



C-570-980
Administrative Review
POR: 01/01/2014-12/31/2014
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DATE: December 29, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Results of the
Administrative Review of the Countervailing Duty Order on
Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled
Into Modules, from the People's Republic of China; 2014

I. SUMMARY

The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty (CVD) order on certain crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells), from the People's Republic of China (PRC). The period of review (POR) is January 1, 2014, through December 31, 2014. The mandatory respondents are Changzhou Trina Solar Energy Co., Ltd. and Canadian Solar Manufacturing (Changshu) Inc.

If these preliminary results are adopted in the final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), we will issue the final results no later than 120 days after the publication of these preliminary results.

II. BACKGROUND

In December 2012, the Department published in the *Federal Register* a CVD order on solar cells from the PRC.¹ On December 1, 2015, the Department published in the *Federal Register* a notice of opportunity to request an administrative review on the CVD Order for the POR.²

¹ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Countervailing Duty Order*, 77 FR 73017 (December 7, 2012) (CVD Order).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 80 FR 75058 (December 1, 2015).



Between December 17 and December 31, 2015, the Department received timely requests to conduct an administrative review of the *CVD Order* from interested parties: Canadian Solar Inc.; Canadian Solar (USA) Inc.; Changzhou Trina Solar Energy Co., Ltd. (TCZ); Trina Solar (Changzhou) Science and Technology Co., Ltd.; Changzhou Trina Solar Yabang Energy Co., Ltd.; Yangcheng Trina Solar Energy Technology Co., Ltd.; ERA Solar Co. Limited (ERA Solar); ET Solar Energy Limited; JA Solar Technology Yangzhou Co., Ltd.; Shanghai JA Solar Technology Co., Ltd.; JingAo Solar Co., Ltd. (collectively, the JA Solar Companies); Jinko Solar Co., Ltd.; JinkoSolar (U.S.) Inc.; Jinko Solar Import and Export Co., Ltd.; JinkoSolar International Limited; Zhejiang Jinko Solar Co., Ltd. (collectively, the Jinko Solar Companies); Lightway Green New Energy Co., Ltd.; Ningbo Qixin Solar Electrical Appliance Co., Ltd.; Chint Solar (Zhejiang) Co., Ltd.; Hangzhou Sunny Energy Science and Technology Co., Ltd.; SolarWorld Americas Inc. (Petitioner), which requested reviews of eight companies; Shanghai BYD Co., Ltd.; BYD (Shangluo) Industrial Co., Ltd.; Shenzhen Topray Solar Co., Ltd.; Sunprime Inc.; Systemes Versilis, Inc.; Taizhou BD Trade Co., Ltd.; tenKsolar (Shanghai) Co., Ltd.; Toenergy Technology Hangzhou Co., Ltd.; Yingli Green Energy Holding Company Limited (Yingli); and Zhejiang Sunflower Light Energy Science & Technology Limited Liability Company (Zhejiang Sunflower).

On February 9, 2016, in accordance with 19 CFR 351.221(c)(1)(i), the Department published in the *Federal Register* a notice of initiation of an administrative review of the *CVD Order* for 45 producers/exporters for the POR.³ In the *Initiation Notice* we stated that, in the event we limited the number of respondents for individual examination in this administrative review, we intended to select respondents based on CBP data for U.S. imports during the POR.⁴ On February 24, 2016, we released the CBP entry data for imports of subject merchandise into the United States during the POR to parties authorized to receive proprietary information under the administrative protective order for this segment of the proceeding, and invited parties to comment on the data and our respondent selection methodology.⁵ On March 2, 2016, we received timely comments on the CBP entry data from Petitioner, stating that the Department should select no fewer than two respondents for individual review, and suggesting that certain companies be selected as mandatory respondents.⁶ No other party submitted comments on the CBP data or on our respondent selection methodology, and no party requested to be considered as a voluntary respondent in this administrative review. On March 10, 2016, the JA Solar Companies reported that they made no exports or sales of subject merchandise to the United States during the POR.⁷

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 6832 (February 9, 2016) (*Initiation Notice*).

⁴ See *Initiation Notice* at the section, “Respondent Selection.”

⁵ See Department Memorandum, “Administrative Review of the Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules (Solar Cells), from the People’s Republic of China (PRC): Release of U.S. Customs Entry Data for Respondent Selection,” (February 24, 2016) (CBP Entry Data); see also *Initiation Notice* at the section, “Respondent Selection.”

⁶ See Letter to the Secretary from Petitioner, “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Comments on CBP Data and Respondent Selection and Request for Verification,” (March 2, 2016).

⁷ See Letter to the Secretary from the JA Solar Companies, “Administrative Review of the Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People’s Republic of China: No Shipments Certification,” (March 10, 2016). As noted below, we received a timely request for withdrawal of review from the JA Solar Companies. Thus, it is not necessary to make a preliminary

Also on March 10, 2016, the Department selected two mandatory respondents, TCZ and Yingli, the two largest PRC producers/exporters of subject merchandise based on the CBP entry data during the POR.⁸ On this same day, we sent a questionnaire to the Government of China (GOC), seeking information regarding the alleged subsidies, and instructing the GOC to forward this questionnaire to the mandatory respondents.⁹ On March 14 and March 18, 2016, the Jinko Solar Companies and Yingli, respectively, timely requested withdrawal of their requests for review.¹⁰ On March 29, 2016, TCZ timely responded to our questions in the CVD Questionnaire about its company affiliations.¹¹ Because mandatory respondent Yingli submitted a timely withdrawal of review request, on April 21, 2016, we selected Canadian Solar Manufacturing (Changshu) Inc. (CSAS) as the second mandatory respondent,¹² and instructed the GOC to respond to questions in the CVD questionnaire regarding CSAS, and to forward the CVD Questionnaire to CSAS. On May 3, 2016, the GOC and TCZ each timely responded to remaining questions in the CVD Questionnaire.¹³ On May 9, 2016, the Department received timely requests of withdrawals for review from ERA Solar; Zhejiang Sunflower; and from the JA Solar Companies.¹⁴ On May 12, 2016, CSAS timely responded to our questions about its company affiliations.¹⁵ On June 10,

determination of no shipments, nor was it necessary to request confirmatory data from CBP regarding the JA Solar Companies' statement of no shipments.

⁸ See Department Memorandum, "Administrative Review of the Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Respondent Selection," (March 10, 2016).

⁹ See Letter from the Department to the GOC, Countervailing Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Countervailing Duty Questionnaire," (March 10, 2016) (CVD Questionnaire).

¹⁰ See Letter to the Secretary from the Jinko Solar Companies, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Jinko's Withdrawal of Request for Administrative Review," (March 14, 2016); see also Letter to the Secretary from Yingli, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Yingli's Withdrawal of Request for Administrative Review," (March 18, 2016).

¹¹ See Letter to the Secretary from the Trina Solar Companies, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China: Section III (Affiliated Companies) Response," (March 29, 2016) (Trina Solar Affiliations Response).

¹² See Department Memorandum, "Administrative Review of the Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Second Analysis for Respondent Selection," (April 21, 2016).

¹³ See Letter to the Secretary from the GOC, "GOC Initial CVD Questionnaire Response: Third Administrative Review of the Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or not Assembled Into Modules, from the People's Republic of China (C-570-980)," (May 3, 2016) (GOC May 3, 2016 QR); see also Letter to the Secretary from TCZ, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China: Section II Questionnaire Response," (May 3, 2016) (Trina Solar May 3, 2016 QR).

¹⁴ See Letter to the Secretary from ERA Solar, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules From The People's Republic of China; ERA Solar Co., Limited's Withdrawal of Request for Review," (May 9, 2016); Letter to the Secretary from Zhejiang Sunflower, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules From The People's Republic of China; Zhejiang Sunflower Light Energy Science & Technology Limited Liability Company's Withdrawal of Request for Review," (May 9, 2016); and Letter to the Secretary from the JA Solar Companies, "Administrative Review of the Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China: Withdrawal of Request for Review," (May 9, 2016).

¹⁵ See Letter to the Secretary from CSAS, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China; Affiliated Companies Response," (May 12, 2016) (Canadian Solar Affiliations Response).

2016, the GOC and CSAS each timely responded to the remaining questions in the CVD Questionnaire.¹⁶

On August 15, 2016, the Department extended the deadline for these preliminary results by 90 days to October 31, 2016.¹⁷ Between October 20, 2016 and November 4, 2016, the GOC, CSAS, and TCZ submitted timely responses to our supplemental questionnaires. On October 27, 2016, the Department further extended the deadline for completing these preliminary results to no later than December 30, 2016.¹⁸ On November 23, 2016, Petitioner alleged that CSAS and certain affiliated companies were uncreditworthy during 2010 and 2014,¹⁹ and that TCZ and certain affiliated companies were uncreditworthy from 2009 through 2014.²⁰ On November 30, 2016, Petitioner, CSAS, and TCZ each timely submitted benchmark data.²¹ On December 12, 2016, CSAS submitted information to rebut Petitioner's Benchmark Submission.²² Finally, between December 16 and December 19, 2016, Petitioner, CSAS, and TCZ each submitted comments for the Department to consider regarding these preliminary results.²³ To the extent practicable, we have considered these comments for these preliminary results.

¹⁶ See Letter to the Secretary from the GOC, "GOC Initial CVD Questionnaire Response re Canadian Solar: Third Administrative Review of the Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or not Assembled Into Modules, from the People's Republic of China (C-570-980) (June 10, 2016) (GOC June 10, 2016 QR); *see also* Letter to the Secretary from CSAS, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China: Countervailing Duty Questionnaire Response – Section III," (June 10, 2016) (Canadian Solar June 10, 2016 QR).

¹⁷ See Department Memorandum, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Extension of Deadline for Preliminary Results in the Countervailing Duty Administrative Review," (August 15, 2016).

¹⁸ See Department Memorandum, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Second Extension of Deadline for Preliminary Results of the Countervailing Duty Administrative Review," (October 27, 2016).

¹⁹ See Letter to the Secretary from Petitioner, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Canadian Solar Uncreditworthiness Submission (November 23, 2016) (Canadian Solar UCW Allegation).

²⁰ See Letter to the Secretary from Petitioner, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Trina Creditworthiness Submission," (November 23, 2016) (Trina Solar UCW Allegation).

²¹ See Letter to the Secretary from Petitioner, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Submission of Benchmark Information, (November 30, 2016) (Petitioner's Benchmark Submission); *see also* Letter to the Secretary from CSAS, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China: Benchmark Submission," (November 30, 2016) (Canadian Solar Benchmark Submission); *see also* Letter to the Secretary from the Trina Solar Companies, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China: Benchmark Submission," (November 30, 2016) (Trina Solar Benchmark Submission).

²² See Letter to the Secretary from CSAS, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China: Rebuttal Benchmark Submission (December 12, 2016) (Canadian Solar Benchmark Rebuttal).

²³ See Letter to the Secretary from Petitioner, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China: Pre-Preliminary Comments," (December 16, 2016); *see also* Letter to the Secretary from CSAS, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China: Pre-Preliminary Comments," (December 16, 2016); *see also* Letter to the Secretary from TCZ, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China: Pre-Preliminary Results Comments," (December 19, 2016).

III. INTENT TO PARTIALLY RESCIND REVIEW

For those companies for which we received timely withdrawals of the requests for review (*i.e.*, the Jinko Solar Companies, Yingli, ERA Solar, Zhejiang Sunflower, and the JA Solar Companies), we intend to rescind this administrative review for these companies, pursuant to 19 CFR 351.213(d)(1), because no other party requested review of these companies. For these companies, countervailing duties shall be assessed at rates equal to the rates of cash deposits for estimated countervailing duties required at the time of entry, or withdrawn from warehouse, for consumption, during the period January 1, 2014, through December 31, 2014, in accordance with 19 CFR 351.212(c)(2).

IV. NON-SELECTED COMPANIES UNDER REVIEW

For the companies for which a review was requested that were not selected as mandatory company respondents, and for which we did not receive a timely request for withdrawal of review, and which we are not finding to be cross-owned with the mandatory company respondents, we are preliminarily basing the subsidy rate on a weighted-average of the subsidy rates calculated for CSAS and TCZ. For a list of these companies, please see the Appendix to this Decision Memorandum.

V. SCOPE OF THE ORDER

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

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

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

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

Also excluded from the scope of this order are crystalline silicon photovoltaic cells, not exceeding 10,000mm² in surface area, that are permanently integrated into a consumer good whose function is other than power generation and that consumes the electricity generated by the integrated crystalline silicon photovoltaic cell. Where more than one cell is permanently

integrated into a consumer good, the surface area for purposes of this exclusion shall be the total combined surface area of all cells that are integrated into the consumer good.

Modules, laminates, and panels produced in a third-country from cells produced in the 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.

VI. APPLICATION OF THE COUNTERVAILING DUTY LAW TO IMPORTS FROM THE PRC

On October 25, 2007, the Department published its final determination on coated free sheet paper from the PRC.²⁴ In *CFS from the PRC*, the Department found that:

... given the substantial difference between the Soviet-style economies and China's economy in recent years, the Department's previous decision not to apply the CVD law to the Soviet-style economies does not act as a bar to proceeding with a CVD investigation involving products from China.²⁵

The Department affirmed its decision to apply the CVD law to the PRC in numerous subsequent determinations.²⁶ Furthermore, on March 31, 2012, Public Law 112-99 was enacted which confirms that the Department has the authority to apply the CVD law to countries designated as non-market economies under section 771(18) of the Act, such as the PRC.²⁷ The effective date provision of the enacted legislation makes clear that this provision applies to this proceeding.²⁸

VII. DIVERSIFICATION OF THE PRC'S ECONOMY

Concurrently with this decision memorandum, the Department is placing the following excerpts from the *China Statistical Yearbook* from the National Bureau of Statistics of China on the record of this investigation:²⁹ Index Page; Table 14-7: Main Indicators on Economic Benefit of State-owned and State-holding Industrial Enterprise by Industrial Sector; Table 14-11: Main Indicators on Economic Benefit of Private Industrial Enterprise by Industrial Sector. This

²⁴ See *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) Issues and Decision Memorandum (IDM) at Comment 6 (*CFS from the PRC*).

²⁵ *Id.*

²⁶ See, e.g., *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008) IDM at Comment 1.

²⁷ Section 1(a) is the relevant provision of Public Law 112-99 and is codified at section 701(f) of the Act.

²⁸ See Public Law 112-99, 126 Stat. 265 §1(b).

²⁹ See Department Memorandum, "Additional Documents Memorandum," dated concurrently with this memorandum.

information reflects a wide diversification of economic activities in the PRC. The industrial sector in the PRC alone is comprised of 37 listed industries and economic activities, indicating the diversification of the economy.

VIII. SUBSIDIES VALUATION

Period of Review (POR)

The POR is January 1, 2014, through December 31, 2014.

