME) purchases of silver paste, and other record information on the cost of silver paste in the production of solar cells.<sup>62</sup>
- The Malaysian AUV is 6,305 percent higher than the weighted average import price into the other listed surrogate countries. It is also 1,322 percent higher than the average historical surrogate values that Commerce has relied upon to value silver paste. The CIT has previously found an AUV was aberrational when it was 60 percent to 200 percent higher than the other record values for the input.<sup>63</sup> In *Activated Carbon from China 2015-2016*, Commerce found that the AUV for anthracite coal was aberrational because it was 350 percent to 600 percent different than the record import values from the other listed surrogate countries.<sup>64</sup> Similarly, in *Steel Propane Cylinders from China*, Commerce found that the AUV for an input was aberrational because it was 1,535 percent higher than the average AUV of imports into the other listed surrogate countries.<sup>65</sup>
- In the prior administrative review of this order, Commerce selected Thailand as the primary surrogate country but determined that the Thai AUV for nitrogen was aberrational because it was \$10.05/kilogram (kg), while the other surrogate countries' import values were less than \$1.00/kg.<sup>66</sup>
- Trina's ME purchases of silver paste during the POR further demonstrate that the Malaysian AUV is aberrational, or at a minimum, imports into Malaysia are not silver paste and thus the import prices are not comparable to the price of silver paste.

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<sup>62</sup> See Risen's Case Brief at 3.

<sup>63</sup> See Risen's Case Brief at 5-6 (citing *Peer Bearing Company-Changshan v. United States*, 752 F. Supp. 2d 1353 (CIT 2011); and *Itochu Bldg. Prods. Co. v. United States*, 2017 Ct. Intl. Trade LEXIS 74, \*20-23 (CIT 2017)).

<sup>64</sup> See Risen's Case Brief at 7 (citing *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 51607 (November 7, 2017) (*Activated Carbon from China 2015-2016*), and accompanying IDM at Comment 3).

<sup>65</sup> See Risen's Case Brief at 7 (citing *Steel Propane Cylinders from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 84 FR 29161 (June 21, 2019) (*Steel Propane Cylinders from China*), and accompanying IDM at Comment 3A).

<sup>66</sup> See Risen's Case Brief at 6 (citing *AR5 Final IDM* at Comment 16).

- Product specificity must be the primary consideration in determining ‘best available information.’<sup>67</sup>
- The Malaysian HTS 7115.90.10 is not specific to silver paste, but covers items including gold. The wide range of import prices for Malaysian HTS 7115.90.10 demonstrate that it covers many items highly different from silver paste.
- The unreasonableness of the silver paste SV is demonstrated by the fact that silver paste, which is one small quantity input used in only one stage of cell production, accounted for almost half of the cost of manufacturing an entire module in the *Preliminary Results*,<sup>68</sup> while the *U.S. Department of Energy Solar Survey* shows that the total costs of both aluminum and silver paste only account for approximately five percent of total module manufacturing costs.<sup>69</sup>
- While Commerce is not required to perfectly match a respondent’s own production experience in selecting SVs, the goal of the “best available information” standard is to use a SV as analogous to the non-market economy (NME) market as is feasible.<sup>70</sup>
- Commerce must consider “commercial reality” when calculating the antidumping duty margins of respondents.<sup>71</sup>
- Where an AUV from the surrogate country is aberrational, it is Commerce’s practice to select an alternate AUV from another potential surrogate country that is a significant producer of comparable merchandise with the largest import volume of the input in question during the POR. Here, Mexico is a significant producer of comparable merchandise and has the largest import volume of silver paste during the POR.
- Even if Commerce continues to select Malaysia as the surrogate country, it should value silver paste using Mexican import data, which reflects the largest import quantity of silver paste during the POR of the countries economically comparable to China.
- The Malaysian HTS 7115.90.10.00 (*i.e.*, “Other, of gold or silver.”) import data relied upon by Commerce was put on the record by Commerce, not an interested party. Commerce also placed historical silver paste import values on the record at the *Preliminary Results*. It is well established that “{T}he burden of creating an adequate

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<sup>67</sup> See Risen’s Case Brief at 8 (citing *Taian Ziyang Food Co. v. United States*, 783 F. Supp. at 1330 (*Taian Ziyang*); and *Certain Activated Carbon from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 21195 (May 5, 2017)).

<sup>68</sup> See Risen’s Case Brief at 12-15 (citing Trina’s Letter, “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People’s Republic of China: Rebuttal to Petitioner’s Comments on Selection of Surrogate Values,” dated September 26, 2019 (Trina’s SV Rebuttal) at Exhibit 2: National Renewable Energy Laboratory of the U.S. Department of Energy, *Crystalline Silicon Photovoltaic Module Manufacturing Costs and Sustainable Pricing. JH 2018 Benchmark and Cost Reduction Road Map. (U.S. Department of Energy Solar Survey)*); and Memorandum, “Preliminary Analysis Memorandum for Risen Energy Co., Ltd.,” dated January 31, 2020 (Risen Preliminary Analysis Memorandum) at 4 and Attachment I.

<sup>69</sup> *Id.*

<sup>70</sup> See Risen’s Case Brief at 10 (citing, *e.g.*, *Nation Ford Chemical v. United States*, 166 F. 3d 1373, 1377 (Fed. Cir. 1999); *Zhengzhou Harmoni Spice Co., Ltd., et al. v. United States*, 617 F. Supp. 2d 1281, 1308 (CIT 2009)).

<sup>71</sup> See Risen’s Case Brief at 10-11 (citing *Yangzhou Bestpak Gifts & Crafts Co. v. United States*, 716 F.3d 1370, 1380 (Fed. Cir. 2013)).

record lies with interested parties and not with Commerce.”<sup>72</sup> Commerce should disregard the silver paste SV information it placed on the record at the *Preliminary Results*.

#### *Petitioner*

- It is Commerce’s longstanding practice to use an alternate country’s SV data only in cases where the SV data in the selected primary surrogate country are unavailable or unreliable.<sup>73</sup>
- The existence of higher prices alone does not necessarily indicate that the prices are distorted or misrepresentative, and thus it is not a sufficient basis upon which to exclude a particular SV.<sup>74</sup> Rather, interested parties must provide specific evidence showing whether the value is aberrational.<sup>75</sup>
- The silver paste AUVs from several potential surrogate countries are based on data from the United Nations Commodity Trade Statistics Database (UN COMTRADE). It is Commerce’s practice to compare AUVs based on GTA data.
- The Malaysian silver paste AUV is based on a commercially significant import volume, and is within a reasonable range of the Russian silver paste AUV.<sup>76</sup> Furthermore, Commerce has found, and the CIT has affirmed, that small quantities of imports are not inherently distortive with respect to the calculation of NV.<sup>77</sup>
- The AUVs for Malaysia from 2015, 2016 and 2017 imports of silver paste placed on the record by Commerce are in a range very similar to the Malaysia AUV for this POR.<sup>78</sup>

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<sup>72</sup> See Risen’s Case Brief at 9 (citing *SolarWorld Ams., Inc. v. United States*, 910 F.3d 1216, 1226 (Fed. Cir. 2018) (quoting *QVD Food Co., Ltd. v. United States*, 658 F.3d 1318, 1324 (Fed. Cir. 2011))).

<sup>73</sup> See Petitioner’s Rebuttal Brief at 25 (citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2013-2014*, 81 FR 39905 (June 20, 2016) (*Solar Cells from China AR2 Final Results*), and accompanying IDM at Comment 21).

<sup>74</sup> See Petitioner’s Rebuttal Brief at 26 (citing *Solar Cells from China AR2 Final Results* IDM at Comments 10 and 21).

<sup>75</sup> See Petitioner’s Rebuttal Brief at 26 (citing, e.g., *Steel Wire Garment Hangers from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 2012-2013*, 80 FR 13332 (March 13, 2015), and accompanying IDM at Comment 5; and *Carbazole Violet Pigment 23 from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 36630 (June 28, 2010), and accompanying IDM at Comment 6).

<sup>76</sup> See Petitioner’s Rebuttal Brief at 27 (citing *Solar Cells from China AR2 Final Results* IDM at 21).

<sup>77</sup> See Petitioner’s Rebuttal Brief at 28 (citing *Certain Oil Country Tubular Goods from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 77 FR 74644 (December 17, 2012) (*OCTG from China*), and accompanying IDM at Comment 1).

<sup>78</sup> See Petitioner’s Rebuttal Brief at 28 (citing 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: Factor Valuation Memorandum,” dated January 31, 2020 (Preliminary SV Memorandum) at Attachment 1, Worksheet “711590”).

Commerce may place information on the record,<sup>79</sup> and does so routinely both before and after a preliminary determination.<sup>80</sup>

- Commerce has consistently declared ME purchase prices unsuitable as benchmarks because these prices are proprietary information of the respective companies and are not representative of industry-wide prices available to other producers.<sup>81</sup>
- The costs of material inputs in the *U.S. Department of Energy Solar Survey*, relied upon by Risen and Trina, are not based on pricing data. Rather, the costs were estimated based on the full fiscal or quarterly material costs, as captured in the surveyed companies' cost of goods sold (COGS).<sup>82</sup> Commerce has long been cautious of benchmark SV data when it does not know the conditions under which the information was solicited.<sup>83</sup>

**Commerce's Position:** For the reasons detailed below, we have continued to value both respondents' silver paste using the AUV of Malaysian imports of HTS 7115.90.10 ("Articles Of Precious Metal Or Of Metal Clad With Precious Metal Nesoï, Other, Not elsewhere specified").

Commerce values FOPs "based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority" in accordance with section 773(c)(1) of the Act.<sup>84</sup> Commerce determines the best available information for valuing FOPs by considering the extent to which the available surrogate values are product-specific, representative of a broad-market average, publicly available, contemporaneous with the period under consideration, and tax and duty exclusive.<sup>85</sup> Commerce has a strong preference to value all FOPs in a single surrogate country pursuant to 19 CFR 351.408(c)(2) and only resorts "to a secondary surrogate country if data from

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<sup>79</sup> See Petitioner's Rebuttal Brief at 28 (citing *Definition of Factual Information and Time Limits for Submission of Factual Information*, 78 FR 21246, 21250 (April 10, 2013)).

<sup>80</sup> See Petitioner's Rebuttal Brief at 29 (citing *Drill Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances*, 76 FR 1965 (January 11, 2011), and accompanying IDM at 3; and *Certain Biaxial Integral Geogrid Products from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 82 FR 3284 (January 11, 2017), and accompanying IDM at 2).

<sup>81</sup> See Petitioner's Rebuttal Brief at 30 (citing *Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 26712 (May 9, 2014) (*Wood Flooring from China AR 11-12*), and accompanying IDM at Comment 6).

<sup>82</sup> See Petitioner's Rebuttal Brief at 31 (citing *U.S. Department of Energy Solar Survey* at 5-6).

<sup>83</sup> See Petitioner's Rebuttal Brief at 31 (citing *Wood Flooring from China AR 11-12* IDM at Comment 4; *Certain Polyethylene Terephthalate Resin from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 81 FR 13331 (March 14, 2016), and accompanying IDM at Comment 2; and *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 47191 (September 15, 2009), and accompanying IDM at Comment 7.B).

<sup>84</sup> See section 773(c)(1) of the Act; and *Qingdao Sea-Line Trading Co. v. United States*, 766 F.3d 1378, 1386 (Fed. Cir. 2014) (*Qingdao Sea-Line*) ("Commerce has broad discretion to determine what constitutes the best available information, as this term is not defined by statute.").

<sup>85</sup> See *First Administrative Review of Certain Polyester Staple Fiber from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 1336 (January 11, 2010), and accompanying IDM at Comment 1.

the primary surrogate country are unavailable or unreliable.”<sup>86</sup> Malaysia import data under HTS category HTS 7115.90.10, which we obtained through the Global Trade Atlas (GTA), satisfies Commerce’s criteria for contemporaneity, public availability, product specificity, broad market average representation, and being free from taxes or duties.<sup>87</sup>

When analyzing whether a given value is aberrational, Commerce “typically compares the prices for an input from all countries found to be at a level of economic development comparable to the NME whose products are under review from the POR and prior years.”<sup>88</sup> Commerce considers import data aberrationally high if the data are “many times higher than the import values from other countries.”<sup>89</sup> Commerce has also previously found that the existence of higher prices alone does not necessarily indicate that the prices are distorted or misrepresentative, and thus higher prices are not a sufficient basis upon which to exclude a particular surrogate value.<sup>90</sup> Although the respondents argue that the Malaysia AUV is aberrational in this case, we do not agree. The Malaysia AUV for silver paste is comparable to the AUV from another economically comparable potential surrogate country, Russia. The Malaysia AUV is \$8,217 per kilogram while Russia’s AUV is \$5,969 per kilogram.<sup>91</sup> Moreover, the Malaysia AUV is not atypical

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<sup>86</sup> See *Jiaying Brother Fastener Co. v. United States*, 11 F. Supp. 3d 1326, 1332-33 (CIT 2014) (*Jiaying Brother*) (quoting *Sodium Hexametaphosphate from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 59375 (September 27, 2012), and accompanying IDM at Comment I).

