



C-570-980

Administrative Review
POR: 01/01/2014-12/31/2014
Public Document
E&C Office VII: GHC

July 10, 2017

MEMORANDUM TO: Carole Showers
Executive Director, Office of Policy
Performing the Duties of the Deputy Assistant Secretary
For Enforcement and Compliance

FROM: James Maeder
Senior Director
Performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

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

SUMMARY

The Department of Commerce (the Department) has completed this administrative review of the countervailing duty (CVD) order on crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells), from the People's Republic of China (PRC), for the period of review (POR) January 1, 2014, through December 31, 2014. This administrative review was conducted in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). The mandatory company respondents are Changzhou Trina Solar Energy Co., Ltd. and its cross-owned affiliates (collectively, Trina Solar),¹ and Canadian Solar Manufacturing (Changshu) Inc. and its cross-owned affiliates (collectively, Canadian Solar).² We find that the mandatory respondents received countervailable subsidies during the POR. For the companies for which a review was requested but were not selected for individual examination, we are using the mandatory respondents' CVD rates to determine the rate applicable for these non-selected companies. We analyzed the case and rebuttal briefs submitted by interested parties following

¹ Trina Solar's cross-owned affiliate include: Changzhou Trina Solar Energy Co., Ltd.; Trina Solar Limited; Trina Solar (Changzhou) Science & Technology Co., Ltd.; Yancheng Trina Solar Energy Technology Co., Ltd.; Changzhou Trina Solar Yabang Energy Co., Ltd.; Hubei Trina Solar Energy Co., Ltd.; Turpan Trina Solar Energy Co., Ltd.; and Changzhou Trina PV Ribbon Materials Co., Ltd.

² Canadian Solar's cross-owned affiliates include: Canadian Solar Manufacturing (Changshu) Inc.; Canadian Solar Inc.; Canadian Solar Manufacturing (Luoyang) Inc.; CSI Cells Co., Ltd.; CSI Solar Power (China) Inc.; CSI Solartronics (Changshu) Co., Ltd.; CSI Solar Technologies Inc.; and CSI Solar Manufacture Inc.



the *Preliminary Results*,³ and address the issues raised in the “Analysis of Comments” section below.

BACKGROUND

The Department published the *Preliminary Results* of this administrative review in the *Federal Register* on January 9, 2017, and we invited comments from interested parties. On April 12, 2017, in accordance with section 751(a)(3)(A) of the Act, the Department extended the period for issuing the final results of this review by 45 days, to June 23, 2017.⁴ On June 7, 2017, the Department extended the period for issuing the final results by an additional 15 days, to July 8, 2017.⁵

On May 11, 2017, we received timely case briefs from the following interested parties: SolarWorld Americas, Inc. (the petitioner); the Government of China (GOC); Canadian Solar; Trina Solar; Shanghai BYD Co., Ltd. and BYD (Shangluo) Industrial Co., Ltd. (collectively, Shanghai BYD); Systemes Versilis, Inc. (Systemes Versilis); and Toenergy Technology Hangzhou Co., Ltd. (Toenergy).⁶ On May 17, 2017, we received timely rebuttal comments from

³ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Preliminary Results of the Countervailing Duty Administrative Review and Preliminary Intent to Rescind, in Part*; 2014, 82 FR 2317 (January 9, 2017) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM).

⁴ See Department Memorandum, “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Extension of Deadline for Final Results of Third Countervailing Duty Administrative Review,” (April 12, 2017).

⁵ 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 Final Results of Third Countervailing Duty Administrative Review,” (June 7, 2017); see also *Notice of Clarification: Application of “Next Business Day” Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

⁶ See Letter to the Secretary from the petitioner, “Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Case Brief of SolarWorld Americas, Inc.,” (May 11, 2017) (Petitioner’s Case Brief); Letter to the Secretary from the GOC, “GOC Administrative Case Brief: 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 11, 2017) (GOC’s Case Brief); Letter to the Secretary from Canadian Solar, “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People’s Republic of China: Case Brief,” (May 11, 2017) (Canadian Solar’s Case Brief); Letter to the Secretary from Trina Solar, “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People’s Republic of China – Case Brief,” (May 11, 2017) (Trina Solar’s Case Brief); Letter to the Secretary from Shanghai BYD, “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China – 2014 CVD Review: BYD’s Case Brief,” (May 11, 2017); Letter to the Secretary from Systemes Versilis, “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China – 2014 CVD Review: Systems Versilis’s Case Brief,” (May 11, 2017); and Letter to the Secretary from Toenergy, “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China (C-570-980); Preliminary Results of the 2014 Countervailing Duty Administrative Review; Case Brief of Toenergy Technology Hangzhou Co., Ltd. (May 11, 2017) (Toenergy’s Case Brief). In their case briefs, Shanghai BYD and Systemes Versilis each stated that they concur with, incorporate, and adopt by reference the arguments presented by Canadian Solar and Trina Solar. Shanghai BYD and Systemes Versilis also each requested that the Department issue final results for this review amending the subsidy rate preliminarily determined for the non-selected companies under review.

the petitioner; the GOC; Canadian Solar; Trina Solar; Shanghai BYD; and Systemes Versilis.⁷ We did not conduct a public hearing in this administrative review.

LIST OF COMMENTS FROM INTERESTED PARTIES

Below is a complete list of the issues raised in this administrative review for which we received comments from interested parties. We analyzed these comments in the “Analysis of Comments” section below.

- Comment 1: Usage of Export Buyer’s Credit Program
- Comment 2: Selection of the Adverse Facts Available (AFA) Rate for Export Buyer’s Credit Program
- Comment 3: Whether the Aluminum Extrusions for Less Than Adequate Remuneration (LTAR) Program is Specific
- Comment 4: Aluminum Extrusions Benchmark
- Comment 5: Solar Glass Benchmark
- Comment 6: Polysilicon Benchmark
- Comment 7: Ocean Freight Benchmark
- Comment 8: Inland Freight Benchmarks
- Comment 9: Inclusion of Value Added Tax (VAT) in LTAR Benchmarks
- Comment 10: Electricity for LTAR
- Comment 11: Creditworthiness
- Comment 12: Whether the Department Should Adjust the Benefit Calculation for the Preferential Policy Lending Program
- Comment 13: Canadian Solar’s Benefit from the Golden Sun Demonstration Program
- Comment 14: Whether the Export Credit Insurance Program is Countervailable
- Comment 15: Clerical Errors in the Preliminary Results

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

⁷ See Letter to the Secretary from the petitioner, “Crystalline Silicon Photovoltaic Cells, Whether Or Not Assembled Into Modules from the People’s Republic of China: Rebuttal Brief of SolarWorld Americas, Inc.,” (May 17, 2017) (Petitioner’s Case Brief); Letter to the Secretary from the GOC, “GOC Rebuttal Brief: 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 17, 2017) (GOC’s Rebuttal Brief); Letter to the Secretary from Canadian Solar, “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People’s Republic of China: Rebuttal Brief,” (May 17, 2017) (Canadian Solar’s Rebuttal Brief); Letter to the Secretary from Trina Solar, “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People’s Republic of China – Rebuttal Brief,” (May 17, 2017) (Trina Solar’s Rebuttal Brief); Letter to the Secretary from Shanghai BYD, “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China – 2014 CVD Review: BYD’s Rebuttal Brief,” (May 17, 2017); and Letter to the Secretary from Systemes Versilis, “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China – 2014 CVD Review: Systemes Versilis’s Rebuttal Brief,” (May 17, 2017). In their rebuttal briefs, Shanghai BYD and Systemes Versilis each stated that they oppose the claims asserted by the petitioner in its case brief, and that they each concur with, incorporate, and adopt by reference the rebuttal arguments presented by Canadian Solar and Trina Solar in their case briefs.

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.

CORRECTION TO THE PRELIMINARY RESULTS

The *Federal Register* notice for the *Preliminary Results* incorrectly listed the case number for this review as “C-570-971,” instead of under the correct case number “C-570-980.”⁸ We have made a notice of this correction in the *Federal Register* notice for the final results. In addition, the *Preliminary Results* inadvertently referenced a non-selected company under review as “Toenergy Technology,” rather than its legal name, “Toenergy Technology Hangzhou Co., Ltd.”⁹ Accordingly, we have made a notice of this correction in the *Federal Register* notice for the final results.

⁸ See *Preliminary Results*.

⁹ *Id.*

CHANGES SINCE THE PRELIMINARY RESULTS

Based on case briefs, rebuttal briefs, and all supporting documentation, we made certain changes from the *Preliminary Results*, which are discussed in the “Analysis of Comments” section below.

PARTIAL RESCISSION OF ADMINISTRATIVE REVIEW

The Department received timely withdrawals of the requests for review for the following companies: Baoding Jiasheng Photovoltaic Technology Co. Ltd.; Baoding Tianwei Yingli New Energy Resources Co., Ltd.; Beijing Tianneng Yingli New Energy Resources Co. Ltd.; ERA Solar Co. Limited; Hainan Yingli New Energy Resources Co., Ltd.; Hengshui Yingli New Energy Resources Co., Ltd.; Jinko Solar Co., Ltd.; Jinko Solar Import and Export Co., Ltd. JinkoSolar (U.S.) Inc.; Lixian Yingli New Energy Resources Co., Ltd.; Tianjin Yingli New Energy Resources Co., Ltd.; Yingli Energy (China) Co., Ltd.; Yingli Green Energy Holding Company Limited; Yingli Green Energy International Trading Company Limited; Zhejiang Jinko Solar Co., Ltd.; and Zhejiang Sunflower Light Energy Science & Technology Liability Company.¹⁰ In the *Preliminary Results*, we made a preliminary determination to rescind the review of these companies. Because no other party requested a review of these companies, and because we received no comments with regard to our preliminary determination to rescind for these companies, we are rescinding the review of these companies pursuant to 19 CFR 351.213(d)(1). For these companies, countervailing duties shall be assessed at the 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).

In the *Preliminary Results*, we also stated that we preliminarily intended to rescind the review for JA Solar Technology Yangzhou Co., Ltd.; JingAo Solar Co., Ltd.; and Shanghai JA Solar Technology Co., Ltd. (collectively, the JA Solar Companies) on the basis that these companies timely withdrew their request for review, and no other party requested a review of these companies.¹¹ This was incorrect, as petitioners also requested a review of the JA Solar Companies.¹² Nonetheless, we received a timely certification of no shipments for the JA Solar Companies, and in our *Preliminary Determination*, stated that we had received this certification.¹³ Based on this certification of no shipments and our review of the record, we are rescinding this review with respect to the JA Solar Companies in accordance with 19 CFR 351.213(d)(3).

¹⁰ See PDM at 5.

¹¹ *Id.* at 2, footnote no. 7.

¹² See Letter to the Secretary from the petitioner, “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China: Request for Administrative Review,” (December 31, 2015).

¹³ 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).

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 based the subsidy rate on a weighted-average of the subsidy rates calculated for Canadian Solar and Trina Solar. For a list of these companies, please see the Appendix to this Decision Memorandum.

SUBSIDIES VALUATION INFORMATION

Allocation Period

The Department made no changes to the allocation period or the allocation methodology used in the *Preliminary Results*.¹⁴

Attribution of Subsidies

The Department made no changes to the attribution methodologies used in the *Preliminary Results*.¹⁵

Denominators

The Department made no changes to the denominators used in the *Preliminary Results*.¹⁶

Creditworthiness

In the *Preliminary Results*, the Department found Canadian Solar to be uncreditworthy during the period 2009 through 2014, and that Trina Solar was uncreditworthy during 2012 through 2014.¹⁷ In a change from the *Preliminary Results*, the Department is now finding that Canadian Solar was creditworthy during 2010 and 2014, and that Trina Solar was creditworthy during 2014. A discussion of the Department's creditworthiness analysis can be found below in Comment 11.

Benchmarks and Discount Rates

Interested parties submitted several comments regarding the benchmarks and discount rates used in the *Preliminary Results*. The Department has considered these comments and have made two changes to the benchmarks used in the *Preliminary Results*. Specifically, we adjusted Canadian Solar's inland freight charges when constructing the benchmarks for its purchases regarding the provision of inputs for LTAR programs, and we adjusted the discount rates for the Preferential Policy Lending program to begin on the date the loan terms were established rather than the date

¹⁴ See PDM at 7.

¹⁵ *Id.* at 7-10.

¹⁶ *Id.* at 10.

¹⁷ *Id.* at 13-16.

on which the loans were received. We also adjusted the discount rates based on our now finding that Canadian Solar and Trina Solar were creditworthy in certain years. A discussion of the comments and the Department's analysis on these issues are in the "Analysis of Comments" section below.

USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

The Department relied on "facts otherwise available," including adverse facts available (AFA), for several findings in the *Preliminary Results*. The Department has not made any changes to its use of facts otherwise available and AFA from the *Preliminary Results*.¹⁸

PROGRAMS DETERMINED TO BE COUNTERAVAILABLE

Except where noted, the Department has made not changes to its *Preliminary Results* with regard to the methodology used to calculate the subsidy rates for the following programs with regard to Canadian Solar and Trina Solar. Also, except where noted, no issues were raised by interested parties in case briefs regarding these programs. The final program rates calculated for Canadian Solar and Trina Solar are as follows:

1. Provision of Solar Grade Polysilicon for LTAR

Canadian Solar: 0.02 percent *ad valorem*

Trina Solar: 0.43 percent *ad valorem*

2. Provision of Solar Glass for LTAR

Canadian Solar: 7.77 percent *ad valorem*

Trina Solar: 7.28 percent *ad valorem*

3. Provision of Aluminum Extrusions for LTAR

Canadian Solar: 1.99 percent *ad valorem*

Trina Solar: 2.23 percent *ad valorem*

4. Provision of Land for LTAR

Canadian Solar: 0.14 percent *ad valorem*

Trina Solar: 0.09 percent *ad valorem*

5. Provision of Electricity for LTAR

Canadian Solar: 0.51 percent *ad valorem*

Trina Solar: 0.99 percent *ad valorem*

¹⁸ See *Preliminary Results* at 20.

