C-570-980
Administrative Review
POR: 1/1/2013-12/31/2013
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July 12, 2016

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

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

RE: Issues and Decision Memorandum for the Final Results of the Countervailing Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China; 2013

I. SUMMARY

On January 8, 2016, the Department of Commerce (Department) published the *Preliminary Results* of this countervailing duty (CVD) administrative review on crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells).[1] This review covers one mandatory respondent, JA Solar Technology Yangzhou Co., Ltd. (JA Yangzhou) and its cross-owned affiliates (collectively, JA Solar)[2] as well as Changzhou Trina Solar Energy Co., Ltd. and Wuxi Suntech Power Co., Ltd.

[1] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2013; and Partial Rescission of Countervailing Duty Administrative Review*, 81 FR 908 (January 8, 2016) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM).

[2] The Department preliminarily found JA Yangzhou to be cross owned with the following companies: JingAo Solar Co., Ltd.; JA Solar Technology Yangzhou Co., Ltd.; Jing Hai Yang Semiconductor Material (Donghai) Co., Ltd.; Donghai JA Solar Technology Co., Ltd.; JA (Hefei) Renewable Energy Co., Ltd.; Hefei JA Solar Technology Co., Ltd.; Solar Silicon Valley Electronic Science and Technology Co., Ltd.; Hebei Ningjin Songgong Semiconductor Co., Ltd.; Shanghai JA Solar Technology Co., Ltd.; Ningjin Songgong Electronic Materials Co., Ltd.; JingLong Industry and Commerce Group Co., Ltd.; Ningjin Guiguang Electronic Investment Co., Ltd.; Yangguang Guifeng Electronic Technology Co., Ltd.; Ninjing Jingxing Electronic Materials Co., Ltd.; Ningjin Saimei Ganglong Electronic Materials Co., Ltd.; Jingwei Electronic Material Co., Ltd.; Ningjin Changlong Electronic Materials Manufacturing Co.; Ningjin Jingfeng Electronic Materials Co., Ltd.; Ningjin County Jingyuan New Energy Investment Co., Ltd.; Xingtai Jinglong Electronic Materials Co., Ltd.; Hebei Yujing Electronic Science and Technology Co., Ltd.; Hebei Ningtong Electronic Materials Co., Ltd.; and Ningjing Sunshine New Energy Co., Ltd. The Department has made no changes to the list of cross-owned companies for these final results.

As explained in a memorandum placed on the record of this proceeding, the Department tolled its deadlines by four business days due to the closure of the Federal Government in January 2016.[3] The revised deadline for the final results is July 12, 2016.

We have analyzed the comments submitted by interested parties in their case and rebuttal briefs.[4] The below is a list of the comments in this administrative review; the "Analysis of Comments" section contains summaries of these comments and the Department's positions on the issues raised in the briefs.

Comment 1: Usage of Export Buyer's Credit Program
Comment 2: Selection of AFA Rate for Export Buyer's Credit Program
Comment 3: Specificity of Aluminum Extrusion for Less than Adequate Remuneration (LTAR) Program
Comment 4: Polysilicon Market Distortions
Comment 5: Polysilicon Benchmark
Comment 6: Solar Glass Benchmark
Comment 7: Ocean Freight Benchmark
Comment 8: Inclusion of Value-Added Tax (VAT) in LTAR Benchmarks
Comment 9: Electricity Benchmarks
Comment 10: Electricity Benefit Calculation
Comment 11: Application of Uncreditworthy Discount Rates to Variable Loans
Comment 12: Application of Uncreditworthy Discount Rates to Imported Equipment Purchases
Comment 13: Minor Corrections

II. PERIOD OF REVIEW

The period for which we are measuring subsidies, *i.e.*, the period of review (POR), is January 1, 2013, through December 31, 2013.

III. SCOPE OF THE ORDER

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

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

[3] *See* Memorandum for the Record, "Tolling of Administrative Deadlines as a Result of the Government Closure during Snowstorm 'Jonas,'" January 27, 2016.
[4] *See* SolarWorld Americas, Inc. (Petitioner) Case Brief; Government of the People's Republic of China (GOC) Case Brief; JA Solar Case Brief; *see also* Petitioner Rebuttal Brief; GOC Rebuttal Brief; JA Solar Rebuttal Brief.

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

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

Also excluded from the scope of this order are crystalline silicon photovoltaic cells, not exceeding 10,000mm^2 in surface area, that are permanently integrated into a consumer good whose function is other than power generation and that consumes the electricity generated by the integrated crystalline silicon photovoltaic cell. Where more than one cell is permanently integrated into a consumer good, the surface area for purposes of this exclusion shall be the total combined surface area of all cells that are integrated into the consumer good.

Modules, laminates, and panels produced in a third-country from cells produced in the People's Republic of China (PRC) are covered by this order; however, modules, laminates, and panels produced in the PRC from cells produced in a third-country are not covered by this order.

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

IV. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

The Department has made no changes to the allocation period or the allocation methodology used in the *Preliminary Results* and no issues were raised by interested parties in case briefs regarding the allocation period or the allocation methodology. For a description of allocation period and the methodology used for these final results, *see* the *Preliminary Results* and accompanying PDM.[5]

B. Attribution of Subsidies

The Department has made no changes to the methodologies used in the *Preliminary Results* for attributing subsidies and no issues were raised by interested parties in case briefs regarding the attribution of subsidies. For descriptions of the methodologies used for these final results, *see* the *Preliminary Results* and the accompanying PDM.[6]

[5] *See* PDM at 5-6.
[6] *Id.* at 6-8.

C. Denominator

The Department has made no changes to the denominators used in the *Preliminary Results*, with the exception of updating the reported sales values, where applicable, for the minor corrections submitted prior to verification.[7]

V. BENCHMARKS AND DISCOUNT RATES

Interested parties submitted a number of comments regarding the benchmarks and discount rates used in the *Preliminary Results* in their case and rebuttal briefs.[8] The Department has considered these comments and has made two changes to the benchmarks used in the *Preliminary Results*. Specifically, we have made adjustments to the solar glass and electricity benchmarks; no other changes were made to any of the benchmarks or discount rates. For a more in-depth discussion of the comments and the Department's analysis as well as the changes made to the benchmarks, *see* Comments 6 and 9. For a description of all other unchanged benchmarks and discount rates used for these final results, *see* the *Preliminary Results* and the accompanying PDM.[9]

VI. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

The Department relied on "facts otherwise available," including adverse facts available (AFA), for several findings in the *Preliminary Results.* With the exception discussed below, the Department has not made any changes to its use of facts otherwise available and AFA from the *Preliminary Results*. For a description of these decisions, *see* the *Preliminary Results.*[10]

Application of Facts Available: The GOC's Involvement in the PRC's Solar Glass Industry Results in the Significant Distortion of Prices

Sections 776(a)(1) and (2) of the Tariff Act of 1930, as amended (the Act) provide that the Department shall, subject to section 782(d) of the Act, apply "facts otherwise available" if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.[11]

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[7] *See* Comment 13 below. For a description of the denominators used for these final results, *see* the PDM at 5.
[8] *See* Petitioner Case Brief; *see also* GOC Case Brief; JA Solar Case Brief; Petitioner Rebuttal Brief.
[9] *See* PDM at 8-17.
[10] *See*, generally, *Preliminary Results* and accompanying PDM.
[11] On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the antidumping duty (AD) and CVD law, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act, as summarized below. *See Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the International Trade Commission. *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015). Therefore, the amendments apply to this administrative review.

In the *Preliminary Results*, the Department did not make a determination on the GOC's involvement in the solar glass industry. Subsequently, parties raised issues surrounding the selection of the solar glass benchmark and, in connection with and in order to analyze these comments, the Department conducted an analysis of the GOC's involvement in the solar glass industry in the PRC.[12]

As an initial matter, the GOC stated in its questionnaire responses that it does not collect production, consumption and industry information specific to solar glass and instead submitted this information related to tempered glass, which the GOC stated encompasses solar glass.[13] This information comes from the GOC's National Bureau of Statistics (SSB), which compiles domestic production data for a number of industries. At verification, the Department confirmed that the SSB does not gather solar glass-specific industry information.[14] With respect to import and export data related to solar glass, the GOC was able to provide this information by consulting with an industry association, the China Chamber of Commerce of Metals, Minerals and Chemicals, which obtains this information from the PRC's customs agency.[15]

As part of the Department's questionnaire, we requested that the GOC provide information related to PRC state-invested enterprises' (SIE) involvement in the solar glass industry. Because, as noted above, the GOC obtained this information from the SSB, which does not track industry information for solar glass, the information provided is related only to SIE involvement in the tempered glass industry, rather than specific to SIE involvement in the solar glass industry.[16] The GOC did not provide SIE ownership information from any sources other than the SSB. The GOC stated in its questionnaire response that there were 290 producers of tempered glass in the PRC during the POR, with a subset of these producers being SIEs.[17] However, we find that, although we were able to verify that the SSB does not track solar glass industry information and that the reported tempered glass information was correctly reported, the tempered glass information in the GOC's response is unreliable with respect to solar glass because it is not specific to solar glass. Therefore, we find that necessary information is not available on the record and, pursuant to section 776(a)(1) of the Act, we have determined it is appropriate to rely on the facts otherwise available in reaching our determination regarding the GOC's involvement in the PRC solar glass market, and whether this government involvement significantly distorts the prices in this industry in the PRC.

