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Investigation
Remand Redetermination
Court No. 15-00068; Slip Op. 16-121
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Public Version

Changzhou Trina Solar Energy Co., Ltd. et al. v. United States
Consol. Court No. 15-00068; Slip Op. 16-121 (CIT December 30, 2016)
FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

SUMMARY

The Department of Commerce (the Department) prepared these final results of redetermination pursuant to the remand order of the Court of International Trade (CIT or the Court) in *Changzhou. Trina Solar Energy Co., Ltd. et al. v. United States*, Consol. Court No. 15-00068, Slip Op. 16-121 (CIT December 30, 2016) (*Remand Order*). These final remand results concern the *Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014) (*Final Determination*) and accompanying Issues and Decision Memorandum, as amended, *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Antidumping Duty Order; and Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 80 FR 8592 (February 18, 2015) (*Amended Final Determination*) and accompanying Ministerial Error Memorandum (Solar Products Ministerial Error Memorandum). The petitioner in the investigation was SolarWorld Americas, Inc. (SolarWorld). The two respondents selected for individual examination in the investigation were Changzhou Trina Solar Energy Co., Ltd. (Trina

Solar) and Wuxi Suntech Power Co., Ltd. (Suntech) (collectively, mandatory respondents or respondent companies).[1]

On December 30, 2016, the Court of International Trade (CIT or the Court) remanded aspects of the *Final Determination* to the Department for further consideration. First, although finding that the Department reasonably invoked its authority under section 776 of the Tariff Act of 1930, as amended (the Act), to use facts otherwise available, with an adverse inference (AFA) to find that certain subsidies are countervailable, the Court found that the Department, in certain instances, did not make the necessary factual findings to satisfy the requirements for countervailability.[2] Thus, as described in greater detail below, the Court ordered the Department to make the necessary factual findings that certain government subsidies provided a financial contribution, were specific, and provided a benefit, within the meaning of section 771(5) of the Act.[3] The Court further held that, should the Department continue to find those programs countervailable on remand, then the Department must explain how its selection of the applicable AFA rates "comports with its stated practice."[4]

Second, the Court granted the Department's request for a voluntary remand to reevaluate whether SolarWorld established a "reasonable basis to believe or suspect" that Suntech and Trina Solar were uncreditworthy during any of the years identified in SolarWorld's allegation.[5]

As set forth in detail below, the Department disagrees with certain aspects of the Court's analysis in its *Remand Order*. Nevertheless, and pursuant to the Court's *Remand Order*, we have clarified or reconsidered the *Final Determination* regarding the issues described above. Based

[1] *See*, *e.g.*, *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 79 FR 33174 (June 10, 2014) (*Preliminary Determination*).
[2] *See Remand Order* at 19-26.
[3] *Id.* at 24-25.
[4] *Id.* at 26-28.
[5] *Id*. at 39.

on this analysis: (1) under respectful protest, we have cited evidence on the record to support the Department's findings that all but one of the subsidies subject to this remand redetermination provided Trina Solar with a financial contribution, conferred a benefit, and were specific within the meaning of sections 771(5)(A), (B), (D), and (E), and section 771(5A), of the Act; (2) we have clarified our analysis to demonstrate how the selection of the AFA rates that the Department assigned to the subsidies provided to Trina Solar comports with the Department's stated practice; and (3) we reevaluated SolarWorld's uncreditworthiness allegation regarding Suntech and Trina Solar, finding that SolarWorld's allegation met the Department's threshold to initiate an investigation of the creditworthiness of the respondent companies in certain years, and that those companies were indeed uncreditworthy in those years.

On April 4, 2017, the Department issued its Draft Remand Results and accompanying documents, and invited interested parties to comment on the Draft Remand Results.[6] On April 18, 2017, SolarWorld and Trina Solar each filed timely comments on the Draft Remand Results.[7] Based on the comments we received on the Draft Remand Results, for these final remand results, we corrected a clerical calculation error in the Draft Remand Results regarding Suntech's subsidy benefit calculations for its long-term loans. Otherwise, besides minor grammatical and formatting changes, these final remand results contain no other revisions to the analysis provided in the Draft Remand Results. Our responses to parties' comments on the Draft Remand Results are addressed in the section, "Comments on Draft Remand Results," below.

[6] *See* Department Document, "Changzhou Trina Solar Energy Co., Ltd. *et al.* v. United States Consol. Court No. 15-00068; Slip Op. 16-121 (CIT December 30, 2016), Draft Results of Redetermination Pursuant to Court Remand," (April 4, 2017) (Draft Remand Results).

[7] *See* Letter to the Secretary from SolarWorld, "Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Comments on Draft Results of Redetermination Pursuant to Court Order, Changzhou Trina Solar Energy Co., Ltd., *et al*. v. United States, Consol. Court No. 15-00068," (April 18, 2017) (SolarWorld Comments on Draft Results); *see also* Letter to the Secretary from Trina Solar, "Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Comments on Draft Remand," (April 18, 2017) (Trina Solar Comments on Draft Results).

BACKGROUND

The Department's Final Determination

In the initial questionnaire sent to the Government of the People's Republic of China (GOC) and to Trina Solar, the Department requested information related to the programs upon which an investigation had been initiated. The Department further requested that the GOC and Trina Solar identify and describe any other forms of assistance directly or indirectly provided by the GOC during the average useful life period. Considering the question to be unlawful, both the GOC and Trina Solar declined to provide information in response to this question.[8]

During the investigation, the Department discovered certain unreported assistance and included these programs in its investigation. First, the Department discovered that there were certain grants that it had previously found countervailable in a related proceeding covering crystalline silicon photovoltaic cells from the People's Republic of China (PRC),[9] but that were not yet included in the instant investigation. The Department, therefore, requested information from Trina Solar and the GOC about these programs. Although Trina Solar subsequently provided information regarding these programs, the GOC declined to provide necessary information regarding specificity. As a result, the Department found, using AFA, that all of

[8] *See*, Letter to the Secretary from the GOC, "Response of the Government of the People's Republic of China to the Department's Questionnaire: Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China," (April 21, 2014) (GOC April 21, 2014 QR) at 222; *see also*, Letter to the Secretary from Trina Solar, "Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China; CVD Questionnaire Response to Section 3," (April 21, 2014); *see also* Letter to the Secretary from the GOC, "Response of the Government of the People's Republic of China to the Department's Supplemental Questionnaire: Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China," (May 12, 2014) at 13-16.

[9] *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 I*) and accompanying Issues and Decision Memorandum.

these grants—hereinafter referred to as the "*Solar I* PRC programs"—were specific within the meaning of section 771(5A) of the Act.[10]

Second, at verification, the Department discovered unreported assistance in Trina Solar's books and records. In particular, the Department discovered 27 grant programs in an account for government grants and a tax deduction for employment of disabled workers.[11] In the *Final Determination*, the Department found that the existence of unreported assistance discovered at verification, combined with Trina Solar's original refusal to provide requested information regarding that assistance, warranted the use of AFA. Using AFA, the Department determined that the discovered subsidies provided a financial contribution that conferred a benefit, and that the subsidies were specific, within the meaning of sections 771(5)(A), (B), (D), and (E), and section 771(5A), of the Act.[12]

Separately, over SolarWorld's objection, the Department did not conduct any investigations into the creditworthiness of the mandatory respondents during the course of the investigation. This is because the Department found that SolarWorld did not submit a "specific allegation" as required by 19 CFR 351.505(a)(6)(i) that met the threshold for initiating creditworthiness investigations for Suntech and for Trina Solar.[13]

As a result of these and other findings, in the *Final Determination*, the Department ultimately determined total *ad valorem* countervailable subsidy rates of 27.64 percent for

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[10] *See Preliminary Determination*, and accompanying Preliminary Decision Memorandum at 24 (unchanged in *Final Determination*). The Department used information provided by Trina Solar to make determinations with respect to financial contribution and benefit. These findings are not in dispute in this remand.
[11] *See, e.g.*, *Final Determination*, and accompanying Issues and Decision Memorandum at 16 and Attachment. The Department subsequently removed one of the grant programs from Trina Solar's net countervailable subsidy rate in response to a ministerial error allegation. *See Amended Final Determination* and Solar Products Ministerial Error Memorandum.
[12] *See Final Determination*, and accompanying Issues and Decision Memorandum at 16-17.
[13] *See Final Determination* and accompanying Issues and Decision Memorandum at 94-96.

Suntech, 49.79 percent for Trina Solar, and 38.72 percent for all other companies subject to the investigation that were not individually examined.[14] The rate for all other companies subject to the investigation was determined to be the simple average of the net countervailable subsidy rates calculated for Suntech and Trina Solar.[15] Based on a ministerial error allegation submitted by Trina Solar, we amended Trina Solar's countervailable subsidy rate from 49.79 percent to 49.21 percent, and the rate for all other companies subject to the investigation was reduced from 38.72 percent to 38.43 percent.[16]

The Court's Remand Order and this Remand Segment

Certain interested parties challenged the *Final Determination* in the CIT.[17] On December 30, 2016, the Court sustained-in-part and remanded-in-part aspects of the *Final Determination*. Regarding the remanded issues, first, the Court remanded for the Department to make the requisite factual findings to satisfy the requirements for countervailability with respect to the discovered subsidies. Second, the Court granted the Department's request for a voluntary remand to reconsider the sufficiency of SolarWorld's creditworthiness allegations.

