



C-570-011
Investigation
Public Document
E&C Office VII: Team

DATE: December 15, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
For Enforcement and Compliance

FROM: Christian Marsh 
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Determination in
the Countervailing Duty Investigation of Certain Crystalline
Silicon Photovoltaic Products from the People's Republic of China

I. SUMMARY

The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of certain crystalline silicon photovoltaic products (certain solar products, or subject merchandise) from the People's Republic of China (the PRC), within the meaning of section 705 of the Tariff Act of 1930, as amended (the Act).¹ Below is the complete list of issues in this investigation for which we received comments from interested parties:

Issues:

- Comment 1:** Scope Comments and Scope Clarification
- Comment 2:** Whether the Department Should Investigate the Effects of the GOC's Alleged Cyberhacking on this Investigation
- Comment 3:** Whether Input Providers are "Authorities" Within the Meaning of the Act
- Comment 4:** Whether the Provision of Chinese Polysilicon for LTAR is Countervailable
- Comment 5:** Whether the Department Should Attribute Subsidies under the Provision of Polysilicon for LTAR Program to Wuxi Suntech's Cross-owned Companies
- Comment 6:** Whether the Provision of Aluminum Extrusions for LTAR is Countervailable
- Comment 7:** Whether the Provision of Solar Glass for LTAR is Countervailable
- Comment 8:** Whether AFA is Applicable to Trina Solar's Land Purchases

¹ See also section 701(f) of the Act.

- Comment 9:** Whether All Banks in China Offering Preferential Loans to Respondents Constitute “Authorities”
- Comment 10:** Whether the Department Should Adjust Its Benefit Calculations for Loans Received by Wuxi Suntech and Zhenjiang Ren De
- Comment 11:** Whether the High or New Technology Tax Program is Specific
- Comment 12:** Whether the Tax Offsets for R&D under the Enterprise Income Tax Law Program is Specific
- Comment 13:** Whether the Department Should Adjust Its Benefit Calculation for Wuxi Suntech’s Use of the “Preferential Income Tax Program for High or New Technology Enterprises” and for the “Tax Offsets for R&D under the Enterprise Income Tax Law” Programs
- Comment 14:** Whether the Golden Sun Program is Countervailable
- Comment 15:** Whether the Department Should Countervail the “Discovered Subsidies” or Subsidies Discovered During the Course of Verification
- Comment 16:** Whether the Department Should Apply AFA to the Ex-Im Bank Buyer’s Credit Program
- Comment 17:** Whether the Department Should Find Trina Solar and Wuxi Suntech to be Uncreditworthy
- Comment 18:** Whether the Department Should Adjust the Sales Denominators Used in Calculating Subsidy Benefits for Wuxi Suntech
- Comment 19:** Whether the Department Should Accept the Minor Corrections Presented by Wuxi Suntech at Verification

II. BACKGROUND

A. Case History

The mandatory company respondents in this proceeding are Changzhou Trina Solar Energy Co., Ltd. and its cross-owned affiliate Trina Solar (Changzhou) Science & Technology Co., Ltd. (collectively, Trina Solar), and Wuxi Suntech Power Co., Ltd. and its cross-owned affiliates² (collectively, Wuxi Suntech). On June 10, 2014, the Department published the *Preliminary Determination* in this proceeding.³ On June 9, 2014, the Government of the People’s Republic of China (the GOC) submitted a ministerial error allegation regarding the benchmark tariff rate the Department used for the provision of solar glass for less than adequate remuneration (LTAR). On June 10, 2014, Trina Solar and Wuxi Suntech each filed ministerial allegations with respect to various aspects of the *Preliminary Determination*. Between July 15 and July 25,

² The cross-owned companies identified by Wuxi Suntech are: Suntech Power Co., Ltd. (Shanghai Suntech), Zhenjiang Rietech New Energy Science & Technology Co., Ltd. (Zhenjiang Rietech), Zhenjiang Ren De New Energy Science & Technology Co., Ltd. (Zhenjiang Ren De), Luoyang Suntech Power Co., Ltd. (Luoyang Suntech), Wuxi Sunshine Power Co., Ltd. (Wuxi Sunshine), Yangzhou Rietech Renewal Energy Co., Ltd. (Yangzhou Rietech), Suntech Energy Engineering Co., Ltd. (Suntech Energy), and Kuttler Automation Systems (Suzhou) Co., Ltd. (Suzhou Kuttler).

³ See *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*) and its accompanying Preliminary Decision Memorandum.

2014, we issued supplemental questionnaires to the GOC, Trina Solar, and Wuxi Suntech, for which we received timely responses between July 29 and August 7, 2014.

On July 31, 2014, we aligned the final determination in this investigation with the final determination in the companion antidumping duty (AD) investigation of certain solar products from the PRC. On August 15, 2014, the Department rejected the GOC's June 9, 2014, ministerial error allegation, as well as Trina Solar's and Wuxi Suntech's June 10, 2014, submissions, explaining that their submissions were noncompliant with the Department's procedures for submitting factual information. Trina Solar and Wuxi Suntech each timely resubmitted their ministerial error allegations on August 19, 2014. On August 21, 2014, the Department determined that no ministerial errors exist with respect to Trina Solar's and Wuxi Suntech's allegations.⁴ Between August 20 and September 2, 2014, we conducted verification of the questionnaire responses submitted by the GOC, Trina Solar, and Wuxi Suntech.⁵ Between October 16 and October 27, 2014, interested parties submitted case and rebuttal briefs. We did not conduct a hearing in this proceeding, as all requests for a hearing were timely withdrawn.

B. Period of Investigation

The period of investigation (POI) for which we are measuring subsidies is January 1, 2012, through December 31, 2012.

III. SCOPE OF THE INVESTIGATION

The merchandise covered by this investigation is modules, laminates and/or panels consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including building integrated materials. For purposes of this investigation, subject merchandise includes modules, laminates and/or panels assembled in the PRC consisting of crystalline silicon photovoltaic cells produced in a customs territory other than the PRC.

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

Excluded from the scope of this investigation are thin film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS). Also excluded from the scope of this investigation are modules, laminates and/or panels

⁴ See Department Memorandum, "Allegations of Ministerial Errors in the Preliminary Determination," (August 21, 2014).

⁵ See Department Memoranda, "Verification of the Questionnaire Responses Submitted by Changzhou Trina Solar Energy Co., Ltd. and its Cross-Owned Companies," (October 2, 2014) (Trina Solar VR); "Verification of the Questionnaire Responses Submitted by the Government of the People's Republic of China," (October 3, 2014) (GOC VR); and "Verification of the Questionnaire Responses Submitted by Wuxi Suntech Power Co., Ltd. and its Cross-Owned Companies," (October 3, 2014) (Wuxi Suntech VR).

assembled in the PRC, consisting of crystalline silicon photovoltaic cells, not exceeding 10,000mm² in surface area, that are permanently integrated into a consumer good whose function is other than power generation and that consumes the electricity generated by the integrated crystalline silicon photovoltaic cells. Where more than one module, laminate and/or panel is permanently integrated into a consumer good, the surface area for purposes of this exclusion shall be the total combined surface area of all modules, laminates and/or panels that are integrated into the consumer good. Further, also excluded from the scope of this investigation are any products covered by the existing antidumping and countervailing duty orders on crystalline silicon photovoltaic cells, whether or not assembled into modules, laminates and/or panels, from the PRC.⁶

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 8501.61.0000, 8507.20.8030, 8507.20.8040, 8507.20.8060, 8507.20.8090, 8541.40.6020, 8541.40.6030 and 8501.31.8000. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of this investigation is dispositive.

IV. APPLICATION OF THE COUNTERVAILING DUTY LAW TO IMPORTS FROM THE PRC

On October 25, 2007, the Department published its final determination on coated free sheet paper from the PRC.⁷ In *CFS from the PRC*, the Department found that:

. . . given the substantial differences between the Soviet-style economies and China's economy in recent years, the Department's previous decision not to apply the CVD law to these Soviet-style economies does not act as a bar to proceeding with a CVD investigation involving products from China.⁸

The Department affirmed its decision to apply the countervailing duty (CVD) law to the PRC in numerous subsequent determinations.⁹ Furthermore, on March 13, 2012, Public Law 112-99 was enacted, which confirms that the Department has authority to apply the CVD law to countries designated as non-market economies under section 771(18) of the Act, such as the PRC.¹⁰ The effective date provision of the enacted legislation makes clear that this provision applies to this proceeding.¹¹

⁶ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order*, 77 FR 73018 (December 7, 2012); *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Countervailing Duty Order*, 77 FR 73017 (December 7, 2012).

⁷ See *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS from the PRC*), an accompanying Decision Memorandum at Comment 6.

⁸ *Id.*

⁹ See, e.g., *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008) (*CWP from the PRC*) and accompanying Decision Memorandum at Comment 1.

¹⁰ Section 1(a) is the relevant provision of Public Law 112-99 and is codified at section 701(f) of the Act.

¹¹ Public Law 112-99, 126 Stat. 265 §1(b).

Additionally, for the reasons stated in *CWP from the PRC*, we are using the date of December 11, 2001, the date on which the PRC became a member of the World Trade Organization (WTO), as the date from which the Department will identify and measure subsidies in the PRC for purposes of this CVD investigation.¹²

V. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

The Department normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise.¹³ The Department finds the AUL in this proceeding to be 10 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.¹⁴ The Department notified the respondents of the 10-year AUL in our initial questionnaire and requested data accordingly. No party in this proceeding disputed this allocation period.

Furthermore, for non-recurring subsidies, we applied the "0.5 percent test," as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the relevant sales value (*e.g.*, total sales or export sales) for the year in which the assistance was approved. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, the benefits are expensed to the year of receipt rather than over the AUL.

B. Attribution of Subsidies

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

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of another corporation in essentially the same ways it can use its own assets.¹⁵ This standard will normally be met

¹² See *CWP from the PRC* and accompanying Decision Memorandum at Comment 2.

¹³ See 19 CFR 351.524(b).

¹⁴ See *Preliminary Determination* and accompanying Preliminary Decision Memorandum at 7.

¹⁵ The Department's regulations at 19 CFR 351.525(b)(6)(vi) state that cross-ownership exists when one corporation can use or direct the assets of another corporation in essentially the same way it can use its own. Normally, however, "this standard will be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations."

where there is a majority voting interest between two corporations, or through common ownership of two (or more) corporations.¹⁶ In certain circumstances, a large minority voting interest (for example, 40 percent) may also result in cross-ownership.¹⁷ The Court of International Trade (CIT) upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same ways it could use its own subsidy benefits.¹⁸

In the *Preliminary Determination*, the Department determined that Trina Solar is cross-owned with one of its affiliates, a producer of subject merchandise located in the PRC.¹⁹ In the *Preliminary Determination*, we also determined that Wuxi Suntech is cross-owned with eight of its affiliates, including other producers of solar cells, producers of equipment used to produce solar cells, and producers of polysilicon wafers,²⁰ which are a major input used in the production of solar cells. We received no comments on these determinations and continue to treat these companies as cross-owned with Trina Solar and Wuxi Suntech, respectively, as described in the *Preliminary Determination*,²¹ for this final determination.

C. Denominators

In accordance with 19 CFR 351.525(b), the Department considers the basis for the respondents' receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondents' export or total sales, or portions thereof. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs described below are explained in the "Final Calculation Memoranda," prepared for this investigation.²² As a result of verification, we have revised certain sales values to calculate the subsidy rates in this final determination. Comments regarding minor corrections are addressed at Comments 18 and 19.²³

VI. BENCHMARKS AND DISCOUNT RATES

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." To calculate loan benchmarks in the *Preliminary Determination*, we followed the methodology first established in *CFS from the PRC* investigation for calculating interest rate benchmarks for

¹⁶ See, *e.g.*, *Countervailing Duties*, 63 FR 65348, 65401 (November 25, 1998) (*Final Rule*).

¹⁷ *Id.*

¹⁸ See *Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

¹⁹ See *Preliminary Determination* and its accompanying Decision Memorandum at 8.

²⁰ *Id.* at 9.

²¹ *Id.* at 7-10.

²² See Department Memoranda, "Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Wuxi Suntech Group Final Calculation Memorandum," (Suntech Final Calculation Memorandum) and "Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Trina Solar Final Calculation Memorandum," (Trina Solar Final Calculation Memorandum), both dated concurrently with this memorandum (collectively, Final Calculation Memoranda).

²³ See Comment 19.

preferential loans and directed credit in the PRC.²⁴ Normally, the Department uses comparable commercial loans reported by the company as a benchmark.²⁵ However, as explained in *CFS from the PRC*, loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market.²⁶ Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, the Department has selected an external market-based benchmark interest rate, consistent with the Department's practice.²⁷ No party commented on our interest rate benchmark methodology, and we will apply this same methodology for this final determination.

Similarly, in the *Preliminary Determination*, the Department used, as the discount rate for non-recurring subsidies, the long-term benchmark interest rate which we calculated in accordance with the methodology applied in previous PRC investigations.²⁸ No party commented on this methodology, and we will continue to apply this methodology for this final determination.

²⁴ See *Preliminary Determination* and accompanying Decision Memorandum at 10; *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS from the PRC*), an accompanying Decision Memorandum at Comment 10. See also the Department's December 15, 2014, Memorandum to the file, "Additional Documents Memorandum," which includes the Department's Memorandum for Paul Piquado, Assistant Secretary for Import Administration, through Lynn Fischer Fox, Deputy Assistant Secretary for AD/CVD Policy and Negotiation, Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations, and John D McInerney, Chief Counsel for Import Administration, from Shauna Biby, Christopher Cassel, Timothy Hruby, Office of Policy, Import Administration, "Section 129 Determination of the Countervailing Duty Investigation of Circular Welded Carbon Quality Steel Pipe; Light-Walled Rectangular Pipe and Tube; Laminated Woven Sacks; and Off-the-Road Tires from the People's Republic of China: An Analysis of Public Bodies in the People's Republic of China in Accordance with the WTO Appellate Body's Findings in WTO DS379," (May 18, 2012) (Public Body Memorandum); Memorandum for Paul Piquado, Assistant Secretary for Import Administration, through Lynn Fischer Fox, Deputy Assistant Secretary for AD/CVD Policy and Negotiation, Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations, and John D McInerney, Chief Counsel for Import Administration, from Shauna Biby, Christopher Cassel, Timothy Hruby, Office of Policy, Import Administration, "The relevance of the Chinese Communist Party for the limited purpose of determining whether particular enterprises should be considered to be 'public bodies' within the context of a countervailing duty investigation," dated May 18, 2012 (CCP Memorandum); the Department Memorandum to David Spooner, Assistant Secretary, Import Administration, from Shauna Lee-Alaia, Lawrence Norton and Anthony Hill, Office of Policy, Import Administration, "The People's Republic of China (PRC) Status as a Non-Market Economy (NME)," (May 15, 2006) and Memorandum to David Spooner, Assistant Secretary, Import Administration, from Shauna Lee-Alaia, Lawrence Norton and Anthony Hill, Office of Policy, Import Administration, "Antidumping Duty Investigation of Certain Lined Paper Products from the People's Republic of China ("China") China's status as a non-market economy ("NME")," (August 30, 2006) (collectively, Banking Memoranda); Department Memorandum, "Whether the Analytical Elements of the Georgetown Steel Opinion are Applicable to China's Present-Day Economy (March 29, 2007) (Georgetown Applicability Memorandum).

²⁵ See 19 CFR 351.505.

²⁶ *Id.*

²⁷ For example, in *Lumber from Canada*, the Department used U.S. timber prices to measure the benefit for government-provided timber in Canada. See *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada*, 67 FR 15545 (April 2, 2002) (*Lumber from Canada*), and accompanying Issues and Decision Memorandum at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."

²⁸ See *Preliminary Determination* and accompanying Decision Memorandum at 13.

Provision of Polysilicon, Aluminum Extrusions, and Solar Glass for LTAR

The Department's regulation at 19 CFR 351.511(a)(2) sets forth the basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (e.g., actual sales, actual imports or competitively run government auctions) ("tier one"); (2) world market prices that would be available to purchasers in the country under investigation ("tier two"); or (3) an assessment of whether the government price is consistent with market principles ("tier three").

Notwithstanding the regulatory preference for the use of prices stemming from actual transactions in the country, where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative in the hierarchy.²⁹

As we detailed in the *Preliminary Determination*, the Department relied on prices paid by Trina Solar and Wuxi Suntech for their imported prices of polysilicon to measure the adequacy of remuneration for the polysilicon supplied by the domestic producers found to be authorities.³⁰ In this final determination, however, as explained below in the section, "Use of Facts Otherwise Available and Adverse Inferences," we are now finding that, based on facts otherwise available, the GOC's involvement in the PRC's solar grade polysilicon market leads to significantly distorted solar grade polysilicon prices in the PRC. Thus, we are now relying on the "Silicon Pricing Index" published by the firm Photon Consulting that was submitted by Wuxi Suntech in its May 2, 2014, benchmark submission as the polysilicon benchmark for this final determination pursuant to 19 CFR 351.511(a)(2)(ii).³¹ We have relied on this same source in prior proceedings.³²

In the *Preliminary Determination*, we noted that neither company respondent reported importing solar glass or aluminum extrusions, and none of the parties offered an internal "Tier 1" benchmark for these inputs.³³ Thus, we relied on world market prices to determine the subsidy rate for the provision of aluminum extrusions and solar glass for LTAR in the *Preliminary Determination*. We have no benchmark prices from actual transactions in the Chinese market for these inputs, and we will continue to rely on world market prices for this final determination.

²⁹ See *CVD Preamble*, 63 FR at 65377.

³⁰ *Id.* at 14. Arguments the determination that these suppliers are authorities are further discussed below at Comment 3.

³¹ See the Letter to the Secretary from Wuxi Suntech, "Crystalline Silicon Photovoltaic Products from the People's Republic of China: Benchmark Data," (May 2, 2014) at Exhibit 1.

³² See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012) (*Solar Cells from the PRC*) and accompanying Issues and Decision Memorandum at 5.

³³ See *Preliminary Determination* and accompanying Preliminary Decision Memorandum at 14-15.

To value ocean freight, we are continuing to rely on the rates for a Maersk Line 20-foot cargo container for the provisions of polysilicon, aluminum extrusions, and solar glass for LTAR.³⁴

Provision of Land for LTAR

In the *Preliminary Determination*, we relied on information obtained from CB Richard Ellis, a global commercial real estate broker, as the benchmark for land purchased in the PRC.³⁵ This information specified rates paid for land purchased in industrial parks outside of Bangkok, Thailand.³⁶ This land benchmark has been used in countervailing land-use rights in prior PRC CVD investigations.³⁷ No parties commented on using this information for PRC land benchmarks. Therefore, we will continue to rely on this same information for this final determination.

Provision of Electricity for LTAR

In the *Preliminary Determination*, we relied, as adverse facts available (AFA),³⁸ on PRC provincial tariff schedules for electricity supplied by the GOC as a benchmark for measuring the benefit from electricity provided to Trina Solar and Wuxi Suntech for LTAR.³⁹ We received no comments on the appropriateness of this benchmark, and we continue to rely on this same information for this final determination.

VII. 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, *inter alia*, 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, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying 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. The Department’s practice when selecting an adverse rate from among the possible sources of information is to ensure that the result is sufficiently adverse as to effectuate the statutory purposes of the AFA rule to induce respondents to provide the Department with complete and accurate information in a timely manner.⁴⁰ The

³⁴ *Id.* at 15.

³⁵ *Id.* at 13.

³⁶ *Id.* (citing Laminated Woven Sacks From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances, 73 FR 35639 (June 24, 2008) and accompanying Issues and Decision Memorandum at Comment 11); *see also* the Department’s Memorandum, “Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Preliminary Benchmark Memorandum (June 2, 2014) (Preliminary Benchmark Memorandum) at “Land Benchmark.”

³⁷ *See, e.g., Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People’s Republic of China* and accompanying Issues and Decision Memorandum at 22-23.

³⁸ *See Preliminary Determination* and accompanying Preliminary Determination Memorandum at 21.

³⁹ *See* the GOC’s April 21, 2014, questionnaire response at Exhibit H.11.

⁴⁰ *See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

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."⁴¹

Section 776(c) of the Act provides that, 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 "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."⁴² The SAA provides that to "corroborate" secondary information, the Department will satisfy itself that the secondary information to be used has probative value.⁴³

In analyzing whether information has probative value, it is the Department's practice to examine the reliability and relevance of the information to be used.⁴⁴ However, the SAA emphasizes that the Department need not prove that the selected facts available are the best alternative information.⁴⁵

For the subsidies discovered at Trina Solar's verification, and for assigning an AFA rate regarding the Ex-Im Bank Buyer's Credit Program, we have applied our CVD AFA methodology for calculation of the subsidy rates. Specifically, it is the Department's practice in a CVD investigation to select, as AFA, the highest calculated rate for the same or similar program.⁴⁶ When selecting rates, we first determine if there is an identical program and use the highest calculated rate for the identical program. If there is no identical program above *de minimis*, we then determine if there is a similar/comparable program (based on the treatment of the benefit) and apply the highest calculated rate for a similar/comparable program. Where there is no comparable program, we apply the highest calculated rate from any non-company specific program, but we do not use a rate from a program if the industry in the proceeding cannot use that program.⁴⁷

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 nation average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal in considering the relevance

⁴¹ See SAA at 870.

⁴² See, e.g., Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I, at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199 (SAA) at 870.

⁴³ *Id.*

⁴⁴ See, e.g., SAA at 869.

⁴⁵ *Id.* at 869-870.

⁴⁶ See, e.g., *Shrimp from the PRC* and its accompanying Issues and Decision Memorandum at 13; see also *Essar Steel Ltd. v. United States*, 753 F.3d 1368, 1373-1374 (Fed. Cir. 2014) (upholding "hierarchical methodology for selecting an AFA rate").

⁴⁷ See *Shrimp from the PRC* and its accompanying Issues and Decision Memorandum at 13-14.

of information used to calculate a countervailable subsidy benefit.⁴⁸ As explained above, in applying the AFA hierarchy, the Department seeks to identify identical program rates calculated for a cooperative respondent in the investigation or, if there are no such rates, from another investigation or administrative review. Alternatively, the Department seeks to identify similar program rates calculated in any proceeding covering imports from the PRC. Actual 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, 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 “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”⁴⁹ Finally, the Department will not use information where circumstances indicate that the information is not appropriate as AFA.⁵⁰

In the absence of record evidence concerning certain programs due to the GOC’s and the respondent companies’ failure to provide requested information, we reviewed the information concerning PRC subsidy programs in other cases. Where we have a program-type match, we find that, because these are the same or similar programs, they are relevant to the programs in this case. For the programs for which there is no program-type match, we have selected the highest calculated subsidy rate for any PRC program, from which the non-cooperative respondent could conceivably receive a benefit, to use as AFA. The relevance of these rates is that they are actual calculated CVD rates for PRC programs, from which the non-cooperative respondent could actually receive a benefit. Due to the lack of participation by the respondents and the resulting lack of record information concerning these programs, the Department corroborated the rates it selected to use as AFA to the extent practicable for this final determination.⁵¹

As discussed below, due to the failure of the GOC and respondent companies, in part, to respond to the Department’s questionnaires concerning the programs at issue, the Department relied on information concerning PRC subsidy programs from other proceedings. In light of the above, the Department corroborated the rates it selected to use as AFA to the extent practicable for this final determination.⁵² Because these rates reflect the actual behavior of the GOC with respect to similar subsidy programs, and lacking questionnaire responses or adequate information from the GOC and the respondent companies demonstrating otherwise, the rates calculated for cooperative respondents provide a reasonable AFA rate.

⁴⁸ See, *e.g.*, *Non-Oriented Electrical Steel From Taiwan: Final Affirmative Countervailing Duty Determination*, 79 FR 61602 (October 14, 2014) and accompanying Issues and Decision Memorandum at Comment 10.

⁴⁹ SAA at 870.

⁵⁰ See, *e.g.*, *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

⁵¹ See, *e.g.*, *Non-Oriented Electrical Steel From the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 61606 (October 14, 2014) and accompanying Issues and Decision Memorandum at 7-8.

⁵² *Id.* and accompanying Issues and Decision Memorandum at 7-8.

Input Producers are “Authorities”

In the *Preliminary Determination*, relying on AFA, we found that all producers of polysilicon, aluminum extrusions, and solar glass purchased by Trina Solar and Wuxi Suntech were authorities within the meaning of section 771(5)(B) of the Act.⁵³ For this final determination, we continue to determine, as AFA, that the producers of these inputs are authorities, for the reasons described in the *Preliminary Determination*. Arguments from interested parties concerning this determination are discussed below at Comment 3.

The GOC’s Involvement in the PRC’s Solar Grade Polysilicon Industry Results in the Distortion of Prices

We stated in the *Preliminary Determination* that it was unclear whether the GOC provided a complete picture of state-invested enterprise (SIE) production in the PRC and whether polysilicon, aluminum extrusions, and solar glass prices are distorted.⁵⁴ For example, when responding to our questions of state ownership in the PRC polysilicon industry, the GOC stated that it maintains ownership or management interest in only a “limited number of polysilicon producers,” and it provided no information specific to “solar grade” polysilicon.⁵⁵ For aluminum extrusions, the GOC stated that it has no specific data on aluminum extrusions, and based its responses on “aluminum sections,” which is a much broader class of products than aluminum extrusions, stating that SIE production of aluminum sections accounted for 10 percent of the market’s production.⁵⁶ And for our questions on solar glass, the GOC provided information indicating that SIE production of “flat glass,” which is a broader class of products than solar glass, accounted for 12 percent of overall production in the PRC.⁵⁷ As such, we preliminarily determined that the reported import volume and reported volume of SIE production did not demonstrate GOC predominance in the PRC’s polysilicon, aluminum extrusions, or solar glass markets, and we relied on prices paid by the respondent companies for imported polysilicon to measure the adequacy of remuneration for the polysilicon supplied by the domestic producers found to be authorities.⁵⁸

After the *Preliminary Determination*, we sought additional information from the GOC on how it collected the industry data that it submitted to the Department in its questionnaire responses, and on the structure of the PRC’s solar grade polysilicon, aluminum extrusions, and solar glass industries.⁵⁹ We also asked the GOC once again to provide data for the specific inputs at issue (e.g., aluminum extrusions, not aluminum sections), to which it responded once again that such information was unavailable. In its initial questionnaire response, the GOC had stated that its reported domestic production information was sourced from its National Bureau of Statistics (SSB), and its import and export data came from the China Chamber of Commerce of Metals,

⁵³ See the Additional Documents Memorandum at Public Body Memorandum and CCP Memorandum.

⁵⁴ See *Preliminary Determination* and accompanying Preliminary Decision Memorandum at 14-15.

⁵⁵ *Id.* and the GOC’s April 21, 2014, questionnaire at 130-132.

⁵⁶ *Id.* and the GOC’s April 21, 2014, questionnaire response at 171-178.

⁵⁷ *Id.* and the GOC’s April 21, 2014, questionnaire response at 211-212.

⁵⁸ *Id.*; see also 19 CFR 351.511(a)(2)(ii).

⁵⁹ See the Department’s Letter to the GOC, “Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Supplemental Questionnaire” (July 15, 2014) (GOC July 15, 2014 QR).

Minerals and Chemicals Importers and Exporters (CCCMC).⁶⁰ Thus, we focused our supplemental questions on these two entities. Generally, the SSB is the GOC agency that is responsible for nationwide statistics, and compiles information according to two-digit industry codes. For example, information on the polysilicon industry is maintained under industry code 26, “Manufacture of Raw Materials and Chemical Products.”⁶¹ The SSB also maintains sub codes for some industries and products, but neither the codes nor the data are made available to the public. The SSB’s information comes from the information it collects in its statistical surveys from PRC companies with more than RMB 20 million in annual sales revenue.⁶²

The GOC explained that the import and export data that was provided by the CCCMC was sourced from the GOC’s General Administration of Customs of China (GACC), which is the GOC agency that compiles import and export data according to the Customs Import and Export Tariff.⁶³ The GACC is responsible for administering the tariff schedule in the PRC, and collects such information for products, units, import volume, import value, *etc.*⁶⁴ The GACC typically sorts data by the commodities that are imported or exported at the eight-digit level of the PRC’s tariff schedule.

With respect to our post-preliminary questions on the PRC solar grade polysilicon industry, the GOC stated that the SSB does not compile information on specific types of polysilicon; it collects general information on polysilicon, which includes solar grade polysilicon and other types.⁶⁵ As a result, the GOC claimed it could not respond to our questions on the solar grade polysilicon industry specifically.⁶⁶ With respect to the information that the GOC did provide in its questionnaire response, the GOC stated that there were 66 producers of polysilicon during the POI, and 56 in 2011.⁶⁷ We asked at verification why the information for a particular year changes over time; *i.e.*, why is it that the information for any earlier year, such as 2011, changes depending on whether you are looking at the 2011 report, the 2012 report, *etc.* An official from the SSB stated that in 2012, an additional 10 companies met the RMB 20 million annual sales threshold for reporting information to the SSB.⁶⁸ Thus, the production information of those companies for 2011 was not collected until 2012, when they met the RMB 20 million sales threshold.

We explain above that section 776(a)(2)(D) of the Act provides that the Department shall apply “facts otherwise available” if an interested party or any other person provides information that cannot be verified as provided for by section 782(i) of the Act.