When reviewing the record for additional information, we note that JA Solar placed solar glass market and price information from IHS Technology (IHS) on the record and now argues that this data should be used when selecting the solar glass benchmark.[18] Due to the proprietary nature of

[12] For a discussion on the comments that resulted in this analysis, as well as the analysis surrounding the selection of a solar glass benchmark for the purposes of these final results, *see* Comment 6.
[13] *See* GOC's September 18, 2015 Questionnaire Response (GOC QR) at 111.
[14] *See* Memorandum to the File, "Verification of the Questionnaire Responses Submitted by the Government of China," May 6, 2016 (GOC Verification Report).
[15] *See* GOC QR at 112; *see also* GOC Verification Report at 8, 11-12.
[16] *See* GOC QR at 113-114.
[17] *Id.* at 111.
[18] *See* Letter to the Secretary from JA Solar, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China: Benchmark Submission," November 2, 2015 (JA Solar Benchmark Submission) at Exhibit 3.

the submission, we have included a more detailed analysis of the information in the submission in the Final Analysis Memorandum but we note that the information includes statements that the GOC's involvement in the solar glass industry has had distortionary effects on pricing.[19]

In the absence of other information on the record, the IHS information reflects recognition of significant distortion of prices in the PRC's solar glass industry. Prices are distorted if they are higher or lower than what would be a normal price in a competitive market without government interventions such as limiting access to an industry or financing, which reduce competition. When government intervention in the marketplace actively manages the amount of supply through means such as capacity restrictions, limitations on access to the industry, or subsidization of uneconomic production, it prevents a price from achieving its competitive equilibrium level, and it can result in a significant distortion of prices in the market. Thus, based on the information discussed in the Final Analysis Memorandum, combined with the unreliability of the information submitted by the GOC, we find that the facts otherwise available on the record of this proceeding support a determination that the GOC's involvement in the PRC's solar glass industry significantly distorts the prices in this industry. As such, we find that it is appropriate to consider "tier two" world market prices as our benchmarks for the provision of solar glass for LTAR program in accordance with 19 CFR 351.511(a)(2)(ii) rather than domestic prices in the PRC as a "tier one" benchmark pursuant to 19 CFR 351.511(a)(2)(i). The use of an external benchmark is consistent with our past practice.[20]

VII. ANALYSIS OF PROGRAMS

A. Programs Determined To Be Countervailable

The Department made no changes to its *Preliminary Results* with respect to the following programs.[21] No issues were raised by interested parties in case briefs regarding these programs, with the exception of JA Solar requesting that the Department incorporate the minor corrections submitted prior to verification into the final calculations.[22] Therefore, the final company-specific program rates for each of the following programs have only changed from the *Preliminary Results* to the extent that there was a corresponding minor corrections presented. The final rates for these programs are as follows:

1. Provision of Polysilicon for Less Than Adequate Remuneration

   JA Solar: 0.05 percent *ad valorem*

[19] *See* Memorandum to the File, "Countervailing Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Results Analysis for JA Solar Technology Yangzhou Co., Ltd and its Cross-Owned Companies," July 12, 2016 (Final Analysis Memorandum).

[20] *See, e.g.*, *Countervailing Duty Investigation of 1,1,1,2 Tetrafluoroethane From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 62594 (October 20, 2014) and accompanying Issues and Decision Memorandum at 14, 27.

[21] For the descriptions, analyses, and calculation methodologies of these programs, *see* PDM at 30-43.

[22] *See* Comment 13 below.

2. Provision of Land for LTAR

   JA Solar: 0.02 percent *ad valorem*

3. Golden Sun Demonstration Grant Program

   JA Solar: 0.25 percent *ad valorem*

4. Other Grant Programs[23]

   JA Solar: 0.79 percent *ad valorem*

5. Enterprise Income Tax Law, Research and Development Program

   JA Solar: 0.01 percent *ad valorem*

6. Preferential Tax Program for High or New Technology Enterprises

   JA Solar: 0.03 percent *ad valorem*

7. "Two Free, Three Half" Tax Program

   JA Solar: 0.09 percent *ad valorem*

8. VAT Refunds/Rebates for Foreign-Invested Enterprises (FIEs) Purchasing Domestically-Produced Equipment

   JA Solar: 0.01 percent *ad valorem*

For the following programs, the Department continues to find the programs countervailable in these final results but has made certain changes to the benefit calculation since the *Preliminary Results* as a result of comments submitted by the parties in their case and rebuttal briefs.

1. Preferential Policy Pending to the Renewable Energy Industry, aka Preferential Loans and Directed Credit

   As discussed in Comment 11, the Department has made adjustments to the selection of the discount rate in those instances where the loan was obtained by JA Solar prior to becoming uncreditworthy. Based on these changes, JA Solar's calculated rate for this program is now 2.22 percent *ad valorem*.

[23] Just as in the *Preliminary Results*, the Department found that some grant programs conferred a benefit during the POR. For the list of the grant programs that conferred a benefit, *see* PDM at 40-43.

2. Provision of Solar Glass for LTAR

   As discussed in Comment 6, the Department has updated the benchmark for solar glass. Additionally, the Department discovered after the *Preliminary Results* that it had inadvertently excluded some reported purchases of solar glass from the preliminary benefit calculations; the Department has updated the final calculations to include all of the reported purchases. Based on these changes, JA Solar's calculated rate for this program is now 12.97 percent *ad valorem*.

3. Provision of Electricity for LTAR

   As discussed in Comment 9, the Department has updated the benchmark for electricity. Based on this change, JA Solar's calculated rate for this program is now 2.47 percent *ad valorem*.

4. Import Tariff and Value-Added Tax Exemptions for Use of Imported Equipment – Encouraged Industries

   As discussed in Comment 12, the Department has made adjustments to the selection of the discount rate in those instances where it was necessary to allocate a benefit originating from the purchase of imported equipment prior to JA Solar becoming uncreditworthy. Based on these changes, JA Solar's calculated rate for this program is now 0.38 percent *ad valorem*.

B. Programs Determined To Be Not Used or Not Confer a Measurable Benefit During the POR

The Department made no changes to its *Preliminary Results* with respect to the following programs.[24] No issues were raised in case briefs regarding these programs. Therefore, for these final results, we continue to determine that the following programs were either not used or do not confer a benefit during the POR:

1. Provision of Aluminum Extrusions for LTAR
2. Other Grant Programs[25]
3. Income Tax Reductions for Export-Oriented Enterprises
4. Income Tax Benefits for FIEs Based on Geographic Locations – Preferential Tax
5. Local Income Tax Exemption and Reduction Programs for "Productive" FIEs
6. Tax Refunds for Reinvestment of FIE Profits in Export-Oriented Enterprises
7. Tax Reductions for High and New-Technology Enterprises Involved in Designated Project
8. Preferential Income Tax Policy for Enterprises in the Northeast Region
9. Guangdong Province Tax Programs

[24] For the descriptions, analyses, and calculation methodologies of these programs, *see* PDM at 43-49.
[25] Just as in the *Preliminary Results*, the Department found that some grant programs did not confer a benefit during the POR. For the list of the grant programs that did not confer a benefit, *see* PDM at 44-49.

10. VAT and Tariff Exemptions for Purchases of Fixed Assets Under the Foreign Trade and Development Fund Program
11. The Over-Rebate of VAT Program

The Department is also finding the following programs to not be used by JA Solar in the POR. We note that, in the *Preliminary Results*, we inadvertently identified both of these programs as not countervailable instead of not used; we hereby correct this error.

1. Export Buyer's Credit Program
2. Export Credit Insurance from SINOSURE

VIII. FINAL RESULTS OF REVIEW

Based on the above analyses, we determine the net total *ad valorem* subsidy rates for these final results are as follows:

Company	Subsidy Rate
JA Solar Technology Yangzhou Co., Ltd. and its cross-owned affiliates	19.20 percent
Changzhou Trina Solar Energy Co., Ltd.	19.20 percent
Wuxi Suntech Power Co., Ltd.	19.20 percent

IX. ANALYSIS OF COMMENTS

Comment 1: Usage of Export Buyer's Credit Program

Petitioner Comments

- The GOC's questionnaire responses did not provide sufficient information.
- Despite being notified in advance of the information the Department intended to review at verification, the GOC did not prepare the requested information for verification and refused to provide it during the course of the program verification.
- The GOC refused to allow the Department to conduct searches in the Export-Import Bank of the PRC (Ex-Im Bank) program database or suggest slightly modified search terms.
- The GOC's conduct with respect to this program qualifies for the application of AFA to this program.
- As the GOC did not fully cooperate on this program, the Department should find that the GOC provided a financial contribution to JA Solar and, by extension, rely on AFA for the selection of a benefit rate to be assigned to JA Solar on the presumption that JA Solar obtained the greatest benefit possible under this program.
- The Department should announce that it will continue to apply AFA to this program in all future reviews until a verification of this program warrants a different finding.

JA Solar Comments

- JA Solar provided declarations from all of its U.S. customers during the POR, confirming that they did not utilize this program and the Department found no indication that any of the verified JA Solar companies relied on this program.
- The Department should continue to find that the Export Buyer's Credit Program was not used by JA Solar's customers during the POR as JA Solar fully cooperated in the proceeding and there is no evidence on the record that its customs benefitted from this program.

Petitioner Rebuttal Comments

- The Department should reject JA Solar's request to find this program not used.
- The GOC was not cooperative at verification and therefore, the Department was unable to complete verification of this program.
- The GOC is the only entity which maintains the information necessary to determine if a respondent's customers used the program; JA Solar's records would not contain any information indicating that this program was used.
- Respondents in the prior segment of this proceeding provided similar declarations for some of their customers and the Department declined to use those to definitively determine whether the program was used except in the case where the Department was able to conduct verification with those customers.
- There is no information on the record that sufficiently demonstrates that all of JA Solar's sales were less than the required $2 million threshold and the governing regulations state that the contract "should" be over $2 million, not that it "shall" be over than amount.