Allocation Period

Under 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the Average Useful Life (AUL) of the renewable physical assets used to produce the subject merchandise. Pursuant to 19 CFR 351.524(d)(2), there is a rebuttable presumption that the AUL will be taken from the IRS Tables, as updated by the U.S. Department of the Treasury. For the subject merchandise, the IRS Tables prescribe an AUL of ten years. No interested party has challenged the use of a ten-year AUL.

Further, for non-recurring subsidies, we have applied the “0.5 percent expense test” described in 19 CFR 351.524(b)(2). Under this test, we compare the amount of subsidies approved under a given program in a particular year to sales (total sales or total export sales, as appropriate) for the same year. If the amount of subsidies is less than 0.5 percent of the relevant sales, then the benefits are allocated to the year of receipt rather than allocated over the AUL period.

Attribution of Subsidies

Cross Ownership: In accordance with 19 CFR 351.525(b)(6)(i), the Department normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provide additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership “exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets.” This section of the Department’s regulations states that this standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. The *CVD Preamble* to the Department’s regulations further clarifies the Department’s cross-ownership standard. According to the *CVD Preamble*, relationships captured by the cross-ownership definition include those where:

the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a “golden share” may also result in cross-ownership.³⁰

Thus, the Department’s regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists. The U.S. Court of International Trade (CIT) upheld the Department’s authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.³¹ Based on information on the record, we preliminarily determine that cross-ownership exists, in accordance with 19 CFR 351.525(b)(6)(vi), among the following companies.

The Trina Solar Companies

As discussed above, we selected TCZ as a mandatory company respondent. TCZ reported that it is cross-owned with several affiliates that are producers of solar cells or provided goods or services for the production of solar cells:³²

1. Changzhou Trina Solar Energy Co., Ltd. (TCZ);
2. Trina Solar (Changzhou) Science & Technology Co., Ltd. (TST);
3. Yancheng Trina Solar Energy Technology Co., Ltd. (TYC);
4. Changzhou Trina Solar Yabang Energy Co., Ltd. (TYB);
5. Hubei Trina Solar Energy Co., Ltd. (THB);
6. Turpan Trina Solar Energy Co., Ltd. (TLF); and
7. Changzhou Trina PV Ribbon Materials Co., Ltd. (TRM).

In the questionnaire responses, TCZ reported that these companies are all ultimately wholly-owned by Trina Solar Limited (TSL), a company located in the Cayman Islands that is publicly traded on the New York Stock Exchange.³³ Therefore, based on these facts, and pursuant to 19 CFR 351.525(b)(6)(vi), we preliminarily determine that the seven companies reported by TCZ are cross-owned through their ownership by their parent company, TSL.³⁴ Hereinafter, these cross-owned companies are referred to collectively as Trina Solar, or the Trina Solar Companies. For the reported producers of subject merchandise, we are attributing any subsidy received by

³⁰ See *Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

³¹ See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

³² See Trina Solar Affiliations Response at 1-3.

³³ See Trina Solar May 3, 2016 QR at 11; see also Trina Solar Affiliations Response at Exhibit 1.

³⁴ The Department’s regulations at 19 CFR 351.525(b)(6)(vi) state that cross-ownership exists when one corporation can use or direct the assets of another corporation in essentially the same way it can use its own. Normally, however, “this standard will be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations.”

these companies to the combined sales of these companies, excluding intercompany sales, in accordance with 19 CFR 351.525(b)(6)(ii). For input producers, we are attributing subsidies received by the input producers to the combined sales of the input and downstream products produced by the input producer and downstream producer, pursuant to 19 CFR 351.525(b)(6)(iv).³⁵

The Canadian Solar Companies

In its questionnaire responses, CSAS reported that it also cross-owned with several affiliates that are producers of solar cells or provided goods or services for the production of solar cells:

1. Canadian Solar Manufacturing (Changshu) Inc. (CSAS);
2. Canadian Solar Manufacturing (Luoyang) Inc. (LYSP);
3. CSI Cells Co., Ltd. (SZCC);
4. CSI Solar Power (China) Inc. (SZSP);
5. CSI Solartronics (Changshu) Co., Ltd. (CSSC);
6. CSI Solar Technologies Inc. (SZST); and
7. CSI Solar Manufacture Inc. (SZSM).³⁶

Our review of CSAS's chart of corporate structure and the business activities for these companies leads us to conclude that these reported affiliated companies satisfy the Department's cross-ownership criteria as described at 19 CFR 351.525(b)(6)(vi).³⁷ As a result, we preliminarily determine that the seven companies reported by CSAS are cross-owned in accordance with CFR 351.525(b)(6)(vi). Because the information leading us to preliminarily determine that the seven companies reported by CSAS are cross-owned is business proprietary in nature, our cross-ownership analysis is set forth in a separate memorandum.³⁸ Hereinafter, these cross-owned companies are referred to collectively as Canadian Solar, or the Canadian Solar Companies. For the reported producers of subject merchandise, we are attributing any subsidy received by these companies to the combined sales of these companies, excluding intercompany sales, in accordance with 19 CFR 351.525(b)(6)(ii). For input producers, we are attributing subsidies received by the input producers to the combined sales of the input and downstream products produced by the input producer and downstream producer, pursuant to 19 CFR 351.525(b)(6) (iv).³⁹

³⁵ See Department Memorandum, "Countervailing Duty Administrative Review of Certain Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Trina Solar Preliminary Calculations Memorandum," dated concurrently with this Preliminary Decision Memorandum (Trina Solar Preliminary Calculations Memorandum).

³⁶ See Canadian Solar Affiliations Response at 3 and at Exhibits 1 and 2.

³⁷ *Id.* The information in these exhibits is business proprietary in nature.

³⁸ See Department Memorandum, "Cross Ownership of the Canadian Solar Companies," dated concurrently with this Decision Memorandum.

³⁹ See Department Memorandum, "Countervailing Duty Administrative Review of Certain Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Canadian Solar Preliminary Calculation Memorandum," dated concurrently with this Preliminary Decision Memorandum (Canadian Solar Preliminary Calculations Memorandum). The mandatory preliminary calculations memorandum for the company respondents are hereinafter referred to collectively as the Preliminary Calculations Memoranda.

Non-Responding Cross-Owned Affiliates: Finally, our original questionnaire instructed the company respondents that they must provide a complete questionnaire response for all cross-owned affiliates that meet one of the following criteria:

- the cross-owned company produces the subject merchandise;
- the cross-owned company is a holding company or a parent company with its own operations (of your company);
- the cross-owned company supplies an input product to you for production of the downstream product produced by the respondent, or;
- the cross-owned company has received a subsidy and transferred it to your company.

Trina Solar and Canadian Solar each identified certain affiliates for which a questionnaire response is not required because these companies did not meet any of the Department's criteria for providing a response. Based on our examination of the information provided on the record by Canadian Solar to support its claims, we preliminarily find that in accordance with 351.525(b), these companies do not fall under our attribution rules such that we would attribute any subsidies they may have received.

Denominators

In accordance with 19 CFR 351.525(b)(1)-(5), the Department considers the basis for the respondent's receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondent's export or total sales. The denominators we used to calculate the countervailable subsidy rate for the various subsidy programs described below are explained in further detail in the Preliminary Calculations Memoranda prepared for this preliminary review.

IX. INTEREST RATE BENCHMARKS, DISCOUNT RATES, INPUT, ELECTRICITY, AND LAND BENCHMARKS

We are examining loans received by the respondents from Chinese policy banks and state-owned commercial banks (SOCBs). We are also examining non-recurring, allocable subsidies.⁴⁰ The derivation of the benchmark interest rates and discount rates used to measure the benefit from these subsidies are discussed below.

Short-Term RMB-Denominated Loans

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." Normally, the Department uses comparable commercial loans reported by the company as a benchmark.⁴¹ If the firm did not have any comparable commercial loans during the period, the Department's regulations provide that we "may use a national average interest rate for comparable commercial

⁴⁰ See 19 CFR 351.524(b)(1).

⁴¹ See 19 CFR 351.505(a)(3)(i).

loans.”⁴² As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate.

For the reasons explained in *CFS from the PRC*,⁴³ loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market. Because of this, any loans received by the respondents from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). Similarly, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). There is no new information on the record of this administrative review that would lead us to deviate from our prior determinations regarding government intervention in the PRC’s banking sector.⁴⁴ Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, the Department is selecting an external market-based benchmark interest rate.⁴⁵ The use of an external benchmark is consistent with the Department’s practice.⁴⁶

We first developed, in *CFS from the PRC*,⁴⁷ and more recently updated in *Thermal Paper from the PRC*,⁴⁸ the methodology used to calculate the external benchmark. Under that methodology, we first determine which countries are similar to the PRC in terms of gross national income, based on the World Bank’s classification of countries as: low income; lower-middle income; upper-middle income; and high income. For 2001 through 2009, the PRC fell in the lower-middle income category.⁴⁹ Beginning with 2010, however, the PRC is in the upper-middle income category and remained there for 2011 to 2014.⁵⁰ Accordingly, as explained below, we are using the interest rates of lower-middle income countries to construct the benchmark and discount rates for the years 2001-2009, and the interest rates of upper-middle income countries to construct the benchmark and discount rates for the years 2010-2014. As explained in *CFS from the PRC*,⁵¹ by pooling countries in this manner, we capture the broad inverse relationship between income and interest rates.

After identifying the appropriate interest rates, the next step in constructing the benchmark is to incorporate an important factor in the interest rate formation - the strength of governance as reflected in the quality of the countries’ institutions. The strength of governance has been built

⁴² See 19 CFR 351.505(a)(3)(ii).

⁴³ See *CFS from the PRC*, and CFS IDM at Comment 10.

⁴⁴ See the “Preferential Policy Lending,” section below.

⁴⁵ See World Bank Country Classification <http://econ.worldbank.org/>.

⁴⁶ See *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada*, 67 FR 15545 (April 2, 2002) IDM at “Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit.”

⁴⁷ See *CFS from the PRC* IDM at Comment 10.

⁴⁸ See *Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (*Thermal Paper from the PRC*) IDM at 8-10.

⁴⁹ See World Bank Country Classification <http://econ.worldbank.org/>; see also Department Memorandum, “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Interest Rate Benchmark Memorandum,” dated concurrently with this preliminary determination (Interest Rate Benchmark Memorandum).

⁵⁰ See World Bank Country Classification.

⁵¹ See *CFS from the PRC* IDM at Comment 10.

into the analysis by using a regression analysis that relates the interest rates to governance indicators.

In each year from 2001-2009, and 2011-2014, the results of the regression-based analysis reflected the intended, common sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates. For 2010, however, the regression does not yield that outcome for the PRC's income group. This contrary result for a single year does not lead the Department to reject the strength of governance as a determinant of interest rates. Therefore, we continue to rely on the regression-based analysis used since *CFS from the PRC* to compute the benchmark for the years from 2001-2009, and 2011- 2014. For the 2010 benchmark, we are using an average of the interest rates of the upper-middle income countries.

Many of the countries in the World Bank's upper-middle and lower-middle income categories reported lending and inflation rates to the International Monetary Fund, and they are included in that agency's international financial statistics (IFS). With the exceptions noted below, we used the interest and inflation rates reported in the IFS for the countries identified as "upper-middle income" by the World Bank for 2010 - 2014, and "lower-middle income" for 2001 -2009.⁵² First, we did not include those economies that the Department considers to be non-market economies for antidumping purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments.⁵³ Finally, for each year the Department calculated an inflation-adjusted short-term benchmark rate and excluded any countries with aberrational or negative real interest rates for the year in question.⁵⁴ Because the resulting rates are net of inflation, we adjusted the benchmark rates to include an inflation component before comparing them to the interest rates on loans issued to the respondents by SOCBs.⁵⁵

Long-Term RMB-Denominated Loans

The lending rates reported in the IFS represent short-and medium-term lending, and there are not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, the Department developed an adjustment to the short-and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates.⁵⁶

⁵² See Interest Rate Benchmark Memorandum.

⁵³ For example, in certain years, Jordan reported a deposit rate, not a lending rate, and Ecuador and Timor L'Este reported dollar-denominated rates; therefore, such rates have been excluded.

⁵⁴ For example, we excluded Brazil from the 2010 and 2011 benchmarks because the country's real interest rates were 34.95 percent and 37.25 percent, respectively. See Interest Rate Benchmark Memorandum.

⁵⁵ See Interest Rate Benchmark Memorandum for the adjusted benchmark rates including an inflation component.

⁵⁶ See *Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination*, 73 FR 35642 (June 24, 2008) IDM at 8.

In the *Citric Acid from the PRC Final Determination*, this methodology was revised by switching from a long-term markup based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where ‘n’ equals or approximates the number of years of the term of the loan in question.⁵⁷ Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.⁵⁸

Foreign Currency-Denominated Loans

To calculate benchmark interest rates for foreign currency-denominated loans, the Department is following the methodology developed over a number of successive PRC proceedings.⁵⁹ For U.S. dollar short-term loans, the Department used as a benchmark the one-year dollar London Interbank Offering Rate (LIBOR), plus the average spread between LIBOR and the one-year corporate bond rates for companies with a BB rating. Likewise, for any short-term loans denominated in other foreign currencies, we used as a benchmark the one-year LIBOR for the given currency plus the average spread between the LIBOR rate and the one-year corporate bond rate for companies with a BB rating.

For any long-term foreign currency-denominated loans, the Department added the applicable short-term LIBOR rate to a spread which is calculated as the difference between the one-year BB bond rate and the n-year BB bond rate, where ‘n’ equals or approximates the number of years of the term of the loan in question.⁶⁰

Discount Rates

Consistent with 19 CFR 351.524(d)(3)(i)(A), we are using as the discount rate the long-term interest rate calculated according to the methodology described above for the year in which the government provided non-recurring subsidies.⁶¹

Creditworthiness

As noted above, Petitioner submitted allegations with respect to the creditworthiness of Trina Solar (for the years 2009 through 2014) and Canadian Solar (for the years 2010 through 2014).

Petitioner’s allegation against Trina Solar argues that a relatively small portion, if any, of Trina Solar’s loan balances in the years in question should be considered comparable commercial loans

⁵⁷ 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) IDM at Comment 14 (*Citric Acid from the PRC Final Determination*).

⁵⁸ See Interest Rate Benchmark Memorandum for the resulting inflation adjusted benchmark lending rates.

⁵⁹ See, e.g., *Aluminum Extrusions From the People’s Republic of China: Final Results, and Partial Rescission of Countervailing Duty Administrative Review*; 2013, 80 FR 77325 (December 14, 2015) and accompanying IDM at 14.

⁶⁰ See Interest Rate Benchmark Memorandum.

