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MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the Expedited First Sunset Review of the Countervailing Duty Orders on: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China

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I. SUMMARY

We have analyzed the substantive response[1] of an interested party in the first sunset review of the countervailing duty (CVD) Order on crystalline silicon photovoltaic (CSPV) cells, whether or not assembled into modules, from the People's Republic of China (China).[2] We did not receive a response from the Government of China (GOC), nor any other respondent interested party to the proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(l)(ii)(B)(2) and (C)(2), the Department of Commerce (Commerce) conducted an expedited sunset review of this CVD order on CSPV cells. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of issues that we address in this expedited sunset review:

[1] See Letter from Petitioner, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Substantive Response to Notice of Initiation of Sunset Review," dated December 1, 2017.
[2] *See 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) (*Final Determination*).

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

2. Net Countervailable Subsidy Likely to Prevail

3. Nature of the Subsidy

II. BACKGROUND

On December 7, 2012, Commerce published the CVD order on CSPV cells from China.[3] On November 1, 2017, Commerce initiated the first sunset review of the *Order*, pursuant to section 751(c)(2) of the Act.[4] Commerce received a notice of intent to participate from SolarWorld Americas, Inc (SolarWorld or the petitioner) within the deadline specified in 19 CFR 351.218(d)(1)(i).[5] The petitioner claimed interested party status pursuant to section 771(9)(C) of the Act, as a manufacturer of CSPV cells and modules in the United States. Commerce did not receive any notice of intent to participate from the GOC, nor any Chinese producers or exporters of the merchandise covered by the *Order*.

III. SCOPE OF THE ORDER

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

The *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 the orders.

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

[3] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Countervailing Duty Order,* 77 FR 73017 (December 7, 2012) (*Order*).
[4] *See Initiation of Five-Year (Sunset) Reviews*, 82 FR 50612 (November 1, 2017).
[5] *See* Letter from SolarWorld, "Notice of Intent to Participate in First Five-Year Review of the Countervailing Duty Order on Crystalline Silicone Photovoltaic Cells Whether or Not Assembled into Modules, From the People's Republic of China" dated November 13, 2017.

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

Additionally, excluded from the scope of this *Order* are panels with surface area from 3,450 mm^2 to 33,782 mm^2 with one black wire and one red wire (each of type 22 AWG or 24 AWG not more than 206 mm in length when measured from panel extrusion), and not exceeding 2.9 volts, 1.1 amps, and 3.19 watts. For the purposes of this exclusion, no panel shall contain an internal battery or external computer peripheral ports.

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

IV. HISTORY OF THE ORDER

On November 16, 2011, Commerce initiated its investigation of CSPV cells and modules from China.[6] Commerce published its final affirmative CVD determination (*Final Determination*) on CSPV cells from China on October 17, 2012.[7] In the *Final Determination*, Commerce found a net countervailable subsidy rate of 14.78 percent *ad valorem* for Wuxi Suntech Power Co., Ltd. and its cross-owned affiliated companies (collectively, Suntech);[8] 15.97 percent *ad valorem* for Changzhou Trina Solar Energy Co., Ltd. and its cross-owned affiliated company Trina Solar (Changzhou) Science and Technology Co., Ltd. (collectively, Trina); and 15.24 percent *ad valorem* for all other producers and exporters of subject merchandise.[9]

We found the following programs countervailable for Suntech in the original investigation:

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[6] *See Crystalline Silicone Photovoltaic Cells, Whether or Not Assembled into Modules, From the People's Republic of China: Initiation of Countervailing Duty Investigation*, 76 FR 70966 (November 16, 2011).

[7] *See 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) (*Final Determination*) and accompanying Issues and Decision Memorandum.

[8] *Id. Wuxi Suntech Power Co., Ltd.'s cross-owned affiliates were: Luoyang Suntech Power Co., Ltd., Suntech Power Co., Ltd., Yangzhou Rietech Renewal Energy Co., Ltd., Zhenjiang Huantai Silicon Science & Technology Co., Ltd., Kuttler Automation Systems (Suzhou) Co., Ltd., Shenzhen Suntech Power Co., Ltd., Wuxi Sunshine Power Co., Ltd., Wuxi University Science Park International Incubator Co., Ltd., Yangzhou Suntech Power Co., Ltd., and Zhenjiang Rietech New Energy Science & Technology Co., Ltd*