GOC Rebuttal Comments

- In *Archer Daniels Midland* and *Fine Furniture*, the Department has an obligation to consider whether record evidence establishes the non-use of this program, regardless of the GOC's refusal to provide information or database searches during verification in this proceeding.[26]
- Record information establishes that JA Solar had no sales contracts with U.S. customers that met the criteria necessary to qualify for financing under this program.
- Any refusal to verify the record information does not mean that the un-verified information is irrelevant or could not serve to confirm non-use.

JA Solar Rebuttal Comments

- Unlike in *OCTG from Turkey*, JA Solar fully cooperated on this program and the Department verified the program's non-use during the company verification; application of AFA would be inconsistent with the Act's requirement that the Department find a failure to cooperate before applying AFA.[27]

[26] *See* GOC Rebuttal Brief, citing *Archer Daniels Midland Co. v. United States*, 917 F. Supp. 2d 1331, 1342 (CIT 2013) (*Archer Daniels Midland*) and *Fine Furniture (Shanghai) Ltd. v. United States*, 865 F. Supp. 2d 1254 (CIT 2012) (*Fine Furniture*).

[27] *See* JA Solar Rebuttal Brief, citing *Certain Oil Country Tubular Goods From the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 41964 (July 18, 2014) (*OCTG from Turkey*) and accompanying Issues and Decision Memorandum.

- There is no evidence on the record indicating that JA Solar's customers benefitted from this program and, moreover, unlike in the first administrative review of this proceeding, JA Solar submitted declarations from all of its U.S. customers stating that they did not rely on this program.
- In *Chloro Isos from the PRC*, the Department found that these statements were sufficient to find non-use, irrespective of whether the Department was able to complete verification at the GOC and therefore should do the same in this proceeding.[28]

Department's Position: The Department continues to find that the Export Buyer's Credit program was not used by JA Solar. As an initial matter, we concur with Petitioner that the Department was unable to fully verify the operation of this program as a result of the GOC's refusal to provide all of the requested information and system access. As a result, we were unable to confirm through the Ex-Im Bank whether JA Solar's U.S. customers had in fact relied on this program during the POR. The Ex-Im Bank is the authority charged with administering this program and therefore, given the Department's understanding of the operation of this program, we have determined that it is typically appropriate to verify the program, and whether it was used, by reviewing the program with GOC and Ex-Im Bank officials. However, the Department also recognizes that JA Solar has been cooperative in this proceeding and we are considering the entire record of the segment to evaluate whether this program was used by JA Solar during the POR. A review of the record in the instant review indicates that, as JA Solar and the GOC point out, JA Solar provided declarations from all its U.S. customers during the POR stating that they did not obtain credit under or otherwise participate in the Export Buyer's Credit program.[29]

Consistent with our determination in *Chloro Isos from the PRC*, the Department finds that the declarations provided by JA Solar for all of its U.S. customers during the POR support a determination that the program was not used by JA Solar or its customers during the period of review. Although Petitioner contends that the Department rejected similar declarations in the prior segment if this proceeding, that determination was made because the respondents did not submit declarations for all their U.S. customers. Accordingly, unlike in this case, without declarations from all U.S. customers, we could not conclude that the program had not been used.[30] Furthermore, while Petitioner questions whether the declarations submitted by JA Solar actually cover all of the respondent's U.S. customers, beyond its speculation, Petitioner has not pointed to any information or evidence to support this conclusion, nor does the Department find any such information on the record of this proceeding. As such, we find that JA Solar has, in fact, submitted declarations from all of its U.S. customers during the POR.

While we did not conduct verification of these declarations as the Department did in *Chloro Isos from the PRC*, we note that we have declarations from all of JA Solar's U.S. customers, and

[28] *See* JA Solar Rebuttal Brief, citing *Chlorinated Isocyanurates from the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2012*, 79 FR 56560 (September 22, 2014) (*Chloro Isos from the PRC*) and accompanying Issues and Decision Memorandum (Chloro Isos from the PRC IDM).
[29] *See* JA Solar Questionnaire Response at Volumes IX (Exhibit 14), XVIII (Exhibit 12); *see also* JA Solar September 22, 2016 Factual Information Submission at Exhibits 1, 2.
[30] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 41003 (July 14, 2015) and accompanying Issues and Decision Memorandum (Solar Cells First AR IDM) at Comment 1.

there is no information on the record contradicting these declarations. On this basis, as well as the fact that the declarations submitted by JA Solar accounted for all of its customers in the United States, we find it appropriate to rely on the statements in the declarations for our determination. Finally, we note that while we agree that the record in this proceeding supports a conclusion that this program was not used by JA Solar during the POR, we intend to continue requesting the GOC's cooperation on this program in future proceedings and we will base subsequent evaluations of this program on the record of each respective proceeding. Additionally, although we did not verify the declarations in this case, the Department notes that we reserve the right to verify any declarations submitted in this or other future proceedings as part of the non-use determination process.

Comment 2: Selection of AFA Rate for Export Buyer's Credit Program

Petitioner Comments

- *OCTG from Turkey* and *Essar Steel* support the reliance on information on the record when applying AFA in a CVD proceeding[31]
- When selecting the AFA rate, the Department should rely on a different AFA rate than what has been applied to this program in other proceedings; relying instead on a calculation based on all of JA Solar's export sales to the United States and long-term uncreditworthy discount rates, resulting in an AFA rate of 30.48 percent.
- The Department's decision in *Citric Acid from the PRC* support Petitioner's proposed constructed AFA rate.[32]
- Alternatively, if the Department relies on an alternative method for the selection of the AFA rate, it should select the debt forgiveness rate of 11.83 percent calculated in *OTR Tires from the PRC* as the export buyer's credit program and debt forgiveness programs, while not identical, are similar in that they are both capital subsidy programs.[33]
- At minimum, the Department should assign the rate of 10.54 percent that has been assigned to this program as an AFA rate in other recent proceedings.
- The Department should announce that it will continue to apply AFA to this program in all future reviews until a verification of this program warrants a different finding.

GOC Rebuttal Comments

- If the Department decides to apply AFA, it should select an AFA rate that is reasonable, based on facts in the proceeding and consistent with commercial reality.
- When assigning an AFA rate, the Department must, to the extent practicable, corroborate that the rate has some probative value based in commercial reality; when the rate comes from a separate segment in the same proceeding, this corroboration is not required.
- Petitioner's proposed AFA rates are punitive and are not based in commercial reality.

[31] *See* Petitioner Case Brief, citing *OCTG from* Turkey and *Essar Steel Limited v. United States*, 721 F. Supp. 2d 1285 (CIT 2010) (*Essar Steel*).

[32] *See Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009) (*Citric Acid from the PRC*) and accompanying Issues and Decision Memorandum.

[33] *See* Petitioner Case Brief, citing *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances*, 73 FR 40480 (July 15, 2008) (*OTR Tires from the PRC*) and Issues and Decision Memorandum.

- The constructed AFA rate proposed by Petitioner is not appropriate because the assumptions made in the calculation of the rate are either incorrect or missing from the record and thus, does not satisfy the requirements for selection of an AFA rate.
- Petitioner's proposal to select AFA rates from prior proceedings is not appropriate as these rates do not reflect conditions during the POR; were calculated for distinct loan programs; and as no rate as high as the proposed rates from other proceedings has been calculated in any proceeding under this CVD proceeding, there is no basis to find that these rates are accurate or relevant to the respondents in the instant review.
- The Department should instead rely on the policy lending rate from this review as the AFA rate for this program, as it did in the first administrative review.

JA Solar Rebuttal Comments

- It would be unreasonable for the Department to apply the 10.54 percent rate as AFA.
- If the Department assigns an AFA rate, it should take into consideration that JA Solar cooperated on this program to a fuller extent than any past respondents and that the GOC permitted the Department to search its database, which yielded no results.

Department's Position: Because the Department has determined that the Export Buyer's Credit program was not used by JA Solar during the POR, and that there is therefore no need to select an AFA rate for this program, the arguments related to the selection of an AFA rate for the Export Buyer's Credit program are moot.

Comment 3: Specificity of Aluminum Extrusion for LTAR Program

GOC Comments

- For a subsidy program to be countervailable, the Department must find that the alleged program is specific to ensure that subsidies that are widely distributed are not countervailed.
- The Department found in the *Preliminary Results* that the program for the provision of aluminum extrusions for LTAR was *de facto* specific because the recipients are limited in number.
- The *CVD Preamble* establishes that, to determine whether an industry is "limited in number," requires the Department to look at the make-up of the users rather than the number of enterprises.
- Record evidence demonstrates that the range of recipients under this alleged program is quite diverse and therefore not limited.[34]
- Even if the industries are not limited, the Department can also find a program specific if an industry or enterprise is a predominant user of a subsidy or receives a disproportionately large amount of the subsidy, as supported by *Washers from Korea* and *OCTG from Turkey*.[35]

[34] *See* GOC Case Brief, citing to *Countervailing Duties*, 63 FR 65348 (November 25, 1998) (*CVD Preamble*).
[35] *See* GOC Case Brief, citing to *OCTG from Turkey* and *Large Residential Washers from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 75975 (December 26, 2012) (*Washers from Korea*) and accompanying Issues and Decision Memorandum.

- Record evidence demonstrates that the industries that purchase/use aluminum extrusions are not limited, instead being diverse and varied and therefore do not support a specificity finding; the Department made a similar determination in *Chloro Isos from the PRC*.
- The number of industry categories should not be a constraint in a specificity analysis; the make-up for the industry should instead be the focus of this analysis.
- Record evidence demonstrates that the solar cell industry in the PRC is not a disproportionate or predominant consumer of aluminum extrusions.