In this investigation, the GOC has been unable to provide information for solar grade polysilicon. Moreover, based on our findings at verification, the information the GOC did provide could not

⁶⁰ See the GOC’s April 21, 2014, questionnaire response at 131.

⁶¹ See the GOCs VR at 8.

⁶² *Id.* at 7.

⁶³ See the GOC’s July 29, 2014, questionnaire response at 3.

⁶⁴ *Id.*

⁶⁵ See the GOC’s July 29, 2014, questionnaire response at 5.

⁶⁶ *Id.* at 4.

⁶⁷ See the GOC’s April 21, 2014, questionnaire response at 130.

⁶⁸ See the GOC VR at 10-11.

be verified. The GOC provided information regarding SIE involvement in this PRC industry based solely on information collected from the SSB. At verification, we learned that the SSB only collects industry information from companies with more than RMB 20 million in annual sales. The fact that the industry information submitted to the Department does not include PRC companies in the polysilicon industries with less than RMB 20 million in sales, and has been subject to substantial revision as additional companies have been included, limits our ability to analyze the entirety of these industries in the PRC, and SIE involvement therein. Thus, we find that the production information for this industry maintained by the SSB is not reliable because reported data for a given year has significantly changed from year-to-year, after the fact.⁶⁹ Therefore, we will rely on the facts otherwise available in reaching our determination on the GOC's involvement in the PRC solar grade polysilicon market, and whether this government involvement significantly distorts the prices in this industry in the PRC.

The instant record contains the following information relevant to determining whether the GOC's involvement in the PRC solar grade polysilicon market significantly distorts prices:

- The Petition points to a WTO Dispute Settlement Panel determination that the GOC maintains WTO-inconsistent export restraints on silicon exports, and that these restraints operate to ensure “an abundant domestic supply of silicon in China, thus artificially depressing the domestic price of polysilicon.”⁷⁰
- A 2009 *New York Times* article explaining that the GOC's State Council, or cabinet, has the ability to manage several key aspects of the solar grade polysilicon industry, including its capacity, access to the industry, land use, and lending from state-owned commercial banks (SOCBs).⁷¹
- Another article on the record explains that the GOC maintains “Polysilicon Industry Access Standards,” outlining rules and restrictions that prospective solar grade polysilicon manufacturers in the PRC must adhere to.
- The record also includes publicly available information indicating that the largest polysilicon producer in China, GCL-Poly, is selling polysilicon at prices below the amount it needs to break even, and that it is able to do so due to the assistance of government subsidies.⁷²

In the absence of further information, these items reflect a recognition of significant distortion in the PRC's solar grade polysilicon industry. Prices are distorted if they are higher or lower than what would be a normal price in a competitive market without government intervention such as limiting access to an industry and financing, which reduces competition. When government intervention in the marketplace actively manages the amount of supply through means such as capacity restrictions, limitations on access to the industry and subsidization of uneconomic

⁶⁹ See the GOC VR at 14.

⁷⁰ See Letter to the Secretary, “Petition for the Imposition of Antidumping and Countervailing Duties: Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China and Taiwan (December 31, 2013) (Petition) at 38, citing *China - Measures Related to the Exportation of Various Raw Materials*, Report of the Panel, WT/DS394/R (July 5, 2011), Exhibit III-51.

⁷¹ See “Chinese Solar Firm Revises Price Mark,” Keith Bradsher, *New York Times*, (August 27, 2009) Volume I of the Petition at Exhibit I-1B.

⁷² See Petition at 41-42 and sources cited therein.

production, it prevents a price from achieving its competitive equilibrium level, and it can result in a significant distortion of prices in the market. Thus, based on the information detailed above, and in accordance with section 776(a)(2)(D) of the Act, we find that the facts otherwise available on the record of this case support a determination that the GOC's involvement in the PRC's solar grade polysilicon industry significantly distorts the prices in this industry. As such, we are not relying on domestic prices in the solar grade polysilicon market in the PRC as a "tier 1" benchmark pursuant to 19 CFR 351.511(a)(2)(i). Consequently, we are relying on world market prices as our benchmarks for the provision of polysilicon for LTAR program, pursuant to 19 CFR 351.511(a)(2)(ii). The use of an external benchmark is consistent with our past practice.⁷³

Provision of Electricity for LTAR

We stated in the *Preliminary Determination* that we relied on the facts available with an adverse inference in finding that the provision of electricity to Trina Solar and Wuxi Suntech constitutes a financial contribution within the meaning of section 771(5)(D) of the Act, and is specific within the meaning of section 771(5A) of the Act.⁷⁴ We also relied on AFA in selecting the benchmark for determining the existence and amount of the benefit.⁷⁵ For determining the existence and amount of the benefit under this program in the *Preliminary Determination*, we relied on the usage information reported by Trina Solar and Wuxi Suntech.⁷⁶ We received no comments on this determination from interested parties, and we continue to rely on this information for this final determination.

Provision of Land for LTAR

In the *Preliminary Determination*, we found that, based on AFA, land provided to Trina Solar is countervailable because the GOC did not provide complete responses to our questionnaires regarding the derivation of the prices paid by Trina Solar for its land-use rights.⁷⁷ For this final determination, for the same reasons as in the *Preliminary Determination*, we continue to find that Trina Solar's land use is countervailable. Arguments regarding the appropriateness of this finding are addressed below at Comment 8.

Export Buyer's Credits

The Department has determined that the use of AFA is warranted in determining the countervailability of Export Buyer's credits. As discussed below in Comment 16, the GOC refused to allow the Department to examine or query electronic databases regarding recipients of export buyer's credits. Pursuant to section 776(a)(2)(D) of the Act, when an interested party provides information that cannot be verified, the Department uses the facts otherwise available. Further, pursuant to section 776(b) of the Act, we find that the GOC failed to cooperate by not acting to the best of its ability, because it refused to allow the Department to examine the source of information that it placed on the record regarding this issue. Accordingly, an adverse

⁷³ See *Countervailing Duty Investigation of 1,1,1,2 Tetrafluoroethane From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 62594 (October 20, 2014) (*Tetrafluoro from the PRC*) and accompanying Issues and Decision Memorandum at 14 and 27.

⁷⁴ *Id.* at 21-22.

⁷⁵ *Id.*

⁷⁶ See Trina Solar's April 21, 2014, questionnaire response, and Wuxi Suntech's April 21, 2014, questionnaire response.

⁷⁷ *Id.* at 22-24. *Preliminary Determination* and accompanying Preliminary Decision Memorandum at 22-24.

inference is warranted. As adverse facts available, we find, as discussed below under Comment 16, that both Trina Solar and Wuxi Suntech benefited from this program at the rate of 10.54 percent *ad valorem*, the highest rate determined for a similar program in a prior PRC proceeding.⁷⁸

Subsidies Discovered During the Investigation

In its response to our question in our initial questionnaire on whether the company respondents received any other subsidies that were not already reported, the GOC stated that it had cooperated with respect to our requests, and that in the absence of allegations and sufficient evidence in respect to “other” subsidies consistent with Article 11.2 and other relevant articles of the SCM, no reply is required.⁷⁹ In their questionnaire responses, the mandatory company respondents reported numerous additional grants in addition to those that were alleged in the petition.⁸⁰ When asked about the additional subsidies reported by Trina Solar and Wuxi Suntech, the GOC refused to provide the requested information stating “that it has no comment on the other subsidies reported by the respondents.”⁸¹

In the *Preliminary Determination*, we determined, as adverse facts available, that the numerous subsidies discovered during the course of this investigation were countervailable grants.⁸² For this final determination, we continue to determine, as adverse facts available, that these subsidies are countervailable grants. Arguments from interested parties on whether the use of AFA is appropriate in analyzing these subsidies and whether the Department properly investigated these subsidies are discussed below under Comment 15.

At the verification of Trina Solar’s questionnaire responses, the Department examined the company’s financial accounts for any indication that the company received unreported assistance.⁸³ In examining these accounts, we noted entries for unreported government grants that were received by Trina Solar during the years 2011-2012.⁸⁴ When we asked why Trina Solar did not report these grants in their questionnaire responses, counsel for Trina Solar stated that the company reported all of the assistance for which it was asked.⁸⁵ Finally, when reviewing Trina Solar’s 2012 income tax returns at verification, we asked company officials to explain an unreported tax deduction for “Wages paid for placement of disabled persons.”⁸⁶ Company officials explained that all companies in the PRC are eligible to claim this deduction as long as they employ disabled persons.⁸⁷

⁷⁸ See *New Pneumatic Off-the-Road Tires From the People’s Republic of China: Preliminary Results of Countervailing Duty Review*, 75 FR 64268 (October 19, 2010), unchanged in the final determination, *New Pneumatic Off-the-Road Tires From the People’s Republic of China Final Results of Countervailing Duty Administrative Review*, 76 FR 23286 (April 26, 2011) (*Off-the-Road Tires from the PRC*).

⁷⁹ See the GOC’s April 21, 2014, questionnaire response at 222.

⁸⁰ See, e.g., Wuxi Suntech’s April 21, 2014 questionnaire response at Exhibit 35 and Trina Solar’s May 14, 2014 questionnaire response at Exhibits 1-7.

⁸¹ See the GOC’s May 12, 2014, questionnaire response at 16.

⁸² See *Preliminary Determination* and accompanying Decision Memorandum at 24.

⁸³ See Trina Solar VR at 7.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.* at 6.

⁸⁷ See Trina Solar VR at 6.

Notwithstanding this *ex tempore* response, the Department had previously asked Trina Solar to report “other subsidies” in our initial questionnaire. Specifically, we stated: “Did the GOC (or entities owned directly, in whole or in part, by the GOC or any provincial or local government) provide, directly or indirectly, any other forms of assistance to your company between January 1, 2003, and the end of the POI? If so, please describe such assistance in detail, including the amounts, date of receipt, purpose and terms, and answer all questions in the appropriate appendices.”⁸⁸ In its questionnaire response, Trina Solar stated that it was cooperating to the best of its ability, and that absent an allegation and evidence regarding other alleged subsidy programs, the company believed that it was not required to respond to this question.⁸⁹

Given this response, and in light of the unreported information discovered at verification, the Department determines that the use of facts available pursuant to section 776(a)(2)(A) of the Act is warranted in determining the countervailability of these apparent subsidies that were discovered during verification. And because Trina Solar failed to respond to the best of its ability regarding our questions on other, non-reported subsidies provided by the GOC, we determine that an adverse inference is warranted with respect to these subsidies pursuant to section 776(b) of the Act. With respect to the unreported tax deduction for disabled persons, we determine, as AFA, that this tax deduction is countervailable. As a result, we are finding that, as AFA, these discovered subsidies provide a financial contribution and are specific within sections 771(5)(D) and 771(5A) of the Act, respectively. A benefit is conferred pursuant to section 771(5)(E). Interested parties commented on our applying AFA to these unreported subsidies, which we address at Comment 15.

VIII. ANALYSIS OF PROGRAMS

A. Programs Determined To Be Countervailable

1. Grant Programs

a. The Golden Sun Demonstration Program

The Golden Sun Demonstration Program (Golden Sun program) was established in 2009 to promote the technological progress and scaled development of the photovoltaic electricity generation industry, with the goal of narrowing the gap between the costs of photovoltaic electricity generation and the costs of fossil electricity generation.⁹⁰ As detailed in the “Notice Concerning the Implementation of the Golden Sun Demonstration Project,” (CaiJian {2009} No. 397), under the Renewable Energy Law the GOC allocated renewable energy funds to support the implementation of the Golden Sun demonstration project.⁹¹ Trina Solar reported that it

⁸⁸ See the Department’s Letter to the GOC, “Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Countervailing Duty Questionnaire,” (February 28, 2014) at III-18. We also sent this questionnaire directly to Trina Solar and Wuxi Suntech.

⁸⁹ See the Letter to the Secretary from Trina Solar, “Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China: CVD Questionnaire Response to Section III” (April 21, 2014) at 67.

⁹⁰ See the GOC’s April 21, 2014 questionnaire response at 20.

⁹¹ *Id.* at Exhibit A.8 at Article 1.

received grants through this program,⁹² and in the *Preliminary Determination*, we found that this program conferred a countervailable subsidy.⁹³

After considering arguments from interested parties concerning the countervailability of this program (*see* Comment 14), we continue to find that grants from this program provide a financial contribution pursuant to section 771(5)(D)(i) of the Act and a benefit, in the amount of the grant provided, pursuant to 19 CFR 351.504(a). We continue to find that grants from this program are specific as a matter of law to certain enterprises, namely those involved in the construction of solar-powered projects, pursuant to section 771(5A)(D)(i) of the Act.

In accordance with 19 CFR 351.524(c)(1) and 19 CFR 351.524(b)(2), we treated the grant as a non-recurring subsidy and performed the “0.5 percent test” for the year the grant was provided to Trina Solar. Specifically, we divided the total amount of the grant by the appropriate total sales denominator, as discussed in the “Subsidies Valuation Information” section above, and in the Trina Solar Final Calculation Memorandum. Because the resulting percentage was less than 0.5 percent, we expensed the full amount of the grant in the POI. To determine Trina Solar’s subsidy rate from the grant, we divided the benefit expensed in the POI by the appropriate total sales denominator, as discussed in the “Subsidies Valuation Information” section above, and in the Trina Solar Final Calculation Memorandum. On this basis, we preliminarily determine a countervailable subsidy rate of 0.10 percent *ad valorem* for Trina Solar.

b. Discovered Subsidies

As discussed above, the Department determines as AFA that numerous subsidies from the GOC to the respondent companies discovered during the course of this investigation are countervailable. For this final determination, we determine a countervailable subsidy rate for these so-called “discovered subsidies” of 0.22 percent *ad valorem* for Trina Solar, and 0.14 percent *ad valorem* for Wuxi Suntech. For Trina Solar’s and Wuxi Suntech’s subsidy rate, for subsidies that Trina Solar and Wuxi Suntech disclosed in their questionnaire responses, we continued to rely on the amount of the grants reported by Trina Solar and Wuxi Suntech to calculate the subsidy rates, consistent with the *Preliminary Determination*.

For the subsidies discovered at Trina Solar’s verification, we have applied our CVD AFA methodology for calculation of the subsidy rates. Specifically, it is the Department’s practice in a CVD investigation to select, as AFA, the highest calculated rate for the same or similar program.⁹⁴ When selecting rates, we first determine if there is an identical program and use the highest calculated rate for the identical program. If there is no identical program above *de minimis*, we then determine if there is a similar/comparable program (based on the treatment of the benefit) and apply the highest calculated rate for a similar/comparable program. Where there is no comparable program, we apply the highest calculated rate from any non-company specific

⁹² See Trina Solar’s April 21, 2014, questionnaire response at 15-25.

⁹³ See *Preliminary Determination* and accompanying Decision Memorandum at 25-27.

⁹⁴ See, e.g., *Shrimp from the PRC* and its accompanying Issues and Decision Memorandum at 13; *see also Essar Steel Ltd. v. United States*, 753 F.3d 1368, 1373-1374 (Fed. Cir. 2014) (upholding “hierarchical methodology for selecting an AFA rate”).

program, but we do not use a rate from a program if the industry in the proceeding cannot use that program.⁹⁵

We have listed the names of programs discovered at Trina Solar's verification and the rate being applied to each as an attachment to this memorandum.⁹⁶ Interested parties have commented on the countervailability of these discovered subsidies, which we address at Comment 15. As AFA, we are applying a total combined rate of 25.95 percent *ad valorem* to these discovered programs.

2. Provision of Inputs for LTAR

a. Provision of Polysilicon for LTAR

Petitioner alleged that PRC producers of subject merchandise received countervailable subsidies in the form of the provision of polysilicon for LTAR. In the *Preliminary Determination*, the Department found that this program conferred a countervailable subsidy.⁹⁷ We have considered the comments from interested parties on the nature of the PRC's polysilicon industry, including the GOC's role in the industry, whether the provision of polysilicon is applicable to subject merchandise as defined by the scope of this investigation, and whether this program provides a benefit to the company respondents (*see* Comments 4 and 5). As discussed above in the section, "Use of Facts Otherwise Available and Adverse Inferences," and below at Comment 3, we continue to find, as we did in the *Preliminary Determination*, that the domestic producers of polysilicon inputs purchased by the respondent companies during the POI are authorities within the meaning of section 771(5)(B) of the Act, relying upon AFA.⁹⁸ As a result, we continue to determine that the polysilicon sold by these input producers constitutes a financial contribution in the form of a provision of a good under section 771(5)(D)(iii) of the Act. We are also now finding that, based on facts otherwise available, the prices in the PRC's polysilicon market are distorted by the involvement of the GOC, and we are now relying on world market prices for the polysilicon benchmark, pursuant to 19 CFR 351.511(a)(2)(ii) and consistent with our past practice.⁹⁹

In response to our questions concerning specificity, the GOC stated: "Polysilicon has a wide range of uses, including but not limited to use in the solar and semiconductor industries."¹⁰⁰ However, the GOC provided none of the information we requested concerning amounts purchased by individual industries.¹⁰¹ Accordingly, we determine that the provision of

⁹⁵ See *Shrimp from the PRC* and its accompanying Issues and Decision Memorandum at 13-14.

⁹⁶ See Attachments I and II.

⁹⁷ See *Preliminary Determination* at 27-28.

⁹⁸ See *Preliminary Determination* and accompanying Decision Memorandum at 16-21. Arguments the determination that these suppliers are authorities are further discussed below at Comment 3.

⁹⁹ See, e.g., *Tetrafluoro*, 79 FR 62594 (October 20, 2014) and accompanying Issues and Decision Memorandum at 14 and 27; *Certain Oil Country Tubular Goods From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 52301, 52303 (September 3, 2014) and accompanying Issues and Decision Memorandum at 28-29.

¹⁰⁰ See the GOC's April 21, 2014, questionnaire response at 136.

¹⁰¹ See the GOC's questionnaire response at 135-136 regarding our request to "Provide the amounts (volume and value) purchased by the industry in which the mandatory respondents operate . . ."

polysilicon is limited to specific industries under section 771(5A)(D)(iii) of the Act, namely the solar and semiconductor industries. We also find that the company respondents received a benefit to the extent that the polysilicon they purchased was provided for LTAR.¹⁰²

As discussed above in the section, “Benchmark and Discount Rates,” we are now relying on, world market prices, *e.g.*, the “Silicon Pricing Index” published by Photon Consulting, to calculate a benefit for each respondent equal to the difference between the delivered benchmark prices and the delivered prices each respondent paid. We adjusted the benchmark price to include delivery charges, import duties, and value added tax (VAT) pursuant to 19 CFR 351.511(a)(2)(iv). Regarding delivery charges, we included ocean freight and the inland freight charges that would be incurred to deliver polysilicon to the respondents’ production facilities.¹⁰³ We added import duties as reported by the GOC, and added the VAT applicable to imports of polysilicon into the PRC, also as reported by the GOC.¹⁰⁴ In calculating VAT, we applied the applicable VAT rate to the benchmark after first adding amounts for ocean freight and import duties. We compared these monthly benchmark prices to the respondents’ reported purchase prices for individual domestic transactions, including VAT and delivery charges.

Based on this comparison, we determine that polysilicon was provided for LTAR and that a benefit exists for each respondent company in the amount of the difference between the benchmark prices and the prices each respondent company paid.¹⁰⁵ We divided the total benefits for each company respondent by the appropriate sales denominator, as discussed in the Final Calculation Memoranda. On this basis, we determine a countervailable subsidy rate of 0.37 percent *ad valorem* for Trina Solar and 5.36 percent *ad valorem* for Wuxi Suntech under this program.

b. Provision of Aluminum Extrusions for LTAR

Petitioner alleged that the respondent companies received countervailable subsidies in the form of the provision of aluminum extrusions for LTAR. For the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are basing our determination regarding the government’s provision of aluminum extrusions, in part, on AFA. Specifically, we determine as AFA that the producers of aluminum purchased by both respondents are “authorities” within the meaning of section 771(5)(B) of the Act and, as such, that the provision of aluminum extrusions constitutes a financial contribution under section 771(5)(D)(iii) of the Act. For the reasons explained in Comment 6 below, we find that the provision of aluminum extrusions is limited to specific industries under section 771(5A)(D)(iii) of the Act. Finally, a benefit is conferred because the aluminum extrusions are being provided for LTAR.¹⁰⁶

¹⁰² See section 771(5)(E)(iv) of the Act.

¹⁰³ See the Final Calculation Memoranda for the Provision of Polysilicon for LTAR Calculation.

¹⁰⁴ See the GOC’s April 21, 2014, questionnaire response at 134 and the GOC VR at 10, which explains that a one percent import tariff was applicable to imports of polysilicon in the PRC during the POI.

¹⁰⁵ See 19 CFR 351.511(a); and section 771(5)(E)(iv) of the Act.

¹⁰⁶ See section 771(5)(E)(iv) of the Act.

As discussed above under the “Subsidies Valuation Information” section, we are basing our aluminum extrusions benchmark on GTA data for HTSUS subheading 7604.29, *e.g.*, “solid profiles of aluminum alloys,” as provided by Trina Solar. We adjusted the benchmark price to include delivery charges, import duties, and VAT pursuant to 19 CFR 351.511(a)(2)(iv).¹⁰⁷ We added import duties as reported by the GOC, and the VAT applicable to imports of aluminum extrusions into the PRC, also as reported by the GOC.¹⁰⁸ In calculating VAT, we applied the applicable VAT rate to the benchmark after first adding amounts for ocean freight and import duties. We compared these monthly benchmark prices to the respondent companies’ reported purchase prices for individual transactions, including VAT and delivery charges.¹⁰⁹

Based on this comparison, we determine that aluminum extrusions were provided for LTAR and that a benefit exists for each respondent in the amount of the difference between the benchmark prices and the prices each respondent paid.¹¹⁰ We divided the total benefits for each respondent by the appropriate total sales denominator, as discussed in the “Subsidies Valuation Information” section above. On this basis, we determine a countervailable subsidy rate of 0.86 percent *ad valorem* for Trina Solar, and 0.58 percent *ad valorem* for Wuxi Suntech.

c. Provision of Electricity for LTAR

For the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are continuing to base our final determination regarding the GOC’s provision of electricity in part on AFA. The Department determined in the *Preliminary Determination* that both company respondents received a countervailable subsidy through purchasing electricity for LTAR.¹¹¹ During verification of Trina Solar and Wuxi Suntech, the Department reviewed electricity invoices and bills, paying particular attention to the parts of the bills listing various electricity charges that the respondent companies reported as being adjustments to their final bills.¹¹²

For the final determination, we continue to find that, in not providing certain information requested by the Department, the GOC did not act to the best of its ability. Accordingly, in selecting from among the facts available, we are drawing an adverse inference with respect to the provision of electricity in the PRC and determine that the GOC is providing a financial contribution that is specific within the meaning of sections 771(5)(D)(iii) and 771(5A)(D) of the Act, respectively. To determine the existence and the amount of any benefit under this program pursuant to section 771(5)(E)(iv) of the Act and 19 CFR 351.511, we relied on the respondent companies’ reported consumption volumes and rates paid. As a result of verification, we have adjusted our treatment of Trina Solar’s and Wuxi Suntech’s adjustments to their electric bills for this final determination.¹¹³ We compared the rates paid by the respondent companies to the

¹⁰⁷ The Department concludes that these data do not already include delivery charges. *See* Preliminary Benchmark Memorandum.

¹⁰⁸ *See* the GOC’s April 21, 2014, questionnaire response at 176 and the GOC VR at 10.

¹⁰⁹ *See* Final Calculation Memoranda for the Provision of Aluminum Extrusions for LTAR calculation.

¹¹⁰ *See* 19 CFR 351.511(a); section 771(5)(E)(iv) of the Act.

¹¹¹ *See* *Preliminary Determination* and accompanying Decision Memorandum at 30-31.

¹¹² *See* Trina Solar VR at 4 and Wuxi Suntech VR at 5.

¹¹³ *See* Final Calculation Memoranda.

benchmark rates, which are the highest rates charged in the PRC during the POI. We made separate comparisons by price category (*e.g.*, great industry peak, basic electricity, *etc.*) We multiplied the difference between the benchmark and the price paid by the consumption amount reported for that month and price category. We then calculated the total benefit during the POI for each company by summing the difference between the benchmark prices and prices paid by each company.¹¹⁴

To calculate the electricity benchmark, in accordance with 19 CFR 351.511(a)(2), we selected the highest rates in the PRC for the user category of the respondents (*e.g.*, “large industrial users”) for the non-seasonal general, peak, normal, and valley ranges, as provided in the electricity tariff schedules submitted by the GOC.¹¹⁵ This benchmark reflects an adverse inference, which we drew as a result of the GOC’s failure to act to the best of its ability in providing requested information about its provision of electricity in this investigation.¹¹⁶

To calculate the subsidy rates, we divided the benefit amount by the appropriate total sales denominator, as discussed in the Final Calculation Memoranda. On this basis, we determine countervailable subsidy rates for this program of 1.28 percent *ad valorem* for Trina Solar and 0.81 percent *ad valorem* for Wuxi Suntech.

d. Provision of Solar Glass for LTAR

As discussed in the *Preliminary Determination*, we found that, based on AFA, in part, the company respondents received countervailable subsidies under this program.¹¹⁷ After considering comments from interested parties on the countervailability of this program (*see* Comment 7), we continue to find, as we did in the *Preliminary Determination*, that this program confers a countervailable subsidy. Specifically, we continue to determine as AFA that the producers of the solar glass purchased by Trina Solar and Wuxi Suntech are “authorities” within the meaning of section 771(5)(B) of the Act¹¹⁸ and, as such, that the provision of solar glass constitutes a financial contribution under section 771(5)(D)(iii) of the Act.

A benefit is conferred because solar glass is being provided for LTAR.¹¹⁹ As discussed above in the “Subsidies Valuation Information” section, the Department selected as a solar glass benchmark, the world pricing data provided by Trina Solar.¹²⁰ We have adjusted the benchmark price to include delivery charges, import duties, and VAT pursuant to 19 CFR 351.511(a)(2)(iv). Based on comments from interested parties, we have adjusted the import duties used in the benchmark.¹²¹ In calculating VAT, we applied the applicable VAT rate to the benchmark after first adding amounts for ocean freight and import duties. We compared the benchmark prices to

¹¹⁴ *Id.*

¹¹⁵ *See* the GOC’s April 21, 2014, questionnaire response at Exhibit H.11.

¹¹⁶ *See Preliminary Determination* and accompanying Preliminary Determination Memorandum at 21.

¹¹⁷ *Id.* at 31-32.

¹¹⁸ *Id.* at 16-21. Arguments the determination that these suppliers are authorities are further discussed below at Comment 3.

¹¹⁹ *See* section 771(5)(E)(iv) of the Act.

¹²⁰ *See* Trina Solar Benchmark Submission at Exhibits 3 and 4.

¹²¹ *See* Comment 7.

the respondent companies' reported purchase prices for individual transactions, including VAT and delivery charges. Based on this comparison, we determine that solar glass was provided by the GOC to the respondent companies for LTAR and that a benefit exists for each company in the amount difference between the benchmark prices and the prices paid by the company.¹²² We divided the total benefits for each company by the appropriate total sales denominator as discussed in the "Subsidies Valuation Information" section above, and in the Final Calculation Memoranda. On this basis, we determine a countervailable subsidy rate of 9.27 percent *ad valorem* for Trina Solar and 9.35 percent *ad valorem* for Wuxi Suntech.

3. Provision of Land for LTAR

In the *Preliminary Determination*, the Department found, as AFA, that Trina Solar received a countervailable subsidy through its purchase of land for LTAR.¹²³ During verification of Trina Solar's questionnaire responses, we examined the company's records to determine whether all of their land had been reported to the Department and we noted no discrepancies with what the company reported.¹²⁴

Interested parties commented on the countervailability of Trina Solar's land, which we address below in Comment 8. We continue to find, as we did in the *Preliminary Determination*, that the provision of land by the GOC constitutes a financial contribution from an authority in the form of providing goods or services pursuant to section 771(5)(D)(iii) of the Act. Furthermore, as discussed above in the section, "Use of Facts Otherwise Available and Adverse Inferences," the Department continues to determine, as AFA, that the provision of land to Trina Solar is specific to the solar products industry under section 771(5A)(D)(i) of the Act.

To determine the benefit, we first multiplied the Thailand industrial land benchmarks discussed above under the "Land Benchmark" section, by the total area of Trina Solar's countervailed tracts. We then subtracted the price actually paid for each tract to derive the total unallocated benefit. We next conducted the "0.5 percent test" of 19 CFR 351.524(b)(2) for the year of the relevant land-use agreement by dividing the total unallocated benefit for each tract by the appropriate sales denominator. If more than one tract was provided in a single year, we combined the total unallocated benefits from the tracts before conducting the "0.5 percent test." As a result, we found that the benefits were greater than 0.5 percent of relevant sales and that allocation was appropriate for all tracts found to be countervailable. We allocated the total unallocated benefit amounts across the terms of the land-use agreements, using the standard allocation formula of 19 CFR 351.524(d), and determined the amount attributable to the POI. We then summed all of the benefits attributable to the POI and divided this amount by the appropriate total sales denominator, as discussed in the "Subsidies Valuation Information" section above, and in the Final Calculation Memoranda, to derive preliminary subsidy rates of 0.10 percent *ad valorem* for Trina Solar.