⁶¹ *Id.*

in accordance with 19 CFR 351.505(a)(4)(ii) and the Department's practice.⁶² Petitioner's allegation also focuses on Trina Solar's current ratios, which dropped as low as 0.99 during the years in questions, quick ratios, which dropped as low as 0.57, and debt-to-equity ratios, which reached as high as 2.29.⁶³ For reference, Petitioner notes the Department previously found Trina Solar uncreditworthy in 2005 and 2007 in a separate proceeding, in part due to its current ratios of 1.62 and 1.55, quick ratios of 0.70 and 0.62, and debt-to-equity ratios of 1.25 and 0.63. Petitioner also discusses several past proceedings in which the Department established benchmarks of 2.0 and 1.0 for current and quick ratios, respectively; the Department will normally find companies with current and quick ratios below those benchmarks to be uncreditworthy.⁶⁴

Similarly, Petitioner's allegation against Canadian Solar claims that Canadian Solar lacked comparable commercial loans, and that its current, quick, and debt-to-equity ratios indicate poor financial performance during the years in question.⁶⁵

The Department has determined that both of Petitioner's allegations satisfy the requirements for an uncreditworthiness allegation in 19 CFR 351.505(a)(6)(i). For both companies Petitioner has submitted information (i.e., references to the company respondents' own consolidated financial statements and 20-F forms) establishing a reasonable basis to believe or suspect that both companies are uncreditworthy, as well as a discussion of the record evidence relevant to the factors enumerated under 19 CFR 351.301(a)(4).

Accordingly, we have analyzed the information on the record and we preliminarily find that Trina was uncreditworthy during the period 2012 through 2014 and that Canadian Solar was uncreditworthy during the period 2009 through 2014, as discussed below.

We note that our analysis is based on respondents own financial data submitted in their consolidated financial statements and 20-Fs and that respondents did not submit rebuttal information in response to Petitioner's allegations. Nonetheless, the Department plans to issue our standard creditworthiness questionnaires to both respondents, providing the opportunity for the respondents to submit any additional information regarding the factors enumerated in 19 CFR 351.505(a)(4)(i)(A)-(D). Parties' comments in case and rebuttal briefs on responses to the creditworthiness questionnaire will be taken into consideration for the final results of review.

Receipt by the Firm of Comparable Commercial Long-Term Loans

In reaching our conclusions regarding the two companies, we note that neither company received what the Department considers to be comparable long-term commercial loans during the years in which we have found the companies to be uncreditworthy, within the meaning of 19 CFR

⁶² See, e.g., *Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 37122 (June 23, 2003) and accompanying IDM at Comment 5.

⁶³ See Trina Solar UCW Allegation.

⁶⁴ See, e.g., *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012) (*Solar Cells from the PRC*) and accompanying IDM at Comment 17.

⁶⁵ See Canadian Solar UCW Allegation.

351.505(a)(4)(i)(A).⁶⁶ In prior proceedings the Department has taken into consideration convertible notes issued by solar respondents as dispositive evidence of creditworthiness, finding the notes offered in market economies to be akin to long-term commercial loans.⁶⁷ However, the information in this review (e.g., 20-Fs submitted to the Securities and Exchange Commission) does not indicate that either respondent issued such notes during the years in which we find the companies to be uncreditworthy (although balances were outstanding from notes issued in prior years).

Present and Past Indicators of the Firm's Financial Health, and Present and Past Indicators of the Firm's Ability to Meet its Costs and Fixed Financial Obligations with its Cash Flow

Consistent with past practice, we have placed significant emphasis on low current and quick ratios during the years in question. As explained previously,

{t}hese ratios are highly relevant under 19 CFR 351.505(a)(4)(i)(B)-(C) because they are indicators of a firm's financial health and its ability to meet its costs and fixed financial obligations with cash flow. Unlike some of the other information we have been asked to consider for this analysis, the meaning of these ratios is clear: either the respondents have liquid funds available to cover upcoming obligations, or they do not. If they do not, they have no choice but to accumulate new debt in order to cover existing debt.⁶⁸

In this review, Trina Solar's current and quick ratios were both well below the benchmarks of 2.0 and 1.0 during the period 2012 through 2014.⁶⁹ During the same period, its debt-to-equity ratios ranged between 2.12 and 2.29, well above the figures for 2005 and 2007.⁷⁰ The increasing debt-to-equity ratios confirm the Department's reasoning that high current and quick ratios lead to increasing debt levels. For earlier years (i.e., 2006 through 2011), Trina Solar's debt-to-equity ratios are mixed (i.e., fluctuate), and thus do not clearly indicate the Trina Solar's financial condition.⁷¹

⁶⁶ See the Preliminary Calculations Memoranda for a BPI discussion of the lending reported by the company respondents and the lack of comparable long-term commercial lending relevant under 19 CFR 351.505(a)(4)(i)(A).

⁶⁷ See Solar Cells Investigation IDM at Comment 17.

⁶⁸ *Id.*

⁶⁹ Current ratios were 1.19, 0.99, and 1.01 in 2012, 2013, and 2104, respectively. Quick ratios were 0.81, 0.60, and 0.57. As noted below, these ratios are calculated conservatively, excluding current assets unavailable for current obligations.

⁷⁰ See Trina Solar UCW Allegation at Exhibit 3. The ratios are calculated from the respondents' consolidated financial statements and 20-Fs (which are also consolidated). This is consistent with past practice. See, e.g., *Solar Cells Investigation* IDM at Comment 17. Arguably, the ratios calculated by Petitioner are too high as they included certain current assets in the numerators that would be unavailable to pay down current liabilities, such as restricted cash, advances to suppliers, and prepaid expenses. For example, Petitioner calculates a current ratio of 0.94 for Canadian Solar, but revising the ratio to exclude restricted cash, advances to suppliers, and prepaid expenses results in a ratio of 0.57. Thus, Petitioner has arguably understated the extent to which the current and quick ratios indicated uncreditworthiness.

⁷¹ See Trina Solar UCW Allegation at Exhibit 3.

During the period 2009 through 2014, Canadian Solar's current and quick ratios were also both well below the benchmarks,⁷² and its debt-to-equity ratios ranged between 1.23 and 6.77.⁷³ Thus, we preliminarily determine that, like Trina Solar, Canadian Solar struggled to meet current obligations with current assets (in particular, cash flows) and resorted to accumulating increasing levels of debt. As with Trina Solar, Canadian Solar's debt-to-equity ratios were mixed during earlier years.⁷⁴

Evidence of the Firm's Future Financial Position

The Department's analysis does not find any evidence indicating the firm's future financial position as viewed during the years in question, such as market studies, country and industry forecasts, and project and loan appraisals prepared prior to loan agreements.

Accordingly, we preliminarily find that Trina was uncreditworthy during the period 2012 through 2014, and that Canadian Solar was uncreditworthy during the period 2009 through 2014, because neither company received comparable long-term commercial loans, and both companies had current, quick, and debt-to-equity ratios that indicate uncreditworthiness, during the periods during which we find each uncreditworthy. Furthermore, no record evidence contradicts our preliminary determination.

Benchmarks to Determine Adequacy of Remuneration

The adequacy of remuneration for government-provided goods or services is determined pursuant to 19 CFR 351.511(a)(2). Under 19 CFR 351.511(a)(2), the Department measures the remuneration received by a government for goods or services against comparable benchmark prices to determine whether the government provided goods or services for less than adequate remuneration (LTAR). These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (e.g., actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As provided in our regulations, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation (i.e., tier one). This is because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation.

Land Benchmark

As detailed in previous investigations, the Department cannot rely on the use of so-called "first-tier" and "second-tier" benchmarks to assess the benefits from the provision of land for LTAR in the PRC.⁷⁵ Accordingly, Canadian Solar and Trina Solar both submitted the same 2010 Thailand

⁷² Current ratios were 1.46, 1.33, 1.05, 0.94, 0.97, and 1.19 in 2009, 2010, 2011, 2012, 2013, and 2014, respectively. Quick ratios were 0.68, 0.65, 0.62, 0.28, 0.31, and 0.50. As noted, these ratios are calculated conservatively, excluding current assets unavailable for current obligations.

⁷³ See Canadian Solar UCW Allegation at Exhibit 1.

⁷⁴ *Id.*

⁷⁵ See, e.g., *Laminated Woven Sacks From the People's Republic of China: Preliminary Affirmative Countervailing*

benchmark information, i.e., “Asian Marketview Reports” by CB Richard Ellis (CBRE) that we relied on in calculating land benchmarks in the CVD investigation of *Solar Cells from the PRC*.⁷⁶ We initially selected this information in the laminated woven sacks investigation after considering a number of factors, including national income levels, population density, and producers’ perceptions that Thailand is a reasonable alternative to China as a location for Asian production.⁷⁷ In *Solar Cells from the PRC*, we calculated annual land benchmarks covering the years 2002 through 2010, and a monthly industrial rental benchmark for 2010.⁷⁸ We find that these benchmarks are suitable for the preliminary results, adjusted accordingly for inflation to account for benefits received by Canadian Solar and Trina Solar during the POR.⁷⁹

Input Benchmarks

For each of the inputs, as discussed below in the section, “Use of Facts Otherwise Available and Application of Adverse Inferences,” we preliminarily determine that all of Canadian Solar’s and Trina Solar’s input suppliers are “authorities.” Therefore, prices from their suppliers are not usable as benchmarks, as they are prices charged by the very providers of the good at issue. We selected the benchmarks for measuring the adequacy of the remuneration for solar grade polysilicon, aluminum extrusions, and solar glass in accordance with 19 CFR 351.511(a). Below we analyze the information provided and the selection of a benchmark for each input.

We note that, where possible, we have removed PRC-related pricing data from all of the input benchmarks for these preliminary results for the reasons described below.

Solar Grade Polysilicon

For solar grade polysilicon, the GOC provided information indicating that imports of solar grade polysilicon accounted for 31.9 percent of domestic consumption of all grades of polysilicon, and that production of polysilicon by state-invested enterprises (SIEs) accounted for 7.6 percent.⁸⁰

Duty Determination; Preliminary Affirmative Determination of Critical Circumstances, In Part; and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination, 72 FR 67893, 67906-08 (December 3, 2007), unchanged in *Laminated Woven Sacks From the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008).

⁷⁶ See Canadian Solar Benchmark Submission at Exhibit 6; see also Trina Solar Benchmark Submission at Exhibit 8; see also *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China; Final Results of Countervailing Duty Administrative Review; 2013*, 81 FR 46904 (July 19, 2016) (*Solar Cells from the PRC Second AR*), unchanged from *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) and accompanying IDM at 15.

⁷⁷ The complete history of our reliance on this benchmark is discussed in *Solar Cells from the PRC*, and accompanying IDM at 6 and Comment 11. In that discussion, we reviewed our analysis from the laminated woven sacks investigation and concluded the CBRE data were still a valid land benchmark.

⁷⁸ *Id.*

⁷⁹ See Department Memorandum to the File, “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China,” dated concurrently with this memorandum (Preliminary Benchmark Memorandum).

⁸⁰ See GOC’s May 3, 2016 QR at 72-74. SIEs include companies in which the GOC maintains an ownership or management interest.

The GOC stated, however, that it was unable to obtain domestic production statistics for solar grade polysilicon, and noted that statistics for the value of polysilicon are not collected on a per product basis, but rather on a per company basis. As such, the GOC stated that the statistics it reported regarding polysilicon may include products other than solar grade polysilicon.⁸¹

The Department normally relies on so-called “first-tier” benchmarks, pursuant to 19 CFR 351.511(a)(2)(i), which include prices stemming from actual transactions between private parties, actual imports, and, in certain circumstances, actual sales from competitively run government auctions. As part of the Department’s questionnaire, we requested that the GOC provide information related to PRC SIE involvement in the PRC’s solar grade polysilicon industry. Because the GOC does not track industry information for solar grade polysilicon, the information provided is related only to SIE involvement in the PRC’s polysilicon industry generally, rather than specific SIE involvement in the solar grade polysilicon industry specifically.⁸² While the GOC did provide information with respect to the PRC’s polysilicon industry, we find that this information is unreliable with respect to the GOC’s solar grade polysilicon industry because it is not specific to solar grade polysilicon.

As a result, and as detailed below in the section, “Use of Facts Otherwise Available and Application of Adverse Inferences,” we find that necessary information is not available on the record and, pursuant to section 776(a)(1) of the Act, we have determined that it is appropriate to rely on the facts otherwise available in reaching our determination regarding the GOC’s involvement in the PRC solar grade polysilicon market.

Notwithstanding the regulatory preference for the use of prices stemming from actual transactions in the country, where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government’s involvement in the market, we will resort to the next alternative in the hierarchy.⁸³ For these preliminary results, as explained below in the section, “Use of Facts Otherwise Available and Adverse Inferences,” we are finding that the GOC’s involvement in the PRC’s solar grade polysilicon market leads to significantly distorted solar grade polysilicon prices in the PRC. Thus, we preliminarily do not find it appropriate to rely on transactions in the PRC as a benchmark for polysilicon and are relying instead on a simple average of the world market solar grade polysilicon prices (tier two) published by Bloomberg, EnergyTrend, Greentech Media, and IHS pursuant to 19 CFR 351.511(a)(2)(ii).⁸⁴

Solar Glass

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 information related to tempered glass, which the GOC stated encompasses solar glass.⁸⁵ As part of the Department’s questionnaire, we requested that the GOC provide information related to

⁸¹ See GOC’s May 3, 2016 QR at 73-74.

⁸² *Id.*, at 74.

⁸³ See *CVD Preamble*, 63 FR at 65377.

⁸⁴ See Petitioner’s Benchmark Submission, Canadian Solar Benchmark Submission, and Trina Solar Benchmark Submission.

⁸⁵ See the GOC’s May 3, 2016 QR at 137-138.

PRC SIE involvement in the solar glass industry. Because the GOC 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 SIE involvement in the solar glass industry.⁸⁶ While the GOC did provide information with respect to the PRC's tempered glass industry, we find that this information is unreliable with respect to the GOC's solar glass industry because it is not specific to solar glass.

Therefore, and as detailed below in the section, "Use of Facts Otherwise Available and Application of Adverse Inferences," we find that necessary information is not available on the record and, pursuant to section 776(a)(1) of the Act, we have determined that 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. Where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative in the hierarchy.⁸⁷ For these preliminary results, as explained below in the section, "Use of Facts Otherwise Available and Adverse Inferences," we are finding that the GOC's involvement in the PRC's solar glass market leads to significantly distorted solar glass prices in the PRC. Thus, we preliminarily do not find it appropriate to rely on transactions in the PRC as a benchmark for solar glass and are relying instead on a simple average of the world market prices (tier two) published by IHS and the United Nations Comtrade Database (Comtrade), pursuant to 19 CFR 351.511(a)(2)(ii).⁸⁸ The IHS data includes an annual global value specifically for solar glass. The Comtrade data allows for the calculation of monthly averages for tempered glass, a broader category of glass that includes solar glass. Because the Department's practice calls for the use of monthly values in assessing the benefits from the provision of inputs for LTAR, we have averaged the annual IHS value with the monthly Comtrade average unit values to derive monthly benchmarks that reflect, in part, the value for solar glass. This is consistent with the Department's approach in the prior review.⁸⁹

Information on the record indicates that only certain countries produce solar glass.⁹⁰ Because the record also indicates that the monthly U.N. Comtrade Database prices reflect tempered glass that is not solar grade, we have considered these facts and preliminarily determined to use only monthly average unit values for solar glass producing countries when constructing the benchmark (excepting the PRC, which, as explained, the Department finds to have a solar glass industry distorted through government involvement).

