C-570-980
Administrative Review
POR: 01/01/2016-12/31/2016
Public Document
E&C Office VII: Team

DATE: February 12, 2019

MEMORANDUM TO: Christian Marsh
Deputy 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 Preliminary Results of the Countervailing Duty Administrative Review, Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China

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I. Summary

The Department of Commerce (Commerce) is conducting an 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). The period of review (POR) is January 1, 2016, through December 31, 2016. The mandatory respondents are Canadian Solar Inc. (Canadian Solar) and Jinko Solar Import & Export Co., Ltd. (Jinko Solar). This is the fifth administrative review of the CVD order. We preliminarily find that Canadian Solar and Jinko Solar received countervailable subsidies during the POR.

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

II. Background

On December 7, 2012, we published the CVD order on solar cells from China.[1] On December 4, 2017, we published in the *Federal Register* a notice of opportunity to request an administrative review of the *CVD Order* for the POR.[2] Pursuant to section 751(a)(1) of the Act and 19 CFR 351.213(b)(1), between December 22, 2017 and January 2, 2018, Commerce received timely requests to conduct an administrative review of the *CVD Order* from the following interested parties: Chint Solar (Zhejiang) Co., Ltd.; Shanghai Ja Solar Technology Co., Ltd., JA Solar Technology Yangzhou Co., Ltd.; JingAo Solar Co., Ltd.; Canadian Solar Inc.; Shenzhen Topray Solar Co., Ltd.; Ningbo Qixin Solar Electrical Appliance Co., Ltd.; Goal Zero LLC; Sunpreme Inc.; SolarWorld Americas Inc. (the petitioner in the underlying CVD investigation), which requested reviews of multiple companies; Hengdian Group DMEGC Magnetics Co., Ltd.; Nice Sun PV Co., Ltd.; Jinko Solar; Yingli Green Energy Holding Company Ltd.; Sumec Hardware & Tools Co., Ltd.; and Changzhou Trina Solar Energy Co., Ltd. (Trina Solar).

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 were, at that time, extended by three days.

On January 31, 2018, the petitioner timely withdrew its requests for reviews on ET Solar Industry Limited and Hangzhou Zhejiang University Sunny Energy Science and Technology Co., Ltd.[4] On February 23, 2018, in accordance with 19 CFR 351.221(c)(1)(i), Commerce published in the *Federal Register* a notice of initiation of an administrative review of the *CVD Order* for 54 Chinese producers/exporters of subject merchandise during the POR.[5] In the *Initiation Notice*, we stated that, in the event we limited the number of respondents for individual examination in this administrative review, we intended to select respondents based on CBP data for U.S. imports of subject merchandise during the POR.[6] On February 27, 2018, we released the CBP entry data for imports of subject merchandise in the United States during the POR to parties authorized to receive proprietary information under the administrative protective order for this segment of the proceeding, and invited parties to comment on the data and on our respondent selection methodology.[7] We received no comments regarding the CBP data for respondent selection. On March 26, 2018, BYD

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[1] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Countervailing Duty Order*, 77 FR 73017 (December 7, 2012) (*CVD Order*).
[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 82 FR 57219 (*Opportunity Notice*).
[3] *See* Memorandum, "Deadlines Affected by the Shutdown of the Federal Government," dated January 23, 2018.
[4] *See* Letter from the petitioner, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Withdrawal of Request for Administrative Review," dated January 31, 2018 (Petitioner's Withdrawal of Request for Review).
[5] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 37 (February 23, 2018) (*Initiation Notice*).
[6] *See Initiation Notice* at the section, "Respondent Selection."
[7] *See* Memorandum, "Administrative Review of the Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China; Release of Customs Entry Data for Respondent Selection," dated February 27, 2018.

(Shangluo) Industrial Co., Ltd. (BYD Shangluo) certified that it had no exports or sales of subject merchandise in the United States during the POR.[8]

On April 17, 2018, we selected two mandatory respondents, Canadian Solar and Jinko Solar, the two largest Chinese producers/exporters of subject merchandise based on the CBP entry data during the POR.[9] On April 26, 2018, we sent a questionnaire to the Government of China (GOC), seeking information regarding the alleged subsidies, requesting the GOC to forward this questionnaire to the mandatory respondents.[10] On May 10, 2018, and June 20, 2018, Trina Solar timely responded to our CVD Questionnaire, and requested voluntary treatment in this administrative review.[11] Between May 17, 2018 and December 19, 2018, the GOC and the two mandatory respondents timely responded to our questions regarding our CVD Questionnaire.[12]

On August 22, 2018, we extended the deadline for these preliminary results by 90 days to December 4, 2018.[13] On October 25, 2018, we informed counsel to Trina Solar that we are denying Trina Solar's request for individual examination as a voluntary respondent.[14]

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[8] *See* Letter from BYD Shangluo, "Crystalline Silicon Photovoltaic Cells, Whether Or Not Assembled Into Modules, from the People's Republic of China: No Shipment Statement from BYD (Shangluo) Industrial Co., Ltd.," dated March 26, 2018 (BYD Shangluo No Shipment Certification).

[9] *See* Memorandum, "Administrative Review of the Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China; Respondent Selection Memorandum," dated April 17, 2018 (Respondent Selection Memorandum).

[10] *See* Commerce Letter to the GOC, "Countervailing Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Countervailing Duty Questionnaire," dated April 26, 2018 (CVD Questionnaire).

[11] *See* Letters from Trina Solar, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China: Section III (Affiliated Companies) Response," dated May 10, 2018; and "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China: Section III Questionnaire Response and Request for Voluntary Treatment," dated June 20, 2018.

[12] *See* Letter from Canadian Solar, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China: Affiliated Companies Response," dated May 17, 2018 (Canadian Solar Affiliations QR); Letter from Jinko Solar, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Affiliated Companies Response of Jinko Solar Import and Export Co., Ltd.," dated May 17, 2018 (Jinko Solar Affiliations QR); Letter from the GOC, "GOC Initial CVD Questionnaire Response: Fifth 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 June 19, 2018 (GOC June 19, 2018 QR); Letter from Canadian Solar, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China: Countervailing Duty Questionnaire Response – Section III," dated June 19, 2018 (Canadian Solar June 19, 2018 QR); Letter from Jinko Solar, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China: Jinko's Section III Response," dated June 19, 2018 (Jinko Solar June 19, 2018 QR); and Letter from the GOC, "GOC Supplemental CVD Questionnaire Response: Fifth 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 December 19, 2018 (GOC December 19, 2018 QR).

[13] *See* Memorandum, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Extension of Deadline for the Preliminary Results of Countervailing Duty Administrative Review; 2016," dated August 22, 2018.

[14] *See* Memorandum, "Administrative Review of the Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China; Telephone Call with Counsel for Trina Solar Energy Co., Ltd." dated October 25, 2018; *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: Selection of Voluntary Respondent," dated concurrently with this Decision Memorandum.

On November 5, 2018, and on December 4, 2018, the petitioner, Canadian Solar, and Jinko Solar timely submitted benchmark data.[15] Also on November 5, 2018, the petitioner submitted an allegation that certain Canadian Solar and certain Jinko Solar affiliated companies were uncreditworthy between 2014 and 2016.[16] On November 9, 2018, Jinko Solar requested that we reject the petitioner's November 5, 2018, creditworthiness allegations because the allegations contain new factual information.[17] On November 12, 2018, the petitioner responded to Jinko Solar's November 9, 2018, rejection request stating that its Creditworthiness Allegation contained no new factual information.[18] On November 15, 2018, Canadian Solar and Jinko Solar each timely submitted information to rebut or clarify Petitioner's Benchmark Submission.[19]

On November 27, 2018, we further extended the deadline for these preliminary results to no later than January 3, 2019.[20] Between November 19, 2018, and December 14, 2018, the petitioner, Canadian Solar, and Jinko Solar each submitted comments on these preliminary results.[21] No other parties submitted comments on these preliminary results.

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.[22] If

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[15] *See* Letter from the petitioner, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Submission of Benchmark Information," dated November 5, 2018 (Petitioner Benchmark Submission); 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 5, 2018 (Canadian Solar Benchmark Submission); Letter from Jinko Solar, "Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules: Jinko's Benchmark Information," dated November 5, 2018 (Jinko Solar Benchmark Submission); and Letter from Canadian Solar, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China: Additional Benchmark Submission," dated December 4, 2018 (Canadian Solar Second Benchmark Submission).

[16] *See* Letter from the petitioner, Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Creditworthiness Allegations," dated November 5, 2018 (Creditworthiness Allegation).

[17] *See* Letter from Jinko Solar, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Request to Reject Petitioner's Creditworthiness Allegations," dated November 9, 2018.

[18] *See* Letter from the petitioner, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Response to Jinko's Request to Reject SolarWorld's Creditworthiness Allegation," dated November 12, 2018.

[19] *See* Letter from Canadian Solar, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China: Rebuttal Benchmark," dated November 15, 2018 (Canadian Solar Rebuttal Benchmarks); and Letter from Jinko Solar, "Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules: Jinko's Rebuttal to Petitioner's Benchmark Information," dated November 15, 2018 (Jinko Solar Rebuttal Benchmarks).

[20] *See* Memorandum, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Second Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review; 2016," dated November 27, 2018.

[21] *See* Letter from the petitioner, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Pre-Preliminary Determination Comments," dated November 19, 2018; Letter from Canadian Solar, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China: Pre-Preliminary Comments," dated December 14, 2018; and Letter from Jinko Solar, "Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules: Jinko's Pre-Preliminary Comments," dated December 14, 2018.

[22] *See* Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for

the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for these preliminary results is now February 12, 2019.

III. Intent to Rescind the 2016 Administrative Review, In Part

We received a timely filed no-shipments certification from BYD Shangluo.[23] To confirm BYD Shangluo's statement, we issued a no-shipment inquiry to CBP with regard to imports of subject merchandise from BYD Shangluo during the POR.[24] Because no evidence currently on the record contradicts BYD Shangluo's certification of no-shipments, we preliminarily intend to rescind this review with regard to BYD Shangluo. A final decision on whether to rescind the review with respect to BYD Shangluo will be made in the final results of this review.

IV. Non-Selected Companies Under Review

The statute and Commerce's regulations do not directly address the establishment of rates to be applied to companies not selected for individual examination where Commerce limits 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 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.

For the companies for which a review was requested that were not selected as mandatory company respondents, and for which we did not receive a timely request for withdrawal of review, and which we are not finding to be cross-owned with the mandatory company respondents, we are preliminarily basing the subsidy rate on a weighted-average of the subsidy rates calculated for Canadian Solar and Jinko Solar, and their cross-owned companies, 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 Preliminary Decision Memorandum (PDM).

V. Scope of the Order

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

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

Enforcement and Compliance, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

[23] *See* BYD Shangluo No Shipment Certification.

[24] *See* CBP message no. 8352308, dated December 18, 2018.

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, 8541.40.6015, 8541.40.6020, 8541.40.6025, 8541.40.6030, 8541.40.6035, 8541.40.6045, and 8501.31.8000.[25] These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of this order is dispositive.

VI. Application of the Countervailing Duty Law to Imports from China

On October 25, 2007, Commerce published its final determination on coated free sheet paper from China, finding that:

> . . . given the substantial difference between the Soviet-style economies and China's economy in recent years, the Department's previous decision not to apply the CVD law to the Soviet-style economies does not act as a bar to proceeding with a CVD investigation involving products from China.[26]

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[25] *See* Memorandum, "Request from Customs and Border Protection to Update the ACE AD/CVD Case Reference File; Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China (C-570-980)," dated August 6, 2018. This memorandum references adding the additional HTSUS subheadings, 8541.40.6015, 8541.40.6025, 8541.40.6035, and 8541.40.6045.

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

Commerce affirmed its decision to apply the CVD law to China in numerous subsequent determinations.[27] Furthermore, on March 13, 2012, Public Law 112-99 was enacted which confirms that Commerce has the authority to apply the CVD law to countries designated as non-market economies under section 771(18) of the Act, such as China.[28] The effective date of the enacted legislation makes clear that this provision applies to this proceeding.[29]

VII. Diversification of China's Economy

Concurrently with this decision memorandum, Commerce is placing the following excerpts from the *China Statistical Yearbook* from the National Bureau of Statistics of China on the record of this investigation:[30] Index Page; Table 14-7: Main Indicators on Economic Benefit of State-owned and State-holding Industrial Enterprise by Industrial Sector; Table 14-11: Main Indicators on Economic Benefit of Private Industrial Enterprise by Industrial Sector. This information reflects a wide diversification of economic activities in China. The industrial sector in China alone is comprised of 37 listed industries and economic activities, indicating the diversification of the economy.

VIII. Subsidies Valuation

Allocation Period

Commerce normally allocates the benefits from non-recurring subsides over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise. Commerce finds the AUL in this proceeding to be 10 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's Class Life Asset Depreciation Range System. No interested party has challenged the use of a 10-year AUL.

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

Attribution of Subsidies

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

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[27] *See, e.g.*, *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008) and accompanying IDM at Comment 1.
[28] Section 1(a) is the relevant provision of Public Law 112-99 and is codified at section 701(f) of the Act.
[29] *See* Public Law 112-99, 126 Stat. 265 §1(b).
[30] *See* Memorandum, "Additional Documents Memorandum," dated concurrently with this memorandum.

a subsidy to a respondent. Further, 19 CFR 351.525(c) provides that benefits from subsidies provided to a trading company which exports subject merchandise shall be cumulated with benefits provided to the firm producing the subject merchandise that is sold through the trading company, regardless of affiliation.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of another corporation in essentially the same ways it can use its own assets. This standard will normally be met where there is a majority voting interest between two corporations, or through common ownership of two (or more) corporations.[31] In certain circumstances, a large minority voting interest (for example, 40 percent) may also result in cross-ownership.[32] The Court of International Trade (the CIT) upheld Commerce's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same ways it could use its own subsidy benefits.[33]

Canadian Solar Inc.

In its questionnaire responses, Canadian Solar Inc. reported that it is cross-owned with several affiliates that are producers of subject merchandise or provided goods or services used in the production of subject merchandise:

1. Canadian Solar Inc.
2. Canadian Solar Manufacturing (Luoyang) Inc. (CS Luoyang);
3. Canadian Solar Manufacturing (Changshu) Inc.;
4. CSI Cells Co., Ltd. (CSI Cells);
5. CSI Solar Power (China) Inc. (name was changed to CSI Solar Power Group Co., Ltd. in December 2016) (CSI Solar Power);
6. CSI Solartronics (Changshu) Co., Ltd.;
7. CSI Solar Technologies Inc.;
8. CSI New Energy Holding Co., Ltd. (name was CSI Solar Manufacture Inc. until July 2015) (CSI New Energy);
9. CSI-GCL Solar Manufacturing (Yancheng) Co., Ltd. (CSI Yancheng);
10. Changshu Tegu New Materials Technology Co., Ltd.;
11. Changshu Tlian Co., Ltd.; and
12. Suzhou Sanysolar Materials Technology Co., Ltd.[34]

Our review of Canadian Solar Inc.'s chart of corporate structure and the business activities for these companies leads us to conclude that these reported affiliated companies satisfy Commerce's cross-ownership criteria as described at 19 CFR 351.525(b)(6)(vi).[35] As a result, we preliminarily determine that the companies reported by Canadian Solar Inc. are cross-owned in accordance with

[31] *See*, *e.g.*, *Countervailing Duties*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).
[32] *Id*.
[33] *See Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).
[34] *See* Canadian Solar Affiliations QR at 2-3 and at Exhibits 1 and 2; *see also* Canadian Solar June 19, 2018 QR at 1-2.
[35] *Id*. The information in these exhibits is business proprietary in nature.