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

Canadian Solar: 1.47 percent *ad valorem*

Trina Solar: 0.06 percent *ad valorem*

7. Enterprise Income Tax Law, Research and Development Program

Canadian Solar: 0.01 percent *ad valorem*

Trina Solar: 0.03 percent *ad valorem*

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

Canadian Solar: 0.00 percent *ad valorem*

Trina Solar: 0.20 percent *ad valorem*

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

Canadian Solar: 0.00 percent *ad valorem*

Trina Solar: 0.00 percent *ad valorem*

10. Golden Sun Demonstration Program

Canadian Solar: 0.30 percent *ad valorem*

Trina Solar: 0.06 percent *ad valorem*

11. Export Buyer's Credits

Canadian Solar: 5.46 percent *ad valorem*

Trina Solar: 5.46 percent *ad valorem*

12. Export Seller's Credits

Canadian Solar: 0.26 percent *ad valorem*

Trina Solar: 0.00 percent *ad valorem*

13. Other Subsidies

Just as in the *Preliminary Results*, the Department found that some grant programs conferred a benefit during the POR.¹⁹

Canadian Solar: 0.37 percent *ad valorem*

Trina Solar: 0.31 percent *ad valorem*

PROGRAMS DETERMINED TO BE NOT COUNTERVAILABLE DURING THE POR

Export Credit Insurance from SINOSURE

For the final results, we find that the company respondents did not benefit from this program during the POR.²⁰

PROGRAMS DETERMINED NOT TO BE USED OR NOT TO CONFER MEASURABLE BENEFITS

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

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

¹⁹ See PDM at 44. For a list of programs that conferred a benefit, see Department Memorandum, “Countervailing Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China, “Canadian Solar Final Calculations Memorandum,” dated concurrently with the IDM (Canadian Solar Final Calculations Memorandum); see also Department Memorandum, “Countervailing Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China, “Trina Solar Final Calculations Memorandum,” dated concurrently with the IDM, collectively (Final Calculations Memoranda).

²⁰ See Comment 14, below.

ANALYSIS OF COMMENTS

Comment 1: Usage of Export Buyer's Credit Program

Petitioner's Comments:

- The Department should continue to apply total AFA to the Ex-Im Bank's Buyer's Credit Program. The GOC has been particularly uncooperative and unresponsive in this review with respect to this program. Its failure to do so should result in serious consequences in order to ensure cooperation in future proceedings.
- The Department investigated this program in numerous other proceedings, and not once has the GOC been able to demonstrate that this program was not used. The GOC is, in effect, a "repeat offender" with regard to its blatant refusals to provide necessary information with regard to this program.²¹ Therefore, going forward, the Department should apply AFA to this program until the GOC provides the information necessary to demonstrate whether this program was used during the relevant period.

GOC's Comments:

- The record demonstrates that the respondents' U.S. customers did not use the Export Buyer's Credit program during the POR. The Department should find this program to be not used.
- While the Department may have additional questions about the mechanics of this program, this missing information does not question the existence of this program, nor negate the information that is on the record regarding its non-use.
- The Department has an obligation to consider whether record evidence establishes non-use of this program in this case, regardless of information that may be missing from the record that is not relevant to the issue of non-use.
- The information on the record of this review is identical to the information on the record of *Solar Cells PRC AR 2* in which the respondents submitted declarations covering all of their respective U.S. customers and the Department found non-use of this program.²²
- In this case, the Department has record evidence affording it the ability to render a decision on usage that is not collaterally adverse to the company respondents.²³

²¹ See Petitioner's Case Brief at 6 citing *Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014) (*Solar Products from the PRC*) and accompanying Issues and Decision Memorandum (IDM) at 89-94; see also *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 PRC Investigation*) and accompanying IDM at 58-63; 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; 2012*, 80 FR 41003 (July 14, 2015) (*Solar Cells PRC AR1*) and accompanying IDM at 39-44.

²² See GOC's Case Brief at 5 citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the Peoples' Republic of China: Final Results of Countervailing Duty Administrative Review; 2013*, 81 FR 46904 (July 19, 2016) (*Solar Cells PRC AR 2*) and accompanying IDM at Comment 1.

²³ See GOC's Case Brief at 3 citing *Archer Daniels Midland Co. v. United States*, 917 F. Supp. 2d 1331, 1342 (CIT 2013) (*Archer Daniels Midland*) and *Fine Furniture (Shanghai) Ltd. v. United States*, 865 F. Supp. 2d 1254 (CIT 2012) (*Fine Furniture*).

Canadian Solar's Comments:

- The Department must remove the subsidy rate for the Export Buyer's Credit program in the final results or, alternatively, issue a supplemental questionnaire or select a different AFA rate.
- In the *Preliminary Results*, the Department failed to consider record evidence establishing that Canadian Solar did not use the Export Buyer's Credit program.
- Canadian Solar submitted customer declarations attesting to unaffiliated customers' non-use of this program.
- Canadian Solar provided affirmative record evidence confirming non-use of this program on exports of subject merchandise, and offered to provide the Department with any additional information at its disposal regarding this program.
- The Department's claimed deficiency with the GOC's response is that it does not provide sufficient explanation of the program. However, it is unclear how this bears on Canadian Solar or the measurement of the benefit. To the extent that Canadian Solar's questionnaire response was inadequate to demonstrate non-use, the Department was obligated to tell Canadian Solar as much and offer an opportunity to provide additional information.

Trina Solar's Comments:

- The Department preliminarily determined that Trina Solar both used and benefitted from this program, despite its claim of non-use and certification of non-use by Trina Solar's customers.
- As explained by Trina Solar in its questionnaire response, the customers of its U.S. affiliates are not eligible for this program because they did not purchase from the PRC exporter.
- To remove all doubt that Trina Solar's exports did not benefit from this program, Trina Solar's U.S. affiliate requested that each of its customers sign a statement confirming whether they have used the program. None of these customers responded indicating that they used the program.
- In the *Preliminary Results*, the Department stated that it was not appropriate to accept Trina Solar's certifications of non-use because the Department did not know enough about the program to verify the certifications because of the GOC's inability to provide information regarding amendments to the program in 2013.
- The existence of a 2013 amendment to the program cannot have any bearing on whether Trina Solar's certifications of non-use are verifiable or reliable.
- In the final results, the Department should not ignore the certifications of non-use and find that Trina Solar neither used nor benefitted from this program.

Petitioner's Rebuttal Comments:

- The Department should reject the respondent's arguments against the use of AFA with respect to this program, and continue to apply total AFA to this program for the final results.
- In this review, the GOC has refused to provide critical information on this program and as a result, has impeded the review to the extent that continued use of AFA is warranted.
- Given the Department's finding in the *Preliminary Results* that the GOC is the entity with which non-use must be verified, and the GOC's refusal to provide information and allow

such verification, the respondents' customer certifications are meaningless. There is no definitive evidence on the record demonstrating that the respondents' customers did not use this program.

GOC's Rebuttal Comments:

- As a sovereign nation, the GOC must balance its WTO commitments and engagement in U.S. CVD proceedings with its own internal laws, regulations, and rules. In some instances, these different interests do not align and situations like the one present here arise.
- While the GOC may not have provided specific information regarding the mechanics of the Export Buyer's Credit program, this requested information only goes to the countervailability of this program.
- In contrast, the GOC answered completely all questions regarding the use of the program and described in detail how the China Ex-Im Bank determined that the respondents' customers did not use this program. In addition, the respondents submitted sworn declarations from each of their customers stating that they did not use this program.
- Therefore, AFA cannot be applied to this information and, as found in the previous administrative review, this program should be found not used.
- The Department has found non-use for this program in the past. In the instant case, as in *Boltless Shelving*,²⁴ the Department's decision not to verify does not render the non-use in this case unverifiable.

Canadian Solar's Rebuttal Comments:

- The Department should reject the petitioner's arguments regarding applying AFA to this program and reverse the erroneous application of AFA that was applied in the *Preliminary Results*.
- The record shows that Canadian Solar did not benefit from the Export Buyer's Credit program.
- Canadian Solar provided declarations of non-use from its customers. In previous reviews of this CVD order, the Department found that information to be sufficient to prove non-use.

Trina Solar's Rebuttal Comments:

- The Department should find that the Export Buyer's Credit program was not used by Trina Solar or by Trina Solar's customers.

Department's Position:

Consistent with the *Preliminary Results*, we continue to find that the record of the instant case does not support a finding of non-use regarding the Export Buyer's Credit Program,²⁵ and we disagree with the arguments made by the GOC and the respondent companies. In prior proceedings in which we have examined this program, we have found that the China Ex-Im

²⁴ See *Boltless Shelving Units Prepackaged for Sale from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 80 FR 51775 (August 26, 2015) (*Boltless Shelving*) and accompanying IDM at Comment 10.

²⁵ See PDM at 30-32.

Bank, as the lender, is the primary entity that possesses the supporting information and documentation that are necessary for the Department to fully understand the operation of this program, which is prerequisite to the Department's ability to verify the accuracy of the respondents' claimed non-use of the program.²⁶ As we discussed in the *Preliminary Results*, the GOC did not provide requested information and documentation necessary for the Department to develop a complete understanding of this program, *i.e.*, information on whether the China Ex-Im Bank uses third-party banks to disburse/settle export buyer's credits, and information on the size of the business contracts for which export buyer's credits are applicable.²⁷ As we stated in the *Preliminary Results*, this information is critical for us to understand how export buyer's credits flow to and from foreign buyers and the China Ex-Im Bank. Absent the requested information, the GOC's claims that the respondent companies did not use this program are not reliable. Moreover, without a full and complete understanding of the involvement of third-party banks, the respondent companies' (and their customers') claims are also not reliable, because the Department cannot be confident in its ability to verify those claims.

We disagree with the GOC's argument that the information on the record of this review is identical to the information submitted in *Solar Cells from the PRC AR 2*. In this review, we have information on the record regarding the 2013 revisions to the program and the involvement of third-party banks, which was not present on the record in *Solar Cells from the PRC AR 2*.²⁸ In its response to our request that the GOC provide the documents pertaining to this 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."²⁹ And when we asked the GOC to confirm whether it extended credit through third-party banks, the GOC replied that "this question is not relevant and is unnecessary to determine usages."³⁰ Moreover, in *Solar Cells from the PRC AR 2*, we specifically stated that, even though we found the record there supported a conclusion of non-use, we intended in future proceedings to continue requesting the GOC's cooperation on this program, and we would base subsequent evaluations of this program on the record for each respective proceeding.³¹ The GOC was uncooperative in the instant proceeding in not responding to our requests for additional information regarding the operations of this program. Without this information, the Department determines that the information provided by the GOC about this program is incomplete and that our understanding on this program is unreliable. As such, we recognize that we cannot rely on information about this program provided by parties other than the GOC, *i.e.*, the respondent companies' customers' certifications of non-use.³²

²⁶ See, *e.g.*, *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 Comment 6; see also *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review; 2014*, 82 FR 27466 (June 15, 2017) (*Chlorinated Isos from the PRC AR 2014*) and accompanying IDM at Comment 2 (concluding that "without the GOC's necessary information, the information provided by the respondent companies is incomplete for reaching a determination of non-use").

²⁷ See PDM at 30-32.

²⁸ See Department Memorandum, "Placing Information on the Record," (October 21, 2016).

²⁹ See the GOC's November 4, 2016 QR at 1-2.

³⁰ *Id.*

³¹ See *Solar Cells from the PRC AR 2* IDM at Comment 1.

³² See PDM at 31.

With respect to arguments that AFA should not be applied with respect to this program, we continue to find that the GOC withheld necessary information that was requested of it and significantly impeded the proceeding, and thus, that the Department must rely on facts otherwise available in issuing these final results, pursuant to sections 776(a)(2)(A) and 776(a)(2)(C) of the Act. Moreover, we determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Specifically, the GOC withheld information that we requested that was reasonably available to it. Consequently, we find that an adverse inference is warranted in the application of facts available, pursuant to section 776(b) of the Act. As AFA, we determine that this program provides a financial contribution, is specific, and provides a benefit to the company respondents within the meaning of sections 771(5)(D), 771(5A), and 771(5)(E), specifically, of the Act. This finding is identical to the application of AFA in, *e.g.*, *Chlorinated Isos from the PRC AR 2014*.³³ In both proceedings, the Department requested operational program information from the GOC on this program, noting that there were substantial changes to the program in 2013, and which the GOC declined to provide. Without this information, the Department cannot determine whether this program is countervailable or whether respondents used this program.

Furthermore, we disagree with the GOC and respondent parties' arguments that non-use of the program is verifiable, and cannot be found otherwise because the Department decided not to verify the customers' certifications of non-use. The Department is not finding the mandatory respondents' customers' certifications of non-use to be unreliable because it declined to verify them. Rather, the Department finds the mandatory respondents' customers' certifications of non-use to be unreliable because without a complete understanding of the operation of the program—which could only be achieved through a complete response by the GOC to Department's questionnaires—the Department could not verify the respondents' customers' certifications of non-use.

The Department considered all of the information on the record of this proceeding, including the statements of non-use provided by the company respondents. However, as explained above and in the *Preliminary Results*, we are unable to rely on the information provided by the company respondents due to the Department's lack of complete and reliable understanding of the program.³⁴ The GOC argues that while it may not have provided specific information regarding the mechanics of the Export Buyer's Credit program, the information that it did not provide only goes to the countervailability of this program. We disagree with the GOC. The Department's complete understanding of the operation of this program is a prerequisite to our reliance on the information provided by the company respondents regarding non-use.³⁵ Thus, without the necessary information that we requested from the GOC, the information provided by the company respondents is incomplete for reaching a determination of non-use.³⁶

Regarding the GOC's argument that the Department has information on the record that allows it to make a decision on usage that is not adverse to the company respondents, the Department has

³³ See *Chlorinated Isos from the PRC AR 2014* at Comment 2.

³⁴ *Id.* at Comment 2.

³⁵ *Id.*

³⁶ *Id.*

addressed this in prior cases.³⁷ The GOC argues that under *Archer Daniels Midland* and *Fine Furniture*, the Department has an obligation to avoid an adverse impact on a cooperating party if relevant information exists elsewhere on the record. In this case, the GOC argues that the relevant information that exists on the record is the company respondents' declarations from their U.S. customers certifying that they did not use the GOC's Export Buyer's Credit Program.³⁸ This is also relevant to Canadian Solar's argument that the Department was obligated to provide Canadian Solar with an opportunity to remedy any deficiencies in its questionnaire responses regarding its usage of this program. The GOC's Ex-Im Bank, however, is the primary entity that possesses the supporting records that the Department needs to understand the post-2013 changes to the program and to verify the accuracy of the claimed non-use of the program, because it is the lender. Accordingly, any deficiencies in Canadian Solar's questionnaire responses are not relevant to this issue as information regarding the operation of this program and respondents' usage of it would come from the GOC.

The Federal Circuit has previously affirmed that certain information comes from the government, and that the Department can take an action that adversely affects a respondent if the government fails to provide requested information:

Fine Furniture is a company within the Country of China, benefitting directly from subsidies the {GOC} may be providing, even if not intending to use such subsidy for anticompetitive purposes. Therefore, a remedy that collaterally reaches Fine Furniture has the potential to encourage the {GOC} to cooperate so as not to hurt its overall industry. Unlike in *SKF*, Commerce in this case did not choose the adverse rate to punish the cooperating plaintiff, but rather to provide a remedy for the {GOC's} failure to cooperate. (citations omitted)

Additionally, the Federal Circuit held that:

{T}he purpose of {section 776}(b), according to the {SAA}, which 'shall be regarded as an authoritative expression by the United States concerning the interpretation and application of the URAA,' 19 U.S.C. 3512(d), is to encourage future cooperation by 'ensur{ing} that the party does not obtain a more favorable result by failing to provide a reasonable estimate base on the best facts available, accompanied by a reasonable adverse inference used in place of missing information, this statute provides a mechanism for remedying sales at less than fair value to aid in the protection of U.S. industry . . .'³⁹

Therefore, in making our determination that the company respondents used the Export Buyer's Credit Program, we find that it would be inappropriate to rely on the certifications of claimed non-usage submitted by the company respondents because the GOC declined to provide all of the

³⁷ See, e.g., *Countervailing Duty Investigation of Certain Biaxial Integral Geogrid Products from the People's Republic of China: Final Affirmative Determination and Final Determination of Critical Circumstances, in Part*, 82 FR 3282 (January 11, 2017) (*Biaxial Geogrid Products from the PRC*) and accompanying Issues and Decision Memorandum at Comment 1.