<sup>87</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>88</sup> See *Multilayered Wood Flooring from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Final Results of New Shipper Review; 2012-2013*, 80 FR 41476 (July 15, 2015) (*Multilayered Wood Flooring*) and accompanying IDM at Comment 11D; and *Steel Wire Garment Hangers from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 2012-2013*, 80 FR 13332 (March 13, 2015) (*Hangers from China*), and accompanying IDM at Comment 5 (citing *OCTG from China* IDM at Comment 1; and *Carbazole Violet Pigment 23 from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 36630 (June 28, 2010), and accompanying IDM at Comment 6).

<sup>89</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rope from India and the People’s Republic of China; Notice of Final Determinations of Sales at Not Less Than Fair Value: Steel Wire Rope from Malaysia*, 66 FR 12759 (February 28, 2001), and accompanying IDM at Comments 1 and 6.

<sup>90</sup> See *Hangers from China* IDM at Comment 5 (citing *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 56158 (September 12, 2011), and accompanying IDM at Comment 12).

<sup>91</sup> We have multiple surrogate sources on the record for valuing silver paste: (1) GTA import data for HTS 7115.90.10 covering the POR from Malaysia; relied upon to value respondents’ silver paste in the *Preliminary Results*. See Preliminary SV Memorandum at Attachment I and II; (2) GTA import data for HTS 711590 covering the POR from Malaysia and Bulgaria. See Petitioner’s Letter, “Submission of Surrogate Values,” dated September 19, 2019 (Petitioner’s September 19, 2019 SV Submission) at Exhibit 1; and Trina’s Letter, “Response to Request for Surrogate Value Information,” dated September 19, 2019 (Trina’s September 19, 2019 SV Submission) at Exhibit 1; (3) UN COMTRADE import data for HTS 711590 covering the POR from all of the potential surrogate countries identified on the surrogate country list (*i.e.*, Brazil, Kazakhstan, Malaysia, Mexico, Romania, and Russia). See Risen’s Letter, “Rebuttal Surrogate Value Comments,” dated September 26, 2019 (Risen’s SV Rebuttal) at

when compared to historical Malaysia AUVs for HTS category 7115.90.10. Between 2015 and 2017, Malaysia AUVs for this HTS category ranged between \$9,058 and \$10,094 per kilogram.<sup>92</sup> Rather than being many times higher than the other Malaysian import data on the record, the Malaysian AUV for the POR is slightly less than the historical AUVs for Malaysia, which supports a finding that it is appropriate to use the Malaysia AUV for valuing silver paste in this review.

While the Malaysia AUV is higher than other surrogate country AUVs, the Malaysia POR quantity is the second highest POR import quantity among the countries on the surrogate country list.<sup>93</sup> The Malaysia POR import quantity is also comparable to the silver paste import quantities from Malaysia for previous years.<sup>94</sup> This indicates that the AUV is not based on outlier transactions. Additionally, the POR import quantity of Malaysia for the HTS category related to silver paste is 8 percent of the total POR import quantity of comparable HTS categories for other countries on the surrogate country list. The significant size of these data supports finding that an AUV in the \$8,000 range is not unrepresentative for this HTS category.

We have evaluated the respondents' benchmark comparisons and find them unpersuasive. First, Trina's market economy purchases of silver paste are not an appropriate benchmark. Individual prices such as the market purchases submitted by Trina suffer from potential biases when compared with published prices that are widely available. Specifically, individual prices are not

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Exhibit SVR-2; and Trina's Letter, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China; Publicly Available Information to Value Trina's Factors of Production Using Romania as the Surrogate Country," dated January 2, 2020 (Trina's January 2, 2020 SV Submission) at Exhibit 1); (4) UN COMTRADE import data for HTS 711590 covering the POR from Bulgaria and Turkey. *See* Risen's SV Rebuttal at Exhibit SVR-2.

(5) Mexican import data sourced from the Trade Data Monitor for HTS 71159099 covering the POR. *See* Risen's Letter, "Surrogate Value Comments," dated January 2, 2020 (Risen's January 2, 2020 SV Submission) at Exhibit SV2-6; (6) Mexican import data sourced from INEGI for HTS 71159099 covering the POR. *See* Risen's January 2, 2020 SV Submission at Exhibit SV2-6; and (7) EUROSTAT import data for HTS 71159000 covering the POR from Bulgaria and Romania. *See* Risen's Submission, "Risen Preliminary Surrogate Value Submission," dated September 19, 2019 (Risen's September 19, 2019 SV Submission) at Exhibits SV-1, SV-2, and SV-9. The record also contains historical GTA data for HTS 711590 from Malaysia (*see* Preliminary SV Memorandum at Attachment I and II); and information on market economy purchases of silver paste by Trina during the POR (*see* Trina's DQR at Exhibit D-6). Additionally, the record contains historical surrogate values for HTS 71159010000 from Thailand (*see* Risen's January 2, 2020 SV Submission at Exhibit SV2-6); however, it does not contain the underlying import data. While the record contains import data of various specificity and from multiple sources, we note that the AUVs for a particular country are approximately the same regardless of specificity or source. The Malaysian AUVs are \$8,217/kg (GTA data for HTS 7115901000) and \$8,465.31/kg (UN Comtrade data for HTS 711590). The Malaysia import data for previous years for HTS 711590 are \$10,094/kg for 2017, \$8,217/kg for 2016, and \$8,217/kg for 2015, with the import quantities ranging from 44,469 kg to 56,023 kg. Similarly, the Mexican AUVs obtained from either the Trade Data Monitor or INEGI for HTS 71159099 are both \$123.35/kg. The AUVs for Brazil, Kazakhstan, and Russia, obtained from UN COMTRADE, are \$54.46/kg, \$221.50/kg, and \$5,968.82/kg, respectively. With respect to Romania, both the UN COMTRADE and EUROSTAT sources show no import quantities for HTS subheadings 711590 or 71159000, respectively.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

representative of a broad market average.<sup>95</sup> Commerce has also consistently found market purchase prices unsuitable as benchmarks because these prices are proprietary information of the respective companies and are not representative of industry-wide prices available to other producers.<sup>96</sup> Second, the *U.S. Department of Energy Solar Survey* cited by Risen does not specify the cost of silver paste, but instead groups the silver paste costs with many other costs.<sup>97</sup> Therefore, we do not find this survey useful for the purposes of determining the reasonableness of the Malaysia AUV.

Parties placed Thai,<sup>98</sup> Bulgarian, and Turkish import information on the record. However, these countries are not on the surrogate country list for this administrative review. Section 773(c)(4) of the Act requires Commerce to value the FOPs, to the extent possible, in a surrogate country that is (a) at a level of economic development comparable to the country being examined, and (b) a significant producer of comparable merchandise.<sup>99</sup> Thailand, Bulgaria, and Turkey's per capita GNI for 2017 are outside the GNI band of the countries on the surrogate country list.<sup>100</sup> Because these countries are not economically comparable to China, we have disregarded the import data from these countries.

While Risen requests that certain silver paste surrogate value information be disregarded because Commerce placed it on the record, Commerce may place information on the record,<sup>101</sup> and has done so in the past both before and after a preliminary decision.<sup>102</sup> Parties had an opportunity to comment on this surrogate value information in their case briefs. Thus, we have not disregarded this information or removed it from the record.

Lastly, as noted above, it is Commerce's well-established practice to rely upon the primary surrogate country for all surrogate values, whenever possible, and to only resort to a secondary surrogate country if data from the primary surrogate country are unavailable or unreliable.<sup>103</sup>

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<sup>95</sup> See *Solar Cells AR4 Final IDM* at Comment 9.

<sup>96</sup> See Petitioner's Rebuttal Brief at 30 (citing *Wood Flooring from China AR 11-12 IDM* at Comment 6).

<sup>97</sup> See Trina's SV Rebuttal at Exhibit 2.

<sup>98</sup> Risen only placed the overall AUV of Thai imports on the record but not the underlying Thai import data.

<sup>99</sup> See Policy Bulletin 04.1.

<sup>100</sup> See Commerce's Letter, "Antidumping Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information," dated July 31, 2019 at Attachment I.

<sup>101</sup> See Petitioner's Rebuttal Brief at 28 (citing *Definition of Factual Information and Time Limits for Submission of Factual Information*, 78 FR 21246, 21250 (April 10, 2013)).

<sup>102</sup> See *Drill Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances*, 76 FR 1965 (January 11, 2011), and accompanying IDM at 3; and *Certain Biaxial Integral Geogrid Products from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 82 FR 3284 (January 11, 2017), and accompanying IDM at 2).

<sup>103</sup> See 19 CFR 351.408(c)(2); and *Steel Wire Garment Hangers from the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the Second Antidumping Duty Administrative Review*, 76 FR 66903 (October 28, 2011), unchanged in *Steel Wire Garment Hangers from the People's Republic of China: Final Results*

Because Malaysia's AUV is comparable to that of Russia, represents a commercial quantity, is less than the historical Malaysia AUVs for the same HTS subheading, is from the primary surrogate country, and we do not find it unreliable, as explained above, we find it is the best information available for valuing silver paste.

### **Comment 3. The Appropriate Surrogate Value for Solar Glass**

*Risen and Trina:*

- Bulgarian and Romanian imports of solar glass under HTS 7007.19.80 (“solar glass consisting of tempered soda-lime-flat-glass. . . having no more than 4.5 millimeters (mm) of thickness”)<sup>104</sup> are more specific to the solar glass consumed by Risen and Trina than Malaysian imports under HTS 7007.19.9000 (“Toughened (Tempered) Safety Glass, Not Suitable For Incorporation In Vehicles, Aircraft, Spacecraft, Vessels, or Machinery Of Heading 84.29 Or 84.30), which is a general category for tempered safety glass.
- The quantity of imports under Malaysian HTS 7007.19.9000 is measured by square meters and the category has no indication of the thickness of the glass. Meanwhile, imports under Bulgarian and Romanian HTS 7007.19.80 are specific to the thickness of glass consumed by Risen<sup>105</sup> and Trina.<sup>106</sup> Solar glass is the thinnest type of tempered glass<sup>107</sup> and thus the broad Malaysian HTS 7007.19.9000, consisting of all types of tempered glass not classified in other HTS categories, covers glass far thicker than that used in the solar industry.<sup>108</sup>
- While Commerce considers several factors in selecting a SV, specificity is clearly the most critical component. The CIT has upheld this approach noting “in sum, ‘product specificity’ logically must be the primary consideration in determining ‘best available information.’ If a set of data is not sufficiently ‘product specific,’ it is of no relevance whether or not the data satisfy the other criteria set forth in Policy Bulletin 04.1.”<sup>109</sup>

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*and Final Partial Rescission of Second Antidumping Duty Administrative Review*, 77 FR 12553 (March 1, 2012); and *Certain Activated Carbon from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*; 2014-2015, 81 FR 62088 (September 8, 2016), and accompanying IDM at Comment 3.

<sup>104</sup> See Risen’s Case Brief at 24 (citing Risen’s January 2, 2020 SV Submission at Exhibit SV2-5).

<sup>105</sup> See Risen’s Case Brief at 24 (citing Risen’s Letter, “Risen First Supplemental Questionnaire Response,” dated September 12, 2019 (Risen’s September 12, 2019 SQR) at Exhibit SQ-29 (Risen Cost reconciliation) at Step 8.1 (showing the thickness of glass consumed by Risen is below 3.5 mm in thickness)).

<sup>106</sup> See Trina’s Case Brief at 11 (citing Trina’s Letter, “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People’s Republic of China: Response to Request for Surrogate Value Information,” dated September 15, 2019 (Trina’s September 15, 2019 SV Submission) at Exhibit 17).

<sup>107</sup> See Risen’s Case Brief at 11 (citing Risen’s September 12, 2019 SQR at Exhibit SQ-29 at Step 8.1 (showing the thickness of glass consumed by Risen is below 3.5 mm in thickness)).

<sup>108</sup> See Risen’s Case Brief at 11 (citing Risen’s January 2, 2020 SV Submission at Exhibit SV2-10, which contains the Chinese standard for tempered glass showing range of thickness from 3 mm to 19 mm) and Exhibit SV2-5 (showing comparison of Malaysian import quantities at the 6-digit HTS for solar glass in kg and square meters with a wide range of kg per square meter conversions, which thus demonstrate a wide range of thicknesses)).