Aluminum Extrusions

In its questionnaire responses, the GOC stated that it does not maintain production statistics in the PRC specifically for aluminum extrusions, and instead provided information for aluminum sections.⁹¹ As part of the Department's questionnaire, we requested that the GOC provide information related to PRC SIE involvement in the PRC's aluminum extrusions industry.

⁸⁶ See GOC May 3, 2016 QR at 139.

⁸⁷ See *CVD Preamble*, 63 FR at 65377.

⁸⁸ See Petitioner's Benchmark Submission, Canadian Solar Benchmark Submission, and Trina Solar Benchmark Submission.

⁸⁹ See *Solar Cells from the PRC Second AR* and accompanying IDM at Comment 6.

⁹⁰ See Canadian Solar Benchmark Submission at Exhibit 3.

⁹¹ See the GOC's May 3, 2016 QR at 115.

However, because the GOC does not track industry information specifically for aluminum extrusions, the information provided is related only to SIE involvement in the aluminum sections industry, rather than specific SIE involvement in the aluminum extrusions industry.⁹² While the GOC did provide information with respect to the PRC's aluminum sections industry, we find that this information is unreliable with respect to the GOC's aluminum extrusions industry because it is not specific to aluminum extrusions.

Consequently, and as detailed below in the section, "Use of Facts Otherwise Available and Application of Adverse Inferences," we find that necessary information is not available on the record and, pursuant to section 776(a)(1) of the Act, we have determined that it is appropriate to rely on the facts otherwise available in reaching our determination regarding the GOC's involvement in the PRC's aluminum extrusions market. For these preliminary results, as explained below in the section, "Use of Facts Otherwise Available and Adverse Inferences," we are finding that the GOC's involvement in the PRC's aluminum extrusions market leads to significantly distorted aluminum extrusions prices in the PRC. Thus, we preliminarily do not find it appropriate to rely on transactions in the PRC as a benchmark for the company respondents' purchases of aluminum extrusions, and we are relying on an average of the world market prices (tier two) of aluminum extrusions and aluminum frames compiled by IHS and Comtrade to determine the subsidy rate for the provision of aluminum extrusions for these preliminary results of review.⁹³ Because the Department's practice calls for the use of monthly values in assessing the benefits from the provision of inputs for LTAR, we have averaged the annual IHS value with the monthly Comtrade average unit values to derive monthly benchmarks that reflect, in part, the value for aluminum extrusions.

Transportation

Petitioner, Canadian Solar, and Trina Solar each provided information to value ocean freight.⁹⁴ Petitioner provided international rates for Maersk 40-foot containers, while the respondent companies each provided international rates for 20-foot containers. For these preliminary results, we preliminarily determine to rely on an average of this ocean freight data.⁹⁵

X. USE OF FACTS OTHERWISE AVAILABLE AND APPLICATION OF ADVERSE INFERENCES

Section 776(a) of the Act provides that the Department shall, subject to section 782(d) of the Act, use the "facts otherwise available" if: (1) necessary information is not on the record; or (2) an interested party or any other person withholds information that has been requested; 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; significantly impedes a proceeding; or provides information that cannot be verified as provided by section 782(i) of the

⁹² *Id.*

⁹³ See Petitioner's Benchmark Submission, Canadian Solar Benchmark Submission, and Trina Solar Benchmark Submission.

⁹⁴ *Id.*

⁹⁵ See 19 CFR 351.511(a)(2)(ii), "Where there is more than one commercially available world market price, the Secretary will average such prices to the extent practicable, making due allowance for factors affecting comparability."

Act. Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information.

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 and CVD law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.⁹⁶ The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this administrative review.⁹⁷

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.⁹⁸ Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the countervailing duty investigation, a previous administrative review, or other information placed on the record.⁹⁹

Section 776(c) of the Act provides that, in general, when the Department relies on secondary information rather than on information obtained in the course of a review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.¹⁰⁰ Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.¹⁰¹ Further, and under the TPEA, the Department is not required to corroborate any countervailing duty applied in a separate segment of the same proceeding.¹⁰²

Finally, under the new section 776(d) of the Act, when applying an adverse inference, the Department may use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that the Department

⁹⁶ See 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 ITC. 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).

⁹⁷ *Id.*, 80 FR at 46794-95. The 2015 amendments are found at <https://www.congress.gov/bill/114thcongress/house-bill/1295/text/pl>.

⁹⁸ See section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).

⁹⁹ See also 19 CFR 351.308(d).

¹⁰⁰ See also 19 CFR 351.308(c).

¹⁰¹ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. 1 at 870 (1994).

¹⁰² See section 776(c)(2) of the Act; TPEA, section 502(2).

considers reasonable to use.¹⁰³ The TPEA also makes clear that, when selecting facts available with an adverse inference, the Department is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.¹⁰⁴

Application of AFA: Input Producers are “Authorities”

We requested information from the GOC regarding the specific companies that produced the input products that Canadian Solar and Trina Solar, and their respective cross-owned companies, purchased during the POR. Specifically, we sought information from the GOC that would allow us to determine whether the producers are “authorities” within the meaning of section 771(5)(B) of the Act.¹⁰⁵ In our original and supplemental questionnaire, we requested detailed information from the GOC that would be needed for this analysis.¹⁰⁶ For each producer in which the GOC was a majority owner, we stated that the GOC needed to provide the following information that is relevant to our analysis of whether that producer is an “authority,” such as translated copies of capital verification reports and articles of association.¹⁰⁷

For each producer that the GOC claimed was not majority government-owned and that produced an input purchased by the respondent companies during the POR, we requested information including:¹⁰⁸

- Capital verification reports, articles of association, share transfer agreements, or financial statements.
- A chart detailing the name and respective ownership level (as a percentage) of each owner of the input producer company, which traced such ownership to the ultimate individual or state owners during the POR.
- The nature and level of the government entity (*e.g.*, central government ministry, SASAC, central and/or provincial SIE, municipality, township enterprise, Chinese Communist Party (CCP) official, *etc.*).
- Information on whether the CCP maintains a role in selecting and monitoring senior management in these entities.
- A discussion on whether the entity is required to carry out obligations on behalf of the Government and/or the CCP, such as public obligations or services these producer entities are required to render.
- Information identifying any individual owners, members of the board of directors, or senior managers of these producer entities who were Government or CCP officials during the POR.

While the GOC provided information such as business registrations for a number of input producers, it did not provide the articles of association for many input producers, as requested.

¹⁰³ See section 776(d)(1) of the Act; TPEA, section 502(3).

¹⁰⁴ See section 776(d)(3) of the Act; TPEA, section 502(3).

¹⁰⁵ See the Department’s March 10, 2016 Questionnaire to the GOC at the sections II and III.

¹⁰⁶ *Id.*; see also the Department’s October 12, 2016 Questionnaire to the GOC.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

Further, the GOC provided no information at all regarding the identification of owners, directors, or senior management who were also GOC or CCP officials.¹⁰⁹ It simply stated that there is no central informational database to search for the requested information, and stated that our questions on the CCP's role into the respondent companies' input providers are "irrelevant to this proceeding and do not go to whether the suppliers at issue are 'public bodies' for the purposes of the Department's LTAR analysis."¹¹⁰

On October 12, 2016, we issued a supplemental questionnaire to the GOC requesting that it provide the remaining ownership information for the input producers. We again requested that the GOC respond to the questions above regarding the role, if any, that GOC and CCP officials had as owners, directors, or senior managers of the producers, or explain in detail the efforts it undertook to obtain the requested information.¹¹¹ In its supplemental response, the GOC did not provide any information regarding the role of GOC and CCP officials with the input producers, nor did the GOC explain the efforts it undertook to obtain the requested information. Further, the GOC stated that it responded to our initial questions to the best of its ability, and reiterated its contention that our questions on GOC and CCP officials are irrelevant to this proceeding.¹¹²

Regarding the GOC's objections to our questions about the role of CCP officials in the management and operations of the input producers, we observe that it is the prerogative of the Department, not the GOC, to determine what information is relevant to our investigations and administrative reviews.¹¹³ The Department requests this information because record information suggests that the CCP exerts significant control over activities in the PRC.¹¹⁴ The Department previously determined that "available information and record evidence indicates that the CCP meets the definition of the term 'government' for the limited purpose of applying the U.S. CVD law to China."¹¹⁵ Additionally, publicly available information indicates that Chinese law

¹⁰⁹ See, e.g., the GOC's May 3, 2016 QR at 59-71.

¹¹⁰ *Id.* at 60.

¹¹¹ See the Department's October 12, 2016, Questionnaire to the GOC at 1.

¹¹² See the GOC's October 26, 2016 QR at 1-2.

¹¹³ See *NSK, Ltd. v. United States*, 919 F. Supp. 442, 447 (CIT 1996) (NSK) ("NSK's assertion that the information it submitted to Commerce provided a sufficient representation of NSK's cost of manufacturing misses the point that 'it is Commerce, not the respondent, that determines what information is to be provided for an administrative review.'"); and *Ansaldo Componenti, S.p.A. v. United States*, 628 F. Supp. 198, 205 (CIT 1986) (*Ansaldo*) (stating that "{i}t is Commerce, not the respondent, that determines what information is to be provided").

¹¹⁴ See Additional Documents Memorandum at Attachment II, which includes Memorandum for Paul Piquado, Assistant Secretary for Import Administration, through Lynn Fischer Fox, Deputy Assistant Secretary for AD/CVD Policy and Negotiation, Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations, and John D. McNerney, Chief Counsel for Import Administration, from Shauna Biby, Christopher Cassel, Timothy Hruby, Office of Policy, Import Administration, "Section 129 Determination of the Countervailing Duty Investigation of Circular Welded Carbon Quality Steel Pipe; Light-Walled Rectangular Pipe and Tube; Laminated Woven Sacks; and Off-the-Road Tires from the People's Republic of China: An Analysis of Public Bodies in the People's Republic of China in Accordance with the WTO Appellate Body's Findings in WTO DS379," dated May 18, 2012 (Public Body Memorandum); and its attachment, Memorandum for Paul Piquado, Assistant Secretary for Import Administration, through Lynn Fischer Fox, Deputy Assistant Secretary for AD/CVD Policy and Negotiation, Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations, and John D. McNerney, Chief Counsel for Import Administration, from Shauna Biby, Christopher Cassel, Timothy Hruby, Office of Policy, Import Administration, "The relevance of the Chinese Communist Party for the limited purpose of determining whether particular enterprises should be considered to be 'public bodies' within the context of a countervailing duty investigation," (May 18, 2012) (CCP Memorandum).

¹¹⁵ *Id.*, at CCP Memorandum at 33.

requires the establishment of CCP organizations “in all companies, whether state, private, domestic, or foreign-invested” and that such organizations may wield a controlling influence in the company’s affairs.¹¹⁶ Because the GOC did not provide the information requested regarding this issue, we have no further basis for reevaluating the Department’s prior factual findings on the role of the CCP. With regard to the GOC’s claim that Chinese law prohibits GOC officials from taking positions in private companies, we previously found that this particular law does not pertain to CCP officials.¹¹⁷

The information we requested regarding the ultimate owners of the producers and the role of government/CCP officials and CCP committees in the management and operations of the input producers, which sold inputs to the respondent, is necessary to our determination of whether the producers are “authorities” within the meaning of section 771(5)(B) of the Act. If the GOC was not able to submit the required information in the requested form and manner, it should have promptly notified the Department, in accordance with section 782(c) of the Act. It did not do so, nor did it suggest any alternative forms for submitting this information.¹¹⁸ Instead, the GOC simply stated that “{t}here is no central informational database to search for the requested information on whether any individual owners, members of the board of directors, or senior managers is a Government of CCP official, and the and the industry and commerce administration does not require the companies to provide such information. Therefore, the GOC cannot obtain the information requested by the Department.”¹¹⁹ Further, the GOC did not indicate that it had attempted to contact the CCP, or that it consulted any other sources. The GOC’s responses in prior proceedings demonstrate that it is, in fact, able to access the information we requested.¹²⁰

Because the GOC did not respond to our requests for information on this issue, we have no further basis for evaluating the GOC’s claim that the role of the CCP is irrelevant. Thus, the Department finds, as it has in past proceedings, that the information requested regarding the role of CCP officials in the management and operations of the input producers, and in the management and operations of the producers’ owners, is necessary to our determination of whether these producers are authorities within the meaning of section 771(5)(B) of the Act. In addition, the GOC did not promptly notify the Department, in accordance with section 782(c) of the Act, that it was unable to submit the information requested in the requested form and manner, nor did it suggest any alternative forms for submitting this information. Further, the GOC did

¹¹⁶ *Id.*, at Public Body Memorandum at 35-36, and sources cited therein.

¹¹⁷ See *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 75 FR 57444 (September 21, 2010), and accompanying IDM at 16.

¹¹⁸ Section 782(c)(1) of the Act states that “{i}f an interested party, promptly after receiving a request from the administering authority or the Commission for information, notifies the administering authority or the Commission (as the case may be) that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the administering authority of the Commission (as the case may be) shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party.”

¹¹⁹ See GOC’s May 3, 2016 QR at 69.

¹²⁰ See, e.g., *High Pressure Steel Cylinders from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012), and accompanying IDM at “Use of Facts Available and Adverse Inferences.”

not provide any information regarding the attempts it undertook to obtain this information, despite the fact that we provided the GOC with a second opportunity to provide the information and extensions for responding to both the original and supplemental questionnaires. Therefore, we have no basis to accept the GOC's claim that it is unable to provide this information. This is particularly appropriate given that the GOC informed the Department that such information regarding the CCP is irrelevant, when the Department made it abundantly clear on the record of this review and numerous previous proceedings that such information is relevant to our analysis of whether input producers are "authorities" under the statute.

Therefore, we preliminarily determine that necessary information is not available on the record, and that the GOC withheld information that was requested of it and, thus, that the Department must rely on "facts otherwise available" in these preliminary results.¹²¹ Further, we preliminarily determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information and an adverse inference is warranted in the application of facts available.¹²² As AFA, and as explained below, we are finding that certain all producers of solar grade polysilicon, aluminum extrusions, and solar glass purchased by the respondents during the POR are "authorities" within the meaning of section 771(5)(B) of the Act.