³⁸ See GOC's Case Brief at 3-6.

³⁹ See *Fine Furniture (Shanghai) Limited v. United States*, 748 F.3d 1365, 1373 (Fed. Cir. 2014); see also *Biaxial Geogrid Products from the PRC* IDM at Comment 1.

requested information that would enable the Department to understand the operation of the program after the 2013 amendments. Instead, we continue to determine usage of this program on the basis of AFA.

With respect to the information that was withheld by the GOC on this program, the Department does not consider that section 782(d) of the Act is applicable here.⁴⁰ In responding to our questions to aid in our understanding on determining the usage of this program, the GOC repeatedly stated that such questions were “not relevant and were unnecessary to determine usage.”⁴¹ This statement is the equivalent of a refusal to respond, rather than an attempt to respond that was deficient in its response. If the Department had to treat such intentional “non-responses” as deficiencies, and had to provide a second chance to submit withheld information, parties would essentially be able to grant themselves an extension to any deadline, simply by not responding, knowing that they would be provided additional time to “remedy” the “deficiency” under section 782(d) of the Act after the Department issued a supplemental questionnaire.⁴² Therefore, the Department finds that, in light of the GOC’s refusal to substantively respond to the Department’s questions on this issue, it was not necessary to provide the GOC with an additional opportunity to provide the information that it willfully withheld during its first opportunity to respond.

Finally, regarding the GOC’s statement that it must balance its WTO commitments and engagement in U.S. CVD proceedings with its own internal laws, regulations, and rules, we note that during the course of this review, the GOC was treated in accordance with the standards set forth under U.S. statute and its implementing regulations.

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

Petitioner’s Comments:

- As AFA, the Department should presume that the respondents benefitted from this program to the fullest extent possible.
- The Department should calculate the respondents’ benefit using the respondents’ own information, and make adverse assumptions in the calculations where information is missing from the record. The Department has employed a similar methodology in the past,⁴³ which has been upheld by the courts.⁴⁴
- In constructing the AFA rate, the Department should assume that the respondents’ customers were uncreditworthy.
- In the alternative, the Department should assign a rate previously calculated for a similar program as the AFA rate. In the first administrative review of this order, the Department

⁴⁰ Section 782(d) of the Act provides that if the Department determines that a response to a request for information is deficient, the Department shall provide the party with an opportunity to remedy or explain the deficiency.

⁴¹ See the GOC’s November 4, 2016 QR at 1-2.

⁴² See *Countervailing Duty Investigation of Stainless Steel Sheet and Strip from the People’s Republic of China; Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 9714 (February 8, 2017) and accompanying IDM at Comment 11.

⁴³ See Petitioner’s Case Brief at 8 (citing *Certain Oil Country Tubular Goods from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 41964 (July 18, 2014) (*OCTG from Turkey Investigation Final*)) and accompanying IDM at 11-13.

⁴⁴ *Id.* (citing *Essar Steel Ltd. v. United States*, 721 F. Supp. 2d 1285, 1287-1890 (CIT 2010)).

assigned an AFA rate of 5.46 percent to this program, after consistently applying a rate of 10.54 percent to this program in other proceedings.

- Because of the GOC's repeat offender status, and because the rates previously selected by the Department have failed to induce cooperation, the Department should select a different rate for a similar program from another proceeding.
- Loan programs and debt forgiveness programs are both capital subsidy programs. In *OTR Tires from the PRC*, the Department assigned a rate of 11.83 percent to a respondent for a debt forgiveness subsidy.⁴⁵ As a result, should the Department decline to calculate an AFA rate based on the respondents' own information, the Department should assign the rate of 11.83 percent from *OTR Tires from the PRC*.

GOC's Comments:

- If the Department continues to apply AFA to this program, it should follow its current practice in administrative reviews and select the policy lending rate from the instant review as the AFA rate for the Export Buyer's Credit program, rather than using the policy lending rate from another review.

Canadian Solar's Comments:

- The proper course of action is for the Department to apply a zero percent CVD rate for this program, as it did in the second administrative review of this case for respondent JA Solar and in accordance with its decision in *Chlorinated Isos PRC Investigation*.⁴⁶
- If the Department continues to find use of the Export Buyer's Credit program in the final results, it must revise the AFA rate and use Canadian Solar's own rate calculated for the Export Seller's Credit program in the instant administrative review.

Petitioner's Rebuttal Comments:

- The Department should increase, not decrease, the AFA rate selected for this program. The respondents' suggested AFA rates are not truly adverse, and would instead reward the GOC's failure to cooperate.
- Canadian Solar's argument that the Department must use the Export Seller's Credits rate calculated in the *Preliminary Results* is without merit. The Export Seller's Credits program is not identical to the Export Buyer's Credits program. Moreover, the rate calculated for the Export Seller's Credits program in the *Preliminary Results* is *de minimis*.

GOC's Rebuttal Comments:

- The Petitioner's argument that the GOC is a "repeat offender" and that a "sufficiently adverse" AFA rate is needed to incentivize the GOC's cooperation was made and rejected in the second administrative review of this order, and should be rejected here.

⁴⁵ *Id.* at 12-13 (citing *Certain New Pneumatic OTR Tires from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances*, 73 FR 40480 (July 15, 2008) (*OTR Tires from the PRC*)).

⁴⁶ See Canadian Solar's Case Brief at 3 citing *Solar Cells from the PRC* AR 2 IDM at Comment 1. *Chlorinated Isocyanurates from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 56560 (September 22, 2014) (*Chlorinated Isos PRC Investigation*) and accompanying IDM at 15.

- The petitioner's proposed AFA rates are overly punitive.
- Section 776(a) of the Act does not provide for different levels of AFA based on either intentional non-cooperation or repeated non-cooperation over the course of numerous proceedings.
- The CIT and the Federal Circuit have both clearly stated that there is no *mens rea* element to the application of facts available and that the reason why certain information is missing is "of no moment."⁴⁷
- The newly enacted section 776(d)(1)(A) of the Act lists the different types of subsidy rates that can be used as AFA in a CVD proceeding. Nowhere on this list is there a reference to a constructed AFA rate.
- The use of a rate from a debt forgiveness program as proposed by the petitioner is contrary to the statute.

Canadian Solar's Rebuttal Comments:

- If the Department accepts the petitioner's proposed AFA rate, the Department would contradict its policy objective of enhancing cooperation in the future because such a rate only punishes Canadian Solar, a cooperating party, not the offending party.

Trina Solar's Rebuttal Comments:

- The petitioner's proposed AFA rate based on the interest rate associated with uncreditworthy dollar loans lacks a basis in substantial evidence, and does not follow the Department's hierarchical method for selecting AFA rates.
- The petitioner's alternative AFA rate based on a debt forgiveness subsidy does not follow the Department's hierarchical method for selecting AFA rates.

Department's Position:

We have reviewed the comments from interested parties, and have made no change to the AFA rate selected in the *Preliminary Results* for this program.⁴⁸ As a result, we continue to apply the rate of 5.46 percent *ad valorem* to the Export Buyer's Credit Program. In these final results, as in the *Preliminary Results*, the Department has applied its CVD AFA hierarchy to determine an AFA rate for the Export Buyer's Credit program. Under the first step of the Department's CVD AFA hierarchy for administrative reviews, the Department applies the highest non-*de minimis* rate calculated for a cooperating respondent for the identical program in any segment of the same proceeding. If there is no identical program match within the same proceeding, or if the rate is *de-minimis*, under step two of the hierarchy, the Department applies the highest non-*de minimis* rate calculated for a cooperating company for a similar program within any segment of the same proceeding. If there is no non-*de minimis* rate calculated for a similar program within the same proceeding, under step three of the hierarchy, the Department applies the highest non-*de minimis* rate calculated for an identical or similar program in another CVD proceeding involving the same country. Finally, if there is no non-*de minimis* rate calculated for an identical or same program in another CVD proceeding involving the same country, under step four, the

⁴⁷ See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1381 (Fed. Cir. 2003); see also *Tianjin Mach. Imp. & Exp. Corp. v. United States*, 31 CIT 1416, 1419 (CIT 2007).

⁴⁸ See PDM at 31-32.

Department applies the highest calculated rate for a cooperating company for any program from the same country that the industry subject to the investigation could have used.⁴⁹

Our examination of the results of all the segments of this proceeding leads us to conclude that there are no calculated rates for this program in this proceeding—and thus no rates are available under step one of the CVD AFA hierarchy. Because we have not calculated a rate for an identical program in this proceeding, we then determine, under step two of the hierarchy, if there is a calculated rate for a similar/comparable program (based on the treatment of the benefit) in the same proceeding, excluding *de minimis* rates. In the instant review, the GOC reported that the Ex-Im Buyer's Credit Program provides loan support through export buyer's credits.⁵⁰ Based on the description of the Ex-Im Buyer's Credit Program as provided by the GOC, we find that Policy Lending Program and the Ex-Im Buyer's Credit Program are similar/comparable programs as both programs provide access to loans. In examining the results of the segments of this proceeding, we find that the highest calculated rate for a cooperating respondent is 5.46 percent *ad valorem* in *Solar Cells from the PRC AR 1* for company respondent Lightway Green New Energy Co., Ltd.'s usage of the Preferential Policy Lending to the Renewable Energy Industry Program (Policy Lending Program).⁵¹ Because we find that the rate of 5.46 percent from the Policy Lending Program from *Solar Cells from the PRC AR 1* is the highest non-*de minimis* rate calculated for a similar/comparable program within the same proceeding, as specified under step two of our hierarchy, it is not necessary to proceed further through the Department's CVD AFA hierarchy methodology to determine whether to select an AFA rate from outside of this proceeding.

Regarding the petitioner's arguments that the GOC is a "repeat offender" by failing to provide requested information about this program, and thus, the Department should apply a different rate for a similar program from another proceeding, we disagree. The CIT recently sustained the Department's application of the 5.46% rate for this program in litigation following the first administrative review in this proceeding.⁵² Specifically, the Court evaluated, and sustained, the Department's application of its CVD AFA review hierarchy in the first administrative review of this proceeding, rather than the CVD AFA investigation hierarchy, which would have resulted in the higher 10.54 percent rate. The Court noted that, in developing and applying its hierarchies, the Department seeks a rate that serves its "dual goals" of relevancy and inducing cooperation from respondents, and that the Department seeks to achieve relevancy by attempting to select an AFA rate that "best approximates how the non-cooperating respondent likely used the subsidy program."⁵³ Importantly, the Court sustained the Department's determination not to deviate from its hierarchies by applying AFA rates on a case-by-case basis, notwithstanding petitioners' arguments in that segment that the 5.46 percent AFA rate was insufficient to induce the GOC's cooperation, and thus a higher rate should be applied.⁵⁴ The Department continues to decline to deviate from our CVD AFA review hierarchy in this segment. Accepting the petitioner's argument and selecting a different rate from another proceeding in this segment would upset the

⁴⁹ See section 776(d) of the Act; see also *SolarWorld Americas, Inc. v. United States*, CIT No. 15-00232 (CIT 2017) (*SolarWorld*), sustaining the Department's CVD AFA hierarchy and selection of AFA rate for CVD reviews.

⁵⁰ See GOC's May 3, 2016 QR at 147-151.

⁵¹ See *Solar Cells from the PRC AR 1* IDM at 18.

⁵² See *SolarWorld*.

⁵³ *Id.* at 9-10.

⁵⁴ *Id.* at 15-17.

balance between relevancy and inducement that the Department seeks when it applies its CVD AFA hierarchy to non-cooperating respondents; furthermore, consistently applying our CVD AFA hierarchies provides predictability and administrative transparency to parties involved in administrative proceedings before the Department. Accordingly, we decline to step outside of our CVD AFA review hierarchy in this proceeding.

The Department also disagrees with the petitioner's argument that it should construct an AFA rate based on the respondents' own information with the assumption that all the company respondents' customers were uncreditworthy. In addition to the Department's practice of and reasons for following its CVD AFA review hierarchy discussed immediately above and by the Court, the record does not support "constructing" an AFA rate for non-cooperative respondents, and there is no information on the record indicating that all of the company respondent's customers were uncreditworthy.

Petitioner additionally argues that the Department should apply, as AFA for the Export Buyer's Credit program, the 11.83 percent rate calculated in *OTR Tires from the PRC* for a debt forgiveness subsidy.⁵⁵ However, because this rate is from a different proceeding (and not a different segment of this same proceeding), it could only be applied under step three of our CVD AFA review hierarchy. As discussed above, the Department sees no reason in this proceeding to step outside of our consistent practice of following our hierarchy, and because there is a suitable rate that can be applied under step two of our hierarchy (*i.e.*, the 5.46 percent policy lending rate from a prior segment of this proceeding), there is no reason for the Department to continue to step three of its hierarchy.⁵⁶

Regarding the GOC's argument that the Department should apply the policy lending rate from the instant review as the AFA for the Export Buyer's Credit Program, we disagree. As we explained above, the CVD AFA hierarchy, under step two, instructs the Department to select the highest non-*de minimis* rate calculated for a cooperating company for a similar program within the same proceeding. The highest policy lending rate from the instant review is 1.47 percent, while the policy lending rate from a prior segment of this proceeding is 5.46 percent *ad valorem*. Accordingly, the selected rate of 5.46 percent *ad valorem* is the highest rate calculated for a similar program within this proceeding.

Finally, with respect to Canadian Solar's argument that we should select Canadian Solar's calculated rate of 0.26 percent for the Export Seller's Credit Program in this review as the AFA rate for the Export Buyer's Credit program, we disagree. We find that the Export Seller's Credit Program and the Export Buyer's Credit Program are not identical programs. Therefore, the Export Seller's Credit Program does not satisfy the criteria under step one of our CVD AFA hierarchy. Although the Export Seller's Credit program may be similar to the Export Buyer's Credit Program based on the treatment of the benefit (*i.e.*, both are lending programs), under step two of our CVD AFA hierarchy we select the highest non-*de minimis* rate calculated for a similar

⁵⁵ *OTR Tires from the PRC*.

⁵⁶ Because the Department does not proceed to step three of our hierarchy, we do not determine whether the debt forgiveness subsidy in *OTR Tires from the PRC* is a similar program to the Export Buyer's Credit program such that it could be eligible to be applied as an AFA rate for the Export Buyer's Credit program under step three of the hierarchy.

program within the same proceeding, which is the policy lending rate of 5.46 percent from a prior segment of this proceeding. Therefore, based on our examination of the record of this proceeding, and in light of our CVD AFA hierarchy, we are applying the rate of 5.46 percent as the AFA rate for this program.