¹²² See 19 CFR 351.511(a); section 771(5)(E)(iv) of the Act. See also, Final Calculation Memoranda.

¹²³ See *Preliminary Determination* and its accompanying Decision Memorandum at 32-33.

¹²⁴ See Trina Solar VR at 4-5.

4. Preferential Loans and Directed Credit

Petitioner alleged that the GOC subsidizes producers of certain solar products through preferential loans and directed credit at interest rates that are considerably lower than market rates. According to Petitioner, the GOC provides for such preferential lending through the Renewable Energy Law, the Medium and Long-Term Development Plan for Renewable Energy in China, and the “Interim Measures for the Administration of Financial Subsidy Fund for Renewable and Energy Saving-Building Materials.”¹²⁵ The information on the record indicates the GOC placed great emphasis on targeting the renewable energy industry, including producers of certain solar products, for development in recent years. The Renewable Energy Law, in Article 25, calls specifically for the use of loans in implementing the GOC’s plans for renewable energy: “Financial institutions may offer favorable loans with a financial discount for renewable energy development and utilization projects that are listed in the renewable energy industry development guidance catalogue and meet credit requirements.”¹²⁶ The Renewable Energy Law is also noted by Trina Solar in its 2010 SEC filing (form 20-F), which states that the law “provides financial incentives, such as national funding, preferential loans and tax preferences for the development of renewable energy projects.”¹²⁷ Renewable energy is also among the “Encouraged Category” of projects listed in the “Directory Catalogue on Readjustment of Industrial Structure,”¹²⁸ a key component of the “Interim Provision on Promoting Industrial Structure Adjustment for Implementation (No. 40 {2005} (Decision 40)) of the National Development and Reform Commission (NDRC), which contains a list of encouraged projects the GOC develops through loans and other forms of assistance,¹²⁹ and which the Department relied upon in prior specificity determinations.¹³⁰

Both Trina Solar and Wuxi Suntech reported having outstanding loans during the POI and, in the *Preliminary Determination*, we found that this program conferred a countervailable subsidy.¹³¹ During the verification of Trina Solar and Wuxi Suntech, the Department reviewed the companies’ outstanding short- and long-term loans, including minor corrections to their previously reported loans.¹³²

After considering comments from interested parties concerning the nature of this program (*see* Comments 9 and 10), we find that there is a program of preferential policy lending specific to the solar products industry within the meaning of section 771(5A)(D)(i) of the Act. We also continue to find that loans from SOCBs under this program constitute financial contributions,

¹²⁵ See Volume III of the Petition, “Information Relating to the People’s Republic of China -- Countervailing Duties,” at 10.

¹²⁶ See the GOC’s April 21, 2014, questionnaire response at Exhibit A.3.

¹²⁷ See the Petition at page 49 of Exhibit III-10.

¹²⁸ See, e.g., the GOC’s April 21, 2014, questionnaire response at page 8 of Exhibit G.10 (“Development and application of supplementary system technology for wind power and photovoltaic power generation”)

¹²⁹ See the GOC’s April 21, 2014, questionnaire response at Exhibit G.9.

¹³⁰ 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) (*Tires Final Determination*) and accompanying Issues and Decision Memorandum at “Government Policy Lending” section.

¹³¹ See *Preliminary Determination* and accompanying Decision Memorandum at 33-34.

¹³² See Trina Solar VR at 5 and Wuxi Suntech VR at 7-9.

pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act because SOCBs are “authorities,” as discussed in more detail below at Comment 9. The loans provide a benefit equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans.¹³³ To calculate the benefit from this program, we used the benchmarks discussed above under the section, “Subsidy Valuation Information.” On this basis, we determine a subsidy rate of 0.58 percent *ad valorem* for Trina Solar and 0.25 percent *ad valorem* for Wuxi Suntech.

5. Tax Benefit Programs

a. Tax Offsets for Research and Development (R&D) under the Enterprise Income Tax Law

Under Article 30.1 of the Enterprise Income Tax Law of the PRC, which became effective January 1, 2008, companies may deduct research and development expenses incurred in the development of new technologies, products, or processes from their taxable income.¹³⁴ Article 95 of the Regulations on the Implementation of Enterprise Income Tax Law of the PRC (Decree 512 of the State Council, 2007) provides that, if eligible research expenditures do not “form part of the intangible assets value,” an additional 50 percent deduction from taxable income may be taken on top of the actual accrual amount.¹³⁵ Where these expenditures form the value of certain intangible assets, the expenditures may be amortized based on 150 percent of the intangible assets costs.¹³⁶

Article 4 of the “Circular of the State Administration of Taxation on Printing and Issuing the Administrative Measures for the Pre-tax Deduction of Enterprises’ Expenditures for Research and Development (for Trial Implementation)” (Circular 116) states that enterprises engaged R&D hi-tech sectors may deduct certain expenditures, as listed in the “Hi-tech Sectors with Primary Support of the State Support and the Guideline of the Latest Key Priority Developmental Areas in the High Technology Industry (2007).”¹³⁷ This list was provided by the GOC as the Administrative Measures for Certification of New and High Technology Enterprises (GUOKEFAHUO {2008} No. 172), and lists in the annex of “Hi-tech Fields with Key State Support” Article 6, “New Energy and Energy Conservation Technology.”¹³⁸ Among the subjects included in Article 6 of the list are “Solar energy” and “Solar photovoltaic technology.”¹³⁹

Wuxi Suntech’s cross-owned companies Zhenjiang Rietech, Yangzhou Rietech, and Suzhou Kuttler, each reported using this program during the POI.¹⁴⁰ In addition, both Trina Solar and its

¹³³ See section 771(5)(E)(ii) of the Act.

¹³⁴ See the GOC’s April 21, 2014 questionnaire response at Exhibit B.3.

¹³⁵ *Id.* at Exhibit B.5.

¹³⁶ *Id.*

¹³⁷ *Id.* at Exhibit B.6.

¹³⁸ *Id.* at Exhibit B.7.

¹³⁹ *Id.* at Article 6, “New Energy and Energy Conversation Technology.”

¹⁴⁰ See Zhenjiang Rietech’s and Zhenjiang Ren De’s April 21, 2014, questionnaire response at 24; Yangzhou Rietech’s April 21, 2014, questionnaire response at 20; and Suzhou Kuttler’s April 21, 2014, questionnaire response at 21.

cross-owned affiliate reported using this program during the POI.¹⁴¹ During verification of Trina Solar's and Wuxi Suntech's questionnaire responses, we reviewed the companies' income tax returns related to this program.¹⁴²

The Department considered the arguments from interested parties on this program in Comments 12 and 13 below. We continue to find that this program constitutes a countervailable subsidy. This income tax deduction is a financial contribution in the form of revenue foregone by the government, and it provides a benefit to the recipients in the amount of the tax savings, pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also find that the income tax deduction afforded by this program is limited as a matter of law to certain enterprises, *i.e.*, those with R&D in eligible high-technology sectors and, thus, is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit from this program to Wuxi Suntech and Trina Solar, we treated the tax deduction as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we calculated the amount of tax each respondent would have paid absent the tax deductions at the company's tax rate. We then divided the tax savings by the appropriate total sales denominator for each respondent, respectively.¹⁴³

On this basis, we determined a countervailable subsidy rate of 0.10 percent *ad valorem* for Trina Solar. Based on arguments from Wuxi Suntech, for this final determination, we have made certain adjustments to the benefit calculation for the use of this program by Wuxi Suntech's cross-owned company, Zhenjiang Rietech (*see* Comment 13), and have calculated a rate of 0.04 percent *ad valorem* for Wuxi Suntech under this program.

b. Preferential Tax Programs for High or New Technology Enterprises (HNTEs)

This program was established on January 1, 2008 by the Enterprise Income Tax Law of the PRC (Decree 63 of the PRC, 2007).¹⁴⁴ Under Article 28 of that law, companies recognized as HNTEs, are eligible for a reduced income tax rate of 15 percent, in lieu of the regular rate of 25 percent.¹⁴⁵ Article 2 of the "Circular of the Ministry of Science and Technology, the Ministry of Finance and the State Administration of Taxation on Printing and Distributing the Administrative Measures for Certification of New and High Technology Enterprises" (Guo Ke Fa Huo {2008} No. 172), identifies HNTEs as enterprises that have been registered for more than one year within the PRC and that have been engaged in continuous research and development and in the transformation of their scientific and technological achievements.¹⁴⁶ Article 6 of the Annex to this circular also specifically identifies the HNTEs that qualify for key state support, which

¹⁴¹ See Trina Solar's April 21, 2014, questionnaire response at 29.

¹⁴² See Trina Solar's VR at 5-6 and Wuxi Suntech's VR at 10.

¹⁴³ See Final Calculation Memoranda for the calculation for the program, "Tax Offsets for Research and Development (R&D) under the Enterprise Income Tax Law."

¹⁴⁴ See the GOC's April 21, 2014, questionnaire response at 60.

¹⁴⁵ *Id.* at 62-63.

¹⁴⁶ See the GOC's April 21, 2014, questionnaire response at Exhibit B.7.

includes renewable, clean energy technologies such as solar photovoltaic technologies.¹⁴⁷ To apply as an HNTE, Chinese companies must complete a self-assessment process regarding whether they can meet the criteria for an HNTE, and they must submit the requisite application form, business license and tax registration forms, and documents that establish that the company has been conducting high technological or innovative activities.¹⁴⁸ Enterprises that meet the eligibility criteria will be certified as HNTEs by the approving GOC authority, and this designation remains effective for three years.¹⁴⁹

Wuxi Suntech's cross-owned companies, Zhenjiang Rietech, and Suzhou Kuttler, each reported using this program during the POI.¹⁵⁰ In addition, Trina Solar and its cross-owned affiliate also reported using this program during the POI.¹⁵¹ Each of these companies was recognized as an HNTE by the GOC during the POI, and as a result their income tax rates were therefore reduced from 25 percent to 15 percent for tax returns filed during the POI.¹⁵² During verification of Trina Solar's and Wuxi Suntech's questionnaire responses, we reviewed the companies' HNTE certificates and income tax returns related to this program.¹⁵³

After considering comments from interested parties on this program (*see* Comments 12 and 13), we continue to find, as we did in the *Preliminary Determination*, that the reduction in income tax paid by HNTEs under this program confers a countervailable subsidy. The income tax reduction is a financial contribution in the form of revenue forgone by the government, and it provides a benefit to the recipients in the amount of the tax savings, pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also determine that the income tax reduction afforded by this program is limited as a matter of law to certain enterprises, *i.e.*, HNTEs, and, thus, is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit from this program to Trina Solar and Wuxi Suntech, we treated the income tax reductions claimed by the companies that used the program as recurring benefits, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we compared the reduced tax rate (15 percent) to the rate that would have otherwise been paid by the companies (the standard income tax rate of 25 percent). We multiplied the difference by the taxable income of each company.¹⁵⁴ We then divided these amounts by the appropriate total sales denominator, as discussed in the "Subsidies Valuation Information" section above, and in the Final Calculation Memoranda. On this basis, we determine a countervailable subsidy rate of 0.42 percent *ad valorem* for Trina Solar. Based on arguments from Wuxi Suntech, for this final determination, we have made certain adjustments to the benefit calculation for Wuxi Suntech's

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at Exhibit B.7, Article 11.

¹⁴⁹ *Id.* at Article 12.

¹⁵⁰ *See* Zhenjiang Rietech's April 21, 2014, questionnaire response at 28 and Suzhou Kuttler's April 21, 2014, questionnaire response at 28.

¹⁵¹ *See* Trina Solar's April 21, 2014, questionnaire response at 38.

¹⁵² *See* the GOC's April 21, 2014, questionnaire response at 59-71.

¹⁵³ *See* Trina Solar's VR at 5-6 and Wuxi Suntech's VR at 10.

¹⁵⁴ *See* Final Calculation Memoranda for the calculation for the program, "Preferential Tax Programs for High or New Technology Enterprises (HNTEs)."

for this program (*see* Comment 13) and have calculated a rate of 0.53 percent *ad valorem* for Wuxi Suntech under this program.

6. VAT Rebates on FIE Purchases of Chinese-Made Equipment

Pursuant to the “Trial Administrative Measures on Purchase of Domestically Produced Equipment by FIEs, (GUOSHUIFA (1999) No. 171),” the GOC refunds the VAT on purchases of domestically-produced equipment by FIEs if the equipment does not fall into the non-duty-exemptible catalog and if the value of the equipment does not exceed the total investment limit of an FIE.¹⁵⁵ The Department has previously found this program to be countervailable.¹⁵⁶ Trina Solar reported using this program from 2005 through 2009, and we found this program to be countervailable in the *Preliminary Determination*.¹⁵⁷ No party commented on this program. For this final determination, we determine, consistent with past practice, that the rebate of the VAT paid on purchases of Chinese-made equipment by FIEs confers a countervailable subsidy. The rebates are a financial contribution in the form of revenue forgone by the GOC and they provide a benefit to the recipients in the amount of the tax savings.¹⁵⁸ We further determine that the VAT rebates are contingent upon the use of domestic over imported equipment and, hence, specific under section 771(5A)(A) and (C) of the Act.

Normally, we treat rebates from indirect taxes and import charges, such as VAT rebates, as recurring benefits, consistent with 19 CFR 351.524(c)(1), and expense these benefits in the year they were received. However, when an indirect tax or import charge exemption is provided for, or tied to, the capital structure or capital assets of a firm, the Department normally treats it as a non-recurring benefit and allocates the benefit to the firm over the AUL.¹⁵⁹ Because the rebates under this program were tied to purchased equipment, we determine that the benefits under this program are tied to the capital structure or capital assets of the companies and that they should be considered non-recurring.

We applied the “0.5 percent test,” pursuant to 19 CFR 351.524(b), for each of the years in which rebates were received. For the years in which the rebate amount was less than 0.5 percent of the relevant sales figure, we expensed the rebates in the year of receipt, consistent with 19 CFR 351.524(a). For those years in which the VAT rebates were greater than or equal to 0.5 percent, we allocated the rebate amount over the AUL. We used the discount rates described above in the “Subsidies Valuation Information” section to calculate the amount of the benefit allocable to the POI. On this basis, we determine that Trina Solar received a countervailable subsidy rate of 0.00 percent *ad valorem* under this program.

¹⁵⁵ See the GOC’s April 21, 2014, questionnaire response at 73.

¹⁵⁶ See *Citric Acid from the PRC*, and accompanying Issues and Decision Memorandum at 20 and *CFS from the PRC* and accompanying Issues and Decision Memorandum at 13-14.

¹⁵⁷ See *Preliminary Determination* and accompanying Decision Memorandum at 36-37.

¹⁵⁸ See section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1).

¹⁵⁹ See 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).

7. Export Guarantees and Insurance for Green Technology

Established in 2004, and in accordance with the “Several Opinions on Further Implementing the Strategy of Promoting Trade through Science and Technology (Guo Ban Fa {2003} No. 92), this program is designed to promote the export of high-tech products, optimize the structure of export products, and improve the quality, grade, and benefits of export products.¹⁶⁰ In accordance with the policy outlined in this document, the China Export & Credit Insurance Corporation (SINOSURE) provides export credit insurance to policyholders.¹⁶¹ Wuxi Suntech maintained an insurance policy with SINOSURE during the POI.¹⁶² The company also reported receiving claim payouts from SINOSURE during this time period.¹⁶³ Those payouts were recorded in the company’s accounting system as “Subsidies Income.”¹⁶⁴ In the *Preliminary Determination*, we found this program to be countervailable, and we calculated a benefit for respondent Wuxi Suntech.¹⁶⁵ At verification, we examined Wuxi Suntech’s insurance payments and claims under this program without noting any discrepancies with what the company reported in its questionnaire responses.¹⁶⁶ We also discussed this program at the verification of the GOC’s questionnaire responses.¹⁶⁷ No party commented on this program with respect to the *Preliminary Determination*.

To determine whether an export insurance program is countervailable, we examine whether the premium rates charged are adequate to cover the program’s long-term operating costs and losses.¹⁶⁸ In its initial questionnaire response, the GOC was asked to provide a chart summarizing SINOSURE’s overall long-term operating costs/losses. The GOC provided a chart in response to the Department’s questionnaire, however all the figures provided were labeled as “Compensation Expenses.”¹⁶⁹ Therefore, the chart provided is not usable for the analysis called for in 19 CFR 351.520(a)(1). However, the GOC also provided the annual reports for SINOSURE for the years 2009-2012.¹⁷⁰ Each annual report reports the net premiums earned, net claims paid out, and the operating expenses of the agency over a two-year period, and thus data for the years 2008-2012 are available.¹⁷¹ These data demonstrate that over the five-year period ending with the POI, the net claims paid out by SINOSURE and its operating expenses exceeded the net premiums earned by SINOSURE in all years except 2010 (*i.e.*, 2008-09 and 2011-12), and that the insurance programs offered by SINOSURE were not profitable as a result of its operations. In addition, the net loss in the years 2008-09 and 2011-12 exceed the gains in 2010 by more than two billion RMB. As such we find that the premiums charged by SINOSURE are inadequate to cover the long-term operating costs and losses of the program within the meaning

¹⁶⁰ See the GOC’s April 21, 2014, questionnaire response at 86-87 and Exhibit E.1

¹⁶¹ *Id.* at 86.

¹⁶² See Wuxi Suntech’s April 21, 2014, questionnaire response at Exhibit 35.

¹⁶³ *Id.* at 54

¹⁶⁴ *Id.* at 53.

¹⁶⁵ See *Preliminary Determination* and accompanying Decision Memorandum at 37-38.

¹⁶⁶ See Wuxi Suntech VR at 10-11.

¹⁶⁷ See GOC VR at 6-7.

¹⁶⁸ See 19 CFR 351.520(a)(1).

¹⁶⁹ See the GOC’s April 21, 2014, questionnaire response at 95.

¹⁷⁰ *Id.* at Exhibit E.2 and the GOC’s May 12, 2014, questionnaire response at Exhibit S1-F.

¹⁷¹ *Id.* In accordance with the *CVD Preamble*, the Department normally analyzes an insurance program over a five-year long-term period. See *CVD Preamble* at 65385.

of 19 CFR 351.520(a)(1). Thus, we continue to determine that this program is countervailable during the POI.

Because insurance provided through this program is contingent upon export performance, we determine that the program is specific within the meaning of 771(5A)(B) of the Act. The Department finds that the export insurance provided by SINOSURE constitutes a financial contribution in the form of a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act. In addition, we determine that the insurance provided by SINOSURE confers a benefit in accordance with section 771(5)(E) of the Act and 19 CFR 351.520(a)(1), to the extent that the premium rates charged are inadequate to cover the long-term operating costs and losses of the program. The amount of the benefit received by Wuxi Suntech is measured in accordance with 19 CFR 351.520(a)(2), such that the benefit is the amount by which the claims paid to Wuxi Suntech exceed the premiums paid by the company. To calculate the applicable CVD rate for this program, this benefit amount is divided by Wuxi Suntech's total exports. We thus determine the countervailable subsidy received by Wuxi Suntech under this insurance program to be 0.03 percent *ad valorem*.

8. Export Credit Subsidies: Export Buyer's Credits

Through this program, the Export-Import Bank of China (Ex-Im Bank) provides loans at preferential rates for the purchase of exported goods from the PRC. The Department found that this program was not used by the company respondents in the *Preliminary Determination*.¹⁷² However, the Department was not able to verify the reported non-use of export buyer's credits during verification with the GOC.¹⁷³

As explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we are determining, relying upon adverse facts available, that both Trina Solar and Wuxi Suntech used this program during the POI. Our determination regarding the countervailability of this program, our reliance on AFA, and our selection of the appropriate rate to apply to this program are explained in further detail under Comment 16, below. On this basis, we determine a countervailable subsidy rate of 10.54 percent *ad valorem* for Trina Solar, and 10.54 percent *ad valorem* for Wuxi Suntech under this program.

B. Programs Determined To Be Not Used by the Respondent Companies During the POI or To Not Provide Countervailable Benefits During the POI

1. Grant Programs

- a. Sub-Central Government Subsidies for Development of "Famous Brands" and China World Top Brands

According to the "Implementation Opinion on Further Promoting the Development of Brand Economy" (XIZHENGFA {2006} No. 106) established by the government of Wuxi City, the

¹⁷² See *Preliminary Determination* and accompanying Preliminary Decision Memorandum at 39.

¹⁷³ See the GOC's VR at 5-6.

development of famous brands are to be developed to promote sustainable development in Wuxi City.¹⁷⁴ According to the Implementation Option, grants of 800,000 RMB are made available to companies which acquire the China Famous brand designation or become well-known trademarks.¹⁷⁵ As a means of promoting famous brands, the Implementation Opinion states that the program will “{u}tilize large conferences and exhibitions...support export enterprise of self-owned brand to participate in Canton Fair and other domestic and overseas famous exhibitions...”¹⁷⁶ The GOC reported that one of Wuxi Suntech’s brands was recognized as a well-known trademark in 2009, and that the company received a grant in June of 2010 under this program.¹⁷⁷ We found that this program conferred a countervailable subsidy to Wuxi Suntech in the *Preliminary Determination*.¹⁷⁸ No interested party commented on this issue.

For this final determination, we continue to determine that the grant that Wuxi Suntech received under this program constitutes a financial contribution and a benefit in the amount of the grant provided under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. In prior investigations, we determined that regardless of the local implementation opinions, the GOC measures for administration of the program require applicants to submit export ratios and information concerning the extent to which their products meet international quality standards. Therefore, consistent with these prior determinations regarding grants under the famous brands program,¹⁷⁹ we determine that the grant provided to Wuxi Suntech under the “famous brands” program is contingent on export activity and is, thus, specific pursuant to section 771(5A)(B) of the Act as an export subsidy. Grants are normally treated as non-recurring subsidies under 19 CFR 351.524(c). After conducting the “0.5 percent test” in accordance with 19 CFR 351.524(b)(2), we determine that the grant should be expensed to the year of receipt.

We verified that none of the company respondents applied for or received benefits during the POI under the following programs for the production or export of subject merchandise to the United States.

- b. Export Product Research and Development Fund
- c. Subsidies for Development of “Famous Brands” and China World Top Brands
- d. Special Energy Fund (Established by Shandong Province)
- e. Funds for Outward Expansion of Industries in Guangdong Province

2. Debt Forgiveness

¹⁷⁴ See the GOC’s April 21, 2014, questionnaire response at 6.

¹⁷⁵ *Id.* at page 3 of Exhibit A.1.

¹⁷⁶ *Id.* at page 4 of Exhibit A.1.

¹⁷⁷ *Id.* at 8.

¹⁷⁸ See *Preliminary Determination* and accompanying Decision Memorandum at 24-25.

¹⁷⁹ See, e.g., *Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011), and accompanying Issues and Decision Memorandum at the section “GOC and Sub-Central Government Grants, Loans, and Other Incentives for Development of Famous Brands and China World Top Brands,” and *Pre-Stressed Concrete Steel Wire Strand from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010), and accompanying Issues and Decision Memorandum at the section “Subsidies for Development of Famous Export Brands and China World Top Brands at Central and Sub-Central Level.”

3. Tax Benefit Programs
 - a. The Two Free/Three Half Program for FIEs
 - b. Income Tax Reductions for Export-Oriented Enterprises
 - c. Income Tax Benefits for FIEs Based on Geographic Locations
 - d. Local Income Tax Exemption and Reduction Programs for “Productive” FIEs
 - e. Tax Reductions for FIEs Purchasing Chinese-Made Equipment
 - f. Tax Refunds for Reinvestment of FIE Profits in Export-Oriented Enterprises
 - g. Tax Reductions for High and New-Technology Enterprises Involved in Designated Projects
 - h. Preferential Income Tax Policy for Enterprises in the Northeast Region
 - i. Guangdong Province Tax Programs
4. VAT and Tariff Exemptions for Purchases of Fixed Assets under the Foreign Trade Development Fund Program

IX. ANALYSIS OF COMMENTS

Comment 1: Scope Comments and Scope Clarification

On October 3, 2014, the Department issued a letter to all interested parties inviting parties to include in their case briefs comments concerning a possible clarification to the scope of the AD/CVD investigations that the Department was considering.¹⁸⁰ The Department stated that the scope clarification under consideration contemplated the following:

- For the PRC investigations, subject merchandise would include all modules, laminates and/or panels assembled in the PRC that contain crystalline silicon photovoltaic cells produced in a customs territory other than the PRC.
- For the Taiwan investigation, subject merchandise would include all modules, laminates and/or panels assembled in Taiwan consisting of crystalline silicon photovoltaic cells produced in Taiwan or a customs territory other than Taiwan and would continue to exclude any products covered by the existing AD and CVD orders on crystalline silicon photovoltaic cells, whether or not assembled into modules, from the PRC. In addition, subject merchandise would include modules, laminates, and panels assembled in a third-country, other than the PRC, consisting of crystalline silicon photovoltaic cells produced in Taiwan.

Parties have commented on the scope clarification in this letter and made other scope comments addressed below. Generally, Respondents oppose adopting the proposed scope clarification in the October 3rd Letter, while Petitioner argues that the Department should adopt the scopes

¹⁸⁰ See October 3, 2014 letter from Howard Smith, Program Manager, Office IV, AD/CVD Operations, Enforcement and Compliance, to All Interested Parties, re: *Antidumping and Countervailing Duty Investigations of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China and the Antidumping Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from Taiwan: Opportunity to Submit Scope Comments* (October 3, 2014) (“October 3rd Letter”).

proposed in the October 3rd Letter because they most effectively apply Petitioner’s intent, would best effectuate the U.S. trade laws and provide effective relief to the injured domestic industry, and would be easily administrable and enforceable by the agencies involved. After considering comments, we have determined to clarify the scopes of the PRC AD and CVD investigations consistent with the October 3rd Letter. We address party comments in detail below.

Due to this revision in the scope, we are not requiring exporter and importer certifications. The revocation of the certification requirements previously established in this investigation does not change or rescind the certification requirements established in connection with the existing orders on crystalline silicon photovoltaic cells, whether or not assembled into modules, from the PRC.

A. Consistency with *Solar I*¹⁸¹ and Court Decisions

Respondents:

- The Department’s proposed scope clarification is arbitrary because it is inconsistent with the product coverage decisions made by the Department in *Solar I* and also ignores country of origin decisions made by the Court of International Trade (referred to as either the “Court” or the “CIT”) and the U.S. Court of Appeals for the Federal Circuit (CAFC), as well as country of origin criteria stated in the Act. Such arbitrary decisions are unlawful because, as the courts have noted, the Department has an obligation to be consistent in its decisions.
 - In *Solar I*, the Department made numerous decisions that directly ruled against establishing a scope that would find solar modules assembled in China but not containing Chinese solar cells subject to the order. The Department’s determinations in *Solar I* were made on the following bases:
 - A product can only have one country of origin,¹⁸²
 - AD and CVD investigations only cover products with a country of origin of the country under investigation,¹⁸³ and
 - The Department relies on the substantial transformation test to determine the country of origin of a product.¹⁸⁴
 - In applying this substantial transformation test in *Solar I*, the Department determined that “module assembly does not substantially alter the essential nature of solar cells nor does it constitute significant processing

¹⁸¹ 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 CVD Final Determination*”) and *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part*, 77 FR 63791 (October 17, 2012) (“*Solar I AD Final Determination*”) (these two investigations are referred to generally as “*Solar I*”).

¹⁸² See *Solar I AD Final Determination* and accompanying Issues and Decision Memorandum (“*Solar I IDM*”) at Comment 1, page 8.

¹⁸³ *Id.*

¹⁸⁴ *Id.* at 5-6.

such that it changes the country of origin of the cell.”¹⁸⁵ The Department found that the solar cell imparts the essential character of a solar module, and, therefore, the origin of the solar cell is determinative of the country of origin of the class or kind of merchandise at issue here. Therefore, “where solar cell production occurs in a different country from solar module assembly, the country of origin of the solar modules/panels is the country in which the solar cell was produced.”¹⁸⁶

- If the approach in *Solar I* described above were applied to these investigations the conclusion would be that the scope of an CVD order must be limited to subject merchandise “produced” and “originating” in the country covered by the order, which here is China and Taiwan. Merchandise produced or originating in a country other than the country covered by an order, which based on the previous substantial transformation decision, includes solar modules assembled in China or Taiwan from solar cells produced in countries other than China or Taiwan, have a different country of origin than China or Taiwan, and thus may not be included in the scope of these investigations.
- Decisions by the CIT and the CAFC, as well as sections of the Act support finding that products under an investigation can only have one country of origin and that the basis for determining this is the substantial transformation test.
 - Applying the country of origin determination implied in the scope as proposed in the October 3rd Letter, as well as the criteria applied in *Solar I*, would result in a solar module assembled in one country containing another country’s cell to have two countries of origin. CIT decisions¹⁸⁷ have stated that a product can only have a single country of origin for AD and CVD purposes.
 - The scope as proposed in the October 3rd Letter is also contrary to the statutory language at Section 731 of the Act, which provides for the imposition of antidumping duties on “subject merchandise,” defined as “the class or kind of merchandise that is within the scope of an investigation, a review, a suspension agreement, {or} an order....”¹⁸⁸ This provision requires the Department to make a finding of dumping for a class or kind of merchandise from a particular country.¹⁸⁹
 - The scope as proposed in the October 3rd Letter ignores the established criteria for determining the country of origin, which is the substantial transformation analysis.