CFR 351.525(b)(6)(vi).[36] Because the information leading us to preliminarily determine that the companies reported by Canadian Solar Inc. are cross-owned is business proprietary in nature, our cross-ownership analysis is set forth in a separate memorandum.[37] Hereinafter, these cross-owned companies are referred to collectively as Canadian Solar, or the Canadian Solar Companies. For the reported producers of subject merchandise, we are attributing any subsidy received by these companies to the combined sales of these companies, excluding intercompany sales, in accordance with 19 CFR 351.525(b)(6)(ii). For input producers, we are attributing subsidies received by the input producers to the combined sales of the input and downstream products produced by the input producer and downstream producer, pursuant to 19 CFR 351.525(b)(6)(iv).[38]

Jinko Solar Import and Export Co., Ltd.

As discussed above, we selected Jinko Solar as a mandatory company respondent. Jinko Solar reported that it is cross-owned with several affiliates that are producers of solar cells or provided goods or services that are used to produce solar cells:

1. Jinko Solar Import and Export Co., Ltd.;
2. Jinko Solar Co., Ltd. (Jinko Solar Co.);
3. Zhejiang Jinko Solar Co., Ltd.;
4. Jinko Solar (Shanghai) Management Co., Ltd. (Jinko Shanghai);
5. Jiangxi Jinko Photovoltaic Materials Co., Ltd.; and
6. Xinjiang Jinko Solar Co., Ltd.[39]

In its questionnaire responses, Jinko Solar reported that these companies are all ultimately owned by JinkoSolar Holding Co., Ltd., a company registered in the Cayman Islands that is publicly listed on the New York Stock Exchange.[40] Therefore, based on these facts, and pursuant to 19 CFR 351.525(b)(6)(vi), we preliminarily determine that the six companies reported by Jinko Solar are cross-owned through their ownership by their parent company JinkoSolar Holding Co., Ltd. Hereinafter, these cross-owned companies are referred to collectively as Jinko Solar or the Jinko Solar Companies. For the reported producers of subject merchandise, we are attributing any subsidy received by these companies to the combined sales of these companies, excluding intercompany sales, in accordance with 19 CFR 351.525(b)(6)(ii). For input producers, we are attributing subsidies received by the input producers to the combined sales of the input and downstream products produced by the input producer and downstream producer, pursuant to 19 CFR 351.525(b)(6)(iv).[41]

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[36] We found Canadian Solar, Inc. to be cross-owned with several of these companies in the fourth administrative review of this proceeding. *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; 2015*, 83 FR 34828 (July 23, 2018) (*Solar Cells from China Fourth AR*).
[37] *See* Memorandum, "Cross Ownership of the Canadian Solar Companies," dated concurrently with this PDM.
[38] *See* Memorandum, "Countervailing Duty Administrative Review of Certain Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Canadian Solar Inc. Preliminary Calculation Memorandum," dated concurrently with this PDM (Canadian Solar Preliminary Calculations Memorandum).
[39] *See* Jinko Solar Affiliations QR at 2 and at Exhibit AC-1.
[40] *Id*.
[41] *See* Memorandum, "Countervailing Duty Administrative Review of Certain Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Jinko Solar Preliminary Calculations

Non-Responding Cross-Owned Affiliates

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

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

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

Denominators

In accordance with 19 CFR 351.525(b)(1)-(5), Commerce considers the basis for the respondent's receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondent's export or total sales. The denominators we used to calculate the countervailable subsidy rate for the various subsidy programs described below are explained in further detail in the Preliminary Calculations Memoranda prepared for this preliminary review.[42]

We note that Canadian Solar requested an "export value" adjustment to its POR sales denominator for its U.S. sales that were made through an affiliated company.[43] Commerce's practice is to use the FOB sales value for the denominator in its subsidy calculation.[44] 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 the 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 countervailing duties are

Memorandum," dated concurrently with this PDM (Jinko Solar Preliminary Calculations Memorandum). The preliminary calculations memorandums for the company respondents are hereinafter referred to collectively as the Preliminary Calculations Memoranda.

[42] See Preliminary Calculations Memoranda.

[43] *See* Canadian Solar June 19, 2018 QR at 9-11, and at Exhibit 8.2. Canadian Solar used the term "export value adjustment." Commerce recently used this term in *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*), but Commerce has typically referred to this adjustment as an "entered value adjustment." We have chosen to continue to refer to this adjustment as an "entered value adjustment."

[44] *See* 19 CFR 351.525(a).

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.[45]

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 meet the six criteria listed above.[46] This is to satisfy Commerce that the sales value adjustment properly reflects an upward adjustment to the sales value of all merchandise that entered the United States, and on which CBP assessed dutiable value.[47] In *Coated Paper from China*, Commerce acknowledged that it expects that the criteria for such an adjustment will be rarely met.[48]

In *Aluminum Foil from China* and in *Solar Cells from China 2015 AR*, we denied granting an entered value adjustment to 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.[49] Canadian Solar contends that it qualifies for this adjustment because it satisfies each of the six criterial listed above.[50] However, our review of the information Canadian Solar provided to support its claim leads us to conclude otherwise. Specifically, the record does not demonstrate that there is a higher customs value for *all* of Canadian Solar's U.S. sales. For example, Canadian Solar provided documentation from only one sample sales transaction to support its claim.[51] Accordingly, we are preliminarily denying Canadian Solar's request for an entered value adjustment.

IX. Interest Rate Benchmarks, Discount Rates, Inputs, Electricity, and Land Benchmarks

We are examining loans received by the respondents from Chinese policy banks and state-owned commercial banks (SOCBs), as well as non-recurring, allocable subsidies.[52] The derivation of the benchmark interest rates and discount rates used to measure the benefit from these subsidies are discussed below.

[45] *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) (*Coated Paper from China*) and accompanying IDM at Comment 32; *see also Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2015*, 83 FR 34828 (July 23, 2018) (*Solar Cells from China 2015 AR*) at and accompanying IDM at Comment 12.
[46] *See*, *e.g.*, *Aluminum Foil from China* and accompanying IDM at Comment 14; *see also Solar Cells from China 2015 AR* and accompanying IDM at Comment 12.
[47] *Id*.
[48] *See Coated Paper from China* and accompanying IDM at Comment 21.
[49] *See*, *e.g.*, *Aluminum Foil from China* and accompanying IDM at Comment 14; *see also Solar Cells from China 2015 AR* and accompanying IDM at Comment 12.
[50] *See* Canadian Solar June 19, 2018 QR at 9-11, and at Exhibit 8.2.
[51] *Id*.
[52] *See* 19 CFR 351.524(b)(1).

Short-Term RMB-Denominated Loans

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." Normally, Commerce uses comparable commercial loans reported by the company as a benchmark.[53] If the firm did not have any comparable commercial loans during the period, Commerce's regulations provide that we "may use a national average interest rate for comparable commercial loans."[54]

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. For the reasons explained in *CFS from China*,[55] loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market. On July 21, 2017, Commerce conducted a re-assessment of China's financial system for CVD benchmarking purposes.[56] Pursuant to our re-assessment, we determined that there continues to be significant government intervention in the financial sector such that interest rates within China cannot be used for CVD loan rate benchmarking or discount rate purposes.[57] Consequently, we preliminarily find that any loans received by Canadian Solar and Jinko Solar from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). For the same reasons, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, Commerce is selecting an external market-based benchmark interest rate. The use of an external benchmark under these circumstances is consistent with Commerce's practice.[58]

In past proceedings involving imports from China, we calculated the external benchmark using the methodology first developed in *CFS from China*,[59] and later updated in *Thermal Paper from China*.[60] Under that methodology, we first determine which countries are similar to China in terms of gross national income, based on the World Bank's classification of countries as: low income; lower-middle income; upper-middle income; and high income. As explained in *CFS from China*,[61] this pool of countries captures the broad inverse relationship between income and interest rates. For 2003 through 2009, China fell in the lower-middle income category.[62] Beginning in 2010,

[53] *See* 19 CFR 351.505(a)(3)(i).
[54] *See* 19 CFR 351.505(a)(3)(ii).
[55] *See CFS from China* and accompanying IDM at Comment 10.
[56] *See* Memorandum to the File, "Review of China's Financial System Memorandum," dated concurrently with this PDM.
[57] *Id*.
[58] *See*, *e.g.*, *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2015*, 82 FR 46754 (October 6, 2017) and accompanying PDM at 21, unchanged in *Certain New Pneumatic Off-the-Road Tires form the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2015*, 83 FR 16055 (April 13, 2018).
[59] *See CFS from China* and accompanying IDM at Comment 10.
[60] *See Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (*Thermal Paper from China*) and accompanying IDM at 8-10.
[61] *See* World Bank Country Classification, http://data.worldbank.org/about/country-and-lending-groups (World Bank Country Classification); *see also* Memorandum, "Administrative Review of the Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China; Interest Rate Benchmark Memorandum," dated concurrently with this PDM (Interest Rate Benchmark Memorandum).
[62] *See* Interest Rate Benchmark Memorandum, dated concurrently with this PDM.

however, China was classified in the upper-middle income category and remained there through 2011 to 2017.[63] Accordingly, as explained below, we are using the interest rates of lower-middle income countries to construct the benchmark and discount rates for the years 2003 through 2009, and the interest rates of upper-middle income countries to construct the benchmark and discount rates for the years 2010 through 2016. This is consistent with Commerce's calculation of interest rates for recent CVD proceedings involving Chinese merchandise.[64]

After Commerce identifies the appropriate interest rates, the next step in constructing the benchmark is to incorporate an important factor in the interest rate formation – the strength of governance as reflected in the quality of the countries' institutions. The strength of governance has been built into the analysis by using a regression analysis that relates the interest rates to governance indicators.

In each year from 2003 through 2009, and 2011 through 2016, the results of the regression-based analysis reflected the intended, common sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates.[65] For 2010, however, the regression does not yield that outcome for China's income group.[66] This contrary result for a single year does not lead Commerce to reject the strength of governance as a determinant of interest rates. Therefore, we continue to rely on the regression-based analysis used since *CFS from China* to compute the benchmark for the years from 2003 through 2009, and 2011 through 2016. For the 2010 benchmark, we are using an average of the interest rates of the upper-middle income countries.

Many of the countries in the World Bank's upper-middle and lower-middle income categories reported lending and inflation rates to the International Monetary Fund, and they are included in that agency's International Financial Statistics (IFS). With the exceptions noted below, we used the interest and inflation rates reported in the IFS for the countries identified as "upper-middle income" by the World Bank for 2010 through 2016, and "lower-middle income" for 2001 through 2009.[67] First, we did not include those economies that Commerce considers to be non-market economies for antidumping purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments. Finally, for each year Commerce calculated an inflation-adjusted short-term benchmark rate we excluded any countries with aberrational or negative real interest rates for the year in question.[68] Because the resulting rates are net of inflation, we adjusted the benchmark rates to include an inflation component.[69]

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[63] *See* World Bank Country Classification.
[64] *See, e.g.*, *Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Countervailing Duty Determination*, 78 FR 33346 (June 4, 2013) and accompanying PDM at the section "Benchmarks and Discount Rates," unchanged in *Shrimp from China*.
[65] *See* Interest Rate Benchmark Memorandum.
[66] *Id.*
[67] *Id.*
[68] *Id.*
[69] *Id.*

Long-Term RMB-Denominated Loans

The lending rates reported in the IFS represent short-and medium-term lending, and there are not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, Commerce developed an adjustment to the short-and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates.[70]

In the *Citric Acid from China*, this methodology was revised by switching from a long-term markup based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where 'n' equals or approximates the number of years of the term of the loan in question.[71] Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.[72]

Foreign Currency-Denominated Loans

To calculate benchmark interest rates for foreign currency-denominated loans, Commerce is following the methodology developed over a number of successive proceedings regarding China.[73] For U.S. dollar short-term loans, Commerce used as a benchmark the one-year dollar London Interbank Offering Rate (LIBOR), plus the average spread between LIBOR and the one-year corporate bond rates for companies with a BB rating. Likewise, for any short-term loans denominated in other foreign currencies, we used as a benchmark the one-year LIBOR for the given currency plus the average spread between the LIBOR rate and the one-year corporate bond rate for companies with a BB rating.

Discount Rates

Consistent with 19 CFR 351.524(d)(3)(i)(A), we are using as the discount rate, the long-term interest rate calculated according to the methodology described above for the year in which the GOC provided non-recurring subsidies.[74]

Creditworthiness

As noted above, the petitioner submitted allegations with respect to the creditworthiness of five Canadian Solar cross-owned affiliates (*i.e.*, CS Luoyang; CSI Cells; CSI Solar Power; CSI New Energy; and CSI Yancheng) and two Jinko Solar cross-owned affiliates (*i.e.*, Jinko Solar Co., and Jinko Shanghai) were uncreditworthy, as defined in 19 CFR 351.505(a)(4), from 2014 through 2016.[75]

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[70] *See*, *e.g.*, *Thermal Paper from China* and accompanying IDM at 10.
[71] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009) (*Citric Acid from China*) and accompanying IDM at Comment 14.
[72] *See* Interest Rate Benchmark Memorandum for the resulting inflation adjusted benchmark lending rates.
[73] *See*, *e.g.*, *Aluminum Extrusions from the People's Republic of China: Final Results, and Partial Rescission of Countervailing Duty Administrative Review; 2013*, 80 FR 77325 (December 14, 2015) and accompanying IDM at 14.
[74] *See* Preliminary Calculation Memoranda.
[75] *See* Creditworthiness Allegation.

As a general matter, Commerce has found certain of these Canadian Solar affiliates to be cross-owned during 2014 (*i.e.*, CS Luoyang; CSI Cells; CSI Solar Power; and CSI New Energy), and we found these cross-owned companies to be creditworthy during 2014.[76] We are finding these same four companies to be cross-owned during the instant review for the same reasons we found them to be cross-owned during the 2014 review. Because we found these cross-owned companies to be creditworthy during 2014, we are relying on our analysis in *Solar Cells from China 2014 AR Final* to find that these four Canadian Solar affiliates were creditworthy during 2014 for the instant creditworthiness analysis. As a result, with respect to the Canadian Solar companies, this creditworthiness analysis covers CSI Yancheng for 2014, and all five of the Canadian Solar companies alleged to be uncreditworthy for 2015 through 2016.