[9] *Id.*

1. Preferential Policy Lending
2. Provision of Polysilicon for Less Than Adequate Remuneration (LTAR)
3. Provision of Land for LTAR
4. Provision of Electricity for LTAR
5. "Two Free, Three Half" Program for Foreign-Invested Enterprises (FIEs)
6. Preferential Tax Program for High or New Technology Enterprises (HNTEs)
7. Enterprise Income Tax Law, Research and Development (R&D) Program
8. Import Tariff and Value Added Tax (VAT) Exemptions for Use of Imported Equipment
9. Discovered Grants
10. Export Credit Subsidy Programs

We determined the following programs were not used by Suntech during the period of investigation (POI):

1. Golden Sun Demonstration Program
2. VAT Rebates on FIE Purchases of Chinese-Made Equipment

We found the following programs countervailable for Trina in the original investigation:

1. Golden Sun Demonstration Program
2. Preferential Policy Lending
3. Provision of Polysilicon for LTAR
4. Provision of Land for LTAR
5. Provision of Electricity for LTAR
6. Preferential Tax Program for HNTEs
7. Enterprise Income Tax Law, Research and Development R&D Program
8. Import Tariff and VAT Exemptions for Use of Imported Equipment
9. VAT Rebates on FIE Purchases of Chinese-Made Equipment
10. Discovered Grants
11. Export Credit Subsidy Programs

We determined the following programs were not used by Trina during the POI:

1. "Two Free, Three Half" Program for Foreign-Invested Enterprises (FIEs)

Since the issuance of the *Order*, three administrative reviews have been completed.

The first administrative review covered the period from March 26, 2012, through December 31, 2012.[10] Commerce selected Lightway Green New Energy Co., Ltd. (Lightway), and Shanghai BYD Co., Ltd., Shangluo BYD Industrial Co., and BYD Company Ltd. (collectively, the BYD Group) as mandatory respondents.[11] In the first review, Commerce discovered two new subsidy programs: (1) Provision of Aluminum Extrusions for LTAR and (2) Provision of Solar Glass for

[10] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 79 FR 6147 (February 3, 2014).
[11] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012,* 80 FR 41003 (July 14, 2015).

LTAR. Commerce determined a countervailable subsidy rate of 23.28 percent *ad valorem* for Lightway and 15.43 percent *ad valorem* for the BYD Group.[12] As a result, as the rate applicable to companies subject to review but not selected for individual examination, Commerce applied a subsidy rate based on a weighted average of the rates calculated for Lightway and the BYD Group using publicly-ranged sales data. The subsidy rate applicable to the non-selected, reviewed producers or exporters of merchandise covered by the *Order* was 20.94 percent.[13]

On February 4, 2015, Commerce initiated the second administrative review for calendar period 2013.[14] Commerce originally selected Baoding Tianwei Yingli New Energy Resources Co., Ltd. (Baoding Yingli), Era Solar, and Yingli Energy (China) Co., Ltd. (Yingli Energy) as mandatory respondents in this review; however, on May 5, 2015, Commerce received timely withdrawals of the requests to review Baoding Yingli and Yingli Energy.[15] On July 16, 2015, Commerce also determined that Era Solar, the only remaining mandatory respondent, had improperly filed its review request.[16] Accordingly, Era Solar was excluded from the list of mandatory respondents. All three of the companies originally selected as mandatory respondents were no longer subject to this review. On July 28, 2015, Commerce determined to select one mandatory respondent, and selected JA Solar as the sole respondent in this review.[17] During this administrative review, Commerce determined a net countervailable subsidy rate of 19.20 percent *ad valorem* for JA Solar and its cross-owned affiliates.[18] Commerce assigned the rate calculated for JA Solar, to Trina and Suntech, companies that were subject to this review, but were not selected for individual examination.[19] In addition, following timely withdrawal of all requests for review for certain companies, we rescinded the review with respect to sixty-six companies listed in Appendix II of the *Preliminary Results Notice*.[20]