¹⁸⁵ See March 19, 2012 Memorandum from Jeff Pedersen to Chris Marsh “Scope Clarification: Antidumping and Countervailing Duty Investigations of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China (“Solar I Substantial Transformation Memorandum”). Included in December 15, 2014 Other Proceedings’ Documents Memorandum at Attachment 1.

¹⁸⁶ *Id.*

¹⁸⁷ See *Ugine & ALZ Belgium, N.V. v. United States*, 517 F. Supp. 2d 1333, 1345 (CIT 2007) (“*Ugine I*”), *aff’d*, 551 F.3d 1339 (“*Ugine III*”) (Fed. Cir. 2009).

¹⁸⁸ *Id.*; Section 771(25) of the Act.

¹⁸⁹ See *E.I. DuPont de Nemours & Co. v. United States*, 8 F. Supp. 2d 854, 859 (CIT 1998) (“*Du Pont*”); see also *Ugine I*, 517 F. Supp. 2d at 1345.

- The CIT has determined that the “substantial transformation” analysis provides a means for the Department to carry out its country of origin examination and properly guards against circumvention of existing antidumping orders.¹⁹⁰
- The Department is prevented from contradicting these decisions in *Solar I* because the Department is obliged to be consistent in its decision-making across its investigations.
 - The CIT has explained that although an agency is not strictly bound to its precedent, “{i}t is a principle of administrative law that an ‘agency must either conform to its prior norms and decisions or explain the reason for its departure from such precedent.’”¹⁹¹ The CAFC has similarly stated that the Department cannot ignore its own precedent absent some legitimate reason for departing from it.¹⁹²
 - The Department has not articulated reasons for diverging from these decisions. Instead, the Department stated in these investigations, that it is informed “by the product coverage decisions that it made” in *Solar I*.¹⁹³

Petitioner:

- In the preliminary determination, the Department stated that it was continuing to analyze interested parties’ scope comments, including comments on whether it is appropriate to apply a traditional substantial transformation or other analysis in determining the country of origin of certain solar modules described in the scope of the investigation.
- Petitioner supports the proposed scope clarification in the Department’s October 3rd Letter, and requests that the Department adopt it for purposes of its final determination and any resulting CVD order.
- The Department’s proposed scope clarification is fully consistent with the Petitioner’s intent. It has been clear since the start of the first solar AD/CVD investigations, and throughout the current investigations, that Petitioner’s intent has always been to cover all cells from the PRC and all modules from the PRC and, now, all cells from Taiwan and all modules from Taiwan.¹⁹⁴
- The Department’s proposed scope clarification would best effectuate the U.S. trade laws and provide effective relief to the injured domestic industry, and would be easily administrable and enforceable by the agencies.
- The remedial purposes of the AD/CVD laws are best served by the proposed scope clarification. The Department has determined that both cells and modules from the PRC and Taiwan are being dumped, and both Chinese cells and modules are subsidized. As such, the law obligates Commerce to impose duties on these products.

¹⁹⁰ See *Du Pont*, 8 F. Supp. 2d at 857 (emphasis added).

¹⁹¹ See *Torrington Co. v. United States*, 745 F. Supp. 718, 727 (CIT 1990) (quoting *Mississippi Valley Gas Co. v. Federal Energy Regulatory Comm’n*, 659 F.2d 488, 506 (5th Cir. 1981)); *Neenah Foundry Co. v. United States*, 142 F. Supp. 2d 1008, 1022 (CIT 2001); *Hussey Copper Ltd., v. United States*, 834 F. Supp. 413,418 (CIT 1993).

¹⁹² See *Ugine III*, 551 F.3d at 1349.

¹⁹³ See *Certain Crystalline Silicon Photovoltaic Products From the People’s Republic of China and Taiwan: Initiation of Antidumping Duty Investigations*, 79 FR 4661 (January 29, 2014) (“*Solar Products Initiation Notice*”).

¹⁹⁴ See, e.g., *Solar I* IDM at Comment 1.

- Clarifying the scope language in the manner proposed by the Department would result in AD/CVD orders that are administrable and enforceable by the Department and U.S. Customs and Border Protection (CBP). Solar cells are not required to contain country of origin markings. It can be extremely difficult for CBP to determine the origin of various inputs in a solar module upon importation. On the other hand, all solar modules are clearly marked with country-of-origin and other identifying information. Covering all cells and modules from both the PRC and Taiwan, as described in the October 3rd Letter proposed scope clarification, would therefore significantly improve the enforceability of any future AD/CVD orders.
- To the extent that the Department’s proposed scope clarification can be considered a departure from its prior country-of-origin determination, the agency is, of course, permitted to depart from its prior determinations.¹⁹⁵
- Respondents’ argument that the scope clarification results in a single product having two countries of origin is unfounded. Because the country-of-origin rules in the proposed scope clarifications provide a supplemental country-of-origin rule for those products not covered by the initial solar investigations, no product would at any time have two countries of origin.
- For example, Trina Solar claims that modules assembled in China with cells produced in Taiwan would result in identical products having two different countries of origin under the previous analysis and the proposed scope clarification.
- The proposed scope would also be consistent with international precedent. The recent European Union (“EU”) AD/CVD investigations of Chinese solar products included “imports of crystalline silicon photovoltaic modules and key components (*i.e.*, cells and wafers) originating in or consigned from the People’s Republic of China,”¹⁹⁶ recognizing that all cells and all modules from the subject country, in addition to other key components, must be covered.
- In the alternative, should the Department decide not to make its proposed clarification to the scope, these investigations should continue with the scope proposed by Petitioner and accepted by the Department for purposes of initiation and its preliminary determination.

Department’s Position: After considering the facts and circumstances presented by the PRC AD and CVD investigations, as well as the parties’ comments on the October 3rd Letter, for this final determination the Department has clarified the scope language of the PRC AD and CVD investigations such that subject merchandise includes all modules, laminates and/or panels assembled in the PRC that contain crystalline silicon photovoltaic cells produced in a customs territory other than the PRC. For a complete description of the scope of the investigation for this final determination, *see* section III above.

¹⁹⁵ *See Torrington*, 745 F. Supp. at 727.

¹⁹⁶ *See* Council Implementing Regulation (EU) No 1238/2013 of 2, Official Journal of the European Union (Dec. 2013).

Upon initiation of these investigations, the Department set aside a period for interested parties to raise issues relating to product coverage, *i.e.*, scope.¹⁹⁷ Interested parties submitted affirmative comments and rebuttal comments regarding product coverage.¹⁹⁸ In the *Preliminary Determination* published on July 31, 2014, we announced that we are continuing to analyze the scope comments, including comments on whether it is appropriate to apply a traditional substantial transformation or other analysis in determining the country of origin of certain solar modules described in the scope of this investigation.¹⁹⁹ Further, with respect to administering the PRC investigations, we explained that the scope of these investigations explicitly excludes any products covered by the existing AD and CVD orders on crystalline silicon photovoltaic cells, whether or not assembled into modules, from the PRC.²⁰⁰ In response to interested parties' comments on the scope of this investigation (and prior to the deadlines for the submission of case and rebuttal briefs), in the October 3rd Letter the Department announced that it was considering the possibility of a scope clarification, described the possible clarification, and invited interested parties to submit comments on the clarification. For the reasons discussed below, the Department determines that there are significant reasons for clarifying and modifying the scope of this investigation.

Importantly, it is within the Department's authority to do so. The CAFC has explained that "the purpose of the petition is to propose an investigation," and the "purpose of the investigation is to determine what merchandise should be included in the final order."²⁰¹ Therefore, the Department must be able to determine what merchandise should be covered by any final order. Additionally, the purpose of the AD and CVD law is to provide a remedy, if appropriate, for alleged injury to the domestic industry that is caused by specified merchandise alleged to be dumped or unfairly subsidized.²⁰² Accordingly, the Department's "practice is to provide ample deference to the Petitioner with respect to the definition of the product for which it seeks relief under the AD and CVD laws."²⁰³

¹⁹⁷ See *Solar Products Initiation Notice*, 79 FR at 4661; see also *Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Initiation of Countervailing Duty Investigation*, 79 FR4667 (January 29, 2014).

¹⁹⁸ See scope comment submissions, dated February 18, 2014, from Gintech; Motech; NextEra Energy, Inc.; SunEdison, Inc.; Suniva, Inc.; and Yingli Green Energy Holding Company Limited, Yingli Green Energy Americas, Inc., Canadian Solar Inc., Changzhou Trina Solar Energy Co., Ltd., Wuxi Suntech Power Co., Ltd., Shanghai JA Solar Technology Co., Ltd., Hefei JA Solar Technology Co., Ltd., and Jinko Solar Co., Ltd.; see also rebuttal scope comment submissions, dated April 3, 2014, from Petitioner, and dated April 21, 2014, from Yingli Green Energy Americas, Inc., Canadian Solar Inc., Changzhou Trina Solar Energy Co., Ltd., Wuxi Suntech Power Co., Ltd., Shanghai JA Solar Technology Co., Ltd., Hefei JA Solar Technology Co., Ltd., and Jinko Solar Co., Ltd.

¹⁹⁹ See *AD PDM* at 5; see also *CVD PDM* at 4 (collectively referred to as "Pre-Prelim Scope Comments").

²⁰⁰ *Id.*

²⁰¹ See *Duferco Steel Inc. v. United States*, 296 F.3d 1087, 1096-97 (Fed. Cir. 2002) ("*Duferco*").

²⁰² See sections 731 and 701 of the Act; see also *United States v. American Home Assur. Co.*, 964 F. Supp. 2d 1342, 1352-53 ("Antidumping duties serve the distinct purpose of remedying the effect of unfair trade practices resulting in actual or threatened injury to domestic like-product producers." (citing *Canadian Wheat Bd. v. United States*, 641 F.3d 1344, 1351 (Fed. Cir. 2011))); *Wolff Shoe Co. v. United States*, 141 F.3d 1116, 1117 (Fed. Cir. 1998) (Countervailing duties "are levied on subsidized imports to offset the unfair competitive advantages created by foreign subsidies.").

²⁰³ See *Large Residential Washers From the Republic of Korea*, 77 FR 46391, 46392 (August 3, 2012) and accompanying Issues and Decision Memorandum at Comment 2. See also *Kern Liebers USA, Inc. v. United States*,

The CIT has stated that the Department “retains broad discretion to define and clarify the scope of an antidumping investigation in a manner which reflects the intent of the petition.”²⁰⁴ Indeed, the CIT has confirmed that any scope clarifications made by the Department *should* be made in a manner which reflects the intent of the Petition, and that is what the scope clarification accomplishes here.²⁰⁵ The Petition²⁰⁶ and Petitioner’s comments in this investigation clearly demonstrate that the Petitioner’s intent is a scope that covers all solar modules assembled in the PRC using third-country solar cells. In its Petition to this investigation, the Petitioner stated its intent to include all of these modules in the scope, citing the “loophole” that resulted when, following the application of Department’s substantial transformation analysis in the *Solar I* investigations, producers subject to the *Solar I* investigations increased exports to the United States of modules assembled in the PRC with non-PRC cells with the result of avoiding the reach of the *Solar I* AD and CVD orders.²⁰⁷ Indeed, in the Petition for this investigation, Petitioner noted that it had argued for a scope almost identical to the scope in the October 3rd Letter in Solar I and stated that the Department’s refusal to cover Chinese solar modules assembled from non-Chinese solar cells allowed Chinese companies to continue to ship solar modules to the United States duty free.²⁰⁸ In these investigations, the alleged injury to the domestic industry stems from certain solar modules that are assembled in the PRC using cells produced in third countries, modules which are not covered by the scope of *Solar I* and, thereby, exceed the reach of the remedy afforded by the *Solar I* AD and CVD orders. In addition, taking the instant PRC investigations together with *Solar I*, the Petitioner has alleged that the domestic industry is being injured as a result of the unfair pricing of cells produced in the PRC, modules containing such cells, and modules assembled in the PRC with third-country cells, as well as unfair subsidization in the PRC of both cells and modules.

Beyond the Petitioner’s intent, there are other facts and factors that the Department has found to be significant in considering the scope of these investigations. For example, the record demonstrates that the solar products industry involves a complex and very adaptable global supply chain which allows producers to modify their production chains easily and quickly. Petitioner has cited statements by five large Chinese solar module producers and one U.S. importer of solar modules noting the ease with which they were able to modify their production

881 F. Supp. 618, 621 (CIT 1995) (“The agency generally exercises {its} broad discretion to define and clarify the scope of an antidumping investigation in a manner which reflects the intent of the petition”).

²⁰⁴ See *Minebea Co. v. United States*, 782 F. Supp. 117, 120 (CIT 1992).

²⁰⁵ See *AMS Assocs. v. United States*, 881 F. Supp. 2d 1374, 1380 (CIT 2012) (explaining that “Commerce retains broad discretion to define and clarify the scope of an antidumping investigation in a manner which reflects the intent of the petition”) (citation and quotation marks omitted), *aff’d*, 737 F.3d 1338 (Fed. Cir. 2013); *Kern Liebers USA, Inc. v. United States*, 881 F. Supp. 618, 621 (CIT 1995) (citing *Minebea*, 782 F. Supp. at 120).

²⁰⁶ See “Petition for the Imposition of Antidumping and Countervailing Duties on Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China and Taiwan,” dated December 31, 2013 (“Petitions on China and Taiwan”).

²⁰⁷ See the Petition at 3, 5-6, 21, 34, 37, and 53; Letter from Petitioner, “Re: Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Case Brief of Solar World Americas, Inc.,” dated October 16, 2014 at 5-6; Letter from Petitioner to the Department, “Re: Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China and Taiwan: Rebuttal to Respondents’ Scope Comments” (Apr. 3, 2014) at 11-13.

²⁰⁸ See the Petitions on China and Taiwan, Volume 1 at 3-4.

chain to avoid paying the AD and CVDs imposed by *Solar I*.²⁰⁹ Further, there exist prior AD and CVD orders on related merchandise (i.e., solar cells and modules) from the PRC – *Solar I* – and following the initiation of the *Solar I* investigations and the imposition of those orders, there has been a shift in trade flows that has resulted in increased imports of non-subject modules produced in China.²¹⁰ Such imports – if they are dumped and/or unfairly subsidized and injurious – should not be beyond the reach of the AD and CVD laws.

The Department has also taken into account considerations regarding administrability, enforceability, and potential evasion. If these investigations result in an AD and/or CVD order, as relevant, the scope clarification adopted in this final determination will make the resulting order(s) substantially easier to administer and enforce (for both the Department and CBP), by helping to prevent significant and widespread evasion similar to the evasion that we have seen result from parties that exploit the substantial transformation analysis conducted in *Solar I*. As indicated in the Petition, although “imports of modules from China consisted largely of modules assembled with Chinese cells” from 2010 through early 2012, “{s}ince that time, imports of modules from China have consisted almost entirely of modules assembled in China from solar cells completed or partially manufactured in Taiwan or other countries (i.e., cells manufactured in Taiwan from Taiwanese inputs, or cells manufactured in Taiwan or other countries from Chinese inputs, including wafers).”²¹¹ The scope which was proposed in the Petition and on which we initiated investigations may result in the evasion of duties and, thus, ineffective relief to the Petitioner due to the complex and adaptable global supply chain that allows production processes for solar cells and modules to be easily moved across borders. With this scope clarification, it is the Department’s intent to reduce as much as possible additional opportunities for evasion like those that resulted after the imposition of AD and CVD cash deposits in *Solar I*. The Department has a long-standing practice of taking potential circumvention concerns into consideration when defining the scope.²¹² This practice has been upheld by the CIT and the CAFC.²¹³ Indeed, the Courts have recognized that the Department has “inherent power to

²⁰⁹ *Id.* at 4-5.

²¹⁰ *Id.* at 3, 5-6, 21, 34, 37, and 53.

²¹¹ *Id.* at 5-6; *see also Id.* at 21.

²¹² *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany*, 61 FR 38166, 38169 (July 23, 1996) (“We agree with the petitioner that incomplete merchandise by necessity must be included in the scope of these investigations. Given the very large size of {large newspaper printing presses and components thereof} and the complex importation process, complicated by the further manufacturing and/or installation activities performed in the United States by the respondents, it was the Department’s intent to use the language at issue to avoid creating loopholes for circumvention, including those arising from differing degrees of completeness of the imported merchandise. The Department is concerned that, because of the great number of parts involved, there is the potential that a party may attempt to exclude its merchandise from the scope of these investigations on the basis of a lack of completion.”); *Cellular Mobile Telephones and Subassemblies from Japan; Final Determination of Sales at Less Than Fair Value*, 50 FR 45447, 45448 (October 31, 1985) (“The determination to include subassemblies within the scope of the investigation was based on the need to prevent circumvention of any antidumping order on {cellular mobile telephones (“CMTs”)} through the importation of major CMT subassemblies, and the Department’s broader conclusion that the investigation properly should include subassemblies.”).

²¹³ *See Mitsubishi Elec. Corp. v. United States*, 700 F. Supp. 538, 555 (CIT 1988) (“*Mitsubishi P*”) (“{the Department} has a certain amount of discretion to expand the language of a petition to encompass the literal intent of the petition, ... with the purpose in mind of preventing the intentional evasion or circumvention of the

establish the parameters of the investigation so as to carry out its mandate to administer the law effectively and in accordance with its intent.”²¹⁴

Furthermore, certain interested parties commented that they did not track their merchandise in a way that would allow them to definitively report only that merchandise falling within the “two-out-of-three” scope proposed in the Petition.²¹⁵ The scope being adopted in these investigations resolves interested parties’ concerns in this respect, by covering *all* modules assembled in the PRC from third-country cells. Under the scope being adopted for these final determinations, producers and exporters would not need to track for purposes of these proceedings the ingots, wafers, or partial cells that are being used in the third-country cells being assembled into modules in China.

Based on these considerations, and in order to evaluate whether there is unfair pricing and/or subsidization of modules assembled in the PRC using third-country cells, the Department finds it is appropriate to determine for purposes of these investigations that the country of origin of such modules is the PRC.

In determining the country-of-origin of a product, the Department’s usual practice has been to conduct a substantial transformation analysis.²¹⁶ Consistent with its practice, the Department considered in *Solar I* whether it should apply its substantial transformation analysis and found that “the application of its substantial transformation test {was} an appropriate means to resolve country-of-origin issues like the one presented in *{that} investigation . . .*”²¹⁷ Based on this analysis, the Department determined that the solar cell was the essential active component of the module, that assembly of cells into modules did not constitute substantial transformation such

antidumping duty law.”), *aff’d*, 898 F.2d 1577 (Fed. Cir. 1990); *see also Tung Mung Dev. Co. v. United States*, 26 CIT 969, 979 (CIT 2002) (citing *Mitsubishi I*, 700 F. Supp. at 555), *aff’d*, 354 F.3d 1371 (Fed. Cir. 2004).

²¹⁴ *See Torrington*, 745 F. Supp. at 728; *see also Mitsubishi Elec. Co. v. United States*, 898 F.2d 1577, 1582 (Fed. Cir. 1990) (“*Mitsubishi IP*”) (“The determination of the applicable scope of an antidumping order that will be effective to remedy the dumping that the {Department} has found lies largely in the {Department’s} discretion”).

²¹⁵ A group of some of the largest Chinese solar product producers stated that it is virtually impossible for importers to know and to trace the origin of the ingots and wafers in cells that are assembled into modules when the module manufacturers purchase the cells from third parties in other countries, or to distinguish between the value of modules with cells that meet Petitioner’s “two-out-of-three” test and those that do not. *See* the February 18, 2014 Scope Comments Letter submitted by of Yingli Green Energy Holding Company Limited, Yingli Green Energy Americas, Inc., Canadian Solar Inc., Changzhou Trina Solar Energy Co., Ltd., Wuxi Suntech Power Co., Ltd., Shanghai JA Solar Technology Co., Ltd., Hefei JA Solar Technology, Co., Ltd., and Jinko Solar Co., Ltd. Further demonstrating this, the mandatory respondent Changzhou Trina Solar Energy Co., Ltd. and Trina Solar (Changzhou) Science & Technology Co., Ltd. (“Trina Solar”) stated that it does not know what country produced the wafers contained in its purchases of solar cells. *See* Trina Solar’s April 22, 2014 response at Attachment A-1. Included in December 15, 2014 Other Proceedings’ Documents Memorandum at Attachment 2. Similarly, Yingli Green Energy Holding Company and Yingli Green Energy Americas, Inc. and Canadian Solar Inc. noted that their respective company records do not specifically identify the origin of the wafers used to produce the cells Yingli purchased from non-Chinese suppliers. *See* both companies’ February 14, 2014 quantity and value responses. Included in December 15, 2014 Other Proceedings’ Documents Memorandum at Attachment 3.

²¹⁶ *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Glycine from India*, 73 FR 16640 (March 28, 2008) and accompanying Issues and Decision Memorandum at Comment 5; *see also Stainless Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review*, 69 FR 74495 (December 14, 2004) and accompanying Issues and Decision Memorandum at Comment 4.

²¹⁷ *See* Solar I IDM at Comment 1, page 8 (emphasis added).

that the assembled module could be considered a product of the country of assembly, and consequently, that modules assembled in the PRC from solar cells produced in third countries are not covered by the scope of that investigation.²¹⁸

Although the Department routinely has found a substantial transformation analysis to be an appropriate means to determine the country of origin of merchandise under investigation, in the circumstances presented by these investigations and discussed above, the Department has determined that it needs to conduct additional analysis. Thus, contrary to certain parties' arguments, our adoption of the scope described in the October 3rd Letter is not arbitrary. Rather, it addresses the specific and special circumstances of these proceedings, as described above. Relying on the substantial transformation analysis alone could result in failure to provide relief to the domestic industry for alleged injury caused by a finished product produced in the subject country but which would be deemed to originate from a third-country for AD/CVD purposes if the traditional substantial transformation analysis were applied. In these particular proceedings, a rote application of a substantial transformation analysis would not allow the Department to address unfair pricing decisions and/or unfair subsidization concerning the modules that is taking place in the country of export. Consistent with sections 701 and 731 of the Act, the Department must be able to address such circumstances, and where appropriate, address unfair pricing decisions or unfair subsidization that is taking place in the exporting country where further manufacturing, such as assembly, occurs, notwithstanding that such activities may not necessarily result in a substantial transformation of merchandise. While the Department intends that a substantial transformation analysis will continue to be the primary manner in which it will evaluate country of origin in AD/CVD proceedings, given the facts presented by these investigations (and in light of the *Solar I* orders already in place, under which country of origin was already based on a substantial transformation analysis), the Department finds that its additional analysis is appropriate. We do not agree that our analysis is inconsistent with *Solar I*. Rather, in these investigations we are building upon our decisions in *Solar I* and finding, given the circumstances before us, that it is appropriate to go beyond our decision concerning country of origin from *Solar I* to address merchandise exported from China that is not subject to the *Solar I* orders and that is alleged to injure the domestic industry through unfair pricing and/or subsidization.

With regard to respondents' assertion that the scope clarification results in a single product having two countries of origin, we disagree. No product would at any time have two countries of origin for AD/CVD purposes. The country of origin of these modules, for AD/CVD purposes, is only the PRC. If an AD and/or CVD order results from these investigations, these modules would be subject to AD and/or CVD duties under the relevant order and not another solar-related order (*i.e.*, not *Solar I* or an order covering solar products from Taiwan, should that investigation result in an AD order). We also disagree with the Petitioner's assertion that Taiwanese cells assembled into a module in the PRC would result in a module of Taiwanese origin. With the scope clarification we have adopted for the PRC investigation, the PRC is the country of origin of all modules, laminates and/or panels assembled in the PRC that contain crystalline silicon photovoltaic cells produced in a customs territory other than the PRC.

²¹⁸ See *Solar I* IDM at Comment 1, page 5-7.

B. Extent of the Scope Clarification

Respondents:

- The scope as proposed in the October 3rd Letter is not a clarification, but an unlawful expansion and alteration of the scope.
 - The scope as proposed in the October 3rd Letter eliminates entirely the “two out of three” principle incorporated into the scope of these investigations, adds to the scope solar modules made from solar cells from countries outside China and Taiwan, and thereby crafts a scope of the investigation that was never contemplated in the Petitions or in any other submission or determination before or after the initiation of these investigations.
 - Petitioner has not requested the expanded scope proposed by the Department, and nothing in the Petition or in Petitioner’s subsequent submissions to the Department or the U.S. International Trade Commission (“ITC”) indicates otherwise.
 - There are numerous CIT decisions demonstrating that a significant expansion and alteration of the scope as outlined in the October 3rd Letter goes far beyond what the CIT decisions have found permissible.²¹⁹
 - The Department stated in *Softwood Lumber from Canada* that while it has the authority to define or clarify the scope of an investigation and must exercise this authority in a manner which reflects the intent of the Petition, the Department generally should not use its authority to define the scope of an investigation in a manner that would thwart the statutory mandate to provide the relief requested in the Petition. As a result, absent an “overarching reason to modify the scope in the Petition, the Department accepts it.”²²⁰

Petitioner:

- The Department’s clarification of the scope at this final phase in the proceedings is fair and reasonable, and would not be unlawful. The CIT has specifically stated that the Department has the discretion to clarify the scope, even in a way that “expand{s} the language of a petition,” in the course of an AD/CVD investigation.²²¹ This decision was upheld by the CAFC.²²²
- The respondents themselves cite *Allegheny Bradford*, in which the CIT held that “{t}here is no clear point during the course of an antidumping investigation at which {the Department} loses the ability to adjust the scope.”²²³
- The scope as proposed in the October 3rd Letter is fully consistent with Petitioner’s intent.

²¹⁹ See *Minebea*, 782 F. Supp. at 120; see also *Allegheny Bradford Corp. v. United States*, 342 F. Supp. 2d 1172 (CIT 2004); *Smith Corona Corp. v. United States*, 796 F. Supp. 1532 (CIT 1992).

²²⁰ *Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada*, 67 FR 15539, 15542 (April 2, 2002) (“*Softwood Lumber from Canada*”).

²²¹ See *Mitsubishi I*, 700 F. Supp. at 555.

²²² See *Mitsubishi II*, 898 F.2d at 1577.

²²³ See *Allegheny Bradford*, 342 F. Supp. 2d at 1187.

- As demonstrated by its comments to *Solar I*, Petitioner’s intent has always been to cover all cells from the PRC and all modules from the PRC.²²⁴ In fact, Petitioner filed the instant investigations specifically to close the loophole created as a result of the Department’s scope determination in the first solar cases and to cover all cells and modules from the PRC, as well as address unfair trade practices in Taiwan that were exacerbated as a result of that scope determination.
- Moreover, in this case, the Department is even more justified than under other circumstances in adjusting the scope at this stage in these proceedings, as the Department has been very clear throughout these investigations that it is continuing to evaluate the scope, and that its country of origin determinations of related subject merchandise could change.²²⁵

Department’s Position: We disagree with respondents’ contention that the proposed clarification of the scope in the October 3rd Letter, which we have adopted in these final determinations, does not reflect Petitioner’s intent. The record of this investigation demonstrates that Petitioner’s intent would be reflected by a scope that covers all solar modules assembled in China using third-country cells. Petitioner’s stated motivation for filing its Petition is to close a “loophole” that resulted when producers subject to the *Solar I* investigations, following the Department’s application of a substantial transformation analysis to fix the scope of that proceeding, increased imports of modules assembled in the PRC with non-PRC cells so as to avoid the reach of the *Solar I* orders.²²⁶ For instance, Petitioner stated that “imports of modules from China consisted largely of modules assembled with Chinese cells” from 2010 through early 2012, but that “{s}ince that time, imports of modules from China have consisted almost entirely of modules assembled in China from solar cells completed or partially manufactured in Taiwan or other countries (*i.e.*, cells manufactured in Taiwan from Taiwanese inputs, or cells manufactured in Taiwan or other countries from Chinese inputs, including wafers).”²²⁷ Petitioner also stated that “imports of Taiwanese {solar} cells and modules and Chinese modules assembled from non-Chinese cells continued to swamp the U.S. marketplace in the first nine months of 2013,” despite the relief provided by the *Solar I* orders.²²⁸ Further, Petitioner contended that the Petition showed “that many Chinese solar producers ceased using Chinese-manufactured cells and began using third-country manufactured cells in their solar modules” as a result of the *Solar I* investigations.²²⁹ In addition, Petitioner cited reports confirming that “Chinese solar producers continue to use third-country cells, largely manufactured in Taiwan, to assemble into solar modules in China and export to the United States.”²³⁰

The scope language of the Petition for these investigations is an expression of the Petitioner’s intent, as noted above, to cover solar modules made in China using solar cells produced in third

²²⁴ See Solar I IDM at Comment 1.

²²⁵ See, e.g., *Certain Crystalline Silicon Photovoltaic Products from Taiwan: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 79 FR 44395 (July 31, 2014) and accompanying Preliminary Decision Memorandum at 5.

²²⁶ See the 2013 CVD Petition on China at 3, 21, and 53.

²²⁷ See the December 31, 2013 AD and CVD Petitions on China and Taiwan, Volume 1, at 5-6; see also *id.* at 21.

²²⁸ *Id.* at 34.

²²⁹ *Id.* at 37.