The petitioner's allegations regarding these Canadian Solar and Jinko Solar companies claim that none of these companies received loans that should be considered comparable commercial loans in accordance with 19 CFR 351.505(a)(4)(ii).[77] The petitioner's allegation also focuses on financial ratios such as current, quick, debt to total assets, debt to equity, cash flow coverage, and return on equity.[78] According to the petitioner, Commerce has established benchmarks of 1.0 and 2.0 for quick and current ratios, respectively, and that Commerce will normally find companies with current and quick ratios below those benchmarks to be uncreditworthy.[79]

We find that the petitioner's allegations satisfy the requirements for an uncreditworthiness allegation as defined in 19 CFR 351.505(a)(6)(i). For the alleged uncreditworthy companies, the petitioner has submitted information (*i.e.*, references to these companies' own financial statements that they submitted in their questionnaire responses) establishing a reasonable basis to believe or suspect that these companies were uncreditworthy, as well as a discussion of the record evidence relevant to the factors enumerated under 19 CFR 351.301(a)(4).[80]

Accordingly, we have analyzed the information on the record and we preliminarily find that the alleged Canadian Solar and Jinko Solar companies were uncreditworthy during the period 2014 through 2016, as discussed below.

We note that our analysis is based on the alleged companies' own financial data submitted in their questionnaire responses and that these companies did not submit additional financial information to rebut the petitioner's allegations. Nonetheless, we intend to issue our standard creditworthiness questionnaires to the respondents, providing the opportunity for the respondents to submit any additional information regarding the factors enumerated in 19 CFR 351.505(a)(4)(i)(A)-(D).

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[76] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Preliminary Results of the Countervailing Duty Administrative Review and Preliminary Intent to Rescind, in Part; 2014*, 82 FR 2317 (January 9, 2017) (*Solar Cells from China 2014 AR Preliminary*) and accompanying PDM at 7-9 for cross-ownership, and *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 82678 (July 17, 2017) (*Solar Cells from China 2014 AR Final*) and accompanying IDM at Comment 11, where we found Canadian Solar to be creditworthy during 2014.
[77] *See* Creditworthiness Allegation.
[78] *Id*. The financial information in the petitioner's Creditworthiness Allegation is business proprietary and is not available for public summary.
[79] *See* Creditworthiness Allegation.
[80] *Id*.

Interested parties' comments in case and rebuttal briefs on responses to the creditworthiness questionnaire will be taken into consideration for the final results of this review.[81]

Receipt by the Firm of Comparable Commercial Long-Term Loans

In reaching our conclusions regarding the Canadian Solar and Jinko Solar companies, we note that neither company received what Commerce considers to be comparable long-term commercial loans during the years in which we have found these companies to be uncreditworthy, within the meaning of 19 CFR 351.505(a)(4)(i)(A). In prior proceedings, Commerce has taken into consideration convertible notes issued by solar respondents as dispositive evidence of creditworthiness, finding the notes offered in market economies to be akin to long-term commercial loans.[82] However, the information in the instant review does not indicate that the companies alleged to be uncreditworthy issued such notes during the years in which we find the companies to be uncreditworthy.

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

Consistent with past practice, we have placed significant emphasis on low quick and current ratios (*i.e.*, below 1.0 and 2.0, respectively) during the years in question. As explained previously,

> {t}hese ratios are highly relevant under 19 CFR 351.505(a)(4)(i)(B)-(C) because they are indicators of a firm's financial health and its ability to meet its costs and fixed financial obligations with cash flow. Unlike some of the other information we have been asked to consider for this analysis, the meaning of these ratios is clear: either the respondents have liquid funds available to cover upcoming obligations, or they do not. If they do not, they have no choice but to accumulate new debt to cover existing debt.[83]

In this review, none of the Canadian Solar or Jinko Solar companies subject to this analysis met both the quick ratios and current ratio benchmarks in the same year with respect to the years in question.[84] We also note that all of the companies subject to this creditworthiness analysis experienced increasing debt to total assets ratios during the years under consideration, except for one of the Canadian Solar affiliates where this ratio decreased slightly.[85] As a result, we preliminarily determine that the Canadian Solar and Jinko Solar companies subject to this allegation struggled to meet their current obligations with current assets (in particular, cash flows) and resorted to accumulating increasing levels of debt during the years in question.

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[81] *See*, *e.g.*, *Solar Cells from China 2014 AR Preliminary*) and accompanying PDM at 13-16, where Commerce preliminarily found the company respondents to be uncreditworthy based on information provided in the uncreditworthiness allegation and gave the respondents an opportunity to provide rebuttal information after the preliminary results.
[82] *See*, *e.g.*, *Solar Cells from China Investigation* and accompanying IDM at Comment 17.
[83] *Id*.
[84] *See* Creditworthiness Allegation at Exhibit 1. The specific values are business proprietary in nature.
[85] *Id*.

Evidence of the Firm's Future Financial Position

We did not find any evidence relating to the years in question that would indicate these firms' future financial positions, such as market studies, country and industry forecasts, or project and loan appraisals prepared prior to loan agreements.

Accordingly, we find that these certain Canadian Solar and Jinko Solar companies were uncreditworthy during the period 2014 through 2016, because these companies did not receive comparable long-term commercial loans, and these companies had quick, current, and debt to total asset ratios that indicate uncreditworthiness, during the periods which we find each to be uncreditworthy. Furthermore, no record evidence contradicts our preliminary determination.

<u>Benchmarks to Determine the Adequacy of Remuneration</u>

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

Land Benchmark

As explained in detail in previous investigations, we cannot rely on the use of "tier one" and "tier two" benchmarks to assess the benefits from the provision of land for less than adequate remuneration (LTAR) in China. Specifically, in *Sacks from China*, we determined that "Chinese land prices are distorted by the significant government role in the market," and hence, no usable "tier one" benchmarks exist.[86] Furthermore, we found that "tier two" benchmarks (world market prices that would be available to purchasers in China) are not appropriate.[87]

On October 2, 2018, Commerce completed a memorandum analyzing developments in China's land market since 2007.[88] The Land Benchmark Analysis was prepared to assess the continued

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[86] *See*, *e.g.*, *Laminated Woven Sacks from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination; Preliminary Affirmative Determination of Critical Circumstances, In Part; and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 74 FR 67893, 67906-08 (December 3, 2007) (unchanged in Final) (*Sacks from China*).
[87] *Id.*
[88] *See* Memorandum, "Administrative Review of the Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Land for LTAR Memorandum,"

application of Commerce's land for LTAR benchmark methodology, as established in 2007 in *Sacks from China*.[89] As discussed in the Land Benchmark Analysis, although reforms in China's land markets have improved the use-rights of some landholders, such improvements have not been comprehensive, and reforms have been implemented on an *ad hoc* basis.[90] The reforms to date have not addressed the fundamental institutional factors that underlie the Chinese government's monopoly control over land-use, which precludes landholders from putting their land to its best use and realizing the market value of their landholdings.[91] The GOC still owns all land in China, and exercises direct control over the sale of land-use rights and land pricing in the primary market and indirect control in the secondary market.[92]

As a result, and consistent with our methodology established in *Sacks from China*, we determine that we cannot use any first-tier, domestic Chinese land prices for benchmarking purposes. We also determine that because land is generally not simultaneously available to an in-country purchaser while located and sold out-of-country on the world market, we cannot use second-tier world prices as a benchmark for land-use rights. Finally, because land prices in China are not consistent with market principles, and reflect the government's control and allocation of land-use on an administrative basis, we will continue to use land-use prices outside of China as a third-tier benchmark. Accordingly, consistent with our past practice, we are relying on the use of so-called "tier three" benchmarks for purposes of calculating a benefit for this program.

We are placing on the record benchmark information to value land from "Asian Marketview Reports" by CB Richard Ellis (CBRE) for Thailand 2010.[93] We used this benchmark in prior segments of this proceeding, and in other proceedings such as the CVD investigation of certain iron mechanical transfer drive components from China.[94] We initially selected this information in the *Sacks from China* investigation after considering a number of factors, including national income levels, population density, and producers' perceptions that Thailand is a reasonable alternative to China as a location for Asian production.[95] We find that this benchmark, appropriately indexed, continues to be suitable for these preliminary results, and we relied on it for our calculation of benefits relating to the company respondents' land purchases.

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dated concurrently with this PDM (Land Benchmark Analysis) (containing a memorandum titled, "Benchmark Analysis of the Government Provision of Land-Use Rights in China for Countervailing Duty Purposes," dated October 2, 2018).

[89] *Id* at 2.

[90] *Id*.

[91] *Id*.

[92] *Id*.

[93] *See* Memorandum, "Administrative Review of the Countervailing Duty Order of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Asian Marketview Report," dated concurrently with this PDM (Land Benchmark Data Memorandum) (containing "Asian Marketview Report" pricing data).

[94] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012) (*Solar Cells from China Investigation*) and accompanying IDM at 6 and Comment 11; *see also Countervailing Duty Investigation of Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Preliminary Affirmative Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 81 FR 21316 (April 11, 2016) and accompanying IDM at 13.

[95] The complete history of our reliance on this benchmark is discussed in the *Solar Cells from China Investigation* IDM. In that discussion, we reviewed our analysis from the *Sacks from China* investigation and concluded that the CBRE data remained a valid benchmark.

We will continue to examine benchmark prices on a case-by-case basis, and will consider the extent to which proposed benchmarks represent prices in a comparable setting (*e.g.*, a country proximate to China; the country's level of economic development, *etc*.). Therefore, we invite parties to submit alternative benchmark data that is consistent with the guidance provided in *Sacks from China* and the Land Benchmark Analysis.[96] Interested parties have seven days from the publication of these preliminary results in the *Federal Register* to provide information to rebut, clarify, or correct information in the Land Benchmark Analysis or the Land Benchmark Data Memorandum.

Input Benchmarks

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

Solar Grade Polysilicon

For solar grade polysilicon, the GOC provided information indicating that imports of solar grade polysilicon accounted for 35.18 percent of domestic consumption of all grades of polysilicon.[97] The production of polysilicon by state-invested enterprises (SIEs) that accounts for the total domestic consumption is business proprietary in nature.[98] The GOC stated, however, that it was unable to obtain domestic production statistics for solar grade polysilicon, and noted that statistics for the value of polysilicon are not collected on a per product basis, but rather on a per company basis. As such, the GOC stated that the statistics it reported regarding polysilicon may include products other than solar grade polysilicon.[99]

Commerce normally relies on so-called "first-tier" benchmarks, pursuant to 19 CFR 351.511(a)(2)(i), which include prices stemming from actual transactions between private parties, actual imports, and, in certain circumstances, actual sales from competitively run government auctions. As part of Commerce's questionnaire, we requested that the GOC provide information related to SIE involvement in China's solar grade polysilicon industry. Because the GOC does not track industry information for solar grade polysilicon, the information provided is related only to SIE involvement in China's polysilicon industry generally, rather than specific SIE involvement in the solar grade polysilicon industry specifically.[100] While the GOC did provide information with respect to China's polysilicon industry, we find that this information is unreliable with respect to the GOC's solar grade polysilicon industry because it is not specific to solar grade polysilicon.

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[96] *See* Land Benchmark Analysis at 30-31.
[97] *See* GOC June 19, 2018 QR at 44-46.
[98] *Id*. at 46. SIEs include companies in which the GOC maintains an ownership or management interest.
[99] *Id*. at 44-46.
[100] *Id*.

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

Notwithstanding the regulatory preference for the use of prices stemming from actual transactions in the country, where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative in the hierarchy.[101] For these preliminary results, as explained below in the section, "Use of Facts Otherwise Available and Adverse Inferences," we are finding that the GOC's involvement in China's solar grade polysilicon market leads to significantly distorted solar grade polysilicon prices in China. Thus, we preliminarily do not find it appropriate to rely on transactions in China as a benchmark for solar grade polysilicon and are relying instead on a simple average of the world market (tier two) solar grade polysilicon prices published by Bloomberg New Energy Finance (Bloomberg), Energy Trend, and Greentech Media, pursuant to 19 CFR 351.511(a)(2)(ii).[102] This is consistent with our prior practice in this proceeding.[103]

Solar Glass

As an initial matter, the GOC stated in its questionnaire responses that it does not collect production, consumption, and industry information specific to solar glass, and instead submitted information related to tempered glass, which the GOC stated encompasses solar glass.[104] As part of Commerce's questionnaire, we requested that the GOC provide information related to SIE involvement in the solar glass industry. Because the GOC does not track industry information for solar glass, the information provided is related only to SIE involvement in the tempered glass industry, rather than specific SIE involvement in the solar glass industry. While the GOC did provide information with respect to China's tempered glass industry, we find that this information is unreliable with respect to the GOC's solar glass industry because it is not specific to solar glass.

Therefore, and as detailed below in the section, "Use of Facts Otherwise Available and Application of Adverse Inferences," we preliminarily find that necessary information is not available on the record and, pursuant to section 776(a)(1) of the Act, we have determined that it is appropriate to rely on the facts otherwise available in reaching our determination regarding the GOC's involvement in China's solar glass market. Where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative in the hierarchy.[105] For these preliminary results, as explained below in the section, "Use of Facts Otherwise Available and Adverse Inferences," we are finding that the GOC's involvement in China's solar glass market leads to significantly distorted

[101] *See CVD Preamble*, 63 FR at 65377.
[102] *See* Petitioner Benchmark Submission, Canadian Solar Benchmark Submission, and Jinko Solar Benchmark Submission.
[103] *See*, *e.g.*, *Solar Cells from China 2015 AR*.
[104] *See* GOC June 19, 2018 QR at 115-118.
[105] *See CVD Preamble*, 63 FR at 65377.

solar glass prices in China. Thus, we preliminarily do not find it appropriate to rely on transactions in China as a benchmark for solar glass and are relying on the world market prices (tier two) published by Greentech Media, as this pricing data provides a monthly global price specifically for solar glass.[106] Commerce has found prices reported on a monthly basis to be preferable because these data reflect price fluctuations over the course of the POR.[107] We note that we relied solely on the solar glass prices published by Greentech Media for the solar glass benchmark in the most recent segment of this proceeding.[108]

While the petitioner submitted pricing data published by the Global Trade Atlas (GTA), and the United Nations Comtrade Database (Comtrade) for Commerce to consider when constructing the solar glass benchmark, we find the pricing data published by Greentech Media preferable to the GTA and Comtrade data because the GTA and Comtrade data have drawbacks that the Greentech Media data do not. Specifically, the GTA and Comtrade sources provide monthly prices, but represent prices for tempered glass, which is a broader category of glass that includes solar glass but also non-solar glass products.[109] As such, because the data published by Greentech Media provides global monthly prices that are specific to solar glass, we find that it is appropriate to rely solely on the Greentech Media data when constructing the solar glass benchmark.

Aluminum Extrusions

In its questionnaire responses, the GOC stated that it does not maintain production statistics in China specifically for aluminum extrusions, and instead provided information for aluminum sections.[110] As part of Commerce's questionnaire, we requested that the GOC provide information related to SIE involvement in China's aluminum extrusions industry. However, because the GOC does not track industry information specifically for aluminum extrusions, the information provided is related only to SIE involvement in the aluminum sections industry, rather than specific SIE involvement in the aluminum extrusions industry.[111] While the GOC did provide information with respect to China's aluminum sections industry, we find that this information is unreliable with respect to the GOC's aluminum extrusions industry because it is not specific to aluminum extrusions.

Consequently, and as detailed below in the section, "Use of Facts Otherwise Available and Application of Adverse Inferences," we preliminarily find that necessary information is not available on the record and, pursuant to section 776(a)(1) of the Act, we have determined that it is appropriate to rely on the facts otherwise available in reaching our determination regarding the GOC's involvement in China's aluminum extrusions market. For these preliminary results, as explained below in the section, "Use of Facts Otherwise Available and Adverse Inferences," we are finding that the GOC's involvement in China's aluminum extrusions market leads to significantly distorted aluminum extrusions prices in China. Thus, we preliminarily do not find it appropriate to

[106] *See* Canadian Solar Benchmark Submission at Exhibit 3; *see also* Jinko Solar Benchmark Submission at Exhibit 3.
[107] *See e.g.*, *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Affirmative Countervailing Duty Determination Final Affirmative Critical Circumstances Determination*, 79 FR 54963 (September 15, 2014) and accompanying IDM at 11.
[108] *See Solar Cells from China 2015 AR* and accompanying IDM at Comment 6.
[109] *See* Petitioner Benchmark Submission.
[110] *See* GOC June 19, 2018 QR at 91.
[111] *Id*.

rely on transactions in China as a benchmark for the company respondents' purchases of aluminum extrusions, and we are relying on an average of the world market prices (tier two) of aluminum extrusions and aluminum frames compiled by Comtrade and IHS Technology (IHS) to determine the subsidy rate for the provision of aluminum extrusions for these preliminary results of review.[112] We have preliminarily determined to average both the Comtrade and IHS data because each contain strengths and flaws. 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 value. 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 IHS data (which reflects prices for aluminum frames) over the Comtrade data (which encompasses a broader range of aluminum products). Accordingly, we have averaged the annual IHS value with the monthly Comtrade average unit values to derive monthly benchmarks that reflect, in part, the value for aluminum extrusions. This is consistent with our prior practice in this proceeding.[113]

Ocean Freight

The petitioner, Canadian Solar, and Jinko Solar each provided POR information to value ocean freight.[114] The petitioner provided international rates for Maersk 40-foot containers, while the respondent companies each provided international rates for 20-foot containers provided by Xeneta. For these preliminary results, we preliminarily determine to rely solely on the Maersk ocean freight data to value ocean freight. Under 19 CFR 351.511(a)(2)(iv), Commerce will adjust the benchmark price to reflect the price that a firm actually would pay if it imported the product, including delivery and import duties. While the Xeneta data submitted by the company respondent indicates that the pricing quotes they each submitted include terminal handling charges, the overall Xeneta data methodology indicates that these terminal handling charges are not consistently included in the shipping rates.[115] Excluding Xeneta data when valuing ocean freight is consistent with our past practice.[116]

Inland Freight Charges

For these preliminary results, we are basing the company respondents inland freight charges on the freight charges submitted by the respondent companies, which are based on their actual experiences.[117] This is consistent with our past practice in this proceeding.[118]

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[112] *See* Petitioner Benchmark Submission, Canadian Solar Benchmark Submission, and Jinko Solar Benchmark Submission.

[113] *See Solar Cells from China 2015 AR* and accompanying IDM at Comment 3.

[114] *See* Petitioner's Benchmark Submission, Canadian Solar Benchmark Submission, and Jinko Solar Benchmark Submission.

[115] *See*, *e.g.*, Canadian Solar Benchmark Submission at Exhibit 6C, "Xeneta Freight Rate Data Method," under Terminal Handling Charges.

[116] *See Solar Cells from China 2015 AR* and accompanying IDM at Comment 8; *see also 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 the Xeneta ocean freight rates because the rates inconsistently included terminal handling charges).

[117] *See* Canadian Solar June 19, 2018 QR at Volume I, Exhibit 11; *see also* Jinko Solar June 19, 2018 QR at Exhibits JZ-10, JJ-15, and JX-7.

[118] *See Solar Cells from China 2015 AR* and accompanying IDM at Comment 8.

X. Use of Facts Otherwise Available and Application of Adverse Inferences

Sections 776(a)(1) and (2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply "facts otherwise available" if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails 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; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.[119]

Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. 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 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 to provide the Department with complete and accurate information in a timely manner."[120] Commerce's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[121]

Section 776(c) of the Act 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. Secondary information is "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."[122] It is Commerce's practice to consider information to be corroborated if it has probative value.[123] In analyzing whether information has probative value, it is Commerce's practice to examine the

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[119] The Trade Preferences Extension Act of 2015 made numerous amendments to the antidumping duty and CVD law, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act, as summarized below. *See Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015) The 2015 law does not specify dates of applications for those amendments. On August 6, 2015, Commerce published an interpretive rule, in which it announced the applicability dates for each amendment of the Act, except for amendments contained in section 771(7) of the Act, which relate to determinations of material injury by the International Trade Commission. *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015). Therefore, the amendments apply to this review.

[120] *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, 2011) (*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 8909, 8932 (February 23, 1998).

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

[122] *Id*.

[123] *Id*.

reliability and relevance of the information to be used.[124] However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.[125] Moreover, under section 776(c)(2) of the Act, Commerce is not required to corroborate any countervailing duty rate applied in a separate segment of the same proceeding.

Finally, under the new section 776(d) of the Act, Commerce may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a 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 adverse facts available rate, Commerce is not required for purposes of 776(c), or any other purpose, to estimate what the countervailable subsidy rate would have been if the interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.[126]

We requested information from the GOC regarding the specific companies that produced the input products (*e.g.*, solar glass, aluminum extrusions, and polysilicon) that Canadian Solar and Jinko Solar, and their respective cross-owned companies, purchased during the POR. Specifically, we sought information from the GOC that would allow us to determine whether the producers are "authorities" within the meaning of section 771(5)(B) of the Act.[127] In our CVD questionnaire, we requested detailed information from the GOC that would be needed for this analysis.[128] Specifically, for input producers in which the GOC maintained majority ownership or non-majority ownership, we requested that the GOC provide Commerce with the information that is relevant to our analysis on whether that producer is an "authority," such as translated copies of capital verification reports, articles of association, and information identifying individual owners, members of the board of directors or senior managers who were either GOC or Chinese Communist Party (CCP) officials during the POR.[129]

While the GOC provided some information, such as business registrations for a number of input producers, it provided no information at all regarding the identification of owners, directors, or senior management who were also GOC or CCP officials.[130] It simply stated that there is no central informational database from which to search for the requested information, and stated that our questions on the CCP's role into the respondent companies' input providers are "irrelevant to this proceeding and do not go to whether the suppliers at issue are 'public bodies' for the purposes of the Department's LTAR analysis."[131] The GOC concluded its response to this question by stating "{i}f the Department insists on the necessity of this information, the Department should collect this information through the respondents, via their suppliers directly."[132]

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[124] *Id*. at 869.
[125] *Id*. at 869-870.
[126] *See* section 776(d)(3) of the Act.
[127] *See* CVD Questionnaire at section II.
[128] *Id*.
[129] *Id*.
[130] *See*, *e.g.*, GOC June 19, 2018 QR at 25-42.
[131] *Id*. at 31-41.
[132] *Id*. at 42.

Regarding the GOC's objections to our questions about the role of CCP officials in the management and operations of the input producers, we observe that it is the prerogative of Commerce, not the GOC, to determine what information is relevant to our investigations and administrative reviews.[133] Commerce requests this information because public information suggests that the CCP exerts significant control over activities in China.[134] Commerce previously determined that "available information and record evidence indicates that the CCP meets the definition of the term 'government' for the limited purpose of applying the U.S. CVD law to China."[135] Additionally, publicly available information indicates that Chinese law requires the establishment of CCP organizations "in all companies, whether state, private, domestic, or foreign-invested" and that such organizations may wield a controlling influence in the company's affairs.[136] Because the GOC did not provide the information requested regarding this issue, we have no further basis for reevaluating Commerce's prior factual findings on the role of the CCP. With regard to the GOC's claim that Chinese law prohibits GOC officials from taking positions in private companies,[137] we previously found that this particular law does not pertain to CCP officials.[138]

The information we requested regarding the ultimate owners of the producers and the role of government/CCP officials and CCP committees in the management and operations of the input producers, which sold inputs to the respondent, is necessary to our determination of whether the producers are "authorities" within the meaning of section 771(5)(B) of the Act. If the GOC was not able to submit the required information in the requested form and manner, it should have promptly notified Commerce, in accordance with section 782(c) of the Act. It did not do so, nor did it suggest any alternative forms for submitting this information.[139] Instead, the GOC simply stated

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

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

[135] *Id.*, at CCP Memorandum at 33.

[136] *Id.*, at Public Body Memorandum at 35-36, and sources cited therein.

[137] *See* GOC June 19, 2018 QR at 36.

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

[139] Section 782(c)(1) of the Act states that "{i}f an interested party, promptly after receiving a request from the administering authority or the Commission for information, notifies the administering authority or the Commission (as the case may be) that such party is unable to submit the information requested in the requested form and manner,

that "{t}here is no central informational database to search for the requested information on whether any individual owners, members of the board of directors, or senior managers is a Government of CCP official, and the and the industry and commerce administration does not require the companies to provide such information. Therefore, the GOC cannot obtain the information requested by the Department."[140] Further, the GOC did not indicate that it had attempted to contact the CCP, or that it consulted any other sources. The GOC's responses in prior proceedings demonstrate that it is, in fact, able to access the information we requested.[141] Because the GOC did not respond to our request for information on this issue, we have no further basis for evaluating the GOC's claim that the role of the CCP is irrelevant.

As a result, we preliminarily determine that the GOC has the necessary information that was requested of it but withheld that information. In doing so, the GOC significantly impeded this administrative review. Therefore, in accordance with sections 776(a)(1), 776(a)(2)(A), and 776(a)(2)(C) of the Act, Commerce must rely on "facts otherwise available" in issuing these preliminary results. Moreover, we preliminarily find that the GOC did not act to the best of its ability to comply with our request for information, as a result of its withholding of the information requested of it. Consequently, we find that an adverse inference is warranted in selecting from the facts available pursuant to section 776(b) of the Act. Thus, as adverse facts available, and as explained below, we are finding that certain producers of solar grade polysilicon, aluminum extrusions, and solar glass purchased by the respondents during the POR are "authorities" within the meaning of section 771(5)(B) of the Act.

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

In response to our questions concerning its role in the production of solar grade polysilicon, the GOC provided no information specific to "solar grade" polysilicon.[142] The GOC also reported that there is no specific solar polysilicon association in China, but that in order to obtain information for solar grade polysilicon, it consulted some related industry associations (for example, the China Chamber of Commerce of Metals, Minerals, and Chemicals Importers and Exporters).[143] The GOC explained that China's National Bureau of Statistics (SSB) is the government agency that is responsible for nationwide statistics, and is relied upon as the source for domestic production.[144]

With respect to the information that the GOC did provide in its questionnaire response, the GOC provided information regarding SIE involvement in the general polysilicon industry based solely on information collected from the SSB, stating that there were 72 producers of polysilicon during the

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together with a full explanation and suggested alternative forms in which such party is able to submit the information, the administering authority of the Commission (as the case may be) shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party."

[140] *See* GOC June 19, 2018 at 41.

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

[142] *See* GOC June 19, 2018 QR at 45.

[143] *Id.* at 45.

[144] *Id.*

POR; the number of which the GOC maintains an ownership or management interest is business proprietary.[145] However, we find the information in the GOC's response to be unreliable because it is not specific to solar grade polysilicon. Therefore, we preliminarily determine that necessary information regarding the solar grade polysilicon industry in China is not available on the record and, pursuant to section 776(a)(1) of the Act, we will rely on the facts otherwise available in reaching our determination on the GOC's involvement in China's solar grade polysilicon market, and whether this government involvement significantly distorts the prices in this industry in China.

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

- The petition for *Solar Products from China* points to a WTO Dispute Settlement Panel determination that the GOC maintains WTO-inconsistent export restraints on silicon exports and contends that these restraints operate to ensure "an abundant domestic supply of silicon in China, thus artificially depressing the domestic price of polysilicon."[146]
- A 2009 *New York Times* article explaining that the GOC's State Council, or cabinet, has the ability to manage several key aspects of the solar grade polysilicon industry, including its capacity, access to the industry, land use, and lending from state-owned commercial banks (SOCBs).[147]
- A Polysilicon Productions Data article explaining that the GOC maintains "Polysilicon Industry Access Standards," outlining rules and restrictions that prospective solar grade polysilicon manufacturers in China must adhere to.[148]

Separately, as discussed above, the GOC stated in its questionnaire responses that it does not collect production, consumption, and industry information specific to solar glass, and instead submitted information related to tempered glass.[149] Because the GOC does not track industry information for solar glass, the information provided by the GOC is related only to SIE involvement in the tempered glass industry, rather than specific SIE involvement in the solar glass industry, as requested by Commerce. While the GOC did provide information with respect to China's tempered glass industry, we find that this information is unreliable with respect to the GOC's solar glass industry because it is not specific to solar glass. Therefore, we preliminarily determine that necessary information regarding the solar glass industry in China is not on the record and, pursuant to section 776(a)(1) of the Act, we have preliminarily determined that it is appropriate to rely on the facts otherwise available in reaching our determination regarding the GOC's involvement in China's solar glass market. Record information from IHS Technology indicates that subsidies provided by

[145] *Id*. at 44.
[146] *See* Letter to the Secretary, "Petition for the Imposition of Antidumping and Countervailing Duties: Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China and Taiwan (December 31, 2013) (*Solar Products from China Petition*) at 38, citing *China - Measures Related to the Exportation of Various Raw Materials,* Report of the Panel, WT/DS394/R (July 5, 2011), Exhibit III-51, placed on the record of this proceeding concurrently with this Decision Memorandum.
[147] *See* "Chinese Solar Firm Revises Price Mark," Keith Bradsher, *New York* Times, (August 27, 2009) Volume I of the Petition at Exhibit I-1B, placed on the record of this proceeding concurrently with this Decision Memorandum.
[148] *See* Polysilicon Productions Data, placed on the record of this proceeding concurrently with this Decision Memorandum.
[149] *See* t GOC June 19, 2018 QR at 115-118.

the GOC to Chinese solar glass producers caused domestic suppliers to increase production and exports, and we have preliminarily relied on that information in reaching our determination.[150]

Finally, as discussed above, the GOC stated that it does not maintain production statistics in China specifically for aluminum extrusions, and instead provided information for aluminum sections.[151] Thus, the information provided by the GOC relates only to SIE involvement in the aluminum sections industry, rather than specific SIE involvement in the aluminum extrusions industry, as requested by Commerce.[152] While the GOC did provide information with respect to China's aluminum sections industry, we find that this information is unreliable with respect to the GOC's aluminum extrusions industry because it is not specific to aluminum extrusions. Therefore, we preliminarily determine that necessary information regarding the aluminum extrusions industry in China is not available on the record and, pursuant to section 776(a)(1) of the Act, we will rely on the facts otherwise available in reaching our determination on the GOC's involvement in China's aluminum extrusions market, and whether this government involvement significantly distorts the prices in this industry in China.