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[12] *Id.*
[13] *Id.*
[14] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 6041 (February 4, 2015).
[15] *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).
[16] *Id.*
[17] *Id.*
[18] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of the Countervailing Duty Administrative Review; 2013*, 81 FR 46904 (July 19, 2016). JA Solar's cross-owned affiliates were: Donghai JA Solar Technology Co., Ltd.; Hebei Ningjin Songgong Semiconductor Co., Ltd.; Hebei Ningtong Electronic Materials Co., Ltd.; Hebei Yujing Electronic Science and Technology Co., Ltd.; Hefei JA Solar Technology Co., Ltd.; JA (Hefei) Renewable Energy Co., Ltd.; JA Solar Technology Yangzhou Co., Ltd.; Jing Hai Yang Semiconductor Material (Donghai) Co., Ltd.; JingAo Solar Co., Ltd.; JingLong Industry and Commerce Group Co., Ltd.; Jingwei Electronic Material Co., Ltd.; Ningjin Changlong Electronic Materials Manufacturing Co.; Ningjin County Jingyuan New Energy Investment Co., Ltd.; Ningjin Guiguang Electronic Investment Co., Ltd.; Ningjin Jingfeng Electronic Materials Co., Ltd.; Ningjin Saimei Ganglong Electronic Materials Co., Ltd.; Ningjin Songgong Electronic Materials Co., Ltd.; Ningjing Sunshine New Energy Co., Ltd.; Ninjing Jingxing Electronic Materials Co., Ltd.; Shanghai JA Solar Technology Co., Ltd.; Solar Silicon Valley Electronic Science and Technology Co., Ltd.; Xingtai Jinglong Electronic Materials Co., Ltd.; and, Yangguang Guifeng Electronic Technology Co., Ltd.
[19] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of the Countervailing Duty Administrative Review; 2013*, 81 FR 46904 (July 19, 2016).
[20] *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; 2012; and Partial Rescission of Countervailing Duty Administrative Review*, 80 FR 1019 (January 8, 2015).

The third administrative review period covered calendar year 2014. For this administrative review, Commerce selected Canadian Solar Manufacturing (Changshu) Inc. (Canadian Solar) and Trina as mandatory respondents.[21] In the third review, nineteen companies timely withdrew their requests for review, and no other party commented on the withdrawal requests. JA Solar, the mandatory respondent in the second administrative review, reported no shipments of subject merchandise into the United States during the POR. As a result, Commerce rescinded the review of twenty companies, including JA Solar.[22] Commerce determined countervailable subsidy rates of 18.30 percent *ad valorem* for Canadian Solar and its cross-owned affiliates, and 17.14 percent *ad valorem* for Trina and its cross-owned affiliates.[23] For the non-selected companies subject to this review, Commerce calculated a rate by weight-averaging the calculated subsidy rates of the two mandatory respondents using their publicly-ranged sales data for exports of subject merchandise to the United States during the POR. Accordingly, the subsidy rate applied to the companies not selected for individual examination but subject to review was 17.53 percent *ad valorem*.[24]

On February 13, 2017, we initiated the fourth administrative review for calendar period 2015.[25] On July 6, 2017, we selected two mandatory respondents: Canadian Solar and Trina.[26] Between January 30, 2017, and May 15, 2017, Commerce received timely withdrawals of the request for review, for which no other parties requested a review, for Yingli Green Energy Holding Company Limited, and the BYD Group and rescinded this review with respect to the aforementioned companies.[27] The preliminary results of the review were published on January 10, 2018, and Commerce preliminarily determined countervailable subsidy rates of 13.72 percent for Canadian Solar, 10.93 percent for Trina, and 12.64 percent for the non-selected companies under review.[28] The fourth administrative review is ongoing, and a final determination has not been made.

On November 27, 2017, Commerce initiated a changed circumstances review (CCR), at the request of Pitsco, Inc. d/b/a Pitsco Education (Pitsco), to consider the possible revocation, in part, of the CVD *Order* on CSPV cells from China.[29] Pitsco, an importer of subject

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21 *Id.*

22 *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of the Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review; 2014,* 82 FR 32678 (July 17, 2017)

23 *Id.*

24 *Id.*

25 *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 10457 (February 13, 2017).

26 *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, and Rescission of Review, in Part; 2015,* 83 FR 1235 (January 10, 2018).

27 *Id.*

28 *Id.*

29 *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Notice of Initiation of Changed Circumstances Reviews, and Consideration of Revocation of the Antidumping and Countervailing Duty Orders in Part*, 82 FR 55987 (November 27, 2017).

merchandise, requested the following scope exclusion language for both the CVD order and the companion antidumping duty order on CSPV cells from China:[30]

> Excluded from the scope of these orders are panels with surface area from 3,450 mm^2 to 33,782 mm^2 with one black wire and one red wire (each of type 22 AWG or 24 AWG not more than 206 mm in length when measured from panel extrusion), and not exceeding 2.9 volts, 1.1 amps, and 3.19 watts. No panel shall contain an internal battery or external computer peripheral ports.