²³⁰ *Id.*

countries. However, as discussed in Comment 1.A., the Department is taking into considerations concern about potential evasion of AD and/or CVD measures, as relevant. The scope which was proposed in the Petition and on which we initiated the investigations, may itself result in the evasion of duties and, thus, ineffective relief to the Petitioner, due to the complex and very adaptable global supply chain that allows producers to modify their production chains easily and quickly. Specifically, producers could simply have sourced their wafers from a country other than the subject country in order to avoid the “two out of three” language in the second sentence of that scope. As a result, the Department explored whether modified scope language could more effectively implement Petitioner’s intent while also mitigating evasion concerns and alleged complications in parties’ ability to properly report subject merchandise to the Department in the context of its administrative proceeding and/or to CBP in connection with importation, and ultimately proposed the clarification in its October 3rd Letter.

Furthermore, in the parallel Taiwan AD investigation, the respondent companies have reported to the Department that following the implementation of the orders in *Solar I*, numerous Chinese companies began to contract with Taiwanese cell producers to manufacture cells for the purpose of exporting those cells to China for use in the production of panels, modules and laminates, and then to export those panels, modules and laminates to the United States.²³¹ This series of transactions was allegedly implemented, at least for many transactions, to evade the order in *Solar I*, and there are emails and communications referenced in the Taiwan IDM which discuss this series of transactions and the reasoning behind those transactions.²³² These communications substantiate the concerns expressed by the Petitioners in the Petition that the orders in *Solar I* have not adequately addressed the issues of Chinese dumping and unfair subsidization of solar panels, modules and laminates, and that a scope which specifically includes that merchandise in this investigation is necessary to address such concerns.

Even had Petitioner not expressly intended to include all solar modules assembled in China using third-country cells, the Department has the authority to identify such products in the scope of these investigations anticipating such configurations and thus serving to place parties on notice regarding how the Department might treat Chinese modules made from third-country cells if subsequent scope questions arise.²³³ In Comment 1.A above we discussed such reasons including, and beyond, Petitioner’s intent. One focus of the Department’s analysis related to

²³¹ See the Issues and Decision Memorandum accompanying the final determination of the Antidumping and Countervailing Duty Investigations of Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China and the Antidumping Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from Taiwan at Comment 4.

²³² *Id.*

²³³ See *Mid Continent Nail Corp. v. United States*, 725 F.3d 1295, 1300-1301, 1305-06 (Fed. Cir. 2013) (for the proposition that if the Department anticipates the need for addressing foreseeable areas of dispute, it should do so prior to the order so as to put parties on notice of what conduct will be regulated by the order and what factors will be considered in regulating that conduct). Although the Department cannot anticipate every possible permutation of solar products, as explained above, the Petition identified a shift in trade flows that resulted in increased imports of non-subject modules produced in China, and significant and widespread avoidance of the reach of *Solar I*. Based on this information, the Department finds that it is appropriate for the scope of the final determination to address all third country modules, not just those that fall within the “two out of three” scope language proposed by the Petitioner, because doing so will put parties on notice, provide greater certainty for those subject to the order, and preserves resources for all of the parties involved, including the Department.

potential evasion. Information on the record indicates that parties have been able to evade the reach of the *Solar I* orders. Thus, even while the investigations focused on merchandise covered by the “two out of three” language rather than “third country cells,” the Department anticipated that evasion concerns would likely arise for the original proposed scope. Through its modification of the scope of these investigations, the Department has identified a way of attempting to prevent such scenarios.²³⁴

We also do not agree that this clarification is a significant and, thus, impermissible expansion of the scope. As an initial matter, we note that Department’s “practice is to provide ample deference to the Petitioner with respect to the definition of the product for which it seeks relief under the AD and CVD laws.”²³⁵ The clarification also addresses concerns (expressed by respondent parties and shared by the Department) regarding the administrability of the “two out of three” scope language that was originally proposed. Further, applying the scope clarification proposed in the October 3, 2014, Letter results in no change to Trina Solar and Renesola/Jinko’s reported database.²³⁶ This clarification will not require the Department to collect any additional information from parties because necessary information is already on the record. At the same time, by more clearly expressing Petitioner’s intent of covering solar modules assembled in China using third-country solar cells, the scope as proposed in the October 3rd Letter will more effectively cover the solar modules from which Petitioner has been seeking relief. Moreover, the scope clarification results in a scope that, should this investigation result in an order, will be more administrable than the scope that was originally proposed.

C. Timeliness of a Potential Scope Clarification

Respondents:

- Even if the Department had the authority to expand the scope, it cannot do so this late in the investigation because it would result in the Department’s final determination not being based on substantial evidence, would prevent finalizing the record and issuing a final decision, and would deny parties due process.
 - Essentially, at this stage in the proceeding, the Department has already completed its investigation of the factual record and thus is unable to supplement the record with additional sales. Thus, an expansion of the scope at this time to include products not already covered would mean that the antidumping margins and subsidy rates calculated by the Department will be based on data that are not consistent with the sales that would be subject to the final expanded scope of these investigations.

²³⁴ *Id.* at 725 F.3d 1295, 1305-06.

²³⁵ See *Large Residential Washers From the Republic of Korea*, 77 FR 46391, 46392 (August 3, 2012) and accompanying Issues and Decision Memorandum at Comment 2. See also *Kern Liebers*, 881 F. Supp. at 621.

²³⁶ The Chinese mandatory respondents reported all U.S. sales containing third-country solar cells. See Trina Solar’s May 13, 2014 submission at 1. Included in December 15, 2014 Other Proceedings’ Documents Memorandum at Attachment 4. Renesola Zhejiang Ltd.’s (“Renesola”) April 24, 2014 submission at 25. Included in December 15, 2014 Other Proceedings’ Documents Memorandum at Attachment 5; and Jinko Solar Co. Ltd. and Jinko Solar Import and Export Co., Ltd.’s (“Jinko”) February 13, 2014 submission at 2. Included in December 15, 2014 Other Proceedings’ Documents Memorandum at Attachment 6.

- The CIT has stated that the Department’s “discretion to define and clarify the scope of an investigation is limited in part by concerns for the finality of administrative action, which caution against including a product that was understood to be excluded at the time the investigation began.”²³⁷ Thus, by including products that were not included in the Petition and were never the subject of the Department’s investigation inquiries, the Department risks undermining the factual basis for its determination and raises concerns about the finality of its administrative actions.
- The CIT has noted that the Department’s decision to change scope language at a late stage in a proceeding can undermine the entire investigatory process.²³⁸
- Reflecting these concerns, the Department denied a late request for scope clarification in the investigation of Coated Free Sheet from the PRC stating: “Moreover, we note that granting such a clarification would mean that a significant number of sales in the investigations would not be included in the margin calculations, raising a potential procedural safeguards concern.”²³⁹
- The Department has even gone so far as to say that it lacks the ability to change the scope after a preliminary determination, in part, because “{a}mending the scope language . . . would, in effect, serve to expand the current scope of subject merchandise that was subject to th{e} investigation at too late a stage in this proceeding.”²⁴⁰
- Because the scope change would occur at such a late stage in the proceeding, it denies due process for parties, especially parties that were not covered under the scope in effect during the *Preliminary Determination*. These Chinese companies and U.S. importers that are not presently part of the proceeding have no opportunity to participate in the hearing or “to be heard” and cannot participate meaningfully in this investigation because the factual record is closed.
 - The CAFC held in *Transcom v. United States* that by not listing exporters in the initiation notice there was deficient notice to the affected parties. In that case, the CAFC stated that importers have the right to complain about procedural flaws in the administrative proceeding, including the Department’s failure to provide adequate notice. The CAFC went on to state that the Department’s determination had to be overturned because the importer and its Chinese exporters had no notice of a change in the Department’s non-market economy practice and, therefore, no opportunity

²³⁷ See *Allegheny Bradford*, 342 F. Supp. 2d at 1187-1188, citing *Mitsubishi Heavy Indus., Ltd. v. United States*, 986 F. Supp. 1428, 1433 (CIT 1997).

²³⁸ See *Smith Corona*, 796 F. Supp. at 1535.

²³⁹ See *Smith Corona*, 796 F. Supp. at 1535.

²⁴⁰ See *Final Determination of Sale at Less Than Fair Value: Sodium Hexametaphosphate from the People’s Republic of China*, 73 Fed. Reg. 6479 (Feb. 4, 2008) (“*Sodium Hexametaphosphate from the PRC*”), and accompanying Issues and Decision Memorandum at Comment 1; see also *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Orange Juice from Brazil*, 71 Fed. Reg. 2183 (Jan. 13, 2006) (“*Certain Orange Juice from Brazil*”), and accompanying Issues and Decision Memorandum at Comment 2.

to submit evidence to demonstrate the exporters' independence from the state-controlled entity.²⁴¹

Petitioner:

- The majority of modules being shipped from the PRC and Taiwan that would be subject to the scope under the Department's proposed scope clarification were also subject to the scope as it existed at the time data were collected from respondents and the *Preliminary Determination* was issued. Thus, the databases on which the Department will calculate final subsidy and dumping margins are largely consistent with the scope as stated in the Department's proposed scope clarification.
- The proposed scope clarification does not implicate due process concerns as the Department has made clear throughout these investigations that the scope of the investigations is subject to continuing evaluation, and that the country-of-origin determinations related to subject merchandise could change for the final determination.
 - Specifically, in the initiation notice, the Department invited comments on the scope of these investigations, clearly indicating to the public that the scope was potentially subject to modification.²⁴²
 - The Department again noted its ongoing evaluation of the scope in the *Preliminary Determination*, in which, after adopting Petitioner's proposed scope, the Department explained that it was continuing to analyze interested parties' scope comments, including comments on whether it is appropriate to apply a traditional substantial transformation or other analysis in determining the applicability of the investigation to certain solar modules described in the Petition.²⁴³
- Further, respondents have repeatedly claimed that it is nearly impossible for importers to know and to trace the origin of the ingots and wafers in cells that are assembled into modules when the module manufacturers purchase the cells from third parties in other countries. While Petitioner disputes this claim, if true, respondents and others would not have known for certain whether or not their products were subject to these investigations. Given this potential uncertainty, all exporters of potential subject merchandise should have filed quantity and value submissions and separate rate applications with the Department.
- Respondents' citations to *Allegheny Bradford* for support are inapposite to this investigation because as stated by the CIT, the issue in *Allegheny Bradford* was "whether Commerce may construe an antidumping order to cover products which bear a characteristic that cannot be reconciled with the language of the order."²⁴⁴ These aspects

²⁴¹ See *Transcom, Inc. v. United States*, 182 F.3d 876, 880-84 (Fed. Cir. 1999).

²⁴² See *Solar Products Initiation Notice*, 79 FR at 4661.

²⁴³ See *Preliminary Determination and Accompanying Issues and Decision Memorandum* ("China AD Prelim I&D Memo") at 5; *Certain Crystalline Silicon Photovoltaic Products From Taiwan: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 79 FR 44395 (July 31, 2014) and accompanying Issues and Decision Memorandum ("Taiwan AD Prelim I&D Memo") at 5; *Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 79 FR 33174 (June 10, 2014) and accompanying Issues and Decision Memorandum ("China CVD Prelim I&D Memo") at 4.

²⁴⁴ See *Allegheny Bradford*, 342 F. Supp. 2d at 1188.

of *Allegheny Bradford* are, therefore, inapplicable to the current circumstances, in which Commerce is still formulating the final scope language, which will ultimately be included in any orders that are issued.

Department’s Position: We disagree with respondents. As the CAFC explained, “the purpose of the petition is to propose an investigation,” and the “purpose of the investigation is to determine what merchandise should be included in the final order.”²⁴⁵ Ultimately, therefore, it is the Department’s responsibility to define the scope of the investigation and ensuing order.²⁴⁶ The Department “retains broad discretion to define and clarify the scope of an antidumping investigation in a manner which reflects the intent of the petition”²⁴⁷ and has the authority to modify or clarify the scope at any time. As the CAFC has recognized, the Department has “inherent power to establish the parameters of the investigation, so that it {is} not . . . tied to an initial scope definition that . . . may not make sense in light of the information available to {the Department} or subsequently obtained in the investigation.”²⁴⁸ Similarly, the CIT has stated that the Department has a “certain amount of discretion to expand the language of a petition to encompass the literal intent of the petition, . . . with the purpose in mind of preventing the intentional evasion or circumvention of the antidumping duty law.”²⁴⁹ As even respondents themselves recognize, “{t}here is no clear point during the course of an antidumping investigation at which {the Department} loses the ability to adjust the scope. . . .”²⁵⁰ Thus, the Department “may depart from the scope as proposed by a petition if it determines that petition to be overly broad, or insufficiently specific to allow proper investigation, or in any other way defective.”²⁵¹

Further, the scope modification adopted for the PRC AD and CVD final determinations has no impact on the data required from and submitted by the parties. As noted above, application of the scope clarification proposed in the October 3rd Letter will result in no change in the reported sales of the mandatory respondents. We further note that no interested parties have provided specific arguments about what changes would occur in the mandatory respondents’ U.S. sales databases if the Department modified the scope as proposed in the October 3rd Letter.

Further mitigating the impact of applying the proposed scope clarification is the fact that most, if not all, parties reported in their Quantity and Value questionnaires all solar modules containing solar cells from third countries because they claim that they did not know the source of the wafer contained in the solar cells they purchased from third countries.²⁵² While respondents have

²⁴⁵ See *Duferco*, 296 F.3d at 1096-97.

²⁴⁶ *Id.* at 1097; accord *Mitsubishi II*, 898 F.2d at 1582; see also *King Supply Co. v. United States*, 674 F.3d 1343, 1345, 1348 (Fed. Cir. 2012).

²⁴⁷ See *Minebea*, 782 F. Supp. at 120.

²⁴⁸ See *Duferco*, 296 F.3d at 1089 (citation and quotation marks omitted); see also *Save Domestic Oil, Inc. v. United States*, 240 F. Supp. 2d 1342, 1351 (CIT 2002).

²⁴⁹ See *Mitsubishi I*, 700 F. Supp. at 555.

²⁵⁰ See *Allegheny Bradford*, 342 F. Supp. 2d at 1187.

²⁵¹ *Ad Hoc Shrimp Trade Action Comm. v. United States*, 637 F. Supp. 2d 1166, 1175 (CIT 2009) (citation and quotation marks omitted); see also *Allegheny Bradford*, 342 F. Supp. 2d at 1188.

²⁵² See, e.g., the February 13, 2014 quantity and value submission by Jinko, the February 14, 2014 quantity and value responses of Yingli Green Energy Holding Company and Yingli Green Energy Americas, Inc., and Canadian

stated that there *may* be U.S. imports that were not covered by the scope of the *Preliminary Determination* that would be covered by the proposed scope clarification, they have not identified any such shipments.

The Department also disagrees with the respondents' claim that a scope clarification at this point in the investigation would deny due process to parties. The Department has made clear throughout these investigations that the scope of the investigations is subject to continuing evaluation, and that the country of origin determinations related to the subject merchandise could change for the final determination. Specifically, in the initiation notice, the Department invited comments on the scope of these investigations and numerous parties submitted comments.²⁵³ The Department again noted in the *Preliminary Determination* that it was continuing to analyze interested parties' scope comments.²⁵⁴ The very circumstances of these investigations, filed in response to the *Solar I* orders, and in which the Department explicitly stated that the *Solar II* investigations excluded merchandise covered by the *Solar I* orders, placed parties on notice that imports of solar products from China beyond those covered by the *Solar I* orders were potentially subject to the investigation. Thus, we find that our notifications that we were considering changes to the scope provided parties with adequate due process with regard to this scope clarification. In fact, the only citation by interested parties to an actual change to the *Preliminary Determination* that would result from a clarification of the scope as proposed in the October 3rd Letter concerns a situation where a party did in fact heed the Department's notice that product coverage was being reconsidered. One separate rate applicant, tenKsolar, reported to the Department that it had no shipments subject to the scope as stated in the *Preliminary Determination*²⁵⁵ but, as a precautionary measure, it filed a separate rate application in the China investigation, which, as we note below, we have granted for this final determination.²⁵⁶ The reaction of tenKsolar indicates that our notice of potential scope did, in fact, provide parties with adequate notification and due process. We also note that exporters of subject merchandise may still apply for review of their sales in the first administrative review should these investigations result in the imposition of an AD and/or CVD order, as relevant.

We note that respondents' reliance on *Sodium Hexametaphosphate from the PRC* and *Certain Orange Juice from Brazil* is misplaced. In both of these cases, the Department declined to modify the scope of the investigation because the modification requested by Petitioners was not a mere clarification, but rather would have been an expansion of the scope, and thus should have been proposed as an amendment to the petition prior to the initiation of the investigation.²⁵⁷ In

Solar Inc. and April 22, 2014 response by Trina Solar at Attachment A-1 (Included in December 15, 2014 Other Proceedings' Documents Memorandum at Attachment 7).

²⁵³ See Pre-Prelim Scope Comments.

²⁵⁴ See *China AD Prelim I&D Memo* at 5; *Taiwan AD Prelim I&D Memo* at 5; *China CVD Prelim I&D Memo* at 4.

²⁵⁵ See tenKsolar's February 12, 2014 quantity and value submission at Attachment I to the China investigation, where it reported no EP or CEP sales, but noted that it sold solar modules to the United States during the POI that it assembled with solar cells fabricated in Taiwan from Taiwan-origin wafers (Included in December 15, 2014 Other Proceedings' Documents Memorandum at Attachment 8).

²⁵⁶ See tenKsolar's March 31, 2014 submission (Included in December 15, 2014 Other Proceedings' Documents Memorandum at Attachment 10).

²⁵⁷ See *Sodium Hexametaphosphate from the PRC* at Comment 1; see also *Certain Orange Juice from Brazil*, at Comment 2.

contrast, the Petitioner in this case did not request the clarification proposed in the October 3rd Letter. Instead, the Department proposed the clarification, in response to and taking account of interested parties' comments on the scope of these investigations. Further, we find that the modification adopted for the purpose of the final determination in the PRC AD and CVD investigations is not an expansion of the scope because the Petition expresses the Petitioner's intent to cover modules assembled in China using third-country solar cells. As noted above, the Petitioner stated its intent to include all of these modules in the scope in its Petition to this investigation, citing the "loophole" that resulted when, following the Department's substantial transformation analysis in the *Solar I* investigations, producers subject to the *Solar I* investigations increased imports of modules assembled in the PRC with non-PRC cells with the result of avoiding the reach of the *Solar I* AD and CVD orders.²⁵⁸ Petitioner also stated that since early 2012 "imports of modules from China have consisted almost entirely of modules assembled in China from solar cells completed or partially manufactured in Taiwan or other countries"²⁵⁹

Similarly, the respondents' reliance on *Transcom* is also misplaced. In *Transcom*, the CAFC held that the Department did not provide sufficient notice to an importer that the antidumping duties on its exporters' products could be affected by an administrative review because the exporters were not named in the initiation notice and the Department had not announced a change in its non-market economy practice at the time it initiated the review.²⁶⁰ However, *Transcom* is distinguishable from the instant case because it involved an administrative review, not an antidumping investigation, and a change in practice without notice rather than a modification or clarification to the scope of an investigation. Further, the Court explained that the statutory and regulatory notice provisions only require that "any reasonably informed party should be able to determine, from the published notice of initiation read in light of announced Department policy, whether particular entries in which it has an interest may be affected by the administrative review."²⁶¹ Here, the Department met its obligation to notify possible interested parties repeatedly and throughout the investigations, as explained above.

D. Impact of a Scope Clarification on the ITC's Final Determination

Respondents:

- A substantial change in scope such as the one contained in the October 3rd Letter would undermine the ITC injury determination.
 - The ITC this late in the proceeding cannot send questionnaires to U.S. solar module producers, foreign producers of solar modules and U.S. importers of solar modules containing third-country solar cells. Thus, the ITC's injury determination will not cover the new products in question, which means that any

²⁵⁸ See the December 31, 2013 AD and CVD Petitions on China and Taiwan, Volume 1, at 3, 5-6, 21, 34, 37, and 53; Solar World Case Brief at 5-6; Letter from Petitioner to the Department, "Re: Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China and Taiwan: Rebuttal to Respondents' Scope Comments" (Apr. 3, 2014) at 11-13.

²⁵⁹ See the December 31, 2013 AD and CVD Petitions on China and Taiwan, Volume 1, at 5-6 (emphasis added); see also *id.* at 21.

²⁶⁰ *Transcom*, 185 F.3d at 881-883.

²⁶¹ *Id.* at 882-883.

antidumping and countervailing duty orders issued will be for products which the ITC has not determined injure the U.S. industry.

Petitioner:

- The majority of modules being shipped from the PRC and Taiwan that would be subject to the scope under the Department's proposed scope clarification, were also subject to the scope as it existed at the time data was collected from respondents and the *Preliminary Determination* was issued. Thus, the data bases on which the ITC will calculate final subsidy and dumping margins would likely be consistent with the data that would be included under the scope as stated in the Department's proposed scope clarification.
- While the ITC never has perfect import coverage in its investigations, the data the ITC will collect in the final phase of the investigation will be largely consistent with the scope as stated in the proposed scope clarification.

Department's Position: While respondents make arguments about the potential implications of the Department's scope clarification on the investigation underway at the ITC, the Department cannot speculate about what potential effect, if any, the Department's scope decision in these investigations may have on the ITC's investigation. With respect to the Department's China AD and CVD investigations, as we noted above, the scope clarification proposed in the October 3rd Letter and adopted for purposes of this final determination will result in no change to the reported sales of the mandatory respondents.

E. Consistency of Scope as Clarified in the October 3rd Letter with the United States' WTO Obligations

Respondents:

- The World Trade Organization ("WTO") Agreement on Rules of Origin imposes an obligation on Members to ensure that "rules of origin shall not in themselves create restrictive, distortive, or disruptive effects on international trade" and "shall not discriminate between other Members."²⁶² The scope clarification proposed in the October 3rd Letter, if adopted, would have precisely such a distortive and discriminatory effect on trade between WTO Members because it would subject imports of modules made with any third-country cells to AD/CVD duties calculated for Chinese or Taiwanese products.
- The scope clarification proposed in the October 3rd Letter treats a module assembled in the PRC using cells produced in Taiwan as a Chinese origin product subject to the current PRC investigations, while it treats a solar module assembled in Malaysia using cells produced in Taiwan as a Taiwanese-origin product subject to the current Taiwan investigation. Thus, the solar module originating in China containing Taiwanese cells would be deprived of the advantage of market economy treatment provided to the like module originating in Malaysia containing Taiwanese cells. Therefore, it violates the

²⁶² See Articles 1.2, 2(c), and 2(d) of the WTO Agreement on Rules of Origin.

United States' obligations under GATT to provide parties to GATT with most-favored nation treatment.²⁶³

Petitioner:

- Any “distortion” in international trade is the result of the unfair trade practices being engaged in by Chinese and Taiwanese solar manufacturers that these investigations are attempting to redress.
- The scope clarification also does not discriminate between the United States' treatment of imports from the PRC and Taiwan on the one hand, and imports from other WTO Members on the other hand, by bringing additional products from the PRC and Taiwan within the scope of any eventual AD/CVD orders that would otherwise not fall within that scope. Any solar cells and/or modules that fall within the scope clarification will be subject to equal treatment. And, contrary to respondent assertions, it would not subject “any third country cells” to AD/CVD duties; rather, it would subject imports of modules from the PRC and Taiwan – which have been determined to be dumped and subsidized – to lawfully calculated duties.
- Under the scope clarification proposed in the October 3rd Letter, the Non Market Economy (“NME”) methodology would, appropriately, only be applied to cells originating in the PRC, as well as modules assembled in the PRC. Contrary to respondents' claims, cells and modules originating in the PRC, an NME country, are not entitled to ME treatment. On the other hand, given Taiwan's status as an ME country, cells originating in Taiwan (other than those destined for module-assembly in the PRC), as well as modules, laminates, and/or panels assembled in Taiwan, would appropriately be subject to duties calculated based on an ME methodology.

Department's Position: We disagree with respondents' claim regarding obligations under the WTO Agreement on Rules of Origin. The Department's determination here is consistent with U.S. law, which in turn is consistent with U.S. WTO obligations.

We also disagree that any orders will unfairly impact the trade of solar modules made with any third-country cells. As noted by Petitioner, the scope proposed in the October 3rd Letter and adopted in the final determinations would not subject third-country cells to AD/CVD duties. Instead, the scope covers imports of modules that the Department has determined to have a country of origin of the PRC for purposes of these investigations – and in the event of AD and CVD orders, provides a remedy for the unfair pricing practices involving, and subsidization of, such merchandise by imposing AD and CVD duties. Thus, any alleged distortions or disruptive effects on international trade are the result of the unfair trade practices being engaged in by

²⁶³ Respondents cite to Article I of GATT 1994, which requires that: “with respect to customs duties and charges of any kind imposed on or in connection with importation or exportation ... , and with respect to all rules and formalities in connection with importation and exportation, ... any advantage, favour, privilege or immunity granted by any Member to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other Members.” Respondents claim that subjecting solar cells from market economies to NME treatment because they are included in Chinese solar modules violates this GATT article.

parties involved in the sale and manufacture of such products, not the result of the Department providing redress for these unfair trade practices.

We also disagree that the scope adopted in the PRC investigations unfairly subjects third-country solar cells assembled into solar modules in China to our NME methodology for calculating dumping margins. As explained above, the Department has determined that modules assembled in China using third-country solar cells, including Taiwanese solar cells, have a country of origin of China. This determination is consistent with the Petitioner's intent. In the Petition, Petitioner alleged that the unfair pricing of modules assembled in China is causing injury to the domestic industry. Although Petitioner also alleged that the unfair pricing of solar cells manufactured in Taiwan is causing injury to the domestic industry, the Petition indicates that Petitioner intended for injury resulting from the unfair pricing of a panel assembled in China to take precedence over the injury resulting from the unfair pricing of a Taiwanese solar cell. Therefore, we find that it is appropriate to focus on the alleged injurious unfair pricing and subsidization of these modules that are assembled in China, and, accordingly, that it is appropriate to apply the NME methodology in determining whether such panels are dumped. In contrast, panels assembled in Malaysia using Taiwanese cells involve no production of either cells or modules in an NME country. Moreover, the fact that there happens to be, in this instance, a concurrent investigation involving solar products from Taiwan has no relevance to what the appropriate methodology is for examining dumping of panels that are assembled in China in the separate investigation of modules from China. It would be appropriate to apply the NME methodology to modules assembled in China in this investigation even if there were no concurrent Taiwan investigation.

F. Administrability Concerns

Respondents:

- The scope as proposed in the October 3rd Letter cannot be administered or applied due to the numerous contradictions and overlaps with the PRC and Taiwan investigations and also with the *Solar I* order.
 - For the same solar module,
 - At times the country of origin would be based on substantial transformation, or where the solar cell is manufactured, such as in *Solar I* and partially in the ongoing investigation on Taiwan, but
 - At other times the country of origin would be determined by where the solar module assembly took place, such as in the ongoing investigation of the PRC and partially in the ongoing investigation of Taiwan.

Petitioner:

- While the country of origin analyses from the *Solar I* investigation and that proposed by the scope clarification may differ, they are not necessarily inconsistent, nor unclear.
- The proposed scope clarification specifically exempts products subject to the existing solar AD/CVD orders from these investigations.
- The country of origin rules in the proposed scope clarifications (providing a supplemental country of origin rule for those products not covered by the initial solar investigations) prevent any product from at any time having two countries of origin.

Department’s Position: We disagree with respondents and find the scope as clarified in the October 3rd Letter to be administrable. As noted by respondents, the country of origin criteria in *Solar I*, applicable to solar modules, differ from these investigations. However, we determine that the scope of *Solar I* is very clear as it states that the country of origin of a solar module is determined by where the solar cell was produced.²⁶⁴ Not only is the scope and country of origin determination of *Solar I* clear, but the scope adopted in the final determinations of the current investigations emphasize that they do not alter, revise, or overlap the scope of *Solar I*. Specifically, the scopes of the current China and Taiwan investigations each state that “excluded from the scope of this investigation are any products covered by the existing antidumping and countervailing duty orders on {*Solar I*}.”²⁶⁵ Further, any possible overlaps between the current China and Taiwan investigations are eliminated by the scope language stating that solar cells assembled in China using solar cells manufactured in Taiwan are subject to the current China investigation and not the Taiwan investigation.²⁶⁶ Thus, we have eliminated any overlap of solar products subject to any of these investigations and those subject to *Solar I*.

Meanwhile, the modifications to the scope language of the *Preliminary Determination* proposed in the October 3rd Letter and adopted in these determinations result in single change: that the country of origin of a solar module assembled in the PRC is the PRC. We find this country of origin language likewise clear and easily applied. Thus, while the country of origin criteria of *Solar I* and the country of origin analysis stated in the proposed clarification in the October 3rd Letter may differ, with the latter building upon the former, we find the approaches to be complementary and that identifying the proceeding to which a given solar module may be subject, based on these analyses, will be straightforward. Further, any potential overlap in coverage that may have arisen due to the different country of origin criteria have been eliminated by the modified language provided in the October 3rd proposed clarification and adopted in the final determinations.

G. Treatment of U.S. Solar Cells Assembled into Solar Modules in China and Taiwan

Respondents:

- The Department must include a scope exemption for solar products assembled from cells of U.S. origin. The Department has already determined that the country of origin of a solar panel is the country in which the solar cell was produced. U.S. law prohibits application of AD/CVD duties to U.S. origin goods.