Petitioner Rebuttal Comments

- The Department has consistently found the provision of aluminum extrusions to be specific and should continue doing so in the instant review.
- The Department has considered and rejected the argument for considering predominate use in other proceedings on the basis that the industries using the program are limited in number and therefore meet the statutory rest of specificity; the same facts apply in this proceeding.

Department's Position: The Department continues to find that the provision of aluminum extrusions for LTAR is specific. As Petitioner points out, the Department has previously received and addressed these exact comments in the first administrative review of this CVD proceeding.[36] The facts in that proceeding and this one are virtually identical. In both proceedings the GOC aluminum extrusion industry user data included lists of industries and their respective consumption of aluminum extrusion as a percentage of total consumption. Likewise, in both proceedings, the GOC also provided lists of "major projects" or applications within these industries (*e.g.*, window and door frames, curtain walls, high speed-rail, and furniture). Based on the information provided by the GOC, we found in the first administrative review that the actual recipients of aluminum extrusions (on an industry basis) are limited in number within the meaning of section 771(5A)(D)(iii)(I) of the Act.[37] As the facts in the instant review are virtually identical to those in the first administrative review, we continue to find that the recipients of aluminum extrusions during the POR were limited in number within the meaning of section 771(5A)(D)(iii)(I) of the Act.

We disagree with the GOC's argument that a determination that the program is not specific would be consistent with *Chloro Isos from the PRC*, where the Department found a different program, urea for LTAR, to not be specific. In *Chloro Isos from the PRC*, we reached a "no specificity" determination after finding that urea is consumed by nine industries in the PRC.[38] Specifically, in *Chloro Isos from the PRC*, we verified that urea is consumed by at least nine broadly diverse industries in the PRC, including: (1) agriculture (both as fertilizer and feed additives); (2) chemicals; (3) wood products; (4) textiles; (5) paper; (6) automotive; (7) industrial pollution control; (8) medicine; and (9) cosmetics.[39] In finding that the provision of urea for LTAR was not specific, we emphasized the diversity of the consuming industries and our lack of knowledge of the specific subindustries that consume urea. We found the program not to be specific based on the "overarching fact that a large number of diverse industrial sectors in the

[36] *See* Solar Cells First AR IDM at Comment 3.
[37] *Id.*
[38] *See* Chloro Isos from the PRC IDM at 23, 38-41.
[39] *Id.*

PRC use urea and that the industry producing subject merchandise is not the predominant or disproportionate user of urea."[40] Further, while petitioners in *Chloro Isos from the PRC* argued that certain industries use only downstream urea products rather than just urea, the record lacked evidence to substantiate such a conclusion.

Unlike in the case of urea, the consuming industries of aluminum extrusions are limited to: (1) building and construction, (2) transportation, (3) machinery and equipment, (4) electrical, (5) consumer durables and (6) others. While the GOC contends that the reported categories "Consumer Durable Goods" and "Other Industries," cover a broad array of products, including multiple categories reported in urea (*e.g.*, chemicals, textiles, paper), we find that the GOC provided no information indicating the number of industries that constitute these categories. We are therefore unable to determine the accuracy of the GOC's statement that these categories include numerous other industries that consume aluminum extrusions, particularly because the data provided by the GOC is from a third-party (*i.e.*, not compiled by the GOC itself). More generally, when comparing the industry categories from urea with those of aluminum extrusions, it is clear that urea is consumed across a much wider and more diverse set of categories whereas aluminum extrusions are consumed by a smaller group of industrial categories that are, on their face, less diverse. As such, based on the information placed on the record, the Department continues to find that the industries consuming aluminum extrusions in the PRC are limited in nature and therefore, the provision of aluminum extrusions for LTAR is specific to a limited group of industries.

Finally, we note that the GOC also argues that the PRC's construction industry predominately or disproportionately consumed aluminum extrusions, whereas the entire electricity industry (which presumably includes the solar cell industry) accounts for only a small portion of consumption. However, there is no need to analyze predominance or disproportionality under section 771(5A)(D)(iii)(II)-(III) of the Act when information on the record indicates that a subsidy is provided to a limited number of industries under section 771(5A)(D)(iii)(I) of the Act, as we found in the first administrative review and as explained above.[41]

Comment 4: Polysilicon Market Distortions

GOC Comments

- The Department previously found it could not rely on the SSB data for market distortion analysis as the SSB would not permit verification of its databases; the successful verification in the instant review has resolved this issue.
- As a result, the SSB data should be used to analyze the market distortions for the alleged input LTAR programs in this and other proceedings.
- There is no evidence on the record that the GOC had solar-grade polysilicon data available to it but failed to submit it to the Department and, to the contrary, the GOC provided the data that it had available.
- Just as the Department accepted broader categories for aluminum extrusions and solar glass, the Department should have accepted the broader category for solar-grade polysilicon as well.

[40] *Id.* at 40.
[41] *See, e.g.*, Solar Cells First AR IDM; *see also CVD Preamble*, 63 FR at 65355.

- The application of facts available in the *Preliminary Results* to polysilicon is without support and the Department should accept the SSB data provided for polysilicon.
- Even if it was appropriate to apply facts available, the Department should have relied on the polysilicon data provided rather than secondary sources.
- The secondary sources used do not demonstrate price distortions in the solar-grade polysilicon market, instead demonstrating (1) that market controls were no longer in effect in the POR, (2) the GOC's movement to rein in any preferential treatment, and (3) that rules addressing capacity are not evidence of government intervention in pricing.
- There is no market distortion by state-invested enterprises in the examined input markets.

Petitioner Rebuttal Comments

- The GOC did not provide the information requested by the Department and, accordingly, the Department appropriately relied on AFA in the *Preliminary Results*; it should continue to do so for the final results.
- The GOC has not demonstrated that distortions caused by export restraints on polysilicon had fully disappeared from the Chinese market during the POR.
- JA Solar's 20-F contradicts the GOC's argument that the GOC has worked on ending preferential lending to solar cell producers.
- JA Solar does not dispute the information in the Polysilicon Industry Access Standards which alone supports the Department's finding that the polysilicon market is distorted.

Department's Position: The Department continues to find that information on the record indicates that the polysilicon market is distorted and, as such, it is appropriate to rely on a tier two (*i.e.*, world price) benchmark for the purposes of the benefit calculation. The Department first notes that the decision in the *Preliminary Results* to find the PRC polysilicon market distorted was based on facts available on the record of this proceeding.[42] The GOC characterizes this facts available determination as penalizing the GOC for being unable to provide information on solar-grade polysilicon; the Department disagrees with this assessment. The Department did not find that the GOC failed to cooperate in providing information, as that would have likely resulted in the application of AFA. Rather, the Department found that a lack of industry-specific information meant that the information the GOC provided was unreliable for purposes of evaluating the solar-grade polysilicon market and resulted in the Department reviewing additional information which led to a determination that the market is distorted.[43] Moreover, as discussed in the section "Use of Facts Otherwise Available and Adverse Inferences," as well as Comment 6, the Department has made a similar determination in these final results for the solar glass industry.

With respect to the GOC's arguments that the Department's verification at the SSB warrants the reliance on the industry data submitted for polysilicon, solar glass and aluminum extrusions, the Department disagrees. The verification was limited to the data submitted on glass and aluminum sections; Department officials did not verify any of the information submitted for polysilicon. Accordingly, the simple fact that the Department conducted verification at the SSB's offices and

[42] *See* PDM at 24-25.
[43] *Id.*

confirmed that the glass and aluminum sections data submitted by the GOC was correct has no bearing on whether the prices in the solar-grade polysilicon market are distorted.

The GOC also contends that the Department should accept the more general polysilicon industry data because we have accepted it for solar glass and aluminum extrusions. We disagree. While the GOC provided the most detailed information it could, the industry information the GOC submitted for polysilicon (and solar glass) were not specific to that industry. As such, the Department could not determine, based on that data, that the prices in the relevant market were not distorted by government involvement in the market. Therefore, the Department evaluated other information to determine whether there were, in fact, market distortions. Although the Department may have previously used this less specific information as the best information available to determine whether the solar-grade polysilicon market is distorted, this does not prevent the Department from considering new or additional information more relevant to the precise issue at hand, as was done in this case.[44] Moreover, in this case, once we considered this additional information on the solar-grade polysilicon market in the PRC, the Department found that the polysilicon market in the PRC is distorted.[45]

While the GOC contends that this information does not actually demonstrate distortions of prices in the polysilicon market, we continue to find that the information supports this conclusion. We agree that the information on the record appears to indicate that the raw material export controls were no longer in place during the POR; we also agree with Petitioner that the fact that these controls were removed at the end of 2012 may mean that there were some residual effects of these controls into the POR. As the controls were removed at the beginning of the POR, we find that it is unlikely that the removal of a control would result in the immediate disappearance of market distortions as it would likely take some time for production and inventory levels to normalize. As such, it is reasonable to conclude that residual effects of the controls continued to linger into the POR while the market adjusted to the removal of the controls in question.

Further, the article "Fits and Starts in China's Polysilicon Industry" indicates that the GOC was planning on tightening preferential lending in order to reign in the growth in the polysilicon market.[46] As Petitioner points out, JA Solar explains in its 2013 20-F that it relies on preferential lending and, were this to go away, it could have a negative effect on the company's operations.[47] Accordingly, where preferential lending has continued, it would seem that, by extension, the GOC continues to provide supports to the polysilicon market while planning to limit this support. As such, this indicates that the GOC continues to introduce distortions into the polysilicon market that would not otherwise be present if preferential lending were eliminated.