On November 13, 2017, SolarWorld submitted a letter stating that it did not oppose the revised exclusion language submitted by Pitsco.[31] Commerce determined that changed circumstances did exist, and warranted revocation of the *Order*, in part. On January 18, 2018, Commerce revoked the *Order*, in part, for solar panels that: (1) have a surface area from 3,450 mm^2 to 33,782 mm^2; (2) have one black wire and one red wire (each of type 22 AWG or 24 AWG not more than 206 mm in length when measured from panel extrusion); (3) do not exceed 2.9 volts, 1.1 amps, and 3.19 watts; and (4) do not contain an internal battery or external computer peripheral ports.[32]

This is the first sunset review of this *Order*.[33]

Previous Scope Rulings

On July 24, 2013, we found that OYAMA Life Impact Energy Co., Ltd.'s OY340-XA Hybrid Solar Tablet Charger is within the scope of the *Order*.[34]

On January 10, 2014, Commerce determined that solar modules assembled in Malaysia from solar cells manufactures in Taiwan and imported by NVT LLC (d/b/a SunEdison), were outside the scope of the *Order*.[35]

On August 5, 2015, we issued a scope ruling, where we found that solar modules produced in China from solar cells that are manufactured in Taiwan, are not subject to the *Order*.[36]

In 2016, Commerce issued three scope rulings. On May 13, 2016, Commerce found that Goal Zero's Torch 250 flashlight was covered by the scope of the *Order* because it can provide power to other appliances.[37] On July 29, 2016, Commerce determined that solar modules containing

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[30] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Changed Circumstances Reviews, and Revocation of the Antidumping and Countervailing Duty Orders in Part*, 83 FR 2617 (January 18, 2018).
[31] *Id.*
[32] *Id.*
[33] The deadline for this Sunset Review was extended to March 5, 2018, as a result of the tolling of deadlines for the January 20-22 closure of the Federal Government.
[34] *See Notice of Scope Rulings*, 79 FR 6165 (February 3, 2014).
[35] *See Notice of Scope Rulings*, 79 FR 30821 (May 29, 2014).
[36] *See* Memorandum to Edward Yang, Director, "Antidumping and Countervailing Duty *Order*s on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China; Final Scope Ruling for the Scope Request from Outdoor Tactical Enterprises" (August 5, 2015).
[37] *See Notice of Scope Rulings*, 82 FR 26454 (June 7, 2017).

bifacial thin film cells made with amorphous silicon, as imported by Sunpreme Inc. are within the scope of the *Order*.[38] On June 17, 2016, we determined that Triex photovoltaic cells produced by SolarCity are covered by the scope of the *Order*.[39]

DISCUSSION OF THE ISSUES

In accordance with section 751(c)(1) of the Act, Commerce is conducting this sunset review to determine whether revocation of the *Order* would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that in making this determination, Commerce shall consider: 1) the net countervailable subsidy determined in the investigation and any subsequent reviews, and 2) whether any changes in the programs which gave rise to the net countervailable subsidy have occurred that are likely to affect the net countervailable subsidy.

Pursuant to section 752(b)(3) of the Act, Commerce shall provide to the International Trade Commission (ITC) the net countervailable subsidy likely to prevail if the *CVD Order* were revoked. In addition, consistent with section 752(a)(6) of the Act, Commerce shall provide to the ITC information concerning the nature of the subsidy and whether it is a subsidy described in Article 3 or Article 6.1 of the 1994 World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures (ASCM).