Petitioner did not comment on this issue.

Department’s Position: We disagree with respondents. As noted above, contrary to respondents’ assertions, we have only applied AD and CVD measures to products determined to

²⁶⁴ See, e.g., *Solar I* where the scope explicitly states that it covers “Modules, laminates, and panels produced in a third-country from cells produced in the PRC are covered by this investigation; however, modules, laminates, and panels produced in the PRC from cells produced in a third-country are not covered by this investigation.” Further, *Solar I* included certifications in Appendix II, which require exporters and imports of solar modules “to substantiate the claim that the panels/modules do not contain solar cells produced in the People’s Republic of China.”

²⁶⁵ See the Attachment to the October 3rd Letter.

²⁶⁶ See the Attachment to the October 3rd Letter.

have a country of origin of China. We have not applied such measures to products determined to have a country of origin of the United States.

H. Comments Concerning the Scope of the Preliminary Determination

Parties have submitted comments concerning the scope of the investigation as defined in the *Preliminary Determination*. Because we have clarified the scope consistent with the October 3rd Letter, we have not addressed comments that were only relevant to the scope of the investigation as defined in the *Preliminary Determination* and not relevant to the scope of this final determination.

Comment 2: Whether the Department Should Investigate the Effects of the GOC's Alleged Cyberhacking on this Investigation

Petitioner's Comments:

- The U.S. Department of Justice charged members of the People's Liberation Army (the military of the PRC) with cyber espionage against U.S. corporations for commercial advantage. SolarWorld was among the U.S. corporations that were targeted.
- As the information allegedly stolen includes information related to SolarWorld's financial status, manufacturing metrics, and privileged attorney-client communications regarding trade litigation, the Department should investigate how this alleged cyberhacking may have affected the AD and CVD investigations.

Wuxi Suntech's Rebuttal Comments:

- Petitioner's allegations of cyberhacking by the GOC are not a proper subject to be addressed by U.S. AD and CVD laws. The allegations do not refer to any of the legal elements of a subsidy.
- Any investigation of Petitioner's allegations should be addressed outside the confines of this investigation.

Department's Position: As the agency charged with administering the antidumping and countervailing duty laws, the Department has the inherent authority to protect the integrity of its proceedings. For example, the Court of Appeals for the Federal Circuit has recognized the Department's authority to ensure that our proceedings are not undermined by fraud.²⁶⁷ Similarly, the law apportions responsibility for justice across the spectrum of administrative agencies, each according to its legislative mandate. For example, "it is Customs, not Commerce, that is charged with responsibility for enforcement of the laws prohibiting material false statements and omissions in customs entry documentation" under 19 U.S.C. § 1592.²⁶⁸

²⁶⁷ See, e.g., *Tokyo Kikai Seisakusho, Ltd. v. United States*, 529 F.3d 1352, 1360-62 (Fed. Cir. 2008).

²⁶⁸ *Mid Continent Nail Corp. v. United States*, 949 F. Supp. 2d 1247, 1283 (Ct. Int'l Trade 2013) ("As such, even assuming that violations such as those alleged by {petitioner} may have occurred, the investigation of any such potential violations would fall squarely within Customs' domain. Commerce here thus acted properly in referring to Customs the issue of whether certain companies may have acted negligently or fraudulently . . .").

Here, based on our analysis of the questionnaire responses, verification reports, and further examination of information on the record, we have concluded that, apart from the specific instances detailed in this final determination, the data and records provided by respondents are reliable for the purposes of determining antidumping and countervailing duties and that nothing in the circumstances underlying Petitioner’s allegations constitutes a failure of the respondents to cooperate in this investigation. Thus, while we recognize the seriousness of Petitioner’s allegation, our examination of Petitioner’s claims leads us to conclude that they do not contain allegations actionable within the context of the CVD investigation. Though grave, the claims do not suggest that information submitted to the Department by the GOC or the company respondents was inaccurate as a result of the alleged cyberhacking or that such alleged hacking has otherwise led to the possibility of determinations being based on inaccurate information.

We note, however, that the Federal Circuit has also made clear that the Department’s authority to protect the integrity of its proceedings does not end simply because the Department reaches a final determination in the proceeding. Thus, even after a proceeding has closed, where allegations of fraud have led the Department to reopen and reconsider a previously-conducted administrative review, the Federal Circuit has held that Commerce has the “inherent authority” to act when evidence of misconduct calls into question the integrity of the determination.²⁶⁹

Comment 3: Whether Input Providers are “Authorities” Within the Meaning of the Act

Wuxi Suntech’s Comments:

- The record does not support a finding that suppliers of production inputs are governmental authorities.
- The adverse inference applied that all input suppliers in China constitute governmental authorities is inconsistent with WTO precedent and the U.S. law.
- WTO jurisprudence has established that the Department must establish positive evidence that enterprises in China constitute public bodies.
- The Department’s analysis in the Public Body Memorandum cannot sustain a finding that majority-owned state-invested enterprises are government authorities.
- Petitioner bears the burden of demonstrating a supplier’s status as a government authority, and it has failed to demonstrate such a status for any of Wuxi Suntech’s suppliers.
- The Department has acknowledged in the “Georgetown Applicability Memorandum” that the GOC has relinquished the majority of its control over the market for goods in China.²⁷⁰
- There is no direct or substantial GOC intervention in the input suppliers’ business so as to vest these private parties with public authority.
- There is no basis for the Department to find that government control exists over input suppliers through the agency of the Chinese Communist Party (CCP).

²⁶⁹ See *Tokyo Kikai Seisakusho, Ltd. v. United States*, 529 F.3d 1352, 1360-62 (Fed. Cir. 2008)); cf. *Sahaviriya Steel Indus. Pub. Co. v. United States*, 649 F.3d 1371, 1379-1380 (Fed. Cir. 2011).

²⁷⁰ See the Additional Documents Memorandum at Georgetown Applicability Memorandum.

- The Department’s typical analysis of public bodies and CCP member ownership is focused on majority state-owned state-invested enterprises, and is not applicable to Wuxi Suntech’s private and minority state-owned input suppliers.
- Given the lack of evidence on the record and the Department’s policy as set forth in the “Georgetown Applicability Memorandum,” the Department must find that Wuxi Suntech’s input suppliers are not government authorities.

No other parties commented on this issue.

Department’s Position: As discussed above in the section, “Programs Determined to be Countervailable,” the Department investigated whether the GOC provided polysilicon, aluminum extrusions, and solar glass for LTAR to the company respondents. We explained in the *Preliminary Determination* that we asked the GOC to provide information regarding the specific companies that produced these input products that Trina Solar, Wuxi Suntech, and their respective cross-owned companies purchased during the POI.²⁷¹ Specifically, we sought information from the GOC that would allow us to determine whether the producers are “authorities” within the meaning of section 771(5)(B) of the Act.²⁷²

²⁷¹ See *Preliminary Determination* and accompanying Preliminary Decision Memorandum at 16.

²⁷² *Id.* (“In our original and supplemental questionnaire, we requested detailed information from the GOC that would be needed for this analysis.”) see also *id.* at 16-17 (requested information included: “For each producer in which the GOC was a majority owner, . . . the GOC needed to provide the following information that is relevant to our analysis of whether that producer is an ‘authority.’”)

- Translated copies of source documents that demonstrate the producer's ownership during the POI, such as capital verification reports, articles of association, share transfer agreements, or financial statements.
- The names of the ten largest shareholders and the total number of shareholders.
- The identification of any government ownership or other affiliations between the ten largest shareholders and the government.
- Total level of state ownership of the company's shares and the names of all government entities that own shares in the producer.
- Any other relevant evidence the GOC believes demonstrates that the company is not controlled by the government.

For each producer that the GOC claimed was privately owned by individuals or companies during the POI, we requested the following.

- Translated copies of source documents that demonstrate the producer's ownership during the POI, such as capital verification reports, articles of association, share transfer agreements, or financial statements.
- Identification of the owners, members of the board of directors, or managers of the producers who were also government or Chinese Communist Party (CCP) officials during the POI.
- A statement regarding whether the producer had ever been an state-owned enterprise (SOE), and, if so, whether any of the current owners, directors, or senior managers had been involved in the operations of the company prior to its privatization.
- A discussion of whether and how operational or strategic decisions made by the management or board of directors are subject to government review or approval.

Finally, for producers owned by other corporations (whether in whole or in part) or with less-than-majority state ownership during the POI, we requested information tracing the ownership of the producer back to the ultimate individual or state owners. For such producers, we requested the following information.

- The identification of any state ownership of the producer's shares; the names of all government entities that own shares, either directly or indirectly, in the producer; the identification of all owners considered ‘SOEs’ by the GOC; and the amount of shares held by each government owner.

A significant part of the information we requested from the GOC concerned the level of state ownership and involvement of GOC or CCP officials in these input producers during the POI. The GOC provided incomplete ownership information for many of the companies that produced the polysilicon, aluminum extrusions, and solar glass purchased by Trina Solar and Wuxi Suntech.²⁷³ As explained in the Public Body Memorandum, majority state-owned enterprises (SOEs) in China possess, exercise, or are vested with governmental authority.²⁷⁴ The GOC exercises meaningful control over these input producers and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector.²⁷⁵ Thus, we consider complete ownership information for these producers necessary information for this determination. Further, as we detailed in the *Preliminary Determination*, the GOC provided no information at all regarding the identification of owners, directors, or senior managers who were GOC or CCP officials for any of the requested input suppliers.²⁷⁶ In addition to not providing all of the requested information regarding government and CCP officials, the GOC objected to our questions about the CCP's structure and functions that are relevant to determine whether the producers of polysilicon, aluminum extrusions, and solar glass are "authorities" within the meaning of section 771(5)(B) of the Act.²⁷⁷ Because the GOC did not meaningfully respond to our requests for information on this issue, we are not reevaluating the Department's prior factual findings on the role of the CCP. Thus, the Department finds, as it has in other PRC CVD proceedings,²⁷⁸ that the information requested regarding the role of CCP officials and CCP committees in the management and operations of these producers, and in the management and operations of the producers' owners, is also necessary to our determination of whether the producer is an authority within the meaning of section 771(5)(B) of the Act.

Regarding the GOC's objections to our questions about the role of CCP officials in the management and operations of the input producers, we observe that it is the prerogative of the Department, not the GOC, to determine what information is relevant to our investigations and

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- For each level of ownership, identification of the owners, directors, or senior managers of the producer who were also government or CCP officials during the POI.
 - A discussion of whether and how operational or strategic decisions made by the management or board of directors are subject to government review or approval.
 - A statement regarding whether any of the shares held by government entities have any special rights, priorities, or privileges with regard to voting rights or other management or decision-making powers of the company; a statement regarding whether there are restrictions on conducting, or acting through, extraordinary meetings of shareholders; a statement regarding whether there are any restrictions on the shares held by private shareholders; and a discussion of the nature of the private shareholders' interests in the company (*e.g.*, operational, strategic, or investment-related)."

²⁷³ *Id.* at 17.

²⁷⁴ See Additional Documents Memorandum, Public Body Memorandum at 35-36.

²⁷⁵ *Id.*

²⁷⁶ See *Preliminary Determination* and accompanying Preliminary Decision Memorandum at 18.

²⁷⁷ *Id.* at 18.

²⁷⁸ See, *e.g.*, *Utility Scale Wind Towers From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012) (Wind Towers from the PRC), and the accompanying Issues and Decision Memorandum at a "Use of Facts Otherwise Available and Adverse Inferences: Titan Companies - HRS Producers are Authorities."

administrative reviews.²⁷⁹ As we stated in the *Preliminary Determination*, the Department requested this information because public information suggests that the CCP exerts significant control over activities in the PRC, and that information and record evidence indicates that the CCP meets the definition of the term ‘government’ for the limited purpose of applying the U.S. CVD law to China.²⁸⁰

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

At a more fundamental level, it is for the Department, and not respondents, to determine what information is considered relevant and necessary, and must be provided.²⁸¹ Thus, regardless of whether the GOC finds our explanations concerning the relevance of this information persuasive, by substantially failing to respond to our questions, the GOC withheld information requested of it. Consequently, and as fully detailed in the *Preliminary Determination*,²⁸² we continue to find, as AFA, that all of the producers of polysilicon, aluminum extrusions, and solar glass purchased by Trina Solar and Wuxi Suntech during the POI are “authorities” within the meaning of section 771(5)(B) of the Act. This is not a blanket finding that “all” input producers in the PRC are authorities, but rather our examination of the record as detailed in the *Preliminary Determination* indicates that the GOC did not provide complete information for any individual producer, nor did it provide the information subsequently.

Finally, with respect to Wuxi Suntech’s arguments, our findings in this proceeding rely on adverse inferences because the GOC failed to cooperate to the best of its ability by not providing complete responses as to the nature and extent of government ownership and control of the input producers, necessitating our resort to a facts available remedy that is provided for under U.S. law. It is the burden of the GOC to provide information regarding the extent of its ownership and control of the input producers, not the burden of Petitioner, beyond Petitioner’s burden during the initiation phase to provide information reasonably available to it that indicates a financial contribution. As explained in the Department’s memoranda determining to initiate certain subsidies contained in the petition, Petitioner met its burden to demonstrate a financial

²⁷⁹ See *NSK, Ltd. v. United States*, 919 F. Supp. 442, 447 (CIT 1996) (NSK) (“NSK’s assertion that the information it submitted to Commerce provided a sufficient representation of NSK’s cost of manufacturing misses the point that ‘it is Commerce, not the respondent, that determines what information is to be provided for an administrative review.’”); and *Ansaldo Componenti, S.p.A. v. United States*, 628 F. Supp. 198, 205 (CIT 1986) (*Ansaldo*) (stating that “{i}t is Commerce, not the respondent, that determines what information is to be provided”).

²⁸⁰ See *Preliminary Determination* and accompanying Decision Memorandum at 18-19 (citing Public Body Memorandum and CCP Memorandum).

²⁸¹ See, e.g., *Solar Cells from the PRC* and its accompanying Issues and Decision Memorandum at 31, citing *Ansaldo Componenti, S.p.A. v. United States*, 628 F. Supp. 198 (CIT 1986).

²⁸² See *Preliminary Determination* and its accompanying Decision Memorandum at 16-21.

contribution and provided information indicating the inputs were produced in the PRC by SOEs.²⁸³

Therefore, because the GOC has not provided the requested information, we continue to find that these producers are “authorities” pursuant the definition of an authority under U.S. law.²⁸⁴ Contrary to Wuxi Suntech’s arguments, our finding on this point is not based solely on state ownership. Rather, as explained in the Public Body Memorandum, majority state-owned enterprises in the PRC possess, exercise, or are vested with governmental authority.²⁸⁵ Although we rely on adverse inferences regarding the extent of ownership and control of the input producers here due to incomplete responses by the GOC, our conclusion is based on the determination that the GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector. Therefore, we determine that these entities are “authorities” within the meaning of section 771(5)(B) of the Act and that the respondent companies received a financial contribution from them in the form of the provision of a good, pursuant to section 771(5)(D)(iii) of the Act.

Regarding Wuxi Suntech’s comment regarding its private and minority state-owned providers and our typical analysis with respect to public bodies and CCP member ownership, again, we are relying on adverse inferences with respect to this issue because the GOC failed to provide the information we requested to fully examine the nature of the CCP’s role in the input providers in question.

With regard to Wuxi Suntech’s contention that our AFA finding of input producers to be authorities is incompatible with the Georgetown Applicability Memorandum findings, as we stated in *Tetrafluoro from the PRC*, the case-specific facts, or lack thereof, in this proceeding cannot be the basis for negating our Georgetown Applicability Memorandum findings, which were based on a broad, systemic analysis of the overall Chinese market.²⁸⁶ In any case, Wuxi Suntech grossly mischaracterizes our Georgetown Applicability Memorandum findings. The main thrust of those findings was that, notwithstanding a few exceptional instances of *de jure* market-oriented reforms, the state continues to exercise effective control overall.²⁸⁷ For example, the Georgetown Applicability Memorandum states that while China’s non-market economy today is more flexible than Soviet-style economies of the past, it nevertheless remains “riddled with the distortions attendant to the extensive intervention of the PRC Government,” and that while private enterprises may generally be free to pursue entrepreneurial activities, they “still conduct all businesses within the broader, distorted economic environment over which the PRC Government has not ceded fundamental control.”²⁸⁸ More to the point, our findings in this

²⁸³ See “Enforcement and Compliance, Office of AD/CVD Enforcement CVD Initiation Checklist, (January 22, 2014) (Initiation Checklist) at 12-15.

²⁸⁴ See *Tetrafluoro from the PRC* and accompanying Issues and Decision Memorandum at 47; *Certain Oil Country Tubular Goods From the People’s Republic of China: Final Results of Countervailing Duty Administrative Review*; 2012, 79 FR 52301 (September 3, 2014) and accompanying Issues and Decision Memorandum at Comment 6.

²⁸⁵ See Public Body Memorandum at 35-36; CCP Memorandum at 33.

²⁸⁶ See *Tetrafluoro from the PRC* and accompanying Issues and Decision Memorandum at 47.

²⁸⁷ *Id.*

²⁸⁸ See Additional Documents Memorandum, Georgetown Applicability Memorandum at 5.

proceeding rely on adverse inferences precisely because the GOC failed to cooperate to the best of its ability by not providing complete responses as to the nature and extent of government ownership and control of the suppliers, necessitating our resort to a facts available remedy that is provided for under U.S. law, as well as WTO rules. As such, Wuxi Suntech has no factual basis for its claim that these suppliers do not meet the definition of public entity under U.S. law. Finally, we find it telling that neither the GOC nor Trina Solar challenged this conclusion in their case or rebuttal briefs.

Comment 4: Whether the Provision of Chinese Polysilicon for LTAR is Countervailable

Trina Solar's Comments:

- The current scope of the investigation covers solar cells that are completed or partially manufactured within Taiwan, and cells where the manufacturing process begins in the PRC and is completed in Taiwan.
- Unless there is evidence that manufacturing of solar cells begin in the PRC and were completed in Taiwan using domestically purchased polysilicon, polysilicon is irrelevant to this investigation.
- There is no record evidence that Trina Solar sold or shipped polysilicon to Taiwanese solar cell suppliers during the POI.
- Because polysilicon is not used in the subject merchandise, the Department should not calculate any subsidy rate for this program for the final determination.
- Should the Department continue to countervail this program for the final determination, the Department should rely on a one percent import duty rate for Trina Solar's polysilicon benchmark.

The GOC's Comments:

- Any benefit provided by the provision of polysilicon for LTAR is fully captured under the existing CVD order on solar cells from China.
- Polysilicon is only used to produce solar cells, and is not consumed in the assembly process.
- Polysilicon purchased by the respondents in this investigating was not consumed in the assembly of solar cells manufactured in third countries.
- In calculating a benchmark for purchases of polysilicon, the Department incorrectly used the standard four percent most-favored nation (MFN) rate in the *Preliminary Determination*.
- For the final determination, the Department should use the correct temporary MFN rate of one percent for polysilicon imports that was in effect during the POI.

Wuxi Suntech's Comments:

- There is no evidence on the record to support a finding that the provision of polysilicon provides a benefit.
- The Department should not countervail Wuxi Suntech's purchases of polysilicon because they are tied to the production of non-subject merchandise.
- There is no basis for the Department to frame its LTAR specificity analysis on a product-specific basis.

- The United States itself has recognized that it may be appropriate to analyze specificity at a lower level.
- The Department should frame the specificity analysis by examining the provision of production inputs generally by the relevant suppliers as a whole.
- The fact that a particular input is being used primarily by a number of industries is not sufficient proof of specificity.
- Some evidence of disproportionate use is also necessary to this specificity analysis.
- Petitioner did not provide any information that the inputs consumed by the solar industry in China provide a benefit that is in any way unusually large or distorted by any action attributable to the GOC.
- In the *Preliminary Determination*, the Department used the incorrect tariff rate in calculating the subsidy benchmark for polysilicon. The Department should apply the correct one percent rate that was in effect for import from WTO-member countries during the POI.

Petitioner's Rebuttal Comments:

- The Department has repeatedly determined that programs involving the provision of goods or services are untied subsidies.
- Trina Solar and Wuxi Suntech purchased a subsidized input, *i.e.*, polysilicon, which benefits all of Trina Solar's and Wuxi Suntech's sales.
- Contrary to the respondents' assertions, the provision of polysilicon for LTAR is an untied subsidy, and the Department should continue to countervail purchases of polysilicon for the final determination.
- The GOC refused to provide necessary information with respect to polysilicon usage in the PRC. Instead of identifying the industries that purchase polysilicon or providing the volume and value of polysilicon purchased by each industry, the GOC reported that polysilicon has a wide range of uses, including but not limited to the solar products and semiconductor industries.
- As the GOC has failed to cooperate to the best of its ability regarding providing information requested by the Department, the Department should apply AFA for the final determination and find the GOC's provision of polysilicon for LTAR is specific.
- The Department should use the simple average of the import duties rates submitted on the record, which is 2.5 percent.

Department's Position: Regarding the provision of polysilicon, our initial questionnaire to the GOC requested the following information concerning polysilicon users:

- Provide a list of the industries in the PRC that purchase polysilicon directly, using a consistent level of industrial classification.
- Provide the amounts (volume and value) purchased by the industry in which the mandatory respondent companies operate, as well as the totals purchased by every other industry.
- In identifying the industries, please use whatever resource or classification scheme your government normally relies upon to define industries and to classify companies within an industry.

- Please provide the relevant classification guidelines, and please ensure the list provided reflects consistent levels of industrial classification.
- Please clearly identify the industry in which the companies under investigation are classified.²⁸⁹

In response, the GOC provided none of the information requested, but instead stated: “The GOC does not impose any limitations on the use of polysilicon, and producers of polysilicon are free to sell their product to any purchaser and at any price. Similarly, purchasers of polysilicon are free to source their product from any producer, domestic or foreign. Polysilicon has a wide range of uses, including but not limited to use in the solar and semiconductor industries.”²⁹⁰

As the GOC provided none of the information requested, we found that the provision of polysilicon for LTAR is specific in the *Preliminary Determination*. Additional attempts to gather information regarding solar grade polysilicon were made subsequent to the *Preliminary Determination*.²⁹¹ The GOC’s questionnaire response stated that the SSB does not maintain data on specific types of polysilicon.²⁹² As a result, it was unable to provide any data regarding the usage of this input.

Wuxi Suntech now argues that the Department should not undertake an analysis on a product-specific basis in reaching our specificity determination, and that we should instead frame the specificity analysis in this investigation by looking at the provision of production inputs generally by the relevant suppliers as a whole. Absent such an analysis, claims Wuxi Suntech, every alleged product-specific LTAR program is necessarily a specific subsidy. Wuxi Suntech also claims that some evidence of “disproportionate use” by the respondent industry is necessary to find specificity.

With regard to Wuxi Suntech’s first assertion, the company provides no basis or legal support for its contention that the Department’s analysis of specificity regarding polysilicon is inappropriate. As we noted in the *Preliminary Determination*, we found the provision of polysilicon specific to the solar and semiconductor industries, the only two industries identified by the GOC as consumers of polysilicon.²⁹³ We did not conduct a “product-specific” analysis, but instead requested that the GOC provide a list of industries that consume polysilicon. It is the question of industries, and not the input, that forms the basis for our specificity analysis. Moreover, we do not see the relevance of Wuxi Suntech’s arguments related to diversified input suppliers versus those who only produce the input in question. As we have stated, our *de facto* specificity analysis is based on the consumption of the input by enterprise or industry, as is called for under section 771(5A)(D)(iii) of the Act, and not its production or pricing. Nor do we agree with Wuxi Suntech that this program requires a finding of disproportionality in order to be found specific.

²⁸⁹ See the Department’s February 28, 2014 questionnaire at II-12.

²⁹⁰ GOC’s April 21, 2014 questionnaire response at 136.

²⁹¹ See GOC July 15, 2014 QR at A-2.

²⁹² See GOC’s July 29, 2014 questionnaire response at 4-5.

²⁹³ See *Preliminary Determination and accompanying Preliminary Decision Memorandum* at 28 (“In response to our questions concerning specificity, the GOC stated: ‘Polysilicon has a wide range of uses, including but not limited to use in the solar and semiconductor industries.’ However, the GOC provided none of the information requested concerning amounts purchased by individual industries.”).

As a matter of *de facto* specificity, a finding under any subsection of section 771(5A)(D)(iii) of the Act is sufficient to consider a subsidy specific. Thus, there is no need to analyze disproportionality under section 771(5A)(D)(iii)(III) of the Act when information on the record indicates that a subsidy is provided to a limited number of industries, such as the solar and semiconductor industries, under section 771(5A)(D)(iii)(I) of the Act.²⁹⁴

Based on the GOC's inability to provide the information requested in the Department's questionnaires, its identification of only two industries that consume polysilicon, and in response to Wuxi Suntech's arguments addressed above, we continue to find that the provision of polysilicon for LTAR is specific under section 771(5A)(D)(iii) of the Act because it is provided to a limited number of industries.

With regard to respondents' arguments that the provision of polysilicon for LTAR has been sufficiently addressed in the existing order on solar cells from the PRC, we find that the subsidies bestowed under this program are not tied to non-subject merchandise, and as such benefit the companies' total operations. It is the Department's practice to identify the type and monetary value of a subsidy at the time the subsidy is bestowed, and not to examine the use or effect of subsidies.²⁹⁵ A subsidy is tied only when the intended use is known to the subsidy giver and so acknowledged prior to, or concurrent with, the bestowal of the subsidy.²⁹⁶ As discussed in Comment 3, above, we find that the providers of polysilicon to the respondent companies are authorities within the meaning of the Act. There is no record evidence that the respondent companies' polysilicon providers were aware of the intended use of the subsidies at the time of bestowal, despite respondents' claims that any polysilicon purchased in the PRC could not benefit production or assembly operations in that country. There is no record evidence regarding the subsidy provider's knowledge of the ultimate consumption or disposition of the inputs at issue that would lead us to conclude that no subsidized inputs are incorporated in to the subject merchandise. As such, there is no basis to find that the benefits are tied to non-subject merchandise.

Finally, given that we have found this program to provide a countervailable benefit during the POI, we agree with respondents that we should adjust the import duty rate used in the *Preliminary Determination* to determine a world-market benchmark price. At the verification of the GOC, we confirmed that the temporary import duty rate of one percent was in effect for imports of polysilicon throughout the POI, rather than the MFN rate of four percent that was

²⁹⁴ *Id.*

²⁹⁵ See *Large Residential Washers from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 75975 (December 26, 2012) (*Washers from Korea*) and accompanying Issues and Decision Memorandum at Comment 7.

²⁹⁶ *Id.*; see also *Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 69 FR 51063 (August 17, 2004) and accompanying Issues and Decision Memorandum at Comment 2 and *Industrial Phosphoric Acid from Israel: Final Results of Countervailing Duty Administrative Review*, 63 FR 13626, at 13631 (March 20, 1998) ("Our position on the tying of benefits is that 'a subsidy is 'tied' when the intended use is known to the subsidy giver and so acknowledged prior to or concurrent with the bestowal of the subsidy.'") (quoting *Final Affirmative Countervailing Duty Determinations; Certain Steel Products from Belgium*, 47 FR 39304 (September 7, 1982)).

used in the *Preliminary Determination*.²⁹⁷ Information on the record indicates that this temporary import duty rate is applicable to commodities imported from WTO Member countries as well as countries with which the PRC has bilateral trade agreements.²⁹⁸ There is no information on the record supporting Petitioner's contention that WTO member countries or countries with bilateral trade agreements with the PRC form a subset that is less than the total number of MFN countries. Thus we believe it is appropriate to apply the one percent duty rate in determining a "Tier 2," world market price under 19 CFR 351.511(a)(2)(iv) as this rate represents the rate applied to imports widely available to consumers of the input in the PRC. Because we find that there is only one applicable import duty rate available, there is no need to average various rates as Petitioner has argued. Thus, for the purpose of calculating the countervailable subsidy rates for this final determination, we will adjust the benchmark calculation for the provision of polysilicon for LTAR to account for imports entering the PRC at the temporary import duty rate of one percent.

Comment 5: Whether the Department Should Attribute Subsidies under the Provision of Polysilicon for LTAR Program to Wuxi Suntech's Cross-owned Companies

Wuxi Suntech Comments:

- Each of the companies that were found to have received countervailable subsidies in the *Preliminary Determination* only supplied Wuxi Suntech with inputs that are tied to the production of non-subject merchandise.
- Pursuant to 19 CFR 351.525(b)(5), where an input from a cross-owned company is tied to non-subject merchandise, any possible subsidies to the input supplier confers no countervailable benefits on the subject merchandise produced by the respondent.²⁹⁹
- Zhenjiang Rietech, Zhenjiang Ren De, and Yangzhou Rietech sold polysilicon wafers to Wuxi Suntech that are only used in the production of non-subject merchandise.
- In the *Preliminary Determination*, the Department erred in focusing on 19 CFR 351.525(b)(6)(iv), which focuses on the requirement of dedication to a downstream product.
- There is no dispute that polysilicon wafers are primarily dedicated to the production of solar modules.
- However, the Department's product-tying and subsidy attribution regulations do not allow the allocation of subsidies provided to cross-owned input suppliers to the subject merchandise in this investigation.
- Subsidies provided to these cross-owned wafer suppliers are already subject to the existing order on solar cells and modules; to countervail them in this final determination would result in countervailing the same subsidies twice.
- Even where cross-owned input suppliers provided polysilicon wafers to Taiwanese cell producers who in turn supplied Wuxi Suntech, there can be no attribution because there is

²⁹⁷ See GOC Verification Report at 10.