A. Discovered Subsidies

With respect to this first issue, in its *Remand Order*, the Court concluded that, because the "record reasonably supports Commerce's determination that the GOC failed to cooperate by not acting to the best of its ability to comply with the request for information regarding additional forms of governmental assistance, Commerce reasonably determined to use facts available, with an inference adverse to the GOC, in deciding whether the elements necessary for

[14] *See Final Determination*, 79 FR at 76964.
[15] *Id*.
[16] *See Amended Final Determination*, 80 FR at 8596.
[17] Parties have also raised scope-related challenges to the *Final Determination*. Those challenges are being addressed in separate litigation.

the imposition of countervailing duties with regard to the *Solar I* PRC programs were met."[18] The Court also concluded that "because the record reasonably supports Commerce's determination that Trina Solar also failed to cooperate by not acting to the best of its ability to comply with this request for information, Commerce also reasonably resorted to AFA (including an inference adverse to the interests of Trina Solar) to decide whether the elements necessary for the imposition of countervailing duties were met with regard to the additional grants and tax deduction found during verification."[19] However, the Court held that while the Department reasonably relied upon adverse facts available under section 776 of the Act, "it must still make the necessary findings to satisfy the requirements for countervailability," and "must still point to factual information on the record to make required factual determinations."[20] The Court held that the Department failed to make the requisite findings and, thus, failed to support with substantial evidence, its conclusions: (1) that the *Solar I* PRC programs were specific;[21] and (2) that the programs that were found at Trina Solar's verification each provided a financial contribution,[22] that each was specific,[23] and that each conferred a benefit.[24]

The Court further found that the Department did not adequately explain how it selected the applicable AFA rates for the discovered subsidies. In particular, the Court found that for the verification grants, the Department did not explain how a rate calculated for a grant in the countervailing duty (CVD) investigation of chlorinated isocyanates from the PRC "relates to each of the twenty-eight grant programs at issue or to the other information (or lack thereof) on

[18] *See Remand Order* at 18.
[19] *Id*. at 19.
[20] *Id*. at 24-25.
[21] *See* section 771(5A) of the Act.
[22] *See* section 771(5)(B) and (D) of the Act.
[23] *See* section 771(5A) of the Act.
[24] *See* section 771(5)(E) of the Act.

record, or whether this program is even available to the solar panel industry."[25] And for the tax program discovered at verification, the Court found that the Department likewise failed to "provide sufficient information" justifying its selection of an AFA rate.[26] Accordingly, the Court found that, "{s}hould Commerce again determine to countervail the verification grants and tax deduction after reconsideration on remand . . . the agency must ensure that its selection of subsidy rates is reasonable."[27] In particular, the Court ordered the Department to "explicitly present its analysis as to how its selection of rates comports with its stated practice."[28]

Pursuant to the Court's instructions, and under respectful protest, the Department is now "pointing" to information on the record to demonstrate that the *Solar I* PRC programs and the grants discovered at Trina Solar's verification satisfy the elements for the imposition of a CVD with respect to the subject merchandise.[29] Furthermore, as instructed by the Court, and because we again determine to countervail certain subsidies that were examined in the *Final Determination*, we are explaining our analysis as to how the AFA-based subsidy rates selected in the *Final Determination* are consistent with the Department's stated practice.

B. Creditworthiness

As noted above, the Court also granted the Department's request for a voluntary remand to reconsider its determination not to initiate creditworthiness investigations for Trina Solar and Suntech. On February 13, 2017, based on its reevaluation of SolarWorld's creditworthiness allegations, the Department initiated creditworthiness investigations on Suntech for 2010 and

[25] *Remand Order* at 27.
[26] *Id.*
[27] *Id*. at 26.
[28] *Id*. at 27-28.
[29] As set forth below, for purposes of these final remand results, we are no longer finding the tax deduction for the employment of disabled persons countervailable.

2012, and on Trina Solar for 2005 and 2007.[30] On this same day, the Department issued creditworthiness questionnaires to both Suntech and to Trina Solar. On February 14, and February 16, 2017, Trina Solar and Suntech, respectively, requested extensions until March 7, 2017, to respond to the Department's creditworthiness questionnaires. On February 21, 2017, the Court granted the Department's request to extend the deadline for responding to the *Court Remand* until May 1, 2017. On March 7, 2017, Suntech and Trina Solar each timely responded to the Department's February 13, 2017, creditworthiness questionnaires.[31] On April 4, 2017, the Department issued its Draft Remand Results and accompanying documents, and invited interested parties to comment on the Draft Remand Results. On April 18, 2017, SolarWorld and Trina Solar each filed timely comments on the Draft Remand Results.[32] No other party commented on the Draft Remand Results.

Based on our reevaluation of SolarWorld's creditworthiness allegation, and on our examination of Suntech's and Trina Solar's responses to our questions on their creditworthiness, as described below, we are now finding that Suntech was uncreditworthy during 2010 and 2012, and that Trina Solar was uncreditworthy during 2005 and 2007. As a result of these final remand results, we are revising the countervailable subsidy rates for Suntech, Trina Solar, and for all other companies subject to this investigation as described below.

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[30] *See* Department Memorandum, "Redetermination Pursuant to Court Remand Regarding the Countervailing Duty Investigation of Certain Silicon Photovoltaic Products from the People's Republic of China: Initiation of Creditworthiness Investigations," (February 13, 2017) (CW Initiation Memorandum).

[31] *See* Letter to the Secretary from Suntech, "Crystalline Silicon Photovoltaic Products from the People's Republic of China: Creditworthiness Response-Wuxi Suntech Power Co., Ltd.," (March 7, 2017) (Suntech CW QR); *see also* Letter to the Secretary from Trina Solar, "Crystalline Silicon Photovoltaic Products from the People's Republic of China; Response to the Department of Commerce's Creditworthiness Questionnaire," (March 7, 2017) (Trina Solar CW QR).

[32] *See* Letter to the Secretary from SolarWorld, "Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Comments on Draft Results of Redetermination Pursuant to Court Order, Changzhou Trina Solar Energy Co., Ltd., *et al*. v. United States, Consol. Court No. 15-00068," (April 18, 2017) (SolarWorld Comments on Draft Results); *see also* Letter to the Secretary from Trina Solar, "Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Comments on Draft Remand," (April 18, 2017) (Trina Solar Comments on Draft Results).

FINAL ANALYSIS

Use of Facts Otherwise Available and Adverse Inferences

Sections 776(a)(1) and (2) of the Act provide that the Department shall 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 to provide information within the deadlines established, or in the form and manner requested by the Department; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.[33]

Section 776(b) of the Act further provides that the Department 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.

A. The Department's Use of AFA to Determine the Countervailability of the *Solar I* PRC Programs and the Additional Grants and Tax Deduction Discovered During Trina's Solar's Verification

In the *Remand Order*, the Court found that the Department "improperly reached legal conclusions without the support of requisite factual findings" to determine that the *Solar I* PRC programs and the programs discovered at Trina Solar's verification satisfy the requirements of

[33] Under the Trade Preferences Extension Act of 2015 (TPEA), numerous amendments to the AD and CVD laws were made, 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). On August 6, 2015, the Department stated that the amendments to sections 776(b) and 776(c) of the Act would apply to determinations made on or after August 6, 2015. *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, 46794 (August 6, 2015). Because this remand redetermination is made after August 6, 2015, the TPEA amendments apply to this redetermination.

countervailability.[34] Specifically, the Court found that "even when using facts otherwise available with adverse inferences, Commerce must still point to actual information on the record to make required factual determinations," to find whether these programs provide a financial contribution, are specific, and confer a benefit to the recipient, and are, therefore, countervailable.[35] As a result, the Court ordered the Department to reexamine the record to make the necessary factual findings that the *Solar I* PRC programs and the programs discovered at Trina Solar's verification satisfy the elements of countervailability.[36] In so doing, the Court found that the Department was not required to solicit the information from the GOC once again, but the Department was required to "search 'the far reaches of the record'" and "may re-open the record" to make the prerequisite factual findings.[37]

In light of the Court's findings, we have reconsidered this issue for purposes of these final remand results. However, we note at the outset that the Department is troubled by the implications of the Court's order. When a party categorically refuses to provide information requested by the Department, the record might not contain the necessary factual evidence the Court is now ordering the Department to cite to make its findings on whether a program is countervailable. Indeed, the subsidy programs that the Department examines often have generic names with no available public information, and necessary information regarding financial contribution, specificity, and benefit is often only available through responses to the Department's questionnaires.[38]

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[34] *Remand Order* at 24.
[35] *Id*. at 25; *see also* section 771(5)(A), (B), (D), and (E), and section 771(5A), of the Act.
[36] *See Remand Order* at 25.
[37] As noted above, the Court found that the Department failed to make the requisite findings with respect to financial contribution, specificity, and benefit for the subsidies discovered at verification and, that the Department failed to make the requisite findings with respect to specificity for the *Solar I* PRC programs. *See Remand Order* at 19.
[38] *See, e.g.*, *Essar Steel Ltd. v. United States*, 721 F. Supp. 2d 1285, 1297 (Ct. Int'l Trade 2010) (rev'd on other grounds) ("Typically, foreign governments are in the best position to provide information regarding the

Therefore, the Court's opinion in its *Remand Order* might incentivize non-cooperation and trivialize the Department's questionnaires to the governments that are providing the subsidies that are under examination. The governments that provide these subsidies are typically the only parties that can provide the Department with information on whether a particular subsidy is specific within the meaning of section 771(5A) of the Act. If, for example, a government does not provide the Department with requested information regarding the specificity of a subsidy program, based on the Court's analysis in its *Remand Order*, the Department might be required to find information that it frequently cannot obtain. Placing the burden on the Department to specify the factual basis for a specificity determination when the government of the foreign country under investigation fails to respond to a questionnaire or otherwise cooperate, especially when information is unavailable publicly, rewards the government under investigation not only for a lack of cooperation, but for an overall lack of transparency in the operation of its subsidy programs. Under these circumstances, the limited record should not inure to the benefit of non-cooperating parties.[39]

Moreover, we respectfully disagree that the Department's determination was not based upon any facts. The grants discovered during Trina Solar's verifications were located within internal records for government grants. These grant programs were not alleged in the petition, and information regarding their existence was withheld until after the fact-gathering stage of the investigation. The record likewise reflects, with respect to the *Solar I* PRC programs, that grants

administration of their alleged subsidy programs, including eligible recipients. The respondent companies, on the other hand, will have information pertaining to the existence and amount of the benefit conferred on them by the program.").