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

Domestic Interested Party's Comments

SolarWorld argues that revocation of the *Order* would likely lead to a continuation or recurrence of countervailable subsidies because Chinese producers of CSPV cells have continued to benefit from countervailable subsidies after the issuance of the *Order*. The petitioner cites Commerce's discovery of two new countervailable programs in the first administrative review as an example. SolarWorld states, "nothing indicates that these programs have changed or ceased."[40]

Commerce's Position:

Section 752(b)(1) of the Act directs Commerce, in determining the likelihood of continuation or recurrence of a countervailable subsidy, to consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether there has been any change in a program found to be countervailable that is likely to affect that net countervailable subsidy. According to the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), Commerce will consider the net countervailable subsidies in effect after the issuance of the order and whether the relevant subsidy programs have been

[38] *Sunpreme Inc. v. United States,* 256 F. Supp. 3d 1265 (CIT 2017) (*Sunpreme*)
[39] *See Sunpreme*, 256 F. Supp. 3d at 1279
[40] See Letter from Petitioner, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Substantive Response to Notice of Initiation of Sunset Review," dated December 1, 2017.

continued, modified, or eliminated.[41] The SAA adds that continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies.[42] Additionally, the presence of programs that have not been used, but also have not been terminated without residual benefits or replacement programs, is also probative of the likelihood of continuation or recurrence of a countervailable subsidy.[43] Where a subsidy program is found to exist, Commerce will normally determine that revocation of the *Order* is likely to lead to continuation or recurrence of a countervailable subsidy regardless of the level of subsidization.[44]

As Commerce has stated in other sunset determinations, two conditions must be met in order for a subsidy program not to be included in determining the likelihood of continued or recurring subsidization: (1) the program must be terminated; and (2) any benefit stream must be fully allocated.[45] Commerce has further stated that, in order to determine whether a program has been terminated, Commerce will consider the legal method by which the government eliminated the program and whether the government is likely to reinstate the program.[46] Commerce normally expects a program to be terminated by means of the same legal mechanism used to institute it.[47] Where a subsidy is not bestowed pursuant to a statute, regulation or decree, Commerce may find no likelihood of continued or recurring subsidization if the subsidy in question was a one-time, company-specific occurrence that was not part of a broader government program.[48]

In the three administrative reviews completed since the issuance of the CVD *Order*, Commerce found that respondents continued to receive countervailable subsidies. Commerce found no information indicating changes in the programs found countervailable during the investigation. In addition, in the first administrative review, Commerce identified additional countervailable subsidy programs. Finally, no party submitted evidence to demonstrate that the countervailable programs have expired or been terminated. Moreover, neither the GOC nor other respondent interested parties participated in this sunset review. Based on the above considerations, Commerce determines that there is a likelihood of continuation or recurrence of countervailable subsidies.

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[41] *See* SAA, H. Doc. No. 316, 103d Cong., 2d Session, Vol. 1 (1994) at 888.
[42] *Id.*
[43] *See, e.g.*, *Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil: Final Results of Full Sunset Review of Countervailing Duty Order*, 75 FR 75455 (December 3, 2010) and accompanying IDM at Comment 1.
[44] *Id*.
[45] *See, e.g.*, *Preliminary Results of Full Sunset Review: Certain Corrosion-Resistant Carbon Steel Flat Products from France*, 71 FR 30875 (May 31, 2006) and accompanying IDM at 5-7, unchanged in *Corrosion-Resistant Carbon Steel Flat Products From France; Final Results of Full Sunset Review*, 71 FR 58584 (October 4, 2006).
[46] *See, e.g.*, *Fresh and Chilled Atlantic Salmon From Norway: Final Results of Full Third Sunset Review of Countervailing Duty Order*, 76 FR 70411 (November 14, 2011) and accompanying IDM at Comment 1.
[47] *See, e.g.*, *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from India*, 66 FR 49635 (September 28, 2001) and accompanying IDM at Comment 7.
[48] *See, e.g.*, *Stainless Steel Plate in Coils from Belgium: Final Results of Full Sunset Review and Revocation of the Countervailing Duty Order*, 76 FR 25666 (May 5, 2011) and accompanying IDM at Comment 1.

2. Net Countervailable Subsidy Likely to Prevail

Domestic Interested Party's Comments

SolarWorld argues that Commerce should report the highest subsidy margin to the International Trade Commission (ITC) as the subsidy rate likely to prevail if the *Order* were revoked. The highest calculated rate is 23.28 percent, which was calculated for Lightway in the first administrative review.[49] SolarWorld contends that the rates calculated in the first review are the appropriate rates, because they demonstrate that Chinese producers of CSPV cells are not only continuing to benefit from countervailable programs identified in the original investigation, but from new countervailable programs as well.

Department's Position:

Consistent with the SAA and legislative history, Commerce normally will provide the ITC with the net countervailable subsidy that was determined in the investigation as the subsidy rate likely to prevail if the order is revoked, because it is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place.[50] Section 752(b)(l)(B) of the Act provides, however, that Commerce will consider whether any change in the program which gave rise to the net countervailable subsidy determination in the investigation or subsequent reviews has occurred that is likely to affect the net countervailable subsidy.