<sup>109</sup> See Risen’s Case Brief at 24 (citing *Taian Ziyang*, 783 F. Supp. 2d at 1330; *Qingdao Sea-Line*, 766 F.3d 1378, 1386 (surrogate value selection justified where Commerce treated product-specificity as “more important factor”

- Commerce’s practice of removing from its SV calculations imports from non-market economies and countries with broadly available export subsidies, results in 99 percent of Malaysian imports of tempered glass being removed from the calculation of the SV. This extreme situation is not the case with imports of solar glass into Bulgaria and Romania, where only 20 and 2 percent, respectively, of imports were removed from consideration in the SV calculations.<sup>110</sup>
- The solar glass used by Trina is “coated glass” and “tempered glass.”

*Petitioner:*

- Commerce should value module glass using Malaysia import data which are specific to tempered glass, reliable, and accurate.
- Lacking any record evidence of the production of identical solar cells and modules in Bulgaria, there is no basis to conclude that the type of glass used in the production of solar modules was actually imported into Bulgaria under HTS 7007.19.80 – regardless of the specificity implied by the classification’s product description.
- Commerce noted in the *Preliminary Results* that because Malaysia, as opposed to the other countries on the surrogate country list, produced solar panels, this “supports the finding that Malaysian import data are of a higher quality because it is more likely these data are specific to the importation of the inputs actually used to produce subject merchandise.”<sup>111</sup>
- Thus, Malaysian import data for glass are specific, reliable and accurate, and the respondents have failed to demonstrate otherwise.

**Commerce’s Position:** In the *Preliminary Results* we used Malaysian imports of HTS 7007.19.9000 respondents’ tempered solar glass. For the final results, we have determined to instead value both respondents’ tempered solar glass<sup>112</sup> using Romania imports of HTS 7007.19.80.<sup>113</sup> As we noted above, Commerce evaluates surrogate value information in accordance with section 773(c)(1) of the Act, and selects the best available information from an

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than other criteria); *Ad Hoc Shrimp Trade Action Comm. v. United States*, 618 F.3d 1316, 1320 (Fed. Cir. 2010) (*Ad Hoc Shrimp*) (affirming selection of “product-specific data” as “best available information”); and *Certain Steel Threaded Rod from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 83800 (November 22, 2016) (*Threaded Rod from China*), and accompanying IDM at 8 (relying on Bulgaria as the primary surrogate country because it has greater specificity for diameter of the steel inputs).

<sup>110</sup> Trina notes that the Malaysia data is summarized based on the Preliminary SV Memorandum at Attachment 1; the Bulgaria data is summarized from Trina’s September 15, 2019 SV Submission at Exhibit 3A, 3B, and 3C; and the Romania data is summarized from Trina’s January 2, 2020 SV Submission at Exhibits 2 and 3. See Trina’s Case Brief at 11.

<sup>111</sup> See Petitioner’s Case Brief at 24 (citing *Preliminary Results* PDM at 18).

<sup>112</sup> Trina’s narrative submissions and specification sheets demonstrate that both its coated glass and tempered glass are solar tempered glass and we have referred to both inputs as solar tempered glass. See Trina’s DQR at 35-36 and Exhibits DA-19 and DA-20. Risen has also reported that its coated glass is tempered glass. See Risen’s DQR at Exhibit D-7.

<sup>113</sup> Because both the Romanian imports and respondents measure tempered solar glass in terms of weight, we have not addressed the arguments concerning the accuracy of the respondents’ reported square meter to kg conversions. As we noted above, Commerce evaluates surrogate value information on a case-by-case basis.

appropriate surrogate country to value FOPs. When selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, it is Commerce's practice to select surrogate values which, to the extent practicable, are product-specific, representative of a broad-market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties.<sup>114</sup> Moreover, it is Commerce's well-established practice to rely upon the primary surrogate country for all surrogate values, whenever possible, and to only resort to a secondary surrogate country if data from the primary surrogate country are unavailable or unreliable.<sup>115</sup> However, as the CIT noted in discussing the surrogate value selection criteria laid out in Policy Bulletin 04.1, "{a}ll of the criteria outlined in Policy Bulletin 04.1 may be important. But they are not equally important. As a matter of pure logic, first among them must be "product specificity."<sup>116</sup>

Bulgaria and Romania HTS 7007.19.80 covers tempered glass used in solar panels; the specific type of glass used by solar panel producers. In contrast, Malaysia HTS 7007.19.9000 is broader, covering all types of tempered glass other than automotive glass.

Bulgaria and Romania HTS 7007.19.80 is not only more specific to the type of glass used by solar panel producers than Malaysia HTS 7007.19.9000, but the quantities of imports under this HTS category are reported by weight,<sup>117</sup> which is how respondents reported their consumption of glass,<sup>118</sup> while the quantities of Malaysia tempered glass imports are reported in square meters. Record evidence indicates that the thickness, and thus weight, of a square meter of tempered glass varies.<sup>119</sup> While we could calculate the weight of the square meters of tempered glass

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<sup>114</sup> See, e.g., *Fuwei Films (Shandong) Co. v. United States*, 837 F. Supp. 2d 1347, 1350-51 (CIT 2012) (citing *Certain Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008), and accompanying IDM at Comment 10; *Electrolytic Manganese Dioxide from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 48195 (August 18, 2008), and accompanying IDM at Comment 2); and *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*; 2014-2015, 81 FR 62088 (September 8, 2016), and accompanying IDM at Comment 3.

<sup>115</sup> See 19 CFR 351.408(c)(2); *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*; 2014-2015, 81 FR 62088 (September 8, 2016), and accompanying IDM at Comment 3; and *Steel Wire Garment Hangers from the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the Second Antidumping Duty Administrative Review*, 76 FR 66903 (October 28, 2011); unchanged in *Steel Wire Garment Hangers from the People's Republic of China: Final Results and Final Partial Rescission of Second Antidumping Duty Administrative Review*, 77 FR 12553 (March 1, 2012).

<sup>116</sup> See *Taian Ziyang*, 783 F. Supp. 2d at 1330.

<sup>117</sup> See the Preliminary SV Memorandum at Attachment I.

<sup>118</sup> See Risen's September 12, 2019 SQR at Exhibit SQ-35; and Trina's Letter, "Crystalline Silicon Photovoltaic cells, Whether or Not Assembled Into Modules from the People's Republic of China: Section D Supplemental Questionnaire Response," dated January 28, 2020 at Exhibit 2.

<sup>119</sup> The thickness of Chinese tempered glass can range from 3 mm to 19 mm or more (see Risen's January 2, 2020 SV Submission at Exhibit SV2-10). UN COMTRADE data for Malaysia HTS 7007.19 shows weight variations from 2 to 153 kg per square meter (see Risen's January 2, 2020 SV Submission at Exhibit SV2-5). The petitioner also noted that the record shows significant differences in the weight of a square meter of tempered glass. See

imported into Malaysia using a single conversion factor (we need the weight of those imports in order to calculate a per-kg value to apply to each respondent's consumption of glass that was reported in kilograms), the calculated per-kilogram value would be an estimate, whereas, using Bulgaria or Romania imports of solar glass, we have the exact value per kilogram. This is another reason for finding Bulgaria and Romania are better SV sources for valuing glass than Malaysia.

While the petitioner argues that there is no information that either Bulgaria or Romania produce solar panels and therefore imports under Bulgaria and Romania HTS 7007.19.80 may not be glass for solar modules, the petitioner cited no evidence that the description of the category "tempered solar glass" is incorrect or that "solar glass" does not refer to glass used in solar modules. Even if the imports of tempered solar glass into Bulgaria and Romania were used in specialized solar products unlike the products produced by the respondents, the fact remains that the imports are described as "tempered solar glass" and the name itself indicates the glass is suitable for use in solar products, which would include use in solar modules. Thus, Bulgaria and Romania HTS 7007.19.80 is still more specific to the tempered solar glass consumed by Risen and Trina than Malaysian HTS 7007.19.9000, which covers all types of tempered glass, other than tempered glass for use in vehicles.

Although Commerce prefers to value all FOP in a single surrogate country, Commerce is also charged with calculating dumping margins using the best available information for valuing FOP. In this case, we have a value for glass on the record that is explicitly identified as solar glass. Given this exactness, and because Romania is on our list of surrogate countries but Bulgaria is not, we find Romania's imports of HTS 7007.19.80 are the best available information for valuing Risen and Trina's consumption of solar glass. Hence, we have used Romania imports of solar glass to value glass in the final results of this review.

#### **Comment 4. The Appropriate Surrogate Country**

In the *Preliminary Results*, Commerce selected Malaysia as the primary surrogate country.

*Risen and Trina:*

- Commerce should select Bulgaria as the primary surrogate country.
- Although Commerce selected Malaysia, rather than Bulgaria, as the primary surrogate country, Bulgaria is at the same level of economic comparability with China as Malaysia and Commerce failed to take into account other data considerations in comparing the Bulgarian and Malaysian SV information on the record.
- Commerce's surrogate country list includes Romania, with a per capita GNI \$1280 greater than that of China, while Bulgaria's per capita GNI was only \$930 less than

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Petitioner's Case Brief at 4-6).

China's GNI.<sup>120</sup> If the implied GNI band is equally applied above and below China's GNI, Bulgaria is economically comparable to China.

- In a new shipper review involving China, Commerce issued a list of surrogate countries with per capita GNIs ranging from \$3,420 to \$7,620; yet, the list included Romania with a GNI of \$8,420.<sup>121</sup> Similarly, in the instant review, Commerce must consider Bulgaria economically equal with the surrogate countries on the list.
- In this review Commerce issued a surrogate country list based upon 2017 GNI. However, the vast majority of the POR is in 2018. Bulgaria is on the surrogate country list that Commerce subsequently issued based on 2018 GNI. In a recent review where Commerce likewise issued the surrogate country list based on 2017 GNI, Commerce nevertheless found in the *Preliminary Results* of that review that countries on the 2018 and 2017 GNI lists would both be considered at the same level of economic development as China because the POR overlapped both 2017 and 2018.<sup>122</sup>
- The record contains evidence that Bulgaria is a producer of subject merchandise.<sup>123</sup>
- Malaysia imports for certain FOP are on a different quantity basis than reported by Risen, thereby requiring unit conversions that lessen accuracy. The Malaysian and Brazilian imports of frosted glass, diode, resin board, wood board, wooden case, wood corner, and wood pallet are reported on an M2 or piece basis.<sup>124</sup> Therefore, along with the two types of tempered solar glass, Malaysia provides less reliable import values for *nine* of Risen's inputs.
- If Commerce does not select Bulgaria as the primary surrogate country, it should select Romania as the primary surrogate country. The record contains Romania data to value Trina's factors of production, including a solar-glass specific tariff classification, and contemporaneous financial statements from two Romanian producers of comparable merchandise<sup>125</sup> that yield financial ratios similar to those used in the *Preliminary Results*.<sup>126</sup>
- For four of the most important inputs – backsheets, glass, aluminum frames, and EVA sheets, Commerce excluded between 60 to 99 percent of Malaysia POR imports from its

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<sup>120</sup> See Risen's Case Brief at 24; and Trina's Case Brief at 3-6 (citing Memorandum "Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information," dated July 31, 2020).

<sup>121</sup> See Risen's Case Brief at 22 (citing *Fresh Garlic from the People's Republic of China: Preliminary Results of the New Shipper Review of Jinxiang Merry Vegetable Co., Ltd. and Cangshan Qingshui Vegetable Foods Co., Ltd.*, 79 FR 28895 (May 20, 2014), and accompanying PDM at Comment F1, unchanged in *Fresh Garlic from the People's Republic of China: Final Results of the Semiannual Antidumping Duty New Shipper Review of Jinxiang Merry Vegetable Co., Ltd. and Cangshan Qingshui Vegetable Foods Co., Ltd.; 2012–2013*, 79 FR 62103 (October 16, 2014).

<sup>122</sup> See Risen's Case Brief at 23 (citing *Fresh Garlic from the People's Republic of China: Preliminary Results, Preliminary Rescission, and Final Rescission, In Part, of the 24th Antidumping Duty Administrative Review; 2017–2018*, 85 FR 2400 (January 15, 2020), and accompanying PDM at 28).

<sup>123</sup> See Trina's Case Brief at 8 (citing Trina's September 19, 2019 SV Submission at Exhibit 15).

<sup>124</sup> See Risen's Case Brief at n.26 (citing Petitioner's Letter, "Comments on Outstanding Conversion Factors," dated December 10, 2019).

<sup>125</sup> See Trina's Case Brief at 22 (citing Trina's January 2, 2020 SV Submission).

<sup>126</sup> *Id.* at 9.