Other record information is relevant to the GOC's involvement in China's aluminum extrusions industry and how it affects pricing, and we rely on those facts otherwise available in reaching our preliminary determination. Public information from the record of the *Solar Cells from China First AR*, placed on this record, indicates that the GOC manages China's aluminum industry, with a focus on the provision of low cost aluminum products at each stage of the value chain in order to provide the cheapest possible inputs for users on the higher end of the chain.[153] Moreover, record information from *Solar Cells from China First AR* also contains information indicating that GOC-owned or -controlled enterprises account for a large proportion of aluminum extrusions that are produced in China.[154] The record information from *Solar Cells from China First AR* discussed above has been placed on the record of this proceeding by Commerce.

In the absence of further information, the record information discussed above suggests that prices in China's solar grade polysilicon, solar glass, and aluminum extrusions industries are significantly distorted. Prices are distorted if they are higher or lower than what would be a normal price in a competitive market without government intervention such as limiting access to an industry and financing, which reduces competition. When government intervention in the marketplace actively

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150 *See* "Solar Glass Price Plunge to Cease as Trade Sanctions Take Effect," IHS Technology, (October 28, 2014) placed on the record of this proceeding concurrently with this Decision Memorandum.
151 *See* GOC June 19, 2018 QR at 91.
152 *Id*.
153 *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 First AR*) at Letter from the petitioner, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: New Subsidy Allegations," (February 27, 2014) (Petitioner's Aluminum Extrusions NSA) at Exhibit 2, "Notice of Guidelines on Accelerating the Adjustment of Aluminum Industry Structure," Fa Gai Yun Xing (2006) No. 589, placed on the record of this proceeding concurrently with this Decision Memorandum.
154 *See* Petitioner's Aluminum Extrusions NSA at Exhibit 3, "Aluminum Corporation of China 2010 Annual Report, Excerpts;" *see also* Petitioner's Aluminum Extrusions NSA at Exhibit 4, "Aluminum Corporation of China Website Excerpt," *see also* Petitioner's Aluminum Extrusions NSA at Exhibit 5, "U.S-China Economic and Security Review Commission, An Analysis of State-Owned Enterprises and State Capitalism in China," (October 26, 2011). We have placed these documents on the instant record dated concurrently with this Decision Memorandum.

manages the amount of supply through means such as capacity restrictions, limitations on access to the industry and subsidization of uneconomic production, it prevents a price from achieving its competitive equilibrium level, and it can result in a significant distortion of prices in the market. Thus, based on the information detailed above, and the unreliability of the information submitted by the GOC with respect to these input markets, we find that the facts otherwise available on the record of this case support a determination that the GOC's involvement in China's solar grade polysilicon, solar glass, and aluminum extrusions industries significantly distorts the prices in these industries. In particular, we find that the GOC's involvement in these Chinese markets (*i.e.*, solar grade polysilicon, aluminum extrusions, and solar glass) distorts both domestically-produced input prices as well as prices for imports of these inputs, because imports must compete with domestically-produced inputs in these Chinese markets. As such, we are not relying on domestic prices in these markets in China as "tier one" benchmarks pursuant to 19 CFR 351.511(a)(2)(i). The use of external benchmarks is consistent with our past practice.[155] Consequently, we are relying on world market prices (tier two) as our benchmarks for the provision of solar grade polysilicon, solar glass, and aluminum extrusions for LTAR programs, pursuant to 19 CFR 351.511(a)(2)(ii). Our selection of these input benchmarks is discussed above.

Application of Adverse Facts Available: Provision of Electricity for LTAR

In order for Commerce to analyze financial contribution and specificity for this program, we requested that the GOC provide information regarding the roles of provinces, the National Development and Reform Commission (NDRC), and cooperation between the provinces and the NDRC in electricity price adjustments. Specifically, Commerce requested, *inter alia*: Provincial Price Proposals for the province in which mandatory respondents or any company "cross-owned" with those respondents is located for applicable tariff schedules that were in effect during the POI; all original NDRC Electricity Price Adjustment Notice(s) that were in effect during the POI; the procedure for adjusting retail electricity tariffs and the role of the NDRC and the provincial governments in this process; the price adjustment conferences that took place between the NDRC and the provinces, grids and power companies with respect to the creation of all tariff schedules that were applicable during the POI; the cost elements and adjustments that were discussed between the provinces and the NDRC in the price adjustment conferences; and how the NDRC determines that the provincial-level price bureaus have accurately reported all relevant cost elements in their price proposals with respect to generation, transmission and distribution.[156] Commerce requested this information to determine the process by which electricity prices and price adjustments are derived, to identify entities that manage and impact price adjustment processes, and to examine cost elements included in the derivation of electricity prices in effect throughout China during the POI. This requested information informs our financial contribution and specificity analyses.

In its initial questionnaire response, the GOC stated that the proposals are obsolete now that the provinces have the authority to set their own prices, under the Notice of NDRC on Lowering Coal-Fired Electricity On-Grid Price and General Industrial and Commercial Electricity Price (Notice 3105).[157] According to the GOC, the creation of this new structure has eliminated the need for

[155] *See*, *e.g.*, *Countervailing Duty Investigation of 1,1,1,2 Tetrafluoroethane from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 62594 (October 20, 2014) and accompanying IDM at 14 and 27.
[156] *See* Initial Questionnaire at Electricity Appendix.
[157] *See* GOC June 19, 2018 QR at 70.

Provincial Price Proposals that had previously been used by the NDRC to set prices for each province.[158]

However, both Notice 3105 and the Notice of National Development and Reform Commission on Adjusting Schedule of Coal-fired Power Generation Grid Purchase Price and Sale Price of Industrial and Commercial Electricity of Each Province (District or City) (Notice 748) explicitly direct provinces to reduce prices and to report the enactment of those changes to the NDRC. Specifically, Article 1 of Notice 748 stipulates a lowering of the on-grid sales price of coal-fired electricity by an average amount per kilowatt hour.[159] Article 2 indicates that the price reduction is "mainly used for reducing the price of industrial and commercial electricity."[160] Articles 3 and 4 specifically direct the reduction of the sales prices for industrial and commercial electricity.[161] Articles 6 and 7 indicate that provincial pricing authorities will "develop and issue specific adjustment plan of electricity price and sales price in accordance with the average price adjustment standards of Annex 1" and will submit the adjustments to the NDRC, and further, that the price adjustment will be enforced on April 20th, 2015.[162] Finally, Article 10 directs that "{l}ocal price departments shall organize and arrange carefully to put in place the electricity price adjustment measures."[163] NDRC Notice 3105 also directs additional price reductions, and stipulates at Articles II and X, that local price authorities shall implement in time the price reductions included in its Annex, and must report resulting prices to the NDRC.[164]

Neither Notice 748 nor Notice 3105 explicitly stipulates that relevant provincial pricing authorities determine and issue electricity prices within their own jurisdictions, as the GOC states to be the case.[165] Rather, both notices indicate that the NDRC continues to play a seminal role in setting and adjusting electricity prices, by mandating average price adjustment targets with which the provinces are obligated to comply in setting their own specific prices.[166] The notices do not explicitly eliminate Provincial Price Proposals and do not define distinctions in price-setting roles between national and provincial pricing authorities. In a supplemental questionnaire, we requested that the GOC explain how the NDRC monitors compliance with the price changes directed in Notice 748 and what action the NDRC would take were any province not to comply with the directed price changes. The GOC noted that "{p}rovincial authorities do submit their price schedules to the NDRC to ensure that the price adjustments follow the principles laid out by the NDRC."[167] However, the GOC's response failed to explain what actions the NDRC would take in the event of non-compliance with a directed price change.[168]

As explained above, the GOC's response does not constitute a full explanation regarding the roles and nature of cooperation between the NDRC and provinces in deriving electricity price adjustments. In fact, the information provided by the GOC indicates that despite its claim that the

[158] *Id.*
[159] *Id.* at Exhibit II E.23.
[160] *Id.*
[161] *Id.*
[162] *Id.*
[163] *Id.*
[164] *Id.* at Exhibit II E.22.
[165] *Id.* at 70.
[166] *Id.* at Exhibits II E.22 and II E.23.
[167] *See* GOC December 19, 2018 QR at 1-3.
[168] *Id.*

responsibility for setting prices within each province has moved from the NDRC to the provincial governments, the NDRC continues to play a major role in setting and adjusting prices. However, the GOC's response failed to explain what action the NDRC would take in the event of a province's non-compliance with a directed price change. This missing information is important to our countervailability analysis as, among other things, it would inform as to whether the NDRC treats non-compliance of directed provincial price changes uniformly throughout all the provinces in China. As a result, the GOC's insufficient response impeded us from being able to conduct the financial contribution and specificity analyses required to determine countervailability.

Consequently, we preliminarily determine, in accordance with sections 776(a)(1), (a)(2)(A), and (a)(2)(C) of the Act, that information necessary to our analysis of financial contribution and specificity is not available on the record, that the GOC withheld information requested by Commerce, and that the GOC significantly impeded this proceeding. Thus, we must rely on "facts available" in making our preliminary determination.[169] Moreover, we preliminarily determine, in accordance with section 776(b) of the Act, that the GOC failed to cooperate to the best of its ability to comply with our repeated requests for information.

As a result, an adverse inference is warranted in the application of facts available.[170] In applying AFA, we find that the GOC's provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act. In applying AFA to choose from the facts available, we are relying on the basis for the initiation of this program in the underlying investigation of this CVD order. Regarding financial contribution and specificity, the petitioner submitted information stating that central, provincial, and local governments established policies to provide preferential electricity rates to solar cells producers and, that this subsidy is limited to priority industries, such as the solar power industry.[171] The respondent companies each reported that they purchased electricity during the POR. Therefore, it is reasonable to conclude, as AFA, they the respondent companies benefitted from this program during the POR.

We are also relying on AFA in selecting the benchmark for determining the existence and amount of the benefit.[172] The benchmark rates we selected are derived from the record of this review and are the highest electricity rates on the record for the applicable rate and user categories. For details regarding the remainder of our analysis, *see* "Provision of Electricity for LTAR," below.

Application of Adverse Facts Available: Land Provided to the Respondents is Specific to the Solar Products Industry

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

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[169] *See* section 776(a)(2)(A) of the Act.
[170] *See* section 776(b) of the Act.
[171] *See* "Import Administration Office of AD/CVD Operations, Countervailing Duty Investigation Initiation Checklist," dated November 8, 2011 (public version) (Initiation Checklist) at the section, "Government Provision of Power for LTAR," which we placed on the record of the instant administrative review.
[172] *See* section 776(b)(4) of the Act.

Our review of the GOC's questionnaire response shows that the GOC did not respond fully to certain sections regarding these programs. Specifically, we asked the GOC to identify all instances in which it provided land or land-use rights to the mandatory respondents during the AUL, to answer questions regarding the eligibility for and the actual use of the assistance provided, and to provide at least one completed application and approval package (*i.e.*, agreements for the company respondents' land-use rights).[173] Rather than responding directly to these questions, the GOC instead referred Commerce to various Chinese land laws and to the respondents' questionnaire responses.[174]

The information requested regarding the provision of land and land-use rights to the mandatory respondents and the basis for which they were provided is crucial for our analysis to determine whether an alleged subsidy constitutes a financial contribution and is specific. This type of information has been provided and verified in previous investigations.[175] Thus, we preliminarily find that the information requested, but not provided, was available to the GOC.

Pursuant to section 776(a) of the Act, we preliminarily determine that information regarding the provision of land and land-use rights is not on the record of this proceeding. Furthermore, given that the GOC has provided information regarding the provision of land and land-use rights in previous proceedings, we preliminarily determine that the GOC has the necessary information that was requested of it and, thus, that the GOC withheld this information within the meaning of section 776(a)(2)(A) of the Act. Accordingly, Commerce must rely on "facts otherwise available" in issuing its preliminary determination, pursuant to section 776(a)(2)(A) of the Act. Moreover, because the GOC withheld information that it can provide, we preliminarily find that the GOC did not act to the best of its ability to comply with our request for information. Consequently, we find that an adverse inference is warranted in the application of facts available pursuant to section 776(b) of the Act. In drawing an adverse inference, we find that the GOC's provision of land-use rights constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act. In applying AFA to choose from the facts available, we are relying on the basis for the initiation of this program in the underlying investigation of this CVD order. With respect to financial contribution and specificity, the petitioner submitted information that the GOC is the ultimate land owner in China, and that certain local governments in China provide land for preferential ales prices (or even for free) to Chinese solar cell producers.[176] The respondent companies each reported that they acquired land-use rights during the AUL. Therefore, it is reasonable to conclude, as AFA, that the respondent companies benefitted from this program during the POR.

[173] *See* GOC June 19, 2018 QR at 55-68.
[174] *Id*.
[175] *See, e.g., See Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 72 FR 71360, 71363 (December 17, 2007) and accompanying PDM at 10 ("we examined these companies' land-use rights agreements and discussed the agreements with the relevant government authorities"), unchanged in *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Countervailing Duty Determination an Final Negative Determination of Critical Circumstances*, 73 FR 40480 (July 15, 2008).
[176] *See* Initiation Checklist at the section, "Government Provision of Land for LTAR."

Application of Adverse Facts Available: Export Buyer's Credits

As discussed under "Programs Preliminarily Determined to be Countervailable," below, we are investigating export buyer's credits provided by the Export-Import Bank of China (China Ex-Im Bank). We preliminary determine that the use of AFA is warranted in determining the countervailability of the Export Buyer's Credit program because the GOC did not provide the requested information needed to allow Commerce to fully analyze this program.

In our CVD Questionnaire and supplemental questionnaire to the GOC, we requested that the GOC answer all the questions in the Standard Questions Appendix and other specific questions relating to the China Ex-Im Bank's Export Buyer's Credit program, which are necessary for Commerce to analyze how the program is administered and how it functions.[177] In response, the GOC stated that none of the company respondents' U.S. customers used export buyer's credits from the China Ex-Im Bank during the POR,[178] and provided the Administrative Measures of Export Buyer's Credit of EIBC (implemented in 2000) (Administrative Measures).[179] The GOC also stated that the exporter itself is the entity that actually receives the money from the China Ex-Im Bank, and that the Chinese exporter and the U.S. importer can verify usage.[180] However, information on the record indicates that the GOC revised the Administrative Measures regarding this program in 2013. This information provides that the China Ex-Im Bank may disburse export buyer's credits directly or through third-party partner and/or correspondent banks.[181] We asked the GOC to submit the Administrative Measures that were revised in 2013, for which the GOC stated that our request for this information is not applicable because none of the U.S. customers of the respondents used export buyer's credits from the China Ex-Im Bank during the POR.[182] We also asked the GOC to provide a list of all partner/correspondent banks involved in the disbursement of funds under this program. Instead of providing the requested information, the GOC again advised us that our question is not applicable.[183]

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

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[177] *See* GOC June 19, 2018 QR and December 19, 2018 QR.
[178] *See* GOC June 19, 2018 QR at 126.
[179] *Id*. at Exhibit II.F.2
[180] *Id*. at 128-129.
[181] *See* Memorandum, "Placing Information on the Record: China Ex-Im Bank," dated December 12, 2018 (China Ex-Im Bank Additional Information).
[182] *See* GOC December 19, 2018 QR at 1.
[183] *Id*.

As noted above, the GOC has not answered our questions to the best of its ability with respect to this program. As a result, the GOC has not provided information that would permit us to make a determination as to whether this program constitutes a financial contribution and whether this program is specific. Because the GOC has not cooperated to the best of its ability in response to Commerce's information requests, we determine, as adverse facts available, that this program constitutes a financial contribution and meets the specificity requirements of the Act.[184]

The GOC has not provided information with respect to whether it uses third-party banks to disburse/settle export buyer's credits from the China Ex-Im Bank. Such information is essential to understanding how export buyer's credits flow to/from foreign buyers and the China Ex-Im Bank. Absent the requested information, the GOC's and respondent companies' claims of non-use of this program are not verifiable. We requested the 2013 revisions to the Administrative Measures because information on the record of this proceeding indicates that the 2013 revisions affected important program changes. For example, record evidence indicates that the loans associated with this program are not limited to direct disbursements through the China Ex-Im Bank.[185] Specifically, the record indicates that customers can open loan accounts for disbursements through this program with third-party banks, whereby the funds are first sent to the importer's account, which could be at the China Ex-Im Bank or third-party banks, and that these funds are then sent to the exporter's bank account.[186] Because of the complicated structure of loan disbursements for this program, Commerce's complete understanding of how this program is administered is necessary.

Thus, the GOC's refusal to provide the 2013 revisions to the administrative measures, which provide internal guidelines for how this program is administered by the China Ex-Im Bank, and a list of partner/correspondent banks that are used to disperse funds through this program, constitutes withholding necessary information and impeded Commerce's ability to conduct its investigation of this program.

Therefore, we preliminarily find that the GOC has not cooperated to the best of its ability and, as adverse facts available, find that Canadian Solar and Jinko Solar both used and benefited from this program. This finding is not contradicted by non-verifiable claims of non-use and certifications of non-use from their customers.[187] As a result, and based on adverse facts available, we find the loans provided by the GOC through the China Ex-Im Bank constitute a financial contribution under sections 771(5)(B)(i) and 771(5)(D)(i) of the Act. These loans also provide a benefit under section 771(5)(E)(ii) of the Act in the amount of the difference between the amounts the recipient paid and

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[184] *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 "Use of Facts Otherwise Available and Adverse Inferences."

[185] *See* China Ex-Im Bank Additional Information at Attachment II.

[186] *See id*.

[187] In prior proceedings, including a prior segment of this proceeding, we have accepted certifications of non-use from a respondent company and its consumers in certain limited situations. *See*, *e.g.*, *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2013*, 81 FR 46904 (July 19, 2016) (*Solar Cells from China Second AR*) and accompanying IDM at 9-12. However, the program was amended in 2013, and as discussed above, the GOC has not provided information regarding the program's amendments. Accordingly, we preliminarily determine that that is not appropriate to accept Canadian Solar's and Jinko Solar's certifications of non-use because we do not know enough about the program to verify those certifications of non-use.

would have paid on comparable commercial loans. Finally, the receipt of loans under this program is tied to export performance and, therefore, this program is specific pursuant to sections 771(5A)(A)-(B) of the Act.

In applying AFA to choose from the facts available, we are relying on the basis for the initiation of this program in the underlying investigation of this CVD order. Specifically, the petitioner submitted information stating that the China Ex-Im Bank provides assistance to exporters through export buyer's credits with the goal of supporting the export of Chinese products. According to information submitted by the petitioner, eligibility for these buyer's credits requires that the Chinese content of exported goods used in the underlying project comprise no less than 50 percent of the contract's value.[188] The respondent companies reported that they exported Chinese origin solar cells during the POR and, thus, were eligible to benefit from this program during the POR.

Under the new section 776(d) of the Act, Commerce may use as adverse facts available a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. Additionally, when selecting an adverse facts available rate, Commerce is not required for purposes of 776(c), or any other purpose, to estimate what the countervailable subsidy rate would have been if the non-cooperating interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.[189]

Consistent with section 776(d) of the Act and our established practice, we selected the highest calculated rate for the same or similar program as adverse facts available.[190] When selecting rates in an administrative review, we first determine if there is an identical program from any segment of the proceeding and use the highest calculated rate for the identical program (excluding *de minimis* rates). If no such identical program exists, we then determine if there is a similar/comparable program (based on the treatment of the benefit) within the same proceeding and apply the highest calculated rate for the similar/comparable program, excluding *de minimis* rates. Where there is no comparable program, we apply the highest calculated rate from any 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.[191] Applying that practice to this proceeding, we determine that there are no rates calculated for this program in any segment of this proceeding. Accordingly, we are preliminarily applying an adverse facts available rate of 5.46 percent *ad valorem*, which was the rate 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 under step two of

[188] *See* Initiation Checklist at the section, "Export Credit Subsidy Programs."
[189] *See* section 776(d)(3) of the Act.
[190] *See*, *e.g.*, *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Shrimp from China*) IDM at 13; *see also Essar Steel Ltd. v. United States*, 753 F.3d 1368, 1373-1374 (Fed. Cir. 2014) (upholding "hierarchical methodology for selecting an AFA rate").
[191] *See Shrimp from China* IDM at 13-14.

our hierarchy.[192] In accordance with section 776(c)(2) of the Act, we do not need to corroborate this rate, because this countervailing duty rate was applied in a separate segment of this proceeding.

<u>Application of Adverse Facts Available: Other Subsidies</u>

Canadian Solar and Jinko Solar each reported receiving assistance with respect to our question, "Did your government (or entities owned directly, in whole or in part, by your government or any provincial or local government) provide, directly or indirectly, any other forms of assistance to your company between January 1, 2007, and the end of the POR?"[193] We also requested that the GOC provide information on "any other non-recurring benefits" received by the respondent companies during the AUL and, that the GOC coordinate with the respondent companies to determine the usage of such programs.[194] In its response, the GOC stated that it has cooperated with Commerce regarding requests for information, and citing Article 11.2 of the WTO Agreement on Subsidies and Countervailing Measures, stated that no reply to questions on these other programs are warranted or required.[195] The nature of the GOC's response to Commerce's request for information on this issue indicates that any further attempts to request this information again from the GOC would be futile. Given the GOC's response, we preliminarily determine that the use of facts available pursuant to sections 776(a)(2)(A) and 776(a)(2)(D) of the Act is warranted in determining the countervailability of these apparent subsidies reported by Canadian Solar and Jinko Solar. The GOC withheld information that was requested of it by not providing information regarding these subsidies in response to our request for information as noted above.[196] Furthermore, because the GOC failed to respond to the best of its ability regarding our question on these other reported subsidies, we determine that an adverse inference is warranted with respect to these subsidies pursuant to section 776(b) of the Act. As a result, we are finding that, as adverse facts available, these other reported subsidies reported by Canadian Solar and Jinko Solar provide a financial contribution and are specific within the meaning of sections 771(5)(D) and 771(5A) of the Act, respectively.

In applying adverse facts available in accordance with section 776(b) of the Act, we are relying on the usage information (*e.g.*, the names of the reported assistance programs, dates the reported assistance was provided, and the reported amounts of the assistance that was received by the respondents) reported by Canadian Solar and Jinko Solar to find that these programs provided a financial contribution within the meaning of section 771(D) of the Act. Based on the GOC's decision not to provide information related to specificity regarding these other reported subsidies, we are applying adverse facts available, in accordance with section 776(b) of the Act, to find that these other subsidies as reported by Canadian Solar and Jinko Solar are specific within the meaning of section 771(5A) of the Act.

Finally, to preliminarily determine whether benefits were provided as a result of these other reported subsidies, within the meaning of section 771(5)(E) of the Act, we are relying on the usage information provided by Canadian Solar and Jinko Solar.

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[192] *See Solar Cells First AR* and accompanying IDM at 18.
[193] *See*, *e.g.*, Canadian Solar June 19, 2018 QR, Vol. I at 29; *see also* Jinko Solar June 19, 2018 QR Vol. I at 47.
[194] *See* CVD Questionnaire at II-25.
[195] *See* GOC June 19, 2018 QR at 140.
[196] *See* section 776(a)(2)(A) of the Act.

XI. Analysis of Programs

Programs Preliminarily Determined to be Countervailable

Government Provision of Inputs for LTAR

In a CVD proceeding, Commerce requires information from both the government of the country whose merchandise is under investigation and from the foreign producers and exporters. When the government fails to provide requested information concerning alleged subsidy programs, Commerce, as adverse facts available, typically finds that a financial contribution exists under the alleged program and that the program is specific.[197] However, where possible, Commerce will rely on respondents' reported information to determine the existence and the amount of the benefit to the extent that such information is useable and verifiable. Thus, we relied on the usage information reported by Canadian Solar and Jinko Solar, as each provided data on the inputs they consumed, and the prices that they paid for these inputs, during the POR.

1. Provision of Solar Grade Polysilicon for LTAR

In the original investigation, Commerce determined this program to be countervailable based on adverse facts available.[198] In this administrative review, the GOC indicated that certain producers of solar grade polysilicon that provided inputs to the company respondents are majority-owned by the government.[199] As explained in the Public Body Memorandum, majority state-owned enterprises in China possess, exercise, or are vested with governmental authority.[200] The GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector. Therefore, we preliminarily determine that these entities constitute "authorities" within the meaning of section 771(5)(B) of the Act and that company respondents received a financial contribution from them in the form of a provision of a good, pursuant to section 771(5)(D)(iii) of the Act.[201]

Further, for the reasons explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we are also basing our determination regarding the government's provision of solar grade polysilicon, in part, on adverse facts available. Specifically, we determine as adverse facts available that certain producers of the solar grade polysilicon purchased by the respondents are "authorities" within the meaning of section 771(5)(B) of the Act and, as such, that the provision of solar grade polysilicon constitutes a financial contribution under section 771(5)(D)(iii) of the Act.[202]

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[197] *See*, *e.g.*, *Hardwood and Decorative Plywood from the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2011* 78 FR 58283 (September 23, 2013) and accompanying IDM at Comment 3.
[198] *See Solar Cells from China Investigation* and accompanying IDM at 12-13.
[199] *See*, *e.g.*, GOC June 19, 2018 QR at 35 at Exhibit II.E.1.
[200] *See* Public Body Memorandum.
[201] *See*, *e.g.*, *Certain Oil Country Tubular Goods from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 52301 (September 3, 2014) (*OCTG from China 2012 AR*) and accompanying IDM at 48-50.
[202] *See*, *e.g.*, GOC June 19, 2018 QR at Exhibit II.E.1.

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

In response to our questions concerning specificity, the GOC stated: "There are a vast number of uses for solar grade polysilicon, and the type of consumers that may purchase solar grade polysilicon is highly varied within China's economy."[203] However, the GOC provided no information concerning the industries consuming polysilicon (solar grade or otherwise) and the amounts purchased by those individual industries. In prior reviews of subject merchandise, we found this program to be specific based on the statements of the GOC, that "Polysilicon has a wide range of uses, including but not limited to use in the solar and semiconductor industries."[204] Because the GOC provided no new information on the industries that consume solar grade polysilicon in China in this segment of the proceeding, we are relying on the prior statements of the GOC in finding that polysilicon is limited to specific industries within the meaning of section 771(5A)(D)(iii) of the Act, namely, the solar and semiconductor industries.[205]

Finally, we preliminarily determine that a benefit is being conferred because the polysilicon is being provided for LTAR. As discussed above under the "Subsidies Valuation Information" section, we are relying on world market prices—an average of the solar grade polysilicon world market prices published by Bloomberg, Energy Trend, and Greentech Media—to calculate a benefit for both Canadian Solar and Jinko Solar. We adjusted the benchmark price to include delivery charges, import duties, and value added tax (VAT) pursuant to 19 CFR 351.511(a)(2)(iv).[206] Regarding delivery charges, we included ocean freight and the inland freight charges that would be incurred to deliver polysilicon to Canadian Solar's and Jinko Solar's production facilities. We added import duties and VAT as reported by the GOC.[207] In calculating VAT, we applied the applicable VAT rate to the benchmark after first adding amounts for ocean freight and import duties. We compared these monthly benchmark prices to Canadian Solar's and Jinko Solar's reported purchase prices for individual domestic transactions, including VAT and delivery charges.

Based on this comparison, we preliminarily determine that polysilicon was provided for LTAR and that a benefit exists for both Canadian Solar and Jinko Solar in the amount of the difference between the benchmark prices and the prices paid by Canadian Solar and Jinko Solar.[208] We divided the total benefits by the appropriate total sales denominator, as discussed in the "Subsidies

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[203] *See* GOC June 19, 2018 QR at 24.
[204] *See*, *e.g.*, *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) (*Solar Cells from China 2015 Preliminary*), unchanged in *Solar Cells from China 2015 AR*.
[205] Commerce's questionnaire states that it will not revisit specificity and financial contribution decisions in administrative reviews unless the government or company respondents provide new information challenging the prior conclusions.
[206] Commerce concludes that these data do not already include delivery charges. *See* the benchmark information submitted by the petitioner, Canadian Solar, and Jinko Solar.
[207] *See* GOC June 19, 2018 QR at 48.
[208] *See* 19 CFR 351.511(a).

Valuation Information" section above, and in the Preliminary Calculation Memoranda. On this basis, we preliminarily determine countervailable *ad valorem* subsidy rates of 0.38 percent for Canadian Solar, and 0.80 percent for Jinko Solar.

2. Provision of Solar Glass for LTAR

Commerce determined this program to be countervailable in the first administrative review.[209] In its questionnaire responses in the instant review, the GOC indicated that certain producers of solar glass that provided inputs to the company respondents are majority-owned by the government.[210] As explained in the Public Body Memorandum, majority state-owned enterprises in China possess, exercise, or are vested with governmental authority.[211] The GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector. Therefore, we preliminarily determine that these entities constitute "authorities" within the meaning of section 771(5)(B) of the Act and that company respondents received a financial contribution from them in the form of a provision of a good, pursuant to section 771(5)(D)(iii) of the Act.[212]

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

In response to our questions concerning specificity, the GOC stated: "{t}here are a vast number of uses for solar glass. The industries that purchase/use solar glass are not limited, and the solar panel industry in China is not a disproportionate or predominant consumer of solar glass . . ."[213] However, the GOC provided none of the information requested concerning amounts purchased by individual industries. In the first administrative review of this *CVD Order* with respect to this program, we relied on information demonstrating that solar glass has lower iron content than other types of glass, in order to allow the transmission of more sunlight, and that solar glass has a particular thickness of between three and four millimeters.[214] Thus, we continue to find that solar glass is a particular type of flat and rolled glass most suitable for particular purposes and customers. Based on this, and the lack of new information provided in this segment of the proceeding, we preliminarily determine that the provision of solar glass is limited to specific industries under section 771(5A)(D)(iii) of the Act, namely, the solar industry.

Finally, a benefit is being conferred because the solar glass is being provided for LTAR. As discussed above under the "Subsidies Valuation Information" section, Commerce is relying on the solar glass benchmarks published by Greentech Media. Commerce adjusted the benchmark price to

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[209] *See Solar Cells from China First AR* and accompanying IDM at 29-30.
[210] *See*, *e.g.*, GOC June 19, 2018 QR at Exhibit II.E.29.
[211] *See* Public Body Memorandum.
[212] *See*, *e.g.*, *OCTG from China 2012 AR* and accompanying IDM at 48-50.
[213] *See* GOC June 19, 2018 QR at 104.
[214] *See Solar Cells from China First AR* and accompanying IDM at 23-25.

include delivery charges, import duties, and VAT pursuant to 19 CFR 351.511(a)(2)(iv).[215] We added import duties and VAT as reported by the GOC.[216] In calculating VAT, we applied the applicable VAT rate to the benchmark after first adding amounts for ocean freight and import duties. We compared the benchmark prices to the respondent's reported purchase prices for individual transactions, including VAT and delivery charges.

Based on this comparison, we preliminarily determine that solar glass was provided to both Canadian Solar and Jinko Solar for LTAR and that a benefit exists in the amount of difference between the benchmark prices and the prices paid by these company respondents.[217] We divided the company respondents' total benefits by the appropriate total sales denominator, as discussed in the "Subsidies Valuation Information" section above, and in the Preliminary Calculation Memoranda. On this basis, we preliminarily determine countervailable *ad valorem* subsidy rates of 2.38 percent for Canadian Solar, and 3.93 percent for Jinko Solar.

3. Provision of Aluminum Extrusions for LTAR

Commerce determined this program to be countervailable in the first administrative review based on adverse facts available.[218] For the reasons explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we are basing our determination regarding the government's provision of aluminum extrusions, in part, on adverse facts available. Specifically, we determine as adverse facts available that the producers of the aluminum extrusions purchased by Canadian Solar and Jinko Solar are "authorities" within the meaning of section 771(5)(B) of the Act and,[219] as such, that the provision of aluminum extrusions constitutes a financial contribution under section 771(5)(D)(iii) of the Act.

In addressing our questions on specificity, the GOC stated that "{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."[220] However, the GOC provided none of the information we requested concerning amounts consumed by individual industries.

In the third administrative review, the GOC reported six industries consuming aluminum extrusions: building and construction, transportation, electrical, machinery and equipment, consumer durables, and other industries.[221] However, the GOC has not provided such information since the third administrative review, and it did not provide this information in the instant review. Thus, for these preliminary results, we continue to find that the recipients of aluminum extrusions are limited in number to the industries listed by the GOC in the third administrative review, and that the provision of aluminum extrusions is *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the

[215] Commerce concludes that these data do not already include delivery charges. *See* the benchmark information submitted by the petitioner, Canadian Solar, and Jinko Solar.
[216] *See* GOC June 19, 2018 QR at 119.
[217] *See* 19 CFR 351.511(a).
[218] *See Solar Cells from China First AR* and accompanying IDM at 28.
[219] We note that the record does not indicate that the GOC maintains a majority ownership interest in the producers of aluminum extrusions that provided inputs to the company respondents during the POR.
[220] *See* GOC June 19, 2018 QR at 86.
[221] *See Solar Cells from China Third AR* and accompanying IDM at Comment 3.

Act. This is consistent with our past practice in the most recently completed segment of this proceeding.[222] While the GOC indicates aluminum extrusions are used in a variety of industries and sectors across China, we continue to find, consistent with the most recently completed review, that the industries within those sectors that actually consume aluminum extrusions are limited in number. The statute notes that the term "enterprise or industry" "includes a group of such enterprises or industries."[223]

Finally, a benefit is conferred to the extent that aluminum extrusions are being provided for LTAR. As discussed above under the "Subsidies Valuation Information" section, we are basing our aluminum extrusions benchmark on an average of the world market prices of aluminum extrusions and aluminum frames compiled by Comtrade and IHS. We adjusted the benchmark price to include delivery charges, import duties, and VAT pursuant to 19 CFR 351.511(a)(2)(iv).[224] We added import duties and VAT as reported by the GOC.[225] In calculating VAT, we applied the applicable VAT rate to the benchmark after first adding amounts for ocean freight and import duties. We compared these monthly benchmark prices to Canadian Solar's and Jinko Solar's reported purchase prices for individual transactions, including VAT and delivery charges.

Based on this comparison, we preliminarily determine that aluminum extrusions were provided to both Canadian Solar and Jinko Solar for LTAR and that a benefit exists in the amount of difference between the benchmark prices and the prices paid by these company respondents.[226] We divided the company respondents' total benefits by the appropriate total sales denominator, as discussed in the "Subsidies Valuation Information" section above, and in the Preliminary Calculation Memoranda. On this basis, we preliminarily determine countervailable *ad valorem* subsidy rates of 2.64 percent for Canadian Solar, and 3.01 percent for Jinko Solar.

4. Provision of Electricity for LTAR

In the original investigation, Commerce determined this program to be countervailable based on the application of adverse facts available.[227] For the reasons explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we are basing our determination regarding the GOC's provision of electricity in part on adverse facts available. For these preliminary results, we determine that Canadian Solar and Jinko Solar each received a countervailable subsidy from electricity provided for LTAR.

As described above in detail, the GOC did not provide certain information requested regarding its provision of electricity to the company respondents and, as a result, we determine, as adverse facts available, that the GOC is providing a financial contribution that is specific within the meaning of sections 771(5)(D)(iii) and 771(5A)(D) of the Act, respectively. To determine the existence and the amount of any benefit under this program pursuant to section 771(5)(E)(iv) of the Act and 19 CFR 351.511, we relied on the company respondents' reported consumption volumes and rates paid. We compared the rates paid by company respondents to the benchmark rates, which, as

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[222] *See Solar Cells from China 2015 AR* and accompanying IDM at Comment 3.
[223] Section 771(5A)(D) of the Act.
[224] Commerce concludes that these data do not already include delivery charges. *See* the benchmark information submitted by the petitioner, Canadian Solar, and Jinko Solar.
[225] *See* GOC June 19, 2018 QR at 95-96.
[226] *See* 19 CFR 351.511(a).
[227] *See Solar Cells from China Investigation* and accompanying IDM at 14-15.

discussed below, are the highest rates charged in China during the POR. We made separate comparisons by price category (*e.g.*, great industry peak, basic electricity, *etc.*). We multiplied the difference between the benchmark and the price paid by the consumption amount reported for that month and price category. We then calculated the total benefit during the POR for the company respondents by summing the difference between the benchmark prices and the prices paid by each company.

To calculate the electricity benchmark, in accordance with 19 CFR 351.511(a)(2), we selected the highest rates in China for the user category of the respondents (*e.g.*, "large industrial users") for the non-seasonal general, peak, normal, and valley ranges, as provided in the electricity tariff schedules submitted by the GOC.[228] This benchmark reflects an adverse inference, which we drew as a result of the GOC's failure to cooperate by not acting to the best of its ability to provide requested information about its provision of electricity in this review.[229]

To calculate the subsidy rate, we divided the benefit amount by the appropriate total sales denominator, as discussed in the Preliminary Calculation Memoranda. On this basis, we preliminarily determine countervailable *ad valorem* subsidy rates of 1.96 percent for Canadian Solar, and 0.40 percent for Jinko Solar.

5. Provision of Land for LTAR

In the original investigation, Commerce determined this program to be countervailable based on the application of adverse facts available.[230] For the reasons explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we are basing our determination regarding the GOC's provision of land in part on adverse facts available. For these preliminary results, we determine that Canadian Solar and Jinko Solar each received a countervailable subsidy through land provided for LTAR.

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

To calculate the benefit, we first multiplied the Thailand industrial land benchmarks discussed above under the "Land Benchmark" section, by the total area of Canadian Solar's and Jinko Solar's countervailed tracts. We then subtracted the price paid for each tract to derive the total unallocated benefit. Because land is related to the respondents' capital structure, we treated the amount of the unallocated benefit as a non-recurring subsidy, pursuant to 19 CFR 351.524(c)(2)(iii). We thus conducted the "0.5 percent test," as instructed by 19 CFR 351.524(b)(2), for the year of the relevant land-use agreement by dividing the total unallocated benefit for each tract by the appropriate sales denominator. If more than one tract was provided in a single year, we combined the total

[228] *See* GOC June 19, 2018 QR at Exhibit II E.24.
[229] *See* "Application of Adverse Facts Available: Provision of Electricity for LTAR" section, above; *see also Changzhou Trina Solar et al. v. United States*, CIT No. 17-00198 (CIT 2018) (*CIT 2018*), stating that "assuming a countervailable subsidy exists, Commerce acted in accordance with the law in using the highest of all provincial rates on the record to calculate the benchmark" for this program.
[230] *See Solar Cells from China Investigation* and accompanying IDM at 7-8.

unallocated benefits from the tracts before conducting the "0.5 percent test." As a result, we found that the benefits were greater than 0.5 percent of relevant sales and that allocation was appropriate for all tracts found to be countervailable. We allocated any benefit amounts across the terms of the land-use agreements, using the standard allocation formula of 19 CFR 351.524(d), and determined the amount attributable to the POR. We then summed all of the benefits attributable to the POR and divided this amount by the appropriate total sales denominator, as discussed in the "Subsidies Valuation Information" section above, and in the Preliminary Calculation Memoranda, to derive preliminary subsidy *ad valorem* subsidy rates of 1.16 percent for Canadian Solar, and 0.77 percent for Jinko Solar.

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

In the original investigation, Commerce determined this program to be countervailable.[231] Article 25 of China's Renewable Energy Law specifically calls for financial institutions to offer favorable loans to the renewable energy industry. In addition, Catalogue No. 40 contains a list of encouraged projects, including solar energy, which the GOC targets through the provision of loans and other forms of assistance.

In the original investigation, Commerce determined that this program conferred countervailable subsidies on subject merchandise because: 1) the loans provide a financial contribution pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act, and 2) the loans provide a benefit pursuant to section 771(E)(ii) equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans.[232] Commerce further determined that there is a program of preferential policy lending specific to the renewable energy industry, including solar cells, within the meaning of section 771(5A)(D)(i) of the Act. There is no new information on the record that would cause us to reconsider this determination. Therefore, we continue to find that this program provides a countervailable subsidy.

In its questionnaire responses in this segment of the proceeding, the GOC stated that this program does not exist and that no loans to any of the respondents were issued pursuant to a policy lending program. The GOC further claimed that if an industrial policy existed, it had "no connection to or effect upon the decision of any bank to issue loans to any respondent," and thus those loans did not constitute a countervailable subsidy.[233] However, the GOC provided no documentation in support of these assertions that would call into question Commerce's conclusions from the investigation.

Canadian Solar and Jinko Solar each reported having loans outstanding from banks in China during the POR under this program.[234] To calculate the benefit under this program, we used the benchmarks described under the section, "Benchmark and Discount Rates" above, including a risk premium for loans provided in the years in which we determined Canadian Solar and Jinko Solar to be uncreditworthy, where applicable.[235] We divided the total benefits received during the POR by the appropriate total sales denominator, as discussed in the "Subsidies Valuation Information"

[231] *Id.* and accompanying IDM at 12, "Preferential Policy Lending."
[232] *Id*.
[233] *See* GOC June 19, 2018 QR at 4.
[234] *See*, *e.g.*, Canadian Solar June 19, 2018 QR at Vol I at 9; *see also* Jinko Solar June 19, 2018 QR at 10.
[235] *See* 19 CFR 351.505(c).

section above, and in the Preliminary Calculation Memoranda. On this basis, we preliminarily determine countervailable *ad valorem* subsidy rates of 1.43 percent for Canadian Solar, and 0.67 percent for Jinko Solar.

Income Tax Programs

1. Preferential Tax Program for High or New Technology Enterprises (HNTEs)

Article 28.2 of the Enterprise Income Tax Law of China provides for the reduction of the income tax rate to 15 percent, from 25 percent, for enterprises that are recognized as HNTEs, regardless of whether the enterprise is a Foreign Invested Enterprise (FIE) or domestic company.[236] Circular 172 provides details regarding the type of enterprises that qualify for HNTE status and it identifies eligible projects, which include renewable, clean energy technologies such as solar photovoltaic technologies.

Commerce determined in the original investigation that this program confers a countervailable subsidy, because the income tax reduction provides a financial contribution in the form of revenue foregone by the government, and it confers a benefit to the recipients in the amount of the tax savings, pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).[237] Commerce also found that the income tax reduction afforded by this program is limited as a matter of law to certain enterprises, *i.e.*, HNTEs and, thus, is specific under section 771(5A)(D)(i) of the Act. There is no new information on the record for us to reconsider our prior determination. Therefore, we continue to find that this program provides a countervailable subsidy.

Canadian Solar and Jinko Solar each reported benefitting from this program during the POR.[238] To calculate the benefit from this program, we treated the income tax reductions claimed by the respondents as recurring benefits, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we compared the company's tax rates (15 percent) applicable under this program to the rate that would have been paid otherwise by the respondents (the standard income tax rate of 25 percent). We then divided the difference between these two amounts by the appropriate total sales denominator, as discussed in the "Denominators" section above. On this basis, we preliminarily determine countervailable *ad valorem* subsidy rates of 0.07 percent for Canadian Solar, and 0.57 percent for Jinko Solar.

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

In the original investigation, Commerce determined this program to be countervailable.[239] Article 30.1 of the Enterprise Income Tax Law of China created a new program regarding the deduction of research and development expenditures by companies, which allows enterprises to deduct, through tax deductions, research expenditures incurred in the development of new technologies, products, and processes. As explained in *Solar Cells from China Investigation*, the income tax deduction afforded by this program is limited as a matter of law to certain enterprises, those with R&D in

[236] *See Solar Cells from China Investigation* and accompanying IDM at 16.
[237] *Id*.
[238] *See* Canadian Solar June 19, 2018 QR, Vol. XI at 10; *see also* Jinko Solar June 19, 2018 QR, Vol. V at 9.
[239] *See Solar Cells from China Investigation* and accompanying IDM at 17.

eligible high-technology sectors.[240] Specifically, Article 95 of Regulation 512 provides that, if eligible research expenditures do not "form part of the intangible assets value," an additional 50 percent deduction from taxable income may be taken on top of the actual accrual amount. Where these expenditures form the value of certain intangible assets, the expenditures may be amortized based on 150 percent of the intangible assets costs.

Commerce determined in the original investigation that this income tax reduction provides a financial contribution in the form of revenue foregone by the government, and it confers a benefit to the recipients in the amount of the tax savings, pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also continue to determine that the income tax deduction afforded by this program is limited as a matter of law to certain enterprises, *i.e.*, those with R&D in eligible high-technology sectors and, thus, is specific under section 771(5A)(D)(i) of the Act. There is no new information on the record for us to reconsider our determination from the original investigation. Therefore, we continue to find that this program provides a countervailable subsidy.

Canadian Solar and Jinko Solar each reported benefitting from this program during the POR.[241] To calculate the benefit from this program, we treated the tax deduction as a recurring benefit, consistent with 19 CFR 351.524(c)(1).[242] To compute the amount of the tax savings, we calculated the amount of tax each respondent company would have paid absent the tax deductions. We then divided the tax savings by the appropriate total sales denominator.

On this basis, we preliminarily determine countervailable *ad valorem* subsidy rates of 0.30 percent for Canadian Solar, and 0.29 percent for Jinko Solar.

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

In the original investigation, Commerce determined this program to be countervailable.[243] Circular 37 exempts foreign invested enterprises (FIEs) and certain domestic enterprises from VAT and tariffs on imported equipment used in their production so long as the equipment does not fall into prescribed lists of non-eligible items, in order to encourage foreign investment and to introduce foreign advanced technology equipment and industry technology upgrades. As of January 1, 2009, the GOC discontinued VAT exemptions under this program, but companies can still receive import duty exemptions.[244] There is no new information on the record for us to reconsider this determination. Therefore, we continue to find that this program provides a countervailable subsidy.

In the investigation, we found that VAT and tariff exemptions on imported equipment confer a countervailable subsidy. The exemptions are a financial contribution in the form of revenue foregone by the GOC, and they provide a benefit to the recipient in the amount of the VAT and

[240] *Id.*
[241] *See* Canadian Solar June 19, 2018 QR, Vol. II at 12; *see also* Jinko Solar June 19, 2018 QR, Vol. V at 12.
[242] *See Solar Cells from China Investigation* and accompanying IDM at 17, "Enterprise Income Tax Law, Research and Development (R&D) Program."
[243] *See Solar Cells from China* and accompanying IDM at 18. Note that the GOC did not provide any laws or regulations in its submissions on the record of this review pertaining to this program.
[244] *Id.*

tariff savings.[245] We also determined that the VAT and tariff exemptions afforded by the program are specific under section 771(5A)(D)(iii)(I) of the Act because the program is limited to certain enterprises, *i.e.*, FIEs and domestic enterprises involved in "encouraged" projects.

Since this indirect tax program is provided for, or tied to, the capital structure or capital assets of a firm, Commerce treats this tax program as providing a non-recurring benefit and allocates the amount of the VAT and/or tariff exemptions, as applicable in the given year, over the AUL.[246] Record information indicates that Jinko Solar received benefits during the AUL from this program that are allocable to the POR.[247] To calculate the countervailable subsidy for the POR, we used our standard methodology for non-recurring grants.[248] In the years that the benefits received by the company respondents under this program did not exceed 0.5 percent of relevant sales for that year, we expensed those benefits in the years that they were received, pursuant to 19 CFR 351.524(b)(2). We used the discount rates described above in the section "Subsidies Valuation Information," to calculate the amount of the benefit allocable to the POR. We then divided the benefit amount by the appropriate sales denominator. On this basis, we preliminarily determine countervailable *ad valorem* subsidy rate of 0.08 percent for Jinko Solar.

Grant Program

Golden Sun Demonstration Program

Commerce determined this program to be countervailable in the original investigation.[249] This program was established in 2009 under Article 20 of China's Renewable Energy Law to provide assistance to firms in the construction of photovoltaic electricity-generation projects. As detailed in Circular 397, this program was designed to provide one-time assistance to recipients over the course of its two-year term. There is no new information on the record that would cause us to reconsider our determination from the original investigation. As a result, we continue to find that grants from this program provide a financial contribution pursuant to section 771(5)(D)(i) of the Act and a benefit, in the amount of the grant provided, pursuant to 19 CFR 351.504(a). We continue to find that grants from this program are specific as a matter of law to certain enterprises, namely those involved in the construction of solar-powered projects, pursuant to section 771(5A)(D)(i) of the Act.[250]

Canadian Solar and Jinko Solar each reported receiving grants from this program.[251] Commerce continues to treat these grants as a non-recurring subsidy and thus performed the "0.5 percent test" for the year the grant was approved, in accordance with 19 CFR 351.504(c)(1) and 19 CFR 351.524(b)(2). Specifically, we divided the total approved amount by the appropriate total sales denominator. For those years in which the grants received were greater than or equal to 0.5 percent, we allocated the rebate amount over the AUL. We used the discount rates described above in the "Subsidies Valuation Information" section to calculate the amount of the benefit allocable to the POR.

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[245] *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1).
[246] *See* 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).
[247] *See* Jinko Solar June 19, 2018 QR, Vol. I at 14.
[248] *See* 19 CFR 351.524(b).
[249] *See Solar Cells from China Investigation* and accompanying IDM at 11-12.
[250] *See CIT 2018*.
[251] *See*, *e.g.*, Canadian Solar June 19, 2018 QR, Vol. II at 14; *see also* Jinko Solar June 19, 2018 QR, Vol. III at 15.

On this basis, we preliminarily determine countervailable *ad valorem* subsidy rates of 0.17 percent for Canadian Solar, and 0.21 percent for Jinko Solar.

Export Financing

1. Export Buyer's Credits Program

Through this program, the China Ex-Im Bank provides loans at preferential rates for the purchase of exported goods from China. As explained above section, "Use of Facts Otherwise Available and Adverse Inferences," we are determining, based on adverse facts available, that both Canadian Solar and Jinko Solar each used this program during the POI, and that a countervailable subsidy was conferred. Therefore, we determine a countervailable subsidy rate of 5.46 percent *ad valorem* for Canadian Solar, and 5.46 percent *ad valorem* for Jinko Solar under this program.

2. Export Seller's Credits Program

Commerce has previously found this program to be countervailable, based on the information the GOC provided in its Circular of the Export-Import Bank of China Regarding the Printing and Distribution of the Export-Import Bank of China Interim Rules of the Seller's Credit on Exports (Revised)," dated August 25, 2000.[252] In the instant review, the GOC stated that Canadian Solar and Jinko Solar each used this program during the POR, and that we should refer to the responses from the company respondents for more details.[253] As a result of the GOC's response, we continue to find the loans provided by the GOC under this program constitute financial contributions under sections 771(5)(B)(i) and 771(5)(D)(i) of the Act. These loans also provide a benefit under section 771(5)(E)(ii) of the Act in the amount of the difference between the amounts the recipient paid and would have paid on comparable commercial loans. Finally, the receipt of loans under this program is tied to actual or anticipated exportation or export earnings and, therefore, this program is specific pursuant to sections 771(5A)(A)-(B) of the Act.

Canadian Solar and Jinko Solar each reported having outstanding loans from the Ex-Im Bank during the POR, which were provided under this program.[254] To calculate the benefit under this program, we used the benchmarks described under the section, "Benchmark and Discount Rates" above, including a risk premium for loans provided in the years in which we determined Canadian Solar and Jinko Solar to be uncreditworthy, where applicable.[255] In conducting this comparison, we used the interest rates described in the "Benchmarks and Discount Rates" section above. We divided the benefits by Canadian Solar's and Jinko Solar's export sales during the POR. On this basis, we preliminarily determine countervailable *ad valorem* subsidy rates of 0.49 percent for Canadian Solar, and 0.03 percent for Jinko Solar.

[252] *See*, *e.g.*, *Solar Cells from China Third AR Preliminary* and accompanying PDM at 43, unchanged in *Solar Cells from China Third AR*.
[253] *See* GOC June 19, 2018 QR at 5.
[254] *See* Canadian Solar June 19, 2018 QR, Vol. II at 11; *see also* Jinko Solar June 19, 2018 QR at Exhibit IQR-JJ-8.
[255] *See* 19 CFR 351.505(c).

Other Subsidy Programs

Canadian Solar and Jinko Solar each reported that they received benefits from various grants and income tax programs during the AUL.[256] As stated above in the section, "Use of Facts Otherwise Available and Adverse Inferences," Commerce has preliminarily determined that numerous additional grants provided to the company respondents are countervailable based upon adverse facts available. The majority of the grants received by both Canadian Solar and Jinko Solar do not pass the "0.5 percent test" described in CFR 351.524(b)(2), and thus are allocated to the year of receipt.[257] However, Canadian Solar and Jinko Solar each received several grants that were expensed during the POR. We calculated *ad valorem* subsidy rates of 0.00 percent for Canadian Solar, and 0.07 percent for Jinko Solar for these grants.[258]

Canadian Solar and Jinko Solar also reported that they each received certain exemptions from their income taxes during the POR.[259] As we stated above in the section, "Application of Adverse Facts Available: Other Subsidies," Commerce has preliminarily determined that this tax program is countervailable based upon adverse facts available. We calculated *ad valorem* subsidy rates of 0.02 percent for Canadian Solar, and 0.00 percent for Jinko Solar for these tax exemption programs.[260]

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

Tax Benefit Programs

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

Other Tax Programs

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

256 *See*, *e.g.*, Canadian Solar June 19, 2018 QR, Vol. I at 29; *see also*, *e.g.*, Jinko Solar June 19, 2018 QR, Vol. V at 38.
257 *See* Preliminary Calculations Memoranda.
258 *Id*.
259 *See* Canadian Solar June 19, 2018 QR, Vol. IV at 30; *see also* Jinko Solar June 19, 2018 QR, Vol. III at 44.
260 *Id*.

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

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

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

Record information indicates that Jinko Solar received benefits during the AUL from this program that are allocable to the POR.[261] Since this indirect tax program is provided for, or tied to, the capital structure or capital assets of a firm, as reported by Jinko Solar, Commerce treats this tax program as providing a non-recurring benefit and allocates the benefit to the firms over the AUL. To calculate the POR benefit under this program, for the years in which the rebate amount was less than 0.5 percent of the relevant sales figure, we expensed the rebates in the year of receipt, consistent with 19 CFR 351.524(a). For those years in which the VAT rebates were greater than or equal to 0.5 percent, we allocated the rebate amount over the AUL. We used the discount rates described above in the "Subsidies Valuation Information" section to calculate the amount of the benefit allocable to the POI.

On this basis, we preliminarily determine a countervailable *ad valorem* subsidy rate of 0.00 percent for Jinko Solar, which is not measurable.

Export Credit Subsidies

Export Credit Insurance from SINOSURE

The company respondents were insured by SINOSURE during the POR.[262] Section 351.520(a)(1) of Commerce's regulations instructs that in the case of export insurance, a benefit exists if the premium rates charged are inadequate to cover the long-term operating costs and losses of the program. Pursuant to 19 CFR 351.520(a)(2), if the premium rates are inadequate, the amount of the benefit is the difference between the amount of premiums paid by the firm and the amount received by the firm under the insurance program during the POR. Our examination of the information provided by the company respondents on their use of this program leads us to conclude that neither Canadian Solar nor Jinko Solar benefitted from this program during the POR, within the meaning of 19 CFR 351.520(a)(2).[263] Accordingly, we preliminarily determine that this program provided no measurable benefit during the POR. As such, for these preliminary results, it was not necessary to

[261] *See* Jinko Solar June 19, 2018 QR, Vol. I at 15.
[262] *See*, *e.g.*, Canadian Solar June 19, 2018 QR, Vol. IV at 28; *see also* Jinko Solar June 19, 2018 QR, Vol III at 43.
[263] Due to the proprietary nature of the information on which we based our analysis, *see* Commerce's discussion of this issue in the Preliminary Calculations Memoranda.

examine whether the rates charged by SINOSURE are adequate to cover the program's long-term operating costs and losses pursuant to 19 CFR 351.520(a)(1).

XII. Verification

We intend to verify record information submitted by Canadian Solar and Jinko Solar.

XIII. Disclosure and Public Comment

Commerce intends to disclose to interested parties the calculations performed in connection with these preliminary results within five days of its public announcement.[264] Case briefs may be submitted to Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) at a date to be determined by Commerce, and rebuttal briefs, limited to issues raised on the case briefs, may be submitted no later than five days after the deadline for the submission for case briefs.[265] Commerce will notify the parties when it has determined a deadline for case briefs. Parties who submit case or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[266]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time, within 30 days after the date of publication of this notice.[267] Hearing requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues parties intend to present at the hearing. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a time to be determined. Prior to the hearing, Commerce will contact all parties who submitted case or rebuttal briefs to determine if they wish to participate in the hearing. Commerce will then distribute a hearing schedule to these parties prior to the hearing and only those parties listed on the schedule may present issues raised in their briefs.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using ACCESS.[268] Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time,[269] on the due dates established above (or, where applicable, to be established by Commerce at a later date).

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[264] *See* 19 CFR 351.224(b).
[265] *See* 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1). Interested parties will be notified through ACCESS regarding the deadline for submitting case briefs.
[266] *See* 19 CFR 351.309(c)(2) and 351.309(d)(2).
[267] *See* 19 CFR 351.310(c).
[268] *See* 19 CFR 351.303(b)(2)(i).
[269] *See* 19 CFR 351.303(b)(1).

XIV. Conclusion

We recommend that you approve the preliminary findings described above.

☒ Agree ☐ Disagree

2/12/2019

X

Signed by: CHRISTIAN MARSH

Christian Marsh
Deputy 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 (USA) Inc.
5. Changzhou Trina Solar Energy Co., Ltd.
6. Changzhou Trina Solar Yabang Energy Co., Ltd.
7. Chint Solar (Zhejiang) Co., Ltd.
8. Dongguan Sunworth Solar Energy Co., Ltd.
9. ERA Solar Co. Limited
10. ET Solar Energy Limited
11. Hainan Yingli New Energy Resources Co., Ltd.
12. Hangzhou 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. JA Technology Yangzhou Co., Ltd.
17. Jiangsu High Hope Int'l Group
18. Jiawei Solarchina (Shenzhen) Co., Ltd.
19. Jiawei Solarchina Co., Ltd.
20. JingAo Solar Co., Ltd.
21. Jinko Solar (U.S.) Inc.
22. Jinko Solar International Limited
23. Lightway Green New Energy Co., Ltd.
24. Lixian Yingli New Energy Resources Co., Ltd.
25. Luoyang Suntech Power Co., Ltd.
26. Nice Sun PV Co., Ltd.
27. Ningbo Qixin Solar Electrical Appliance Co., Ltd.
28. Risen Energy Co., Ltd.
29. Shanghai BYD Co., Ltd.
30. Shanghai JA Solar Technology Co., Ltd.
31. Shenzhen Glory Industries Co., Ltd.
32. Shenzhen Topray Solar Co., Ltd.
33. Sumec Hardware & Tools Co., Ltd.
34. Systemes Versilis, Inc.
35. Taizhou BD Trade Co., Ltd.
36. tenKsolar (Shanghai) Co., Ltd.
37. Tianjin Yingli New Energy Resources Co., Ltd.
38. Toenergy Technology Hangzhou Co., Ltd.
39. Trina Solar (Changzhou) Science & Technology Co., Ltd.
40. Wuxi Suntech Power Co., Ltd.
41. Yancheng Trina Solar Energy Technology Co., Ltd.
42. Yingli Energy (China) Co., Ltd.

43. Yingli Green Energy Holding Company Limited
44. Yingli Green Energy International Trading Company Limited
45. Zhejiang Era Solar Technology Co., Ltd.
46. Zhejiang Sunflower Light Energy Science & Technology Limited Liability Company