Finally, with respect to the "Polysilicon Industry Access Standards" information on the record, the GOC argues that these rules are not sufficient to determine that the GOC has introduced distortions into the market that affect price. While implementation of these standards, by way of

[44] *See* Memorandum to the File, "Additional Documents Memorandum," December 31, 2015 at Attachment V.
[45] *Id.*
[46] *Id.*
[47] *See* Letter from Petitioner, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Comments on JA Solar's Affiliation Questionnaire Response," September 8, 2015.

shutting down small or polluting polysilicon factories, could result in less production which could raise prices, the bigger issue is that the article indicates that the GOC had yet to implement the rules and appeared to be wavering on them. By declining to implement the standards it set, the government could be permitting distortions within the market by allowing the industry to skirt the rules and regulations in support of maintaining production levels.

Taken together, the information placed on the record supports a finding that, through either actions or inaction on the part of the GOC, the GOC's involvement in the PRC polysilicon market has resulted in distortions, and therefore the market is not reliable for the purposes of calculating a program benefit in this proceeding.

Comment 5: Polysilicon Benchmark

Petitioner Comments

- The Department did not use Petitioner's proposed benchmark prices for polysilicon in the *Preliminary Results* because the prices were illegible.
- The Department should use these polysilicon prices submitted by Petitioner for the final results of the instant review.

JA Solar Rebuttal Comments

- Petitioner has provided no reason why the Department should not continue to rely on the JA Solar data used in the *Preliminary Results* and therefore, the Department should continue to do so for the final results.

Department's Position: The Department has continued to rely on the polysilicon benchmark data used in the *Preliminary Results*. As we noted in the *Preliminary Results*, the benchmark information submitted by Petitioner is illegible and therefore, the only other information on the record is that presented by JA Solar. Furthermore, as JA Solar notes, there is no information or arguments indicating that it is inappropriate to rely on the data used in the *Preliminary Results*. Accordingly, we have made no changes to the polysilicon benchmark used in the benefit calculation for the provision of polysilicon for LTAR program for these final results.

Comment 6: Solar Glass Benchmark

JA Solar Comments

- The Global Trade Atlas (GTA) data should not be used for the solar glass benchmark as the data reflect a broad, six-digit basket category of safety glass rather than being price data specific to solar glass and there is no information indicating that solar glass would be classified under this category.
- Petitioner filtered the GTA data to remove all price data reported in square meters, the effect being that 75 percent of the data was removed and thus rendering the data less than representative of a world price.
- The CIT in *Jiangsu Jiasheng* upheld the Department's decision to rely on a more specific Harmonized Tariff Schedule (HTS) category rather than a broader HTS category because

the broader category covered diverse products whose value was not reasonably comparable to that of the respondent's purchases.[48]

- The Department should instead rely on the IHS world price data as this data is both representative of the world trade in solar glass and specific to the low-iron, rolled solar glass used by JA Solar.
- Information on the record allows for the conversion of the IHS price data to a price-per-kilogram basis and thus is the best option for a solar glass benchmark price.

Petitioner Rebuttal Comments

- The Department should continue to rely on GTA data for the solar glass benchmark.
- While the HTS category used for the GTA data may include other glass items, solar glass is properly classifiable under this category and, moreover, specifically pertains to rolled glass products which are used in the majority of photovoltaic applications.
- Rejection of a broader HTS category in *Jiangsu Jiasheng Photovoltaic*, an AD proceeding, is not relevant to this proceeding as the rejected category was significantly broader than the product at hand whereas, in this proceeding, there is little distinction between the glass products included in the GTA data and the glass used in the production of solar cells.
- All of the GTA data under this HTS category was submitted and, should the Department wish to utilize the GTA data reported on a per-square-meter basis, it would simply need to convert those values to a per-kilogram basis; the necessary conversion factor is available on the record.
- If the Department were to convert the GTA data reported on a per-square meter basis to a per-kilogram basis and incorporate those additional prices into the benchmark price, no party could claim that the price would not represent a world market price.
- The IHS data is reported on an annual basis whereas the Department's stated preference is to utilize monthly data over annual price data; the GTA data is provided on a monthly basis.
- It is unclear whether the IHS data is tax-inclusive; reflective of domestic pricing, export pricing or import pricing; or whether it has been adjusted for Chinese solar glass products, which the IHS report states dominates the solar glass market.
- While the conversion rate placed onto the record provides for the density of float glass, there is not information on the record concerning the density of rolled glass, the product primarily consumed in the solar glass market; any application of the float glass conversion rate to the IHS rolled glass data may be distortive.

Department Position: The Department has determined that it is appropriate to rely on an average of the GTA data used in the *Preliminary Results* with the IHS data, exclusive of Chinese prices. As an initial matter, in the course of reviewing these arguments, the Department determined that it was necessary to evaluate the PRC solar glass market. Specifically, parties commented on adjustments the proposed benchmarks for PRC-related data and the possibility of PRC-related distortions in the solar glass benchmark data. As such, in order to adequately review the GTA and IHS data placed on the record, the Department found it necessary to review,

[48] *See* JA Solar Case Brief, citing *Jiangsu Jiasheng Photovoltaic Tech. Co., Ltd. v. United States*, 28 F. Supp. 3d 1317 (CIT 2014) (*Jiangsu Jiasheng*).

generally, whether the PRC solar glass market was distorted and, thus, whether it is appropriate to adjust the proposed benchmark prices for PRC data.[49] As discussed above in the section "Use of Facts Otherwise Available and Adverse Inferences," the Department has determined that the solar glass market in the PRC is distorted and therefore it is necessary to rely on "tier two" world market price data. Accordingly, it is vis-a-vis our determination that the PRC solar glass market is distorted that we have evaluated the GTA and IHS world price data that the parties contend we should consider for the selection of the solar glass benchmark.

In this case, we received two possible sets of data: (1) GTA data for tempered glass on a monthly basis for the POR and (2) an IHS report that contained world solar glass prices on an annual basis. The factors relied upon by the Department when determining appropriate benchmark(s) for valuing an input depend on the facts surrounding the data/information placed on the record of a proceeding and therefore must be evaluated on a case-by-case basis. In this case, the GTA data, while representing a broader category of glass products, is reported on a monthly basis, which the Department has found to be preferable.[50] Alternatively, the IHS data is limited to solar glass and the Department normally attempts to rely on data reflecting the narrowest category of products encompassing the input product, where possible.[51] However, the IHS data is presented on an annual basis, which limits the Department's ability to take price changes over the POR into account when calculating a benefit. In the *Preliminary Results*, the Department relied solely on the GTA data on the basis that it was reported in kilograms whereas the IHS data was reported in square meters and there was no available conversion factor to convert to kilograms. Subsequent to the *Preliminary Results*, the Department placed on the record a conversion factor that JA Solar now contends is sufficient to convert the IHS data into a per-kilogram price.[52]

With respect to the GTA data, Petitioner placed the entire dataset on the record and then, as JA Solar points out, filtered the data to remove all values reported in square meters. Then, with the remaining values in metric tons, Petitioner removed PRC price data. It was this remaining data that was used as the benchmark in the *Preliminary Results*. JA Solar challenges the Department's use of the GTA data in a few areas.

Alternatively, Petitioner challenges the Department's use of the IHS data, noting that it is annual data and includes PRC prices, which the IHS report indicates have benefitted from GOC market interventions.

Representativeness

First, JA Solar contends that the IHS data is limited to solar glass whereas the GTA data includes tempered glass that is a broader category and, on that basis alone, the Department should reject the GTA data. While the Department recognizes that the GTA data is not limited to solar glass

[49] *See, e.g.*, JA Solar Case Brief at 5; *see also* Petitioner Rebuttal Brief at 10-11

[50] *See, e.g., Steel Concrete Reinforcing Bar From the Republic of Turkey: Final Affirmative Countervailing Duty Determination Final Affirmative Critical Circumstances Determination*, 79 FR 54963 (September 15, 2014) and accompanying Issues and Decision Memorandum at 11.

[51] *See, e.g., Certain Uncoated Paper From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 81 FR 3110 (January 2, 2016) and accompanying Issues and Decision Memorandum at 25-26.

[52] *See* Memorandum to the File, "Countervailing Duty Administrative Review of Crystalline Silicon Photovoltaic Cells Whether or Not Assembled Into Modules from the People's Republic of China," March 23, 2016.

prices, JA Solar's characterization that the tempered glass category is too broad to be reliable is incorrect. Tempered glass is a relatively limited category and no party has contended that solar glass does not fall within this category of glass products. If all other information related to the GTA and IHS data were the same, the Department would consider the IHS data to be preferable on the basis that it is more representative but, as discussed below, the IHS data also contains flaws in areas where GTA data is superior.

Contemporaneity

As Petitioner correctly points out, the GTA data represents monthly price data, which has historically been the Department's preference over a less frequent benchmark (*e.g.*, annual). This compares to the IHS data submitted by JA Solar, which is limited to a single world price for the year 2013 and we have no information about what that IHS annual price represents (*e.g.*, actual calendar year price data, beginning 2013 price, end of 2013 price). Accordingly, as it is clear that the GTA data is representative of a price that covers the entire POR while it is not as clear what period the IHS data represents other than being listed as a price for 2013, we find that, with respect to contemporaneity, the GTA price is preferable.