SV calculation because they came from either NME countries or countries providing widely available export subsidies. On the other hand, only 20 percent or less of POR imports into Bulgaria and Romania for these inputs were from such excluded countries.<sup>127</sup>

*Petitioner:*

- The respondents would have Commerce adhere to a set GNI range or percentage GNI differential across cases. Yet, Commerce has found it inappropriate to establish a set GNI range where countries with per capita GNIs within the range are considered economically comparable to the NME country.<sup>128</sup>
- Commerce’s practice is to consider GNI information available to it at the time it issues the surrogate country list. For example, in *Frozen Fish Filets from Vietnam AR 11-12*, Commerce provided parties with a list of potential surrogate countries found to be economically comparable to Vietnam based on 2010 GNI data. Commerce rejected the most recent 2011 GNI data placed on the record later because it was not available at the time that Commerce constructed the surrogate country list for the review.<sup>129</sup>
- For Commerce to consider the 2018 GNI data at this late date in the review, as argued for by the respondents, would clearly create undue administrative difficulties and be unfair. Commerce seeks to avoid such problems by issuing the list of surrogate countries as early in the case as possible.
- Any decision to revise the surrogate list at this point is highly prejudicial to the petitioner.
- Consistent with practice, Commerce properly determined that Bulgaria is not at the same level of economic development as China, and it should continue to exclude Bulgaria from the surrogate country list. The respondents failed to establish that the list of potential surrogate countries is unreasonable or otherwise unreliable.
- Commerce’s practice is to value FOPs using data from one or more countries on the surrogate country list unless it determines that none of the countries at the same level of economic development as the NME country: (a) are significant producers of comparable merchandise, (b) provide sufficient reliable sources of publicly available SV data, or (c) are suitable based on other reasons.<sup>130</sup>
- Malaysia is a producer of both solar cells and solar modules – which supports the finding that Malaysia import data are of a higher quality than import data from the other potential surrogate countries.<sup>131</sup> Substantial evidence confirms that Bulgaria is a producer of non-comparable products.

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<sup>127</sup> See Trina’s Case Brief at 11.

<sup>128</sup> See Petitioner’s Case Brief at 13 (citing *Wooden Bedroom Furniture from the People’s Republic of China: Final Result of Antidumping Duty Administrative Review and New Shipper Review*, 73 FR 49162 (August 20, 2008) at 5).

<sup>129</sup> See Petitioner’s Case Brief at 15 (citing *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty New Shipper Reviews; 2011-2012*, 78 FR 39708 (June 24, 2013), and accompanying IDM at Comment 1.A).

<sup>130</sup> See Petitioner’s Case Brief at 18 (citing *Certain Activated Carbon from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review at 6-7 2013-2014*, 80 FR 61172 (October 9, 2015) at 6-7).

<sup>131</sup> See Petitioner’s Case Brief at 18 (citing *Preliminary Results PDM* at 18).

- Risen and Trina point only to the financial statements of New Energy Systems Ltd. (NES) – a Bulgarian producer of “solar and thermal energy products including photovoltaic modules” – as evidence that Bulgaria is a significant producer of identical merchandise. The record does not contain, and the respondents are unable to identify, any other evidence supporting the contention that Bulgaria is a significant producer of identical merchandise.
- The NES financial statements, however, indicate the company produces boilers and water heaters – merchandise that is not remotely comparable to subject solar cells or modules. The financial statements, as well as the company’s website, make clear that the company’s main activities are the “production of water heaters, boilers and collectors.”<sup>132</sup>
- Note 4 of NES’s financial statements contain a breakdown of revenues for 2018 that includes the line items: “Photovoltaic plant” and “Photovoltaic systems.”<sup>133</sup> Neither line item is described in more detail and there is no basis to conclude that either specifically includes revenues earned from the actual production of subject cells or modules.
- NES’s revenue from the sale of “photovoltaic systems” in 2018 was zero, and revenue from the sale of “photovoltaic plants” was a mere Bulgarian Lev (BGN) 285,000; only 0.76 percent of overall total revenue of BGN 37,515,000 for 2018.<sup>134</sup> The sale of non-photovoltaic goods —which includes water heaters, boilers, and collectors — accounted for 99.24 percent of total sales revenue.
- NES’s main product lines —boilers, water heaters, and collectors —are far less complex and vastly different in nature and production process than subject solar cells and modules. The respondents have provided no evidence to otherwise demonstrate comparability.
- On the other hand, the fact that Malaysia produces both solar cells and solar modules is evidenced not only by the surrogate company’s financial statements but also by production information published by the International Energy Agency (IEA), which demonstrates that Malaysia accounted for seven percent of global photovoltaic cell production and six percent of global module production in 2017. The IEA does not identify Bulgaria as specifically accounting for any share of global cell or module production.<sup>135</sup>
- Not valuing SVs using Malaysia because it may have less usable imports for certain inputs (*i.e.*, usable because they are from ME countries that did not receive broadly available export subsidies) ignores the fact that Commerce has long rejected the notion that SVs based on low volumes are inherently aberrational or otherwise unreliable.<sup>136</sup>

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<sup>132</sup> See Petitioner’s Case Brief at 20 (citing Trina’s September 19, 2019 SV Submission at Exhibit 14, n.1; and Petitioner’s Letter, “Information to Rebut, Clarify, or Correct Information Pertaining to Surrogate Values,” dated September 26, 2019 at Exhibit 1).

<sup>133</sup> *Id.* at n.4.

<sup>134</sup> *Id.*

<sup>135</sup> See Petitioner’s Case Brief at 21 (citing Petitioner’s Letter, “Comments on Surrogate Country Selection, dated August 26, 2019 (Petitioner’s SC Submission) at Exhibit 5).

<sup>136</sup> See Petitioner’s Case Brief at 23 (citing *OCTG from China* IDM at Comment 1 (citing *Trust Chern Co. v. United States*, 791 F. Supp. 2d 1257 (CIT 2011))).

- More importantly, given that Malaysia is the only producer of identical solar cells and modules, Malaysia import data are likely to reflect imports of the actual materials used to produce subject merchandise.

For arguments relating to surrogate country selection involving silver paste and tempered solar glass, *see* Comments 2 and 3 above.

**Commerce’s Position:** Commerce selects surrogate countries in NME cases by evaluating whether the potential countries are economically comparable to the NME country, whether they are significant producers of comparable merchandise, and the quality of their SV data.<sup>137</sup> We have continued to select Malaysia, which is economically comparable to China and a significant producer of comparable merchandise, as the primary surrogate country because of the quality and availability of its data. Among the countries for which SV data were submitted, including that of Romania and Bulgaria, Malaysia is the only country that is a producer of both solar cells and solar modules and it is the only country for which we have financial statements from a solar cell and solar module producer.

The importance we place on the fact that Malaysia produces solar cells and panels, and no other surrogate country does so, is that the surrogate data provided by Malaysia will consist of actual inputs used in producing subject merchandise, as opposed to the data of the other surrogate countries which have no reason to import inputs used specifically to produce solar cells and panels. While we have relied on more specific Romania data to value tempered solar glass, this is only one of approximately 200 inputs consumed by each of the mandatory respondents.<sup>138</sup> Meanwhile, all of the remaining import data coming from Malaysia may, because they would include the imports of the large Malaysian solar cell producer Hanwha QCells, who we are relying on for calculating surrogate financial ratios, the Malaysian data is more specific to inputs consumed by a solar cell producer. Further, the surrogate financial ratios account for over 30 percent of total normal value. Only by selecting Malaysia as the surrogate country, can we base these highly important surrogate financial ratios on an actual solar cell and panel producer, Hanwha QCells.<sup>139</sup> Thus, because the material inputs are at least in part based on import data that would include the solar cell and panel producer Hanwha QCells and the financial ratios are based solely on the experience of Hanwha QCells, and no other surrogate country, or Bulgaria, provides such data from a producer of solar cells and panels, the data quality for Malaysia is superior to any other country data on the record.

The respondents have not disputed the importance the surrogate country having a producer of subject merchandise signifies in selecting a surrogate country. Rather, the respondents have attempted to argue that Bulgaria also has a solar cell producer. However, the record evidence does not support their contention. The Malaysian company Hanwha QCells’ sole business line is

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<sup>137</sup> *See* Policy Bulletin 04.1

<sup>138</sup> *See* Preliminary SV Memorandum at Attachment II.

<sup>139</sup> *See* Memorandum “Final Results Surrogate Value Memorandum,” dated concurrent with this memorandum.

the production of solar cells and solar modules.<sup>140</sup> In contrast, the Bulgarian and Romanian companies for which financial statements are on the record do not produce solar cells or solar modules.<sup>141</sup> While respondents contend the Bulgarian company NES produces solar cells and that Bulgaria is a producer of the merchandise under consideration, NES's financial statements, the only documents on the record concerning the company, state that its main business lines involve water heaters, boilers, collectors, and trade in heating goods.<sup>142</sup> These financial statements, the English version of which is incomplete,<sup>143</sup> make no mention of anything related to solar cells.<sup>144</sup> Also, the petitioner noted that NES' revenue for sales of "photovoltaic systems" in 2018 is zero, and its revenue from the sale of "photovoltaic plants" is BGN 285,000, or approximately \$150,000.<sup>145</sup> This compares to its total 2018 revenue of BGN 37,515,000. While a small amount of NES' revenue involved "photovoltaic plants" there is no evidence that NES produced solar cells or solar modules in generating that revenue and we do not consider water heaters, boilers, collectors, and trade in heating goods to be comparable to solar cells and modules.

Further demonstrating that there are no solar cell producers in Bulgaria or Romania are surveys on the record by the International Energy Agency (IEA) and the U.S. Department Energy identifying solar cell and solar module producers. These surveys show that Malaysia accounted for seven percent of global 2017 photovoltaic cell production and six percent of global solar module production.<sup>146</sup> Bulgaria and Romania were not identified as countries producing solar cells or solar modules in either survey.<sup>147</sup>

We are similarly unconvinced by Risen's and Trina's other contentions that the data of Bulgaria or Romania are of higher quality for determining the normal value of solar cell producers. Risen contends that the need to convert certain Malaysian import quantities in square meters or pieces (frosted glass, diodes, resin boards, wood boards, wooden case, wood corners, and wood pallets) into kilograms (its unit of consumption) makes the resulting SVs less accurate than using Bulgaria and Romania imports in kilograms. While we agree with this proposition with respect to tempered glass, as explained above, Risen has not demonstrated why conversions of the remaining seven inputs are inaccurate. Also, tempered glass aside, all seven inputs with

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<sup>140</sup> See Risen's January 2, 2020 SV Submission at Exhibit SV2-8 which identifies the production of Hanwha QCells as: "The principal activities of the Company are those relating to design, development and manufacture of silicon photovoltaic wafers, cells and modules."

<sup>141</sup> See Trina's September 19, 2019 SV Submission at Exhibit 14; and Trina's January 2, 2020 SV Submission at Exhibits 10 and 11.

<sup>142</sup> *Id.*

<sup>143</sup> See Trina's September 19, 2019 SV Submission at Exhibit 14. The last page with printing ends at n.2.20.

<sup>144</sup> See Trina's September 19, 2019 SV Submission at Exhibit 14.

<sup>145</sup> See Petitioner's Rebuttal Brief at 21 (citing Trina's September 19, 2019 SV Submission at Exhibit 14, n.4). The English version of this note is not on the record. The last page with printing on it of the English version of the financial statements ends at n.2.20. The pages thereafter are blank.

<sup>146</sup> See Petitioner's SC Submission at Exhibit 5.

<sup>147</sup> *Id.*

Malaysian GTA import quantities reported in units other than weight are minor inputs accounting for a relatively small portion of normal value.<sup>148</sup>

Trina questions the quality of Malaysia SV data for what it claims are three of the most important inputs: backsheets, aluminum frames, and ethylene-vinyl acetate (EVA) sheets.<sup>149</sup> Its concern arises because more Malaysia imports are excluded from the SV calculations for these inputs than is the case for Bulgaria and Romania because the imports are from NME countries and countries with subsidies (India, Indonesia, South Korea and Thailand). However, Trina provided no explanation why the remaining Malaysia imports of 400,000 kg of backsheets consisting of PET, 700,000 kg of aluminum frames, and 18,000,000 kg of EVA sheet, valued at Malaysian Ringgit (RM) of 3,000,000, RM5,000,000, and RM50,000,000, respectively,<sup>150</sup> would result in distorted valuations. The quantities of these imports are between 200 and 500 times greater than the quantity of the corresponding Bulgarian imports and of a similarly greater magnitude than the quantity of the corresponding Romanian imports.<sup>151</sup> Additionally, Trina's claim of the importance of these inputs, which is based on the fact that they represent the majority of the weight of inputs, is misleading. By any reasonable measurement, polysilicon is the most important input used in solar modules. In addition to the purchase cost, the processing of polysilicon into wafers is also extremely costly. These facts are emphasized in the *U.S. Department of Energy Solar Survey* placed on the record by Trina.<sup>152</sup>

Trina argues that Hanwha QCells' financial statements are unusable because the nature of RM 1,752,328,000 of its costs, which account for over 80 percent of Hanwha QCells' total costs, are not identified. As explained in Comment 11 below, although Trina claims certain details regarding the costs included in the costs of goods sold are unknown, Hanwha QCells' financial statements identify RM1,648 million of the costs included in the cost of sales as inventory costs and we were able to conclude that the remaining costs are overhead costs. Thus, we continue to find Hanwha QCells' financial statements to be reliable and the only financial statements on the record from a producer of solar cells and panels.