Therefore, although the SAA and House Report provide that Commerce normally will select a rate from the investigation, this rate may not be the most appropriate if, for example, the rate was derived (in whole or part) from subsidy programs which were found in subsequent reviews to be terminated, there has been a program-wide change, or the rate ignores a program found to be countervailable in a subsequent administrative review.[51]

In determining whether company-specific, net countervailable subsidy rates are likely to prevail, Commerce started with the rates found in the original investigation. We then adjusted the investigation rates, where appropriate, to reflect the programs that Commerce subsequently found to be countervailable. Therefore, in providing to the ITC the subsidy rates likely to prevail if the *Order* were revoked, we added the averages of the countervailable subsidy rates from the two additional subsidy programs discovered in the first review to the net countervailable subsidy rates determined in the original investigation. Commerce will provide to the ITC the new countervailable subsidy rates shown in the section titled "Final Results of Review" below.[52]

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[49] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 41003 (July 14, 2015).
[50] *See* SAA at 890, and H.R. Rep. No. 103-826 (1994) (House Report) at 64.
[51] *See, e.g., Stainless Steel Sheet and Strip in Coils From the Republic of Korea: Final Results of Expedited Second Sunset Review*, 75 FR 6210 l (October 7, 2010) and accompanying IDM at Comment 2.
[52] *See*, Memorandum, "Countervailing Duty Sunset Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from China: Calculation Memorandum for the Final Determination," dated concurrently with this memorandum.

3. Nature of the Subsidies

Consistent with section 752(a)(6) of the Act, Commerce is providing the following information to the ITC concerning the nature of the subsidies and whether the subsidies are subsidies as described in Article 3 or Article 6.1 of the ASCM. We note that Article 6.1 of the ASCM expired effective January 1, 2000.

Subsidies

The following programs do not fall within the meaning of Article 3.1 of the ASCM, but could be subsidies as described in Article 6.1 of the ASCM if the amount of the subsidy exceeds five percent, as measured in accordance with Annex IV of the ASCM. The subsidies could also fall within the meaning of Article 6.1 if they constitute debt forgiveness, grants to cover debt repayment, or subsidies to cover operating losses sustained by an industry or enterprise. However, there is insufficient information on the record of this review for Commerce to make such a determination. We are, in any case, providing the ITC with the following program descriptions:

1. <u>"Two Free, Three Half" Program for FIEs:</u>

   Under Article 8 of the FIE Tax Law, an FIE that is "productive" and scheduled to operate for more than ten years may be exempted from income tax in the first two years of profitability and pay income taxes at half the standard rate for the next three years.

2. <u>Golden Sun Demonstration Program:</u>

   Evidence on the record of the *Final Determination* indicates that this program was established in 2009 under Article 20 of China's Renewable Energy Law (REL)[53] to provide assistance to firms in the construction of photovoltaic electricity-generation projects. As detailed in *Circular of the State Council on Adjusting Tax Policies on Imported Equipment* (Circular) 397, this program was designed to provide one-time assistance to recipients over the course of its two-year term.

3. <u>Preferential Policy Lending:</u>

   Article 25 of the REL specifically calls for financial institutions to offer favorable loans to the renewable energy industry. In addition, China's Industry Development Guidance Catalogue contains a list of encouraged projects, including solar energy, which the GOC targets through the provision of loans and other forms of assistance.

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[53] *See 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) (*Final Determination*) and accompanying Issues and Decision Memorandum.

4. Provision of Polysilicon for LTAR:

   Certain producers of polysilicon inputs are "authorities" within the meaning of section 771(5)(B) of the Act and, as such, the provision of these polysilicon inputs constitutes a financial contribution under section 771(5)(D)(iii) of the Act, provides a benefit to the extent they are provided for LTAR pursuant to section 771(5)(e)(iv) of the Act, and the provision of polysilicon for LTAR is specific to solar cells producers.

5. Provision of Land for LTAR:

   Evidence on the record of the *Final Determination* indicates that this subsidy program provides land-use rights to specific enterprises at preferential prices.[54] The provision of land by the GOC constitutes a financial contribution from an authority in the form of providing goods or services pursuant to section 771(5)(D)(iii) of the Act, and provides a benefit to the extent such goods or services are provided for LTAR pursuant to section 771(5)(E)(iv) of the Act.