[39] This result subverts the purpose of the AFA statute, which is to ensure that an uncooperative "party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316, vol. 1, at 870 (1994), *reprinted in* 1994 U.S.C.C.A.N. 4040, 4199 (SAA).

were received from various local governments and that the GOC refused to provide any information regarding the grant programs. This procedural history, and the reasonable inferences flowing therefrom, are themselves "facts" supporting the Department's determination.[40]

Nonetheless, we recognize the Court's finding that there are "many ways by which a government aid program may satisfy the specificity requirement" and that "a determination that a large number of diverse government programs are 'specific' in the abstract without reference to any facts at all, is not a factual determination."[41] Therefore, to comply with the Court's order, and under respectful protest, for purposes of these final remand results, we have analyzed the record and have identified the specific information on which the Department relied to make its findings that the subsidy programs in question satisfy the requirements for countervailability (*i.e.*, financial contribution, specificity, and benefit). These subsidy programs fall into two categories: 40 governmental assistance programs that were examined in the related *Solar I* investigation, and the additional government grants and a tax deduction that were discovered during the verification of Trina Solar's questionnaire responses in the underlying investigation.[42]

Solar I PRC Programs

The Court remanded for the Department to indicate the facts that it has relied on to conclude that the 40 subsidy programs that were examined in *Solar I* are specific.[43] These

[40] The Court has recognized that it is reasonable to infer that respondents made "a rational decision to either respond or not respond to Commerce's questionnaires, based on which choice will result in the lower rate." *Tianjin Mach. Imp. & Exp. Corp. v. United States.* 752 F. Supp. 2d 1336, 1347 (CIT 2011); *see also Ta Chen Stainless Steel Pipe, Inc. v. United States,* 298 F.3d 1330, 1338–39 (Fed. Cir. 2002) (citing *Rhone Poulenc, Inc. v. United States,* 899 F.2d 1185, 1190 (Fed. Cir. 1990)). Because the GOC did not respond to the Department's questionnaires seeking additional information, an inference is justified that the GOC purposefully chose not to do so after concluding that it could not obtain a more favorable result by cooperating.

[41] *See Remand Order* at 22 n.16.

[42] *See*, *e.g.*, *Remand Order* at 4-5 and 19.

[43] *See Remand Order* at 19. As noted above, the Department's findings with respect to financial contribution and benefit are not implicated with respect to the *Solar I* programs.

previously examined subsidy programs all related to grants that Trina Solar received between 2008 and 2010.[44] To find whether these 40 grants should be allocated to the 2012 period of investigation (POI) or expensed during the year in which they were received, we conducted the "0.5 percent test," as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of the subsidy approved under a given subsidy program in a particular year by the relevant sales (*e.g.*, total sales or export sales) for the year in which the assistance was provided. If the amount of the subsidy is less than 0.5 percent of the relevant sales value, the benefit from that subsidy is expensed to the year in which it was received, rather than over the average useful life of the renewable physical assets used in the production of the subject merchandise.[45] From these 40 grant programs, only two of these grants passed the 0.5 percent test and were allocated to the POI: (1) Funding on Infrastructure 2008; and (2) Infrastructure 2009.[46] As such, upon further consideration, we no longer consider it necessary to reach a determination regarding the specificity of the remaining 38 programs. These programs were not included in Trina Solar's final CVD rate in the investigation, and are not included here.

With respect to the two infrastructure grants, we continue to find, using AFA, that these grants are specific, within the meaning of section 771(5A) of the Act.[47] To address the Court's *Remand Order*, we examined the record for further evidence upon which we could base a specificity finding. At the outset, we note that, although Trina Solar reported that it received benefits under these grant programs, it stated that it was not aware of the government agencies

[44] *See Preliminary Determination* and accompanying Preliminary Decision Memorandum at 24, unchanged in *Final Determination*; *see also* Department Memorandum, "Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Trina Solar Final Calculation Memorandum," (December 15, 2014) (Trina Solar Calculation Memorandum) at 7.
[45] *See* 19 CFR 351.524(b)(2).
[46] *See* Trina Solar Calculation Memorandum at 7.
[47] *See Final Determination* at 16-17 and 82-88.

involved in the provision of this assistance, and that it was not aware of the purpose of this assistance or its eligibility criteria.[48] Therefore, we looked elsewhere in Trina Solar's questionnaire responses. In particular, Trina Solar reported that it received other grants from the [ ] regarding the [ ] for participating in a [ ][49] The main tasks of this [ ] included an [ ].[50] According to record information, the objective of this [ ][51]

Based on this record information, we are relying on the facts available, with the application of an adverse inference, to find that the infrastructure grants that were examined in *Solar I* were provided to Trina Solar for the [ ].[52] As a result, we find that the provision of these infrastructure grants was limited to enterprises operating in the [ ] industry, and the grants are specific within the meaning of section 771(5A)(D)(i) of the Act. Therefore, given the analysis described above, we conclude that the Department has made the "necessary factual findings to satisfy the requirements for countervailability," for these infrastructure grants as ordered by the Court.[53]

[48] *See* Trina Solar May 14, 2014 QR at 91-99. The Department is skeptical that a company would not know from whom it received money, or why it received the money.
[49] *See* Trina Solar May 14, 2014 QR at Exhibit 5.
[50] *See id*.
[51] *See id*.
[52] *See* sections 776(a) and 776(b) of the Act.
[53] *See Remand Order* at 24-25.

Government Assistance Discovered During the Verification of Trina Solar's Questionnaire Responses

With regard to the additional grants and the tax deduction that were discovered during the verification of Trina Solar's questionnaire responses, the Department continues to believe that, because Trina Solar did not cooperate to the best of its ability regarding our questions on non-reported subsidies, pursuant to section 776(b) of the Act, the Department properly found that these programs provide a financial contribution and benefit, and are specific within the meaning of sections 771(5)(D), 771(E), and 771(5A) of the Act, respectively.

However, to comply with the Court's order, and for the purposes of these final remand results, we have examined the "far reaches of the record"[54] in an effort to make the requisite factual findings with respect to the subsidies discovered at verification. Despite doing this, we were unable to locate any information that would support a specificity finding with respect to the discovered tax deduction program, Deduction of Wages Paid for Placement of Disabled Persons. Therefore, based on our reexamination of the record as ordered by the Court,[55] under respectful protest, the Department is no longer finding this program to be countervailable. Article 96 of the GOC's "Regulations on the Implementation of Enterprise Income Tax Law of the People's Republic of China (Decree 512 of the State Council, 2007),"[56] allows for an enterprise to deduct the salaries it pays to disabled employees, as provided by Article 30 of the "Enterprise Income Tax Law of the P.R.C."[57] Because we cannot find that the tax deduction is *de jure* limited to specific enterprises or industries pursuant to section 771(5A) of the Act, and because there is no

[54] *See Remand Order* at 25.
[55] *See id.* at 23-25.
[56] *See* GOC April 21, 2014 QR at Exhibit B.5.
[57] *See id*. at Exhibit B.3.

other information on the record regarding the specificity of this program, we are removing this tax deduction program from Trina Solar's subsidy calculation.

However, while the record does not indicate that this tax deduction is limited on a *de jure* basis to certain enterprises or industries, we note that the program may still be specific as a factual matter. But because neither Trina Solar, nor the GOC, reported this tax deduction in its questionnaire responses, the Department did not have the opportunity to gather additional information from the GOC on the universe of the enterprises and industries that actually utilized this deduction on a *de facto* basis. Nor is the Department in a position to independently obtain this information. Thus, this program illustrates the Department's central concern with the Court's findings; namely, by removing this subsidy program from Trina Solar's subsidy calculations, Trina Solar and the GOC are being rewarded for not cooperating to the best of their ability by fully responding to the Department's requests for information. The Department is concerned that this outcome incentivizes non-cooperation, contrary to the purpose of the AFA provisions of the statute.