For the reasons detailed above, we have selected Malaysia as the surrogate country. Despite it not being on the surrogate country list, as detailed above, we considered the selection of Bulgaria and conclude that the record lacks concrete evidence to support its selection. In contrast to Malaysia, the record lacks surrogate financial information for a Bulgarian producer of subject merchandise and lacks financial information for any company in Romania. Further, the record contains evidence that no solar cells are produced in Bulgaria or Romania. Thus, not only does

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<sup>148</sup> See the calculation of normal value for each respondent in the Memoranda, "Final Analysis Memorandum for Risen Energy Co., Ltd.," dated concurrently with this memorandum (Risen's Final Analysis Memorandum); and "Final Analysis Memorandum for Trina Solar Co., Ltd.," dated concurrently with this memorandum (Trina's Final Analysis Memorandum).

<sup>149</sup> We addressed Trina's arguments regarding tempered glass in Comment 3.

<sup>150</sup> See Preliminary SV Memorandum at Attachment I.

<sup>151</sup> See Trina's Case Brief at 12.

<sup>152</sup> See Trina's SV Rebuttal at Exhibit 2.

Malaysia provide more accurate surrogate financial information, but because Malaysia has a producer of solar cells that could be importing inputs actually used in the production of solar cells while Bulgaria and Romania do not, it is more likely the Malaysian import data are specific to the inputs that we are valuing.<sup>153</sup> Therefore, we continue to find Malaysia to be the appropriate surrogate country based on the quality and availability of its data.

#### **Comment 5. The Appropriate Surrogate Value for Ocean Freight**

In the *Preliminary Results*, we valued ocean freight expenses incurred to ship subject merchandise from China to the United States' west coast using Descartes data for 40 foot containers and to the United States' east and gulf coasts using Descartes data for 20 foot containers.<sup>154</sup>

#### *Petitioner:*

- Commerce should value ocean freight expenses using route-specific Maersk rates.
- Although Commerce preliminarily rejected the Maersk rates because the petitioner treated the rates as proprietary information, Commerce has long used route-specific Maersk rates to value ocean freight, even when they were provided as proprietary information.<sup>155</sup>
- Commerce has recognized that Maersk rates are publicly available. However, the petitioner reported the route-specific Maersk rates as proprietary information because Risen and Trina treat their specific ocean freight routes and container sizes as proprietary information.
- At a minimum, Commerce should calculate the SV for ocean freight expenses using the Maersk rates submitted as public data, even though these data are for ocean freight routes between China and the United States that are not specific to the actual routes used by Risen and Trina.
- Maersk data on the record contain a sufficient number of ocean freight rates and more accurate and specific than other potential ocean freight SVs on the record because

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<sup>153</sup> See *Preliminary Results* PDM at 18.

<sup>154</sup> See Risen's Preliminary Analysis Memorandum at 4 and Attachment II, and "Preliminary Analysis Memorandum for Trina Solar Co., Ltd.," dated January 31, 2020 (Trina's Preliminary Analysis Memorandum) at 4 and Attachment II.

<sup>155</sup> See Petitioner's Case Brief at 11 (citing *AR5 Final* IDM at Comment 16; and Petitioner's January 2, 2020 SV Submission at Exhibit 6 and 8).

Maersk rates reflect shipments of products in the same container size used by the respondents.

- The components of the Xeneta freight rates are not identified, which prevents the rates from being adjusted to exclude non-freight fees and charges, and results in double-counting US brokerage expenses.<sup>156</sup>

*Trina:*

- Commerce should use Xeneta freight rates to value ocean freight expenses as the Xeneta represents the broadest source of information on the record and it is as reliable as Descartes data.
- Xeneta data includes freight rates for every day of the POR for each of the three specific shipping routes, and the dry 40-foot containers, used by Trina.
- Commerce preliminarily did not use Xeneta rates to value ocean freight expense because the product shipped is not indicated. However, nothing on the record indicates that the product being shipped is a relevant factor in determining broad market-average freight rates for shipments in dry 40-foot containers.
- Commerce previously found that the type of product shipped is not relevant when selecting surrogate freight rates. In a July 2018 remand determination, Commerce concluded that it “strained credulity” to believe “that entering a commodity code in the Maersk price quote system for a general query of freight costs between the two cities draws upon actual underlying transaction data for producers of that commodity.”<sup>157</sup>
- Commerce should not use the petitioner’s “Maersk data” to value ocean freight expenses because the purported Maersk information on the record is not a direct extract or copy of Maersk-sourced data. Thus, the record lacks any Maersk data.
- Maersk data is not as broad as Xeneta or Descartes data but only covers freight rates for four days in four different months of the POR. Xeneta data covers nearly every day of the POR for each of the specific routes used by Trina. The Xeneta rates are also specific to dry 40-foot containers.
- Descartes data are not as broad as Xeneta data, but do cover a large breadth of rates for all of Trina’s shipping routes.

*Risen:*

- Descartes data should be used to value ocean freight expenses as they are public data, specific to electrical goods, reported on a daily basis, and cover a wide range of shipping routes, including Risen’s primary ocean freight routes.
- Maersk data are incomplete and wholly unusable for valuing ocean freight expenses. The Maersk data do not provide rates for exact freight routes. Also, the petitioner merely supplied an Excel spreadsheet of prices claimed to be the rates associated with a specific

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<sup>156</sup> See Petitioner’s Rebuttal Brief at 35 (citing *Solar AR4 Final IDM* at Comment 8).

<sup>157</sup> See Trina’s Case Brief at 36 (citing Final Results of Redetermination Pursuant to Court Remand, *Qingdao Qihang Tyre Co., Ltd., et al. v. United States*, Consol. Court No. 16-00075; Slip Op. 18-35 (CIT 2018), (July 25, 2018) at 18).

container size of electrical goods, without any information on Risen’s routes or any information directly from Maersk.com. Maersk ocean freight rates are over twice as high as the Xeneta and Descartes rates. Descartes was preferred by Commerce over Maersk data in valuing ocean freight expenses in the last review of this order.

**Commerce’s Position:** We continue to find Descartes data to be the best available information on the record for valuing ocean freight expenses. The record comprises the following data for valuing ocean freight expense: (1) Descartes data for 20 foot and 40 foot dry containers shipped to both the West and East coasts of the United State;<sup>158</sup> and 20 foot dry containers shipped to the West Coast;<sup>159</sup> (2) Xeneta data for 40 foot high cube containers shipped to both the West and East coasts of the United States;<sup>160</sup> and (3) Maersk data treated as business proprietary information (BPI);<sup>161</sup> and a list of Maersk rates (public information) with no supporting documentation.<sup>162</sup> We address each of these data sources below.

The Maersk rates cited by the petitioner are not usable because they are merely lists of rates in a spreadsheet for which the petitioner has not provided any supporting data.<sup>163</sup> Further, Policy Bulletin 04.1 Commerce explains that

in assessing data and data sources, it is Commerce’s stated practice to use investigation or review period-wide price averages, prices specific to the input in question, prices that are net of taxes and import duties, prices that are contemporaneous with the period of investigation or review, and *publicly available data*. {(emphasis added)}.<sup>164</sup>

The Xeneta data are not the best available information on the record for valuing ocean freight expenses because they are not as specific as other data on the record. Xeneta rates are not for shipping a specific type of commodity (and whether it is a hazardous material) in a specific type of container.<sup>165</sup> This contrasts with the Descartes data which identifies the specific type of commodity to be shipped, the container type as “PC” (dry container), the hazard code as “NHZ” (non-hazardous container), and the controlled temperature as “N/A” (not applicable).<sup>166</sup>

Factors such as the container type, whether the container is temperature controlled, and whether the container is suitable for transporting hazardous goods can affect the ocean freight rate. Each

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<sup>158</sup> *Id.* at Exhibit 21.

<sup>159</sup> See Risen’s January 2, 2020 SV Submission at Exhibit SV2-9.

<sup>160</sup> See Trina’s January 2, 2020 SV Submission at Exhibit 20.

<sup>161</sup> See Petitioner’s September 19, 2019 SV Submission at Exhibit 13A.

<sup>162</sup> *Id.* at Exhibit 13B.

<sup>163</sup> This submission does not contain any information concerning the source of the rates cited in spreadsheet. See Petitioner’s September 19, 2019 SV Submission at Exhibit 13A and 13B

<sup>164</sup> See Policy Bulletin 04.1.

<sup>165</sup> See Trina’s January 2, 2020 SV Submission at Exhibit 20.

<sup>166</sup> See Trina’s January 2, 2020 SV Submission at Exhibit 21; and Risen’s January 2, 2020 SV Submission at Exhibit SV2-9.

of these items are part of the standardized terms established by the U.S. Federal Maritime Commission to describe shipping conveyances for setting ocean freight and other transportation tariffs.<sup>167</sup> Moreover, the fact that the types of shipping containers/equipment used can affect shipping costs is supported by Xeneta compilation of shipping rates, “per route, per day, *per equipment*” (emphasis added).<sup>168</sup> Yet the Xeneta rates are averages of shipment rates that may involve various types of equipment. The exact type of equipment used in the shipments whose rates are averaged is not known.

Specificity is one of the most critical criteria in selecting surrogate values.<sup>169</sup> The CIT noted that “in sum, ‘product specificity’ logically must be the primary consideration in determining ‘best available information.’ If a set of data is not sufficiently ‘product specific,’ it is of no relevance whether or not the data satisfy the other criteria set forth in Policy Bulletin 04.1.”<sup>170</sup> Hence, we find it reasonable to select an ocean freight SV that specifies the same type of goods shipped and containers used by Risen and Trina, rather than selecting an ocean freight SV that could reflect, in part, rates for goods and shipping containers unlike those shipped or used by Risen and Trina.

While for certain routes the Xeneta data are for 40 foot containers, while the Descartes data for these routes are only for 20 foot containers, because the Descartes data are more specific with respect to numerous shipping characteristics (container type, whether the container is temperature controlled, whether the container is suitable for transporting hazardous goods, and packaging type), we find the Descartes data to provide the best available information on the record for valuing ocean freight expenses. As noted by the CIT:

Commerce values the factors of production in a non-market economy “based on the best available information regarding the values of such factors in a market economy country.” 19 U.S.C. § 1677b(c)(1) (1994). Since the statute does not specify what constitutes the best available information, these decisions are within Commerce’s discretion. Accordingly, Commerce need not prove that its methodology was the only way or even the best way to calculate surrogate values for factors of production as long as it was reasonable.<sup>171</sup>

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<sup>167</sup> See the U.S. *Code of Federal Regulations* at 46 CFR, Part 520 – CARRIERS AUTOMATED TARIFFS, of the U.S. Federal Maritime Commission Regulations, Appendix A to Part 520 Standard Terminology and Codes.

<sup>168</sup> See Trina’s January 2, 2020 SV Submission at Exhibit 20.

<sup>169</sup> See *Taian Ziyang*, 783 F. Supp. 2d at 1330; and *Qingdao Sea-Line*, 766 F.3d 1378, 1386 (surrogate value selection justified where Commerce treated product-specificity as “more important factor” than other criteria); *Ad Hoc Shrimp*, 618 F.3d 1316, 1320 (affirming selection of “product-specific data” as “best available information”); *Threaded Rod from China* IDM at 8 (relying on Bulgaria as the primary surrogate country because it has greater specificity for diameter of the steel inputs).

<sup>170</sup> See *Taian Ziyang* at 783 F. Supp. 2d at 1330; see also *Qingdao Sea-Line*, 766 F.3d at 1386 (surrogate value selection justified where Commerce treated product-specificity as “more important factor” than other criteria); *Ad Hoc Shrimp*, 618 F.3d 1316, 1320 (affirming selection of “product-specific data” as “best available information”); *Threaded Rod from China* IDM at 8 (relying on Bulgaria as the primary surrogate country because it has greater specificity for diameter of the steel inputs).

<sup>171</sup> See *Shandong Huarong General Corp. v. United States*, 159 F. Supp. 2d 714, 721 (CIT 2001).

Thus, we have continued to value NME ocean freight expenses incurred by Risen and Trina using Descartes data.

Lastly, in our preliminary calculation of ocean freight expenses using the Descartes data, we inadvertently included some rates for shipments of products that were not electronic goods. We have corrected this error and excluded these rates from our calculations for the final results of review.<sup>172</sup>

## **Comment 6. Selection of Surrogate Financial Statements**

In the Preliminary Results, Commerce used Hanwha QCells' financial statements to calculate surrogate financial ratios because they are the only financial statements on the record for a producer of solar cells and solar modules in the primary surrogate country, Malaysia.