Unit of Measure

JA Solar points out that, as a result of filtering out all the GTA data reported in square meters, Petitioner has eliminated a significant portion of the GTA data (*i.e.*, 75 percent) and therefore the GTA data is not accurately reflecting the prices of this glass category. In response, Petitioner contends that it placed all the information on the record and, should the Department so choose, it can rely on the glass density information on the record to convert those GTA data in square meters to kilograms. No information has been presented to explain why some of the GTA data has been reported in square meters while other data is in kilograms and, as such, we do not believe it is appropriate to convert the GTA data in square meters to kilograms. Specifically, any conversion from square meters to kilograms not only requires knowledge of the density, which is on the record, but also requires some knowledge about the thickness of the glass, which is not on the record. As we lack this information for the GTA data, we would be required to make certain assumptions about the thickness of glass in the GTA data in order to carry out the conversion. Without more information on the glass reported by GTA in square meters, it would not be appropriate to make these assumptions as the resulting per-kilogram price may not be accurate, particularly as the GTA data may represent multiple thicknesses. While the Department does not have detailed information on the GTA glass data reported in metric tons, the fact that it is reported in metric tons means that it is not necessary for the Department to make any assumptions or modifications to the data in order to use it. As such, the Department finds that it is appropriate to rely on the GTA data in metric tons while it would not be appropriate to rely on the data in square meters.

This compares to the IHS data, which we note is reported in square meters but contains information on thicknesses such that the Department would not be required to make any assumptions when converting to kilograms.

As for Petitioner's argument that the density rate placed on the record is for float glass and is not representative of the majority-used rolled glass, we disagree. JA Solar has stated that the density rate is consistent with the solar glass it used during the POR and the information placed on the

record indicates that this is the density of glass, generally. Accordingly, the Department continues to find that the density of glass placed on the record is reflective of solar glass.

Information in Data
Petitioner contends that, unlike the GTA data, which is a tax-exclusive price and has had all PRC price data removed, there is no information indicating whether the IHS data is similarly tax exclusive or excludes PRC price data. The Department agrees with this assessment and notes that our analysis of the IHS data indicates that some adjustments are necessary for PRC price data. Nonetheless, we do not find that this issue renders the IHS data unusable. Due to the proprietary nature of the IHS data and these adjustments, *see* the Department's detailed discussion of this in the Final Analysis Memorandum.

In sum, both the GTA data and the IHS data contain strengths and flaws. As such, the Department finds that the most appropriate action is to rely on both sets of data as, while neither is ideal, in the facts and circumstances of this proceeding, neither contain flaws or deficiencies so serious that either should be rejected in its entirety for the purpose of creating a more robust global benchmark. Therefore, in accordance with 19 CFR 351.511(a)(2)(ii), we find that it is appropriate is to calculate an average of the GTA and IHS datasets where more than one commercially viable price is available. Notwithstanding this decision, we note that on the basis that the IHS data includes PRC price data, we have adjusted the IHS data to remove this PRC price information. As the PRC-related price data was already removed from the GTA data used in the *Preliminary Results* and we find that it is not appropriate to rely on the GTA data reported in square meters due to the lack of information on glass thickness necessary for an accurate conversion to kilograms, we have made no adjustments to the GTA data used in the *Preliminary Results*. As such, the Department has calculated the benchmark for solar glass based on a simple average of the GTA price used in the *Preliminary Results* and the adjusted IHS price. *See* the Final Analysis Memorandum for the detailed discussion of the adjustments made to the IHS data as well as the calculation of the benchmark.

Comment 7: Ocean Freight Benchmark

Petitioner Comments
- Preliminarily not considering Petitioner's freight rates in the benchmark calculations on the basis that they were 2012 data indexes to the POR resulted in a more distorted benchmark freight rate.
- The Department routinely relies on non-contemporaneous data indexed to the respective POR in AD and CVD calculations and even relied on non-contemporaneous data for the calculation of JA Solar's land benefit in the instant review.
- Petitioner's non-contemporaneous freight data is specific to the movement of polysilicon billets, aluminum extrusions and glass whereas the JA Solar freight rates used in the *Preliminary Results* are for transportation of different materials (*i.e.*, calcium carbonate, caustic soda and steam coal).
- There is no information on the record which supports the Department's preliminary conclusion that 40-foot containers would not be used to transport polysilicon billets, aluminum extrusions and glass.

- The Department used freight rates of 40-foot containers from *Citric Acid from the PRC 2013* for sulfuric acid and caustic soda, noting that it did so because there was no information indicating which size container is commonly used to ship said materials.[53]
- Petitioner's freight rates are reasonable and, therefore, the Department should calculate international freight rates by relying on Petitioner's proposed freight rates instead of, or in addition to, those provided by JA Solar.

JA Solar Rebuttal Comments

- Unlike in other situations, where contemporaneous data were unavailable, the JA Solar ocean freight benchmark data is contemporaneous and therefore is more appropriate than non-contemporaneous data from 2012.
- Petitioner has given the Department no reason to depart from relying on the contemporaneous data submitted by JA Solar and, as such, the Department should continue to rely on JA Solar's freight data as it did in the *Preliminary Results*.

Department's Position: The Department has continued to rely on the 2013 ocean freight data used in the *Preliminary Results*. In this proceeding, JA Solar submitted information for the last three months of the POR specific to shipping the inputs in question (*i.e.*, polysilicon billets, solar glass and aluminum extrusions) and also pointed to *Citric Acid from the PRC 2013*, which has the same POR, to demonstrate that these prices were the same for shipping other products. By extrapolation, JA Solar argued that this indicated that the ocean freight prices for the first nine months of the POR, while no longer available from Maersk, would be the same as those ocean freight rates on the record of *Citric Acid from the PRC 2013*. Alternatively, Petitioner argues that the Department should not accept this extrapolation as the ocean freight rates used in *Citric Acid from the PRC 2013* are for different products whereas the 2012 data Petitioner submitted is more specific to the inputs in question and is indexed to the POR with a consumer price index that the Department has used previously.

As JA Solar points out, the Department's preference, where possible, is to rely on contemporaneous data over non-contemporaneous data. The data submitted by JA Solar meets this standard. Furthermore, by demonstrating that the data from *Citric Acid from the PRC 2013* and prices to ship the inputs in question in the instant review are the same for the final three months of the POR, the Department finds it reasonable to conclude that the prices for the first nine months of the POR could be the same as those used in *Citric Acid from the PRC 2013*. While Petitioner argues that it is not appropriate to rely on shipping prices for goods that are not similar to those used in this case, the information on the record indicates that, at least for the last three months of the POR, the price for shipping these different goods is the same and, accordingly, we find it appropriate to continue relying on the ocean freight data relied upon in the *Preliminary Results*.

[53] *See* Petitioner Case Brief, citing to PDM at 16-17. For the ocean freight data cited in the PDM, *see* JA Solar Benchmark Submission at Exhibit 4B (placing information from *Citric Acid and Certain Citrate Salts: Preliminary Results of Countervailing Duty Administrative Review; 2013*, 80 FR 32346 (June 8, 2015), unchanged in *Citric Acid and Certain Citrate Salts: Finals Results of Countervailing Duty Administrative Review; 2013*, 80 FR 77318 (December 14, 2015) (*Citric Acid from the PRC 2013*)).

Beyond the fact that Petitioner's freight data is not contemporaneous, we also note that for two of the three reported freight categories submitted by Petitioner ("miscellaneous manufactured articles" for polysilicon billets and "glass, glassware" for solar glass), the prices are for 40 foot tanks.[54] Information on the record indicates that a tank's capacity is measured in liters rather than a dry weight measure, as used for regular containers.[55] Even if it were appropriate to rely on Petitioner's non-contemporaneous data, the Department finds that it would not be appropriate to rely on ocean freight rates for tanks used to ship liquids when the inputs in question are solid products that would more likely be shipping in standard containers. This would only leave Petitioner's 20 foot standard container ocean freight rates for aluminum extrusions (*i.e.*, "aluminum, aluminum articles, metal") for 2012. Nonetheless, JA Solar submitted ocean freight for this same category and container size for 2013. Accordingly, the Department finds that there is no reason to rely on Petitioner's 2012 ocean freight prices, particularly in light of more contemporaneous and representative data on the record.

Comment 8: Inclusion of VAT in LTAR Benchmarks

JA Solar Comments

- It is unreasonable to claim that VAT is either a "delivery charge" or "import duties" and therefore, VAT is not an allowable adjustment under 19 CFR 351.511(a)(2)(iv).
- While "delivery charge" and "import duties" are not defined in 19 CFR 351, 19 CFR 351.102(b)(28) defines classifies VAT as part of indirect taxes, which are specifically excluded from the definition of import charge under 19 CFR 351.102(b)(26).
- When determining the adequacy of remuneration, the Act allows for the consideration of prevailing market conditions, including price, quality, availability, marketability, transportation, and other conditions of purchase or sale; VAT is not expressly named as a component of market or purchase conditions.
- VAT's exclusion from the Act and 19 CFR 351 is consistent with the way a VAT system functions where the VAT paid out is recouped when the goods are sold or refunded when exported.
- By including VAT in the benchmarking, this adds a cost that does not exist and violates the SCM Agreement, which establishes that the subsidy calculation shall be done in terms of the cost to the granting government.
- Inclusion of VAT in the benchmarks for aluminum extrusions, solar glass and polysilicon creates a distortion in the benefit analysis.
- Record information indicates that the GOC electrical schedules and JA Solar's reported electricity costs include VAT.
- For the final results, the Department must revise its benchmark calculations in the LTAR programs by removing VAT in order to comply with its own regulations and to eliminate distortions.