In accordance with section 776(c)(2) of the Act, we do not need to corroborate this 5.46 percent rate, applied under AFA in this segment of the proceeding, because it was applied in a separate segment of this proceeding.

Comment 3: Whether the Aluminum Extrusions for LTAR Program is Specific

Canadian Solar's Comments:

- The Aluminum Extrusions for LTAR program is not specific. The Department's preliminary finding must be reversed because the "program" is broadly applicable to numerous industries.
- The Department is authorized to find LTAR programs to be specific if the actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number.⁵⁷
- The *CVD Preamble* explains that the analysis regarding specificity is not necessarily dependent on the number of enterprises involved, but on the makeup of the users.⁵⁸ In the *Preliminary Results*, the Department failed to adequately consider the make-up of the users of this program.
- The industries that use aluminum extrusions are extremely diverse, foreclosing a specificity finding.

Petitioner's Rebuttal Comments:

- In prior reviews of this order, the Department has consistently found that this program is specific, and has considered and rejected the same arguments that the respondents are now raising. Nothing has changed in this review.

Department's Position:

The Department has previously addressed these same arguments in the most recently-completed review this proceeding,⁵⁹ and in the *Preliminary Results*, we preliminarily found that there was no new information or arguments on the instant record that would cause us to change our findings from that review.⁶⁰ In the instant case, the GOC reported six industries consume aluminum extrusions: (1) building and construction, (2) transportation, (3) electrical, (4) machinery and equipment, (5) consumer durables, and (6) other industries.⁶¹ Thus, for these final results, we continue to find that the industries consuming aluminum extrusions in the PRC

⁵⁷ See Canadian Solar's Case Brief at 21 citing section 771(5A)(D)(iii)(I) of the Act.

⁵⁸ *Id.*, citing *CVD Preamble* 63 FR at 65357.

⁵⁹ See, e.g., *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 AR 2*) and accompanying IDM at Comment 3.

⁶⁰ See PDM at 36-37.

⁶¹ See the GOC's June 10, 2016 QR at 43.

are limited to the industries listed by the GOC, as discussed in the *Preliminary Results*, and that the recipients of aluminum extrusions during the POR were limited in number within the meaning of section 771(5A)(D)(iii)(I) of the Act.

Comment 4: Aluminum Extrusions Benchmark

Canadian Solar's Comments:

- For the final results, the Department must revise the aluminum extrusions benchmark to remove the United Nations Comtrade Database (Comtrade) data and use only the IHS Technology (IHS) data.
- In the most recent administrative review of this proceeding, the Department relied solely on the IHS data for its aluminum extrusions benchmark, and should continue to do so in the instant review.
- The Comtrade data is flawed because it is over-inclusive and not specific to the actual input used in Canadian Solar's production of subject merchandise.
- There are no descriptions provided for the HTS codes or any other record evidence that supports the petitioner's claim that the Comtrade data relates to aluminum frames purchased by Canadian Solar.
- In the *Preliminary Results*, the Department used the Comtrade data for all three HTS codes with no reference to a description of any of the HTS codes. Thus, the Department used this data in the *Preliminary Results* based only on a shallow assertion that this data relates to aluminum extrusions.
- The Comtrade data is unreliable because it is presented at the six-digit level of the HTS and cover merchandise under a basket category. The Department found in the parallel AD investigation that a basket category is not specific enough to value the aluminum frames component of solar cells.

Trina Solar's Comments:

- In the *Preliminary Results*, the Department calculated the benchmark for aluminum extrusions using the IHS data, and the Comtrade data for HTS codes 7604.21, 7604.29, and 7610.10.
- The Department should exclude the Comtrade data in the final results because it is not specific to Trina Solar's aluminum frames.
- The petitioner did not provide any explanations or documents to explain why the basket categories in the Comtrade data are specific to Trina Solar's aluminum frames.
- The Department's practice is to exclude benchmarking information that is not specific to the good purchased for which adequate remuneration is being measured.
- The Comtrade data cannot be used because it is based on over-inclusive basket HTS classifications.
- In the antidumping proceeding, the Department has found that a basket category is not specific enough to value the aluminum frames component of solar cells.⁶² The Department should follow the same approach here by rejecting the basket category.

⁶² See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China, Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, In Part*, 77 FR 63791 (October 17, 2012) and accompanying IDM at 63.

- The CIT confirmed that an HTS code at a low-digit level is inherently problematic because these codes cover an array of merchandise that is not specific to aluminum frames consumed in the manufacture of solar modules.⁶³
- The Comtrade data should be disregarded in favor of the IHS data for the final results. The IHS data was used for the aluminum extrusion benchmark in the most recent administrative review and the Department has no reason to depart from that choice.

Petitioner's Rebuttal Comments:

- The Department should continue to use the Comtrade data in the benchmark for aluminum extrusions for LTAR in the final results.
- The selection of a world price benchmark under the subsidy provision of the statute is inherently different from the selection of a surrogate value for purposes of calculating an AD margin under the dumping provision of the statute.

Department's Position:

As discussed in the *Preliminary Results*, the Department determined that the PRC's aluminum extrusions market is distorted and that it is necessary to rely on "tier two" world market price data for the benchmark for the provision of aluminum extrusions for LTAR.⁶⁴ In this case, we received two possible sets of world market price data: (1) monthly Comtrade data covering merchandise classified under the Harmonized Tariff Schedule of the United States (HTS) classifications, 7604.21, 7604.29, and 7610.10, and (2) IHS data for annual prices for aluminum frames.⁶⁵ Because we have determined that the PRC's aluminum extrusions market is distorted, we have evaluated the Comtrade and IHS world price data that parties contend we should consider for the selection of the aluminum extrusions benchmark. Canadian Solar argues that the Department relied on the Comtrade data based on a shallow assertion that this data relates to aluminum extrusions. However, the Department is familiar with the merchandise that is classified under the above-referenced HTS classifications, and has relied upon these HTS classifications in prior cases when measuring the remuneration for the provision of aluminum extrusions in cases such as *Aluminum Extrusions from the PRC 2013 AR*:

Petitioner's benchmark pricing data included GTIS pricing data for harmonized tariff schedule subheadings 7604.21 (*i.e.*, aluminum alloy hollow profiles), 7604.29 (*i.e.*, aluminum alloy profiles other than hollow profiles), 7610.10 (*i.e.*, aluminum door, windows and their frames and thresholds for doors) . . . With respect to the aluminum extrusions input for the Jangho Companies, we are

⁶³ See Trina Solar's Case Brief at 13 citing *Jiangsu Jiasheng Photovoltaic Tech. Co., Ltd. v United States*, 28 F. Supp. 3d 1317, 1333-38 (CIT 2014).

⁶⁴ See PDM at 22-27.

⁶⁵ See Letter to the Secretary from the 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 Canadian Solar, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China: Benchmark Submission," (November 30, 2016) (Canadian Solar's Benchmark Submission); see also Letter to the Secretary from the Trina Solar, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China: Benchmark Submission," (November 30, 2016) (Trina Solar's Benchmark Submission).

relying upon GTIS data related to 7604.21, 7604.29, and 7610.10 pricing data that Petitioner submitted because those data represent the aluminum extrusions inputs {that were} used in the production of subject merchandise.⁶⁶

Based on the descriptions of the merchandise described under the HTS classifications, 7604.21, 7604.29, and 7610.10, we find that the world market prices listed in the Comtrade data are suitable for use in constructing the benchmark price for the respondents' purchases of aluminum extrusions. With respect to the IHS data for aluminum frames, the Department is also familiar with this data as it was used in constructing the benchmark price for aluminum extrusions in the most recently completed review of this proceeding.⁶⁷ As a result of our examination of the IHS data, we find that the world market prices in this data are also suitable for constructing the aluminum extrusions benchmark.

In this case, the Comtrade data are reported on a monthly basis, which the Department has found to be preferable because the data reflect price fluctuations over the course of the POR.⁶⁸ The IHS data are imperfect in this regard, because the data are presented on an annual basis, which limits the Department's ability to take price changes over the POR into account when calculating a benefit. However, the IHS data are limited to aluminum frames, while the Comtrade data represent a broader category of aluminum products. The Department normally attempts to rely on data reflecting the narrowest category of products encompassing the input product, where possible;⁶⁹ accordingly, the IHS data reflects this preference better than the Comtrade data. Both the Comtrade and IHS data contain strengths and flaws, and while neither is ideal, considering the facts and circumstances of this proceeding, neither contains flaws or deficiencies so serious that either should be rejected in its entirety for the purpose of creating a more robust global benchmark. The factors relied upon by the Department when determining appropriate benchmark(s) for valuing an input depend on the facts surrounding the data/information placed on the record of a proceeding, and, therefore, must be evaluated on a case-by-case basis.⁷⁰ Therefore, and in accordance with 19 CFR 351.511(a)(2)(ii), in this case we find that it is appropriate to calculate an average of the Comtrade and IHS datasets when constructing the benchmark for measuring the remuneration of the respondents' purchases of aluminum extrusions. This is consistent with our past practice in this proceeding when the record contained benchmark prices on a monthly basis for a broad category of input items, and annual prices covering a narrower category of input items.⁷¹ We note that because we have determined that

⁶⁶ See *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) (*Aluminum Extrusions from the PRC 2013 AR*) and accompanying IDM at 60.

⁶⁷ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2013; and Partial Rescission of Countervailing Duty Administrative Review*, 81 FR 908 (January 8, 2016) (*Solar Cells from the PRC AR 2 Prelim*) and accompanying PDM at 16, unchanged in *Solar Cells from the PRC AR 2*.

⁶⁸ See, e.g., *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Affirmative Countervailing Duty Determination Final Affirmative Critical Circumstances Determination*, 79 FR 54963 (September 15, 2014) and accompanying IDM at 11; see also *Solar Cells from the PRC AR 2* IDM at Comment 6.

⁶⁹ See, e.g., *Certain Uncoated Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 81 FR 3110 (January 2, 2016) and accompanying IDM at 25-26; see also *Solar Cells from the PRC AR 2* IDM at Comment 6.

⁷⁰ See *Solar Cells from the PRC AR 2* IDM at Comment 6.

⁷¹ *Id.*

the GOC's involvement in the PRC's aluminum extrusions industry distorts the market, we have excluded any PRC-related prices from these datasets when constructing the benchmark.

Finally, Canadian Solar argues that the Comtrade data should be disregarded when constructing the benchmark because the Department has found in the companion AD case on solar cells that a basket category is not specific enough to value aluminum frames.⁷² We note that the AD and CVD laws and regulations establish different methodologies and procedures for determining surrogate values in non-market economy (NME) AD proceedings (*see* section 773(c)(4) of the Act and 19 CFR 351.408) and benchmarks in CVD proceedings (*see* section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a)(2)). Because AD and CVD reviews are different proceedings operating under different provisions of the statute and the Department's regulations, it is no way surprising or illogical that different values would be used as a surrogate value in an AD proceeding and as a benchmark in a CVD proceeding.⁷³

Comment 5: Solar Glass Benchmark

Petitioner's Comments:

- In the *Preliminary Results*, the Department averaged the IHS and Comtrade data for the solar glass benchmark. For the final results, the Department should disregard the IHS benchmark data in measuring the benefit for purchases of glass for LTAR.
- The IHS data contains significant flaws.
- The Department's regular practice is to rely on a monthly benchmark when inputs are purchased repeatedly and continuously over the course of a calendar year.
- The IHS data does not identify whether the pricing is tax-inclusive or tax-exclusive, or whether the pricing reflects domestic pricing, export pricing, or import pricing.
- The IHS data does not identify whether the pricing takes into account the distortive effects of Chinese domination of the solar glass market.
- Therefore, the Department should use the Comtrade data, and not the IHS data, for the final results.

GOC's Comments:

- To value the adequacy of remuneration, the Department is required to either select a benchmark based on actual transactions of the respondent or based upon a world market price that the respondent actually would have paid had it imported the product (*i.e.*, a tier two world benchmark).
- Similar to its practice with respect to surrogate value selection, the Department has interpreted benchmark selection under section 351.511 to require the selection of the most accurate benchmark possible to reflect the actual input being investigated.⁷⁴

⁷² See Canadian Solar's Case Brief at 23 citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part*, 77 FR 63791 (October 17, 2012) (*Solar Cells PRC AD Investigation*) and accompanying IDM at Comment 16.

⁷³ See *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 77206 (December 12, 2011) and accompanying IDM at Comment 1.

⁷⁴ See GOC's Case Brief at 8 (citing *OTR Tires from the PRC*).

- The most “apple-to-apples” comparison possible in this case is a comparison of an import price that includes solar glass used to produce subject merchandise (*i.e.*, the IHS data), and not a price that includes other types of glass that is not used to produce subject merchandise (*i.e.*, the Comtrade data).⁷⁵
- The Comtrade data includes two HTS categories, 7007.19 and 7007.29. In the *Preliminary Results*, the Department recognized that the Comtrade data reflects tempered glass that is not solar grade.
- While the Department may prefer to use “monthly” prices, this preference cannot be more important than the mandate to use benchmarks that are specific to the inputs being valued.

Canadian Solar’s Comments:

- The Department erred in the *Preliminary Results* by using a simple average of the IHS data and Comtrade data to value the solar glass benchmark. For the final results, the Department must use only the IHS data to value the solar glass benchmark.
- The IHS world pricing information is the only global data on the record that covers solar glass, the actual input used by Canadian Solar. By contrast, the Comtrade data reflects pricing for only a subset of global data within a broader basket category of safety glass, which was not used by Canadian Solar.
- The Department used data for two HTS six-digit subheadings as benchmarks for solar glass: 7007.19 and 7007.29. The Department’s past findings and other information on the record make it clear that neither 7007.19 nor 7007.29 is specific to solar glass and, therefore, are not appropriate to use for the solar glass benchmark.
- The Comtrade data does not include major producers of solar glass. The Department clearly took notice of the world’s solar glass producers in the *Preliminary Results* because it used monthly unit values for solar glass producing countries when constructing the solar glass benchmark.
- The omission of exports by two large sources of solar glass in the Comtrade data confirms Canadian Solar’s point that the Comtrade data is not reporting solar glass. That the Comtrade data reports the wrong data on a monthly rather than annual basis does not make it better.
- The alleged subsidy is specific to solar glass and, therefore, the benchmark must be specific to solar glass.
- In the *Preliminary Results*, the Department acknowledged the importance of specificity regarding the solar glass program when it declined to use PRC usage data provided by the GOC regarding the PRC’s tempered glass industry because it is not specific to solar glass. The Department, however, contradicts this position by accepting tempered glass data in the form of the Comtrade data for measuring the benefit for purchases of solar glass.
- Even though the datasets from the GOC and from Comtrade are used for different parts of the CVD determination, they cover the same category of goods (*i.e.*, tempered glass) and, therefore, the Department must treat this data consistently or risk the determination being overturned on appeal as arbitrary.

⁷⁵ See GOC Case Brief at 9.

- In the *Preliminary Results*, the Department attempted to justify its contradictory treatment of tempered glass in the benefit calculations by relying on the fact that the Comtrade data allows for the construction of monthly average for tempered glass. The Department's preference to develop a monthly benchmark for LTAR input programs does not supersede the Department's regulatory obligation to consider product similarity, quantities sold, and others factors regarding comparability when selecting a benchmark.
- A monthly presentation does not justify using data for the wrong material. Twelve monthly instances of data for the wrong product do not lead to an accurate result. The Department's logic is severely flawed because it elevates the importance of time period (*i.e.*, monthly) over whether the data is actually comparable to the input as required by the Department's regulations.

Trina Solar's Comments:

- For the final results, the Department should only use the IHS data to calculate the benchmark for solar glass.
- The IHS world pricing data is the only data on the record that covers solar glass and thus, provides the only usable benchmark for Trina Solar's solar glass purchases.
- The Department relied on the IHS data for the solar glass benchmark, in part, in the most recent administrative review of this case.
- When multiple sources of world market prices for the goods in question are available and "comparable," the Department will average the various datasets to obtain an average world market price.⁷⁶
- The Department has emphasized that it uses benchmark pricing data that corresponds to the particular product being purchased by the respondents.
- To achieve product-specific benchmarks, the Department will exclude the pricing data for basket HTS categories if the basket category includes products not under examination.⁷⁷
- The Comtrade data submitted by the petitioner includes products classified under HTS codes 7007.19 and 7007.29. The petitioner did not submit any information to establish that these HTS classifications cover the solar glass purchased by Trina Solar.
- While the IHS data is specific to solar glass, the goods under the HTS codes in the Comtrade data may have no resemblance to the solar glass purchased by Trina Solar.
- In the *Preliminary Results* when addressing specificity regarding the provision of solar glass for LTAR, the Department recognized that solar glass is a very particular type of glass. The Department cannot recognize the unique characteristics of solar glass to reach its specificity determination but then ignore those unique characteristics when selecting an LTAR benchmark.
- If the Department selects a benchmark using basket categories under HTS codes 7007.19 and 7007.29, it must also reassess its specificity determination and find that the provision of glass is not specific under section 771(5A)(D)(iii) of the Act.

⁷⁶ See Trina Solar Solar's Case Brief at 8-9 citing 19 CFR 351(a)(2)(ii).

⁷⁷ *Id.* at 9 citing *Magnesia Carbon Bricks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 45472 (August 2, 2010) and accompanying IDM at Comment 7.

Petitioner's Rebuttal Comments:

- For the final results, the Department should rely on the Comtrade data and disregard the IHS data in measuring the solar glass benefit.
- While the HTS codes 7007.19 and 7007.29 may encompass items other than solar glass, there is no question that they also encompass solar glass and similar glass.
- The IHS data contains significant flaws and should not be relied on by the Department for the final results.
- The Department's regular practice is to rely upon a monthly benchmark when inputs are purchased repeatedly over the course of a calendar year. This allows the Department to match the pricing to world benchmark prices that may fluctuate over the course of a year.
- In prior reviews of this order, the Department relied whenever possible on monthly data for all solar cell and module inputs and raw materials.
- The IHS data does not identify whether the pricing is tax-inclusive or tax-exclusive, whether the pricing reflects domestic, export, or import pricing, or whether the pricing takes into effect the distortive effects of the PRC's domination of the solar glass market.
- Regardless of the benchmark used, the Department should continue to find the provision of solar glass is specific.
- Trina Solar's argument that the Department cannot recognize the uniqueness of solar glass to reach its specificity determination but then ignore those unique characteristics when selecting a benchmark should be rejected. Benchmarks have nothing to do with the specificity of a subsidy program.

GOC's Rebuttal Comments:

- The petitioner's arguments on rejecting the IHS data should be rejected. The perceived deficiencies in the IHS data are not so significant as to render this data less credible than the Comtrade data in view of the major deficiencies in the Comtrade data.

Canadian Solar's Rebuttal Comments:

- The Department must reject the petitioner's proposed solar glass benchmark.
- The Department must reject the petitioner's criticisms of the IHS data and continue to use this data in the final results.
- In the second administrative review of this CVD order, the Department acknowledged its preference for a monthly solar glass benchmark, and noted that the IHS data was not available with respect to monthly prices. But the Department found that this flaw did not rise to the level where the IHS should be rejected entirely.

Trina Solar's Rebuttal Comments:

- In the previous segment of this proceeding, the Department relied on the IHS data despite the contemporaneity of the pricing data. The Department should again find that contemporaneity concerns are not a basis for declining to use the IHS data.
- The specificity of the benchmark far outweighs concerns regarding relative contemporaneity of the benchmark alternatives.
- When balancing considerations of contemporaneity and accuracy and specificity, the Department should prefer accurate data that is specific to the good being valued, but less

contemporaneous over data that is non-specific or inaccurate covering each month of the POR.⁷⁸

Department's Position:

The record and the arguments on the appropriate data to use when constructing the benchmark for solar glass are similar to the issues above concerning the benchmark for aluminum extrusions. In this review, the Department determined that the PRC's solar glass market is distorted and that it is necessary to rely on a "tier two" benchmark for solar glass.⁷⁹ For world market prices for solar glass, the petitioner provided Comtrade data that provides the monthly prices of tempered glass, which is a broader category of glass that includes solar glass, while the company respondents submitted annual prices compiled by IHS that are specifically for solar glass.⁸⁰ Similar to the discussion above with respect to the benchmark for aluminum extrusions, the monthly Comtrade data cover a broader category of glass products (that includes solar glass), while the annual IHS prices would allow the Department to rely on data reflecting the narrowest category of products that encompass the input product. As with the benchmark prices submitted for aluminum extrusions, we find that the Comtrade dataset and the IHS dataset each contain strengths and flaws, but neither contain flaws or deficiencies so serious that either should be entirely rejected for purposes of constructing the solar glass benchmark.

In its comments, the petitioner argues that the IHS data should be rejected because it does not identify whether the prices are tax-inclusive or tax-exclusive, whether the prices reflect domestic, export, or import prices, or whether the prices take into effect the distortive effects of the PRC's domination of the solar glass market. However, record information leads us to conclude that the IHS data is tax-exclusive. Due to the proprietary nature of the information on which we based our analysis, see the Department's discussion of this issue in the Final Calculations Memoranda. And to eliminate any distortive effects of the PRC's domination of the solar glass market, because we have found that the GOC's intervention in the PRC's solar glass market leads to price distortions, we will continue to remove PRC-related pricing data from the IHS solar glass prices.⁸¹

Regarding arguments from the GOC and the company respondents that the Comtrade data should be rejected because the data covers too broad of a category of glass and do not provide for an "apples-to-apples" comparison to the inputs purchased by the company respondents, the GOC reported that tempered glass includes the solar glass industry.⁸² And although Canadian Solar noted that the Comtrade data contain tempered glass prices for companies that do not produce solar glass, we stated in the *Preliminary Results* that we determined only to use Comtrade prices for solar glass producing countries when constructing the benchmark.⁸³ In continuing to remove non-solar glass producing countries from the Comtrade data for these final results, we

⁷⁸ See Trina Solar's Rebuttal Comments at 9 citing *Dorbest Ltd. v. United States*, 62 F. Supp.2d 1262, 1280 (CIT 2006).

⁷⁹ See PDM at 22-27.

⁸⁰ See Petitioner's Benchmark Submission; see also Canadian Solar's Benchmark Submission; see also Trina Solar's Benchmark Submission.

⁸¹ See PDM at 17-19 and 25-27.

⁸² See the GOC's May 3, 2016 QR at 139.

⁸³ See PDM at 19.

have narrowed the data as much as possible to focus on solar glass producers. And while Canadian Solar argues that there is no usable Comtrade data for two of the major global suppliers of solar glass, we note that in measuring the adequacy of remuneration for government-provided goods, 19 CFR 351.511(a)(2)(ii) requires that the Department compare a government price to a world market price, and this provision contains no requirement that the Department calculate world market prices that include prices of all major global suppliers. We also note that Canadian Solar has not argued that the Comtrade data is otherwise distorted by only relying on world market prices from the remaining solar glass producing countries.

As such, in this instance, we find that world market prices for tempered glass in the Comtrade data are suitable to use in the solar glass benchmark because these prices include prices for solar glass, and we have narrowed those prices to exclude countries that do not produce solar glass. This is consistent with our approach in the most recent review in this proceeding where we constructed a benchmark for solar glass based on an average of the annual solar glass prices compiled by IHS and the monthly prices for tempered glass compiled by the Global Trade Atlas.⁸⁴ Thus, based on the information on the record of this review, we are relying on the simple average of the solar glass prices provided by Comtrade (adjusted to only include prices from solar glass producing countries) and IHS (adjusted to remove PRC-related prices), pursuant to 19 CFR 351.511(a)(2)(ii), to construct the benchmark for the provision of solar glass.

In their comments, the respondents contend that the Department contradicts itself by declining to use the GOC's data for the PRC's tempered glass industry because it is not specific to solar glass when making its specificity determination, but then relying on tempered glass data when constructing its solar glass benchmark to determine the adequacy of remuneration. We disagree with the respondents. The Department examines the specificity of a subsidy based on section 771(5A)(A)-(D) of the Act, and it examines whether goods or services have been provided by the government under section 771(5)(E) of the Act and 19 CFR 351.511(a)(2). Thus, the Department relies on different methodologies and procedures to determine whether a subsidy is specific and for determining whether a subsidy provides a benefit. Neither the Act, nor the Department's regulations, require that the Department rely on data that covers identical products when making these determinations, as argued by the respondents.

Comment 6: Polysilicon Benchmark

Canadian Solar's Comments:

- The record contains significant information regarding what actual market participants engaged in arms-length transactions would pay for polysilicon in the PRC market.
- The Department's regulations express a preference for a comparison of a market based price resulting from actual transactions in the country in question.⁸⁵ The Department's regulations also note that these prices could be based on actual transactions between private parties and from actual imports.⁸⁶ Using Canadian Solar's actual market economy imports to construct a polysilicon benchmark satisfies the Departments criteria.

⁸⁴ See *Solar Cells from the PRC* AR 2 IDM at Comment 6.

⁸⁵ See Canadian Solar's Case Brief at 34 citing 19 CFR 351.511(a)(2)(i).

⁸⁶ *Id.*

- A benchmark constructed around the average unit value of Canadian Solar’s actual import transactions reveals that the Department’s benchmark is well above the average cost of imports. This is clear evidence that the Department’s benchmark is inflated relative to the conditions on the PRC market.
- For the final results, the Department should use the average unit value of Canadian Solar’s polysilicon imports as the benchmark for the provision of solar grade polysilicon.

No other party commented on this issue.

Department’s Position:

The Department’s regulation at 19 CFR 351.511(a)(2) sets forth the basis for identifying appropriate market-determined benchmarks for purposes of measuring the adequacy of remuneration for government-provided goods and services. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under review (*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 review (“tier two”) or (3) an assessment of whether the government price is consistent with market principles (“tier three”). Notwithstanding the regulatory preference for the use of prices stemming from actual transactions within the country, where it is reasonable to conclude that the 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

In response to our questions concerning its role in the production of solar grade polysilicon, the GOC provided no information that was specific to “solar grade” polysilicon.⁸⁸ As a result, we preliminarily found that the information in the GOC’s responses was unreliable because it was not specific to solar grade polysilicon.⁸⁹ As a result, we found that necessary information was not available on the record and that, pursuant to section 776(a)(1) of the Act, the GOC’s involvement in the PRC’s solar grade polysilicon market leads to significantly distorted solar grade polysilicon prices in the PRC.⁹⁰ As such, we stated that we are not relying on domestic prices in the PRC’s solar grade polysilicon market as a “tier one” benchmark for solar grade polysilicon,⁹¹ which includes “actual imports,” pursuant to 19 CFR 351.511(a)(2)(i). Because we continue to find, as facts available, that the GOC’s intervention in the PRC’s solar grade polysilicon market leads to significantly distorted prices of this input in the PRC, it would not be appropriate to rely on Canadian Solar’s actual imports into the PRC as the benchmark to measure the adequacy of remuneration for its domestic purchases of solar grade polysilicon. Accordingly, we continue to use as a benchmark a simple average of the world market solar grade polysilicon prices (*i.e.*, tier two prices) published by Bloomberg, EnergyTrend, Greentech Media, and IHS.

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

⁸⁸ See PDM at 25; see also the GOC’s May 3, 2016 QR at 53.

⁸⁹ See PDM at 25-27.

⁹⁰ See PDM at 17-18 and 25-27.

⁹¹ See PDM at 27.

Comment 7: Ocean Freight Benchmark

Canadian Solar's Comments:

- In the *Preliminary Results*, the Department incorrectly included international delivery charges to the LTAR benchmarks. International delivery charges do not represent the prevailing market conditions in the PRC.
- The Department's regulations at 19 CFR 351.511(a)(2)(iv) allow for adjustments to reflect delivered prices, including delivery charges and import duties.
- Section 351.511(a)(2)(ii) of the Department's regulations provides for the construction of an LTAR benchmark that accurately approximates a world market price that would be available to the purchasers in the country in question.
- These provisions are derived from the statutory command that the adequacy of remuneration shall be determined with respect to the prevailing market conditions in the country subject to review.⁹²
- While it is the Department's practice to add international freight charges to its benchmarks, these charges may not reflect prevailing market conditions where goods are not imported.
- In *Borusan*, the CIT stressed that benchmarks must be grounded in the reality of the prevailing market conditions for the good or service in the country subject to the investigation or review.⁹³
- Canadian Solar did not incur any international freight costs with respect to its purchases of aluminum and solar glass. If Canadian Solar's suppliers were free of the distortive price effects found by the Department, the prevailing market conditions still would not include international freight. The generally applicable delivery charges would simply be inland freight.
- For the final results, the Department should remove international freight from the benchmarks for solar glass and aluminum extrusions.
- If the Department continues to include ocean freight in the LTAR benchmarks for the final results, it should only rely on the Xeneta rates submitted by Canadian Solar as these rates are actual freight rates based on a large sample of completed contracts. The Maersk ocean freight benchmarks submitted by the petitioner are merely price quotes that have not been finalized.
- If the Department continues to use the Maersk ocean freight rates, it must alter its methodology for averaging these rates. The petitioner submitted data from Maersk detailing imports into the PRC from various ports around the world for solar glass and aluminum extrusions. The Department's current calculation over-weights the Maersk data by treating each quote as a separate source when they are actually derived from the same source.
- In the final results, the Department must average the Maersk data, then average this data with the Xeneta prices to accurately reflect the global benchmark.

⁹² See Canadian Solar's Case Brief at 39 citing section 771(5)(E)(iv) of the Act.

⁹³ *Id.* citing *Borusan Mannesmann v. United States*, 61 F. Supp. 3d 1306 (CIT 2015) (*Borusan*).

Petitioner's Rebuttal Comments:

- The Department should disregard the argument to remove international freight from its benchmark calculation. The Department's regulations at 19 CFR 351.511(a)(2)(iv) state that the comparison price will be adjusted to reflect the price a firm actually would pay if it imported the product.
- The U.S. Court of Appeals for the Federal Circuit has upheld the Department's inclusion of international freight when constructing a world benchmark price.⁹⁴
- Canadian Solar's argument that the Department should only use the Xeneta ocean freight data to construct the benchmark should be rejected. Canadian Solar contends that the data from Xeneta serves as a more reliable source because it is a statistical sample of actual freight contracts as opposed to the Maersk data which are based on price quotes.
- Canadian Solar has argued for using only the IHS data with regard to world prices for inputs, like the Maersk ocean freight data, the IHS data is also based on surveys. Regardless, the Department has a longstanding practice to rely on Maersk ocean freight data when constructing benchmarks.

Department's Position:

For the final results, we are continuing to incorporate international freight values in our external benchmark prices. According to 19 CFR 351.511(a)(2)(iv), world market prices must be adjusted to include delivery charges and import duties in order to arrive at a delivered price "to reflect the price that a firm actually paid or would pay if it imported the product."⁹⁵ The courts have upheld our application of these adjustments as lawful and in compliance with our regulations.⁹⁶ The Department determined that it was appropriate to use world market prices as the benchmarks for the company respondents' purchases of these inputs and, therefore, we must adjust such prices as required by our regulations. We are calculating a delivered price that includes freight and import duties, which would be the price that companies would pay if they imported the inputs in question. Whether the company respondents actually imported the inputs and paid international freight is not relevant for purposes of determining an appropriate benchmark.⁹⁷ However, consistent with section 771(5)(E) of the Act, the Department does consider the prevailing conditions of the country in question in this analysis. Accordingly, we have used an average of the Maersk and Xeneta ocean freight charges, actual inland freight charges as reported by the company respondents, and actual PRC import duties for the specific inputs we are examining to compute benchmark prices. Thus, these charges reflect prices and rates in the PRC market, and they, therefore, relate directly to prevailing market conditions in the PRC.⁹⁸

⁹⁴ See Petitioner's Rebuttal Brief at 27 citing *Creswell Trading Co. v. United States*, 141 F.3d 1471, 1478 (Fed. Cir. 1998).

⁹⁵ See 19 CFR 351.511(a)(2)(iv).

⁹⁶ See *Beijing Tiahai Indus. Co. v. United States*, 52 F. Supp. 3d 1351, 1372-75 (CIT 2015); see also *Zhaoqing New Zhongya Aluminum Co., Ltd. v. United States*, 929 F. Supp. 2d 1324, 1327 (CIT 2013).

⁹⁷ See, e.g., *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 the PRC*) and accompanying IDM at Comment 3.

⁹⁸ *Id.*

Regarding Canadian Solar's argument that we must average the Maersk ocean freight prices submitted by the petitioner before we average the Xeneta shipping prices submitted by the company respondents, we disagree. The Maersk ocean freight prices submitted by the petitioner consist of separate sets of Maersk shipping rates for 40-foot containers from various ports from around the world to various ports located in the PRC.⁹⁹ For example, one set of shipping rates has price quotes for shipping items from various points around the world to Shanghai, and another set is for shipping items to Yantian, another set is for shipping items to Qingdao.¹⁰⁰ As such, each set of Maersk shipping rates submitted by the petitioner is a separate price quote. Canadian Solar and Trina Solar each submitted identical ocean freight rates sourced from Xeneta for shipping items in 20-foot containers from various ports around the world to Shanghai.¹⁰¹ We do not find the fact that the Xeneta rates represent completed contracts, while the Maersk rates are price quotes, to be relevant for the purpose of determining our benchmark, because both are relevant to "the price that a firm actually paid or would pay if it imported the" input.¹⁰²

Section 351.511(a)(2)(ii) of the Department's regulations states that, "{w}here 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." Although the Maersk rates regard prices for 40-foot containers while the Xeneta rates are for 20-foot containers, the shipping rates for the Maersk and Xeneta rates were provided on a USD/kg basis.¹⁰³ Therefore, we conclude that the Maersk and Xeneta shipping rates are comparable. Thus, we see no need to use the average of the Maersk shipping rates before averaging the Maersk rates with the Xeneta shipping rates. For the final results, we continue to use the simple average of the Maersk and Xeneta shipping rates, as permitted by 19 CFR 351.511(a)(2)(ii).

Comment 8: Inland Freight Benchmarks

Canadian Solar's Comments:

- In the *Preliminary Results*, the Department indicated that it relied on Canadian Solar's questionnaire responses to derive Canadian Solar's inland freight benchmark, but the Department did not explain how it arrived at the inland freight benchmark.
- The inland freight benchmark used by the Department in the *Preliminary Results* appears to be a composite inland freight calculated by the Department. For the final results, the Department should use a company-specific inland freight rate for each individual Canadian Solar cross-owned company.

⁹⁹ See Letter to the Secretary from the 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) at Exhibits 2 and 3.

¹⁰⁰ *Id.*

¹⁰¹ See Letter to the Secretary from Canadian Solar, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China: Benchmark Submission," (November 30, 2016) at Exhibit 7; see also Letter to the Secretary from Trina Solar, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China: Benchmark Submission," (November 30, 2016) (Trina Solar's Benchmark Submission) at Exhibit 7.

¹⁰² See 19 CFR 351.511(a)(2)(iv).

¹⁰³ See Petitioner's Benchmark Submission at Exhibits 2 and 3; see also Trina Solar's Benchmark Submission at Exhibit 7.

- The more accurate inland freight calculation that the Department should use in the final results is the company-specific inland freight charges for each individual Canadian Solar cross-owned company provided in Canadian Solar's questionnaire response.

Petitioner's Rebuttal Comments:

- The Department should reject Canadian Solar's argument that the Department should use company-specific inland freight rates to construct the input subsidy benchmarks. The Department is not bound to construct a benchmark precisely mirroring the experience of any one particular company.
- The Department rejected a similar argument in *OCTG from the PRC* with respect to ocean freight,¹⁰⁴ and should do the same in the instant case.
- Further, 19 CFR 351.511(a)(2)(ii) states that the Department "will average" the data used to construct the benchmark.

Department's Position:

In its questionnaire responses, Canadian Solar provided company-specific inland freight charges for inputs purchased by its cross-owned companies. In the *Preliminary Results*, the Department used an average of these company-specific inland freight charges to calculate a single, composite inland freight charge to construct the benchmark for all of Canadian Solar's production locations.¹⁰⁵ For the final results, we agree with Canadian Solar that based on the information on the record, in this instance, it is appropriate to use the company-specific inland freight charges for each individual Canadian Solar production location. This is consistent with our past practice of relying on individual inland freight expenses that were specific to a cross-owned producer's production facilities. For example, in *Aluminum Extrusions from the PRC 2014 AR*:

{w}e instructed Jangho to provide the freight expense associated with an input or product to or from the nearest major seaport to each production facility. In response, the Jangho Companies provided freight expenses for each cross-owned producer's production facility to the nearest major port. No other party placed alternative inland freight data on the record of this review. Accordingly, we relied upon the inland freight expenses submitted by the Jangho Companies in its supplemental response.¹⁰⁶

We note that the only inland freight charges on the record of the instant review are the freight charges submitted by the respondent companies that are based on their actual experiences. As

¹⁰⁴ See *Certain Oil Tubular Goods from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination*, 74 FR 64045 (December 7, 2009) (*OCTG from the PRC*) and accompanying IDM at Comment 13D.

¹⁰⁵ See Department Memorandum, "Countervailing Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China; Canadian Solar Preliminary Calculations Memorandum," (December 30, 2016) at 5.

¹⁰⁶ See *Aluminum Extrusions from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review and Preliminary Intent to Rescind, in Part*; 2014 81 FR 38137 (June 13, 2016) and accompanying PDM at 57, unchanged in *Aluminum Extrusions from the People's Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review*; 2014 81 FR 92778 (December 20, 2016) (*Aluminum Extrusions from the PRC 2014 AR*).

such, we find that the situation in the instant review is almost identical to the situation in *Aluminum Extrusions from the PRC 2014 AR*.

We agree with the petitioner that the Department's regulations do not bind it to construct a benchmark that is representative of a respondent's exact circumstances. However, the Department can use the actual transportation costs of a company in constructing a tier two benchmark, as we are doing here, if those transportation costs are the only representative transportation costs on the record.¹⁰⁷ And with respect to the petitioner's argument that we should use an average of the inland freight charges in the benchmarks, the petitioner misconstrues what is stated at 19 CFR 351.511(a)(2)(ii). This section of the Department's regulations instructs that "{w}here there is more than one commercially available world market price, the Secretary will average such prices to the extent practicable . . ." However, the data in this instance reference inland freight charges as reported by the company respondents based on their own experiences, and not world market prices. As a result, we find that this argument from the petitioner is not analogous to the situation at hand.

Finally, we note that Trina Solar only reported inland freight charges for its purchases of solar grade polysilicon. For the final results, we continue to use Trina Solar's inland freight charges for its purchases of solar grade polysilicon as proxies for its inland freight charges for its purchases of solar glass and aluminum extrusions.¹⁰⁸

Comment 9: Inclusion of VAT in LTAR Benchmarks

Canadian Solar's Comments:

- For the final results, the Department should revise the solar glass, polysilicon and aluminum extrusions for LTAR benchmarks to remove the 17 percent VAT from both the benchmark and domestic purchases because VAT is not an allowable adjustment under the Department's regulations. Inclusion of the VAT also distorts the comparison to the purchase price.
- When the Department uses a "tier two" benchmark, the price must be converted to a "delivered" price as instructed by 19 CFR 351.511(a)(2)(iv). To calculate the delivered price, the Department will adjust the comparison price to reflect the price a firm would have paid if it imported the product. This adjustment includes delivery charges and import duties.
- VAT is not listed as an allowable adjustment, and it cannot be construed as an allowable "delivery charge" or "import duty" because it is listed as an indirect tax under 19 351.102(b)(28).
- Section 771(5)(E)(iv) does not list VAT as a component of prevailing market conditions or a condition of purchase or sale and, therefore, the Act does not give the Department authority to adjust benchmarks to include VAT.

¹⁰⁷ See *Supercalendered Paper from Canada: Final Results of Countervailing Duty Expedited Review*, 82 FR 18896 (April 24, 2017) and accompanying IDM at Comment 20.

¹⁰⁸ See Department Memorandum, "Countervailing Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China; Trina Solar Preliminary Calculations Memorandum," (December 30, 2016) at Excel worksheet tab, "Freight."

Trina Solar's Comments:

- The Department should not include VAT in its benchmark analysis.
- VAT is not listed as an allowable adjustment like delivery charges and import duties, and the Department acted contrary to the statute and its own regulations by including VAT in the benchmark prices for LTAR programs regarding solar glass, polysilicon, and aluminum extrusions.
- The Department's regulations at 19 CFR 351.102(b)(28) identifies VAT as an indirect tax. If the Department wanted to include VAT in benchmark prices, it would have drafted its own regulations to include indirect taxes along with import duties and delivery charges as benchmark adjustments.
- VAT is not expressly identified as a benchmark adjustment in either the statute or the Department's regulations, and this is consistent with the practical functioning of a VAT system.
- VAT is paid upon the purchase of a production input, but is either recouped when the taxpayer re-sells the good domestically or is refunded when the good is exported. By adding VAT to the benchmark and to the relevant purchases, the Department's position is that the only relevant price is the price paid at the moment of delivery.
- Including VAT when benchmarking LTAR programs adds an apparent cost to the GOC that does not exist. The Department deemed that the GOC is subsidizing input prices, but is adding the same amount of VAT to both the purchase prices and the benchmarks. There is no cost to the GOC of providing LTAR benefits on the inputs that extends to VAT.
- The Department's addition of VAT to the benchmark prices for solar glass, polysilicon, and aluminum extrusions introduces a significant level of distortion into the benefit analysis.

Petitioner's Rebuttal Comments:

- Respondents claim that VAT is not a delivery charge or import duty as contemplated by the Department's regulations, and that including VAT in LTAR benchmarks introduces a distortion in the subsidy calculation. The Department has rejected such claims in the past and should do so in the instant case.
- The record shows that the respondents paid VAT on their domestic input purchases, and the Department appropriately adjusted the benchmark price in the *Preliminary Results* to include VAT.
- The intent of the Department's benchmarking exercise is to use a benchmark that "a firm actually paid or would pay."¹⁰⁹ The Department did precisely that in the *Preliminary Results* and should continue to do so for the final results.
- The Department should reject the respondents' argument that the VAT they pay on inputs is later recouped or refunded when they sell the finished product. The Department rejected a similar argument in *Melamine from Trinidad and Tobago*.¹¹⁰ The case is the same in this case, and the Department should continue to include VAT in its benefit calculations for the final results.

¹⁰⁹ See Petitioner's Case Brief at 24 citing 19 CFR 351.511(a)(2)(iv).

¹¹⁰ See *Melamine from Trinidad and Tobago: Final Affirmative Countervailing Duty Determination*, 80 FR 688849 (November 6, 2015) (*Melamine from Trinidad and Tobago*) and accompanying IDM at Comment 6.

Department's Position:

Pursuant to 19 CFR 351.511(a)(2)(iv), the Department will adjust benchmark prices to reflect the price a firm actually paid or would pay if it imported the product, while also making adjustments for delivery charges and import duties. The Department adds freight, import duties, and VAT to the world prices in order to estimate what a firm would have paid if it imported the product. As long as VAT is reflective of what an importer would have paid, then VAT is appropriate to include in the benchmark. Accordingly, we find that our regulations require us to consider all adjustments necessary to make a proper comparison and are not limited to delivery charges and import duties. As such, and consistent with past practice, the Department has not excluded VAT from its benchmark prices for the final results.¹¹¹

With respect to the company respondents' arguments that VAT is not listed in the Department's regulations as an allowable adjustment like delivery charges and import duties, and that the Department acted contrary to the statute and its own regulations by including VAT in the benchmark prices for LTAR programs regarding solar glass, polysilicon, and aluminum extrusions, 19 CFR 351.511(a)(2)(i) states that the Department will:

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

As we have stated before, this is the governing principle when the Department conducts the benefit analysis for an LTAR program.¹¹² As part of this, where an import price is used, 19 CFR 351.511(a)(2)(iv) establishes that the Department will adjust the benchmark price to reflect the price a firm actually paid or would pay while also stating that the adjustment will include delivery charges and import duties. The company respondents contend that the second part of this regulation limits any adjustments to delivery charges and import duties, with VAT not being an allowable adjustment. Canadian Solar and Trina Solar misunderstand the benchmark price and comparison price being constructed by the Department.