### *Petitioner:*

- Commerce's practice is to calculate financial ratios from nonproprietary, complete financial statements showing a profit, contemporaneous with the data used to calculate SVs for factors of production, gathered from producers of identical and/or comparable merchandise in the surrogate country.<sup>173</sup>
- Where two or more financial statements are usable, Commerce calculates financial ratios using multiple financial statements in order to derive ratios that are representative of a broader segment of the industry.<sup>174</sup>
- Commerce should have calculated financial ratios using Hanwha QCells' financial statements as well as the financial statements of the other four Malaysian producers of semiconductor components and circuit boards, which Commerce has determined are comparable to subject merchandise.

### *Trina:*

- Each of the five Malaysian financial statements advocated for by the petitioner are missing details that render their financial ratios less accurate than the financial ratios derived from the audited financial statements of NES, a Bulgarian producer of solar and thermal energy products including photovoltaic modules.
- None of the Malaysian financial statements identify energy expenses. Commerce's practice is to not rely on financial statements where the statement is not sufficiently detailed such that energy expense is expressed separately.
- None of the Malaysian financial statements itemize all costs so that they can be properly categorized in calculating financial ratios. The costs that are not itemized, which are

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<sup>172</sup> See Risen's Final Analysis Memorandum; and Trina's Final Analysis Memorandum.

<sup>173</sup> See Petitioner's Case Brief at 8 (citing *Solar AR4 Final IDM* at Comment 10).

<sup>174</sup> *Id.* (citing *Jiaxing Brother*, 11 F. Supp. 3d 1326, 1331, *aff'd*, *Jiaxing Brother Fastener Co. v. United States*, 822 F.3d 1289 (Fed. Cir. 2016); and *Dupont Teijin Films v. United States*, 997 F. Supp. 2d 1338, 1346 (CIT 2014)).

significant, can only be arbitrarily assigned to cost of manufacturing, manufacturing overhead, or selling, general, and administrative expenses.

- Four of the Malaysian financial statements advocated for by the petitioner appear to be for service providers rendering services related to comparable merchandise rather than producers of comparable merchandise.
- Neither case cited by the petitioner supports the contention that Commerce has a preference for calculating financial ratios using multiple financial statements when some statements are from producers of only comparable merchandise while others are from producers of identical merchandise. Commerce prefers to calculate financial ratios using financial statements of producers of identical merchandise over statements from companies that produce only comparable merchandise.<sup>175</sup>

**Commerce's Position:** We have continued to calculate financial ratios solely using data from Hanwha QCells' financial statements because it is the best information available. Pursuant to 19 CFR 351.408(c)(4), Commerce values overhead, general and administrative (G&A) expenses, and profit using publicly available information gathered from producers of identical or comparable merchandise in the surrogate country. Commerce is required by section 773(c)(1) of the Act to use the best available information from an ME country when calculating surrogate financial ratios. Commerce determines which information is the best available information for calculating financial ratios, based on, among other things, the specificity, contemporaneity, and quality of the data (*e.g.*, financial statements that show a profit and that are not distorted or otherwise unreliable, such as financial statements that are distorted by subsidies).<sup>176</sup>

Commerce's *Notice of Proposed Rulemaking* states:

Given the importance of manufacturing overhead, general expenses and profit in the calculation of normal value, {Commerce} believes it is important to seek information that is as accurate as possible. To this end, paragraph (c)(4) expresses a preference for using non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country for valuing manufacturing overhead, general expenses and profit. Because {Commerce} expects that these elements will vary widely across industries, we will attempt to obtain data that is as specific as possible to the subject merchandise.<sup>177</sup>

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<sup>175</sup> See Trina's Rebuttal Case Brief at 6 (citing *Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 68568, (Dec 28, 2009) (*Folding Metal Tables*), and accompanying IDM at Comment 1 (explaining, "Meco is correct that {Commerce} has a preference to use the most specific data and prefers producers of identical merchandise to those of similar or comparable merchandise."))

<sup>176</sup> See *Hand Trucks and Certain Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*; 2010-2011, 78 FR 28801 (May 16, 2013), and accompanying IDM at Comment 2; and *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China; 2010-2011; Final Results of Antidumping Duty Administrative Review*, 78 FR 5414 (January 25, 2013), and accompanying IDM at Comment 1.

<sup>177</sup> See *Notice of Proposed Rulemaking and Request for Public Comments: Antidumping Duties; Countervailing Duties*, 61 FR 7308 (February 27, 1996) (*Notice of Proposed Rulemaking*).

Hence, when selecting surrogate financial statements, Commerce prefers financial statements from companies that produce identical merchandise over companies that produce comparable merchandise provided that the surrogate value data are not distorted or otherwise unreliable, because it is Commerce's preference to match the surrogate companies' production experience with respondents' production experience.

Therefore, we have continued to calculate financial ratios solely using data from Hanwha QCells' financial statements because Hanwha QCells produces both solar cells and panels, while the other companies which the petitioner advocates we use do not produce solar cells or panels. The petitioner did not provide support for using financial statements of producers of comparable merchandise to calculate financial ratios when the financial statements of producers of identical merchandise are on the record. As noted in Commerce's *Notice of Proposed Rulemaking*, specificity is an overriding criterion when choosing surrogate financial data.<sup>178</sup> Thus we continue to find Hanwha QCells' financial statements to be the best information available for valuing financial ratios.<sup>179</sup> The petitioner has failed to demonstrate why financial data from companies producing non-subject merchandise is better information than financial data from a company that produces subject merchandise (solar cells and panels) which has more specific data than data from companies that do not produce solar cells or panels. Consequently, we have not changed our approach from the *Preliminary Results*. We addressed Trina's comments in Comment 4 above.

#### **Comment 7. The Appropriate Surrogate Value for Aluminum Frames**

*Petitioner:*

- Commerce should value aluminum frames using Malaysia HTS 7616.99 (Articles Of Aluminum, Nesoi) rather than Malaysia HTS 7604.29.1000 (Aluminum alloy bars, rods and profiles, other, other than hollow profiles, extruded bars and rods) because solar frames are fabricated aluminum products rather than aluminum products to be fabricated.
- Risen purchased finished frames for the production of solar modules; thus, indicating its aluminum frames were processed to such an extent that they should be valued using HTS classification 7616.99. The specifications for Trina's frames also indicate value was added.<sup>180</sup>
- Evidence indicates that producing an aluminum frame from an aluminum extrusion requires a level of processing that justifies having the processing performed by a different entity. The record also indicates that one such entity, Twinsel, had yield loss when processing the frames, and reported aluminum scrap resulting from frame production.<sup>181</sup>

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<sup>178</sup> See *Notice of Proposed Rulemaking* 61 FR 7308; and *Taian Ziyang*, 783 F. Supp. 2d at 1330.

<sup>179</sup> See *Folding Metal Tables* IDM at Comment 1 (explaining, "Meco is correct that {Commerce} has a preference to use the most specific data and prefers producers of identical merchandise to those of similar or comparable merchandise.")

<sup>180</sup> See Petitioner's Case Brief at 23 (citing Trina's DQR at Appendix XII at DA-16).

<sup>181</sup> See Petitioner's Case Brief at 22 (citing Risen's DQR at Appendix XII at 18, 29).

- Numerous U.S. Customs and Border Protection (CBP) rulings indicate that further fabrication makes aluminum products more than simple aluminum extrusions under HTS 7604. A prior mandatory respondent in this proceeding, Wuxi Suntech, obtained a binding CBP tariff classification ruling of HTS 7616.99 for its frames.<sup>182</sup>

*Risen and Trina:*

- Value Trina’s frames using Malaysia HTS 7604.29. The petitioner’s argument has been rejected by Commerce in six different segments across two different proceedings.
- Commerce’s SV selection for aluminum frames has been sustained by the CIT and the CAFC<sup>183</sup> and nothing has changed since those decisions that would warrant a different determination.
- The CBP rulings relied on by the petitioner have previously been considered and found unpersuasive by Commerce and the CAFC.<sup>184</sup>
- Commerce should again reject the petitioner’s argument and value aluminum frames using Malaysian HTS 7604.29.

*Risen:*

- Risen’s aluminum frames are made of extruded non-hollow alloy aluminum and have undergone some additional processing. Thus, they should be classified under Malaysian HTS 7604.29.9000 (“aluminum extrusion profile, not hollow, cut to fixed lengths, alloy, other than extruded bars and rods and y-shaped profiles for zip fasteners”) rather than Malaysia HTS 7604.29.1000 which covers aluminum extrusions.
- The processing that Risen itself performs on aluminum extrusions in order for them to be used as frames in solar panels is minor.<sup>185</sup> This indicates that only minor processing of aluminum profiles is required to produce the aluminum frames that Risen purchases and does not process before using them in modules.
- Confronted with the same facts in the previous review, Commerce valued both Risen’s aluminum frames and extrusions using HTS 7604.29.<sup>186</sup> No facts have changed since then.

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<sup>182</sup> See Petitioner’s Case Brief at 21 (citing, *e.g.*, *AR4 Final Results* at Comment 7).

<sup>183</sup> See Risen’s Rebuttal Brief at 14-15 (citing *Solar Cells AR1 Final IDM* at Comment 36; *Solar Cells AR2 Final IDM* at Comment 8; *Solar Cells AR3 Final IDM* at Comment 10; *Solar Cells AR4 Final IDM* at Comment 7; *Solar Cells AR5 Final IDM* at Comment 8; *Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 76970 (December 23, 2014) (Solar Products Final Determination, and accompanying IDM at Comment 9; *SolarWorld Ams., Inc. v. United States*, 910 F. Supp. 3d 1216, 1222-25 (Fed. Cir. 2018) (*SolarWorld*); and *Jiangsu Jiasheng Photovoltaic Technology Co., Ltd. v. United States*, 28 F. Supp. 3d 1317, 1335-1338 (CIT 2014) (*Jiangsu Jiasheng*)).

<sup>184</sup> See Risen’s Rebuttal Brief at 14-15 (citing *SolarWorld* 910 F. Supp. 3d 1216,1224-25).

<sup>185</sup> See Risen’s Rebuttal Brief at 16 (citing Risen’s DQR at Appendix XII, 3-36 and Exhibit D-34; Risen’s September 12, 2019 SQR at 16-17, 39; Risen’s 3rd SQR at 20-21; See also Risen’s Submission, “Risen Fifth Supplemental Questionnaire Response,” dated January 14, 2020 at 4-5).

<sup>186</sup> See Risen’s Rebuttal Brief at 15 (citing *Solar Cells AR5 Final IDM* at Comment 8).

**Commerce’s Position:** In identifying the best available surrogate value information, Commerce weighs available information on the record and makes a product-specific and case-specific decision as to what constitutes the “best available information” for a surrogate value for each input.<sup>187</sup> We find that Malaysian HTS 7604.29.1000 (Aluminum alloy bars, rods and profiles, other, other than hollow profiles, extruded bars and rods) provides the best available information for valuing Risen and Trina’s aluminum frames and extrusions because this HTS category covers imports more specific to the input in question than HTS 7616.99 (Articles Of Aluminum, Nesoi) and, as explained below, HTS 7604.29.1000 can cover fabricated aluminum products.

We determine that HTS 7604.29 is a better category because it expressly covers non-hollow aluminum profiles used by Risen and Trina, while HTS 7616 covers items that are dissimilar to the non-hollow, aluminum profiles.<sup>188</sup> Specifically, HTS 7616 covers items which include “nails, tacks, staples, screws, bolts, nuts, screw hooks, rivets, cotters, cotter pins, washers, knitting needles, bodkins, crochet hooks, embroidery stilettos, safety pins, other pins and chains, and cloth, grill and netting of aluminum wire.”<sup>189</sup> The description for HTS 7616 does not refer to items similar to the aluminum profiles that were further processed into frames and thus does not provide an accurate valuation of the aluminum profiles in question.

The petitioner argues that aluminum frames for modules are not covered by HTS 7604 because the frames are further processed finished products whereas HTS 7604 only covers aluminum profiles that are unfinished. According to the petitioner, finished aluminum profiles do not fit in any other HTS category; thus, they should be valued using the catch-all category HTS 7616, which covers aluminum articles not elsewhere specified or indicated. We disagree with both points.

First, simply because an item is identified as an aluminum profile, which is a product covered by HTS 7604.29, does not mean that it has not been further processed. The U.S. International Trade Commission (ITC) stated that the term “profile” can be applied to goods “which have been subsequently worked after production.”<sup>190</sup> Commerce noted in the *Solar Products Investigation Final* that the “ITC definition of aluminum profiles . . . indicates that profiles may be cast, sintered, and worked after production.”<sup>191</sup> This issue has been litigated. In sustaining Commerce’s prior determination on aluminum profiles, the CIT stated that HTS 7604 “includes aluminum bars, rods, and profiles, and products that have been *subsequently worked after production*. . . provided that they have not thereby assumed the character of articles or products

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<sup>187</sup> See *Narrow Woven Ribbons With Woven Selvedge from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 41808 (July 19, 2010), and accompanying IDM at Comment 2; see also *Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part; 2010-2011*, 78 FR 22513 (April 16, 2013), and accompanying IDM at Comment 5.A.