6. Provision of Electricity for LTAR:

   The provision of electricity confers a financial contribution, under section 771(5)(D)(iii) of the Act, is specific, under section 771(5A) of the Act, and constitutes a benefit to the extent that such government provided goods or services are provided for less than adequate remuneration pursuant to section 771(5)(E)(iv) of the Act.

7. Preferential Tax Program for HNTEs:

   Article 28.2 of the Enterprise Income Tax Law of China provides for the reduction of the income tax rate to 15 percent, from 25 percent, for enterprises that are recognized as HNTEs, regardless of whether the enterprise is an FIE or domestic company. Circular 172 provides details regarding the type of enterprises that qualify for HNTE status and it identifies eligible projects, which include renewable, clean energy technologies such as solar photovoltaic technologies.

8. Enterprise Income Tax Law, Research and Development R&D Program:

   Article 30.1 of the Enterprise Income Tax Law of China created a new program regarding the deduction of research and development expenditures by companies, which allows enterprises to deduct, through tax deductions, research expenditures incurred in the development of new technologies, products, and processes. Article 95 of Regulation 512 provides that, if eligible research expenditures do not "form part of the intangible assets value," an additional 50 percent deduction from taxable income may be taken on top of the actual accrual amount. Where these expenditures form the value of certain intangible

[54] *See 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) (*Final Determination*) and accompanying Issues and Decision Memorandum.

assets, the expenditures may be amortized based on 150 percent of the intangible assets costs.

9. Import Tariff and VAT Exemptions for Use of Imported Equipment:

   Enacted in 1997, Circular 37 exempts both FIEs and certain domestic enterprises from the VAT and tariffs on imported equipment used in their production so long as the equipment does not fall into prescribed lists of non-eligible items. The National Development and Reform Commission or its provincial branch provides a certificate to enterprises that receive the exemption. The objective of the program is to encourage foreign investment and to introduce foreign advanced technology equipment and industry technology upgrades.

10. VAT Rebates on FIE Purchases of Chinese-Made Equipment:

    According to Trial Measure 171, the GOC refunds the VAT on purchases of certain domestically produced equipment to FIEs if the equipment is used for certain encouraged projects. Commerce determined that the VAT rebates were contingent upon the use of domestic over imported goods and, hence, specific under section 771 (5A)(A) and (C) of the Act.

11. Discovered Grants:

    During the course of the investigation, Commerce discovered, through examination of submitted financial statements, that both respondents had received numerous grants from provincial and local governments that were not part of any of the other programs included in the investigation. Commerce determined that the grants were export contingent, and that such grants were export subsidies and used total export sales as the denominator. Accordingly, we determined that all these "Discovered Grants" conferred countervailable subsidies to certain industries, and were thus specific.

12. Export Credit Subsidy Programs:

    Through this program, the Export-Import Bank provides loans at preferential rates for the purchase of exported goods from China.

13. Provision of Aluminum Extrusions for LTAR:

    Certain producers of the aluminum extrusions purchased by both respondents are "authorities" within the meaning of section 771(5)(B) of the Act and, as such, the provision of aluminum extrusions constitutes a financial contribution under section 771(5)(D)(iii) of the Act, and constitutes a benefit to the extent such aluminum extrusions are provided for LTAR pursuant to section 771(5)(E)(iv) of the Act.

14. <u>Provision of Solar Glass for LTAR:</u>

Certain producers of the solar glass purchased by both respondents are “authorities” within the meaning of section 771(5)(B) of the Act and, as such, the provision of solar glass constitutes a financial contribution under section 771(5)(D)(iii) of the Act, and constitutes a benefit to the extent such solar glass is solar glass is provided for LTAR pursuant to section 771(5)(E)(iv) of the Act.

FINAL RESULTS OF REVIEW

Commerce finds that revocation of the *Order* would be likely to lead to continuation or recurrence of countervailable subsidies at the rates listed below:

Manufacturers/Exporters/Producers	**Net Countervailable Subsidy Rate**
Suntech	18.22%
Trina	19.41%
All Others	18.82%

RECOMMENDATION

Based on our analysis of the substantive response received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of this review in the *Federal Register*, and notify the ITC of our findings.

☒ ☐

Agree Disagree

3/5/2018

X

Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance