C-570-980
Administrative Review
POR: 01/01/2015-12/31/2015
Public Document
E&C VII: GHC

DATE: July 12, 2018

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: Decision Memorandum for the Final Results of Countervailing Duty Administrative Review: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China; 2015

I. SUMMARY

Commerce has completed the 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 (China), for the period of review (POR) January 1, 2015, through December 31, 2015, in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). The mandatory respondents are Changzhou Trina Solar Energy Co., Ltd. and its cross-owned entities (collectively, Trina Solar), and Canadian Solar Inc. and its cross-owned entities (collectively, Canadian Solar). This is the fourth administrative review of this CVD order. We analyzed the case and rebuttal briefs submitted by interested parties following the *Preliminary Results*,[1] and address the issues raised in the "Analysis of Comments" section below.

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[1] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review, and Rescission of Review, in Part; 2015*, 83 FR 1235 (January 10, 2018) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM).

II. BACKGROUND

We published the *Preliminary Results* of this administrative review in the *Federal Register* on January 10, 2018, finding that the mandatory respondents received countervailable subsidies during the POR related to certain programs, and we invited interested parties to comment on the *Preliminary Results*.[2] On January 23, 2018, Commerce exercised its discretion to toll all deadlines affected by the duration of the closure of the Federal Government from January 20 through January 22, 2018.[3] As a result, all deadlines in this segment of the proceeding have been extended by three days. On May 11, 2018, we extended the deadline for issuing the final results of this administrative review by 45 days, to June 27, 2018.[4] On June 21, 2018, we extended the period for issuing the final results by an additional 15 days, to July 12, 2018.[5]

On February 9, 2018, we received a timely request to hold a public hearing from SolarWorld Americas, Inc. (the petitioner and/or SolarWorld).[6] On February 12, 2018, Canadian Solar submitted a timely request that we conduct a hearing.[7] On June 1, 2018, Canadian Solar withdrew its request for a hearing;[8] the petitioner withdrew its hearing request on June 21, 2018.[9] As the only parties that requested a hearing withdrew their requests, we did not conduct a hearing in this administrative review.

On March 5, 2018, we received timely case briefs from the following interested parties: SolarWorld, the Government of China (GOC), Canadian Solar, and Trina Solar.[10] On March 12,

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[2] *See Preliminary Results*.
[3] *See* Memorandum, "Deadlines Affected by the Shutdown of the Federal Government," dated January 23, 2018.
[4] *See* 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 2015 Countervailing Duty Administrative Review," dated May 11, 2018.
[5] *See* Memorandum, Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Section Extension of Deadline for Final Results of 2015 Countervailing Duty Administrative Review," dated June 21, 2018.
[6] *See* Letter from the petitioner, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Request for Hearing," dated February 9, 2018.
[7] *See* Letter from Canadian Solar, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China: Hearing Request," dated February 12, 2018.
[8] *See* Letter from Canadian Solar, Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China: Withdrawal of Hearing Request," dated June 1, 2018.
[9] *See* Letter from the petitioner, "Certain Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Withdrawal of Request for Hearing," dated June 21, 2018.
[10] *See* Letter from the petitioner, "Certain Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China; Case Brief of SolarWorld Americas, Inc.," dated March 5, 2018 (Petitioner's Case Brief); Letter from the GOC, "GOC Administrative Case Brief: Fourth 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)," dated March 5, 2018 (GOC's Case Brief); Letter from Canadian Solar, "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: Case Brief," dated March 5, 2018 (Canadian Solar's Case Brief); and Letter from Trina Solar, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China: Case Brief," dated March 5, 2018 (Trina Solar's Case Brief).

2018, we received timely rebuttal comments from SolarWorld; the GOC; Canadian Solar; Trina Solar; and Sumec Hardware & Tools Co., Ltd. (Sumec).[11]

III. LIST OF INTERESTED PARTY COMMENTS

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: Application of Adverse Facts Available to the GOC
Comment 2: Export Buyer's Credit Program
Comment 3: Provision of Aluminum Extrusions for Less Than Adequate Remuneration (LTAR)
Comment 4: Provision of Electricity for LTAR
Comment 5: Polysilicon Benchmark
Comment 6: Solar Glass Benchmark
Comment 7: Inclusion of Value Added Tax (VAT) in the LTAR Benchmarks
Comment 8: Inclusion of International Freight in the LTAR Benchmarks
Comment 9: Golden Sun Demonstration Program
Comment 10: Offsetting Purchases Made Above LTAR Benchmarks
Comment 11: Benefit Calculation for the Preferential Policy Lending Program
Comment 12: Entered Value Adjustment
Comment 13: Clerical Errors in the Preliminary Results

IV. SCOPE OF THE ORDER

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

This order covers crystalline silicon photovoltaic cells of thickness equal to or greater than 20 micrometers, having a p/n junction formed by any means, whether or not the cell has undergone other processing, including, but not limited to, cleaning, etching, coating, and/or addition of

[11] See Letter 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.," dated March 12, 2018. (Petitioner's Rebuttal Brief); Letter from the GOC, "GOC Rebuttal Brief: Fourth 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)," dated March 12, 2018 (GOC's Rebuttal Brief); Letter from Canadian Solar, "Administrative Review of the Countervailing Duty order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled in Modules from the People's Republic of China: Rebuttal Case Brief," dated March 12, 2018. (Canadian Solar's Rebuttal Brief); Letter from Trina Solar, " Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China: Rebuttal Brief," dated March 12, 2018 (Trina Solar's Rebuttal Brief); and Letter from Sumec, "SHTC Letter in Lieu of Rebuttal Brief: 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," dated March 12, 2018. In its letter, Sumec submits that Commerce should adopt the positions put forward in the case and rebuttal briefs submitted by Canadian Solar and Trina Solar.

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 10,000mm^2 in surface area, that are permanently integrated into a consumer good whose function is other than power generation and that consumes the electricity generated by the integrated crystalline silicon photovoltaic cell. Where more than one cell is permanently integrated into a consumer good, the surface area for purposes of this exclusion shall be the total combined surface area of all cells that are integrated into the consumer good.

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

Merchandise covered by this order is currently classified in the Harmonized Tariff 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.

V. 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 addressed in the "Analysis of Comments" section below. Specifically, we are now relying solely on ocean freight rates published by Maersk to value international ocean freight when constructing our benchmarks for measuring the adequacy of remuneration regarding the respondents' purchases of solar grade polysilicon, solar glass, and aluminum extrusions. We have also made corrections to calculations with respect to Canadian Solar's countervailable subsidy rate, which are addressed in the "Analysis of Comments" section.

VI. NON-SELECTED COMPANIES UNDER REVIEW

The Act and Commerce's regulations do not directly address the establishment of rates to be applied to companies not selected for individual examination where Commerce limited its examination in an administrative review pursuant to section 777A(e)(2) of the Act. However, Commerce normally determines the rates for non-selected companies in administrative reviews in a manner that is consistent with section 705(c)(5) of the Act, which provides instructions for calculating the all others rate in an investigation. We also note that section 777A(e)(2) of the Act provides that "the individual countervailable subsidy rates determined under subparagraph (A) shall be used to determine the all others rate of under section {705(c)(5) of the Act}." Section 705(c)(5)(A) of the Act instructs Commerce to calculate an all others rate using the weighted-average of the subsidy rates established for the producers/exporters individually examined, excluding zero, *de minimis*, or facts available rates.

For the companies for which a review was requested that were not selected as mandatory company respondents, and for which we did not receive a timely request for withdrawal of review, and which we are not finding to be cross-owned with the mandatory company respondents, we are basing the subsidy rate on a weighted-average of the subsidy rates calculated for Canadian Solar and Trina Solar, using their publicly-ranged sales data for exports of subject merchandise to the United States during the POR. For a list of these companies, please see the Appendix to this Issues and Decision Memorandum (IDM).

VII. SUBSIDIES VALUATION INFORMATION

Allocation Period

We made no changes to the allocation period (AUL) or to the allocation methodology used in the *Preliminary Results*.[12]

Attribution of Subsidies

We made no changes to the attribution methodologies used in the *Preliminary Results*.[13]

Denominators

Except where noted below in the section "Analysis of Comments," we made no changes to the denominators used in the *Preliminary Results*.[14]

Benchmarks and Discount Rates

In the *Preliminary Results*, we relied on an average of the Xeneta and Maersk pricing data to value international ocean freight when constructing the LTAR benchmarks.[15] In a change from the *Preliminary Results*, and as discussed below in the section "Analysis of Comments," for the final results we are relying solely on the Maersk pricing data to value international ocean freight when constructing the LTAR benchmarks.

[12] *See Preliminary Results* and accompanying PDM at 6-7.
[13] *See* PDM at 7-10.
[14] *Id*. at 10.
[15] *Id*. at 18.

VIII. USE OF FACTS AVAILABLE AND ADVERSE INFERENCES

Section 776(a) of the Act provides that Commerce shall, subject to section 782(d) of the Act, use the "facts otherwise available" if: (1) necessary information is not on the record; or (2) an interested party or any other person withholds information that has been requested; fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; significantly impedes a proceeding; or provides information that cannot be verified as provided by section 782(i) of the Act. Section 776(b) of the Act provides that Commerce may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting the best of its ability to comply with a request for information.

Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an adverse facts available (AFA) rate from among the possible sources of information, Commerce's practice is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents provide Commerce with complete and accurate information in a timely manner.[16] Commerce's practice also ensures "that the party does not obtain a more favorable results by failing to cooperate than if it had cooperated fully."[17]

Section 776(c) of the Act also provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. However, Commerce is not required to corroborate any countervailing duty applied in a separate segment of the same proceeding.[18]

Under section 776(d) of the Act, Commerce may use as AFA a countervailable subsidy rate applied for the same of similar program in a CVD proceeding involving the same country, or, if there is no same of similar program, a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, Commerce is not required for purposes of section 776(c) of the Act, or any other purpose, to estimate what the countervailable subsidy rate would have been if the non-cooperating interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.[19]

In a CVD case, as discussed further below, Commerce requires information from both the foreign producers and exporters of the merchandise under examination and from the government of the country where those producers and exporters are located. When the government fails to

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[16] *See*, *e.g.*, *Drill Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2010) (*Drill Pipe from China*); *see also Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR (February 23, 1998).

[17] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316 Vol. I at 870 (1994), reprinted at 1994 USCCAN. 4040, 4199 (SAA) at 870.

[18] *See* section 776(c)(2) of the Act.

[19] *See* section 776(d)(3) of the Act.

provide requested and necessary information concerning alleged subsidy programs, Commerce, as AFA, may find that a financial contribution exists under the alleged program and that the program is specific. However, in some circumstances, Commerce will rely on the responsive producer's or exporter's records to determine the existence and amount of the benefit conferred, to the extent that those records are useable and verifiable.

Otherwise, consistent with section 776(d) of the Act and our established practice of the hierarchal methodology for selecting an AFA rate in administrative reviews, for certain programs discussed below, as appropriate, we selected as AFA the highest calculated rate for the same or a similar program. The AFA hierarchy for administrative reviews has four steps, applied in sequential order.[20] The first step is to apply 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 proceeding, or if the rate is *de minimis*, the second step is to apply 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, the third step is to apply the highest non-*de minimis* rate calculated for an identical or similar program in another countervailing duty proceeding involving the same country. If no such rate exists under the first through third steps, the fourth step is to apply the highest rate calculated for a cooperating company for any program from the same country that the industry subject to the investigation could have used.

In the *Preliminary Results*, we relied on "facts otherwise available," including AFA, for several findings. With regard to the provision of electricity for LTAR, we relied on AFA to determine that the provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act, and is specific within the meaning of section 771(5A)(D) of the Act.[21] We also relied on an adverse inference to determine the existence and the amount of the benefit; we selected as our benchmark the highest electricity rates on the record for the applicable rate and user categories.[22] Because the rates were derived from information submitted during this review, they do not constitute secondary information and there is no requirement to corroborate pursuant to section 776(c) of the Act. As discussed below, we have not changed these AFA findings for these final results.

In the *Preliminary Results,* we also found that the GOC had not provided information with respect to whether the China Export-Import Bank (China Ex-Im Bank or Ex-Im Bank) limits the provision of export buyer's credits to business contracts exceeding $2 million, and to whether it uses third-party banks to disperse/settle export buyer's credits.[23] Without this information, we were unable to fully analyze how these export buyer's credits flow to and from foreign buyers and the China Ex-Im Bank and found that the GOC had not cooperated to the best of its ability.

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[20] *See*, *e.g.*, *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2015*, 83 FR 26954 (June 11, 2018) (*Chlorinated Isos from China 2015 AR*) and accompanying IDM at 5; *see also Essar Steel Ltd. v. United States*, 753 F.3d 1368, 1373-74 (Fed. Cir. 2014) (upholding "hierarchical methodology for selecting an AFA rate").
[21] *See* PDM at 25-26 and at 36.
[22] *Id*. at 36.
[23] *Id*. at 28-30.

As a result, and as AFA, we found that Canadian Solar and Trina Solar benefitted from the program, despite their claims of non-use and certifications of non-use from their customers.[24]

Due to the failure of the GOC to cooperate to the best of its ability, for the Export Buyer's Credit Program, and as discussed below, we applied AFA. To select the AFA rate for this program, we applied step two of our AFA hierarchy for reviews and selected a rate from a similar program from an administrative review from this proceeding. Pursuant to section 776(c)(2) of the Act, we do not need to corroborate this rate because this countervailing duty rate was applied in a separate segment of this proceeding.

IX. PROGRAMS DETERMINED TO BE COUNTERVAILABLE

We made no changes to the *Preliminary Results* with regard to the methodology used to calculate the subsidy rates for the following programs with respect to Canadian Solar and Trina Solar. Also, except as discussed in the "Analysis of Comments" section below, no issues were raised by interested parties in case briefs regarding these programs. The final subsidy rates calculated for Canadian Solar and Trina Solar are as follows:

1. Provision of Solar Grade Polysilicon for LTAR

   Canadian Solar: 0.09 percent *ad valorem*
   Trina Solar: 0.26 percent *ad valorem*

2. Provision of Solar Glass for LTAR

   Canadian Solar: 3.14 percent *ad valorem*
   Trina Solar: 2.26 percent *ad valorem*

3. Provision of Aluminum Extrusions for LTAR

   Canadian Solar: 3.35 percent *ad valorem*
   Trina Solar: 2.73 percent *ad valorem*

4. Provision of Electricity for LTAR

   Canadian Solar: 0.54 percent *ad valorem*
   Trina Solar: 0.00 percent *ad valorem*

5. Provision of Land for LTAR

   Canadian Solar: 0.11 percent *ad valorem*
   Trina Solar: 0.24 percent *ad valorem*

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[24] *Id*.

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

   Canadian Solar: 0.66 percent *ad valorem*
   Trina Solar: 0.01 percent *ad valorem*

7. Preferential Tax Program for High or new Technology Enterprises

   Canadian Solar: 0.03 percent *ad valorem*
   Trina Solar: 0.00 percent *ad valorem*

8. Enterprise Income Tax Law, Research and Development Program

   Canadian Solar: 0.02 percent *ad valorem*
   Trina Solar: 0.07 percent *ad valorem*

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

   Canadian Solar: 0.00 percent *ad valorem*
   Trina Solar: 0.11 percent *ad valorem*

10. Golden Sun Demonstration Program

    Canadian Solar: 0.58 percent *ad valorem*
    Trina Solar: 0.00 percent *ad valorem*

11. Export Buyer's Credit Program

    Canadian Solar: 5.46 percent *ad valorem*
    Trina Solar: 5.46 percent *ad valorem*

12. Export Seller's Credits

    Canadian Solar: 0.16 percent *ad valorem*
    Trina Solar: Not used by Trina Solar

13. Other Subsidies

    Canadian Solar: 0.20 percent *ad valorem*
    Trina Solar: 0.25 percent *ad valorem*

X. PROGRAM DETERMINED TO BE NOT COUNTERVAILABLE DURING THE POR

For these final results, we continue to find that the mandatory respondents did not benefit from the "Export Credit Insurance from SINOSURE" program during the POR.[25]

XI. PROGRAMS DETERMINED TO BE NOT USED OR NOT TO CONFER A MEASURABLE BENEFIT DURING THE POR

1. Two Free/Three Half Program for Foreign-Invested Enterprises (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 of 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
9. VAT and Tariff Exemptions for Purchases of Fixed Assets Under the Foreign Trade and Development Fund Program
10. The Over-Rebate of VAT Program
11. Tax Reductions for FIE Purchases of Chinese-Made Equipment
12. VAT Rebates/Refunds for FIEs Purchasing Domestically-Produced Equipment

XII. ANALYSIS OF COMMENTS

Comment 1: Application of Adverse Facts Available to the GOC

The GOC's Comments:

- Commerce cannot apply adverse facts available to the GOC for any issue since Commerce never notified the GOC that any of its submissions were deficient, as required by Section 782 of the Act.[26]
- In the *Preliminary Results*, Commerce applied AFA to the GOC for a number of perceived deficiencies related to: (1) whether input producers are "authorities;" (2) whether the GOC's involvement in China's solar grade polysilicon, solar glass, and aluminum extrusions industries results in the significant distortion of prices; (3) whether the provision of electricity for LTAR is countervailable; (4) whether land provided to the respondents is specific to the solar products industry; and (5) whether export buyer's credits were used.[27]
- However, at no point in this proceeding did Commerce indicate that the GOC's initial questionnaire response was deficient.[28]

[25] *See* PDM at 43.
[26] *See* GOC's Case Brief at 2-3.
[27] *Id*. at 2.
[28] *Id*.

- Before applying AFA, Commerce has a statutory obligation to inform a party of any deficiencies in its submission to permit the party an opportunity to cure those deficiencies.[29]
- The Court has analyzed section 782 of the Act, explaining that requiring notice of a deficiency is a prerequisite to applying AFA under section 776 of the Act.[30]
- The GOC fully responded to Commerce's initial questionnaire, and Commerce did not issue the GOC any supplemental questionnaires despite having done so with the respondents.[31]

Commerce's Position: For these final results, we continue to find that: (1) certain producers of solar grade polysilicon, aluminum extrusions, and solar glass are "authorities" within the meaning of section 771(5)(B) of the Act; (2) the GOC's involvement in China's solar grade polysilicon, solar glass, and aluminum extrusions industries results in the significant distortions of prices; (3) the GOC's provision of electricity for LTAR is countervailable; (4) land provided to the respondents is specific to the solar products industry; and (5) export buyer's credits were used by the mandatory respondents. We disagree with the GOC's argument that Commerce was obligated to issue a deficiency letter or supplemental questionnaire to the GOC to provide it with an opportunity to cure deficiencies in its questionnaire response, because the GOC's responses to our questions on these issues were essentially "non-responses."[32] We address the GOC's questionnaire response regarding this issue, below.

<u>Input Producers are "Authorities"</u>

With respect to whether the input producers that provided Canadian Solar and Trina Solar with their solar grade polysilicon, solar glass, and aluminum extrusions are "authorities" within the meaning of section 771(5)(B) of the Act, we sought information regarding, among other things, whether any of the owners, directors, or senior management of these companies were also GOC or Chinese Communist Party (CCP) officials. However, the GOC responded by stating our questions on this issue are irrelevant.[33] While the GOC provided a long narrative explanation of the role of the CCP, when asked to identify any owners, board members, or managers of the input suppliers who were government or CCP officials during the POR, the GOC stated that there is "no central informational database to search for the requested information on whether any individual owners, members of the board of directors, or senior managers is a Government or CCP official," and suggested that Commerce should obtain this information through the respondent companies."[34] In prior CVD proceedings concerning China, we found that the GOC was able to obtain the information requested independently from the companies involved, and

[29] *Id*.
[30] *Id*.
[31] *Id.* at 4.
[32] *See*, *e.g.*, *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 9717 (February 8, 2017) and accompanying IDM at Comment 11 ("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 be able to essentially grant themselves an extension to any deadline, simply by not responding, knowing that they would be provided additional time "to remedy" the "deficiency," after the Department issued a supplemental questionnaire.")
[33] *See* GOC August 29, 2017 Questionnaire Response (QR) at 41.
[34] *Id*. at 50-51.

that statements from the companies, rather than from the GOC or from the CCP themselves, were not sufficient.[35] We have also explained that our understanding of the CCP's involvement in China's economic and political structure is relevant because public information suggests that the CCP exerts significant control over activities in China and is part of the governing structure in China.[36] Thus, we find that the information requested regarding the role of the CCP and CCP officials regarding the management and operations of companies that provided Canadian Solar and Trina Solar with solar grade polysilicon, solar glass, and aluminum extrusions is necessary to our determination of whether a producer is an "authority" within the meaning of section 771(5)(B) of the Act. We also find that the GOC failed to provide requested information even though it could have obtained this information.

As a result, we find that the GOC withheld necessary information that was requested of it and, thus, we must rely on "facts otherwise available" in conducting our analysis. We also find that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. While the GOC argues that Commerce did not inform the GOC that its response to our question on this issue was deficient and did not provide the GOC with an opportunity to cure any deficiencies, by contending our request for information regarding the CCP was irrelevant, and by directing us to attempt to collect this requested information directly from the respondents, rather than through the GOC, we find that any further attempts to request this information again from the GOC would be futile and would also result in the GOC granting itself an extension of the deadline to provide this requested information. This was not a situation where the GOC provided a response that was merely deficient in some respects, within the meaning of section 782(d) of the Act. Rather, this was a situation where the GOC refused to provide the requested information at all, deciding for itself what was or was not relevant to the review. We also note that we placed additional information on the record regarding the CCP's involvement in China's economic and political structure on the record of this administrative review and invited comments on this information from interested parties.[37] However, the GOC did not comment on this additional information.

Consequently, we determine that the GOC withheld information, and that an adverse inference is warranted in the application of facts available.[38] As AFA, we find that CCP officials are present in the companies that suppled the respondents with their solar grade polysilicon, solar glass, and aluminum extrusions, as individual owners, managers, and members of the board of directors.[39] We find that this gives the CCP, as the government, meaningful control over these companies and their resources. As explained in the Public Bodies Memorandum, an entity with significant CCP presence on its board or in management or in party committees is controlled such that it

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[35] *See Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 78799 (December 31, 2014) (*Citric Acid from China 2012 AR*) and accompanying IDM at Comment 5.

[36] *See*, *e.g.*, *Countervailing Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Final Affirmative Determination*, 83 FR 9274 (March 5, 2018) (*Aluminum Foil from China*) and accompanying IDM at Comment 18; *see also* Memorandum, "Countervailing Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China; 2015: Public Bodies Memorandum," dated January 25, 2018 (Public Bodies Memorandum) at Attachment I (CCP Memorandum).

[37] *See* Public Bodies Memorandum.

[38] *See* section 776(b) of the Act.

[39] *See* Public Bodies Memorandum.

possesses, exercises or is vested with governmental authority.[40] Thus, we find that the companies that provided Canadian Solar and Trina Solar with their solar grade polysilicon, solar glass, and aluminum extrusions purchases are "authorities" within the meaning of section 771(5)(B) of the Act.

<u>The GOC's Involvement in China's Solar Grade Polysilicon, Solar Glass, and Aluminum Extrusions Industries Results in the Significant Distortions of Prices</u>

In the *Preliminary Results*, we determined that necessary information on the GOC's role in the production of solar grade polysilicon, solar glass, and aluminum extrusions in China was not on the record, and we relied on facts otherwise on the record, pursuant to section 776(a)(1) of the Act, to reach our determination that the GOC's involvement results in the significant distortion of prices in these markets.[41] In responses to our questions regarding these industries, the GOC explained that it did not maintain information on the specific industries in question. Specifically, the GOC sourced information for its questionnaire response from China's National Bureau of Statistics (SSB).[42] However, the GOC explained that the SSB does not collect data specifically for solar grade polysilicon, aluminum extrusions, or for solar glass.[43] It is reasonable to conclude that if the GOC could provide the information that we requested, *e.g.*, information specific to China's solar grade polysilicon, solar glass, and aluminum extrusions markets, the GOC would have provided that information in its questionnaire response. Providing the GOC with an additional opportunity to provide information that it should have already provided would effectively result in the GOC granting itself an extension of the deadline to provide requested information. Again, this was not a situation in which the GOC provided a response that was somewhat deficient in a particular manner; rather, the GOC did not provide the requested information at all.

After the *Preliminary Results*, we placed public documents on the record of this administrative review that contain information relevant to determining whether the GOC's involvement in these three markets significantly distorts prices in China.[44] Interested parties were invited to comment on this information. While the GOC contends that we did not provide it with an opportunity to remedy any deficiencies in its questionnaire response, it did not comment on this information. As such, we continue to determine that necessary information is not on the record regarding the GOC's role in China's solar grade polysilicon, solar glass, and aluminum extrusions industries, and we continue to rely on facts otherwise on the record, as stated in section 776(a)(1) of the Act, in reaching our determinations on whether the GOC's involvement in these Chinese markets results in the significant distortion of prices in China. As such, we are continuing to rely on world market prices (*i.e.*, "tier two") as our benchmarks for the provision of solar grade polysilicon, solar glass, and aluminum extrusions for LTAR programs, pursuant to 19 CFR 351.311(a)(2)(ii).

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[40] *See*, *e.g.*, Public Bodies Memorandum at 33-36.
[41] *See* PDM at 22-25.
[42] *See* GOC August 29, 2017 QR at 54-55.
[43] *Id*. at 55, 97, and 121.
[44] *See* PDM at 22-24; *see also* Memorandum, "Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Additional Documents Memorandum," dated January 2, 2018 (Additional Documents Memorandum).

Whether the Provision of Electricity for LTAR is Countervailable

In the *Preliminary Results*, we found that GOC did not provide complete responses to our questions regarding this program, and we relied on facts otherwise available, pursuant to section 776(a)(1) and (a)(2)(A) of the Act, along with an adverse inference, pursuant to section 776(b) of the Act, in making our determination regarding this program.[45] Specifically, the GOC did not address our questions regarding how cost elements in price proposals lead to price increases for electricity; how increases in costs are factored into price proposals for increases in electricity rates; and how cost element increases in price proposals and final price increases are allocated across provincial and tariff end-user categories. Further, we requested that the GOC provide the original Provincial Price Proposals for each province in which a mandatory respondent or any of its cross-owned companies were located during the POR. The GOC stated that starting on April 20, 2015, Price Proposals were no longer used by the provinces to calculate electricity prices and that our question was not applicable.[46] However, the GOC made no attempt to provide any price proposals that were in effect *prior* to April 20, 2015, nor did it request an extension of time to provide this requested information.

We also requested that the GOC provide information on the roles of provinces and the National Development and Reform Commission (NDRC), and how the provinces and the NDRC cooperate in determining electricity price adjustments. However, the GOC stated that as of April 20, 2015, the role of the NDRC was limited to providing and supervising the implementation of general guidelines and delegated its authority to prepare and publish provincial electricity sales price schedules to the provincial government agencies.[47] Again, the GOC provided no information on the interplay between the NDRC and the provinces regarding how provincial electricity prices were established prior to April 20, 2015, nor did it request an extension of time to submit this requested information. The GOC only stated that because there were no longer any provincial price adjustments as of 2015, our questions regarding the NDRC were no longer applicable.[48]

The information requested is key to our understanding of the GOC's role in establishing electricity prices at the local provincial level. By not providing the information requested, we find that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. As a result, an adverse inference is warranted in selecting from the facts available under section 776(b) of the Act.

While the GOC contends that in April 2015 it exercised its authority to delegate setting price schedules and adjustments to electricity prices to the provincial governments, subsequent to the *Preliminary Results*, we placed additional information on the record that contradicts the GOC's claims.[49] We invited interested parties to comment on this additional information. While the

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[45] *See* PDM at 25-26.
[46] *See* GOC's August 29, 2017 QR at 78-84.
[47] *Id*.
[48] *Id*.
[49] *See* Additional Documents Memorandum, at Attachment L, "Letter from the Government of People's Republic of China, 'GOC Second Supplemental Response: Second Administrative Review of the Countervailing Duty Order on Certain Chlorinated Isocyanurates from the People's Republic of China (C-570-991)."

GOC argues that we did not provide with an opportunity to remedy any deficiencies in its questionnaire response, the GOC did not comment on this additional information.

Whether Land Provided to the Respondents is Specific to the Solar Products Industry

Consistent with the *Preliminary Results*, we continue to find that the GOC did not respond to our questions regarding this program.[50] Specifically, we asked the GOC to identify all instances in which it provided land or land-use rights to the mandatory respondents during the AUL, to answer questions regarding the eligibility for and the actual use of the assistance provided, and to provide at least one completed application and approval package (*i.e.*, agreements for the mandatory respondents' land-use rights). This type of information has been provided and verified in previous investigations.[51] Rather than providing the information requested, the GOC referred us to various Chinese land laws and to the mandatory respondents' questionnaire responses.[52] While the GOC argues that we did not provide it with an opportunity to remedy deficiencies in its questionnaire response, the GOC did not request an extension of time to respond to our questions on this program, and by referring us to the respondents' questionnaire responses for this information, we find that any further attempts to request this information from the GOC would be futile and would also result in the GOC granting itself an extension of the deadline to provide this requested information. The GOC's "response" was not merely deficient; rather, it was a refusal to provide the requested information.

Therefore, pursuant to section 776(a) of the Act, we continue to find that information regarding the provision of land and land-use rights is not on the record of this proceeding, and that the GOC has withheld this information within the meaning of section 776(a)(2)(A) of the Act. As such, we are continuing to rely on "facts otherwise available" for our final determination, pursuant to section 776(a)(2)(A) of the Act. Because the GOC withheld information that it can provide, we find that the GOC did not act to the best of its ability to comply with our request for information, and that an adverse inference is warranted in applying the facts available as stated in section 776(b) of the Act. In drawing this adverse inference, we find that the GOC's provision of land-use rights was provided by "authorities" within the meaning of section 771(5)(B) of the Act, constitutes a financial contribution within the meaning of section 771(5)(D) of the Act, and is specific within the meaning of section 771(5A) of the Act. For these final results, we continue to treat any unallocated benefits from this program as a non-recurring subsidy, pursuant to 19 351.524(c)(2)(iii), 19 CFR 351.524(b)(2), and 19 CFR 351.524(d).

Whether Export Buyer's Credits Were Used

We preliminarily determined that the use of adverse facts available is warranted in determining the countervailability of the Export Buyer's Credits program because the GOC did not provide

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[50] *See* PDM at 27.
[51] *See*, *e.g.*, *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 72 FR 71360, 71363 (December 17, 2007) and accompanying PDM at 10 ("we examined these companies' land-use rights agreements and discussed the agreements with the relevant government authorities") (unchanged in the Final Determination, 73 FR 40480 (July 15, 2008)).
[52] *See*, *e.g.*, the GOC's August 29, 2017 QR at 64-76.

the information we requested to fully analyze this program.[53] In its questionnaire response, the GOC provided its Administrative Measures of the Export Buyer's Credit of EIBC (published in 2000), for which Article 5 states that the business contract supported by export buyer's credits should be over $2 million.[54] However, we stated in the *Preliminary Results* that Commerce reviewed this program in the most-recently completed review of this CVD order, and we explicitly questioned the GOC about a 2013 revision to this program that eliminated this minimum requirement, and on whether the China Ex-Im Bank uses third-party banks to disburse/settle export buyer's credits.[55] The GOC failed to reference these issues in its questionnaire response, and did not request an extension of time to provide information on issues regarding the 2013 program revision. Therefore, the GOC's initial questionnaire response was not merely a deficient response on these issues. Rather, it amounted to a non-response on these issues.

While the GOC contends that we did not provide it with an opportunity remedy any deficiencies with respect to this program, we note that subsequent to the *Preliminary Results*, we placed information on the record regarding the 2013 revision for this program, and on whether third-party banks disburse/settle these buyer's credits, and invited interested parties to comment on this information.[56] The GOC had an opportunity to comment on this information, but it did not do so.

Consistent with the *Preliminary Results*, we continue to find that the GOC withheld requested information regarding the Export Buyer's Credits program and significantly impeded this proceeding, pursuant to sections 776(a)(2)(A) and (a)(2)(C) of the Act. Further, pursuant to section 776(b) of the Act, we find that the GOC, by withholding requested information and significantly impeding this proceeding, failed to cooperate to the best of its ability.

Comment 2: Export Buyer's Credit Program

GOC's Comments:

- In the *Preliminary Results*, Commerce applied AFA to the GOC regarding the Export Buyer's Credit Program based on the GOC's failure to provide the 2013 Administrative Measures Revisions, information regarding a $2 million threshold, if any, and an explanation of "whether it uses third-party banks to disburse/settle Export Buyer's Credits."[57]
- As a result of these perceived failures, Commerce found this program to be both countervailable and used by the respondents. Commerce then applied an AFA rate of 5.46 percent, the highest rate calculated for a similar program in this proceeding, to each respondent for this program.

[53] *See* PDM at 28-30.
[54] *See* GOC August 29, 2017 QR at Exhibit II F.1.
[55] *See* PDM at 28.
[56] *See* Additional Documents Memorandum at Attachment K, "Administrative Review of Countervailing Duty Order on Citric and Certain Citrate Salts; Verification of the Questionnaire Responses Submitted by the Government of the People's Republic of China," dated October 7, 2014.
[57] *See* GOC's Case Brief at 4.

- Commerce's application of AFA for this program is unlawful and unreasonable and should be corrected in the final results.
- In a CVD proceeding, Commerce's investigation of any alleged subsidy has two goals: (1) to determine how a program operates and whether it could provide a countervailable subsidy; and (2) to determine whether the alleged subsidy was used by the respondents. These inquiries are distinct from one another and the exploration of one cannot be used to bootstrap the existence of the other.[58]
- In this case, while Commerce may have found a lack of information with regard to the first goal, no such ambiguity exists with regard to the second. The Export Buyer's Credit Program was undeniably not used by the respondents' customers in this case.[59]
- Commerce explained that the information the GOC failed to provide was critical for Commerce to understand how credits from this program flow to/from foreign buyers and the China Ex-Im Bank. However, a review of the missing information Commerce identified leaves one baffled as to how Commerce could reach this conclusion.
- Commerce stated that the previous iteration of the Export Buyer's Program had a usage threshold of $2 million, but this threshold may have been eliminated after it was revised in 2013.[60]
- However, even if this is assumed to be true, Commerce has not used this $2 million threshold for the basis of finding non-use in the past and has never looked at this threshold as a means to determine non-use in the on-site verifications it has conducted at the China Ex-Im Bank.[61] Instead, Commerce always reviewed the Ex-Im Bank's database, which demonstrates usage of the program. As a result, this criterion is irrelevant as to whether Commerce could conduct a similar verification.[62]
- Commerce claims that the 2013 Administrative Measures Revisions are needed but were not provided by the GOC. However, this is irrelevant as to whether Commerce could have conducted the usage verification at the Ex-Im Bank. In its questionnaire response, the GOC explained how the Ex-Im Bank determines usages in this case, and these methods are no different that the methods the Ex-Im Bank used to determine usage prior to the effective date of the 2013 Administrative Measures Revisions.[63] Commerce has never inquired whether the 2013 Administrative Measures Revision impacted how the Ex-Im Bank determines usage; the GOC said that it does not.[64]
- Thus, Commerce failed to investigate whether the absence of this information on the record had any real impact on the usage determination and whether this created a gap in the record that required the application of AFA.[65]
- Commerce explained that it needed the names of domestic settlement banks and third-party financial institutions through which the program could be indirectly disbursed by the Ex-Im

[58] *Id*.
[59] *Id*. at 5.
[60] *Id*.
[61] *Id*. at 5-6.
[62] *Id*. at 6.
[63] *Id*.
[64] *Id*.
[65] *Id*.

Bank. However, this information was not necessary because the respondents' customers did not use this program and this information was not relevant as to the usage determination.[66]

- The GOC's failure to provide certain information in this case is no different than the GOC's failure to provide information regarding certain grant programs. The information that was not provided goes to the countervailability of the program, not to usage.[67]
- Independent of the GOC's actions, the respondents have placed sufficient evidence on the record of this case to demonstrate that they have not benefitted from this program. This information consisted of declarations from all of the respondents' U.S. customers certifying to the fact that they received no funding from the Ex-Im Bank directly or indirectly through any third-party bank. Declarations were sufficient in *Solar Cells from China 2013 AR* to establish non-use for this program, despite the GOC's actions with regard to this program, which were deemed uncooperative.[68] Commerce has accepted declarations of non-use before and should do the same here.
- In *Boltless Shelving from China*, Commerce decided not to verify the Ex-Im Bank and found that the Export Buyer's Credit and Seller's Credit programs were not used during the POI based on the GOC's responses and verification of the respondents.[69] Thus, the decision not to verify does not prevent a finding of non-use with regard to the Export Buyer's Credit Program.
- The 5.46 percent rate applied as AFA in the *Preliminary Results* is unlawful and unreasonable. While Commerce may have wide discretion in selecting AFA rates, that selection is not without limits.
- Commerce calculated an RMB interest rate of 10.74 percent and a U.S. dollar rate of 0.56 percent for one-year loans. Because of how loan benefits are calculated, the maximum CVD rate possible would be equal to the loan interest benchmark rate, presuming the loan received was interest free.
- It is mathematically impossible for a company to receive a rate as high as 5.46 percent under this program. The highest CVD rate a company could receive, presuming that all of a respondent's exporters are covered by these loans is 0.56 percent.

SolarWorld's Comments:

- Commerce should continue to apply total adverse facts available to the Ex-Im Bank Buyer's Credit Program.[70]
- The GOC has been uncooperative during this review, including the Ex-Im Bank Buyer's Credit Program.
- The GOC's actions are in violation of U.S. law and contrary to its World Trade Organization commitments.
- Commerce has investigated this program in numerous other proceedings, and not once has the GOC demonstrated that this program has not been used. Thus, it is clear that the adverse rate previously selected by Commerce has failed to incentivize the GOC to cooperate with Commerce's request for information.

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[66] *Id*. 6-7.
[67] *Id*. at 7.
[68] *Id*. at 10.
[69] *Id*. at 12.
[70] *See* SolarWorld's Case Brief at 1.

- Therefore, Commerce must select from other, higher AFA rates to fulfill the purpose of the statute and to induce compliance by the GOC.
- In this case, it is reasonable and conservative for Commerce to assign respondents a subsidy rate of approximately 30 percent for this program, by using the respondents' own information and making adverse assumptions in the calculations where information is missing.[71]
- Alternatively, as AFA, Commerce should assign a rate previously calculated for a similar program, which is 11.83 percent, in accordance with Commerce's practice and the statute.[72]

Canadian Solar's Comments:
- Commerce's determination in the *Preliminary Results* ran directly contrary to evidence establishing that Canadian Solar did not use this program during the POR. Canadian Solar reported that none of its unaffiliated companies received assistance through this program, and submitted signed declarations that attested these companies did not use financing from the Ex-Im Bank in any way during the POR.[73] No party submitted evidence challenging these statements.[74]
- The GOC also confirmed Canadian Solar's non-use of this program. Commerce, however, concluded that the GOC did not provide information regarding whether the Ex-Im Bank limits the provision of export buyer's credits to business contracts exceeding $2 million and whether the Ex-Im Bank uses third-party banks to disburse/settle these credits. Commerce claims that this program was amended in 2013, and without this information the claims of the respondents' non-use are not verifiable.[75]
- Commerce ignores the fact that Canadian Solar did everything in its power to establish that it did not use this program. If Commerce found that further information was needed, it was required to ask Canadian Solar additional supplemental questions or conduct verification prior to applying facts available, let alone adverse inferences, but it did not.[76]
- Commerce did not issue a supplemental questionnaire on this issue to Canadian Solar, and nowhere in the record is there any mention that Canadian Solar failed to cooperate. If Commerce chooses not to conduct verification, as is the case in this review, it must make its determination based on the record.[77]
- The GOC explained that the Chinese exporter is involved in the loan process regarding this program, and is in a position to verify and confirm usage. Even if Commerce disagrees with the GOC's characterization that the Chinese exporter is in the best position to confirm usage, Canadian Solar provided documentation from its foreign customers that separately confirm non-use.[78]

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[71] *Id*. at 6-10.
[72] *Id*. at 10-12.
[73] *See* Canadian Solar's Case Brief at 2-3.
[74] *Id*. at 3.
[75] *Id*. at 3-4.
[76] *Id*. at 4.
[77] *Id*. at 5.
[78] *Id*. at 5-6.

- Commerce's failure to rely on Canadian Solar's unambiguous statements of non-use for this program and instead to apply AFA runs contrary to several well-established limits on its power to apply AFA.[79]
- The proper course is for Commerce to apply a zero percent CVD margin for this program, as it did in the second administrative review of this CVD order for respondent JA Solar, and in other cases. Commerce distinguished the instant review from the second administrative review because of the alleged 2013 changes to this program. However, in the instant review Commerce did not consider that Canadian Solar's own response of non-use as the best party in position to verify this position. [80]
- When relevant information exists elsewhere on the record, Commerce should seek to avoid adversely impacting a cooperating party.[81]
- Even if Commerce is correct that the GOC failed to cooperate, it may not apply AFA for no reason other than to deter the GOC's non-cooperation in the future if relevant evidence exists elsewhere on the record.[82]
- If Commerce continues to calculate a subsidy rate for Canadian Solar with respect to this program, it must revise its selection of the 5.46 percent AFA rate that it applied in the *Preliminary Results*. In selecting this AFA rate, Commerce relied on a rate calculated in the 2002 administrative review for the Preferential Policy Lending to the Renewable Energy Industry Program, stating that the usage of this lending program is similar to that of the Export Buyer's Credit Program.[83]
- The most appropriate choice of a similar program to base Canadian Solar's AFA rate for the Export Buyer's Credit Program is Canadian Solar's own Export Seller's Credit Program in the instant administrative review.[84]

Trina Solar's Comments:

- Commerce's determination that Trina Solar both used and benefitted from this program is not supported by the record.[85]
- Trina Solar submitted certifications and statements from its U.S. customers that those companies did not use this program.[86]
- Record evidence indicates that Trina Solar and its U.S. affiliate were not eligible to use this program during the POR. The reliability of the certifications of non-use are irrelevant to determining Trina Solar's use of this program in the absence of evidence indicating that either Trina Solar or its U.S. affiliate were eligible for this program.[87]
- Commerce cited doubts on whether updated regulations indicate the GOC uses third-party banks to disburse/settle Export Buyer's Credits to conclude that it could not verify Trina's

[79] *Id*. at 6-7.
[80] *Id*. at 7-9.
[81] *Id*. at 9.
[82] *Id*.
[83] *Id*. at 10.
[84] *Id*. at 10-12.
[85] *See* Trina Solar's Case Brief at 12.
[86] *Id*. at 13-14.
[87] *Id*. at 14.

Claims of non-use. Understanding the precise substance of the 2013 regulations is only relevant to verifying the reliability of the certifications of non-use. However, there is no need to verify non-use where all record evidence indicates that neither Trina Solar nor its U.S. affiliate was eligible for the program.[88]

- Even if the GOC did not provide every detail requested about the substance of the regulations, a better understanding of the settlement of credits under this program generally would provide no better insight into Trina Solar's ineligibility that the statement from the Ex-Im Bank that Trina Solar was ineligible for this program during the POR.[89]
- Without so much as issuing supplemental questionnaires probing the certifications of non-use and/or the rejected Ex-Im Bank Export Buyer's Credit application or conducting a verification to confirm that the books and records of the companies support their certifications of non-use, it is not reasonable for Commerce to conclude that the certifications of non-use are unreliable.[90]

SolarWorld's Rebuttal Comments:

- Commerce should continue to apply total AFA to this program. The respondents have repeatedly failed to provide key information regarding this program despite the agency's repeated requests. Commerce has correctly concluded that at this point it is a waste of time, administrative resources, and taxpayer dollars to continue to request such information from the GOC only to have its requests repeatedly refused.[91]
- The GOC is, in effect, a "repeat offender" with its refusals to provide necessary information with regard to this program. Therefore, Commerce has appropriately determined that AFA must be applied to this program until the GOC provides the information necessary to demonstrate whether the program was used during the relevant period.[92]
- In the *Preliminary Results*, Commerce appropriately found that the GOC refused to provide critical information and has not attempted to remedy this failure. As Commerce stated in the prior administrative review, it is "futile" to continue these information requests.[93]
- Commerce should reject the respondents' arguments that there is sufficient information on the record of this review, specifically their customer certifications, to find that their customers did not use this program during the POR.[94]
- Commerce has previously found that the GOC maintains the information necessary to determine whether this program is used. Commerce appropriately requested information from the GOC concerning the details of this program, but the GOC refused to fully and accurately provide this information.[95]
- In the *Preliminary Results*, Commerce appropriately found that absent the information requested from the GOC, the respondent companies' claims of non-use of this program are

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[88] *Id*. at 14-15.
[89] *Id*. at 15.
[90] *Id*. at 16.
[91] *See* SolarWorld's Rebuttal Brief at 5.
[92] *Id*. at 5-6.
[93] *Id*. at 6-7.
[94] *Id*. at 8.
[95] *Id*. at 9.

not verifiable. Accordingly, Commerce should continue to find that Canadian Solar and Trina Solar used and benefitted from this program in the final results.[96]

- It should be clear to all parties, including Commerce, that at this point the rate selected as "adverse" for this program is a "neutral" facts available rate.[97]
- Commerce's practice when selecting adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner."[98]
- Commerce has investigated, or attempted to investigate, this program numerous times in this proceeding as well as in other proceedings, and the GOC has repeatedly refused to cooperate with Commerce and provide requested information.[99]
- The history of these cases shows that the rate selected by Commerce has not been sufficiently adverse to induce compliance from the respondents. Therefore, Commerce must select from other, higher AFA rates in order to fulfill the purpose of the statute and to induce compliance.[100]
- None of the rates suggested by the respondents are adverse. Canadian Solar urges Commerce to use its rate from the Export Seller's Credit Program, but this is not an identical program with respect to the Export Buyer's Credit Program.[101] Moreover, the rate calculated for that program was *de minimis*.
- Commerce has the authority to apply a higher AFA rate and should do so here. Commerce should reject the respondents' arguments regarding the rate to assign this program, and assign an AFA rate that is sufficient to induce the GOC to cooperate in future proceedings.

GOC's Rebuttal Comments:

- AFA for the program with regard to use is not warranted. The petitioner's argument that the GOC is a "repeat offender" and that a "sufficiently adverse" AFA is therefore needed to "incentivize the GOC to cooperate" has been made and rejected in prior reviews of this order and should be rejected here as well.[102]
- The statute does not provide for different levels of AFA based on either intentional non-cooperation or repeated non-cooperation over the course of numerous proceedings.[103]
- While the GOC may not have provided specific information regarding the mechanics of the Export Buyer's Credit Program, this requested and missing information only goes to the countervailability of this program.
- In contrast, the GOC answered completely all questions regarding the use of this program and described in detail how the Ex-Im Bank determined that the respondents' customers did

[96] *Id*. at 10.
[97] *Id*.
[98] *Id*. at 10-11.
[99] *Id*. at 11.
[100] *Id*.
[101] *Id*. at 13.
[102] *See* GOC's Rebuttal Brief at 1.
[103] *Id*. at 2.

not use this program.[104] Therefore, AFA cannot be applied to this information and Commerce should find this program not to be used.
- If Commerce chooses to overlook evidence that AFA is not warranted regard to use, the petitioner's proposed AFA rates are untenable.[105]

Canadian Solar's Rebuttal Comments:

- Commerce erred in applying AFA to Canadian Solar because the record establishes Canadian Solar's non-use of this program. For the final results, Commerce must abandon its use of AFA in its calculation of this program and remove this program from Canadian Solar's subsidy rate calculation.[106]
- Commerce's determination that the GOC failed to cooperate is irrelevant to the independent determination regarding whether Canadian Solar used this program. As such, application of AFA to Canadian Solar on the basis of the GOC's failure to cooperate is improper and must be revised in the final results.[107]
- If Commerce continues to apply AFA, it may not use the enhanced AFA option proposed by the petitioner.[108]

Trina Solar's Rebuttal Comments:

- Commerce should not attribute any benefit for the Export Buyer's Credit Program to Trina Solar because the record shows that neither Trina Solar nor its U.S. customers used this program, and because Trina Solar and its sole U.S. customer are ineligible for financing under this program. The alleged failures by the GOC to provide information are irrelevant to determining whether Trina Solar used this program.[109]
- The letter from the China Ex-Im Bank rejecting Trina Solar's and its U.S. affiliate's Export Buyer's Credit application demonstrates that none of Trina Solar's trade to the United States was eligible for this program.[110]
- The petitioner's suggested methodology for assigning an AFA rate for this program would unreasonably depart from Commerce's established practice of assigning an AFA rate in CVD reviews.[111]

Commerce's Position: For the final results, we continue to find that the record does not support finding non-use of the Export Buyer's Credit program for Canadian Solar and Trina Solar. In the instant review and in other proceedings in which we have examined this program, we have found that the China Ex-Im Bank, as the lender, is the primary entity that possesses the supporting information and documentation necessary for us to fully understand the operation of the

[104] *Id*. at 5.
[105] *Id*. at 6-8.
[106] *See* Canadian Solar's Rebuttal Brief at 2.
[107] *Id*. at 3.
[108] *Id*. at 3-9.
[109] *See* Trina Solar's Rebuttal Comments at 1-2.
[110] *Id*. at 3-4.
[111] *Id*. at 5-8.

program, which is prerequisite to our ability to verify the accuracy of the responding companies' claims of non-use of this program.[112] We find that the GOC has not provided the requested information and documentation for Commerce to develop a complete understanding of this program, *e.g.*, whether the China Ex-Im Bank limits the provision of export buyer's credits to business contracts exceeding $2 million, and whether it uses third-party banks to disburse/settle export buyer's credits. Such information is crucial to our understanding how these credits flow to and from foreign banks and the China Ex-Im Bank. Absent the requested information, the GOC's and the respondent companies' claims regarding non-use are not verifiable. Moreover, without an understanding of the involvement of third-party banks, the respondent companies' (and their customers') claims are also not verifiable.

With respect to arguments that AFA should not be applied to this program, we continue to find that the GOC withheld necessary information that was requested and significantly impeded this proceeding. Thus, we 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 to the best of its ability to comply with our request for information. Specifically, the GOC withheld information that was reasonably available to it. As such, 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 respondent companies within the meaning of sections 771(5)(D), 771(5A), and 771(5)(E), respectively, of the Act.

Furthermore, we note that we are not finding the respondent's customers' certifications of non-use to be unreliable because we declined to verify them. Rather, we find the respondents' customers' certifications of non-use to be unverifiable because, without a complete understanding of the operation of the program, which could only be achieved through a complete response by the GOC to our questions on this program, verification of the respondents' customer's certifications of non-use would be meaningless.

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 provide only goes to the countervailability of this program. We disagree with the GOC. Our 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. Therefore, 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.[113] Accordingly, information regarding the operation of this program and the respondents' usage would come from the GOC.

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[112] *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.

[113] *See*, *e.g.*, *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 China 2014 AR*) 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.").

The U.S. Court of Appeals for the Federal Circuit (CAFC) has affirmed that certain information comes from the government and that Commerce 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 *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.[114]

Additionally, the CAFC 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 facts available, accompanies 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 . . ."[115]

Therefore, in making our determination that the company respondents used the Export Buyer's Credit Program, we have not relied on the certifications of claimed non-usage submitted by the company respondents because the GOC declined to provide information that would enable Commerce to understand the operation of the program after the 2013 amendments to the program. Instead, we continue to determine usage of this program based on AFA, and find that the collateral impact on the respondent companies of our application of AFA based on the GOC's failure to cooperate is consistent with section 776(b) the Act and CAFC precedent.

With respect to the selection of the AFA rate to apply to this program, we have reviewed comments from interested parties and we are continuing to apply our CVD AFA hierarchy to assign a rate of 5.46 percent *ad valorem* to this program, consistent with the *Preliminary Results*.[116] When selecting AFA rates for an administrative review, we first determine if there is an identical program from any segment of the proceeding and use the highest calculated rate for the identical program (excluding *de minimis* rates). If no such identical program exists, we then determine if there is a similar/comparable program (based on the treatment of the benefit) within the same proceeding and apply the highest calculated rate for the similar/comparable program, excluding *de minimis* rates. If no such similar program exists within the same proceeding, we then determine if there is an identical or similar/comparable program (based on the treatment of the benefit) in another countervailing duty proceeding involving the same country and apply the highest calculated rate, excluding *de minimis* rates. When there is no comparable program, we

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[114] *See Fine Furniture (Shanghai) Limited v. United States*, 748 F.3d 1365, 1373 (Fed. Cir. 2014).
[115] *Id.*
[116] *See* PDM at 28-30, and at 41.

apply the highest calculated rate from any non-company specific program in any CVD case involving the same country, but we do not use a rate from a program if the industry in the proceeding cannot use that program. Applying our hierarchy to this proceeding, we determine that there are no rates calculated for the Export Buyer's Credit program in any segment of this proceeding. Accordingly, the selected rate of 5.46 percent *ad valorem* was calculated for company respondent Lightway Green New Energy Co., Ltd.'s usage of a similar/comparable program, the Preferential Policy Lending to the Renewable Energy Industry Program, in the 2012 administrative review of this proceeding.[117] In the instant review, the GOC reported that the Export Buyer's Credit program provides loan support through export buyer's credits.[118] Based on the description of the Export Buyer's Credit program, we find that the Preferential Policy Lending program and the Export Buyer's Credit program are similar/comparable programs as both programs provide access to loans.

Regarding arguments from interested parties that we should apply a different AFA rate for this program, we note that the U.S. Court of International Trade (CIT) sustained our application of this 5.46 percent rate for this very program in a prior segment of this proceeding.[119] Specifically, the Court evaluated, and sustained, Commerce's application of its CVD AFA review hierarchy in the first administrative review of this proceeding. The Court noted that, in developing and applying its AFA hierarchies (for CVD investigations and reviews), Commerce seeks a rate that serves its "dual goals" of relevancy and inducing cooperation from respondents, and that Commerce seeks to achieve relevancy by attempting to select an AFA rate that "best approximates how the non-cooperating respondent likely used the subsidy program."[120] Importantly, as the CIT sustained Commerce's determination not to deviate from its hierarchies by applying AFA rates on a case-by-case basis,[121] we decline to deviate from our CVD AFA review hierarchy in this segment. Accepting arguments from interested parties and selecting a different AFA rate for this program would upset the balance between relevancy and inducement that Commerce seeks when it applies its CVD AFA hierarchy to non-cooperating respondents; furthermore, consistently applying our CVD AFA hierarchies provide predictability and administrative transparency to parties involved in administrative proceedings before Commerce.[122] Finally, the use of the highest subsidy rate from a similar program in this proceeding is specifically authorized by section 776(d) of the Act, and based on our evaluation of the situation in this administrative review, this is the most appropriate rate to use. Therefore, we are applying the rate of 5.46 percent as the AFA rate for this program.

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[117] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 41003 (July 14, 2015) (*Solar Cells from China 2012 AR*) and accompanying IDM at 27-28.

[118] *See* the GOC's August 29, 2017 QR at 131-135.

[119] *See SolarWorld Americas, Inc. v. United States*, CIT No. 15-00232 (CIT 2017) (*SolarWorld*), sustaining Commerce's CVD AFA hierarchy and selection of AFA rate for CVD reviews.

[120] *Id*. at 9-10.

[121] *Id*.

[122] *See, e.g.*, *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, and Partial Rescission of Countervailing Duty Administrative Review; 2014*, 82 FR 32678 (July 17, 2017) (*Solar Cells from China 2014 AR*) at Comment 2.

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 this rate was calculated in a separate segment of this proceeding.

Comment 3: Provision of Aluminum Extrusions for LTAR

Canadian Solar's Comments:

- Commerce must revise its preliminary finding that the Aluminum Extrusions for LTAR Program is specific to the solar cells industry because the "program" is broadly available to numerous industries. Under the statute, Commerce must find that the alleged "program" is specific in accordance with section 771(5A)(D) of the Act.[123]
- In determining whether a particular industry fits within the statutory term "limited," the *CVD Preamble* explains that this analysis it not necessarily dependent on the number of enterprises involved but instead is "focused on the makeup of the users."[124]
- In the instant review, the GOC reported that there are a vast number of uses for aluminum extrusions, the industries that purchase and use aluminum extrusions are not limited, and that the solar industry in China is not a disproportionate or predominant consumer of aluminum extrusions.[125]
- Despite record evidence, Commerce found the industries within the sector to be limited, stating that the GOC provided none of the information that Commerce requested concerning the amounts consumed by industries. Specifically, Commerce relied on information from the previous administrative review where the GOC reported that six industries consumed aluminum: building and construction, transportation, electrical, machinery and equipment, consumer durables, and other industries.[126]
- Commerce need not rely on the amounts consumed by different industries, as a deeper analysis based on the GOC's response shows that these categories represented numerous and diverse industries. For example, the "other industries" catch-all category could include any number of industrial consumers, making it even larger and broader than a single category.
- Even if the listed industries represent a group, Commerce is still required to determine whether these groups are "limited in number," and failed to do this in the *Preliminary Results*.[127]
- Commerce cannot remedy this error in the final results by more explanation because the industries stated by the GOC and the "make-up of {their} end-users" are extremely diverse, foreclosing a specificity finding in their own right. For example, building and construction and transportation along make up countless sub-industries, yet Commerce failed to recognize the depth of these industries in the *Preliminary Results*.[128]
- Commerce's reliance on six industry categories alone as support for its specificity finding falls well short of its obligation under section 771(5A)(D)(iii)(I) of the Act to determine

[123] *See* Canadian Solar's Case Brief at 12.
[124] *Id*. at 13.
[125] *Id*.
[126] *Id*. at 13-14.
[127] *Id*. at 14.
[128] *Id*. at 15

whether a particular industry fits within the statutory term “limited” based on the “makeup of the users.”[129]

- Commerce must revise the benchmark for the Aluminum Extrusions for LTAR Program to remove the United Nations Comtrade Database (Comtrade) data and only use the IHS Markit prices.[130]
- Commerce preliminarily determined that an average of the Comtrade and IHS Markit prices are appropriate because each contains strengths and flaws. While Commerce found the Comtrade data to be preferable because it contains pricing on a monthly basis, it must also consider that the Comtrade data does not reflect the global price of aluminum extrusions used in the production of solar cells.[131]
- In *Solar Cells from China 2013 AR*, Commerce correctly relied on the IHS Markit data alone and should return to this practice in the current administrative review.[132]
- Commerce acknowledged in its remand redetermination of *Solar Cells from China 2013 AR* that the Comtrade data is unreliable for use as benchmarks because it is presented at the six-digit level of the HTS and covers merchandise under a “basket” category.[133] The Comtrade data proposed by the petitioner in the instant review is similarly unreliable six-digit basket commodity codes: 7604.21; 7604.29; and 7610.10.[134]
- The CIT in reviewing this very input, 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 cells.[135]
- When measuring adequate remuneration, Commerce must compare “the government price to a world market price.”[136] The Comtrade data submitted by the petitioner is unusable because it is not representative of the world market price for aluminum frames. Commerce must adjust the aluminum extrusions benchmark in the final results to only use the IHS Markit data.
- If Commerce continues to rely on the Comtrade data for the final results, it must revise its monthly benchmark calculation to use a total monthly average unit price, which is consistent with its approach in the prior administrative review and in other cases.[137]

Trina Solar’s Comments:

- Commerce’s regulation only permits the averaging of various datasets to obtain an average world price where the datasets cover comparable merchandise. Specifically, Commerce’s regulation requires it to compare the government price of a comparable product to a benchmark price for a comparable product.[138]

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[129] *Id.*
[130] *Id.*
[131] *Id.* at 15-16.
[132] *Id.*
[133] *Id.*
[134] *Id.*
[135] *Id.*
[136] *Id.*
[137] *Id.*
[138] *See* Trina Solar’s Case Brief at 8.

- Where Commerce uses a tier two benchmark, Commerce's regulation only permits the averaging of available prices to the extent practicable.[139]
- Commerce lacks a reasonable basis to conclude that the Comtrade data to value Trina Solar's aluminum extrusions relates to comparable merchandise.[140]
- For the final results, Commerce should exclude the Comtrade data from the aluminum extrusions benchmark calculation because it is not specific to Trina Solar's aluminum frames, and the petitioner did not provide any explanation or documents as to why the basket HTS classifications in the Comtrade data are specific to Trina Solar's aluminum frames.[141]
- The IHS Markit data includes POR blended average pricing for the precise input in question. Therefore, there is no basis in the statute or in Commerce's regulations for averaging non-specific data for aluminum solar frames with specific IHS Markit pricing data.[142]
- If Commerce continues to include the Comtrade data in its benchmark for aluminum frames, it should exclude the data from HTS subcategory 7610.10 because Trina Solar provided information from Commerce's prior determination in an antidumping duty review that HTS 7604.29 is the best available data for valuing the respondents' aluminum frames.[143]

SolarWorld's Rebuttal Comments:

- The respondents argue that the provision of aluminum extrusions for LTAR is not a specific financial contribution because the industries that use aluminum extrusions are extremely diverse. Commerce should reject this argument as it has done in prior cases and continue to find that this program provides a specific contribution.[144]
- In prior reviews of this order, Commerce has consistently found the provision of aluminum extrusions for LTAR to be specific, and has rejected the same arguments that the respondents are now raising. Nothing has changed in this review. There is no justification for a departure from Commerce's prior findings.[145]
- Commerce should reject the respondents' arguments and continue to utilize the Comtrade data for measuring the benefit for the provision of aluminum extrusions for LTAR in the final results.[146]
- Citing to antidumping cases involving the selection of surrogate values to argue the Comtrade data is not a precise match to compare to the respondents' domestic purchases is a flawed argument. 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 a dumping margin under the dumping provision of the statute.[147]
- Commerce has specifically addressed and dismissed respondents' arguments in the last segment of this proceeding, and should do so again here.[148]

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[139] *Id*.
[140] *Id*.
[141] *Id*. at 8-9
[142] *Id*. at 10.
[143] *Id*. at 11.
[144] *See* SolarWorld's Rebuttal Brief at 14.
[145] *Id*.
[146] *Id*. at 15.
[147] *Id*.
[148] *Id*. at 16.

- Respondents argue that Commerce incorrectly calculated the benchmark used for measuring the benefit from their purchases of aluminum extrusions, but Commerce has significant discretion in constructing its benchmarks.[149]
- In the instant review, Commerce has Comtrade data, by both quantity and by value, and a single annual IHS Markit price. As a result, Commerce should continue to calculate the aluminum extrusions benchmark as it did in the *Preliminary Results*.[150]

Commerce's Position: We have addressed these same arguments in the most-recently completed administrative review in this proceeding, and find that there is no new information or arguments on the instant record that would cause us to change our findings from that review.[151] As are result, we are making no changes to our findings and determinations from the *Preliminary Results*.[152]

In addressing our questions on specificity, the GOC stated that "{t}here are a vast number of uses for aluminum extrusions. The industries that purchase/use aluminum extrusions are not limited, and the solar panel industry in China is not a disproportionate or predominant consumer of aluminum extrusions."[153] However, the GOC did not provide any of the information that we requested concerning the amounts of aluminum extrusions that are consumed by individual industries in China. Therefore, in the *Preliminary Results* we relied on information reported by the GOC in the most recently completed review in which the GOC reported that six industries consumed aluminum extrusions: building and construction; transportation; electrical; machinery and equipment; consumer durables; and other industries.[154] The CIT has previously upheld Commerce's specificity finding for aluminum extrusions based on these six enumerated industries, stating that "{r}egardless of the variety of recipient industries . . . when those recipient industries are 'limited in number,' specificity is established."[155] As there is no new information or arguments on the instant record that would cause us to change our preliminary findings, we continue to find that the recipients of aluminum extrusions are limited in number to the industries listed by the GOC in the most recently completed review, and that the provision of aluminum extrusions is *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.[156] We continue to find that a benefit is conferred to the extent that aluminum extrusions are being provided to the respondent companies for LTAR.[157]

As discussed in the *Preliminary Results*, we determined that China'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.[158] In this case, we received two possible sets of world market price data: (1) monthly Comtrade covering merchandise classified under HTS classifications, 7604.21, 7604.29, and 7610.10, and (2) IHS Markit data for annual

[149] *Id.*
[150] *Id.*
[151] *See Solar Cells from China 2014 AR* and accompanying IDM at Comment 4.
[152] *See* PDM at 34-35.
[153] *See* the GOC's August 29, 2017 QR at 86.
[154] *See* PDM at 35.
[155] *See Changzhou Trina Solar Energy Co., Ltd. v. United States*, 195 F. Supp. 3d 1334, 1352 (CIT 2016).
[156] *See Solar Cells from China 2014 AR* and accompanying IDM at Comment 3.
[157] *See* PDM at 35.
[158] *Id.* at 13 and 17-18.

prices for aluminum frames. In evaluating each set of data, we continue to find that neither source is ideal, but that the deficiencies are not so serious that either data set should be rejected in its entirety. The Comtrade data is reported on a monthly basis, while the IHS Markit data is reported on an annual basis. Because Commerce's practice calls for the use of monthly values in assessing the benefits from the provision of inputs for LTAR, the monthly Comtrade data is preferable to the annual IHS Markit data.

However, Commerce's practice is normally to rely on data reflecting the narrowest category of products encompassing the input product, which, in this case, would be the annual IHS Markit data (which reflects prices for aluminum frames, while the Comtrade data encompasses a broader range of aluminum products). Accordingly, because each set of data contains strengths and flaws, for these final results, we are continuing to average the monthly Comtrade data with the annual IHS Markit data to derive monthly benchmarks that reflect, in part, the value for aluminum extrusions. Using an average of the data from these two sources (*i.e.*, Comtrade and IHS Markit) is consistent with our practice in this proceeding for valuing aluminum extrusions.[159]

With respect to arguments from interested parties on our usage and averaging of the Comtrade and IHS Markit data when constructing our benchmark for aluminum extrusions, we have addressed these same arguments previously.[160] Interested parties have not presented sufficient information to warrant reconsideration of Commerce's prior findings and determinations on this issue.

Comment 4: Provision of Electricity for LTAR

Canadian Solar's Comments:

- Commerce's benefit analysis for the Government Provision of Electricity for LTAR Program is flawed because the program is not specific to a region or industry.[161]
- In the *Preliminary Results*, Commerce found that the GOC did not comply with its requests for information, determined to use AFA, and applied the highest rates amongst the provincial price schedules as benchmarks for each reported electrical category.[162]
- Commerce used benchmarks from multiple provinces to measure a factory in one location.
- Commerce did not make any of the necessary findings for classifying a domestic subsidy as "specific" under section 771(5A)(D) of the Act. If Commerce continues to find that this program is specific for the final results, it can remedy its improper use of AFA by using neutral facts available to determine the electricity benchmark in the form of an average of the rates listed in the GOC's electricity exhibit.[163]
- Even if Commerce disagrees with the argument that its preliminary finding regarding this program was flawed, Commerce must reverse its preliminary finding and remove all subsidy

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[159] *See Solar Cells from China 2014 AR* and accompanying IDM at Comment 4.
[160] *Id*.
[161] *See* Canadian Solar's Case Brief at 21.
[162] *Id*.
[163] *Id*. at 24.

benefits calculated after April 20, 2015, because the GOC has officially granted provinces the authority to prepare and publish electricity prices for their specific jurisdictions without review from the NDRC.[164]

- Commerce used the incorrect benchmark prices for "Sharp" in the benefit calculations for certain Canadian Solar's affiliates.[165]

SolarWorld's Rebuttal Comments:

- Canadian Solar argues that Commerce's AFA benefit analysis is flawed with regard to this program. Specifically, Canadian Solar contends that Commerce's use of the highest provincial electricity rate in China, due to the GOC's failure to provide information regarding how provincial rates are set, was incorrect.[166]
- Canadian Solar claims that Commerce "inferred" that the provision of electricity in China is a regional or geographic subsidy, and claims Canadian Solar did not pay the highest provincial electricity rates in China because those rates come from provinces where Canadian Solar is not located. Therefore, Canadian Solar argues that Commerce should use an average rate for all provinces.[167]
- In the *Preliminary Results*, Commerce reasonably applied AFA in its calculation for this program as the GOC failed to cooperate to the best of its ability regarding this program in this review.[168]
- Canadian Solar's argument about regional specificity is irrelevant given that the GOC refused to participate in this administrative review. It is reasonable for Commerce to presume as AFA that Canadian Solar paid the highest provincial rates in China, even if a Canadian Solar facility was not located in the province where that rate applies because the GOC has never disclosed to Commerce how the national adjustments are made.[169]
- Canadian Solar argues that the most appropriate rate would be a neutral facts available rate that averages the provincial electricity rates provided by the GOC. However, Canadian Solar's averaging argument contradicts the entire argument it advances regarding electricity. Using an average of rates including rates from other provinces in which Canadian Solar's facilities are not located does not conform to its argument that Commerce must use a rate from the province in which its facility is located.[170]
- The averaging method proposed by Canadian Solar would only constitute the application of neutral facts available, which would not incentivize compliance in future investigations or reviews.[171]
- Canadian Solar argues that Commerce should discontinue countervailing electricity subsidies after April 20, 2015 because the GOC stated that the NDRC delegated its authority to provincial governments. However, Commerce appropriately found that information on the

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[164] *Id*. at 25-26.
[165] *Id*. at 26.
[166] *See* SolarWorld's Rebuttal Brief at 17.
[167] *Id*.
[168] *Id*. at 17-19.
[169] *Id*. at 19.
[170] *Id*. at 20.
[171] *Id*.

record indicates otherwise.[172] As a result, Commerce should continue to countervail the electricity subsidies for the final results.

- Canadian Solar argues that Commerce should use an alternate electricity schedule with a different translation for "peak" and "sharp" usage. Commerce should reject Canadian Solar's argument. Parties to a review, and not Commerce, bear the responsibility to translate their submissions fully and accurately. Having failed to do so, respondents cannot now argue that Commerce should use a different translation.[173]

Commerce's Position: Commerce disagrees with Canadian Solar's arguments. As noted in the *Preliminary Results*, the GOC did not provide all of the information we requested and, therefore, we found the GOC did not act to the best of its ability to comply with our requests for information.[174] Because of the GOC's unwillingness to cooperate, we were unable to determine whether the electricity schedules submitted by the GOC were calculated based on market principles. As a result, we applied facts available with an adverse inference to determine the appropriate benchmark. Specifically, because the GOC provided the provincial tariff schedules, we relied on this information for the application of facts available and, in order to make an adverse inference, we identified the highest rates from 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 we 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 our need to identify electricity benchmarks based on facts available with an adverse inference. Our determination to use regional rates for the provision of electricity for LTAR does not reflect a determination by Commerce 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.[175]

With respect to Canadian Solar's argument that we should average the electrical rates from all provinces 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. Further, without sufficient record information on how the different electrical rates were determined, we consider it plausible that a company respondent in China could have been subject to the highest electrical rates in China, regardless of location. Accordingly, based on the record of this review, it is appropriate for Commerce to continue to

[172] *Id*. at 21.
[173] *Id*. at 22.
[174] *See* PDM at 25-26.
[175] *See Solar Cells from China 2014 AR* and accompanying IDM at Comment 10.

select the electricity benchmarks based on the highest rate for each category across all of China's electricity schedules.

We disagree with Canadian Solar's argument that we should remove all subsidy benefits calculated after April 20, 2015 because the GOC officially granted provinces the authority to prepare and publish electricity prices for their specific jurisdictions without review from the NDRC. As we stated in the *Preliminary Results*, record information indicates that while the GOC's Notice 748 and Notice 2909 direct provinces to reduce electricity prices and to report the enactment of those changes to the NDRC, neither of these notices allow the provincial authorities to determine and to issue electricity prices without oversight from the NDRC. To the contrary, Notice 748 and 2909 indicate that the NDRC continues to play an important role in setting and adjusting provincial electricity prices. Our finding on this issue is consistent with our recent findings in other China CVD cases.[176] As such, for these final results we are continuing to include any benefits conferred from this program after April 20, 2015.

Regarding Canadian Solar's argument that we should revise the "peak" and "sharp" categories for certain electricity calculations, we agree with the petitioner that we should continue to use the electricity schedules as we did in the *Preliminary Results*. We note that when constructing the benchmarks for this program and when comparing the electricity prices paid by the respondents to the benchmarks, we relied on the English translations of the electricity price categories as provided by the GOC and the respondents. We also agree with the petitioner that it is the responsibility of the respondents, and not Commerce, to ensure that documents submitted on the record are translated fully and accurately.

Comment 5: Polysilicon Benchmark

Canadian Solar's Comments:

- Commerce should use Canadian Solar's own market-economy purchases as the polysilicon benchmark. Commerce should accept Canadian Solar's own polysilicon purchases as a reliable benchmark because any distortions that may impact the domestic pricing in China have no impact on the pricing of an arms-length import transaction between Canadian Solar and a market economy seller.[177]

SolarWorld's Rebuttal Comments:

- In the *Preliminary Results*, Commerce found that the polysilicon market is distorted, and accordingly resorted to a tier two benchmark for measuring the benefit for this program. Pursuant to 19 CFR 351.511(a)(2)(ii), Commerce is precluded from using Canadian Solar's import prices because imported prices are considered to be domestic prices.[178]

[176] *See*, *e.g.*, *Chlorinated Isos from China 2015 AR* and accompanying IDM at Comment 2.
[177] *See* Canadian Solar's Case Brief at 27.
[178] *See* SolarWorld's Rebuttal Brief at 22.

- Because domestic prices are distorted, Commerce must use an offshore world price as the benchmark. Therefore, Commerce should continue to use an offshore, world market price, for the final results.[179]

Commerce's Position: We have previously addressed the argument raised by Canadian Solar regarding the use of what it claims to be "market-economy purchases" as the polysilicon benchmark,[180] and continue to find its arguments to be unavailing. For measuring the adequacy of remuneration for purchases of solar grade polysilicon, we declined to use the actual transactions from the respondents because we determined, pursuant to the facts available, that the GOC's intervention in China's solar grade polysilicon market leads to significantly distorted prices for solar grade polysilicon in China.[181] As such, we are not relying on domestic prices in China's solar grade polysilicon market, which includes "actual imports."[182] Because we continue to find, as facts available, that the GOC's intervention in China's solar grade polysilicon market leads to significantly distorted prices of this input in China, it would not be appropriate to rely on Canadian Solar's imports into China as the benchmark to measure the adequacy of remuneration for its domestic purchases of solar grade polysilicon. This is not only consistent with our regulation, but also consistent with our past practice in this proceeding.[183] As a result, for these final results, we continue to rely on a simple average of world market prices for solar grade polysilicon published by Bloomberg, Energy Trend, and Greentech media to construct our solar grade polysilicon benchmark.[184]

Comment 6: Solar Glass Benchmark

SolarWorld's Comments:

- In the *Preliminary Results*, Commerce departed from its prior practice of using published export statistics for global trade in solar glass as disseminated from Comtrade or from the Global Trade Atlas (GTA) database.[185] Instead, Commerce relied on data published by Greentech Media.
- Commerce stated that it relied on the Greentech Media data because it provided global monthly prices that are specific to solar glass.[186]
- Commerce selected Greentech Media data over Comtrade, GTS, and IHS Markit, stating that these three sources contained flaws that are not apparent in the solar glass pricing published by Greentech Media.[187]
- According to Commerce, the solar glass prices from IHS Markit are specific to solar glass but are only provided on an annual basis, while the GTA and Comtrade data include prices

[179] *Id.*
[180] *See Solar Cells from China 2014 AR* and accompanying IDM at Comment 6.
[181] *See* PDM at 15-25.
[182] *See* 19 CFR 351.511(a)(2)(i).
[183] *See Solar Cells from China 2014 AR* and accompanying IDM at Comment 6.
[184] *See* PDM at 32.
[185] *See* SolarWorld's Case Brief at 12.
[186] *Id.*
[187] *Id.*

for tempered glass, which is a broader category of glass that includes solar, but are provided on a monthly basis.

- Commerce's utilization of the Greentech Media prices was improper, as these prices undoubtedly include prices for Chinese solar glass.[188]
- In calculating the proper value of a benchmark, and in an effort to avoid distortions caused by policies in the market under investigation, Commerce typically will remove prices relevant to the country under investigation from the benchmark.[189]
- As the Greentech Media prices include Chinese pricing, Commerce should not rely on these prices to value solar glass.
- Commerce should not reject the Comtrade or the GTA data because solar glass is a form of tempered glass, and the market prices for solar glass and tempered glass are connected. Therefore, there should be no concern regarding the utilization of tempered glass pricing as found in the GTA and Comtrade data to value solar glass.[190]
- If Commerce assumes that solar glass is a distinct subset of tempered glass, it can revise the Comtrade data to limit any distortion found in the pricing for solar glass as it has done in the preceding administrative review of this CVD order.[191]

Canadian Solar's Rebuttal Comments:

- In the *Preliminary Results*, Commerce excluded the Chinese prices in the Greentech Media data when constructing the solar glass benchmark. Commerce should continue to use the Greentech Media data alone when calculating the solar glass benchmark for the final results.[192]

Trina Solar's Rebuttal Comments:

- Commerce properly determined that the benchmark for valuing the solar glass purchased by Trina Solar should be based solely on the monthly prices for solar glass as published by Greentech Media. The Greentech Media data provides monthly prices that are specific to solar glass.[193]
- Commerce correctly based its determination to exclude the GTA and Comtrade data from its benchmark because both datasets include monthly pricing that is not limited to solar glass.[194]
- Commerce should maintain the solar glass benchmark selected in the *Preliminary Results* because it represents monthly tax-exclusive pricing that is specific to Trina Solar's solar glass inputs and excludes Chinese prices for solar glass.[195]

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188 *Id.* at 13.
189 *Id.*
190 *Id.* at 14-15.
191 *Id.* at 15.
192 *See* Canadian Solar's Rebuttal Brief at 9-12.
193 *See* Trina Solar's Rebuttal Brief at 9.
194 *Id.*
195 *Id.* at 13.

Commerce's Position: In this review, we determined that China's solar glass market is distorted and that it is necessary to rely on a "tier two" (world market prices) benchmark for solar glass.[196] For world market prices for solar glass, parties provided: (1) prices published by IHS Markit that are specific to solar glass but are only provided on an annual basis; (2) GTA and Comtrade data that provide monthly prices but include prices for tempered glass, which is a broader category of glass that includes solar glass; and (3) data from Greentech Media that provides monthly prices specifically for solar glass.[197] In the *Preliminary Results*, we stated that where possible, to determine its benchmark, Commerce relies on the data reflecting the narrowest category of products encompassing the input product, which, in this instance, is solar glass and not tempered glass (for which prices are included in the GTA and Comtrade data).[198]

We also stated that Commerce has found prices reported on a monthly bases to be preferable to prices reported on an annual basis (IHS Markit data is provided on an annual rather than monthly basis) because this data reflects price fluctuations that may occur over the course of the POR.[199] As a result, we selected the world market prices published by Greentech Media for our solar glass benchmark, because these prices are for the narrowest category of product encompassing the input product (*i.e.*, solar glass), and are provided on a monthly basis, which reflects price fluctuations over the course of the POR.

The petitioner contends that the Greentech Media data contains prices from China, which would distort the examination for measuring the adequacy of remuneration regarding purchases of solar glass from China, the country in question. However, when constructing our solar glass benchmark, we removed solar glass prices from the Chinese market in order to avoid such distortions referenced by the petitioner.

Comment 7: Inclusion of VAT in the LTAR Benchmarks

Canadian Solar's Comments:

- Commerce should not include VAT in its benchmark calculations. In the final results, Commerce should revise the LTAR benchmarks to remove the 17 percent VAT from both the benchmark and the domestic purchases because VAT is not an allowable adjustment under the plain language of Commerce's regulations. The inclusion of VAT in the benchmark price also significantly distorts the comparison price to the purchase price.[200]
- Given that VAT is clearly excluded from the definition of "import charge" in 19 CFR 351.102(b)(26), it cannot be found to be an "import duty" or "delivery charge" under 19 CFR 351.511(a)(2)(iv).[201]

[196] *See* PDM at 16.
[197] *See* PDM at 16-17.
[198] *Id.*; *see also*, *Archer Daniels Midland Co. v. United States*, 968 F. Supp. 2d 1269, 1278 (CIT) (citing 19 CFR 351.511(a)(2)).
[199] *See* PDM at 16-17.
[200] *See* Canadian Solar's Case Brief at 31-32.
[201] *Id*. at 32.

Trina Solar's Comments:

- Commerce should not have adjusted the world market benchmark prices for polysilicon, solar glass, and aluminum extrusions to include VAT because adding VAT into the world market price would ignore the prevailing market conditions in which these key inputs are provided in the Chinese market.[202]
- Commerce's regulation does not provide for the adjustment of world market prices by indirect taxes such at VAT.[203]
- The record unequivocally indicates that the market for solar-grade polysilicon, aluminum extrusions, and solar glass in China is overwhelmingly sourced domestically. Therefore, it is unreasonable for Commerce to interpret its regulation as providing that an import price that includes VAT is reflective of the price a firm actually pays in the Chinese market for these inputs.[204]
- To include VAT as an adjustment to a tier two benchmark is inconsistent with the practical functioning of the VAT system in China because a firm does not pay VAT on a good that is further processed or later exported.[205]
- Including VAT in both actual purchase prices and comparison benchmark prices increases the size of the benefit provided to Trina Solar where no apparent benefit is provided at all since there is no cost to the government for refunding VAT charged on imported goods on exportation.[206]

SolarWorld's Rebuttal Comments:

- The respondents argue that VAT is not a "delivery charge" or "import duty" as contemplated by Commerce's regulations, and that VAT should not be included when benchmarking the LTAR subsidy programs. Commerce has rejected such claims in the past and should do so here.[207]
- The respondents also argue that the VAT they pay on its inputs is later recouped or refunded when they sell the finished product. This argument should be rejected as well, and Commerce should continue to include VAT in its benefit calculations for the final results.[208]

Commerce's Position: Pursuant to 19 CFR 351.511(a)(2)(iv), Commerce will adjust the 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. Commerce 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

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202 *See* Trina Solar's Case Brief at 2.
203 *Id*.
204 *Id*. at 5.
205 *Id*.
206 *Id*. at 7.
207 *See* SolarWorld's Rebuttal Case Brief at 25-28.
208 *Id*. at 28.

to delivery charges and import duties. As such, and consistent with past practice, we have not excluded VAT from our benchmark prices for these final results.[209]

Regarding the company respondents' arguments that VAT is not listed in Commerce's regulations as an allowable adjustment like delivery charges and import duties, 19 CFR 351.511(a)(2)(i) states that Commerce will:

> . . . normally seek to measure the adequacy of remuneration by comparing the government price to a market-determined price for the good or service resulting from actual transactions in the country in question. Such a price could include prices stemming from actual transactions between private parties, actual imports, or, in certain circumstances, actual sales from competitively run government auctions. In choosing such transactions or sales, the Secretary will consider product similarity; quantities sold, imported, or auctions; and other factors affecting comparability.[210]

As we have stated before, this is the governing principle when Commerce conducts the benefit analysis for an LTAR program.[211] As part of this, where an import price is used, 19 CFR 351.511(a)(2)(iv) establishes that Commerce 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. The respondent companies misunderstand the benchmark price and comparison price being constructed by Commerce.

Commerce 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, Commerce 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, VAT is appropriate to include in the benchmark. Canadian Solar also argues that we should remove the VAT payments from its domestic purchases. This is incorrect because as noted above, Commerce'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. The GOC confirmed this by reporting the VAT assessment rates that apply to each of these inputs.[212]

Accordingly, we find that Commerce's 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

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209 *See Beijing Tiahai Indus. Co. v. United State*, 52 F. Supp. 3d 1351, 1372-75 (CIT 2015) (*Beijing Tiahai*); *see also Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review; 2014-2015*, 82 FR 42792 (September 12, 2017) (*Solar Products from China 2014-2015 AR*) and accompanying IDM at Comment 9.
210 *See* 19 CFR 351.511(a)(2)(i).
211 *See*, *e.g.*, *Solar Products from China 2014-2015 AR* at Comment 9.
212 *See* the GOC's August 29, 2017 QR at 58, 102, and 125.

purchases by removing VAT would result in a less accurate comparison and, therefore, would be inconsistent with Commerce's regulations. As such, we 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 LTAR benchmarks and from their domestic purchases of inputs. We have considered and rejected this argument before.[213] This argument fails to consider Commerce's obligation to conduct a comparison between a market price and the price paid by the respondent. Section 351.511(a)(2) of Commerce'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 Commerce must use as the comparison price under 19 CFR 351.511(a)(2)(iv).[214]

Comment 8: Inclusion of International Freight in the LTAR Benchmarks

Canadian Solar's Comments:

- Commerce must remove international freight from its benchmark adjustments to account for the prevailing market conditions in the country of provision.[215] Commerce was incorrect when it included international freight as part of the benchmarks for aluminum, polysilicon, and solar glass. International delivery charges do not represent the prevailing market conditions.
- If Commerce continues to include ocean freight in the LTAR benchmarks, it should rely only on the Xeneta rates submitted by Canadian Solar and Trina Solar. Unlike the Xeneta rates, which are based on a statistical sample of actual freight contract rates, the petitioner's proposed ocean freight benchmark rates from Maersk are composed of quotes that have not been finalized or actually agreed upon between parties.[216]

SolarWorld's Rebuttal Comments:

- Commerce should reject Canadian Solar's argument that international freight should be excluded in the LTAR benchmarks. Commerce longstanding practice is to include international freight when constructing tier two benchmarks. The U.S. Court of Appeals for the Federal Circuit has upheld Commerce's inclusion of international freight when constructing a world market price.[217]
- Canadian Solar's argument that Commerce should only use Canadian Solar's suggested international freight data should be rejected. Canadian Solar contends that the Xeneta data serves as a more reliable source because it is a statistical sample of actual freight contracts, a as opposed to the Maersk data which provides freight quotes.[218]

[213] *See*, *e.g.*, *Solar Products from China 2014-2015 AR* and accompanying IDM at Comment 9.
[214] *Id*.
[215] See Canadian Solar's Case Brief at 35.
[216] *Id*. at 37-39.
[217] *See* SolarWorld's Rebuttal Brief at 29.
[218] *Id*. at 30.

- After espousing the virtues of using the IHS Markit data with regard to world prices for the LTAR inputs, Canadian Solar appears to have abandoned that argument here as the IHS Markit prices are based on surveys.[219]
- Commerce has a longstanding practice of using Maersk freight prices in constructing its benchmarks.[220]

Commerce's Position: For these 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."[221] The courts have upheld our application of these adjustments as lawful and in compliance with our regulations.[222] We determined that it was appropriate to use world market prices as the benchmarks for the company respondents' purchases of the inputs under examination 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 the 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.[223] However, consistent with section 771(5)(E) of the Act, Commerce does consider the prevailing conditions of the country in question in this analysis.

Accordingly, we are using ocean freight charges, actual inland freight charges as reported by the company respondents, and actual Chinese import duties for the specific inputs we are examining to compute benchmark prices. Thus, these charges reflect prices and rates in the Chinese market, and they, therefore, relate directly to prevailing market conditions in China.[224]

In the *Preliminary Results*, we relied on an average of POR shipping data from Maersk and Xeneta to value ocean freight.[225] For these final results, we are now relying solely on shipping data from Maersk to value ocean freight in our LTAR benchmarks. As stated above, under 19 CFR 351.511(a)(2)(iv), Commerce will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. The Xeneta data submitted by Canadian Solar and Trina Solar either includes or excludes terminal handling charges, according to

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[219] *Id.*
[220] *Id.*
[221] *See* 19 CFR 351.511(a)(2)(iv).
[222] *See Beijing Tiahai*; *see also Zhaoqing New Zhongya Aluminum Co., Ltd. v. United States*, 929 F. Supp. 2d 1324, 1327 (CIT 2013).
[223] *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 8, 2015) and accompanying IDM at Comment 3.
[224] *Id.*
[225] *See* PDM at 18.

Xeneta's data methodology.[226] Our examination of the Xeneta data submitted in the company respondents' benchmark submissions leads us to conclude that terminal handling charges are not always included in the ocean freight rates to Asia.[227] Because the Xeneta data inconsistently includes terminal handling charges, we are not using it to value freight for these final results.[228]

Comment 9: Golden Sun Demonstration Program

Canadian Solar's Comments:

- In the *Preliminary Results*, Commerce's finding that the Golden Sun Demonstration Program was countervailable and conferred a benefit on Canadian Solar was incorrect.[229]
- This program provides assistance for the generation of electricity and not for the production of the subject merchandise.
- The facilities that benefited from the subsidy were not located on Canadian Solar's premises.
- The benefits Canadian Solar received under this program were specifically dedicated to its involvement in the construction of solar power generation products, and not dedicated to the production of the subject merchandise.[230] As a result, Commerce should find this program is not countervailable with respect to Canadian Solar.
- If Commerce continues to find this program is countervailable, it must revise its denominator calculation for Canadian Solar.
- Commerce used the total sales for producers as the denominator. However, grants from this program are beneficial to both producers and their input suppliers as evidenced in the previous administrative review.[231] Commerce should correct its calculation in the final results to use the sum of sales for all cross-owned entities.

SolarWorld's Rebuttal Comments:

- Canadian Solar argues that Commerce should not countervail grants tied to this program, claiming that grants from this program are tied to the generation of electricity at other facilities and not at the facilities that produce subject merchandise.[232] Canadian Solar's argument should be rejected.

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[226] Letter from Canadian Solar, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China: Benchmark Submission," dated November 1, 2017 (Canadian Solar Benchmark Submission) at Exhibit 7; and Letter from Trina Solar, "Crystalline Silicon Photovoltaic Cells, Whether Or Not Assembled Into Modules, from the People's Republic of China: Benchmark Submission," dated November 1, 2017(Trina Solar Benchmark Submission) at Exhibit 9.
[227] *See* Canadian Solar Benchmark Submission at Exhibit 7C; *see also* Trina Solar Benchmark Submission at Exhibit 9.
[228] *See*, *e.g.*, *Countervailing Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Final Affirmative Determination*, 83 FR 9274 (March 5, 2018) and accompanying IDM at Comment 26 (Commerce rejected the use of Xeneta ocean freight rates because the rates inconsistently included terminal handling charges).
[229] *See* Canadian Solar's Case Brief at 28.
[230] *Id.*
[231] *Id.* at 29.
[232] *See* SolarWorld's Rebuttal Brief at 23.

- The *CVD Preamble* warns that respondents may attempt to use Commerce's attribution rules to escape countervailing duties. As a result, Commerce examines "all tying claims closely to ensure that the attribution rules are not manipulated to reduce countervailing duties."[233] This is the case here, where Canadian Solar is provided subsides for both downstream and upstream portions of its business.
- Canadian Solar argues that this program was established to promote the technical progress and development of the photovoltaic electricity industry, which, according to Canadian Solar, exempts it from having grants from this program countervailed because it is a producer of subject merchandise.[234]
- Canadian Solar is clearly part of the photovoltaic electricity industry that this program is designed to benefit. The granting government authority believes that Canadian Solar is part of this industry, and subsidies from this program benefit the production of electricity generation equipment. As a result, Canadian Solar's arguments should be rejected.[235]
- Canadian Solar argues that Commerce should attribute benefits from the Golden Sun program to all of its cross-owned producers. However, Canadian Solar does not cite to Commerce's attribution regulation in making this argument because the regulations are contrary to its argument.[236]
- Subsidies provided to input suppliers are attributed to the combined sales of the input supplier and the producer of subject merchandise, whereas subsidies provided to producers of subject merchandise are attributed to the combined sales of only producers of subject merchandise.[237] Therefore, for the final results, Commerce should continue to attribute this subsidy as it did in the *Preliminary Results*.

Commerce's Position: We have previously addressed Canadian Solar's arguments regarding the countervailability of this program,[238] and we continue to find its arguments to be unavailing. In its case brief, Canadian Solar argues that this subsidy is tied to the production of non-subject merchandise. We have explained before in this proceeding that 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, Commerce 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 track how benefits are used by companies.[239] 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.[240]

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[233] *Id*.
[234] *Id*. at 24.
[235] *Id*.
[236] *Id*. at 24-25.
[237] *Id*. at 25.
[238] *See*, *e.g.*, *Solar Cells from China 2014 AR* and accompanying IDM at Comment 13.
[239] *See CVD Preamble*, 63 FR at 65399-65404.
[240] *See*, *e.g.*, *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012) and accompanying IDM at Comment 21; *see also Solar Cells from China 2014 AR* and accompanying IDM at Comment 13.

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.[241] In this review, the GOC did not provide any new information that would warrant the reexamination of this program.[242] Canadian Solar states that the funds it received under this program were specifically dedicated to its involvement in the construction of solar power generation products, and not dedicated to the production of the subject merchandise. However, the record demonstrates otherwise. As detailed in the GOC's "Notice Concerning the Implementation of the Golden Sun Demonstration Project (Cai Jian {2009} 397),"the GOC allocated funds to support the Golden Sun Demonstration program.[243] Article 2 of this document states that the Golden Sun Demonstration program is designed to accelerate the industrialization and development of China's photovoltaic power industry and to promote the progress of photovoltaic power generation technology.[244] As Canadian Solar is a producer of crystalline silicon photovoltaic cells (*i.e.*, subject merchandise) and received funds from this program, the record does not support Canadian Solar's argument.

Because funds from the Golden Sun Demonstration program are provided to promote the development of China's photovoltaic power industries (which includes the development of solar cells), we find that funds from this program are not tied solely to solar power generation projects. 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.[245]

With respect to Canadian Solar's argument that we should revise the denominator to include its input providers for this program for the final results, we disagree. We have found certain producers of subject merchandise and input producers that are affiliated with Canadian Solar to be "cross-owned," as defined by 19 CFR 351.525(b)(6)(vi).[246] Section 351.525(b)(6)(ii) instructs that if two or more companies with cross-ownership produce subject merchandise, subsidies received by either or both companies will be attributed to the products produced by both companies. With respect to the attribution of subsidies to cross-owned input producers, 19 CFR 351.525(b)(6)(iv) provides that subsidies received by the input producers are attributed to the combined sales of the input producers and downstream producers. We disagree with Canadian Solar that we should attribute subsidies from the Golden Sun Demonstration program across the sum of the sales of all of Canadian Solar's cross-owned producers and input suppliers.

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[241] *See* Letter to the GOC, "Administrative Review of the Countervailing Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Countervailing Duty Questionnaire," dated July 7, 2017 at II-1.

[242] *See* GOC August 29, 2017 QR at 25-33.

[243] *See* Additional Documents Memorandum at Attachment M, "Excepts from Letter from the Government of the People's Republic of China, "Response of the Government of the People's Republic of China to the Department's Questionnaire: Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China," (April 21, 2014), (public version), Exhibit A.8, 'Notice Concerning the Implementation of the Golden Sun Demonstration Project (Cai Jian {2009} 397)'."

[244] *Id.*

[245] *See*, *e.g.*, *Solar Cells from China 2014 AR* at Comment 13.

[246] *See* PDM at 7-8.

As stated by Canadian Solar, we have correctly followed Commerce's attribution rules for this program in the *Preliminary Results* ("{f}or the reported producers of subject merchandise, we are attributing any subsidy received by these companies to the combined sales of these companies, excluding intercompany sales, in accordance with 19 CFR 351.525(b)(6)(ii). For input producers, we are attributing subsidies received by the input producers to the combined sales of the input and downstream products produced by the input producer and downstream producers, pursuant to 19 CFR 351.525(b)(6)(iv).")[247] and we see no reason to revise the denominator for this program for these final results.

Comment 10: Offsetting Purchases Made Above LTAR Benchmarks

Canadian Solar's Comments:

- In the *Preliminary Results*, Commerce improperly calculated the benefits for Canadian Solar's aluminum, solar glass, polysilicon, loans, and electricity programs.[248] Commerce's decision to "zero" negative benefits is inconsistent with the Act and with its own regulations, which direct Commerce to determine whether a respondent received "a benefit" from the government's provision of goods and/or services.[249]
- The use of "benefit" in the singular and "services" in the plural indicates that Commerce must determine the overall benefit derived from all government sales of the services. This requirement is violated if certain government sales that are priced higher than Commerce's benchmarks are disregarded.[250] This practice has the effect of artificially inflating the countervailable subsidy rate.
- By failing to measure the true difference between Canadian Solar's prices paid and benchmark prices for all sales, including those made at higher than benchmark levels, Commerce's calculation fails to reflect the actual market conditions under which Canadian Solar's purchases for its goods and/or services were paid.[251]

SolarWorld's Rebuttal Comments:

- Commerce properly considers the failure to zero such comparisons to be an "impermissible offset" that is not permitted under the statute.[252] Accordingly, Commerce should reject Canadian Solar's argument.

Commerce's Position: The LTAR benefit methodology applied in the *Preliminary Results*, which is to compare the actual input purchases made by the respondent to a world market price, is consistent with the regulations and Commerce's practice.[253] In a subsidy analysis, a benefit is

[247] *Id*.
[248] *See* Canadian Solar's Case Brief at 29-30.
[249] *Id*. at 30.
[250] *Id*.
[251] *Id*. at 31.
[252] *See* SolarWorld's Rebuttal Brief at 25.
[253] *See* 19 CFR 351.511(a)(2)(ii); *see also*, *e.g.*, *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China: Preliminary Affirmative Determination*, 80 FR 68843

either conferred or not conferred, and a positive benefit from certain transactions cannot be masked by "negative benefits" from other transactions. There is no offsetting credit for transactions that did not provide a subsidy benefit. Such an adjustment is not contemplated under the statute and is inconsistent with Commerce's practice.[254] Therefore, we have made no modifications to the final results regarding alleged "negative" benefits.

Comment 11: Benefit Calculation for the Preferential Policy Lending Program

Canadian Solar's Comments:

- Commerce must revise its loan benefit calculation for Canadian Solar to reflect the date on which the loan agreement was made and the interest rate was agreed upon. This is consistent with the previous administrative review.[255]
- Commerce must recalculate the number of days that certain interest payments cover for loans that were received prior to the POR. To ensure an accurate comparison between the rate that Canadian Solar could have attained in the private market that reflects the relevant POR, the correct number of days an interest payment covers should start at the POR. For loans received before 2015, the correct number of days that each interest payment covers should begin on January 1, 2015.[256]

No other party commented on this issue.

Commerce's Position: We agree with Canadian Solar. The loan approval date is the date on which the terms of the loan, including interest rate, were established. To ensure that the benefits from loans under this program are calculated correctly, 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.[257] We also agree with Canadian Solar that for loans received before the POR, the correct number of days that each interest payment covers should begin at the start of the POR (*i.e.*, January 1, 2015), and not prior to the POR. We have adjusted Canadian Solar's loan calculations accordingly for these final results.

(November 6, 2015), and accompanying PDM at 33-34 (unchanged in the Final Determination, 81 FR 35308 (June 2, 2016)).

[254] *See*, *e.g.*, *Final Results of Countervailing Duty New Shipper Review: Certain Softwood Lumber Products from Canada*, 70 FR 56640 (September 28, 2005) and accompanying IDM at Comment 6; *see also Certain Oil Country 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) and accompanying IDM at Comment 14.

[255] *See* Canadian Solar's Case Brief at 40.

[256] *Id*.

[257] *See Solar Cells from China 2014 AR* and accompanying IDM at Comment 12.

Comment 12: Entered Value Adjustment

Canadian Solar's Comments:

- In the *Preliminary Results*, Commerce failed to make an "export value adjustment"[258] to the subsidy rate denominator as requested by Canadian Solar. Commerce must make this adjustment because all of Canadian Solar's sales to the United States were to Canadian Solar USA through an affiliated company, which then resold the subject merchandise to unaffiliated customers in the United States.[259]

SolarWorld's Rebuttal Comments:

- Commerce should deny Canadian Solar's request. Commerce has a longstanding practice of using FOB sales for the denominator in the subsidy calculation. Canadian Solar has failed to demonstrate that the subsidy is warranted in an administrative review. And given the scant support submitted in support of Canadian Solar's argument, Commerce should deny the adjustment in the final results.[260]

Commerce's Position: Commerce's practice is to use the FOB sales value for the denominator in its subsidy calculations.[261] However, in limited circumstances, Commerce has adjusted the calculation of the subsidy rate when the sales value used to calculate that subsidy rate does not match the entered value of the subject merchandise, *e.g.*, where subject merchandise is exported to the United States with a mark-up from an affiliated company, and where the respondent can demonstrate that: 1) the price on which the alleged subsidy is based differs from the U.S. invoiced price; 2) the exporters and the party that invoices the customer are affiliated; 3) the U.S. invoice establishes the customs value to which the CVD duties are applied; 4) there is a one-to-one correlation between the invoice that reflects the price on which subsidies are received and the invoice with the mark-up that accompanies the shipment; 5) the merchandise is shipped directly to the United States; and 6) the invoices can be tracked as back-to-back invoices that are identical except for price.[262]

Commerce's practice of granting a sales adjustment is limited to instances where a respondent can demonstrate that all of its sales to the United States met the six criteria listed above. This is to satisfy Commerce that the sales value adjustment properly reflects an upward adjustment to

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[258] Canadian Solar uses the term "export value adjustment." Commerce recently used this term in *Aluminum Foil from China*, but Commerce has typically referred to this adjustment as an "entered value adjustment". *See Coated Paper from China* and *Aluminum Extrusions from China*. We have chosen to continue to refer to this adjustment as an "entered value adjustment."
[259] *See* Canadian Solar's Case Brief at 41-43.
[260] *See* SolarWorld's Rebuttal Brief at 30-32.
[261] *See* 19 CFR 351.525(a).
[262] *See*, *e.g.*, *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 59212 (September 27, 2010) and accompanying IDM at Comment 32; *see also Aluminum Foil from China* and accompanying IDM at Comment 14.

the sales value of all merchandise that entered the United States, and on which Customs and Border Protection assessed dutiable value.[263]

In *Aluminum Foil from China*, we denied granting an entered value adjustment to one of the responding companies stating that, among the other criteria listed, in order to qualify for an adjustment to its sales denominator, a respondent must be able to demonstrate that there is a higher customs value for *all* of its U.S. sales.[264] Canadian Solar contends that it qualifies for this adjustment because it satisfies each of the six criteria listed above.[265] However, our review of the information Canadian Solar submitted to support its claim leads us to conclude otherwise. Generally, Canadian Solar has not demonstrated that there is a higher customs value for all of its U.S. sales. As a result, we are denying Canadian Solar's request for an entered value adjustment for these final results. Because the information leading us to this finding is business proprietary in nature, our analysis on this issue is set forth in Canadian Solar's final calculations memorandum.

Comment 13: Clerical Errors in the Preliminary Results

Canadian Solar's Comments:

- Commerce must correct calculation errors with respect to Canadian Solar regarding its total sales denominator, the Golden Sun Demonstration Program, and the Provision of Polysilicon for LTAR Program.[266]

No other party commented on this issue.

Commerce's Position: In the *Preliminary Results*, we made certain inadvertent clerical errors when calculating Canadian Solar's subsidy benefits. We have corrected these errors for the final results, which are discussed in Canadian Solar's final calculations memorandum.

[263] *See Aluminum Foil from China* at Comment 14.
[264] *Id.* (emphasis added).
[265] *See* Letter from Canadian Solar, "Crystalline Silicon Photovoltaic Cells, Whether Or Not Assembled into Modules from the People's Republic of China, Questionnaire Response of Canadian Solar and Affiliates, Volume II, Canadian Solar Manufacturing (Changshu) Inc." dated August 28, 2017 at 10-12; *see also* Canadian Solar's Case Brief at 41-43.
[266] *See* Canadian Solar's Case Brief at 43-45.

XIII. CONCLUSION

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

☒ ☐

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Agree Disagree

7/12/2018

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

Appendix

Non-Selected Companies Under Review

1. Baoding Jiasheng Photovoltaic Technology Co., Ltd.
2. Baoding Tianwei Yingli New Energy Resources Co., Ltd.
3. Beijing Tianneng Yingli New Energy Resources Co., Ltd.
4. Canadian Solar International, Ltd.
5. Chint Solar (Zhejiang) Co., Ltd.
6. Dongguan Sunworth Solar Energy Co., Ltd.
7. ERA Solar Co., Ltd.
8. ET Solar Energy Limited
9. ET Solar Industry Limited
10. Hainan Yingli New Energy Resources Co., Ltd.
11. Hangzhou Sunny Energy Science and Technology Co., Ltd.
12. Hangzhou Zhejiang University Sunny Energy Science and Technology Co., Ltd.
13. Hengdian Group DMEGC Magnetics Co., Ltd.
14. Hengshui Yingli New Energy Resources Co., Ltd.
15. JA Solar Technology Yangzhou Co., Ltd.
16. Jiangsu High Hope Int’l Group
17. Jiawei Solarchina Co., Ltd.
18. Jiawei Solarchina (Shenzhen) Co., Ltd.
19. JingAo Solar Co., Ltd.
20. Jinko Solar Co., Ltd.
21. Jinko Solar Import and Export Co., Ltd.
22. Jinko Solar International Limited
23. Jinko Solar (U.S.) Inc.
24. Lightway Green New Energy Co., Ltd.
25. Lixian Yingli New Energy Resources Co., Ltd.
26. Luoyang Suntech Power Co., Ltd.
27. Ningbo Qixin Solar Electrical Appliance Co., Ltd.
28. Risen Energy Co., Ltd.
29. Shanghai JA Solar Technology Co., Ltd.
30. Shenzhen Glory Industries Co., Ltd.
31. Shenzhen Topray Solar Co., Ltd.
32. Sumec Hardware & Tools Co. Ltd.
33. Systemes Versilis, Inc.
34. Taizhou BD Trade Co., Ltd.
35. tenKsolar (Shanghai) Co., Ltd.
36. Tianjin Yingli New Energy Resources Co., Ltd.
37. Toenergy Technology Hangzhou Co., Ltd.
38. Wuxi Suntech Power Co., Ltd.
39. Yingli Energy (China) Co., Ltd.
40. Zhejiang Era Solar Technology Co., Ltd.
41. Zhejiang Jinko Solar Co., Ltd.
42. Zhejiang Sunflower Light Energy Science & Technology Limited Liability Company