Application of Facts Available: The GOC's Involvement in the PRC's Solar Grade Polysilicon, Solar Glass, and Aluminum Extrusions Industries Results in the Significant Distortion of Prices

In response to our questions concerning its role in the production of solar grade polysilicon, the GOC provided no information specific to "solar grade" polysilicon.¹²³ The GOC also reported that there is no specific solar polysilicon association in the PRC, but that in order to obtain information for solar grade polysilicon, it consulted some related industry associations (for example, the China Chamber of Commerce of Metals, Minerals and Chemicals).¹²⁴ The GOC explained that the SSB is the government agency that is responsible for nationwide statistics, and is relied upon as the source for domestic production.¹²⁵

With respect to the information that the GOC did provide in its questionnaire response, the GOC provided information regarding state-involved enterprise (SIE) involvement in the polysilicon industry based solely on information collected from the SSB, stating that there were 62 producers of polysilicon during the POR.¹²⁶ However, we find the information in the GOC's response to be unreliable because it is not specific to solar grade polysilicon. Therefore, we preliminarily determine that necessary information regarding the solar grade polysilicon industry in the PRC is not available on the record and, pursuant to section 776(a)(1) of the Act, we will rely on the facts otherwise available in reaching our determination on the GOC's involvement in the PRC solar grade polysilicon market, and whether this government involvement significantly distorts the prices in this industry in the PRC.

¹²¹ See sections 776(a)(1) and (a)(2)(A) of the Act.

¹²² See section 776(b) of the Act.

¹²³ See GOC's May 3, 2016 QR at 53.

¹²⁴ *Id.* at 73.

¹²⁵ *Id.* at 72.

¹²⁶ *Id.* at 72.

Public documents from the record of the solar products investigation, placed on the record of this proceeding by the Department, contains the following information relevant to determining whether the GOC's involvement in the PRC solar grade polysilicon market significantly distorts prices:

- The petition for *Solar Products from the PRC* points to a WTO Dispute Settlement Panel determination that the GOC maintains WTO-inconsistent export restraints on silicon exports, and contends that these restraints operate to ensure “an abundant domestic supply of silicon in China, thus artificially depressing the domestic price of polysilicon.”¹²⁷
- A 2009 *New York Times* article explaining that the GOC's State Council, or cabinet, has the ability to manage several key aspects of the solar grade polysilicon industry, including its capacity, access to the industry, land use, and lending from state-owned commercial banks (SOCBs).¹²⁸
- A Polysilicon Productions Data article explaining that the GOC maintains “Polysilicon Industry Access Standards,” outlining rules and restrictions that prospective solar grade polysilicon manufacturers in the PRC must adhere to.¹²⁹

Regarding the GOC's involvement in the PRC's solar glass industry, when reviewing the record of the instant review, we note that Canadian Solar placed solar glass market and price information from IHS on the record; the IHS information includes statements that the GOC's involvement in the solar glass industry has had distortionary effects on pricing.¹³⁰ Due to the proprietary nature of this submission, we have included a more detailed analysis of the information in Canadian Solar Preliminary Calculations Memorandum.

Finally, with respect to the GOC's involvement in the PRC's aluminum extrusions industry and how it affects pricing, public information from the record of the *Solar Cells from the PRC First AR* indicates that the GOC manages the PRC's aluminum industry, with a focus on the provision of low cost aluminum products at each stage of the value chain in order to provide the cheapest possible inputs for users on the higher end of the chain.¹³¹ Moreover, record information from *Solar Cells from the PRC First AR* also contains information indicating that GOC-owned or

¹²⁷ See Letter to the Secretary, “Petition for the Imposition of Antidumping and Countervailing Duties: Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China and Taiwan (December 31, 2013) (*Solar Products from the PRC Petition*) at 38, citing *China - Measures Related to the Exportation of Various Raw Materials*, Report of the Panel, WT/DS394/R (July 5, 2011), Exhibit III-51, placed on the record of this proceeding concurrently with this Decision Memorandum.

¹²⁸ See “Chinese Solar Firm Revises Price Mark,” Keith Bradsher, *New York Times*, (August 27, 2009) Volume I of the Petition at Exhibit I-1B, placed on the record of this proceeding concurrently with this Decision Memorandum.

¹²⁹ See Polysilicon Productions Data, placed on the record of this proceeding concurrently with this Decision Memorandum.

¹³⁰ See Canadian Solar Benchmark Submission at Exhibit 5.

¹³¹ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 41003 (July 14, 2015) (*Solar Cells from the PRC First AR*) at Letter to the Secretary from Petitioner, “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: New Subsidy Allegations,” (February 27, 2014) (Petitioner's Aluminum Extrusions NSA) at Exhibit 2, “Notice of Guidelines on Accelerating the Adjustment of Aluminum Industry Structure,” Fa Gai Yun Xing (2006) No. 589, placed on the record of this proceeding concurrently with this Decision Memorandum.

-controlled enterprises account for a large proportion of aluminum extrusions that are produced in the PRC.¹³² The record information from *Solar Cells from the PRC First AR* discussed above has been placed on the record of this proceeding by the Department.

In the absence of further information, the record information discussed above suggests that prices in the PRC's solar grade polysilicon, solar glass, and aluminum extrusions industries are significantly distorted. Prices are distorted if they are higher or lower than what would be a normal price in a competitive market without government intervention such as limiting access to an industry and financing, which reduces 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 and 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 detailed above, and the unreliability of the information submitted by the GOC with respect to these input markets, we find that the facts otherwise available on the record of this case support a determination that the GOC's involvement in the PRC's solar grade polysilicon, solar glass, and aluminum extrusions industries significantly distorts the prices in these industries. As such, we are not relying on domestic prices in these markets in the PRC as "tier one" benchmarks pursuant to 19 CFR 351.511(a)(2)(i). The use of external benchmarks is consistent with our past practice.¹³³ Consequently, we are relying on world market prices (tier two) as our benchmarks for the provision of solar grade polysilicon, solar glass, and aluminum extrusions for LTAR programs, pursuant to 19 CFR 351.511(a)(2)(ii). The calculation of these input benchmarks is discussed above.

Application of AFA: Provision of Electricity for LTAR

The GOC did not provide complete responses to the Department's questions regarding the alleged provision of electricity for LTAR. These questions requested information to determine whether the provision of electricity constituted a financial contribution within the meaning of section 771(5)(D) of the Act, whether such a provision provided a benefit within the meaning of section 771(5)(E) of the Act, and whether such a provision was specific within the meaning of section 771(5A) of the Act. In the Department's CVD Questionnaire, for each province in which a respondent is located, the Department asked the GOC to provide a detailed explanation of: (1) how increases in the cost elements in the price proposals led to retail price increases for electricity; (2) how increases in labor costs, capital expenses, and transmission and distribution costs are factored into the price proposals for increases in electricity rates; and (3) how the cost element increases in the price proposals and the final price increases were allocated across the

¹³² See Petitioner's Aluminum Extrusions NSA at Exhibit 3, "Aluminum Corporation of China 2010 Annual Report, Excerpts;" see also Petitioner's Aluminum Extrusions NSA at Exhibit 4, "Aluminum Corporation of China Website Excerpt," see also Petitioner's Aluminum Extrusions NSA at Exhibit 5, "U.S-China Economic and Security Review Commission, An Analysis of State-Owned Enterprises and State Capitalism in China," (October 26, 2011). We have placed these documents on the instant record dated concurrently with this Decision Memorandum.

¹³³ 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) (*Tetrafluoro from the PRC*) and accompanying IDM at 14 and 27.

province and across tariff end-user categories. In its May 3, 2016 response, the GOC did not adequately address these questions.¹³⁴

The GOC did not explain how cost elements in the price proposals led to retail price increases, but stated, without any supporting documents, that the cost elements are “obtained directly from the data provided by the power generating companies and grid companies,”¹³⁵ and that electricity rates are “fully reflective of the changes in the supply and demand of the market, and further the international commitments and government policies made by the GOC for energy conservation and emission reduction.”¹³⁶

Moreover, when the Department asked the GOC to explain how the National Development and Reform Commission (NDRC) determines that the price adjustments proposed by the provinces reflect all relevant cost elements, and to explain how the NDRC determines that all relevant cost elements are accurately reported by the provincial level price bureaus, the GOC responded that the NDRC “corresponds with power generating companies, grid companies, and local price bureaus in cross-checking these data to ensure that the price adjustment proposals are comprehensive, true, accurate, and reliable,” with no explanation of how it “corresponds” with these various parties.¹³⁷ When the Department requested this information again in its supplemental questionnaire to the GOC, the GOC responded that the documents are for the “NDRC’s review only,” stating that it (the GOC) “believes that sufficient information exists on the record to make a determination regarding this program without this information.”¹³⁸

Consequently, we preliminarily determine that necessary information is not on the record of this investigation because the GOC withheld information that was requested of it and, thus, that the Department must rely on “facts available” in making our preliminary determination.¹³⁹

Moreover, we preliminarily determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information.¹⁴⁰ The GOC did not adequately answer our questions, nor did the GOC ask for additional time to gather and provide such information. Consequently, an adverse inference is warranted in the application of facts available.¹⁴¹ In drawing an adverse inference, we find that the GOC’s provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act. Because the GOC refused to provide information concerning the relationship (if any) between provincial tariff schedules and cost, we also relied on an adverse inference in selecting the benchmark for determining the existence and amount of the benefit.¹⁴² The benchmark rates we selected are derived from the record of this review and are the highest electricity rates on the record for the applicable rate and user categories. For details regarding the remainder of our analysis, see the “Provision of Electricity for LTAR” section, below.

¹³⁴ See GOC’s May 3, 2016 QR at 95-102.

¹³⁵ *Id.*, at 99.

¹³⁶ *Id.*

¹³⁷ *Id.*, at 100-101.

¹³⁸ See GOC’s October 26, 2016 QR at 2.

¹³⁹ See section 776(a)(1) and (a)(2)(A) of the Act.

¹⁴⁰ See section 776(b)(1) of the Act.

¹⁴¹ *Id.*

¹⁴² See section 776(b)(4) of the Act.

Application of AFA: Land Provided to the Respondents is Specific to the Solar Products Industry

As discussed below in the section “Programs Preliminarily Determined to be Countervailable,” the Department is investigating the provision of land-use rights programs for less than adequate remuneration. We requested information from the GOC regarding the program.

Our review of the GOC’s initial questionnaire response shows that the GOC did not respond fully to certain sections regarding these programs. Specifically, we asked the GOC to identify all instances in which it provided land or land-use rights to the mandatory respondents during the AUL, to answer questions regarding the eligibility for and the actual use of the assistance provided, and to provide at least one completed application and approval package (*i.e.*, agreements for the company respondents’ land-use rights).¹⁴³ Rather than responding directly to these questions, the GOC instead referred the Department to various PRC land laws and to the respondents’ questionnaire responses.¹⁴⁴

The information requested regarding the provision of land and land-use rights to the mandatory respondents and the basis for which they were provided is crucial for our analysis to determine whether an alleged subsidy constitutes a financial contribution and is specific. This type of information has been provided and verified in previous investigations.¹⁴⁵ Thus, we preliminarily find that the information requested, but not provided, was available to the GOC.

Pursuant to section 776(a) of the Act, we preliminarily determine that information regarding the provision of land and land-use rights is not on the record of this proceeding. Furthermore, given that the GOC has provided information regarding the provision of land and land-use rights in previous proceedings, we preliminarily determine that the GOC has the necessary information that was requested of it and, thus, that the GOC withheld this information within the meaning of section 776(a)(2)(A) of the Act. Accordingly, the Department must rely on “facts otherwise available” in issuing its preliminary determination, pursuant to section 776(a)(2)(A) of the Act. Moreover, because the GOC withheld information that it is able to provide, we preliminarily find that the GOC did not act to the best of its ability to comply with our request for information. Consequently, we find that an adverse inference is warranted in the application of facts available pursuant to section 776(b) of the Act. In drawing an adverse inference, we find that the GOC’s provision of land-use rights constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act.

¹⁴³ See the GOC’s May 3, 2016 QR at 82-94; see also the GOC’s June 10, 2016 QR at 35-38.

¹⁴⁴ *Id.*

¹⁴⁵ See, e.g., *See Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 72 FR 71360, 71363 (December 17, 2007) and accompanying Preliminary Determination Memorandum (PDM) at page 10 (“we examined these companies’ land-use rights agreements and discussed the agreements with the relevant government authorities”) (unchanged in the *OTR Tires from the PRC Final Determination*).

Application of AFA: Export Buyer's Credits

The Department has determined that the use of AFA is warranted in determining the countervailability of the Export Buyer's Credit program because the GOC did not provide the requested information needed to allow the Department to analyze this program fully. In its questionnaire responses, the GOC claimed that none of the U.S. customers of the respondent companies used export buyer's credits from the China Export-Import Bank (China Ex-Im Bank) during the POR.¹⁴⁶ The GOC also stated that "for a business contract to be supported by the export buyer's credit, the contract amount must be more than 2 million U.S. dollars."¹⁴⁷ Information on the record indicates that the GOC revised this program in 2013 to eliminate this minimum requirement.¹⁴⁸ In response to our request that it provide the documents pertaining to the 2013 program revision, the GOC refused to provide them, stating that the "Administrative Measures/Internal Guidelines relating to this program that were revised in 2013 are internal to the bank, non-public, and not available for release."¹⁴⁹ Through its response to the Department's supplemental questionnaire, the GOC refused to provide the requested information or any information concerning the 2013 program revision, which is necessary for the Department to analyze how the program functions.

Moreover, information on the record also indicates that the China Ex-Im Bank may disburse Export Buyer's Credits directly or through a third-party partner and/or correspondent banks.¹⁵⁰ We asked the GOC to confirm whether it extended credit through third-party banks. Instead of providing a response stating whether third party banks play a role in the disbursement/settlement of export buyer's credits, the GOC replied that "this question is not relevant and is unnecessary to determine usage."¹⁵¹ The Department also requested that the GOC provide a list of all third-party banks involved in the disbursement/settlement of Export Buyer's Credits. Instead of providing the information requested, the GOC again advised us that our question is not relevant.¹⁵²

Pursuant to sections 776(a)(2)(A) and (a)(2)(C) of the Act, when an interested party withholds information requested by the Department and/or significantly impedes a proceeding, the Department uses facts otherwise available. Because the GOC withheld the requested information described above, thereby impeding this proceeding, we preliminarily determine that the use of facts available is appropriate. Further, pursuant to section 776(b) of the Act, we find that the GOC, by virtue of its withholding information and significantly impeding this proceeding, failed to cooperate by not acting to the best of its ability. Accordingly, the application of AFA is warranted.

As noted above, the GOC has not answered our questions with respect to this program. As a result, the GOC has not provided information that would permit us to make a determination as to whether this program constitutes a financial contribution and whether this program is specific.

¹⁴⁶ See the GOC's May 3, 2016 QR at 148; see also the GOC's June 10, 2016 QR at 69.

¹⁴⁷ See the GOC's May 3, 2016 QR at 149.

¹⁴⁸ See Department Memorandum, "Placing Information on the Record" (October 21, 2016).

¹⁴⁹ See the GOC's November 4, 2016 QR at 1-2.

¹⁵⁰ See Department Memorandum, "Placing Information on the Record," (October 21, 2016).

¹⁵¹ See the GOC's November 4, 2016 QR at 1-2.

¹⁵² *Id.*

Because the GOC has not cooperated to the best of its ability in response to the Department's specific information requests, we determine, as AFA, that this program constitutes a financial contribution and meets the specificity requirements of the Act.¹⁵³

Moreover, the GOC has not provided information with respect to whether the China Ex-Im Bank limits the provision of Export Buyer's Credits to business contracts exceeding USD 2 million. In addition, the GOC has not provided information on whether it uses third-party banks to disburse/settle Export Buyer's Credits. Such information is critical to understanding how Export Buyer's Credits flow to/from foreign buyers and the China Ex-Im Bank. The nature of the GOC's responses to those information requests further indicates that any attempt to request the information again from the GOC would be futile. Absent the requested information, the GOC's and respondent companies' claims of non-use of this program are not verifiable. Therefore, we preliminarily find that the GOC has not cooperated to the best of its ability and, as AFA, find that Canadian Solar and Trina Solar both used and benefited from this program, despite their claims of non-use and certifications of non-use from their customers.¹⁵⁴

Under the new section 776(d) of the Act, the Department may use as AFA a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, the Department is not required for purposes of 776(c), or any other purpose, to estimate what the countervailable subsidy rate would have been if the non-cooperating interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.¹⁵⁵

Consistent with section 776(d) of the Act and our established practice, we selected the highest calculated rate for the same or similar program as AFA.¹⁵⁶ When selecting rates in an administrative review, we first determine if there is an identical program from any segment of the proceeding and use the highest calculated rate for the identical program (excluding *de minimis* rates). If no such identical program exists, we then determine if there is a similar/comparable program (based on the treatment of the benefit) within the same proceeding and apply the highest calculated rate for the similar/comparable program, excluding *de minimis* rates. Where there is no comparable program, we apply the highest calculated rate from any

¹⁵³ See *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products From the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35308 (June 2, 2016) and accompanying IDM at "Use of Facts Otherwise Available and Adverse Inferences."

¹⁵⁴ In prior proceedings, including the prior segment of this proceeding, we have accepted certifications of non-use from a respondent company and its consumers in certain limited situations. See, e.g., *Solar Cells from the PRC Second AR* and accompanying IDM at 9-12. The program was amended in 2013, and as discussed above, the GOC has not provided information regarding the program's amendments. Accordingly, we preliminarily determine that that is not appropriate to accept Canadian Solar's and Trina Solar's certifications of non-use because we do not know enough about the program to verify those certifications of non-use.

¹⁵⁵ See section 776(d)(3) of the Act.

¹⁵⁶ See, e.g., *Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Shrimp from the PRC*) IDM at 13; see also *Essar Steel Ltd. v. United States*, 753 F.3d 1368, 1373-1374 (Fed. Cir. 2014) (upholding "hierarchical methodology for selecting an AFA rate").

non-company specific program in any CVD case involving the same country, but we do not use a rate from a program if the industry in the proceeding cannot use that program.¹⁵⁷ We are applying an AFA rate of 5.46 percent *ad valorem*, the rate calculated for company respondent Lightway Green New Energy Co., Ltd.’s usage of the Preferential Policy Lending to the Renewable Energy Industry program in the 2012 administrative review of this proceeding.¹⁵⁸ In accordance with section 776(c)(2) of the Act, we do not need to corroborate this rate, because this countervailing duty rate was applied in a separate segment of this proceeding.

Application of AFA: Other Subsidies

Canadian Solar and Trina Solar each reported receiving assistance with respect to our question, “Did your government (or entities owned directly, in whole or in part, by your government or any provincial or local government) provide, directly or indirectly, any other forms of assistance to your company between January 1, 2005, and the end of the POR?”¹⁵⁹ In its responses to our question regarding this government assistance reported by the company respondents, the GOC stated that it has cooperated with the Department regarding requests for information, and citing Article 11.2 of the WTO Agreement on Subsidies and Countervailing Measures, stated that no reply to questions on these other programs are warranted or required.¹⁶⁰ We reiterated our questions on these other subsidies in a supplemental questionnaire, for which the GOC stated that it “objects to inquiries concerning purported subsidies to which no timely allegation have been filed, and as to which the Department has not initiated any investigation.”¹⁶¹ Further, the GOC stated it “has decided not to challenge the countervailability of these programs at this time and confirms the information reported by the respondents.”¹⁶²

Given the GOC’s responses, we preliminarily determine that the use of facts available pursuant to sections 776(a)(2)(A) and 776(a)(2)(D) of the Act is warranted in determining the countervailability of these apparent subsidies reported by Canadian Solar and Trina Solar. First, information regarding whether these programs provide a financial contribution within the meaning of section 771(D) of the Act, and whether these programs are specific within the meaning of section 771(5A) of the Act, is not on the record of this proceeding.¹⁶³ The GOC withheld information that was requested of it by not providing information regarding these subsidies in response to our requests for information noted above.¹⁶⁴ Because the GOC failed to respond to the best of its ability regarding our questions on other, reported subsidies provided by the GOC, we determine that an adverse inference is warranted with respect to these subsidies pursuant to section 776(b) of the Act. As a result, we are finding that, as AFA, these other subsidies reported by Canadian Solar and Trina Solar provide a financial contribution and are specific within the meaning of sections 771(5)(D) and 771(5A) of the Act, respectively. To preliminarily determine whether benefits were provided as a result of these other subsidies

¹⁵⁷ See *Shrimp from the PRC* IDM at 13-14.

¹⁵⁸ See *Solar Cells First AR* and accompanying IDM at 18.

¹⁵⁹ See, e.g., Canadian Solar’s June 10, 2016 QR, Vol. I at 29; see also Trina Solar’s May 3, 2016 QR at 75.

¹⁶⁰ See the GOC’s May 3, 2016 QR at 163; see also the GOC’s June 10, 2016 QR at 74.

¹⁶¹ See the GOC’s October 26, 2016 QR at 3-4.

¹⁶² *Id.*

¹⁶³ See section 776(a)(1) of the Act.

¹⁶⁴ See section 776(a)(2)(A) of the Act.

within the meaning of section 771(5)(E) of the Act, the Department relied on the usage information provided by the company respondents.

XI. ANALYSIS OF PROGRAMS

Programs Preliminarily Determined To Be Countervailable

In a CVD proceeding, the Department requires information from both the government of the country whose merchandise is under investigation and from the foreign producers and exporters. When the government fails to provide requested information concerning alleged subsidy programs, the Department, as AFA, typically finds that a financial contribution exists under the alleged program and that the program is specific.¹⁶⁵ However, where possible, the Department will rely on respondents' reported information to determine the existence and the amount of the benefit to the extent that such information is useable and verifiable.¹⁶⁶ Thus, we relied on the usage information reported by Canadian Solar and Trina Solar, as each provided data on the inputs they consumed, and the prices that they paid for these inputs, during the POR.¹⁶⁷

Provision of Inputs for LTAR

1. Provision of Solar Grade Polysilicon for LTAR

In the original investigation, the Department determined this program to be countervailable based on AFA.¹⁶⁸ In this administrative review, the GOC indicated that certain producers of solar grade polysilicon that provided inputs to the company respondents are majority-owned by the government.¹⁶⁹ As explained in the Public Body Memorandum, majority state-owned enterprises in the PRC possess, exercise, or are vested with governmental authority.¹⁷⁰ The GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector. Therefore, we preliminarily determine that these entities constitute "authorities" within the meaning of section 771(5)(B) of the Act and that company respondents received a financial contribution from them in the form of a provision of a good, pursuant to section 771(5)(D)(iii) of the Act.¹⁷¹

Further, for the reasons explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we are also basing our determination regarding the government's provision of solar grade polysilicon, in part, on AFA. Specifically, we determine as AFA that

¹⁶⁵ See, e.g., *Hardwood and Decorative Plywood from the People's Republic of China: Final Affirmative Countervailing Duty Determination*; 2011 78 FR 58283 (September 23, 2013), and accompanying IDM at Comment 3, "Provision of Electricity."

¹⁶⁶ See, generally, Canadian Solar's June 10, 2016 QR, and Trina Solar's May 3, 2016 QR.

¹⁶⁷ *Id.*

¹⁶⁸ See *Solar Cells from the PRC*, and accompanying IDM at 12-13.

¹⁶⁹ See, e.g., the GOC's May 3, 2016 QR at Exhibit II.E.1.

¹⁷⁰ See Public Body Memorandum.

¹⁷¹ See, e.g., *Certain Oil Country Tubular Goods From the People's Republic of China: Final Results of Countervailing Duty Administrative Review*; 2012, 79 FR 52301 (September 3, 2014) (*OCTG from the PRC 2012 AR*) and accompanying IDM at 48-50.

certain producers of the solar grade polysilicon purchased by the respondents are “authorities” within the meaning of section 771(5)(B) of the Act and, as such, that the provision of solar grade polysilicon constitutes a financial contribution under section 771(5)(D)(iii) of the Act.¹⁷²

For instances where the record evidence indicates that the solar grade polysilicon producers that provided inputs to the company respondents are wholly-foreign owned, we find that there is no evidence on the record indicating that these producers possess, exercise, or are vested with governmental authority. As a result, we preliminarily find that these producers are not “authorities” within the meaning of section 771(5)(B) of the Act and are not capable of providing a financial contribution pursuant to section 771(5)(D)(iii) of the Act.

In response to our questions concerning specificity, the GOC stated: “There are a vast number of uses for solar grade polysilicon, and the type of consumers that may purchase polysilicon is highly varied within China’s economy.”¹⁷³ However, the GOC provided no information concerning the industries consuming polysilicon (solar grade or otherwise) and the amounts purchased by those individual industries. In the most-recently completed review of subject merchandise, we found this program to be specific based on the statements of the GOC, that “Polysilicon has a wide range of uses, including but not limited to use in the solar and semiconductor industries.” Because the GOC provided no new information on the industries that consume polysilicon in the PRC in this segment of the proceeding, we are relying on the prior statements of the GOC in finding that polysilicon is limited to specific industries within the meaning of section 771(5A)(D)(iii) of the Act, namely, the solar and semiconductor industries.¹⁷⁴

Finally, we preliminarily determine that a benefit is being conferred because the polysilicon is being provided for LTAR. As discussed above under the “Subsidies Valuation Information” section, the Department is relying on world market prices—an average of the solar grade polysilicon world market prices published by Bloomberg, EnergyTrend, Greentech Media, and IHS—to calculate a benefit for both Canadian Solar and Trina Solar. The Department adjusted the benchmark price to include delivery charges, import duties, and value added tax (VAT) pursuant to 19 CFR 351.511(a)(2)(iv).¹⁷⁵ Regarding delivery charges, we included ocean freight and the inland freight charges that would be incurred to deliver polysilicon to Canadian Solar’s and Trina Solar’s production facilities. We added import duties and VAT as reported by the GOC.¹⁷⁶ In calculating VAT, we applied the applicable VAT rate to the benchmark after first adding amounts for ocean freight and import duties. We compared these monthly benchmark prices to Canadian Solar’s and Trina Solar’s reported purchase prices for individual domestic transactions, including VAT and delivery charges.

Based on this comparison, we preliminarily determine that polysilicon was provided for LTAR and that a benefit exists for both Canadian Solar and Trina Solar in the amount of the difference

¹⁷² See, e.g., the GOC’s May 3 2016 QR at Exhibit II.E.1.

¹⁷³ See the GOC’s May 3, 2016 QR at 54.

¹⁷⁴ The Department’s questionnaire states that it will not revisit specificity and financial contribution decisions in administrative reviews unless the government or company respondents provide new information challenging the prior conclusions.

¹⁷⁵ The Department concludes that these data do not already include delivery charges. See Preliminary Benchmark Memorandum.

¹⁷⁶ See GOC’s May 3, 2016 QR at 76.

between the benchmark prices and the prices paid by Canadian Solar and Trina Solar.¹⁷⁷ We divided the total benefits by the appropriate total sales denominator, as discussed in the “Subsidies Valuation Information” section above, and in the Preliminary Calculation Memoranda. On this basis, we preliminarily determine countervailable *ad valorem* subsidy rates of 0.02 percent for Canadian Solar, and 0.43 percent for Trina Solar.

2. Provision of Solar Glass for LTAR

The Department determined this program to be countervailable in the first administrative review.¹⁷⁸ In its questionnaire responses in this review, the GOC indicated that certain producers of solar glass that provided inputs to the company respondents are majority-owned by the government.¹⁷⁹ As explained in the Public Body Memorandum, majority state-owned enterprises in the PRC possess, exercise, or are vested with governmental authority.¹⁸⁰ The GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector. Therefore, we preliminarily determine that these entities constitute “authorities” within the meaning of section 771(5)(B) of the Act and that company respondents received a financial contribution from them in the form of a provision of a good, pursuant to section 771(5)(D)(iii) of the Act.¹⁸¹

For the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are basing our preliminary determination regarding the GOC’s provision of solar glass, in part, on AFA. Specifically, we determine as AFA that certain producers of the solar glass purchased by respondent are “authorities” within the meaning of section 771(5)(B) of the Act and, as such, that the provision of solar glass constitutes a financial contribution under section 771(5)(D)(iii) of the Act.

For instances where the record evidence indicates that the solar glass producers that provided inputs to the company respondents are wholly-foreign owned, we find that there is no evidence on the record indicating that these producers possess, exercise, or are vested with governmental authority. As a result, we preliminarily find that these producers are not “authorities” within the meaning of section 771(5)(B) of the Act and are not capable of providing a financial contribution pursuant to section 771(5)(D)(iii) of the Act.

In response to our questions concerning specificity, the GOC stated: “{t}here are a vast number of uses for solar glass. The industries that purchase/use solar glass are not limited, and the solar panel industry in China is not a disproportionate or predominant consumer of solar glass . . .”¹⁸² However, the GOC provided none of the information requested concerning amounts purchased by individual industries. In the first administrative review of this *CVD Order* with respect to this program, we relied on information demonstrating that solar glass has lower iron content than other types of glass, in order to allow the transmission of more sunlight, and that solar glass has a

¹⁷⁷ See 19 CFR 351.511(a).

¹⁷⁸ See *Solar Cells from the PRC First AR* and accompanying IDM at 29-30.

¹⁷⁹ See, e.g., the GOC’s May 3, 2016 QR at Exhibit II.E.27.

¹⁸⁰ See Public Body Memorandum.

¹⁸¹ See, e.g., *OC TG from the PRC 2012 AR* and accompanying IDM at 48-50.

¹⁸² See the GOC’s May 3, 2016 QR at 127.

particular thickness of between three and four millimeters.¹⁸³ Thus, we continue to find that solar glass is a particular type of flat and rolled glass most suitable for particular purposes and customers. Based on this, and the lack of new information provided in this segment of the proceeding, we preliminarily determine that the provision of solar glass is limited to specific industries under section 771(5A)(D)(iii) of the Act, namely, the solar industry.

Finally, a benefit is being conferred because the solar glass is being provided for LTAR. As discussed above under the “Subsidies Valuation Information” section, the Department is relying on the solar glass benchmarks published by IHS and the United Nations Comtrade Database. The Department adjusted the benchmark price to include delivery charges, import duties, and VAT pursuant to 19 CFR 351.511(a)(2)(iv).¹⁸⁴ We added import duties and VAT as reported by the GOC.¹⁸⁵ In calculating VAT, we applied the applicable VAT rate to the benchmark after first adding amounts for ocean freight and import duties. We compared the benchmark prices to the respondent’s reported purchase prices for individual transactions, including VAT and delivery charges.

Based on this comparison, we preliminarily determine that solar glass was provided to both Canadian Solar and Trina Solar for LTAR and that a benefit exists in the amount of difference between the benchmark prices and the prices paid by these company respondents.¹⁸⁶ We divided the company respondents’ total benefits by the appropriate total sales denominator, as discussed in the “Subsidies Valuation Information” section above, and in the Preliminary Calculation Memoranda. On this basis, we preliminarily determine countervailable *ad valorem* subsidy rates of 9.47 percent for Canadian Solar, and 1.34 percent for Trina Solar.

3. Provision of Aluminum Extrusions for LTAR

The Department determined this program to be countervailable in the first administrative review based on AFA.¹⁸⁷ For the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are basing our determination regarding the government’s provision of aluminum extrusions, in part, on AFA. Specifically, we determine as AFA that the producers of the aluminum extrusions purchased by Canadian Solar and Trina Solar are “authorities” within the meaning of section 771(5)(B) of the Act and,¹⁸⁸ as such, that the provision of aluminum extrusions constitutes a financial contribution under section 771(5)(D)(iii) of the Act.

In addressing our questions on specificity, the GOC stated that “Aluminum extrusions in China are consumed by a diverse range of industries.”¹⁸⁹ The GOC also provided a list of a few dozen “major end-use” applications for aluminum and aluminum extrusions in the United States taken

¹⁸³ See *Solar Cells from the PRC First AR* and accompanying IDM at 23-25.

¹⁸⁴ The Department concludes that these data do not already include delivery charges. See Preliminary Benchmark Memorandum.

¹⁸⁵ See the GOC’s May 3, 2016 QR at 141.

¹⁸⁶ See 19 CFR 351.511(a).

¹⁸⁷ See *Solar Cells from the PRC First AR* and accompanying IDM at 28.

¹⁸⁸ We note that the record does not indicate that the GOC maintains a majority ownership interest in the producer of aluminum extrusions that provided inputs to the company respondents during the POR.

¹⁸⁹ See GOC’s June 10, 2016 QR at 43.

from the aluminum extrusions injury analysis of the ITC and stated, “The consumption pattern for aluminum extrusions in China is actually more pronounced away from the electrical sector than in North America.”¹⁹⁰ However, the GOC provided none of the information requested concerning amounts consumed by individual industries.

The GOC reported six industries consuming aluminum extrusions: building and construction, transportation, electrical, machinery and equipment, consumer durables, and other industries.¹⁹¹ Thus, we find that the recipients of aluminum extrusions are limited in number to the industries listed by the GOC, and that the provision of aluminum extrusions is *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act. This is consistent with our past practice in this proceeding.¹⁹² Although the GOC claims its information indicates aluminum extrusions are used in a variety of industries and sectors across the PRC, the industries within those sectors that actually consume aluminum extrusions are limited in number. The statute notes that the term “enterprise or industry” “includes a group of such enterprises or industries.”¹⁹³

Finally, a benefit is conferred to the extent that aluminum extrusions are being provided for LTAR. As discussed above under the “Subsidies Valuation Information” section, we are basing our aluminum extrusions benchmark on an average of the world market prices of aluminum extrusions and aluminum frames compiled by IHS and Comtrade. We adjusted the benchmark price to include delivery charges, import duties, and VAT pursuant to 19 CFR 351.511(a)(2)(iv).¹⁹⁴ We added import duties and VAT as reported by the GOC.¹⁹⁵ In calculating VAT, we applied the applicable VAT rate to the benchmark after first adding amounts for ocean freight and import duties. We compared these monthly benchmark prices to Canadian Solar’s and Trina Solar’s reported purchase prices for individual transactions, including VAT and delivery charges.

Based on this comparison, we preliminarily determine that aluminum extrusions were provided to both Canadian Solar and Trina Solar for LTAR and that a benefit exists in the amount of difference between the benchmark prices and the prices paid by these company respondents.¹⁹⁶ We divided the company respondents’ total benefits by the appropriate total sales denominator, as discussed in the “Subsidies Valuation Information” section above, and in the Preliminary Calculation Memoranda. On this basis, we preliminarily determine countervailable *ad valorem* subsidy rates of 2.32 percent for Canadian Solar, and 2.44 percent for Trina Solar.

¹⁹⁰ *Id.* at 46.

¹⁹¹ *Id.*

¹⁹² See *Solar Cells from the PRC First AR* at 21-23; see also *CWP from the PRC* and accompanying Issues and Decision Memorandum at 62; see also *Solar Cells from the PRC Second AR* and accompanying IDM at 13-15.

¹⁹³ Section 771(5A)(D) of the Act.

¹⁹⁴ The Department concludes that these data do not already include delivery charges. See Preliminary Benchmark Memorandum.

¹⁹⁵ See the GOC’s May 3, 2016 QR at 119.

¹⁹⁶ See 19 CFR 351.511(a).

4. Provision of Electricity for LTAR

In the original investigation, the Department determined this program to be countervailable based on the application of AFA.¹⁹⁷ For the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are basing our determination regarding the GOC’s provision of electricity in part on AFA. For these preliminary results, we determine that Canadian Solar and Trina Solar each received a countervailable subsidy from electricity provided for LTAR.

As described above in detail, the GOC did not provide certain information requested regarding its provision of electricity to the company respondents and, as a result, we determine, as AFA, that the GOC is providing a financial contribution that is specific within the meaning of sections 771(5)(D)(iii) and 771(5A)(D) of the Act, respectively. To determine the existence and the amount of any benefit under this program pursuant to section 771(5)(E)(iv) of the Act and 19 CFR 351.511, we relied on the company respondents’ reported consumption volumes and rates paid. We compared the rates paid by company respondents to the benchmark rates, which, as discussed above, are the highest rates charged in the PRC during the POR. We made separate comparisons by price category (*e.g.*, great industry peak, basic electricity, *etc.*). We multiplied the difference between the benchmark and the price paid by the consumption amount reported for that month and price category. We then calculated the total benefit during the POR for the company respondents by summing the difference between the benchmark prices and the prices paid by each company.

To calculate the electricity benchmark, in accordance with 19 CFR 351.511(a)(2), we selected the highest rates in the PRC for the user category of the respondents (*e.g.*, “large industrial users”) for the non-seasonal general, peak, normal, and valley ranges, as provided in the electricity tariff schedules submitted by the GOC.¹⁹⁸ This benchmark reflects an adverse inference, which we drew as a result of the GOC’s failure to cooperate by not acting to the best of its ability to provide requested information about its provision of electricity in this review.¹⁹⁹

To calculate the subsidy rate, we divided the benefit amount by the appropriate total sales denominator, as discussed in the Preliminary Calculation Memoranda. On this basis, we preliminarily determine countervailable *ad valorem* subsidy rates of 0.53 percent for Canadian Solar, and 1.01 percent for Trina Solar.

5. Provision of Land for LTAR

In the original investigation, the Department determined this program to be countervailable based on the application of AFA.²⁰⁰ For the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are basing our determination regarding the GOC’s provision of land in part on AFA. For these preliminary results, we determine that

¹⁹⁷ See *Solar Cells from the PRC*, and accompanying IDM at 14-15.

¹⁹⁸ See the GOC’s September 18, 2015, QR and the GOC’s October 26, 2016 QR.

¹⁹⁹ See “Application of AFA: Provision of Electricity for LTAR” section, above.

²⁰⁰ See *Solar Cells from the PRC*, and accompanying IDM at 7-8.

Canadian Solar and Trina Solar each received a countervailable subsidy through land provided for LTAR.

As discussed above in the “Use of Facts Otherwise Available and Adverse Inferences” section, the Department continues to determine as AFA that the provision of land to the company respondents was made by “authorities” within the meaning of section 771(5)(B) of the Act and thus constitutes a financial contribution within the meaning of section 771(5)(D) of the Act, and is also specific pursuant to section 771(5A)(D) of the Act.

In order to calculate the benefit, we first multiplied the Thailand industrial land benchmarks discussed above under the “Land Benchmark” section, by the total area of Canadian Solar’s and Trina Solar’s countervailed tracts. We then subtracted the price actually paid for each tract to derive the total unallocated benefit. Because land is related to the respondents’ capital structure, we treated the amount of the unallocated benefit as a non-recurring subsidy, pursuant to 19 CFR 351.524(c)(2)(iii). We thus conducted the “0.5 percent test,” as instructed by 19 CFR 351.524(b)(2), for the year of the relevant land-use agreement by dividing the total unallocated benefit for each tract by the appropriate sales denominator. If more than one tract was provided in a single year, we combined the total unallocated benefits from the tracts before conducting the “0.5 percent test.” As a result, we found that the benefits were greater than 0.5 percent of relevant sales and that allocation was appropriate for all tracts found to be countervailable. We allocated the total unallocated benefit amounts across the terms of the land-use agreements, using the standard allocation formula of 19 CFR 351.524(d), and determined the amount attributable to the POR. We then summed all of the benefits attributable to the POR and divided this amount by the appropriate total sales denominator, as discussed in the “Subsidies Valuation Information” section above, and in the Preliminary Calculation Memoranda, to derive preliminary subsidy *ad valorem* subsidy rates of 0.14 percent for Canadian Solar, and 0.09 percent for Trina Solar.

Preferential Policy Lending to the Renewable Energy Industry, aka Preferential Loans and Directed Credit

In the original investigation, the Department determined this program to be countervailable.²⁰¹ Article 25 of the PRC’s Renewable Energy Law (REL) specifically calls for financial institutions to offer favorable loans to the renewable energy industry. In addition, Catalogue No. 40 contains a list of encouraged projects, including solar energy, which the GOC targets through the provision of loans and other forms of assistance.

In the original investigation, the Department determined that this program conferred countervailable subsidies on subject merchandise because: 1) it provides a financial contribution pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act, and 2) the loans provide a benefit pursuant to section 771(E)(ii) equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans.²⁰² The Department further determined that there is a program of preferential policy lending specific to the renewable energy industry, including solar cells, within the meaning of section 771(5A)(D)(i)

²⁰¹ See *Solar Cells from the PRC*, and accompanying IDM at 12, “Preferential Policy Lending.”

²⁰² *Id.*

of the Act. There is no new information on the record that would cause us to reconsider this determination. Therefore, we continue to find that this program provides a countervailable subsidy.

In its questionnaire responses in this segment of the proceeding, the GOC stated that this program does not exist and that no loans to any of the respondents were issued pursuant to a policy lending program. The GOC further claimed that if an industrial policy existed, it had “no connection to or effect upon the decision of any bank to issue loans to any respondent,” and thus those loans did not constitute a countervailable subsidy.²⁰³ However, the GOC provided no documentation in support of these assertions that would call into question the Department’s conclusions from the investigation.

Canadian Solar and Trina Solar each reported having loans outstanding from banks in China during the POR under this program.²⁰⁴ To calculate the benefit under this program, we used the benchmarks described under “Benchmark and Discount Rates” above. We divided the total benefits received during the POR by the appropriate total sales denominator, as discussed in the “Subsidies Valuation Information” section above, and in the Preliminary Calculation Memoranda. On this basis, we preliminarily determine countervailable *ad valorem* subsidy rates of 2.10 percent for Canadian Solar, and 1.11 percent for Trina Solar.

Tax Benefit Programs

1. Enterprise Income Tax Law, Research and Development (R&D) Program

In the original investigation, the Department determined this program to be countervailable.²⁰⁵ Article 30.1 of the Enterprise Income Tax Law of the PRC created a new program regarding the deduction of research and development expenditures by companies, which allows enterprises to deduct, through tax deductions, research expenditures incurred in the development of new technologies, products, and processes. As explained in *Solar Cells from the PRC*, the income tax deduction afforded by this program is limited as a matter of law to certain enterprises, those with R&D in eligible high-technology sectors.²⁰⁶ Article 95 of Regulation 512 provides that, if eligible research expenditures do not “form part of the intangible assets value,” an additional 50 percent deduction from taxable income may be taken on top of the actual accrual amount. Where these expenditures form the value of certain intangible assets, the expenditures may be amortized based on 150 percent of the intangible assets costs.

The Department determined in the original investigation that this income tax reduction provides a financial contribution in the form of revenue foregone by the government, and it confers a benefit to the recipients in the amount of the tax savings, pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also continue to determine that the income tax deduction afforded by this program is limited as a matter of law to certain enterprises, *i.e.*, those with R&D in eligible high-technology sectors and, thus, is specific under section 771(5A)(D)(i) of the Act.

²⁰³ See the GOC’s May 3, 2016 QR at 7; *see also* the GOC’s June 10, 2016 QR at 3.

²⁰⁴ See Canadian Solar’s June 10, 2016 QR for SZSP at 10; *see also* Trina Solar’s May 3, 2016 QR at 14-15.

²⁰⁵ See *Solar Cells from the PRC*, and accompanying IDM at 17.

²⁰⁶ *Id.*

There is no new information on the record for us to reconsider our determination from the original investigation. Therefore, we continue to find that this program provides a countervailable subsidy.

Canadian Solar and Trina Solar each reported benefitting from this program during the POR.²⁰⁷ To calculate the benefit from this program, we treated the tax deduction as a recurring benefit, consistent with 19 CFR 351.524(c)(1).²⁰⁸ To compute the amount of the tax savings, we calculated the amount of tax each respondent company would have paid absent the tax deductions. We then divided the tax savings by the appropriate total sales denominator for each respondent company.