The Department is relying on world price data as the basis for our benchmarks for solar grade polysilicon, solar glass, and aluminum extrusion purchases during the POR. Therefore, the Department adds freight, import duties, and VAT to the world prices in order to estimate what a firm would have paid if it imported the product. As long as VAT is reflective of what an importer would have paid, the VAT is appropriate to include in the benchmark. Canadian Solar

¹¹¹ See *Beijing Tiahai Indus. Co. v. United States*, 52 F. Supp. 3d 1351, 1372-75 (CIT 2015); see also *Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China: Final Affirmative Determination*, 82 FR 8405 (January 25, 2017) and accompanying IDM at Comment 10.

¹¹² See *Solar Cells from the PRC* AR 2 IDM at Comment 8.

also argues that we should remove the VAT payments from its domestic purchases. This is incorrect because as noted above, the Department's regulations require that we ensure the benchmark price reflects the price a firm actually paid or would pay. The assessment of VAT on these goods is standard practice and is what a firm would normally pay.¹¹³ The GOC confirmed this by reporting the VAT assessment rates that apply to each of these inputs.¹¹⁴ Accordingly, the Department finds that our regulations require us to consider all adjustments necessary to ensure an accurate comparison and are not limited to delivery charges and import duties, as argued by the company respondents. To exclude VAT and/or to adjust the reported purchases by removing VAT would result in a less accurate comparison and therefore, would be inconsistent with the Department's regulations. As such, the Department has made no changes to the benchmark prices used in the *Preliminary Results* with respect to VAT.

The company respondents also contend that because the goods are later resold or exported, they recoup the VAT paid and therefore, VAT should be excluded from the benchmarks and the domestic purchases of inputs. The Department has considered and rejected this argument before.¹¹⁵ This argument fails to consider the Department's obligation to conduct a comparison between a market price and the price paid by the respondent. Section 351.511(a)(2) of the Department's regulations does not contemplate future reimbursements for refunds or taxes, but instead requires us to evaluate the purchases in the form in which they are made. Whether a firm recovers VAT after delivery of the input is immaterial to the delivered price that the Department must use as the comparison price under 19 CFR 351.511(a)(2)(iv).¹¹⁶

Comment 10: Electricity for LTAR

Canadian Solar's Comments:

- The Department's benefit analysis for the Electricity for LTAR program is flawed.
- In the *Preliminary Results*, the Department found that the GOC failed to cooperate by not providing complete information related to how PRC provincial electricity rates are set.
- In the instant case, the Department's method for selecting an AFA rate for this program is a mix-and-match of electricity rates from different provinces in the PRC, depending on which one had the highest electricity rate for the user category to be measured.
- The Department is making an inferred determination that the provision of electricity in the PRC is a regional or geographic subsidy. There is no basis for selecting different rate categories from across the PRC based on an inferred regional subsidy program where the GOC did not refuse to answer any questions regarding the regional differences of electricity prices.
- The provision of electricity is a domestic subsidy; it cannot be exported or imported. The Department did not make any of the necessary findings for classifying a domestic subsidy as "specific" under section 771(5A)(D) of the Act.
- The Department failed to cite to any facts that would support the proposition that electricity rates differ for users or industries within regions, which is a required finding to

¹¹³ *Id.*

¹¹⁴ See the GOC's May 3, 2016 QR at 76, 119, and 141.

¹¹⁵ See *Solar Cells from the PRC* AR 2 IDM at Comment 8.

¹¹⁶ *Id.*

conclude that a domestically-available benefit is regionally specific under section 771(5A)(D)(iv) of the Act.

- The Department's *de facto* regional subsidy finding conflicts with Article 2.2 of the SCM Agreement, which establishes that a subsidy limited to certain enterprises located within a designated geographical region within the jurisdiction of the granting authority shall be specific. However, generally applicable tax rates by all levels of government entitled to do so shall not be deemed specific.
- The GOC did not fail to respond to any questions addressing whether electricity rates are generally applicable within the provinces. Therefore, there is no basis for the Department to conclude otherwise, even under AFA.
- The Department's manner of selecting the worst possible rates in all of the PRC is nonsensical, even under AFA, because it imputes electricity rates from different provinces to the same Canadian Solar facility. The statute does not permit the Department to apply strictly punitive measures, even under AFA.
- For the final results, the Department's electricity benchmark should be an average of the rates provided by the GOC.

Petitioner's Rebuttal Comments:

- The Department's benefit analysis for this program is correct, and Canadian Solar's arguments should be rejected.
- In the *Preliminary Results*, the Department reasonably applied AFA in its calculation of the subsidy for this program as the GOC failed to cooperate to the best of its ability in this review.
- Specifically, the GOC refused to supply critical responses as to how its electricity costs are evaluated when setting electricity rates, and how it makes price rate adjustments.
- Canadian Solar's arguments about regional specificity are irrelevant given that the GOC refused to provide information on how it makes national pricing adjustments to the regional rates, let alone information on how the actual costs of electricity relate to the ultimate rates that were set.
- It is fully reasonable for the Department to presume as AFA that Canadian Solar paid the highest provincial rates in the PRC, even if a Canadian Solar facility was not located in the province where that rate applies.
- Canadian Solar's argument that the most appropriate AFA rate would be to average the electricity rates from all of the provinces in the PRC is flawed, and contradicts its entire argument regarding electricity.
- Averaging all of the rates, including provinces with lower electricity rates, would constitute only the application of "neutral facts available," which would not incentivize compliance in this or in future proceedings.¹¹⁷

Department's Position:

The Department disagrees with Canadian Solar's arguments. As noted in the *Preliminary Results*, the GOC did not provide all of the requested information and therefore, we found that

¹¹⁷ See Petitioner's Rebuttal Brief at 34-35.

the GOC did not act to the best of its ability to comply with our requests for information.¹¹⁸ As a result of the GOC's unwillingness to be cooperative, the Department was unable to determine whether the electricity rates included in the electricity schedules submitted by the GOC were calculated based on market principles. As a result, the Department's applied facts available with an adverse inference to the determination of the appropriate benchmark. Specifically, because the GOC provided the provincial electrical tariff schedules, the Department relied on this information for the application of facts available and, in order to make an adverse inference, the Department identified the highest rates amongst these schedules for each reported electrical category and used those rates as the benchmarks in the benefit calculations.

As the selected highest electricity rates for each category are spread across electricity schedules from different provinces, Canadian Solar argues that the Department has made an inference that the provision of the electricity for LTAR is a regional or geographical-specific program. Canadian Solar misconstrues our reliance on the highest electrical rate from any of the provincial schedules as a determination on program specificity. Indeed, the selection of electrical benchmark rates is based on the GOC's failure to cooperate, which resulted in the Department's need to identify electricity benchmarks based on facts available with an adverse inference. The Department's determination to use regional rates for the provision of electricity for LTAR does not reflect a determination by the Department that the program is regionally or geographically specific; rather, the GOC's failure to cooperate means that both our specificity determination and our benchmark determination must rely on the facts available on the record, with appropriate adverse inferences.¹¹⁹ The Department attempted to obtain information on how PRC provincial schedules are calculated and why they differ,¹²⁰ which could have contributed to the Department's analysis of an appropriate benchmark for the benefit calculation in this program. The GOC's failure to respond to our questions on how electrical tariff schedules are established in the PRC is precisely the reason why the Department is applying AFA in this case with respect to the selection of an electricity benchmark. Therefore, the Department has not made a determination, inferred or otherwise, related to this program being a regional or geographical-specific program. The fact that the GOC refused to answer questions related to regional electrical differences, including differences between industries, means that the Department is unable to carry out this analysis.

Finally, with respect to Canadian Solar's argument that the Department should average the electrical rates from across all provinces in order to calculate a benefit, we agree with the petitioner that such calculation would be equivalent to the application of facts otherwise available rather than the application of facts available with an adverse inference. A benchmark of this kind fails to take into account the fact that the GOC refused to act to the best of its ability in complying with our request for information on this program, and does little to incentivize the GOC to cooperate on this program in future proceedings. Furthermore, without sufficient record information on how the different electrical rates were determined, the Department considers it plausible that a respondent in the PRC could have been subject to the highest electrical rates in the PRC, regardless of its location. Accordingly, based on the record of this review, it is

¹¹⁸ See PDM at 27-28.

¹¹⁹ *Id.*

¹²⁰ *Id.*; see also the GOC's May 3, 2016 QR at 95-102.

appropriate that the Department continue to select the electricity benchmarks based on the highest rate for each category across all PRC electricity schedules.

Comment 11: Creditworthiness

Canadian Solar's Comments:

- The Department must find Canadian Solar to be creditworthy during 2010.
- Record evidence shows that Canadian Solar was profitable and had a positive cash flow for 2010.
- The average days in accounts receivable outstanding in 2010 dropped significantly from the previous year. This decrease indicates that it was easier for Canadian Solar to collect payments in 2010 than in 2009.
- Even though Canadian Solar's current and quick ratios for 2010 (1.33 percent and 0.83 percent, respectively) are below the Department's creditworthiness benchmarks of 2.0 percent and 1.0 percent, these ratios are just barely below the Department's benchmarks and represent better performance than most other years under review.

Petitioner's Rebuttal Comments:

- The Department should continue to find that Canadian Solar was uncreditworthy during 2010.
- The Department has stated that its benchmarks for conducting its creditworthiness analysis are vitally important in determining whether a firm is creditworthy.
- With regard to the current and quick ratios, the Department has stated that a current ratio less than 2.0 and a quick ratio less than 1.0 are strong indicators that the firm is uncreditworthy.¹²¹ In the instant review, Canadian Solar's current and quick ratios were 1.33 and 0.83, respectively, in 2010.
- Canadian Solar's solvency and capital structure were poor in 2010, meaning its ability to borrow and repay funds was very weak.
- Canadian Solar's debt-to-equity ratio steadily increased from 0.15 in 2006 to 3.29 in 2014, and was 1.66 in 2010. Such high debt-to-equity ratios indicate that Canadian Solar's own investors considered the company too risky to provide their own funds to cover costs and to make investments.
- In the investigation of this order, the Department considered debt-to-equity ratios similar to those experienced by Canadian Solar to be "high."¹²²

Department's Position:

The Department's creditworthiness analysis is conducted pursuant to 19 CFR 351.505(a)(4). The Department considers a firm to be uncreditworthy if "based on information available at the time of the government-provided loan, the firm could not have obtained long-term loans from conventional commercial sources."¹²³ Our analysis is guided by four regulatory factors: (1) the receipt by the firm of comparable commercial long-term loans; (2) the present and past financial

¹²¹ See *Solar Cells from the PRC Investigation* and accompanying IDM at 58.

¹²² *Id.*

¹²³ See 19 CFR 351.505(a)(4)(i).

health of the firm, as reflected in various financial indicators calculated from the firms' financial statements and accounts; (3) the firm's recent past and present ability to meet its costs and fixed financial obligations with its cash flow; and (4) evidence of the firm's future financial position, such as market studies, country and industry economic forecasts, and project and loan appraisals prepared prior to the agreement between the lender and the firm on the terms of the loan.¹²⁴

We continue to find that Canadian Solar was uncreditworthy during 2009, and during 2011 through 2013.¹²⁵ In addition, we also continue to find that Trina Solar was uncreditworthy during 2012 and 2013.¹²⁶ However, in a change from our preliminary analysis, we find that the loan Canadian Solar received from Standard Chartered Bank in 2010, and the long-term convertible notes each issued by Canadian Solar and Trina Solar in 2014, are dispositive evidence of their creditworthiness, for those years.¹²⁷

With respect to our finding that Canadian Solar was creditworthy during 2010, after we issued the *Preliminary Results*, we provided the company respondents with an opportunity to provide financial information regarding their creditworthiness. Canadian Solar reported that it received long-term commercial loans from private sources between 2009 and 2014.¹²⁸ In examining Canadian Solar's financial statements (*i.e.*, SEC Form 20-F) for the years in question, we noted that during 2010, one of its cross-owned affiliates (Canadian Solar Manufacturing (Changshu) Inc.) entered into a long-term loan agreement with Standard Chartered Bank for working capital purposes.¹²⁹ Standard Chartered Bank is a well-known international commercial bank, and we find that a long-term loan from this bank qualifies as a comparable commercial long-term loan pursuant to 19 CFR 351.505(a)(4)(A). Our examination of the record does not lead us to conclude that this 2010 loan from Standard Chartered Bank was accompanied by a government-provided guarantee. Thus, we find that Canadian Solar's receipt of this loan is dispositive evidence that it was creditworthy during 2010, pursuant to 19 CFR 351.505(a)(4)(ii). Because we find there is dispositive evidence of Canadian Solar's creditworthiness for 2010, there is no need to address the comments above on whether the company was creditworthy in 2010 based on its financial indicators.

We also change our *Preliminary Results* to find that Canadian Solar and Trina Solar were creditworthy during 2014, because in 2014 both companies issued long-term convertible notes to large institutional investors in the United States, and these notes were recorded as long-term debt in their financial statements (*i.e.*, SEC Form 20-F for 2014). Thus, these notes essentially functioned as long-term commercial loans issued to private, market economy lenders. As such, we now determine that the convertible notes each issued by Canadian Solar and Trina Solar in 2014 are dispositive evidence of their creditworthiness, within the meaning of 19 CFR 351.505(a)(4)(ii), in that year. We reached the same conclusion regarding the issuance of long-

¹²⁴ See 19 CFR 351.505(a)(4)(i)(A)-(D).

¹²⁵ See PDM at 13-16.

¹²⁶ *Id.*

¹²⁷ See Canadian Solar's February 21, 2017 QR at Exhibits SQ2-1 (Canadian Solar's SEC Form 20-F for 2010) and SQ2-3 (Canadian Solar's Form 20-F for 2014); see also Trina Solar's February 21, 2017 QR at Exhibits 5 and 7; see also 19 CFR 351.505(a)(4)(ii).

¹²⁸ See Canadian Solar's February 21, 2017 QR at SQ2-3 and at Exhibit SQ2-3.

¹²⁹ *Id.* at Exhibit SQ2-1, Canadian Solar's SEC form 20-F for 2010 at F-21.

term convertible notes in *Solar Cells from the PRC Investigation*.¹³⁰ Because we are now finding Canadian Solar to be creditworthy during 2010 and 2014, and Trina Solar to be creditworthy during 2014, we have revised the interest rate benchmarks in their benefit calculations accordingly.

As stated above, we continue to find that Canadian Solar was uncreditworthy during 2009, and during 2011 through 2013, and that Trina Solar was uncreditworthy during 2012 and 2013, basing our analysis on record information in accordance with 19 CFR 351.505(a)(4)(i)(A)-(D). In reaching our conclusions regarding Canadian Solar during 2009, and 2011 through 2013, as well as for Trina Solar during 2012 and 2013, we note that neither company received commercial long-term loans within the meaning of 19 CFR 351.505(a)(4)(i)(A) during those periods. With respect to Canadian Solar, although it reported what appears to be long-term commercial loans from non-PRC banks, we note that several of these loans were issued to Canadian Solar affiliates that were not reported as, nor found to be, cross-owned companies in accordance with 19 CFR 351.525(b)(6)(vi).¹³¹ Because such loans were not issued to cross-owned affiliates, we are not including these loans in our creditworthiness analysis. And while the parent company of the cross-owned Canadian Solar entity, *i.e.*, Canadian Solar Inc., guaranteed long-term loans in 2013 that were provided by Harvest North Star Capital (Harvest North Star), record information indicates that Harvest North Star is based in the PRC.¹³² Thus, because Harvest North Star is based in the PRC, we conclude that loans from Harvest North Star do not satisfy the criteria of being comparable commercial loans pursuant to 19 CFR 351.505(a)(2)(i).