<sup>188</sup> See Trina’s DQR at Appendix XII 32; see also Risen’s DQR at Exhibit D-7.

<sup>189</sup> See, e.g., descriptions of items contained under HTS 7616 listed in *Solar Cells Investigation Final* and accompanying IDM at Comment 16, and *Solar Cells AR3 Final* and accompanying IDM at Comment 10.

<sup>190</sup> See *Solar Cells AR3 Final* IDM at Comment 10.

<sup>191</sup> See *Solar Products Investigation Final* IDM at Comment 9.

of other headings” (emphasis added).<sup>192</sup> Thus, Commerce has previously found, and the CIT has sustained a finding, that aluminum profiles used for aluminum frames in solar modules could have been further processed.

Second, record information does not indicate that aluminum profiles that have been finished or further processed are not covered by HTS 7604.29. Commerce previously stated:

While other HTS categories identify whether they contain finished or unfinished items, HTS 7604 does not specify whether it contains finished or unfinished aluminum profiles.<sup>193</sup>

Even though the petitioner argues that the coating, sawing, hole punching and other processing described by respondents<sup>194</sup> transform the aluminum into something far different than simple extruded aluminum, it provided no support for its claim that such processing would cause aluminum frames to be classified under HTS 7616.99 or more significantly, would add significant costs to the unprocessed aluminum. Thus, we disagree with the petitioner’s conclusion that aluminum profiles that were further processed would not typically be classified under HTS 7604 or that such profiles would necessarily be classified under HTS 7616.

While the petitioner cited CBP rulings to support its position, Commerce is not bound by CBP rulings regarding U.S. imports when selecting import values from surrogate countries but, instead, must select the best available information on the record to value the FOP.<sup>195</sup> Although CBP ruled in one case that aluminum frames used to produce solar panels should be classified under HTS 7616.99 (articles of aluminum, not elsewhere specified or indicated),<sup>196</sup> this is an “other” category covering articles of aluminum not already identified elsewhere in the HTS. Alloyed aluminum profiles, of the type used in solar cells and modules, are already identified elsewhere in the HTS; specifically, they are identified under HTS 7604. Additionally, CBP did not explain in the referenced ruling why the frames at issue should be classified under HTS 7616.99.<sup>197</sup> Absent an explanation, we are unable to weigh the ruling against record evidence supporting Commerce’s use of an HTS category different from the one identified in the ruling.

Risen argues that its aluminum frames should be classified under Malaysia HTS 7604.29.9000 rather than HTS 7604.29.1000 because its aluminum frames were further processed and HTS

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<sup>192</sup> See *Jiangsu*, 28 F. Supp. 3d at 1337 (quoting World Customs Organization, Harmonized Commodity Description and Coding System Explanatory Notes 76.04 (5th ed. 2012)).

<sup>193</sup> See *Solar Cells Investigation Final IDM* at Comment 16; see also *Solar Cells AR1 Final IDM* at Comment 36; *Solar Cells AR2 Final IDM* at Comment 8; *Solar Cells AR3 Final IDM* at Comment 10; *Solar Cells AR4 Final IDM* at Comment 1; and *Solar Cells AR4 Final IDM* at Comment 8.

<sup>194</sup> See Petitioner’s Case Brief at 22 (citing the Submission, “Risen Third Supplemental Questionnaire Response,” dated November 27, 2019 (Risen’s 3rd SQR) at 20; see also Petitioner’s Case Brief at 23 (citing Trina’s DQR at Appendix XII at DA-16).

<sup>195</sup> See *Solar Cells AR2 Final IDM* at 19.

<sup>196</sup> See *Solar Cells AR 5 IDM* at Comment 8.

<sup>197</sup> *Id.*

7604.29.9000 covers “aluminum extrusion profiles, not hollow, *cut to fixed lengths*, alloy” (emphasis added). Risen’s argument appears to be based on its incorrect understanding that “cut to fixed lengths” describes HTS 7604.29.9000. However, the GTA description for Malaysia HTS 7604.29.9000 does not contain the phrase “cut to fixed lengths” (the GTA’s description is “[a]luminum alloy bars, rods and profiles, other, other than hollow profiles, other, other profiles, o/t hollow profiles: o/t extruded bars and rods and y-shaped profiles for zip fasteners, in coils.” Furthermore, nothing on the record indicates that cut-to-length extrusions are no longer classifiable as extrusions. Risen described its aluminum frames as aluminum extrusion profiles that are not hollow,<sup>198</sup> which matches the description of Malaysia HTS 7604.29.1000. Thus, we have continued to value Risen’s aluminum frames using Malaysia imports under HTS 7604.29.1000.

Based on the foregoing, as sustained by the CIT and CAFC, we continue to find that Malaysia HTS 7604.29.1000 constitutes the best available information with which to value Risen and Trina’s aluminum frames. Similar to prior segments of this proceeding, Commerce disagrees with the arguments proffered by the petitioner regarding the valuation of aluminum frames.<sup>199</sup>

#### **Comment 8. The Appropriate Surrogate Value for Junction Boxes**

Commerce selected Malaysia HTS 8544.60.1100 (“For A Voltage Exceed[ing] 1 Kv But < 36 Kv: Cables Insulated With Plastics Having A Core Diameter Of < 22.7 Mm”) to value junction boxes in the *Preliminary Results*.

##### *Petitioner:*

- Commerce should value respondents’ junction boxes using Malaysia HTS 8544.42.9900 (“Electric Conductors, For a Voltage Not Exceeding 1000 V, Fitted with Connectors”). A junction box is a rectangular device with two attached wires which Commerce previously valued under HTS 8544.42.<sup>200</sup> There is no basis for Commerce to now find that a different HTS subheadings results in a better value.
- While Malaysia HTS 8544.42.9900 may not cover certain junction boxes used by Risen, Risen did not provide sufficient information to separately value its various junction boxes; thus, as facts available, Commerce should value all of Risen’s junction boxes using Malaysia HTS 8544.42.9900.<sup>201</sup>

##### *Risen:*

- Commerce should value junction boxes using an average of the AUVs for Malaysia HTS 8544.60.11.00 and 8544.42.94.00. These two HTS subheadings cover items more

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<sup>198</sup> See Risen’s DQR at Exhibit D-7.

<sup>199</sup> See *Solar Cells AR1 Final IDM* at Comment 36; *Solar Cells AR2 Final IDM* at Comment 8; *Solar Cells AR3 Final IDM* at Comment 10; *Solar Cells AR4 Final IDM* at Comment 7; *Solar Cells AR5 Final IDM* at Comment 8; *Solar Products Final Determination IDM* at Comment 9; *SolarWorld*, 910 F. Supp. 3d 1216, 1222-25; and *Jiangsu Jiasheng*, 28 F. Supp. 3d 1317, 1335-1338.

<sup>200</sup> See Petitioner’s Case Brief at 15-17.

<sup>201</sup> See Petitioner’s Case Brief at 16 (citing Risen’s DQR at 36-37 and Exhibits D-1 and D-35).

specific to Risen’s various junction boxes (*i.e.*, items with plastic coated cables and the appropriate diameter and voltage ranges).<sup>202</sup> Malaysia HTS 8544.60.11.00 only covers some of Risen’s junction boxes.

- Malaysia HTS 8544.42.9900 is an “Other” category which covers items not covered by other HTS subheadings. Since Risen’s junction boxes are covered by Malaysia HTS 8544.60.11.00 and 8544.42.94.00, Malaysia HTS 8544.42.9900 would not cover Risen’s junction boxes.

**Commerce’s Position:** We have continued to value the respondents’ junction boxes using Malaysia HTS 8544.60.1100. Contrary to the petitioner’s claim, Risen specifically identified the different voltages of its junction boxes and provided information regarding the cables used with those junction boxes.<sup>203</sup> This information allowed us to determine that imports under Malaysian HTS 8544.42.9400 and HTS 8544.60.1100 most closely correspond with the various junction boxes used by Risen. Malaysian HTS 8544.42.9900, which the petitioner suggested using, is not the best available information for valuing Risen’s junction boxes because it is an “Other” category that is not as specific to the input as HTS 8544.42.9400. Furthermore, import data for Malaysian HTS 8544.42.9400 are not on the record.<sup>204</sup> Thus, it is not possible to average the values under that category with the values under Malaysian HTS 8544.60.1100 as suggested by Risen. Consequently, we valued Risen’s junction boxes using Malaysian HTS 8544.60.1100.

#### **Comment 9. The Appropriate Surrogate Value for Backsheets**

Commerce selected Malaysia HTS 3920.62.1000 (“Of Poly(Ethylene Terephthalate): Plates And Sheets”) to value backsheets in the *Preliminary Results*.

*Petitioner:*

- Malaysia HTS 3920.62.1000 best captures the nature of Risen’s backsheets, which are multi-layered sheets.

*Risen:*

- Commerce should value backsheets using Malaysia HTS 3920.62.9000 (“Of Poly(Ethylene Terephthalate): Other Than Plates And Sheets”) which is an “Other” category, the same as HTS 3920.62.90.090 which was used to value backsheets in the last review.<sup>205</sup> Risen’s backsheets have not changed from the prior review, nor is there any evidence that Risen’s backsheets are different from those used by other respondents in past reviews.

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<sup>202</sup> See Risen’s DQR Appendix XII at 36-37 and Exhibits D-1 and D-35.

<sup>203</sup> See Risen’s DQR at 36; and Risen’s September 19, 2019 SV Submission at Exhibit 1.

<sup>204</sup> Although Risen’s argument refers to this information, no interested party cites to the location of this information on the record, and Commerce is not aware of it being on the record of this review.

<sup>205</sup> See Risen’s Case Brief at 17 (citing Risen’s January 2, 2020 SV Submission at Exhibit SV2-;5 and *Solar AR3 Final IDM* at Comment 11).

**Commerce’s Position:** We agree with the petitioner and have continued to value Risen’s backsheets using Malaysia HTS 3920.62.1000 which, as denoted by the description of the category, covers polyethylene terephthalate: plates and sheets. A backsheet serves to protect solar cells in a solar module.<sup>206</sup> Film refers to a lighter, less rigid product than plates and sheets, and thus would not serve as a protective backsheet. In its arguments concerning its ethyl vinyl acetate (EVA) input, Risen itself noted that film, as opposed to plate or sheet, is a flexible film.<sup>207</sup> Risen’s reference to a prior SV selection does not outweigh the record evidence showing the input is sheet.<sup>208</sup>

#### **Comment 10. The Appropriate Surrogate Value for Ethylene Vinyl Acetate (EVA) Sheet**

Commerce selected Malaysian HTS 3920.10.1900 (“Polymers Of Ethylene: Plates And Sheets: Other Than Rigid”) to value EVA sheet in the *Preliminary Results*.

*Petitioner:*

- While the specifications for the product call it “EVA film,” the illustration of the product, its quality, and its strength shows it is a sheet;<sup>209</sup> thus, it should be valued using Malaysia HTS 3920.10.1900.<sup>210</sup>

*Risen:*

- Commerce should value Risen’s EVA input using Malaysia HTS 3920.10.9000 (“Polymers Of Ethylene: Other Than Plates And Sheets”) rather than Malaysia HTS 3920.10.1900 (“Polymers Of Ethylene: Plates And Sheets: Other Than Rigid”) because Risen’s EVA input is not a plate or sheet but is flexible film.<sup>211</sup>
- Malaysia HTS 3920.10.1900 is consistent with Thai HTS 3920.10.00.090 (“Of Polymers Of Ethylene: O/T Plates And Sheets”) that was previously used to value this input.<sup>212</sup>

**Commerce’s Position:** We have continued to value Risen’s EVA sheet using Malaysia HTS 3920.10.1900, which covers “Polymers Of Ethylene: Plates And *Sheets*: Other Than Rigid.” Risen referred to its EVA input as “Ethylene Vinyl Acetate Sheet,”<sup>213</sup> consistent with Risen’s description of the EVA as over 0.5mm thick, which indicates it is sheet, rather than film.<sup>214</sup> Sheets and plates are more rigid, and thicker than film. Risen itself noted that plates and sheets are more rigid than flexible film.<sup>215</sup> Risen’s comparison with a prior SV source does not outweigh the record evidence showing the input is sheet rather than film.

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<sup>206</sup> See Risen’s October 17, 2019 SV Submission at Exhibit S2-1.

<sup>207</sup> See Risen’s Case Brief at 18.

<sup>208</sup> See Risen’s October 17, 2019 SV Submission at Exhibit S2-1.

<sup>209</sup> *Id.*

<sup>210</sup> See Petitioner’s Rebuttal Brief at 37 (citing Risen’s Final SVs at Exhibit SV2-12).

<sup>211</sup> See Risen’s Case Brief at 18 (citing Risen’s Final SVs at Exhibit SV2-12).