[54] *See* Letter from Petitioner, "Certain Crystalline Silicon Photovoltaic Products, Whether or Not Assembled Into Modules, from the People's Republic of China: Submission of Factual Information – Benchmark Data," November 2, 2015 at Exhibit 1.
[55] *Id.*

Petitioner Rebuttal Comments

- The Department has addressed the arguments raised by JA Solar in the past and rejected them.
- The Department's regulation governing these adjustments establishes that ". . . the Secretary will adjust the comparison price to reflect the price that a firm actually paid or would pay if it imported the product. . . "
- Because JA Solar paid VAT on purchases of inputs, the Department followed its regulatory requirements by establishing a benchmark that a firm actually or would have actually paid.
- For electricity, VAT was included because the "tier one" benchmark and JA Solar's reported electricity expenses included VAT.
- In *Steel Cylinders from the PRC*, similar arguments were made and the Department declined to exclude VAT from the benchmarks used in the benefit calculations on the basis that, to avoid any distortions in the benefit calculations, it was not appropriate to compare purchases of VAT-inclusive goods with a VAT-exclusive benchmark.[56]
- Likewise, just as in *Steel Cylinders from China*, the fact that Shanghai JA Solar Technology Co., Ltd. is located in an export processing zone does not require the Department make specific adjustments just for this company's specific situation.
- With respect to the argument that VAT paid is recovered and therefore should be excluded, just as the Department found in *Melamine from Trinidad and Tobago*, there is not sufficient evidence on the record to demonstrate that the respondent recovered the VAT paid and therefore, the Department should continue to include VAT in the benefit calculations.[57]

Department's Position: The Department has made no changes to the benchmark and benefit calculations used in the *Preliminary Results* with respect to VAT.

First, with respect to JA Solar's arguments that the Department incorrectly includes VAT rates in the benchmark and benefit calculations for the provision of goods and services, 19 CFR 351.511(a)(2)(i) states that the Department will:

> . . . normally seek to measure the adequacy of remuneration by comparing the government price to a market-determined price for the good or service resulting from actual transactions in the country in question. Such a price could include prices stemming from actual transactions between private parties, actual imports, or, in certain circumstances, actual sales from competitively run government auctions. In choosing such transactions or sales, the Secretary will consider product similarity; quantities sold, imported, or auctioned; and other factors affecting comparability.

This is the governing principle when the Department conducts the benefit analysis for an LTAR program. As part of this, where an import price is used, 19 CFR 351.511(a)(2)(iv) establishes

[56] *See* Petitioner Rebuttal Brief, citing to *High Pressure Steel Cylinders From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012) (*Steel Cylinders from the PRC*).
[57] *See* Petitioner Rebuttal Brief, citing to *Melamine From Trinidad and Tobago: Final Affirmative Countervailing Duty Determination*, 80 FR 68849 (November 6, 2015) (*Melamine from Trinidad and Tobago*).

that the Department will adjust the benchmark price to reflect the price a firm actually paid or would pay while also stating that the adjustment will include delivery charges and import duties. JA Solar contends that the second part of this regulation limits any adjustments to delivery charges and import duties, with VAT not being a permissible adjustment. JA Solar misunderstands the benchmark price and comparison being constructed by the Department.

As the Department has already discussed, we are relying on world price data as the basis for our benchmarks for polysilicon, solar glass and aluminum extrusion purchases during the POR. Therefore, the Department adds freight, import duties and VAT to the world prices in order to estimate what a firm would have paid if it imported the product. As long as VAT is reflective of what an importer would have paid, then VAT is appropriate to include in the benchmark. JA Solar additionally argues that we should remove the VAT payments from its domestic purchases. This is incorrect because, as noted above, the Department's regulations require that we ensure the benchmark price reflect the price a firm actually paid or would pay. The assessment of VAT on these goods is standard practice and is what a firm would normally pay. The GOC confirmed this by reporting the VAT assessment rates that apply to each of these inputs.[58] Accordingly, the Department finds that our regulations require us to consider all adjustments necessary to ensure an accurate comparison and are not limited to delivery charges and import duties, as JA Solar asserts. To exclude VAT and/or adjust the reported purchases by removing VAT would result in a less accurate comparison and therefore would be inconsistent with the Department's regulations. As such, the Department has made no changes with respect to VAT to the benchmark prices used in the *Preliminary Results* or JA Solar's reported purchases.

JA Solar also contends that, because the goods are later resold or exported, it recoups the VAT paid and therefore, VAT should be excluded from the benchmarks and reported domestic purchases of inputs. This argument fails to consider the Department's obligation to conduct a comparison between a market price and the price paid by the respondent. 19 CFR 351.511(a)(2) does not contemplate future reimbursements or refunds of taxes, but instead requires us to evaluate the purchases in the form in which they are made. Whether a firm recovers VAT subsequent to delivery of the input is immaterial to the delivered price that the Department must use as the comparison price under 19 CFR 351.511(a)(2)(iv).

With respect to electricity payments, the Department agrees that JA Solar's reported information that was reviewed during the course of verification includes VAT and some of the reported electricity rates match those in the electricity schedules submitted by the GOC. However, although JA Solar argues that that is sufficient evidence to conclude that the GOC electricity schedules are also VAT inclusive are less persuasive as the GOC provided no information which clearly states whether the rates listed in the schedules are VAT-inclusive or VAT-exclusive. Without this information from the GOC, the Department cannot reasonably make a determination that VAT should be removed from the electricity benchmark, particularly in light of the GOC's failure to fully cooperate in its responses to the electricity-related questions. Accordingly, due to the GOC's refusal to cooperate and the lack of information otherwise, the Department finds that it is not appropriate to make adjustments to the electricity rate benchmarks that were preliminarily selected in the instant review.

[58] *See* GOC QR at 65, 115, 138.

Even if the Department were to accept JA Solar's unsupported proposition that the electricity rates provided by the GOC include VAT, this only further supports a determination that the Department is correct in continuing to incorporate VAT into the electricity benchmark and benefit calculations. As JA Solar's electricity expenses were reported and verified as including VAT, the Department appropriately concludes that this may be a part of electricity costs paid by a party. As such, to remove the VAT paid by JA Solar when conducting the benefit calculations would result in a calculation not based on what a party would reasonably be expected to pay and therefore, would not be an accurate benefit calculation, as envisioned by the Department's regulations. As such, the Department has made no adjustments to JA Solar's reported electricity costs as part of the benefit calculations.

Comment 9: Electricity Benchmarks

JA Solar Comments

- In the recent *Wood Flooring from the PRC* administrative review, the Department concluded that the column headings in the Zhejiang electrical schedules were transposed and corrected for this error.[59]
- The same error exists in the Zhejiang electrical schedule on the record of this proceeding; the Department should correct this transposition in this proceeding as well.

Petitioner Rebuttal Comments

- There is no evidence on the record of this proceeding which indicates that the exhibit was not fully and correctly translated by the GOC so the Department has no reason to make any changes to the Zhejiang electrical schedule.

Department's Position: The Department finds that it is appropriate to make the correction to the Zhejiang electrical tariff schedule. While the Department agrees with Petitioner that it is the responsibility of the GOC to ensure that the information it submits is correctly translated, we have reviewed *Wood Flooring from the PRC* as well as the record of the instant review and find that the circumstances are identical and therefore, it is appropriate that we make the same adjustment in this proceeding.[60] As such, the Department has updated the electricity benchmarks accordingly.

Comment 10: Electricity Benefit Calculation

JA Solar Comments

- By selecting the highest electricity rates from across the PRC, the Department is making an inferred determination that the provision of electricity is a regional or geographical subsidy.

[59] *See* JA Solar Case Brief, citing to *Multilayered Wood Flooring From the People's Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2013*, 81 FR 32291 (May 23, 2016) (*Wood Flooring from the PRC*) and accompanying Issues and Decision Memorandum (Wood Flooring from the PRC IDM).
[60] *See* Wood Flooring from the PRC IDM at 4.

- The Department has not cited to any facts that support the proposition that electricity rates differ for users or industries with the regions, information that is required to conclude that a program is regionally specific.
- The solar cells industry does not fall into any of the industry-specific electricity categories in the electrical rate schedules and the Department has not indicated there are any issues with the electricity schedules.
- The selection of and reliance on the highest rates from different provinces for calculating a benefit for a stationary location in a single province is punitive.
- As the Department did not request that the GOC explain differences in electrical prices between different provinces, it cannot conclude that the GOC refused to provide this information and, as such, there is no basis for selecting benchmark electricity rates in this manner.
- The Department should calculate the AFA rate by averaging the rates for all provinces in the PRC.

Petitioner Rebuttal Comments

- The GOC did not provide the information requested by the Department on how the electricity prices were determined for each province and therefore, it was reasonable for the Department to apply AFA to determine the benchmark for the calculation of the electricity for LTAR program benefit.
- In previous CVD proceedings from the PRC, as well as the instant review, the GOC has been unwilling to provide the Department with all of the information necessary to understand how the provincial electrical schedules are determined.
- JA Solar's argument about regional specificity is irrelevant as the GOC has not provided the Department the information necessary to understand how the rates are determined and, just as in *Essar Steel*, without this information, it is plausible that JA Solar could have been subject the highest provincial rate.
- The argument that the Department should calculate the AFA rate by averaging the rates of all provinces contradicts JA Solar's argument that a stationary factory cannot be subject to rates from multiple provinces.
- Likewise, by averaging all of the provincial rates, the Department would be calculating a "neutral facts available" rate, therefore eliminating the GOC's incentive to provide the requested information.
- The Department should continue to rely on the highest provincial electrical rate for each applicable category as the AFA benchmark rate for the benefit calculation.

Department's Position: The Department has continued to rely on the highest provincial electricity rate for each category when selecting the electricity benchmark used in the benefit calculation of this program.