²⁹⁸ See the GOC's April 21, 2014 questionnaire response at 134.

²⁹⁹ See, e.g., *Certain Steel Wheels From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 77 FR 17017 (March 23, 2012); see also *PET Film from India*.

no cross-ownership with the Taiwanese suppliers and the transactions took place on an arms-length basis.

- Capital equipment provided by Suzhou Kuttler is used for the production of solar cells, and therefore any subsidies received by the company are tied to non-subject merchandise and should not be attributed to Wuxi Suntech.

Petitioner's Rebuttal Comments:

- The Department should continue to attribute the subsidies from Zhenjiang Rietech, Zhenjiang Ren De, Yangzhou Rietech, and Suzhou Kuttler to Wuxi Suntech because the input products were “primarily dedicated to the downstream product (solar cells and other solar products, regardless of whether in our out of scope),³⁰⁰ consistent with the *Preliminary Determination* and the Department’s regulation.

Department’s Position: As discussed above in Comment 3, the Department finds that providers of inputs such as polysilicon constitute authorities under the Act; furthermore, as explained in Comment 4, the record does not support a finding that the provision of polysilicon is tied to the production of non-subject merchandise. Based on these findings, we conclude that pursuant to 19 CFR 351.525(b)(6)(iv), subsidies provided to the suppliers of inputs primarily dedicated to downstream products, such as the subject merchandise at issue, are countervailable and attributable to company respondents. There is no dispute that Zhenjiang Rietech, Zhenjiang Ren De, and Yangzhou Rietech are both cross-owned with Wuxi Suntech and provide an input that is primarily dedicated to the production of the downstream product. This same finding applies to the capital equipment used by Suzhou Kuttler to produce inputs used in the production of solar cells.

Comment 6: Whether the Provision of Aluminum Extrusions for LTAR is Countervailable

The GOC’s Comments:

- The evidence relied on by the Department does not support the finding in the *Preliminary Determination* that this program is *de facto* specific.
- The annual report of Zhongwang, a producer of aluminum extrusions, should only be construed to apply to Zhongwang’s emphasis on a limited number of high value industrial applications.
- Zhongwang’s annual report also indicates that the company supplies additional economic sectors with aluminum extrusions.
- The Department mischaracterized the transportation, machinery and equipment, and electric power engineering industries as being much narrower than they actually are.
- The GOC did not provide specific industry purchase data for aluminum extrusions because it does not gather or maintain such data; however the GOC identified numerous industrial sectors that consume aluminum extrusions, indicating that any benefits are not subsidies are not specific to a limited number of industries.

³⁰⁰ See Letter to the Secretary, “Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Rebuttal Brief of Solar World Americas, Inc.” (October 22, 2014) (Petitioner’s Rebuttal Brief) at 28, citing the *Preliminary Determination* and accompanying Preliminary Decision Memorandum at 9-10.

- Record evidence indicates that the solar product industry is not a disproportionate or predominant user of aluminum extrusions.

Trina Solar's Comments:

- Aluminum extrusions are inputs that are widely consumed by many industries in the PRC, are not specific to the solar products industry, and should not be countervailed for the final determination.
- The GOC placed evidence on the record demonstrating that a greater proportion of aluminum extrusions is dedicated to construction, and there is no record evidence indicating disproportionate use by the solar panel industry.

Wuxi Suntech's Comments:

- There is no evidence on the record to support a finding that the provision of aluminum extrusions provides a benefit.
- Aluminum extrusions are used by an exceedingly large number of distinct industries for a number of end-users, and is therefore not specific.
- There is no basis for the Department to frame its LTAR specificity analysis on a product-specific basis.
- The United States itself has recognized that it may be appropriate to analyze specificity at a lower level.
- The Department should frame the specificity analysis by examining the provision of production inputs generally by the relevant suppliers as a whole.
- The fact that a particular input is being used primarily by a number of industries is not sufficient proof of specificity.
- Petitioner did not provide any information that the inputs consumed by the solar industry in China are in any way unusually large or distorted by any action attributable to the GOC.
- In the *Preliminary Determination*, the Department used an incorrect conversion factor to convert Wuxi Suntech's purchases of aluminum extrusions from a per-piece to a per-kilogram basis.
- The conversion factor used in the *Preliminary Determination* was based on a complete frame of four aluminum extrusions for one solar panel.
- The conversion factor should be on a per-piece basis, *i.e.*, the average conversion factor for a complete frame should be divided by four.
- The Department should adjust the piece-to-kilogram conversion for the final determination.

Petitioner's Rebuttal Comments:

- The Department asked the GOC to identify the industries that purchase aluminum extrusions, and to provide the volume and value of aluminum extrusions purchased by industries in the PRC. In response, the GOC provided a list of "major-end use" applications for aluminum extrusions in the United States, and reported that consumption patterns and the diversity of consumers is no different in the PRC.
- Nowhere did the GOC provide any of the information requested concerning the amount of aluminum extrusions purchased by individual industries in the PRC.

- As the GOC has failed to cooperate to the best of its ability regarding providing information requested by the Department, the Department should apply AFA for the final determination and find the GOC’s provision of aluminum extrusions for LTAR is specific.

Department’s Position: Petitioner alleged that the respondent companies received countervailable subsidies in the form of the provision of aluminum extrusions for LTAR. For the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences, Input Producers are ‘Authorities’” section above, and at Comment 3, we are basing our determination regarding the government’s provision of aluminum extrusions, in part, on AFA. Specifically, and as explained in the *Preliminary Determination*, we continue to determine as AFA that the producers of the aluminum extrusions purchased by Trina Solar and Wuxi Suntech are “authorities” within section 771(5)(B) of the Act and, as such, that the provision of aluminum extrusions constitutes a financial contribution under section 771(5)(D)(iii) of the Act.³⁰¹

In response to our questions concerning specificity, the GOC provided a list of a few dozen “major end use” applications for aluminum extrusions in the United States taken from the aluminum extrusions analysis of the ITC.³⁰² The GOC stated, “Consumption patterns and the diversity of consumers is no different in China. Indeed, given the breadth of manufacturing in China one would expect it to be broader than in the United States.”³⁰³ However, the GOC provided none of the information requested concerning amounts purchased by individual industries. In the *Preliminary Determination*, we found this program to be specific because, given the entirety of the record at the time, we found the provision of aluminum extrusions is limited to specific industries. We based our preliminary determination on the statements of the GOC and on information included in the petition indicating aluminum extrusion producers in the PRC have three categories of customers: transportation, machinery and equipment, and electric power engineering industries.³⁰⁴

Subsequently, in response to a post-preliminary determination supplemental questionnaire, the GOC provided additional information concerning the industries in the PRC that used aluminum extrusions during the POI:³⁰⁵

- Construction industry: 63.25%;
- Transportation industry: 12.45%;
- Mechanical & electrical equipment industry: 12.35%;
- Consumer durable goods industry: 4.62%;
- Electricity: 3.31%; and
- Other industries: 4.02%.

³⁰¹ See *Preliminary Determination* and accompanying Decision Memorandum at 16-21.

³⁰² See the GOC’s July 29, 2014, questionnaire response at 7-12.

³⁰³ See the GOC’s April 21, 2014, questionnaire response at 177.

³⁰⁴ See *Preliminary Determination* and accompanying Decision Memorandum at 28-29.

³⁰⁵ See the GOC’s July 29, 2014, questionnaire response at 11.

The GOC also provided a list of 22 “major projects” (e.g., window and door frames, curtain walls, high-speed rail, furniture) that use aluminum extrusions within these broader consumption categories.³⁰⁶

Petitioner argues that the Department should apply AFA regarding specificity for this program and contends that the GOC failed to cooperate to the best of its ability by not providing information requested by the Department. Our examination of the record leads us to conclude otherwise. As discussed above, the GOC first provided information regarding consumers of aluminum extrusions it gathered from an ITC report. In response to our supplemental questions on specificity, the GOC supplemented its initial response with an overview report of aluminum extrusion consumption in the PRC, *i.e.*, a prospectus published by the Hong Kong Exchange and Clearing Limited, the source of the 22 “major projects” referenced above.³⁰⁷ It provided the ITC information and other third-party information because it claims it maintains no specific data on aluminum extrusions consumption.³⁰⁸

We find the record does not demonstrate that the GOC did not act to the best of its ability by not providing the Department with requested information on the usage of aluminum extrusions. There is no information indicating that the GOC has in its possession the consumption information requested by the Department. The GOC’s provision of information from third-party sources is not in and of itself uncooperative when there is no evidence that it had better, first-hand information in its possession. As such, in light of the facts present in this particular case, we find AFA is not warranted regarding the specificity of the provision of aluminum extrusions for LTAR.

For this final determination, we find that the recipients of aluminum extrusions are limited in number to the industries listed by the GOC, and that the provision of aluminum extrusions is *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act. This is consistent with our past practice. For example, in *CWP from the PRC*, we found that, although hot-rolled steel is used in a spectrum of industries, the actual users of hot-rolled steel were limited in number.³⁰⁹ Likewise, although the GOC’s information indicates aluminum extrusions is used in a variety of industries and sectors across the PRC, on an enterprise or industry basis, the industries within those sectors that actually consume aluminum extrusions are limited in number. The statute notes that the term “enterprise or industry” “includes a group of such enterprises or industries.” Section 771(5A)(D).

Regarding the GOC’s arguments with respect to Zhongwang’s annual report, we relied on this information in the *Preliminary Determination* because the GOC provided none of the information requested regarding the amount of aluminum extrusions purchased by individual industries. And the information that it did provide concerned the end uses of aluminum extrusions, which did not allow us to conduct an analysis on the aluminum extrusions on an enterprise or industry basis in the PRC, as instructed by section 771(5A)(D)(iii)(I) of the Act.

³⁰⁶ *Id.* at 9.

³⁰⁷ See the GOC’s July 29, 2014, questionnaire response at 9.

³⁰⁸ *Id.* at 6.

³⁰⁹ See *CWP from the PRC* and accompanying Issues and Decision Memorandum at 62.

However, this argument is now moot because we are not relying on Zhongwang's annual report for our specificity determination for this final determination, as we are finding the provision of aluminum for LTAR to be specific to the industries listed by the GOC.

On Wuxi Suntech's argument on the Department's specificity analysis regarding aluminum extrusions in inappropriate, we addressed this similar argument above in Comment 4 on the provision of polysilicon. Similar to Wuxi Suntech's argument on the provision of polysilicon, it provided no legal basis or support for this claim regarding the provision of aluminum extrusions. And again, we do not agree with Wuxi Suntech that this program requires a finding of disproportionality in order to be found specific. As we stated above, as a matter of *de facto* specificity, a finding under any subsection of section 771(5A)(D)(iii) of the Act is sufficient to find a subsidy to be specific. Regarding Wuxi Suntech's contention that there is no evidence of a benefit, we disagree. We compared the prices paid by the respondents to a benchmark in accordance with the Act and our regulations, and find that the respondents have, indeed, benefitted from the government provision of aluminum extrusions for LTAR.

Finally, based on what we learned at the verification of Wuxi Suntech's questionnaire responses, we will adjust our calculations regarding the piece-to-kilogram conversion for the subsidy calculation in this final determination.³¹⁰

Comment 7: Whether the Provision of Solar Glass for LTAR is Countervailable

Trina Solar's Comments:

- Solar glass is an input that is widely consumed in the PRC by many industries, is not specific to the solar products industry, and should not be countervailed for the final determination.
- In this proceeding, the GOC has stated that solar glass is suitable for many downstream activities in addition to just the solar industry.
- Industries in the PRC that use solar glass represent an extremely diverse make-up of industries that cannot be defined as "limited" within the meaning of the statute.
- There is no record evidence that shows the PRC solar industry had a disproportionate or predominant consumption of solar glass.
- The Department should use the correct 12 percent import rate, the applicable MFN tariff rate for 2012, to calculate the provision of solar glass for LTAR.

Wuxi Suntech's Comments:

- The provision of solar glass is not specific because it may be employed in many downstream applications besides the solar industry.
- Petitioner has failed to provide information indicating that suppliers restricted sales of glass with special product characteristics to certain end-users, that they priced the product differently for certain end-users, or that the GOC has interfered with the market to favor certain end-users.

³¹⁰ See Wuxi Suntech VR at 5.

- There is no evidence on the record to support a finding that the provision of solar glass provides a benefit.
- In the minor corrections accepted at verification, Wuxi Suntech identified several reported glass purchases that actually represented processing fees, rather than purchases.
- The Department should exclude reported line items representing these processing fees, should it continue to countervail the provision of solar glass for LTAR.
- In the *Preliminary Determination*, the Department improperly used the general tariff rate of 50 percent when calculating the benchmark for solar glass. The Department should apply the correct 12 percent MFN rate for solar glass that was provided at verification by the GOC.

The GOC's Comments:

- In the *Preliminary Determination*, the Department incorrectly used the general rate for flat glass in calculating the benchmark rate for solar glass. For the final determination, the Department should use the correct MFN rate for imports of solar glass, which is 12 percent.

Petitioner's Rebuttal Comments:

- The Department asked the GOC to provide a list of industries that purchase solar glass, and to identify the volume and value of solar glass purchased by each industry.
- The GOC failed to entirely respond to the Department's request, stating that it does not impose any limitations on the use or consumption of solar glass, and that as a basic material input, solar glass is suitable for many downstream applications including use in the solar industry.
- As the GOC has failed to cooperate to the best of its ability regarding providing information requested by the Department, the Department should apply AFA for the final determination and find the GOC's provision of solar glass for LTAR is specific.
- The Department should use the simple average of the import duties rates submitted on the record, which is 31 percent.

Department's Position: In response to our questions concerning specificity, the GOC stated: “{a}s a basic material input, solar glass is suitable for many downstream applications including use in the solar industry.”³¹¹ However, the GOC provided none of the information requested concerning amounts purchased by individual industries. The petition provided information demonstrating solar glass has lower iron content than other types of glass in order to allow the transmission of more sunlight and that it has a particular thickness, between three and four millimeters.³¹² In the GOC's initial questionnaire response, the GOC stated that solar glass is suitable for many downstream applications, including use in the solar industry.³¹³ Thus, we find the provision of solar glass is limited to the only industry specifically identified by GOC, the solar industry, under section 771(5A)(D)(iii) of the Act. Our financial contribution and benefit determinations are detailed in the section above, “Solar Glass for LTAR.” Based on the

³¹¹ See the GOC's April 21, 2014, questionnaire response at 215.

³¹² See the petition at 58-59 and Exhibit III-92.

³¹³ See the GOC's April 21, 2014, questionnaire response at 215.

comments provided, we find no reason to alter our findings on this program from the *Preliminary Determination*.

Trina Solar argues that there is no evidence the PRC solar industry had a disproportionate or predominant consumption of solar glass. We addressed this similar argument above in Comments 4 and 6, above. As a matter of *de facto* specificity, a finding under any subsection of section 771(5A)(D)(iii) of the Act is sufficient to consider a subsidy specific. Thus, there is no need to analyze, *e.g.*, disproportionality under section 771(5A)(D)(iii)(III) of the Act when information on the record indicates that a subsidy is provided to a limited number of industries, such as the solar product industry, under section 771(5A)(D)(iii)(I) of the Act.

With respect to Wuxi Suntech's contention that Petitioner failed to provide information indicating that suppliers restricted sales of glass with special product characteristics to certain end-uses, that these suppliers priced the product differently for certain end-users, or that the GOC has interfered with the market to favor certain end-users, we initiated on this program because our examination of the Petition lead us to conclude that GOC provides solar glass for LTAR through its state-owned suppliers.³¹⁴ Petitioner provided information indicating that there are subsidized, government-owned producers of rolled and float glass (*e.g.*, the methods used to produce solar glass), and that float glass was priced at less than 50 percent per square meter in the PRC when compared to a world market price.³¹⁵ Petitioner also contended that because many PRC solar glass producers lack the facilities to produce solar glass, they must purchase this input. Based on our examination of Petitioner's allegation, we found that Petitioner properly alleged the elements of a subsidy as instructed by sections 771(5) and (5A) of the Act, and we initiated an investigation on this program.³¹⁶

Regarding Petitioner's comment that we should average the import duty rates on the record, at the verification of the GOC's questionnaire responses, we examined information that demonstrates that the import duty rate for solar glass in the PRC was 12 percent during the POI.³¹⁷ Absent evidence to the contrary, we find no reason why this import duty rate verified at the GOC should not be used for the final determination. As a result, we will use a 12 percent import duty rate for the benefit calculation for this program in this final determination.

Finally, with respect to Wuxi Suntech's comment on reported glass purchases that were actually processing fees, based on the minor corrections provided by Wuxi Suntech at its verification, and the confirmation of the information therein, we will exclude those reported line items from Wuxi Suntech's subsidy calculation for the final determination.

³¹⁴ See Initiation Checklist at 15.

³¹⁵ *Id.*

³¹⁶ *Id.* at 7 and 15.

³¹⁷ See the GOC's VR at 10.

Comment 8: Whether AFA is Applicable to Trina Solar's Land Purchases

Trina Solar's Comments:

- The GOC acted to the best of its ability and supplied information requested by the Department regarding Trina Solar's land purchases.
- Any information the Department found to be missing was because the GOC is not the entity in charge of directing the price of land or land-use rights for Trina Solar.
- Trina Solar should not be punished for information the GOC may not have had in its possession. As a result, the Department should not apply AFA to Trina Solar's land purchases for the final determination.

Petitioner's Rebuttal Comments:

- The GOC owns all land in China. Therefore, it is best positioned to provide details of all land transactions that take place in China, as U.S. courts have recognized.
- The instant record is still devoid of information requested by the Department of the GOC regarding the derivation of the prices paid by Trina Solar's land use rights to determine whether the provision of this land was specific. As a result, the Department should continue to find, as AFA, that Trina Solar's land-use purchases are countervailable for the final determination.

Department's Position: As explained in the *Preliminary Determination*, we stated in our initial questionnaire to the GOC that if it claimed that the provision of land or land-use rights to the respondents was not contingent upon any particular status or activity (e.g., being a producer of certain solar products residing in an industrial park), the GOC must provide a discussion of how the prices paid by the respondent companies were determined.³¹⁸ Trina Solar is located in Jiangsu Province. However, the GOC responded that it “does not direct the price of land or land-use rights which were established between the mandatory respondents and local governments.”³¹⁹ The “Notice of Jiangsu Provincial Government on Printing and Issuance of the Standards for the Minimum Transfer Prices of Land for Industrial Purposes in Jiangsu Province” became effective January 1, 2007, and set new minimal standards related to the transfer prices and land use rights, such that land for industrial use must be transferred through bidding, auction, or quotation.³²⁰ Neither the floor price nor the settlement price of the transfer shall be lower than the minimum transfer price corresponding to the land grade at the place where the land is located.³²¹ Trina Solar stated that its land-use rights had been purchased through a bidding process and that all of its land is located in an industrial park.³²² As a result, we asked the GOC to provide information regarding the public bidding process, demonstrating, among other things, that the floor prices of these auctions, the public notices inviting bids, and the number of bidders for all of Trina Solar's land-use rights purchases.³²³ The GOC provided the “minimum transfer price,” or floor price, for land acquired by Trina Solar after 2008, but it did not provide the

³¹⁸ See *Preliminary Determination* and accompanying Preliminary Decision Memorandum at 22.

³¹⁹ See the GOC's April 21, 2014, questionnaire response at 193.

³²⁰ *Id.* at 193-194.

³²¹ *Id.*

³²² See Trina Solar's April 21, 2014, questionnaire response at 63.

³²³ See the Department's April 29, 2014, questionnaire to the GOC.

requested information for all of the tracts of land provided by the local land bureau to Trina Solar.³²⁴

In the *Preliminary Determination*, we applied AFA in making our specificity determination for Trina Solar's land purchases because the GOC did not provide complete responses to either our initial or supplemental questionnaires regarding the derivation of the prices paid by Trina Solar for its land-use rights. Without this information, we are unable to determine whether the provision of these land-use rights was specific.³²⁵ As we stated in the *Preliminary Determination*, the GOC appears to suggest that it cannot obtain information from local governments regarding land transactions, but such information has been provided in other proceedings; some information from local governments regarding land-use rights was, in fact, provided in this investigation.³²⁶ The GOC has not addressed this deficiency since then. Thus, the GOC has not cooperated to the best of its ability in providing requested information, and we continue to find that an adverse inference is warranted in the application of facts available pursuant to section 776(b) of the Act.

With respect to Trina Solar's argument that it should not be "punished" by the Department's application of AFA for information the GOC did not provide with respect to our specificity analysis, we are not punishing Trina Solar for the GOC's non-response; rather we are relying on AFA to provide a remedy for the government of China's failure to cooperate. The court has upheld the Department's use of AFA in similar circumstances.³²⁷ For example, in *Fine Furniture*, the Federal Circuit recognized that "{respondent} is a company within the country of China, benefitting directly from subsidies the government of China may be providing, even if not intending to use such subsidy for anticompetitive purposes. Therefore, a remedy that collaterally reaches {respondent} has the potential to encourage the government of China to cooperate so as not to hurt its overall industry."³²⁸ We explained above why we are applying AFA for our specificity finding for Trina Solar's land, which is consistent with our practice.³²⁹ As the Federal Circuit held, that a respondent may be subject to collateral effects due to the adverse inferences applied when a government fails to respond to Commerce's questions . . . is not contrary to the statute or its purposes, nor is it inconsistent with this court's precedent."³³⁰ Here, we note that while we are basing our specificity finding on adverse facts available, we are using Trina Solar's reported purchase prices for its land-use rights in the subsidy calculation.

³²⁴ See the GOC's May 12, 2014, questionnaire response at 9-10 and the GOC's April 21, 2014, questionnaire response at Exhibit H.12.

³²⁵ See *Preliminary Determination* and accompanying Preliminary Decision Memorandum at 23.

³²⁶ See, e.g., the GOC's April 21, 2014, questionnaire response at exhibit H.12.

³²⁷ See, e.g., *Fine Furniture (Shanghai) Ltd. v. United States*, 748 F.3d 1365, 1372-1373 (Fed. Cir. 2014) (*Fine Furniture*).

³²⁸ *Id.*

³²⁹ See, e.g., *Wind Towers from the PRC* and its accompanying Issues and Decision Memorandum at Comment 2.

³³⁰ *Fine Furniture*, 748 F.3d 1365, 1372-1373 (Fed. Cir. 2014).

Comment 9: Whether All Banks in China Offering Preferential Loans to Respondents Constitute “Authorities”

Wuxi Suntech Comments:

- The Department improperly categorized some Chinese banks as government authorities despite a lack of evidence on the record that any government ownership or control exists.
- In the *Preliminary Determination*, the Department stated that loans from SOCBs constitute a financial contribution, citing to *OTR Tires from China*.
- As used in *OTR Tires from China*, the term “SOCBs” refers only to the “Big Four” SOCBs in China: the Bank of China, the China Construction Bank, the Industrial and Commercial Bank of China, and the Agricultural Bank of China.³³¹
- Other memoranda issued by the Department only analyze and refer to these banks as SOCBs, and recognize the existence of non-SOCB banks in existence in China.³³²
- Petitioner did not submit any evidence of these other banks’ ownership structures, business operations, or government control over their operations.
- The WTO Appellate Body has faulted the United States for impermissibly shifting to foreign Respondents the burden of proof for showing that SOCBs are not public bodies,³³³ but no record evidence or analysis by the Department indicates that Chinese banks, other than the “Big Four,” constitute government authorities.
- The Department should exclude any loans from any Chinese banks outside the “Big Four” in calculating subsidy margins.

Petitioner’s Rebuttal Comments:

- The Department should continue to find that preferential loans and directed credit from all Chinese banks, not just from SOCBs, are countervailable.
- Government ownership is not limited to SOCBs.
- The Department has previously determined that the GOC has been relatively cautious about banking sector reforms, so banking sector reforms in the PRC have lagged the rest of the sectors in the PRC economy.
- Respondents and/or the GOC, not Petitioner, bear the burden of demonstrating a lack of GOC ownership of the Chinese banks in question.
- Neither Wuxi Suntech nor the GOC has provided evidence that supports Suntech’s argument with respect to a lack of government control or ownership over the banks in question.

Department’s Position: We continue to find, consistent with our findings in *CFS from the PRC* regarding the PRC’s banking sector, that state-owned or controlled banks outside the “Big Four” SOCBs are public authorities within the meaning of section 771(5)(B) of the Act; no respondent has submitted additional information on the record that contradicts our findings in *CFS from the*

³³¹ See Wuxi Suntech’s brief at 29, n.44; see also Additional Documents Memorandum at Banking Memoranda.

³³² *Id.*

³³³ See Appellate Body Report, “United States- Definitive Anti-Dumping and Countervailing Duties on Certain Products from China,” WT/DS379/AB/R, adopted 25 March 2011 at ¶ 352.

PRC that the PRC's banking sector does not operate on a commercial basis and is subject to significant distortions, primarily arising out of the continued dominant role of the government in the financial system and the government's use of banks to effectuate policy objectives.³³⁴ The Department has repeatedly affirmed these findings in proceedings following *CFS from the PRC*. In *OCTG from the PRC*, for example, we noted that:

{T}he GOC has failed to provide evidence that the government has divested itself of ownership in Chinese banks. The GOC has failed to address the issue of real risk assessment within the Chinese banking sector. The GOC has failed to address interest rate and deposit rate ceilings and floors set by the government. The GOC has failed to address both *de jure* and *de facto* reforms within the Chinese banking sector. The GOC has failed to address the elimination of policy based lending within the Chinese banking sector. Therefore, the GOC has failed to provide the information that would warrant a reconsideration of the Department's determination in {the *CFS from the PRC* investigation}.³³⁵

In the more recent investigation, *Aluminum Extrusions from the PRC*, we also noted that the banking system continues to be impacted by the legacy of government policy objectives, which continues to undermine the ability of the "Big Four" and the rest of the domestic banking sector to act on a commercial basis, and allows continued government involvement in the allocation of credit in pursuit of those objectives.³³⁶ Finally, we disagree with Wuxi Suntech's characterization of the Banking Memoranda. If respondents believe that some evidence on the record, including the evidence discussed in those memoranda, is no longer correct, then they had the opportunity to submit additional information to correct that evidence but they did not. The record does not contain any evidence that contradicts the evidence and analysis on the record, or that counteracts the Department's past precedents.

Comment 10: Whether the Department Should Adjust Its Benefit Calculations for Loans Received by Wuxi Suntech and Zhenjiang Ren De

Wuxi Suntech Comments:

- The Department should refer to the minor corrections regarding the loans received by Wuxi Suntech and its cross-owned companies when calculating subsidy margins for the final determination.

³³⁴ See *Aluminum Extrusions from the PRC* and accompanying Issues and Decision Memorandum at Comment 7, citing *Coated Paper from the PRC*, and accompanying Issues and Decision Memorandum at Comment 10; see also Additional Documents Memorandum at Banking Memoranda. Regarding Wuxi Suntech's statements concerning the WTO Appellate Body Decision, see *Countervailing Duty Investigation of 1,1,1,2 Tetrafluoroethane From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 62594 (October 20, 2014) and accompanying Issues and Decision Memorandum at Comment 1, n.204 ("{W}e note that the Appellate Body in that dispute affirmed the Department's finding that SOCBs are 'public bodies' or 'authorities' because they pursue and effectuate government policies.").

³³⁵ See *OCTG from the PRC* and accompanying Issues and Decision Memorandum at Comment 20.

³³⁶ See, e.g., *Aluminum Extrusions from the PRC* and accompanying Issues and Decision Memorandum at Comment 7.

- For one loan received by Zhenjiang Ren De, no principal or interest was repaid. But because this loan was received from an affiliated party, it should not be countervailed.
- The Department should use the revised loan template provided at verification by Wuxi Suntech for the final determination. Otherwise, the Department should use loan chart provided as Exhibit 7-A of the company’s August 13, 2014 questionnaire response.
- If the Department uses Exhibit 7-A, it should apply “Total Number of Days Covered” as zero for the lines which show no interest payment during the POI, rather than the figures provided in the “Life of Loan” column.
- The Department should understand that for two loans, for which the interest is to be repaid after two years at the same time as the principal, that interest must still be repaid after the period of non-payment.

No other party commented on this issue.

Department’s Position: As discussed below, in Comment 19, we have accepted the minor corrections provided by Wuxi Suntech regarding the loans received by it and its cross-owned companies. To the extent practicable, we are using the revised loan data that was examined at verification in order to calculate the *ad valorem* subsidy rate for Wuxi Suntech’s use of this program during the POI. However, we have previously noted several difficulties that arise in using this revised data to calculate subsidies.³³⁷ For the adjustments for specific loans that Wuxi Suntech has identified, we have addressed these concerns in the calculation memorandum for the company, which is dated concurrently with this memorandum.

Comment 11: Whether the High or New Technology Tax Program is Specific

Trina Solar’s Comments:

- Record evidence does not support the *Preliminary Determination* finding regarding specificity. The HNTE program is not limited to a specific enterprise or industry as research and development is conducted in practically all industries.