<sup>212</sup> See Risen’s Case Brief at 19 (citing Risen’s January 2, 2020 SV Submission at Exhibit SV2-5).

<sup>213</sup> See Risen’s October 17, 2019 SV Submission at Exhibit S2-1.

<sup>214</sup> *Id.*

<sup>215</sup> See Risen’s Case Brief at 18.

## Comment 11. Adjusting the Surrogate Financial Ratio Calculations

### *Petitioner:*

- Commerce should revise its surrogate financial ratio calculations by: (1) adjusting cost of sales for the difference in finished goods and spare parts inventory levels; (2) deducting overhead, including depreciation, and labor expenses from the cost of sales since inventories include overhead and labor expenses but Commerce incorrectly considered cost of sales entirely as raw material costs;<sup>216</sup> (3) considering the difference between “the amount of inventories recognized as an expense in cost of sales” (1,648,000,000) and the cost of sales (1,752,328,000) not elsewhere specified in the financial statements as overhead costs; and (4) valuing depreciation based on financial statement Note 9 rather than Note 13.

### *Risen:*

- Classifying labor, depreciation, and the remaining unallocated cost of sales as overhead costs is wholly inappropriate based on the information in the surrogate financial statement and Commerce’s normal allocation methodology.
- It is illogical that any, much less a majority, of the remaining cost of sales would be manufacturing overhead expenses. Commerce’s practice in such situations is to conclude that the majority of unclassified cost of sales are material, labor, and energy costs.
- The depreciation costs that the petitioner argues to add to overhead were already included in the reported overhead cost.

**Commerce Position:** We have reviewed the surrogate financial ratio calculations relied on in the *Preliminary Results* in light of the interested party comments and made certain adjustments for these final results. First, we have revised the materials, labor and energy (MLE) denominator to reflect the direct product costs specifically identified in Note 17 to the financial statements. In the *Preliminary Results*, we considered the entire amount of cost of sales not specifically identified at Note 9 to the financial statements to be raw material costs. However, as noted by the petitioner, in calculating the preliminary results we did not consider Note 17 to the financial statements, which identifies that the total 2018 costs of sales of RM2,003 million includes “the amount of inventories recognized as an expense in cost of sales. . . {which} were RM1,648 million.”<sup>217</sup> Further, Note “2.12 Inventories,” which outlines the company’s inventory valuation policies, states that items classified as “Inventories” include “costs of direct materials and {labor} and a proportion of manufacturing overheads based on normal operating capacity.”<sup>218</sup> Therefore, we find the specifically identified direct product costs identified in the notes to the financial statements to be a more appropriate reflection of MLE rather than the constructed MLE (*i.e.*, backed into raw material costs plus labor costs) used in the *Preliminary Results*.

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<sup>216</sup> See Petitioner’s Case Brief at 10 (citing Risen’s January 2, 2020 SV Submission at Exhibit SV2-8).

<sup>217</sup> Risen’s January 2, 2020 SV Submission at Exhibit SV2-8.

<sup>218</sup> *Id.*

Second, we accounted for the change in finished goods inventories and treated the difference between the total manufacturing costs and MLE as overhead costs. Aside from the cost of sales, the income statement explicitly identifies the sales, general, administrative, and interest costs of RM195 million as separate line items. Therefore, we find it appropriate to treat the remaining costs of sales, *i.e.*, the RM2,003 million (adjusted for the decrease in finished goods) less MLE of RM1,648 million, as overhead expenses. Incorporating the above conclusions, our revised calculation of the surrogate financial ratios based on Hanwha QCells' financial statement is as follows:

<b>SOURCE: Hanwha Q Cells Malaysia YE 2018-12-31</b>		
<b>ITEMS</b>	<b>Income Statement Amounts</b>	<b>Formula</b>
<b>Cost of sales (income statement)</b>	<b>2,003,400</b>	<b>A</b>
<b>Inventory Costs Included in Cost of Sales (FS Note 17)</b>	<b>1,648,000</b>	<b>B</b>
Finished goods – Beg. Bal. Valued at Cost (FS Note 17)	(56,450)	C
Finished Goods – Beg. Bal. Valued at NRV (FS Note 13)	(1,444)	D
Finished goods – End. Bal. (FS Note 13)	48,683	E
Finished goods – End. Bal. Valued at NRV (FS Note 13)	7,455	F
<b>Decrease in finished goods balance/Traded goods</b>	<b>1,756</b>	<b>G=C+D+E+F</b>
<b>TOTAL MLE (including change in finished goods balances)</b>	<b>1,646,244</b>	<b>H=B-G</b>
<b>TOTAL OH</b>	<b>357,156</b>	<b>I=A-H</b>
interest income (income statement)	(567)	J
other income (income statement)	(15,226)	K
selling and administrative expenses (income statement)	122,853	L
other expenses (income statement)	15,134	M
Financial Expenses (income statement):	72,852	N
<b>TOTAL Non-Operating Costs Expenses</b>	<b>195,046</b>	<b>M=J+K+L+M+N</b>

<b>OVERHEAD RATIO=OH/(MLE+CHANGE IN INVENTORY)</b>	<b>21.70%</b>	<b>=I/H</b>
<b>SGA RATIO=TOTAL SG&amp;A/(TOTAL MLE-TRADED GOODS+MOH)</b>	<b>9.73%</b>	<b>=M/(H+G+I)</b>
Profit (before taxes) (income statement)	76,514	N
<b>PROFIT RATIO=PROFIT/MLE+MOH-CHANGE IN FINISHED GOODS+SGA</b>	<b>3.48%</b>	<b>=N/(G+H+L+M)</b>

While Risen argued that it is illogical to conclude that the unidentified cost of sales are overhead, it has not explained why it is illogical to reach this conclusion other than to claim, without any support, that it is Commerce practice to classify unidentified costs in financial statements as material, labor, and electricity costs. Commerce is unaware of any such practice. Rather, as described above, based on the information contained in Hanwha QCells' financial statements, we have concluded that the remaining unidentified costs are overhead costs.

With regard to the petitioner's argument that all depreciation costs should be considered overhead costs, the depreciation costs include a small amount for the depreciation of motor vehicles, computer equipment, and furniture, which are properly classified as sales, general, and administrative costs rather than manufacturing overhead. With regard to the petitioner's argument that we should consider the changes in inventory to finished goods in calculating the cost of manufacture and the changes in spare goods as the cost of producing inventory, we agree that the decrease in finished goods identifies that already produced goods were included in the 2018 cost of sales and thus in calculating the 2018 costs of manufacturing, we should deduct the decreasing in finished goods. However, there is no indication that the cost of inventories does not already include an account for spare parts and we have not adjusted for the change in spare parts balance.

## **Comment 12. Error in Calculating Certain Market Economy Purchase Prices**

### *Petitioner:*

- Commerce should have used the ME purchase percentages in Exhibits D-6 and D-7 of Trina's section D questionnaire response to calculate the ME purchase price of Trina's polysilicon. Commerce should calculate the ME purchase price of polysilicon using the calculation methodology suggested by the petitioner (BPI).
- Commerce failed to correctly reflect the extent of ME purchases of silver paste by Risen in its calculations (details regarding this error involve BPI).<sup>219</sup>

<sup>219</sup> See Petitioner's Case Brief at 19 (citing Trina's DQR at Exhibits 6-7; and Risen's DQR at Exhibits 6-7).

*Trina:*

- Trina revised its ME purchase percentages in a January 14, 2020, submission that it filed subsequent to its section D questionnaire response.<sup>220</sup> Commerce should use these revised percentages in calculating the ME purchase price for polysilicon.
- Contrary to the petitioner's suggested calculation methodology, consistent with its practice, Commerce should exclude ME purchases from countries where there are generally available export subsidies in its calculation of Trina's ME purchase price of polysilicon.<sup>221</sup>
- Commerce should also remove an incorrect figure (which is BPI) from its polysilicon ME purchase price calculation because the source of the figure is unknown.<sup>222</sup>

No other party commented on this issue.

**Commerce Position:** We agree with both parties that we did not properly reflect the extent of Trina's and Risen's ME purchases of polysilicon and silver paste, respectively, in our calculations. We, therefore, revised our calculations to reflect the ME purchase percentages reported in Trina's January 14, 2020 submission and the information reported in Risen's reported ME purchases in its section D submission (the most recent ME purchase percentages for each respondent).<sup>223</sup> Consistent with Commerce's practice, we excluded from our calculations ME purchases from countries where there are generally available export subsidies.<sup>224</sup> We also eliminated from our calculations the erroneous figure noted by Trina.

We did not base the percentages of market and non-market purchases on the quantities of each placed into production, as argued by Trina, because Commerce's practice, as articulated in the *Preliminary Results*, is to "weight-average the ME purchase prices with an appropriate SV, according to their respective shares of the total volume of purchases."<sup>225</sup>

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<sup>220</sup> See Trina's Case Brief at 13 (citing Trina's Letter, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China: Section D Supplemental Questionnaire Response," dated January 14, 2020 at Exhibit D-2).

<sup>221</sup> See e.g., *Certain Fabricated Structural Steel from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 85 FR 5376 (January 30, 2020) (*Structural Steel from China Final Determination*), and accompanying IDM at Comment 6.

<sup>222</sup> See Trina's Preliminary Analysis Memorandum.

<sup>223</sup> See Trina's Final Analysis Memorandum; and Risen's Final Analysis Memorandum.

<sup>224</sup> See *Structural Steel from China Final Determination* IDM at Comment 6.

<sup>225</sup> See *Preliminary Results* PDM at 26 (citing *Use of Market Economy Input Prices in Nonmarket Economy Proceedings*, 78 FR 46799 (August 2, 2013)).

### **Comment 13. Error in Calculating the International Freight Surrogate Value**

*Trina:*

- The average number of solar modules per shipping container that Commerce used in calculating the international freight SV is incorrect (the average used possibly came from a prior review).
- Commerce should calculate the international freight SV using the number of solar modules per container reported in Trina's January 2, 2020 SV Submission.<sup>226</sup>

*Petitioner:*

- Commerce correctly used the number of solar modules per container reported in Trina's Section C questionnaire response.<sup>227</sup>
- If Commerce does not calculate international freight expenses using the number of solar modules per container reported by Trina in its Section C response, it should use an average of the section C response number and the number of solar modules per container reported by Trina in its January 2, 2020 SV Submission.<sup>228</sup>

**Commerce Position:** The number of solar modules per container that Trina reported in its section C questionnaire response (which Commerce relied on in its calculations)<sup>229</sup> differs from the number of solar modules per container that Trina reported in its later January 2, 2020, SV submission and that later submission does not indicate the new number is a correction. Because it is not clear which number is correct, for these final results, we are using an average of the two different number of modules per container reported by Trina in our calculations.<sup>230</sup>

### **Comment 14. Error in Calculating the Domestic Brokerage and Handling Surrogate Value**

*Trina:*

- Commerce erroneously deducted a USD per kg domestic brokerage and handling (B&H) expense from a USD per watt gross unit price in calculating net U.S. prices.<sup>231</sup>

No other party commented on this issue.

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<sup>226</sup> See Trina's Case Brief at 37 (citing Trina's January 2, 2020 SV Submission at Exhibit 22).

<sup>227</sup> See Petitioner's Rebuttal Brief at 36 (citing Trina's Letter, "Crystalline Silicon Photovoltaic Cells Whether or Not Assembled Into Modules from the People's Republic of China: Section C Questionnaire Response and Appendix XI Response," dated June 20, 2019 (Trina's CQR) at Appendix XI-5).

<sup>228</sup> See Petitioner's Rebuttal Brief at 36 (citing Trina's January 2, 2020 SV Submission at Exhibit 22).

<sup>229</sup> See Trina's CQR at Appendix XI-5.

<sup>230</sup> See Trina's Final Analysis Memorandum.

<sup>231</sup> See Preliminary SV Memorandum at 3.

**Commerce Position:** We agree with Trina and have corrected this error by converting the domestic portion of the B&H expense to a per watt expense before deducting it from U.S. gross unit sales prices.<sup>232</sup>

**Comment 15. Failure to Adjust the U.S. Price for Subsidies**

*Risen:*

- Commerce stated in the *Preliminary Results* that it was adjusting Risen’s net U.S. price by the double-remedy and export subsidy offsets (export subsidies with respect to the Export Buyer’s Credits and Export Seller’s programs) but failed to do so.<sup>233</sup>

No other party commented on this issue.

**Commerce Position:** We agree with Risen that we intended to make these offsets and have corrected this error in the final results.<sup>234</sup>

**V. RECOMMENDATION**

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

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

9/28/2020

X   
\_\_\_\_\_

Signed by: JEFFREY KESSLER

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Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

<sup>232</sup> See Trina’s Final Analysis Memorandum.

<sup>233</sup> See *Preliminary Results* PDM at 29-30.

<sup>234</sup> See Trina’s Final Analysis Memorandum.