With respect to the remaining grant programs discovered at verification, in accordance with the Court's *Remand Order*, we have examined the record and indicated the facts on the record to support our finding that these discovered programs are countervailable. First, we note that all 27 of these subsidies were discovered in Trina Solar's accounting system under accounts for government assistance, and that the positive balances in these accounts indicate the actual disbursement of funds through government programs.[58] Thus, using AFA, we find that the

[58] *See* Department Memorandum, "Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China (PRC); Verification of Questionnaire responses Submitted by Changzhou Trina Solar Energy Co., Ltd. and its Cross-Owned Companies," (October 2, 2014) at 7; *see also* Letter to the Secretary from Trina Solar, "Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China; Trina CVD Verification Exhibits," (August 29, 2014) at Exhibit 18, "Results of System Query;" *see also*

record demonstrates that all of the grants discovered at verification provided Trina Solar with a financial contribution and a benefit, pursuant to sections 771(D) and 771(E) of the Act, respectively.[59]

Second, regarding information on the record to establish that the grant programs discovered at Trina Solar's verification are specific, we note that the record indicates the GOC placed great emphasis on targeting the renewable energy industry, including producers of subject merchandise, such as Trina Solar. For example, Article 2 of the GOC's "Law of the People's Republic of China on Renewable Energies (2009 Revision)" (Renewable Energy Law) refers to solar energy as a "renewable energy" and Article 12 of the Renewable Energy Law states that "the state shall give priority to scientific and technological research into the industrialization of renewable energy development and utilization," and "arrange for funds to support scientific and technological research into and the application, demonstration and industrialization of renewable energy development and utilization."[60] Economic measures and incentives to promote the development of the PRC's renewable energy industry, including the solar energy industry, include a "renewable energy development fund, the sources of which shall include funds allocated by the national annual financial budget."[61] Renewable energy is also among the "Encouraged Category" of projects listed in the "Directory Catalogue on Readjustment of

Department Memorandum, "Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China; Amended Final Determination, Analysis Memorandum for Changzhou Trina Solar Energy Co., Ltd." (February 10, 2015) at the attachment, "CVD AFA Methodology for Assistance Discovered at Verification Revised for Amended Final Determination." In the *Amended Final Determination*, we revised Trina Solar's *ad valorem* subsidy rate by removing the grant program "Water-Saving Technology Award" from the subsidy rate calculation. Therefore, there are only 27 grant programs that were discovered at verification that the Department countervailed using AFA.

[59] *See also* 19 CFR 351.504(a).

[60] *See* GOC April 21, 2014 QR at Exhibit A.2.

[61] *See id*.

Industrial Structure,"[62] a key component of the GOC's "Decision of the State Council on Promulgating the Interim Provisions on Promoting Industrial Structure Adjustment for Implementation (No. 40 {2005} (Decision 40)) of the National Development and Reform Commission, which contains a list of encouraged projects the GOC develops through loans and other forms of financial assistance,[63] and which the Department relied upon in prior specificity determinations.[64] Local governments in the PRC were also tapped to support the growth of the PRC's renewable energy industry as demonstrated through, for example, the Jiangsu Provincial Government's Reform and Development Committee's provision of grants to Trina Solar under the GOC's Golden Sun Demonstration Project.[65]

In addition to promoting the PRC's renewable energy industry specifically, the GOC has also advanced principles and development goals to develop the PRC's science and technology industries. According to the GOC's "National Medium- and Long-Term Program for Science and Technology Development (2006-2010); An Outline" (S&T Outline), the GOC states that "efforts are to be made to enhance government capability in mobilizing S&T resources through diverse financial means such as direct appropriations and referential taxation breaks."[66] The S&T Outline further states that state treasury appropriations will be used to support both public and science and technology activities, including "frontier technology development," such as "solar cells related materials," in addition to guiding industry and private sectors to enhance their science and technology input.[67]

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[62] *See id*. at Exhibit G.10.
[63] *See id*. at Exhibit G.9.
[64] *See*, *e.g.*, *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances*, 73 FR 40480 (July 15, 2008) and accompanying Issues and Decision Memorandum at the section "Government Policy Lending."
[65] *See*, *e.g.*, *Final Determination* and accompanying Issues and Decision Memorandum at 17.
[66] *See* GOC April 21, 2014 QR at Exhibit A.3.
[67] *See id*. at 36 and 59.

Based on the record information described above, it is clear that the GOC, including local and provincial governments, has been subsidizing Trina Solar because of the company's involvement in the PRC's renewable energy and science and technology sectors through its Renewable Energy Law, its various policy catalogues, and through programs such as the Golden Sun Demonstration Project. As such, we conclude that, when relying on the facts available pursuant to section 776(a) of the Act, with the application of an adverse inference pursuant to section 776(b) of the Act, the record supports a conclusion that the grants discovered at Trina Solar's verification under the programs, Changzhou Treasury Bureau Other Manufacturing Expenses; Changzhou Treasury Financial Grant; China Treasury Department Grant; and Special Capital Transfer to Non-Operating Revenue are limited by law to certain enterprises, namely enterprises operating in the PRC's renewable energy or science and technology sectors, pursuant to section 771(5A)(D)(i) of the Act. For the remaining grants, to comply with the Court's order, we have pointed to additional information on the record to "make the necessary factual findings" to find that these programs are specific within the meaning of section 771(5A) of the Act, as detailed below.

For the discovered grants, Talented People Income Tax Refund; Grant for Post-Doctoral Station; and Social Security Grant, the GOC's S&T Outline states that "{i}t is important to advocate the strategy of national capacity building with talented people, strengthening the capacity building of S&T personnel, and providing human resource support for the implementation of the Outline."[68] As described above, the GOC's S&T Outline indicates that funds to implement the S&T outline should be made available through financial means such as state appropriations. Based on the information on the record, we are applying an adverse

[68] *See id*. at 62.

inference pursuant to section 776(b) of the Act to find that the grants provided under these three programs were provided to Trina Solar to improve the capacity of its science and technology personnel, and are limited by law to enterprises operating in the PRC's science and technology sectors, pursuant to section 771(5A)(D)(i) of the Act.

For the discovered grants, Changzhou Treasury Grant for Research and Development; Changzhou Treasury Project Award; Grant for Key Lab Construction Support Fund; Grant for National Key New Product Project Award; Innovation Award Grant; New Technology Application Award; Science Technical Award; Science Technology Bureau Grant; and Science Technology Infrastructure Rolling Support, the names of these grants (combined with the evidence of the policies outlined above) support a determination that they were provided to Trina Solar because it is an enterprise operating in the PRC's science and technology sector. Further, the record reflects that Trina Solar received funding from the [

] for various projects related to [

].[69] Based on this record information, the Department is relying on the facts available pursuant to section 776(a) of the Act, with the application of an adverse inference pursuant to section 776(b) of the Act, to find that these nine grants are limited by law to enterprises operating in the PRC's science and technology sectors generally, and in the solar industry specifically, pursuant to section 771(5A)(D)(i) of the Act.

For the four discovered grants referenced as either Patent Grant or Patent Award, Trina Solar reported that it received grants "related to the encouragement of patent application" from the Changzhou Xinbei District Bureau of Science and Technology and Xinbei District Bureau of

[69] *See* Trina Solar May 14, 2014 QR at 81-90 and at Exhibit 5.

Intellectual Property.[70] Given that the patent grants Trina Solar reported were provided by the Changzhou Xinbei Bureau of Science and Technology and Xinbei District Bureau of Intellectual Property, the Department is relying on the facts available pursuant to section 776(a) of the Act, with the application of an adverse inference pursuant to section 776(b) of the Act, to find that the four Patent Grants and Patent Awards discovered at Trina Solar's verification are limited by law to enterprises operating in the PRC's science and technology sectors, pursuant to section 771(5A)(D)(i) of the Act.

For the discovered grants, Exportation Credit Insurance Support Grant; Other International Development Service Expenses; and Changzhou Treasury Bureau Support Fund for Exportation and International Market Development, the names of these three grants support a finding that they were provided to Trina Solar based on Trina Solar's export performance. Further, our review of the record, including the GOC's "Several Opinions on Further Implementing the Strategy of Promoting Trade Through Science and Technology, Guo Ban Fa {2003} No. 92," provides that the GOC established a goal of growing the annual growth rate of Chinese high-tech products for export, and provided for arranging funds from its Central Trade Foreign Trade Development Fund to meet this goal.[71] Based on this record information, the Department is relying on the facts available pursuant to section 776(a) of the Act, with the application of an adverse inference pursuant to section 776(b) of the Act, to find that the three grants discovered at Trina Solar's verification are contingent upon Trina Solar's export performance, and are specific pursuant to section 771(5A)(B) of the Act.

With respect to the discovered grants, Recycling Grant and Changzhou Treasury Bureau Grant for Waste Water Recycling, the GOC's S&T Outline states that priority topics include

[70] *See id*. at 132.
[71] *See* GOC April 21, 2014 QR at Exhibit E.1.

comprehensive water conservation and the development of technologies for industrial cyclic utilization of water and water efficient production activities.[72] The S&T Outline also calls for developing integrated clean production technologies for highly polluting industries. According to the S&T Outline, state treasury appropriations will be used to support science and technology activities that cannot be effectively covered by the current market system.[73] Based on this record information, the Department is relying on the facts available pursuant to section 776(a) of the Act, with the application of an adverse inference pursuant to section 776(b) of the Act, to find that these two grants discovered at Trina Solar's verification were provided to Trina Solar because of its operation in the PRC's science and technology sector, and are *de jure* specific pursuant to section 771(5A)(D)(i) of the Act.

Regarding the discovered grant, High Efficiency Crystalline Solar Cell Key Technical Problem Research and Development, the name of this grant supports a finding that it was provided to Trina Solar based on its operating in the PRC's renewable energy sector generally, and in the solar energy industry specifically. Article 2 of the GOC's Renewable Energy Law defines "renewable energies" as non-fossil energies such as solar energy.[74] Article 9 of the Renewable Energy Law states the GOC's intention to promote the development and utilization of renewable energies, such as solar energy.[75] And Article 12 of the Renewable Energy Law arranged for funds to support scientific and technical research for the development of renewable energies.[76] Based on this record information, the Department is relying on the facts available pursuant to section 776(a) of the Act, with the application of an adverse inference pursuant to

[72] *See id*. at Exhibit A.3 at 16.
[73] *See id*. at Exhibit A.3 at 59.
[74] *See id*. at Exhibit A.2.
[75] *See id*.
[76] *See id*.

section 776(b) of the Act, to find that this grant discovered at Trina Solar's verification was provided to Trina Solar because of its operation in the PRC's renewable energy sector generally, and in the solar energy industry specifically, and is *de jure* specific pursuant to section 771(5A)(D)(i) of the Act.