On this basis, we preliminarily determine countervailable *ad valorem* subsidy rates of 0.01 percent for Canadian Solar, and 0.03 percent for Trina Solar.

2. Import Tariff and VAT Exemptions for Use of Imported Equipment – Encouraged Industries

In the original investigation, the Department determined this program to be countervailable.²⁰⁹ Circular 37 exempts FIEs and certain domestic enterprises from VAT and tariffs on imported equipment used in their production so long as the equipment does not fall into prescribed lists of non-eligible items, in order to encourage foreign investment and to introduce foreign advanced technology equipment and industry technology upgrades. As of January 1, 2009, the GOC discontinued VAT exemptions under this program, but companies can still receive import duty exemptions.²¹⁰ There is no new information on the record for us to reconsider this determination. Therefore, we continue to find that this program provides a countervailable subsidy.

In the investigation, we found that VAT and tariff exemptions on imported equipment confer a countervailable subsidy. The exemptions are a financial contribution in the form of revenue foregone by the GOC, and they provide a benefit to the recipient in the amount of the VAT and tariff savings.²¹¹ We also determined that the VAT and tariff exemptions afforded by the program are specific under section 771(5A)(D)(iii)(I) of the Act because the program is limited to certain enterprises, *i.e.*, FIEs and domestic enterprises involved in “encouraged” projects.

Canadian Solar and Trina Solar each reported benefits from this program.²¹² Since this indirect tax is provided for, or tied to, the capital structure or capital assets of a firm, as reported by both Canadian Solar and Trina Solar, the Department treated this tax as a non-recurring benefit and allocated the amount of the VAT and/or tariff exemptions, as applicable in the given year, over

²⁰⁷ See Canadian Solar’s June 10, 2016 QR; see also Trina Solar’s May 3, 2016 QR.

²⁰⁸ See *Solar Cells from the PRC*, and accompanying IDM at 17, “Enterprise Income Tax Law, Research and Development (R&D) Program.”

²⁰⁹ See *Solar Cells from the PRC*, and accompanying IDM at 18. Note that the GOC did not provide any laws or regulations in its submissions on the record of this review pertaining to this program.

²¹⁰ *Id.*

²¹¹ See section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1).

²¹² See, *e.g.*, Canadian Solar’s June 10, 2016 QR for CSAS at 10; see also, *e.g.*, Trina Solar’s May 3, 2016 QR at 16.

the AUL.²¹³ To calculate the countervailable subsidy, we used our standard methodology for non-recurring grants.²¹⁴ In the years that the benefits received by the company respondents under this program did not exceed 0.5 percent of relevant sales for that year, we expensed those benefits in the years that they were received, pursuant to 19 CFR 351.524(b)(2). We used the discount rates described above in the section “Subsidies Valuation Information,” to calculate the amount of the benefit allocable to the POR. We then divided the benefit amount by the appropriate sales denominator.

On this basis, we preliminarily determine countervailable *ad valorem* subsidy rates of 0.00 percent for Canadian Solar, and 0.20 percent for Trina Solar.

3. VAT Refunds/Rebates for FIEs Purchasing Domestically-Produced Equipment

The Department found this program to be countervailable in the original investigation.²¹⁵ According to Trial Measure 171, the GOC refunds the VAT on purchases of certain Chinese produced equipment to FIEs if the equipment is used for certain encouraged projects. There is no new information on the record of the instant review that would cause us to reconsider this determination.

The Department continues to find that the rebates provided under this program are a financial contribution in the form of revenue foregone by the GOC, and they provide a benefit to both respondent companies in the amount of the tax savings.²¹⁶ We also continue to determine that the VAT rebates are contingent upon the use of domestic over imported equipment and, hence, specific under section 771(5A)(A) and (C) of the Act.

Canadian Solar and Trina Solar each reported using this program.²¹⁷ Since this indirect tax is provided for, or tied to, the capital structure or capital assets of a firm, as reported by both Canadian Solar and Trina Solar, the Department treated this tax as a non-recurring benefit and allocated the benefit to the firms over the AUL.²¹⁸ To calculate a benefit under this program, for the years in which the rebate amount was less than 0.5 percent of the relevant sales figure, we expensed the rebates in the year of receipt, consistent with 19 CFR 351.524(a). For those years in which the VAT rebates were greater than or equal to 0.5 percent, we allocated the rebate amount over the AUL. We used the discount rates described above in the “Subsidies Valuation Information” section to calculate the amount of the benefit allocable to the POI.

On this basis, we preliminarily determine countervailable *ad valorem* subsidy rates of 0.00 percent for Canadian Solar, and 0.00 percent for Trina Solar.

²¹³ See 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).

²¹⁴ See 19 CFR 351.524(b).

²¹⁵ See *Solar Cells from the PRC* and accompanying IDM at 31-32, “VAT Rebates on FIE Purchases of Chinese-Made Equipment.” Note that the GOC did not provide any laws or regulations in its submissions on the record of this review pertaining to this program.

²¹⁶ See section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1).

²¹⁷ See, e.g., Canadian Solar’s June 10, 2016 QR for LYSP at 10; see also Trina Solar’s May 3, 2016 QR at 16.

²¹⁸ See 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).

Grant Program

Golden Sun Demonstration Program

The Department determined this program to be countervailable in the original investigation.²¹⁹ This program was established in 2009 under Article 20 of the REL to provide assistance to firms in the construction of photovoltaic electricity-generation projects. As detailed in Circular 397, this program was designed to provide one-time assistance to recipients over the course of its two-year term. There is no new information on the record that would cause us to reconsider our determination from the original investigation. As a result, we continue to find that grants from this program provide a financial contribution pursuant to section 771(5)(D)(i) of the Act and a benefit, in the amount of the grant provided, pursuant to 19 CFR 351.504(a). We continue to find that grants from this program are specific as a matter of law to certain enterprises, namely those involved in the construction of solar-powered projects, pursuant to section 771(5A)(D)(i) of the Act.

Canadian Solar and Trina Solar each reported receiving grants from this program.²²⁰ The Department continues to treat these grants as a non-recurring subsidy and thus performed the “0.5 percent test” for the year the grant was approved, in accordance with 19 CFR 351.504(c)(1) and 19 CFR 351.524(b)(2). Specifically, we divided the total approved amount by the appropriate total sales denominator. For those years in which the grants received were greater than or equal to 0.5 percent, we allocated the rebate amount over the AUL. We used the discount rates described above in the “Subsidies Valuation Information” section to calculate the amount of the benefit allocable to the POR.

On this basis, we preliminarily determine countervailable *ad valorem* subsidy rates of 0.30 percent for Canadian Solar, and 0.06 percent for Trina Solar.

Export Financing

Export Seller’s Credits Program

The Department has previously found this program to be countervailable.²²¹ In its questionnaire response, the GOC provided the “Circular of the Export-Import Bank of China Regarding the Printing and Distribution of the Export-Import Bank of China Interim Rules of the Seller’s Credit on Exports (Revised),” dated August 25, 2000. Based on our review of this document, and consistent with our determinations in *Citric Acid from the PRC Final Determination* and *Citric Acid from the PRC 2012 Review*, we find the loans provided by the GOC under this program constitute financial contributions under sections 771(5)(B)(i) and 771(5)(D)(i) of the Act. These loans also provide a benefit under section 771(5)(E)(ii) of the Act in the amount of the difference between the amounts the recipient paid and would have paid on comparable commercial loans.

²¹⁹ See *Solar Cells from the PRC* and accompanying IDM at 11-12.

²²⁰ See, e.g., Canadian Solar’s October 26, 2016 QR at 3-4; see also Trina Solar’s May 3, 2016 QR at 16.

²²¹ See, e.g., *Citric Acid from the PRC Final Determination* and accompanying IDM at 12-13; see also *Citric Acid and Certain Citrate Salts: Final Results of Countervailing Administrative Review*; 2012, 79 FR 78799 (December 31, 2014) and accompanying IDM at 15-16 (*Citric Acid from the PRC 2012 Review*).

Finally, the receipt of loans under this program is tied to actual or anticipated exportation or export earnings and, therefore, this program is specific pursuant to sections 771(5A)(A)-(B) of the Act.

Canadian Solar reported having outstanding loans from the Ex-Im Bank during the POR, which were provided under this program.²²² To calculate the benefit under this program, we compared the amount of interest Canadian Solar paid on the outstanding loans to the amount of interest the company would have paid on comparable commercial loans.²²³ In conducting this comparison, we used the interest rates described in the “Benchmarks and Discount Rates” section above. We divided the total benefit by Canadian Solar’s export sales during the POR. On this basis, we find that Canadian Solar received a countervailable subsidy of 0.26 percent *ad valorem*.

Other Subsidy Programs

Canadian Solar and Trina Solar each reported that they received various grants during the AUL.²²⁴ As stated above in the section, “Use of Facts Otherwise Available and Adverse Inferences,” the Department has preliminarily determined that numerous additional grants provided to the company respondents are countervailable based upon AFA. The majority of the grants received by both Canadian Solar and Trina Solar do not pass the “0.5 percent test” described in CFR 351.524(b)(2), and thus are allocated to the year of receipt.²²⁵ However, Canadian Solar and Trina Solar each received several grants that were expensed during the POR. We calculated *ad valorem* subsidy rates of 0.37 percent for Canadian Solar, and 0.31 percent for Trina Solar for these grants.²²⁶

Programs Preliminarily Determined To Be Not Used Or Not To Confer A Measurable Benefit During the POR

Tax Benefit Programs

1. The Two Free/Three Half Program for FIEs
2. Income Tax Reductions for Export-Oriented Enterprises
3. Income Tax Benefits for FIEs Based on Geographic Locations – Preferential Tax Programs for Western Development
4. Local Income Tax Exemption and Reduction Programs for “Productive” FIEs
5. Tax Refunds for Reinvestment of FIE Profits in Export-Oriented Enterprises
6. Tax Reductions for High and New-Technology Enterprises Involved in Designated Projects
7. Preferential Income Tax Policy for Enterprises in the Northeast Region
8. Guangdong Province Tax Programs

²²² See Canadian Solar’s October 26, 2016 QR at 4.

²²³ See 19 CFR 351.505(a).

²²⁴ See, e.g., Canadian Solar’s June 10, 2016 QR for LYSP at 29; see also, e.g., Trina Solar’s May 3, 2016 QR at 75.

²²⁵ See Preliminary Calculations Memoranda.

²²⁶ *Id.*

Other Tax Programs

1. VAT and Tariff Exemptions for Purchases of Fixed Assets Under the Foreign Trade and Development Fund Program
2. The Over-Rebate of VAT Program
3. Tax Reductions for FIE Purchases of Chinese-Made Equipment

Programs Preliminarily Determined To Be Not Countervailable During the POR

Export Credit Subsidies

Export Credit Insurance from SINOSURE

The GOC and the company respondents were insured by SINOSURE during the POR.²²⁷ To determine whether an export insurance program is countervailable, we must examine whether the premium rates charged are adequate to cover the program's long-term operating costs and losses.²²⁸ The GOC provided a chart summarizing SINOSURE's overall long-term operating costs and losses for 2006 through 2014 in response to the Department's questionnaire.²²⁹ Our review of this chart and SINOSURE's 2014 Annual Report leads us to conclude that the annual premiums collected by SINOSURE were adequate to cover its long-term operating costs and losses of the program. As such, we preliminarily determine that this program was not countervailable during the POR.

However, we take note of the fact that the Department made a different finding concerning this program in the *Passenger Vehicle and Light Truck Tires from PRC*.²³⁰ The Department intends to further investigate this matter for the final results.

XII. VERIFICATION

Although verification in this review is not mandatory, the Department is currently determining whether "good cause" exists in this review for verification of the questionnaire responses submitted in this administrative review.

XIII. DISCLOSURE AND PUBLIC COMMENT

The Department intends to disclose to interested parties the calculations performed in connection with these preliminary results within five days of its public announcement.²³¹ Case briefs may be submitted to Enforcement and Compliance's Antidumping and Countervailing Duty

²²⁷ See the GOC's May 3, 2016 QR at 155; see also the GOC's June 10, 2016 QR at 73; see also Canadian Solar's June 10, 2016 QR for SZSP at 31; see also Trina Solar's May 3, 2016 QR at 74.

²²⁸ See 19 CFR 351.520(a)(1).

²²⁹ See the GOC's May 3, 2016 QR at 163 and at Exhibit III.F.1.

²³⁰ See *Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 80 FR 34888 (June 18, 2015) (*Passenger Vehicle and Light Truck Tires from PRC*) and accompanying IDM at 24 and footnote no. 112.

²³¹ See 19 CFR 351.224(b).

Centralized Electronic Service System (ACCESS) at a date to be determined by the Department, and rebuttal briefs, limited to issues raised on the case briefs, may be submitted no later than five days after the deadline for the submission for case briefs.²³² Parties who submit case or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.²³³

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S Department of Commerce, filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time, within 30 days after the date of publication of this notice.²³⁴ Hearing requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues parties intend to present at the hearing. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a time to be determined. Prior to the hearing, the Department will contact all parties who submitted case or rebuttal briefs to determine if they wish to participate in the hearing. The Department will then distribute a hearing schedule to these parties prior to the hearing and only those parties listed on the schedule may present issues raised in their briefs.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using ACCESS.²³⁵ Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time,²³⁶ on the due dates established above.

²³² See 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1). Interested parties will be notified through ACCESS regarding the deadline for submitting case briefs.

²³³ See 19 CFR 351.309(c)(2) and 351.309(d)(2).

²³⁴ See 19 CFR 351.310(c).

²³⁵ See 19 CFR 351.303(b)(2)(i).

²³⁶ See 19 CFR 351.303(b)(1).

XIV. CONCLUSION

We recommend that you approve the preliminary findings described above.



Agree

Disagree

12/29/2016

X

Pe Pj

Signed by: PAUL PIQUADO

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

Appendix

Non-Selected Companies Under Review

1. BYD (Shangluo) Industrial Co., Ltd.
2. Chint Solar (Zhejiang) Co., Ltd.
3. ET Solar Energy Limited
4. ET Solar Industry Limited
5. Hangzhou Sunny Energy Science and Technology Co., Ltd.
6. Jiawei Solarchina Co., Ltd.
7. Jiawei Solarchina (Shenzhen) Co., Ltd.
8. Lightway Green New Energy Co., Ltd.
9. Luoyang Suntech Power Co., Ltd.
10. Ningbo Qixin Solar Electrical Appliance Co., Ltd.
11. Shanghai BYD Co., Ltd.
12. Shenzhen Topray Solar Co. Ltd.
13. Systemes Versilis, Inc.
14. Taizhou BD Trade Co., Ltd.
15. tenKsolar (Shanghai) Co., Ltd.
16. Toenergy Technology
17. Wuxi Suntech Power Co., Ltd.