Further, we requested that both respondents provide relevant studies or other analysis concerning their financial health that would have been available to lenders in the years in question, within the meaning of 19 CFR 351.505(a)(4)(i)(D). Although Trina Solar reported that it was assigned a rating of AAA by Jiangsu Hengda Credit & Appraisal Co., Ltd. in 2013 and 2014,¹³³ we note that there is very little in the way of data or analysis for the Department to evaluate on how this credit rating was determined.¹³⁴

Finally, in examining the respondents' financial ratios and indicators under the factors in 19 CFR 351.505(a)(4)(i)(B)-(C), both companies' current ratios were all below the Department's benchmark of 2.0 during the years in question, while their quick ratios were all below the Department's benchmark of 1.0.¹³⁵ As we stated in the *Preliminary Results*, we have placed

¹³⁰ See *Solar Cells from the PRC Investigation* IDM at Comment 17.

¹³¹ See, *e.g.*, Canadian Solar's February 21, 2017 QR at Exhibit SQ2-1, Canadian Solar's SEC Form 20-F for 2013 at F-35, regarding a June 26, 2016 loan agreement between Canadian Solar Japan K.K. and a Japanese bank for working capital.

¹³² 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; Placing Information on the Record," (April 24, 2017).

¹³³ See Trina Solar's February 21, 2017 QR at 4.

¹³⁴ See Trina Solar's April 21, 2017 QR at Exhibit 4.

¹³⁵ See Canadian Solar's February 21, 2017 QR at Exhibit SQ2-2; see also Trina Solar's February 21, 2017 QR at Exhibit 6. Specifically, Canadian Solar's current ratios were 1.46 in 2009, 1.05 in 2011, 0.94 in 2012, and 0.97 in 2013, while its respective quick ratios were 0.95, 0.72, 0.54, and 0.55. Regarding Trina Solar, its current ratios were 1.19 in 2012 and 0.99 in 2013, while its respective quick ratios were 0.88 and 0.65.

significant emphasis on the respondents' low current and quick ratios during the years in question.¹³⁶ As we explained:

{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.¹³⁷

Accordingly, we continue to find that Canadian Solar was uncreditworthy during 2009, and during 2011 through 2013, and that Trina Solar was uncreditworthy during 2012 and 2013 because neither company received comparable long-term commercial loans, and both companies had current and quick ratios that indicate uncreditworthiness during the periods during which we are finding each uncreditworthy.

Comment 12: Whether the Department Should Adjust the Benefit Calculation for the Preferential Policy Lending Program

Canadian Solar's Comments:

- For the final results, the Department should adjust the benefit calculation for certain of Canadian Solar's loans to use the date on which the loan agreement was made and the interest rate agreed.
- The Department's calculations in the *Preliminary Results* peg the receipt of the loan to the date on which the loan was disbursed and apply the benchmark from that year. In certain instances, there was a lag between the date on which Canadian Solar concluded the loan agreement and the date on which the funds were actually disbursed.
- In the final results, the Department must use the year in which the loan agreement was made to select the interest rate benchmark.
- Certain loan payments made by affiliate CSI Solar Power should be excluded from the benefit calculation because a benefit is erroneously being conferred in a year in which a payment is not due. These loan payments are due outside of the POR, and by including these loan payments in the benefit calculation, the Department is inflating Canadian Solar's benefit. In the final results, the Department should zero the benefit for those payments.

No other party commented on this issue.

Department's Position:

In the *Preliminary Results*, we calculated the benefit for this program by selecting the benchmark interest rate based on the date the funds from the loans were disbursed rather than the date the loans were approved. The loan approval date is the date on which the terms of the loan,

¹³⁶ See PDM at 15.

¹³⁷ *Id.*; see also *Solar Cells from the PRC Investigation* IDM at Comment 17.

including the interest rate, were established. To ensure that the benefit from the loans under this program is calculated accurately, we conclude that for the final results it is appropriate to select the benchmark interest rate based on the date the loans were approved, rather than on the date the loans were received.

With respect to Canadian Solar's argument that certain loan payments that were made outside the POR should be excluded from the benefit calculation, we agree with Canadian Solar. Section 351.505(c)(1) of the Department's regulations instructs that:

The Secretary will allocate (expense) the benefit from a short-term loan to the year(s) in which the firm is due to make interest payments on the loan.

Based on our reading of this regulation, we agree with Canadian Solar that certain loan payments that were made outside of the POR should be excluded from the benefit calculation because a benefit is erroneously being calculated in a year for which a loan payment is not due. Accordingly, we have updated the benefit calculations for this program for the final results.

Comment 13: Canadian Solar's Benefit from the Golden Sun Demonstration Program

Canadian Solar's Comments:

- The record establishes that the subsidies from this program are tied to the production or sale of electricity generation and not to the production of solar cells.
- Even though Canadian Solar received benefits under this program, those benefits were specifically dedicated to the construction of solar power generation and not dedicated to the production of subject merchandise. All of the funds received by Canadian Solar under this program were used for projects outside of its own facilities, and the Department is not justified in attributing these funds to subject merchandise.
- Because this program is dedicated to assisting power generation and not the production of solar cells, the Department should find this program is not countervailable with respect to Canadian Solar for the final results.

Petitioner's Rebuttal Comments:

- Canadian Solar's arguments should be rejected, and Canadian Solar's grant related to the Golden Sun program should continue to be attributed to its total sales in the final results.
- The *CVD Preamble* warns that respondents may attempt to use the Department's attribution rules in order to escape countervailing duties, and the Department noted that it is "extremely sensitive to potential circumvention of the countervailing duty law" with regards to tying claims.¹³⁸
- As such, the Department examines tying claims "to ensure that the attribution rules are not manipulated to reduce countervailing duties."¹³⁹ This is the case here, where Canadian Solar is provided subsidies for both the downstream and upstream portions of its business.

¹³⁸ See Petitioner's Rebuttal Brief at 37-38 citing the *CVD Preamble*, 63 FR at 65400.

¹³⁹ See Petitioner's Rebuttal Brief at 38 citing the *CVD Preamble*, 63 FR at 65400.

- Grants from the Golden Sun program directly benefit Canadian Solar's own production because it installed the subject merchandise. To suggest that Golden Sun grants have nothing to do with the production of subject merchandise because these grants regard installing subject merchandise is without merit, regardless where the subject merchandise is installed.

Department's Position:

We find Canadian Solar's arguments to be unavailing, and we continue to find that funds received by Canadian Solar under the Golden Sun Demonstration program constitute a countervailable subsidy. In its case brief, Canadian Solar argues that this subsidy is tied to the production of non-subject merchandise. Our regulation, at 19 CFR 351.525(b)(5)(i), states that generally, "(i)f a subsidy is tied to the production or sale of a particular product, the Secretary will attribute the subsidy only to that product." In making this determination, the Department analyzes the purpose of the subsidy based on information available at the time of bestowal, and is not required to examine the use or effect of subsidies, *i.e.*, to trace how benefits are used by companies.¹⁴⁰ In prior segments of this proceeding, we have treated funds provided under the Golden Sun program as untied subsidies that are attributable to a company's total sales.¹⁴¹ In our questionnaire to the GOC, we stated that "{a}bsent new information warranting a program reexamination, we will not reevaluate determinations regarding the countervailability of programs."¹⁴² In this review, the GOC did not provide any new information that would warrant the reexamination of this program.¹⁴³ Canadian Solar refers to its questionnaire response in this review, which allegedly demonstrates how it used the funds from this program. However, as just described, our test for whether a subsidy is "tied" does not analyze the use or effect of a subsidy. Therefore, and consistent with our determinations in prior segments of this proceeding, we continue to find that this subsidy is untied and attributable to Canadian Solar's total sales.¹⁴⁴

Comment 14: Whether the Export Credit Insurance Program is Countervailable

Canadian Solar's Comments:

- In the *Preliminary Results*, the Department correctly determined that the Export Credit Insurance from SINOSURE program was not countervailable during the POR. This determination was made based on record evidence submitted by the GOC establishing that "the annual premiums collected by SINOSURE were adequate to cover its long-term

¹⁴⁰ See CVD Preamble 63 FR at 65399-65404.

¹⁴¹ See, e.g., *Solar Cells from the PRC Investigation* IDM at 11.

¹⁴² See Letter to the GOC, "Administrative Review of Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic China: Countervailing Duty Questionnaire," (March 28, 2014).

¹⁴³ See the GOC's May 3, 2016 QR at 18; see also the GOC's June 10, 2016 QR at 13.

¹⁴⁴ See PDM at 43.

operating costs and losses of the program.”¹⁴⁵ The Department must maintain this finding in the final results.

- The Department noted that it made a contrary determination in *Passenger Vehicle and Light Truck Tires from the PRC*.¹⁴⁶ The facts were entirely different in *Passenger Vehicle and Light Truck Tires from the PRC* than they are in the instant case.
- Specifically, in *Passenger Vehicle and Light Truck Tires from the PRC*, the Department determined that the GOC did not provide requested information summarizing SINOSURE’s long-term operating costs and losses, and the record of that case showed that the premiums charged by SINOSURE were not enough to cover the long-term operating costs and losses of the program.
- In the instant review, the GOC provided information requested by the Department showing that SINOSURE’s insurance programs were profitable.

No other party commented on this issue.

Department’s Position:

The company respondents were insured by SINOSURE during the POR. To determine whether an export insurance program is countervailable, we examine whether the premium rates charged are adequate to cover the program’s long-term operating costs and losses.¹⁴⁷ In the *Preliminary Results*, we determined that this program was not countervailable, finding that the annual premiums collected by SINOSURE were adequate to cover its long-term operating costs and losses of the program.¹⁴⁸ However, we stated that because the Department made a different finding concerning this program in a different case, we would examine this matter further for the final results.¹⁴⁹ Subsequent to the *Preliminary Results*, we gathered additional financial information from the GOC on this program, and information from the company respondents on their use of this program during the POR.¹⁵⁰ Section 351.520(a)(1) of the Department’s regulations instructs that in the case of export insurance, a benefit exists if the premium rates charged are inadequate to cover the long-term operating costs and losses of the program. Pursuant to 19 CFR 351.520(a)(2), if the premium rates are inadequate, the amount of the benefit is the difference between the amount of premiums paid by the firm and the amount received by the firm under the insurance program during the POR. Our examination of the information provided by the company respondents on their use of this program leads us to conclude that neither Canadian Solar nor Trina Solar benefitted from this program during the POR, within the

¹⁴⁵ See Canadian Solar’s Case Brief at 45 citing the *Preliminary Results* and accompanying PDM at 45.

¹⁴⁶ *Id.*; see also *Passenger Vehicle and Light Truck Tires from the PRC* and accompanying IDM at 24 and footnote no. 112.

¹⁴⁷ See 19 CFR 351.520(a)(1).

¹⁴⁸ See PDM at 45.

¹⁴⁹ *Id.*

¹⁵⁰ See Letter to the Secretary from the GOC, “GOC Third Supplemental 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),” (April 21, 2017); Letter to the Secretary from Canadian Solar, “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People’s Republic of China: Third Supplemental Questionnaire Response,” (April 21, 2017); and Letter to the Secretary from Trina Solar, “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People’s Republic of China: Second Supplemental Questionnaire Response,” (April 21, 2017).

meaning of 19 CFR 351.520(a)(2). Due to the proprietary nature of the information on which we based our analysis, see the Department's discussion of this issue in the Final Calculations Memoranda. Accordingly, we continue to determine that this program was not countervailable during the POR. As such, it was not necessary to examine whether the rates charged by SINOSURE are adequate to cover the program's long-term operating costs and losses pursuant to 19 CFR 351.520(a)(1).

Comment 15: Clerical Errors in the *Preliminary Results*

Petitioner's Comments:

- The Department should correct a clerical error made in the calculation of Trina Solar's benefit from the Solar Glass for LTAR program. In the *Preliminary Results*, the Department unintentionally calculated Trina Solar's benefit based on pieces rather than in kilograms.

Trina Solar's Rebuttal Comments:

- The Department did not make a clerical error in calculating Trina Solar's benefit for its purchases of solar glass.

Department's Position:

We agree with the petitioner that we made an inadvertent error when calculating the unit of measurement in Trina Solar's benefit calculation. We have corrected this error for the final results.¹⁵¹

Canadian Solar's Comments:

- For the final results, the Department should correct clerical errors regarding the solar glass and aluminum extrusions benchmarks, and for Canadian Solar's benefit calculation for the Electricity for LTAR program. With respect to the solar glass and aluminum extrusions benchmarks, the Department made errors in the formulas calculating certain conversion factors, and when adjusting the Comtrade data to remove transactions for which there was pricing data but no corresponding quantities.

No other party commented on this issue.

Department's Position:

In the *Preliminary Results*, the Department made inadvertent clerical errors when calculating benchmarks for solar glass and aluminum extrusions, and in the calculation for Canadian Solar's benefit regarding its purchases of electricity. We have corrected these errors for the final results.¹⁵²

¹⁵¹ See Trina Solar Final Calculations Memorandum.

¹⁵² See Final Calculations Memoranda.

Toenergy's Comments:

- The Department should amend the *Preliminary Results Federal Register* notice to include the correct case number. The case number for this review is “C-570-980.” However, the *Preliminary Results* as published in the *Federal Register* lists the case number as “C-570-971.”
- The Department should use the full name, “Toenergy Technology Hangzhou Co., Ltd.,” for the final results of this review. The *Preliminary Results* lists a truncated name, “Toenergy Technology.”

No other party commented on this issue.

Department's Position:

The *Federal Register* notice for the *Preliminary Results* incorrectly listed the case number for this review as “C-570-971,” instead of under the correct case number “C-570-980.” We have made a notice of this correction in the *Federal Register* notice for the final results.¹⁵³ In addition, for the final results, we have corrected the company name “Toenergy Technology” to read “Toenergy Technology Hangzhou Co., Ltd.” as one of the non-selected companies subject to this review.¹⁵⁴

RECOMMENDATION

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



Agree



Disagree

7/10/2017

X

Carole Showers

Signed by: CAROLE SHOWERS
Carole Showers
Executive Director, Office of Policy
Performing the Duties of the Deputy Assistant Secretary
for Enforcement and Compliance

¹⁵³ See the *Federal Register* notice for the final results.

¹⁵⁴ *Id.*; see also the Appendix to this memorandum.

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 Hangzhou Co., Ltd.
17. Wuxi Suntech Power Co., Ltd.