For the discovered grant, Changzhou Treasury Bureau Grant-Five Big Industrial Special Fund for Capital, we note that the record indicates that Trina Solar reported that it received a grant under the program, "Special Funds for the Development of Five Key Industries (Equipment Manufacturing Industry, Electronic Information Industry, New Materials Industry, Biological Technology and Pharmaceutical Industry, and New Energy Industry)."[77] While Trina Solar stated that it is not aware of the detailed eligibility criteria of this program, it concluded that "considering the name of this program, the assistance under this program is provided to encourage the so called five key industries."[78] The GOC's "Administrative Measures for Certification of New and High Technology Enterprises (GUOKEFAHUO {2008} No. 172)," provides for key state support for new and high technology fields,[79] and classifies solar energy and solar photovoltaic technology as a new energy industry.[80] Based on this record information, the Department is relying on the facts available pursuant to section 776(a) of the Act, with the application of an adverse inference pursuant to section 776(b) of the Act, to find that this grant discovered at Trina Solar's verification was provided to Trina Solar because of its operation in the PRC's science and technology sector, and is specific pursuant to section 771(5A)(D)(i) of the Act.

[77] *See* Trina Solar May 14, 2014 QR at Exhibit 1, page 1.
[78] *Id*. at Exhibit 1, page 3.
[79] *See* GOC April 21, 2014 QR at Exhibit B.7.
[80] *See id*. at Annex: Hi-tech Fields with Key State Support, Article 6 New Energy and Energy Conservation Technology.

B. The Department's Selection of AFA Rates for the Discovered Verification Grants and Tax Deduction

In the *Final Determination*, the Department used its CVD AFA methodology to determine the CVD rates of 0.58 percent and 9.71 percent to apply for the unreported grant programs and tax deduction, respectively, that were discovered at the verification of Trina Solar's questionnaire responses.[81] In the *Remand Order*, the Court found that the Department did not "provide sufficient information to permit the court to judge whether or not the agency's choices here comport with its stated (and undisputed) practice."[82] As a result, the Court held that if the Department continues to reach a determination that the discovered subsidies are countervailable, the Department must "explicitly present its analysis as to how its selection of rates comports with its stated practice."[83]

As an initial matter, with respect to the tax deduction program for disabled employees that was discovered at verification, as explained above, the Department is no longer including this program in Trina Solar's subsidy rate calculation. As a result, the Department concludes that it is not necessary to provide an analysis of how the 9.71 percent rate used in the *Final Determination* for this program comports with the Department's stated practice.

For the remaining grant programs, to comply with the Court's findings, the Department is presenting its analysis as to how it determined the CVD rates that were applied to the grant programs discovered at verification.

When selecting an AFA rate from among the possible sources of information, the Department's practice is to ensure that the rate is sufficiently adverse "as to effectuate the

[81] *See Final Determination*, and accompanying Issues and Decision Memorandum at 88.
[82] *See Remand Order* at 27.
[83] *Id*.

statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner."[84] The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[85]

Under the new section 776(d) of the Act, when applying an adverse inference, the Department 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 Department considers reasonable to use.[86] The TPEA also makes clear that, when selecting facts available with an adverse inference, the Department is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.[87]

Because Trina Solar failed to act to the best of its ability to respond to our request for information, we are selecting AFA rates consistent with section 776(d) of the Act and our established practice.[88] Under this practice, for investigations involving the PRC, the Department computes the total AFA rate for non-cooperating companies generally by using program-specific rates calculated for the cooperating respondents in the instant investigation or calculated in prior

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[84] *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) and accompanying Issues and Decision Memorandum at "V. Use of Facts Otherwise Available and Adverse Inferences."
[85] *See* SAA at 870.
[86] *See* section 776(d)(1) of the Act; *see also* TPEA, section 520(3).
[87] *See* Section 776(d)(3) of the Act; *see also* TPEA at section 520(3).
[88] *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) and accompanying Issues and Decision Memorandum at 13-14; *see also Countervailing Duty Investigation of Stainless Steel Sheet and Strip from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 9714 (February 8, 2017) (*Stainless Steel Sheet and Strip from the PRC*) and accompanying Issues and Decision Memorandum at 8-9; *see also Essar Steel Ltd. v. United States*, 735 F.3d 1368, 1373-1374 (Fed. Cir. 2014) (upholding "hierarchical methodology for selecting an AFA rate").

PRC CVD cases. As a result, for the programs discovered at Trina Solar's verification, we applied the following approach to select the appropriate subsidy rates for the programs at issue: (a) we first determine whether there is an identical program in the instant investigation and use the highest calculated rate for the identical program (excluding zero rates); (b) if there is no identical program above zero in the instant investigation, we then determine if an identical program was used in another CVD proceeding involving the same country, and apply the highest calculated rate for the identical program (excluding rates that are *de minimis*); (c) if no identical program exists, we then determine if there is a similar/comparable program (based on the treatment of the benefit) in another CVD proceeding involving the same country and apply the highest calculated rate for the similar/comparable program; (d) where there is no comparable program, we apply the highest calculated rate from any non-company specific program in a 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.

Section 776(c) of the Act provides that, in general, when the Department relies on secondary information rather than on information obtained in the course of 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 defined as 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 of the Act concerning the subject merchandise.[89] The SAA provides that to "corroborate" secondary information, the Department will satisfy itself that the secondary information to be used has probative value.[90]

[89] *See*, *e.g.*, SAA at 870.
[90] *See id*.

The Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information.[91] Furthermore, the Department is not required to estimate what the estimated countervailable subsidy rate would have been if the interested party had cooperated, and is not required to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.[92]

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there are typically no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. We find that the AFA rates applied here (and described below) are reliable based on their calculation and application in previous CVD proceedings pertaining to the PRC, and because no information on the record calls their reliability into question. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit.

As explained above, in applying the AFA hierarchy, the Department seeks to identify identical program rates calculated for a cooperative respondent from the instant investigation. Alternatively, the Department seeks to identify identical or similar program rates calculated in any CVD proceeding covering imports from the PRC. Actual subsidy rates calculated based on actual usage by PRC companies are reliable where they have been calculated in the context of an administrative proceeding. Moreover, under our CVD AFA methodology, we strive to assign AFA rates that are the same in terms of the type of benefit (*e.g.*, grant-to-grant, loan-to-loan,

[91] *See id.* at 869-870.
[92] *See* section 776(d)(3)(A) of the Act.

indirect tax-to-indirect tax), because these rates are relevant to the respondent. Additionally, by selecting the highest rate calculated for a cooperative respondent, we arrive at a reasonably accurate estimate of the respondent's actual rate, and a rate that also ensures, as mentioned above, "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[93] Finally, the Department will not use information where circumstances indicate that the information is not appropriate as AFA.[94]

With respect to the grant programs that were discovered at the verification of Trina Solar's questionnaire responses, we reviewed the information concerning subsidy programs in other segments in this proceeding and in other PRC proceedings. Where we have found a program-type match (*i.e.*, same or similar programs), we were able to utilize these programs in determining AFA rates for the programs discovered at Trina Solar's verification (*i.e.*, the programs and their rates are relevant). The relevance of those program rates is that they are actual calculated CVD rates from PRC subsidy programs for which Trina Solar could actually receive a benefit. Due to the GOC's and Trina Solar's lack of participation and the resulting lack of record information regarding these discovered grants, the Department corroborated the rates it selected to use as AFA to the extent practicable.

For the grants discovered at the verification of Trina Solar's questionnaire responses, the Department applied the above AFA methodology and was unable to find a non-zero rate calculated for a cooperative respondent for identical programs in this investigation, nor did we find any above *de minimis* rates calculated for a cooperative respondent for an identical program in any proceeding covering imports from the PRC. Proceeding to the next step in the hierarchy,

[93] *See* SAA at 870.
[94] *See*, *e.g.*, *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

we determine that the highest non-*de minimis* rate calculated for a similar/comparable program (*i.e.*, a grant program) in any proceeding covering imports from the PRC is the rate of 0.58 percent, which was calculated for the program "Special Fund for Energy Saving Technology," in the CVD investigation of *Chlorinated Isocyanurates from the PRC*.[95]

In *Chlorinated Isocyanurates from the PRC*, the Department found that the GOC provides grants to companies for renovations, which improve their energy efficiency, and that this grant was provided to Hebei Jiheng Chemicals Co., Ltd. (a producer of chlorinated isocyanurates) based on its energy saving technology renovations.[96] As set forth above, the instant record reflects that Trina Solar is in the PRC's renewable energy industry generally, and in the science and technology sector specifically. Thus, the record of the instant investigation does not lead us to conclude that the industry in which Trina Solar operates would be ineligible to use the Special Fund for Energy Saving Technology program from *Chlorinated Isocyanurates from the PRC*.[97] As a result, and consistent with the Department's CVD AFA methodology, we find that Trina Solar could actually use the Special Fund for Energy Saving Technology program, and that the calculated rate of 0.58 percent is an appropriate rate to select as AFA for the grants discovered at Trina Solar's verification. Therefore, for purposes of these final remand results, and consistent with the *Final Determination*, we are continuing to apply this 0.58 percent rate to the grants discovered at verification.

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[95] *See Final Determination* and accompanying Issues and Decision Memorandum at 88; *see also Chlorinated Isocyanurates from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 2012; 79 FR 56560 (September 22, 2014) (*Chlorinated Isocyanurates from the PRC*) and accompanying Issues and Decision Memorandum at 14.

[96] *See Chlorinated Isocyanurates from the PRC* and accompanying Issues and Decision Memorandum at 13.

[97] *See*, *e.g.*, *Stainless Steel Sheet and Strip from the PRC* and accompanying Issues and Decision Memorandum at 8-9 (regarding the Department's CVD AFA methodology and selection of a program from which to select an AFA rate, "we apply the highest calculated rate from any non-company specific program in a 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.")

C. Creditworthiness of Suntech and Trina Solar

In the *Final Determination*, the Department found that SolarWorld did not submit a "specific allegation," as required by 19 CFR 351.505(a)(6)(i), that met the threshold for initiating creditworthiness investigations for Suntech for the years 2010 and 2012, and for Trina Solar for the years 2005, 2007, and 2012.[98] Upon considering the matter further and reviewing the record, we requested a voluntary remand to reconsider this finding. In its *Remand Order*, the Court granted our request to reevaluate SolarWorld's allegation.[99] As a result of our reevaluation of SolarWorld's allegation, we initiated creditworthiness investigations for Suntech for 2010 and 2012, and for Trina Solar for 2005 and 2007.[100] We provided Suntech and Trina Solar with the opportunity to provide information regarding their creditworthiness for the years in question, and both companies submitted information on this issue on March 7, 2017.[101] Our analysis of each company's creditworthiness is provided below.

The examination of creditworthiness is an attempt to determine whether the company in question could obtain long-term financing from conventional commercial sources. According to 19 CFR 351.505(a)(4)(i), the Department will generally consider a firm to be uncreditworthy if, based on information available at the time of the government-provided loan, the firm could not have obtained long-term loans from conventional commercial sources.

In making this determination, and as guided by 19 CFR 351.505(a)(4)(i)(A)-(D), the Department may examine, *inter alia*, the following four types of information: 1) receipt by the firm of comparable commercial long-term loans; 2) present and past indicators of the firm's

[98] *See Final Determination* and accompanying Issues and Decision Memorandum at 94-96.
[99] *See Remand Order* at 39.
[100] *See* CW Initiation Memorandum.
[101] *See* Suntech CW QR; *see also* Trina Solar CW QR.

financial health; 3) present and past indicators of the firm's ability to meet its costs and fixed financial obligations with its cash flow; and 4) evidence of the firm's future financial position.

Receipt by the Firm of Comparable Commercial Long-Term Loans

The first factor we consider is the receipt by the firm of comparable commercial long-term loans.[102] In the case of firms not owned by the government, the receipt of such loans, unaccompanied by a government-provided guarantee, will normally constitute dispositive evidence that the firm is not uncreditworthy.[103] In reviewing Suntech's and Trina Solar's creditworthiness responses, we conclude that neither company received what the Department considers to be comparable long-term loans during the years in which we have found them to be uncreditworthy, within the meaning of 19 CFR 351.505(a)(4)(i)(A).[104] We note that in prior proceedings, the Department has taken into consideration convertible notes issued by solar respondents as dispositive evidence of creditworthiness, finding that the notes offered in market economies to be akin to long-term commercial loans.[105] However, the information submitted by the respondent companies in this remand does not indicate that either respondent issued such notes during the years in which we find the companies to be uncreditworthy, although balances were outstanding from notes issued in prior years.

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

Suntech argues that there is no "standard" benchmark with regard to these financial ratios, and that all of the different financial ratios should be taken into account to draw a

[102] *See* 19 CFR 351.505(a)(4)(i)(A).
[103] *See* 19 CFR 351.505(a)(4)(ii).
[104] *See* Suntech CW QR at Exhibit 3; *see also*, Trina Solar CW QR at 3.
[105] *See Solar I* and accompanying Issues and Decision Memorandum at 55.

complete picture of the company.[106] However, and as explained previously, "{t}hese ratios are highly relevant under 19 CFR 351.505(a)(4)(i)(B)-(C) because they are indicators of a firm's financial health and its ability to meet its costs and fixed financial obligations with cash flow. Unlike some of the other information we have been asked to consider for this analysis, the meaning of these ratios is clear: either the respondents have liquid funds available to cover upcoming obligations, or they do not. If they do not, they have no choice but to accumulate new debt in order to cover existing debt."[107] Therefore, and consistent with the Department's practice, we placed significant emphasis on low current and quick ratios during the years in question.

Suntech reported current and quick ratios that were both below the Department's normal benchmarks of 2.0 and 1.0, for the years 2010 and 2012, respectively.[108] We also note that Suntech reported decreasing cash flows, while reporting increasing debt-to-equity ratios, between 2008 and 2012.[109] These financial indicators indicate that Suntech struggled to meet its costs and fixed financial obligations with its cash flow, and was required to borrow in order to cover its cash outlays after servicing its long-term debts.

Trina Solar reported current ratios of 1.62 and 1.55 for 2005 and 2007 (*i.e.*, the years for which are examining Trina Solar's creditworthiness) respectively,[110] which are below the Department's established benchmark of 2.0. Trina Solar reported quick ratios of 0.58 for 2005, and 1.07 for 2007 (the Department's normal benchmark for this metric is 1.0).[111] We note that

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[106] *See* Suntech CW QR at 4-5.
[107] *See Solar I* and accompanying Issues and Decision Memorandum at 56.
[108] Suntech's current ratios were 1.02 in 2010, and [ ] in 2012. The company's quick ratios were 0.78 in 2010 and [ ] in 2012. *See* Suntech CW QR at Exhibit 2.
[109] *See id*. Suntech's net cash flows decreased from 0.00 in 2008 to [ ] in 2012. The company's debt-to-equity ratios increased from 1.99 in 2008 to 3.79 in 2011, then [ ]. [ ].
[110] *See* Trina Solar CW QR at Exhibit 4.
[111] *See id*.

while Trina Solar reported *adjusted* quick ratios of 1.04 for 2005, and 1.29 for 2007, we conclude that these adjusted quick ratios include certain assets in the calculation's numerator that would be unavailable to pay down current liabilities such as restricted cash, pre-paid expenses, and other short-term liquidity restrictions. Trina Solar reported fluctuating cash flows between 2003 and 2007, which peaked in 2006 before decreasing in 2007,[112] and reported debt-to-equity ratios of 0.34 in 2005, 0.03 in 2006, and 0.02 for 2007.[113]

Evidence of the Firm's Future Financial Position

The Department's has not found any evidence indicating Suntech's or Trina Solar's future financial position as viewed during the years in question such as market studies, country and industry economic forecasts, or project and loan appraisals that were prepared prior to loan agreements. While Suntech submitted samples of the media coverage it received during 2010 and 2012 about expanding its production capacity and highlighting certain operational achievements, the Department finds that this information does not provide evidence of the company's future financial position within the meaning of 19 CFR 351.505(a)(4)(i)(D).[114]

Conclusion on Creditworthiness

Based on an analysis of the factors under 19 CFR 351.505(a)(4)(i)(A)-(D), for purposes of these final remand results, we find that Suntech was uncreditworthy in 2010 and 2012, and that Trina Solar was uncreditworthy in 2005 and 2007. Specifically, in each of these years, we find that the respondents' current and quick ratios indicated that they did not have sufficient liquid assets to cover their costs and fixed financial obligations and, thus, could not have obtained long-term loans from conventional commercial sources. Moreover, neither respondent

[112] *See id*. Trina Solar reported [ ], which increased to USD 134 million in 2006 before decreasing to USD 92 million in 2007.
[113] *See id*.
[114] *See* Suntech CW QR at Exhibit 4.

company had what the Department considers to be comparable long-term loans during the years in which we have found them to be uncreditworthy, within the meaning of 19 CFR 351.505(a)(4)(i)(A).

Because we have determined that Suntech and Trina Solar were uncreditworthy during the years in question, we adjusted the long-term interest rate benchmarks in the *Final Determination* for these years, and recalculated the subsidy rates for Suntech, Trina Solar, and for all other companies that were subject to the investigation.

COMMENTS ON DRAFT REMAND RESULTS

Issue 1: Factual Information on the Record Supporting the Countervailability Based on AFA for Trina Solar's Unreported and Discovered Grants

SolarWorld Comments

- Requiring the Department to point to specific information on the record with respect to the countervailability of programs for a non-cooperating party that has refused to provide requested information places an unreasonable burden on the Department. This burden is particularly troubling given that the record might lack the requisite information that the respondent intentionally withheld. Thus, such factual finding requirement may thwart the purpose of AFA by incentivizing non-cooperation, and may undermine the broader purpose of the CVD law.[115]
- Nevertheless, in accordance with the Court's *Remand Order*, in the Draft Remand Results, the Department identified specific factual information demonstrating that Trina Solar's unreported and discovered grants meet the requirements for countervailability under the Act.

[115] *See* SolarWorld Comments on Draft Results at 5-6.

Trina Solar Comments

- The Department failed to cite to specific evidence on the record to support its finding that the *Solar I* programs and the programs found at verification meet the statutory requirements regarding countervailability. The Department's "post-hoc rationalization continues to fail to base its decision on record evidence and makes no effort to consider evidence that distracts from its preconceived notion that anything that looks like a subsidy is in fact a subsidy and moreover is specific."[116]
- In the investigation, the Department presumed that any entry in an account for government grants was sufficient to find the underlying entry to be a countervailable subsidy. However, inclusion or exclusion from such an account says little if anything about whether a financial contribution is made by the government that confers a benefit and says nothing about specificity.[117]
- In its Draft Remand Results, the Department found no evidence of specificity for the two *Solar I* infrastructure programs. Instead, the Department assumed specificity existed for these programs based on the fact that Trina Solar received other grants from the [ ] for the purpose of [ ]. From this, the Department somehow concluded that these infrastructure grants were limited to enterprises in the [ ] industry and, therefore, were specific. However, the Department provided no reference to the facts on the record of this case to support this leap in logic.[118]

[116] *See* Trina Solar Comments on Draft Results at 2-3.
[117] *See id*.
[118] *See id*. at 3-4.

- The Department correctly concluded in its Draft Remand Results that the record did not support a finding of specificity for the tax deduction program, Deduction of Wages Paid for Placement of Disabled Persons. However, as to the remaining subsidies found at verification, the Department again concluded that their inclusion in an account for government grants is *de facto* evidence of a subsidy. By this logic, any assistance not booked in this account would not be a subsidy.[119]
- The Department conflated the two elements of determining a subsidy. The Department is aware that the determination of whether a government action is a subsidy is a legal decision dependent on a finding that the government has made a financial contribution that confers a benefit. The Department found, based on AFA, that the record demonstrates that all of the grants discovered at verification provided Trina Solar with a financial contribution and a benefit pursuant to sections 771(D) and 771(E) of the Act, respectively. But while the Department explained how a positive balance in the account for government grants may indicate the disbursement of funds and, therefore, presumably, a financial contribution, the Department failed to make a decision based on the evidence on the record that the financial contribution conferred a benefit to Trina Solar.[120]
- Regarding specificity, in its Draft Remand Results the Department explained that the GOC and the local governments have a policy of supporting the PRC's renewable energy sector, but it did not reference or cite evidence that would indicate whether similar support is provided to other companies in a wide range of industries. Therefore, it is not clear how the evidence cited is determinative of specificity. Nonetheless, based on generic statements of support, the Department found that the programs, Changzhou Treasury Bureau Other

[119] *See id*. at 4.
[120] *See id*. at 4-5.

Manufacturing Expenses; Changzhou Treasury Financial Grant; China Treasury Department Grant; and Special Capital Transfer to Non-operating Revenue, are all limited by law to certain enterprises, namely enterprises operating in the PRC's renewable energy or science and technology sectors, pursuant to section 771(5A)(D)(i) of the Act. However, the Department does not discuss how these programs are limited by law. The Department has taken the position that randomly pointing to evidence on the record in some way fulfills the Court's *Remand Order*.[121]

- The Department's analysis in the Draft Remand Results regarding the Talented People Income Tax Refund; Grant for Post-Doctoral Station; and Social Security Grant, all suffer from the same defect regarding specificity. Assuming that the GOC supports science and technology education, encouraging science and technology is not limited to the solar energy sector, as policies such as these would potentially support every sector of the economy. Much like the Deduction of Wages Paid for Placement of Disabled Persons program, for example, the Department has not explained how the policies cited indicate that the Social Security Grant is not generally available.[122]
- For the programs, Changzhou Treasury Grant for Research and Development; Changzhou Treasury Project Award; Grant for Key Lab Construction Support Fund; Grant for National Key New Product Project Award; Innovation Award Grant; New Technology Application Award; Science Technical Award; Science Technology Bureau Grant; and Science Technology Infrastructure Rolling Support, the Department is effectively relying on nothing more than the names of these programs to determine specificity and to satisfy the Court's order to indicate the "facts" selected to make the requisite factual findings. In making its

[121] *See id*. at 5.
[122] *See id*. at 6.

specificity determinations, the Department's Draft Remand Results do not comply with the Court's direction.[123]

Department's Position:

We disagree with Trina Solar that the Department failed to cite evidence on the record to support its findings that the infrastructure grants from *Solar I* and the programs discovered at Trina Solar's verification meet the statutory requirements regarding countervailability. The Department's analysis as discussed above points to record information that supports a finding, based upon AFA, that the *Solar I* grants are specific, and that each program discovered during Trina Solar's verification provided Trina Solar with a financial contribution, conferred a benefit, and is specific, within the meaning of sections 771(5)(A), (B), (D), and (E), and section 771(5A) of the Act. Trina Solar objects to the Department's findings regarding benefit and specificity, but these arguments disregard the facts and circumstances of this remand proceeding, as discussed below.

At the outset, we note that, while Trina Solar argues that the Department's analyses rely on "post-hoc rationalizations," this argument fails to account for the posture of this case. The Department is providing additional analysis to comply with the Court's *Remand Order* that the Department "make the necessary factual findings to satisfy the requirements for countervailability."[124] Under these circumstances, the Department's compliance with the terms of the Court's order cannot be considered post-hoc rationalization.

Regarding Trina Solar's argument that the Department failed to show how a positive balance in the company's account for government grants indicates that the grants conferred a benefit, the simple fact that the grants were recorded in this account as positive entries supports a

[123] *See id*. at 7.
[124] *See Remand Opinion* at 24-25.

finding that the grants provided Trina Solar with a benefit in the amount of the grants. This is because the Department determines the benefit for a grant program simply by looking at "the amount of the grant."[125] Therefore, we disagree that the Department has failed to cite facts that support its benefit determination for the subsidies discovered during Trina Solar's verification.

With respect to specificity, Trina Solar argues that the Department has made "no effort to consider evidence" that the programs in question might not be subsidies, let alone specific subsidies. Trina Solar misapprehends the nature of the remand. In its *Remand Order*, the Court concluded that the Department "reasonably resorted to AFA (including an inference adverse to the interests of Trina Solar) to decide whether the elements necessary for the imposition of countervailing duties were met with regard to the additional grants and tax deduction found during verification."[126] However, the Court instructed the Department to provide a factual predicate to support its finding, based upon AFA, that the subsidies are specific within the meaning of section 771(5A) of the Act. The Department complied with the Court's *Remand Order* under respectful protest. In particular, the Court instructed the Department to "point to actual information on the record to make the required factual determinations," regarding the elements of countervailability (*i.e.*, financial contribution, benefit, and specificity),[127] and the Department complied with the Court's instructions by undertaking an extensive analysis of the subsidy programs in question.[128]

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[125] *See* 19 CFR 351.504(a).

[126] *See Remand Opinion* at 19.

[127] *See id.* at 25.

[128] Although Trina Solar frequently argues that the Department "randomly cited to record evidence without any logical connection to the programs at issue," *see, e.g.*, Trina Solar Comments on Draft Results at 6, the extensive analysis of each program above clearly reflects otherwise. For each program, the Department's findings were based upon evidence and reasonable inferences (albeit inferences that are adverse to Trina Solar, as permitted by the statute).

Trina Solar does not contest the accuracy of the evidence upon which the Department has relied, nor does Trina Solar identify any "competing" evidence indicating that the Department's inferences are unreasonable. Instead, Trina Solar faults the Department for failing to consider what the record *might* have shown, had the GOC and Trina Solar complied with the Department's requests for information. For example, with respect to the Changzhou Treasury Bureau Other Manufacturing Expenses; Changzhou Treasury Financial Grant; China Treasury Department Grant; and Special Capital Transfer to Non-operating Revenue, Trina Solar states that the Department failed to analyze "any record evidence . . . that would indicate whether similar support is provided to other companies in a wide range of industries."[129] With respect to the Talented People Income Tax Refund, Grant for Post-Doctoral Station and Social Security Grant, Trina Solar asserts that the Department failed to consider the fact that "{p}olicies such as these would potentially support every sector of the economy and do not by themselves support a finding of specificity related to the solar energy sector."[130]

But these arguments miss the point. The Department acknowledges that the record lacks indisputable evidence that the infrastructure grants from *Solar I* and the subsidies discovered at Trina Solar's verification are specific within the meaning of section 771(5A) of the Act. However, that fault lies with the GOC and Trina Solar for failing to act to the best of their abilities by not providing information requested by the Department. Under these circumstances, the Department is permitted under the statute to rely upon facts and inferences that are adverse to Trina Solar and the GOC to fill the record gap created by the failure to cooperate.[131] That is what the Department has done in this final remand redetermination. Trina Solar cannot undo the

[129] Trina Solar Comments on Draft Remand at 5. We also disagree that use by a diverse group of industries necessarily precludes a finding that the program is specific, provided that the industries are limited in number.
[130] *Id.* at 6.
[131] *See* section 776(a) and (b) of the Act.

consequences of its failure to cooperate by citing the absence of complete evidence. Indeed, this result would allow parties to manipulate the outcome of determinations by providing only information that favors their claims and arguments.

Based on the analyses discussed above, the Department demonstrated that, based on the application of AFA, the *Solar I* infrastructure grants are specific, *and* that each of the grants discovered at Trina Solar's verification, provided the company with a financial contribution and a benefit, and is specific. Therefore, each subsidy in question is countervailable in accordance with the Act. As such, the Department has complied with the Court's *Remand Order* on this issue.

Issue 2: The Selection of the AFA Rate for the Grants Discovered at Verification

SolarWorld Comments

- Consistent with its longstanding two-step analysis for calculating AFA in CVD cases, the Department correctly chose the highest *non-de minimis* rate calculated for a similar/comparable program in another CVD proceeding involving the PRC. As the Department explained in its Draft Remand Results, the Special Fund for Energy Saving Technology program from *Chlorinated Isocyanurates from the PRC* could have actually been used by Trina Solar. Accordingly, the Department's use of the 0.58 percent rate calculated for this program was appropriate for Trina Solar's unreported and discovered grants.[132]

No other party commented on this issue.

[132] *See* SolarWorld Comments on Draft Results at 6-7.

Department's Position:

We agree with SolarWorld on this issue. As a result, for these final remand results, we made no changes to the AFA rate selected for Trina Solar's unreported and discovered grants.

Issue 3: Creditworthiness

SolarWorld Comments

- In its Draft Remand Results, the Department correctly determined that Suntech and Trina Solar were uncreditworthy, but erred in declining to initiate a creditworthiness investigation with respect to Trina Solar for 2012. There was significant evidence demonstrating that Trina Solar was uncreditworthy during 2012.[133]

Trina Solar Comments

- The Department's decision to initiate the creditworthiness investigation was inconsistent with its past practice, and the creditworthiness decision was not based on substantial record evidence. In its Draft Remand Results, while the Department found that Trina Solar was uncreditworthy during 2005 and 2007, this issue is "somewhat moot" given the Department also found that Trina Solar did not receive any long-term loans or non-recurring subsidies in 2005 and 2007 that had benefits allocable to the POI. However, Trina Solar continues to believe that SolarWorld failed to provide a specific allegation of uncreditworthiness, and that even upon reconsideration, the creditworthiness investigation should not have been initiated. In its Draft Remand Results, the Department did not point to any evidence that cures the defects in SolarWorld's original uncreditworthiness allegation. For the final remand results, the Department should

[133] *See id*. at 7-11.

determine that it was correct in its previous decision and not consider SolarWorld's uncreditworthiness allegation.[134]

Department's Position:

In the underlying investigation, the Department found that SolarWorld did not submit a "specific allegation" as required by 19 CFR 351.505(a)(6)(i) that met the threshold for initiating creditworthiness investigations for Suntech for the years 2010 and 2012, and for Trina Solar for the years 2005, 2007, and 2012. Among other findings, the Department found that SolarWorld's uncreditworthiness allegation did not specify a time period for the Department to investigate. The Department subsequently concluded, however, that SolarWorld's uncreditworthiness allegation did relate to 2010 and 2012 for Suntech, and 2005, 2007, and 2012 for Trina Solar. The Department, thus, requested and received a voluntary remand to "reevaluate whether SolarWorld established a reasonable basis to believe or to suspect" that Suntech and Trina Solar were uncreditworthy during any of the years in question.[135] Trina Solar had the opportunity to object to the Department's request for a voluntary remand, but did not do so.[136]

On remand, the Department reconsidered SolarWorld's creditworthiness allegation. First, the Department noted that SolarWorld alleged that in *Solar I*, the Department found that Suntech was uncreditworthy during 2010, and that Trina Solar was uncreditworthy during 2005 and 2007.[137] The Department found that these prior determinations in *Solar I* alone established a "reasonable basis to believe or suspect" in this investigation that Suntech and Trina Solar were uncreditworthy during the same years at issue in *Solar I* (*i.e.*, 2010 for Suntech, and 2005 and

[134] *See* Trina Solar Comments on Draft Results at 7-9.
[135] *See Remand Order* at 39.
[136] *Id*.
[137] *See Solar I* and accompanying Issues and Decision Memorandum at Comment 17.

2007 for Trina Solar).[138] Additionally, because the Department previously found Suntech to be uncreditworthy in *Solar I* for 2010, and because the Department had not found Suntech to be creditworthy during a subsequent year (*i.e.*, there is no intervening finding that Suntech was creditworthy during 2011) the Department determined that SolarWorld's allegation that Suntech was uncreditworthy during 2012 met the initiation threshold without the need for any additional information.[139]

The Department based this determination on language from the regulatory history of 19 CFR 351.505(a)(6)(i).[140] In particular, the Department explained in its CW Initiation Memorandum that the Department's 1989 Proposed Rulemaking, which is referenced in the *CVD Preamble*, states that where a company has been previously found to be uncreditworthy and there has been "no intervening finding" of the company's creditworthiness, the prior finding of uncreditworthiness provides a reasonable basis to believe or to suspect that the firm continues to be uncreditworthy.[141]

For Trina Solar, the Department made an intervening finding in 2008 that Trina was creditworthy.[142] Thus, the Department found that this intervening finding broke "the path between our finding of Trina Solar's uncreditworthiness in 2007 and SolarWorld's allegation regarding 2012."[143] And after considering the substance of SolarWorld's allegation, the

[138] *See* CW Initiation Memorandum at 2-3; *see also Countervailing Duties; Final Rule*, 63 FR 65348, 65368 (November 25, 1998) (*CVD Preamble*).
[139] *See* CW Initiation Memorandum.
[140] *See* CW Initiation Memorandum.
[141] *See* CW Initiation Memorandum; *see also CVD Preamble*; *see also Notice of Proposed Rulemaking and Request for Public Comments (Countervailing Duties)*, 54 FR 23366 (May 31, 1989).
[142] *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 (Dep't of Commerce 2012), and accompanying Issues and Decision Memorandum at Comment 17.
[143] *See* CW Initiation Memorandum at 3.

Department found in the CW Initiation Memorandum that SolarWorld's uncreditworthiness allegation on Trina Solar for 2012 did not justify initiation of creditworthiness allegation.

Trina Solar and SolarWorld each contest aspects of the Department's findings, but these contentions are unpersuasive. Although Trina Solar argues that the Department's decision to initiate an investigation into its creditworthiness in 2005 and 2007 was inconsistent with past practice and not based on substantial evidence, Trina Solar itself recognizes that this issue is moot considering that the Department's revised findings have no impact on the net countervailable subsidy rate calculated for Trina Solar.[144] In any event, Trina Solar's arguments are merely a recitation of the Department's prior findings in the underlying investigation. Trina Solar fails to appreciate that the Department has reconsidered those findings, in light of its examination of the *CVD Preamble*, and has explained why it reached a different conclusion in the context of this remand proceeding. This conclusion is based upon a reasonable interpretation of 19 CFR 351.505(a)(6)(i). Therefore, we continue to find that it was appropriate to investigate Trina Solar's creditworthiness in 2005 and 2007.

Contrary to SolarWorld's arguments, we likewise continue to find that the Department correctly declined to initiate an investigation into Trina Solar's creditworthiness in 2012. As the Department explained in its CW Initiation Memorandum, absent a prior unbroken finding of uncreditworthiness, the Department normally relies on the following information when finding whether an allegation of uncreditworthiness satisfies the initiation standard: 1) the receipt by the firm of comparable commercial long-term loans; 2) present and past indicators of the firm's financial health; 3) present and past indicators of the firm's ability to meet its costs and fixed financial obligations with its cash flow; and 4) evidence of the firm's future financial position,

[144] *See* Trina Solar Pre-Preliminary Comments at 7-8.

such as market studies, country and industry economic forecasts, and projects and loan appraisals that were prepared before the agreement between the lender and the firm on the terms of the loan.[145] The Department explained that SolarWorld's allegation on Trina Solar's uncreditworthiness for 2012 only stated that Trina Solar experienced losses during the fourth quarter of 2012, and cited to a February 26, 2013 news article in the Petition.[146] This single statement from SolarWorld on Trina Solar's profitability during the fourth quarter of 2012 does not satisfy the initiation criteria described above. Although SolarWorld contends that these losses are an "extremely strong" indicator of the firm's present and past financial health, SolarWorld fails to buttress this allegation with reference to any of the other criteria that the Department customarily examines in considering whether to initiate an investigation into a firm's creditworthiness (such as, for example, a firm's low current and quick ratios). Therefore, without additional information, SolarWorld's uncreditworthiness allegation concerning Trina Solar for 2012 is not a "specific allegation," as required by 19 CFR 351.505(a)(6)(i). As a result, the Department continues to find that it was appropriate not to initiate an investigation as to Trina Solar's creditworthiness for 2012.

Issue 4: Clerical Error in Suntech's Margin Calculations for the Draft Remand Results

SolarWorld Comments

- In its Draft Remand Results, the Department stated that it intended to adjust the discount rate for certain Suntech loans. While the Department did recalculate the benefit as

[145] *See* CW Initiation Memorandum at 3; *see also* 19 CFR 351.505(a)(4)(i).
[146] *See* CW Initiation Memorandum at 3; *see also* SolarWorld Pre-Preliminary Comments at 29-31; *see also* Letter to the Secretary, "Petitioner 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) (Petition) at Exhibit III-117, "Trina continues to see net losses," (PV Magazine Global) (February 26, 2013).

intended, it did not include the revised benefit in the overall summation of the benefit received. The Department should correct this clerical error for the final remand results. No other party commented on this issue.

Department's Position:

We agree with SolarWorld, and we corrected this clerical error for these final remand results. As a result of this correction, Suntech's overall subsidy rate has been revised to 27.65 percent. Because the all others rate is derived from the overall subsidy rates of Suntech and Trina Solar, the all others rate has been revised to 33.58 percent.

FINAL RESULTS OF REDETERMINATION

Pursuant to the Court's *Remand Order*, we have implemented the changes discussed above. As a result of this final remand determination, we have revised the subsidy rates as follows:[147]

Producer	**Amended Final Determination**	**Final Results of Redetermination**
Suntech	27.64 percent	27.65 percent
Trina Solar	49.21 percent	39.50 percent
All Others	38.43 percent	33.58 percent

// Signed in Business Proprietary Version //

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

April 28, 2017

[147] *See* Department Memorandum, "Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Results of Redetermination Pursuant to Court Order, Calculations Memorandum," (April 28, 2017).