As an initial matter, the Department requested that the GOC provide information on how the provincial electrical tariff schedules were developed by the GOC's National Development and Reform Commission (NDRC). As noted in the *Preliminary Results*, the GOC did not provide all of the requested information and therefore, we found the GOC to be uncooperative.[61] As a result

[61] *See* PDM at 26-27.

of the GOC's unwillingness to cooperative, the Department was unable to determine whether the electrical rates included in the electricity schedules submitted by the GOC were calculated based on market principles. The result was the Department's application of facts available with an adverse inference to the determination of the appropriate benchmark. Specifically, because the GOC provided the provincial electrical tariff schedules, the Department relied on this information for the application of facts available and, in order to make an adverse inference, the Department identified the highest rates amongst the schedules for each reported electrical category and used those as the benchmarks in the benefit calculations.

As the selected highest electricity rates for each category are spread across electricity schedules from different provinces, JA Solar argues that the Department has made an inherent determination that the provision of electricity for LTAR is a regional or geographical-specific program. JA Solar misconstrues our reliance on the highest electrical rate from any of the provincial schedules as a determination on program specificity but, as noted above, the selection of electrical benchmark rates is based on the fact that the GOC's failure to cooperative resulted in the Department's need to identify electricity benchmarks based on facts available with an adverse inference. The Department has not made a record-based determination or analysis with respect to the provision of electricity for LTAR as a regional or geographical-specific program but instead found this program to be specific through the application of AFA due to the GOC's unwillingness to cooperate on this program.[62]

With respect to JA Solar's argument that the Department cannot apply AFA to the electricity benchmark in this manner because it did not request that the GOC provide information on differences in provincial electricity rates, we disagree. We point out that, as part of the Department's initial questionnaire, we requested that the GOC complete the Electricity Appendix, which includes a number of questions about the provincial electricity rates, including the following:

- Provide the original Provincial Price Proposals (with English translations) for each province in which a mandatory respondent or any reported "cross-owned" company is located for applicable tariff schedules that were in effect during the POR.
- Describe the procedure for adjusting retail electricity tariffs and explain the role of the NDRC and the provincial governments in this process.
- Describe the price adjustment conferences that took place between the NDRC and the provinces, grids, and power companies with respect to the creation of all tariff schedules that were applicable to the POR. Explain, in detail, the cost elements and adjustments that were discussed between the provinces and the NDRC in the price adjustment conferences.
- Describe how the provincial Price Proposals are created and the NDRC's review of these Price Proposals.
- Each province in which a respondent or any reported "cross-owned" company is located should explain how increases in the cost elements in the Price Proposals led to retail price increases for electricity. Explain how these increases in the cost elements were derived and the sources for each of these listed cost elements. Explain any methodology used to

[62] *Id.* at 33.

calculate each of these cost element increases. Explain how all significant cost elements are accounted for within the province's Price Proposal.

- Each province in which a respondent or any reported "cross-owned" company is located should explain how increases in labor costs, capital expenses, and transmission and distribution costs are factored into the Price Proposals. If any of these cost element increases are not included in the price adjustments, please explain the rationale for not accounting for the increases in these specific cost factors.
- Each province in which a respondent or any reported "cross-owned" company is located should explain how the cost element increases in the Price Proposals and the final price increases were allocated across the province and across tariff end-user categories.
- Explain how the NDRC determines that the price adjustments proposed by the provinces reflect all relevant cost elements. Furthermore, explain how the NDRC determines that the provincial level price bureaus have accurately reported all relevant cost elements in their price proposals with respect to generation, transmission, and distribution.

These questions demonstrate that the Department has attempted to obtain information on how provincial electrical schedules are calculated and why they differ, which could have contributed to the Department's analysis of an appropriate benchmark for the benefit calculation in this program. The GOC's failure to provide the information that JA Solar argues was never requested is precisely the reason why the Department is applying AFA in this case with respect to the selection of an electricity benchmark.

Likewise, JA Solar similarly argues that there is no information on the record to establish that there are industry differences in electricity rates. We concur, noting that, just as we did for the questions regarding provincial electrical rates, that the Electricity Appendix in the initial questionnaire provided to the GOC included the following questions:

- Please identify the pricing category and the rates in effect for the mandatory respondent or any reported "cross-owned" companies. In addition, please describe the types of industries included in the corresponding customer-pricing category and the number of users in the corresponding customer-pricing category.
- Identify any "special industry sectors" or "encouraged" companies that receive preferential electricity rates.

Had the GOC been cooperative in responding to these questions, there may have been information on the record regarding differences in electrical rates for different industries. Because the GOC was not cooperative in responding to the Department's request for information, the Department could not carry out this analysis and instead selected a benchmark based on an adverse inference.

Accordingly, the Department has not made a determination, inherent or otherwise, related to this program being a regional or geographical-specific program. Even if the Department had wished to make such a determination, the fact that the GOC refused to answer questions related to regional electrical differences, as well as differences between industries, and therefore the Department was unable to carry out this analysis.

Finally, with respect to JA Solar's argument that the Department should instead average the electrical rates across all provinces in order to calculate a benefit, we agree with Petitioner that such calculation would be equivalent to the application of facts otherwise available rather than the application of facts available with an adverse inference. A benchmark of this kind fails to take into account the fact that the GOC refused to cooperate with our requests for information on this program and does little to incentivize the GOC to cooperate on this program in future proceedings. Furthermore, without sufficient record information about how the different electrical rates were determined, the Department considers it plausible that a respondent in the PRC could have been subject to the highest electrical rates in the PRC, regardless of their location. Accordingly, it is appropriate that the Department continue to select the electricity benchmarks based on the highest rate for each user category across all PRC electricity schedules.

Comment 11: Application of Uncreditworthy Discount Rates to Variable Loans

JA Solar Comments

- The Department applied the uncreditworthy discount rate to variable-rate loans obtained prior to 2012, the first year JA Solar was deemed to be uncreditworthy.
- To apply this would to conclude that a bank would have altered the terms of a prior loan agreement to account for a change in JA Solar's financial status; there is no evidence that this took place in JA Solar's case.
- For the final results, the Department should apply the creditworthy discount rate to those loans that were received prior to 2012.

Petitioner Rebuttal Comments

- Record information indicates that JA Solar's credit facilities come with variable rate terms that may be changed, so it is reasonable to apply an uncreditworthy discount rate to JA Solar's variable rate loans during the POR, even if they were received prior to becoming uncreditworthy.
- 19 CFR 351.505(c)(2) lays out that the benefit attributable to a particular year is determined by calculating the difference between the payments made in the year and what a firm would have paid on the comparison loan.
- For the final results, the Department should continue to assign the uncreditworthy discount rates to JA Solar's variable loans when calculating the benefit.

Department's Position: The Department has considered the comments surrounding this issue and has determined it is appropriate to apply the creditworthy discount rates for interest payments on variable-rate loans received when the respective JA Solar companies were considered creditworthy. 19 CFR 351.505(a)(5) establishes that, for long-term variable rate loans, the Department will conduct a comparison between commercial interest rates and the government-provided loan ". . . for the year in which the terms of the government-provided loan were established." With this in mind, Petitioner contends that "JA Solar's credit facilities come with flexible variable rate terms that may be changed due to market conditions or JA Solar's financial situation" by pointing to JA Solar's 2013 Form 20-F filed with the U.S. Securities and Exchange Commission as evidence that the terms of lending may change.[63] Notwithstanding

[63] *See* Petitioner Case Brief at 18.

Petitioner's contentions, the Department finds no evidence in the 20-F indicating that existing loans already taken out by JA Solar prior to becoming uncreditworthy were subject to changes in the terms. While some information in the 20-F would indicate that, in at least one instance, a creditor may be able to change certain terms of loans issued prior to 2012, there is no indication or evidence that any changes were actually made to JA Solar's loan terms. Without such information on the record, we have no basis to conclude that the original loan terms, including how the variable interest rates were calculated, on loans received before 2012 were subject to changes beyond the initially-established variable interest rate calculations. As such, the Department finds that it is not appropriate to assign an uncreditworthy discount rate for interest paid in the POR on variable rate loans received prior to becoming uncreditworthy. The Department has updated the benefit calculations accordingly.

Comment 12: Application of Uncreditworthy Discount Rates to Imported Equipment Purchases

JA Solar Comments

- The Department should not apply the uncreditworthy discount rates to purchases of imported equipment made prior to 2012, when the Department determined JA Solar became uncreditworthy.
- There is no evidence that, by becoming uncreditworthy after the purchase, JA Solar received a greater benefit from those purchases.

Department's Position: The Department agrees with JA Solar and has relied on the creditworthy discount rates when allocating across the average useful life the benefit related to the purchases of imported equipment made prior to 2012. The Department's regulation 19 CFR 351.505(a)(4)(iv) states, in relation to discount rates, that "{w}hen the creditworthiness of a firm is considered in connection with the allocation of non-recurring benefits, the Secretary will rely on information available in the year in which the government agreed to provide the subsidy conferring a non-recurring benefit." Accordingly, as the Department considers the benefits under this program to be non-recurring in nature, the Department selects a discount rate that reflects the company's creditworthiness at the time when the GOC agreed to provide the subsidy. In this case, because the Department found that certain JA Solar companies were uncreditworthy in 2012 and 2013, any purchases under this program prior to 2012 that must be allocated to the POR are subject to a creditworthy discount rate. The Department has updated the allocation calculations accordingly.

Comment 13: Minor Corrections

JA Solar Comments

- The Department should rely on the revised databases submitted as minor corrections at the beginning of verification for the final benefit calculations.

Department's Position: The Department has incorporated all of the minor corrections submitted by JA Solar prior to the start of verification into the calculations for these final results of this administrative review.

X. RECOMMENDATION

Based on our analysis, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of the review in the *Federal Register*.

✓
Agree

Disagree

Ronald K Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

July 12, 2016
Date