Wuxi Suntech’s Comments:

- The evidence on the record does not support the Department’s preliminary finding that this program is limited as a matter of law to certain enterprises.
- This program is broadly available to a wide range of distinct products among various industrial sectors.
- Even if implementing legislation limits the scope of the income tax programs, such limits are neutral and do not favor any enterprise or industry over another.

Petitioner’s Rebuttal Comments:

- In the *Preliminary Determination*, the Department appropriately determined that this program is *de jure* specific and target “high and new technology” such as solar photovoltaic technologies.
- The Department should continue to countervail this program for the final determination.

³³⁷ See Wuxi Suntech Verification Report at 8.

Department’s Position: The Department found this program to be specific and countervailable in the *Preliminary Determination*.³³⁸ We find that interested parties have not submitted any new information or arguments that warrant reconsideration of our preliminary finding. In the *Preliminary Determination* we stated:

. . . We also preliminarily determine that the income tax reduction afforded by this program is limited as a matter of law to certain enterprises, *i.e.*, HNTEs, and, thus, is specific under section 771(5A)(D)(i) of the Act.³³⁹

Specifically, under Article 28 of the Enterprise Income Tax Law of the PRC (Decree 63 of the PRC, 2007) companies recognized as HNTEs are eligible for a reduced income tax rate of 15 percent, in lieu of the regular rate of 25 percent.³⁴⁰ Article 2 of the “Circular of the Ministry of Science and Technology, the Ministry of Finance and State Administration of Taxation on Printing and Distributing the Administrative Measures for Certification of New and High Technology Enterprises,” identifies HNTEs as enterprises that have been registered for more than one year within the PRC and that have engaged in continuous R&D and limits availability of this program to those industries enumerated in the Annex of “Hi-tech Fields with Key State Support.”³⁴¹ Article 6 of this Annex also specifically identifies HNTEs that qualify for state key support to include renewable, clean energy technologies such as solar photovoltaic technologies. Trina Solar, its cross-owned affiliate, and certain Wuxi Suntech’s cross-owned affiliates reported being recognized as HNTEs and used this program during the POI, and we confirmed their usage at the verification.³⁴² Our findings at verification were consistent with what the GOC and the respondent companies reported regarding this program. As a result, we continue to find that the eligibility criteria of this program is limited by law to HNTEs, and thus, confers income tax benefits that are specific under section 771(5A)(D)(i) of the Act.

With respect to Trina Solar’s argument that this program is not limited to any specific enterprise or industry as R&D is conducted in practically all industries, we explain above that HNTEs are identified as enterprises that have been registered for more than one year within the PRC and that have engaged in continuous R&D in one of the industries identified in the Annex. Thus, we conclude that this program is limited to the group of certain enterprises (*i.e.*, those that have been registered in the PRC for more than one year and have conducted continuous R&D in one of the industries identified in the Annex), that meet the qualifying criteria.

³³⁸ See *Preliminary Determination* and accompanying Decision Memorandum at 35-36.

³³⁹ *Id.*

³⁴⁰ See the GOC’s April 21, 2014, questionnaire response at 60.

³⁴¹ *Id.*

³⁴² See GOC VR at 3-4, Trina Solar VR at 3-4, and Wuxi Suntech VR at 10.

Comment 12: Whether the Tax Offsets for R&D under the Enterprise Income Tax Law Program is Specific

Wuxi Suntech's Comments:

- The evidence on the record does not support the Department's preliminary finding that the income tax subsidies are limited as a matter of law to certain enterprises.
- The income tax subsidies are broadly available to a wide range of products among various industries.
- The "Tax Offsets for R&D under the Enterprise Income Tax Law" program is broadly available for many R&D expenditures for a wide range of enterprises and industries, and is therefore not specific.
- Even if implementing legislation limits the scope of the income tax programs, such limits are neutral and do not favor any enterprise or industry over another.

Petitioner's Rebuttal Comments:

- In the *Preliminary Determination*, the Department appropriately determined that this program is *de jure* specific and target "high and new technology" such as solar photovoltaic technologies.
- The Department should continue to countervail this program for the final determination.

Department's Position: Similar to the HNTE tax reduction program discussed above, the Department found this program to be countervailable in the *Preliminary Determination*.³⁴³ Under Article 30.1 of the PRC's Enterprise Income Tax Law, companies may deduct R&D expenses incurred in the development of new technologies, products, or processes from their taxable income.³⁴⁴ Decree 512 of the State Council, 2007 provides that, if eligible research expenditures do not "form part of the intangible assets value," an additional 50 percent deduction from taxable income may be taken on top of the actual accrual amount.³⁴⁵ Where these expenditures form the value of certain intangible assets, the expenditures may be amortized based on 150 percent of the intangible assets costs.³⁴⁶

Article 4 of the "Circular of the State Administration of Taxation on Printing and Issuing the Administrative Measures for the Pre-tax Deduction of Enterprises' Expenditures for Research and Development (for Trial Implementation)" (Circular 116) states that enterprises engaged R&D hi-tech sectors may deduct certain expenditures, as listed in the "Hi-tech Sectors with Primary Support of the State Support and the Guideline of the Latest Key Priority Developmental Areas in the High Technology Industry (2007)."³⁴⁷ This list was provided by the GOC as the Administrative Measures for Certification of New and High Technology Enterprises (GUOKEFAHUO {2008} No. 172), and lists in the annex of "Hi-tech Fields with Key State

³⁴³ See *Preliminary Determination* and accompanying Decision Memorandum at 34-35.

³⁴⁴ See the GOC's April 21, 2014, questionnaire response at Exhibit B.3.

³⁴⁵ *Id.* at Exhibit B.5.

³⁴⁶ *Id.*

³⁴⁷ *Id.* at Exhibit B.6.

Support” Article 6, “New Energy and Energy Conservation Technology.”³⁴⁸ Among the subjects included in Article 6 of the list are “Solar energy” and “Solar photovoltaic technology.”³⁴⁹

Trina Solar, its cross-owned affiliate, and some of Wuxi Suntech’s cross-owned affiliates reported using this tax offset program during the POI, which we examined at verification.³⁵⁰ We find that interested parties have not submitted any new information or arguments that warrant reconsideration of our preliminary finding. As a result, we continue to find that the eligibility criteria of this program is limited by law to certain companies engaged in R&D in certain enumerated “hi tech” sectors, and thus, confers income tax benefits that are specific under section 771(5A)(D)(i) of the Act.

Regarding Trina Solar’s argument that this program is broadly available for many R&D expenditures for a wide range of enterprises and industries, and is not specific, we disagree. Based on our examination of the evidence, we conclude that the program is only available to those industries enumerated in the lists and circulars implementing the program. For example, Article 20 of Chapter V of the “Circular of the Ministry of Science and Technology, the Ministry of Finance and the State Administration of Taxation on Printing and Distributing the Administrative Measures for Certification of New and High Technology Enterprises (Guo Ke Fa Huo {2008} No. 172,” lists “Hi-Tech Fields with Key State Support.”³⁵¹ Article 20 lists fields such as “electronic information technology,” “biological and new pharmaceutical technology,” and “new energy and energy conservation technology.”³⁵² Our examination of this list leads us to conclude that this program is limited by law to enterprises conducting R&D in certain sectors.

Comment 13: Whether the Department Should Adjust Its Benefit Calculation for Wuxi Suntech’s Use of the “Preferential Income Tax Program for High or New Technology Enterprises” and for the “Tax Offsets for R&D under the Enterprise Income Tax Law” Programs

Wuxi Suntech’s Comments:

- In the *Preliminary Determination*, the Department double-counted the subsidy benefit provided by the “Tax Offsets for R&D under the Enterprise Income Tax Law” program and the “Preferential Tax Programs for High or New Technology Enterprise.”
- Because the two programs work in tandem with one another, the reduced income tax rate of 15 percent actually paid by Zhenjiang Rietech should be used to calculate the R&D offsets, rather than the normal 25 percent rate, as was used in the *Preliminary Determination*.

Petitioner’s Rebuttal Comments:

- The Department verified the relevant tax deductions, and should continue to apply its *Preliminary Determination* methodology in the final determination.

³⁴⁸ *Id.* at Exhibit B.7.

³⁴⁹ *Id.*

³⁵⁰ *See* GOC VR at 2-3, Trina Solar VR at 5, and Wuxi Suntech VR at 10.

³⁵¹ *See* the GOC’s April 21, 2014, questionnaire response at Exhibit B.7.

³⁵² *Id.*

Department’s Position: Following the *Preliminary Determination*, Wuxi Suntech argued that the Department committed a ministerial error in double-counting the subsidy benefit to Zhenjiang Rietech from both the “Tax Offsets for R&D under the Enterprise Income Tax Law” program and the “Preferential Tax Programs for High or New Technology Enterprises.”³⁵³ In our response to this allegation, we noted that we used the benefit amount provided by Zhenjiang Rietech in its narrative response as the numerator for the calculations in the *Preliminary Determination*.³⁵⁴ Essentially, in calculating the preliminary subsidy rates, we used as a numerator a figure incorrectly calculated by Zhenjiang Rietech itself. At verification, we confirmed that Zhenjiang Rietech’s initially reported calculation, using the standard 25 percent tax rate in effect in the PRC, was in error, and that the company should have calculated its tax offsets using the preferential 15 percent rate.³⁵⁵ We therefore will adjust the final subsidy calculation of Zhenjiang Rietech’s use of the “Tax Offsets for R&D under the Enterprise Income Tax Law” program by using a numerator calculated with the preferential 15 percent tax rate that the company qualifies for as part of the “Preferential Income Tax Programs for High or New Technology Enterprises.”

Comment 14: Whether the Golden Sun Program is Countervailable

Trina Solar’s Comments:

- In the *Preliminary Determination*, the Department essentially acknowledged that this program was established to promote the technological progress and development of the photovoltaic generation industry. Rather than benefitting a specific industry (*e.g.*, Chinese producers of subject merchandise), this program is only directed at those involved in the construction of solar power projects.
- The Department found that this program provided a benefit and was specific because Trina Solar responded that it benefitted directly from this program as a recipient of the grant.
- Consistent with 19 CFR 351.525(b)(5), because the grant is tied to power generation, and not to subject merchandise, the Department should not countervail this program in the final determination.

Petitioner’s Rebuttal Comments:

- Trina Solar is one of the largest producers of solar products worldwide. Solar products are used solely to generate electricity. Grants from this program directly benefit Trina Solar’s own production of solar products by lowering the cost of those products through ensuring an abundant supply of inexpensive electricity.
- Trina Solar argues that this program was established to promote the development of the photovoltaic electricity industry, which exempts it from having grants from this program

³⁵³ See Letter from Wuxi Suntech to the Department, “Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Ministerial Error Comments of Wuxi Suntech Power Co., Ltd.,” at 4-5 (June 10, 2014).

³⁵⁴ See Department Memorandum, “Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Allegations of Ministerial Errors in the Preliminary Determination,” at 6 (August 21, 2014).

³⁵⁵ See, *e.g.*, Suntech Verification Report at 9-10 and Verification Exhibit 12 at 21.

countervailed because it produces solar products. This argument does not make sense as Trina Solar is clearly part of the photo electricity generation industry.

- The granting authority believes that Trina Solar is part of the photovoltaic electricity generation industry, and grants from this program benefit the production of electricity generation equipment.
- Trina Solar’s argument should be rejected, and the Department should continue to countervail this program for the final determination.

Department’s Position: We continue to find that funds received by Trina Solar under the Golden Sun program constitute a countervailable grant. In the *Preliminary Determination*, we determined that Trina Solar benefited from this program as a recipient of the grants for installing a photovoltaic energy-generating project, and that grants from this program are specific as a matter of law to certain enterprises, namely those involved in the construction of solar-powered projects³⁵⁶ Trina Solar argues that the Department should not countervail this program because grants from this program are tied to power generation and not to subject merchandise. We closely examined the “Notice concerning the Implementation of the Golden Sun Demonstration Project (Cai Jian {2009} 397).”³⁵⁷ Article 2 of Chapter 1 of this notice states that the Golden Sun program is a combination of financial assistance, technological support, and market approaches “used to accelerate the industrialization and development of the domestic photovoltaic power industry, and to promote the progress of PV {photovoltaic} power generation technology.”³⁵⁸ Trina Solar, as a producer of photovoltaic solar products, is part of the photovoltaic power generation technology industry. Article 4 of Chapter 2 of the notice indicates that financial assistance from this program is not only for constructing power plants as Trina Solar contends. Article 4 states that financial assistance includes support for the “development and industrialization of key PV technologies, including silicon purification, control inverters, and other key network technologies.”³⁵⁹ Thus, we find that funds from this program are not only provided for the construction of power generation projects, but they are also provided to develop photovoltaic technologies, such as solar cells and modules, which Trina Solar produces.

Comment 15: Whether the Department Should Countervail the “Discovered Subsidies” or Subsidies Discovered During the Course of Verification

Petitioner’s Comments:

- Trina Solar failed verification with respect to certain unreported tax and grant programs by failing to report its use of these programs to the Department. Only at verification did the Department discover that Trina Solar benefitted from these programs.
- Because the use of these programs was not properly disclosed to the Department in advance, and could not be verified, the Department must utilize facts available consistent with section 776(a)(2)(A-D) of the Act.
- The Department should employ its CVD AFA methodology to assign a subsidy rate based on AFA to these tax and grant programs.

³⁵⁶ See *Preliminary Determination* and accompanying Decision Memorandum at 25-27.

³⁵⁷ See Exhibit A.8 of the GOC’s April 21, 2014, questionnaire response.

³⁵⁸ *Id.*

³⁵⁹ *Id.*

Trina Solar's Comments:

- The Department preliminarily determined that numerous “discovered grants” from the GOC to the respondents discovered during the course of this investigation were countervailable. Consistent with the Department’s regulations and U.S. obligations under the WTO, these grants should not be countervailed because they were not alleged in the petition nor properly initiated by the Department.
- At verification, the Department’s verification team noted certain grants in Trina Solar’s financial accounting systems. As with the “discovered grants,” the Department should also not countervail these grants because the Department did not lawfully initiate an investigation on them.
- There is no evidence on the record that these grants are subsidies that would meet the criteria to be countervailed.
- The Department’s regulations state that it will only examine a grant discovered during the course of an investigation if the Secretary concludes that sufficient time remains before the scheduled date of the final determination. Because the deadline for the submission of factual information has passed, there is insufficient time to examine these grants.
- In the absence of a proper initiation and evidence demonstrating that these grants are countervailable subsidies, the Department should not countervail them for the final determination.

Petitioner's Rebuttal Comments:

- The Department should countervail all “discovered grants” and should apply AFA to any additional grants discovered at verification.
- At Trina Solar’s verification, the Department discovered that the company did not disclose its receipt of additional grants. As a result, it is clear that Trina Solar did not act to the best of its ability to extract the information on these additional grants from its records.
- Because these additional grants were not disclosed to the Department, and therefore could not be verified, the Department has no choice but to utilize facts available under section 776(a)(2)(A-D) of the Act.
- The Department should apply its CVD AFA methodology for assigning a subsidy rate to each of the additional grants uncovered by the Department at Trina Solar’s verification.

Trina Solar's Rebuttal Comments:

- These alleged grants were not properly initiated and there is no evidence that they are countervailable.
- The Department has previously deferred the investigation of alleged subsidies when they have not been alleged by the regulatory deadline or where they were discovered by the Department after that deadline.
- If the Department countervails these alleged grants, it should apply neutral facts available for the final determination.
- The discovered tax program is a deduction for the employment of disabled persons. This tax deduction is eligible to all companies in the PRC that employ disabled persons, and is not specific as a matter of law. The Department has declined to countervail this program in other investigations.

Department’s Position: We have two issues regarding subsidies that were discovered during the course of this investigation. First, as discussed above in the section, “Use of Facts Otherwise Available and Adverse Inferences,” we are continuing to determine, as AFA, that numerous grants from the GOC to the respondents discovered during the course of this investigation are countervailable. In our initial questionnaire, the Department included the following question, which is part of the “standard” questionnaire issued at the outset of every CVD investigation and review:

Does the GOC (or entities owned directly, in whole or in part, by the GOC or any provincial or local government) provide, directly or indirectly, any other forms of assistance to producers or exporters of solar cells and panels? Please coordinate with the respondent companies to determine if they are reporting usage of any subsidy program(s). For each such program, please describe such assistance in detail, including the amounts, date of receipt, purpose and terms, and answer all questions in the Standard Questions Appendix, as well as other appropriate appendices attached to this questionnaire.³⁶⁰

As it has done in the past, the GOC responded by stating its position that an answer to this question is not warranted or required.³⁶¹ In the GOC’s view, the question is inconsistent with Article 11.2 of the SCM agreement.³⁶²

We explained in the *Preliminary Determination* that in their questionnaire responses, Trina Solar and Wuxi Suntech reported numerous additional grants in addition to those alleged in the petition.³⁶³ We provided the GOC with an opportunity to respond to the standard questionnaire appendix regarding these grants, and the GOC did not provide the requested information. Instead, the GOC objected to our questions on “purported” subsidies as to which it claimed no timely allegations were filed, or investigation initiated.³⁶⁴ Indeed, the GOC contends that our requests are inconsistent with the Act and our own regulations.³⁶⁵ In their questionnaire responses, Trina Solar and Wuxi Suntech provided information on the names of the grant programs, the amounts received, and brief explanations of their understanding of the purpose of the program, information for which we were able to examine at their respective verifications.³⁶⁶

It is important to note that the GOC made no attempt to provide the information requested. It also gave no indication that it needed more time to provide the information requested, despite having done so in responding to questions on other topics.³⁶⁷ The GOC stated unequivocally its

³⁶⁰ See the Department’s February 28, 2014, questionnaire to the GOC at II-19.

³⁶¹ See the GOC’s April 21, 2014, questionnaire response at 222; see also, e.g., *Solar Cells from the PRC* and accompanying Issues and Decision Memorandum at 66-67.

³⁶² See the GOC’s April 21, 2014, questionnaire response at 222.

³⁶³ See *Preliminary Determination* at 24.

³⁶⁴ See the GOC’s May 12, 2014, questionnaire response at 13-14.

³⁶⁵ *Id.*

³⁶⁶ See, Trina Solar’s May 14, 2014, questionnaire response; Wuxi Suntech’s April 21, 2014, questionnaire response; Trina Solar VR at 7; and Wuxi Suntech VR at 11.

³⁶⁷ For example, in responding to questions on information regarding the China Export & Credit Insurance Corporation (SINOSURE), the GOC stated that time had been a factor: “The GOC was not able to obtain the annual

objection to our questions, and provided no indication it intended to respond to these questions in the future. Instead, it only provided an argument as to why, in its view, the information was inconsistent with the Act and the Department's regulations. While the Department is required by section 782(d) of the Act to identify deficiencies in questionnaire responses and to provide additional time to a respondent to correct such deficiencies, this was not a "deficient" response. It was simply an argument submitted in lieu of a response. Consequently, we determined that all of these grants were countervailable and calculated subsidy rates for these grants in the *Preliminary Determination*.³⁶⁸ Based on the subsequent arguments received on this issue, we find no reason to revise our findings in the *Preliminary Determination* on these grants.

We explained above in the section, "Subsidies Discovered During the Investigation," that Trina Solar and Wuxi Suntech reported additional grants in addition to those that were alleged in the petition. When we asked the GOC about these unreported grants, the GOC refused to provide the information that we requested, stating that "it has no comment on the other subsidies reported by the respondents."³⁶⁹ Because the GOC failed to provide requested information on these additional grants, we found them to be countervailable in the *Preliminary Determination* based on AFA.³⁷⁰ Now Trina Solar argues that these additional grants were not alleged, and that we should not find them to be countervailable.

The Department did not include these additional grants in the Initiation Notice.³⁷¹ However, section 775 of the Act requires that if the Department "discovers a practice which appears to be a countervailable subsidy, but was not included in the matters alleged in a countervailing duty petition . . . then the administering authority (1) *shall* include the practice, subsidy, or subsidy program in the proceeding if the practice, subsidy, or subsidy program appears to be a countervailable with respect to the merchandise which is subject of the proceeding . . ."³⁷² The GOC declined to provide the information that we requested, and we applied an adverse inference under section 776(b) of the Act to find that these grants are specific.

Trina Solar also contends that the Department will only examine a grant discovered during the course of an investigation only "if the Secretary concludes that sufficient time remains before the scheduled date for the final determination or final results of review," citing 19 CFR 351.311(b).³⁷³ We concluded that sufficient time did remain to examine these additional grants before this final determination as we included these grants in our analysis for the *Preliminary Determination* and were able to sufficiently examine the relevant information.³⁷⁴

report for SINOSURE for 2012 in time for purposes of this response. The GOC will make the best efforts to provide the required documents, if applicable, as soon as practicable." See the GOC's April 21, 2014, questionnaire response at 95.

³⁶⁸ See *Preliminary Determination* and accompanying Decision Memorandum at 27.

³⁶⁹ See the GOC's July 12, 2014, questionnaire response at 16.

³⁷⁰ See *Preliminary Determination* and accompanying Preliminary Decision Memorandum at 24.

³⁷¹ See *Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Initiation of Countervailing Duty Investigation*, 79 FR 4667 (January 29, 2014) and accompanying CVD Initiation Checklist.

³⁷² *Id.*; section 775 of the Act (emphasis added); 19 CFR 351.311(b).

³⁷³ See the Letter to the Secretary, "Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Case Brief of Changzhou Trina Solar Energy Co., Ltd. (October 16, 2014) at 23.

³⁷⁴ See *Preliminary Determination* and accompanying Preliminary Decision Memorandum at 24 and 27.

The second issue regards unreported grants that were discovered at the verification of Trina Solar's questionnaire responses. At the verification of Trina Solar's questionnaire responses, the verification team noted entries for numerous unreported grants in the company's various accounts for government grants.³⁷⁵ When the verification team asked why Trina Solar did not report these grants in its questionnaire responses, counsel for Trina Solar stated that the company reported all of the assistance for which it was asked, and offered to provide additional information on the purpose for these grants and how Trina Solar qualified for them.³⁷⁶ The Department's verifiers explained that while they would take the names, dates, and amounts received for these unreported grants as verification exhibits, we would consider any additional information on these grants to be new factual information, and thus declined to accept the additional information that was offered by counsel for Trina Solar with respect to these grants.³⁷⁷

Also at verification, the verification team asked Trina Solar about an unreported tax deduction listed in the company's income tax returns.³⁷⁸ Company officials explained that this deduction was for employing disabled persons, and that all companies in the PRC are eligible to claim this deduction as long as they employ disabled persons.³⁷⁹ Company officials provided the "Notice of the Ministry of Finance and the State Administration of Taxation on Issues on Preferential Tax Policies for Enterprises Employing Disabled Persons," Cai Shui No. 70, 2009, which indicates that enterprises that employ disabled persons are eligible to deduct 100 percent of the wages paid to disabled employees when calculating the amount of their taxable income on the basis of the deduction that is made in accordance with the actual wages that were paid to the employee.³⁸⁰

Despite the Department's questions concerning "Other Forms of Assistance," in the initial questionnaire, the GOC and Trina Solar did not report the existence of these unreported grants and tax deduction in their initial and supplemental questionnaires. It is important to note that Trina Solar made no attempt to provide the information requested by the deadline for the submission of information, and gave no indication that they needed more time to provide the information requested, despite having done so in responding to questions on other topics, as noted throughout.

As explained above in the section "Use of Facts Otherwise Available and Adverse Inferences," we find that Trina Solar failed to provide information regarding this assistance discovered at its verification, and thus, section 776(a)(2)(B) of the Act applies. We further find that by not divulging the receipt of this unreported assistance prior to the commencement of verification, Trina Solar failed to cooperate by not acting to the best of its ability and precluded this unreported assistance from being verifiable. Thus, pursuant to section 776(b) of the Act, we are determining, as AFA, that the unreported assistance in question is countervailable.

³⁷⁵ See Trina Solar VR at 7.

³⁷⁶ *Id.*

³⁷⁷ *Id.*

³⁷⁸ *Id.* at 6.

³⁷⁹ *Id.*

³⁸⁰ *Id.*

With respect to Trina Solar’s argument that the Department should use the information taken at verification, the Department disagrees. First, based on the reasons stated above, the Department is applying an adverse inference in determining the benefit of these unreported programs, not neutral facts available. By its own actions, Trina Solar precluded the Department from verifying this information when it withheld it until after the deadline for the submission of new factual information had passed. Second, the information obtained at verification was collected merely to record that Trina received benefits from unreported government assistance programs.³⁸¹ The Department did not “verify” this information. The Department examined only certain accounts regarding government grants. Additionally, the record evidence does not demonstrate that what we collected at the verification constitutes the entirety of the accounting information regarding unreported government grants. For example, the Department did not reconcile the amounts of these unreported government grants to Trina Solar’s financial statements. The fact that Trina Solar presented this information to Department officials during the afternoon of the final day of verification and not within the time limits for the submission of new factual information precluded the Department from verifying this information. Relying on this information now would not be consistent with the statute’s mandate that the Department “shall verify all information relied upon in making . . . a final determination in an investigation.”³⁸² Instead, we must rely on the adverse inference that Trina Solar chose not to timely report this information and subject it to verification because doing so would have resulted in a less favorable result than allowing the Department to discover this information at verification.³⁸³

With respect to Trina Solar’s arguments, and consistent with *Shrimp from the PRC*,³⁸⁴ we find the refusal of the GOC and Trina Solar to respond to our questions on “Other Forms of Assistance” demonstrates an unwillingness to respond to the Department’s initial and supplemental questionnaires regarding this unreported assistance. Further, section 775 of the Act and 19 CFR 351.311(b) direct the Department to examine apparent subsidy practices discovered during the course of the proceeding and not alleged in the petition (if the Secretary “concludes that sufficient time remains”). The information in Trina Solar’s 2012 annual report contains numerous references to government grants.³⁸⁵ And the grants that we “discovered” at verification were booked into accounts for recording subsidies under the PRC GAAP, such as government grants.³⁸⁶ Thus, the documents of Trina Solar indicated practices that appeared to provide countervailable subsidies, and, thus, the Department properly examined these programs under section 775 of the Act and 19 CFR 351.311(b).³⁸⁷

³⁸¹ See Trina Solar VR at 7 and at Verification Exhibit 18.

³⁸² See section 782(i) of the Act.

³⁸³ See SAA at 870.

³⁸⁴ See Trina Solar VR at 7 and at Verification Exhibit 18 and *Shrimp from the PRC* and accompanying Issues and Decision Memorandum at 15.

³⁸⁵ See, e.g., Trina Solar’s April 21, 2014, questionnaire response (public version) at Exhibit 17, page F-21, “Government Grants.”

³⁸⁶ See Trina Solar VR at 7.

³⁸⁷ The Department has addressed these same arguments with nearly identical fact patterns in prior CVD proceedings involving the PRC. See, e.g., *Steel Wheels from the PRC* and accompanying Issues and Decision Memorandum at 45-46; *Citric Acid from the PRC*, and accompanying Issues and Decision Memorandum at Comment 30; and *Solar Cells from the PRC* and accompanying Issues and Decision Memorandum at Comment 23.

We acknowledge that the Department's practice regarding assistance discovered during verification has varied in past cases. However, we find that the facts of this particular case merit the application of AFA. For example, in *Washers from Korea*, the respondent demonstrated that the grant in question was not tied to subject merchandise, and thus was not relevant to the investigation at hand; thus, the Department concluded that the grant in question was not tied to subject merchandise and was not countervailable.³⁸⁸ In the instant investigation, we have no information to demonstrate that the apparent assistance discovered at verification did not benefit the subject merchandise that would justify Trina Solar's failure to report.

Trina Solar's argument that we did not have sufficient time to examine these programs because they were discovered at verification and thus after the deadline for factual information are unavailing. While situations may arise wherein the Department is not able to examine programs discovered during verification, the programs discovered here were able to be sufficiently examined within the time constraints of this proceeding, taking into account the nature of these programs and our reliance on adverse inferences. Contrary to Trina Solar's argument, the fact that it was not willing to respond fully to our earlier questions or divulge this information earlier should not prohibit the Department from considering the very information Trina Solar failed to disclose earlier or relying on adverse inferences in doing so.

We note that 19 CFR 351.311(d) provides that the Department will notify the parties to the proceeding of any subsidy discovered during an ongoing proceeding, and whether it will be included in the ongoing proceeding. The parties were notified of the discovery of this assistance discovered at verification and their inclusion in this proceeding when the Department released Trina Solar's VR. Such notice is evident in the fact that interested parties commented on the issues surrounding this assistance prior to the final determination.

Finally, for the assistance discovered at Trina Solar's verification, and consistent with our practice,³⁸⁹ we will apply our CVD AFA methodology to determine the CVD rate(s) to apply for the unreported assistance discovered at Trina Solar's verification. For the grant programs, we are applying 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*.³⁹⁰ For the discovered tax program, we are applying the rate of 9.71 percent, which was calculated for the program, "VAT and Import Duty Exemptions on Imported Material," in the CVD administrative review of *Off-the-Road Tires from the PRC*.³⁹¹

³⁸⁸ See *Washers from Korea* and accompanying Issues and Decision Memorandum at Comment 18.

³⁸⁹ See *Shrimp from the PRC* and accompanying Issues and Decision Memorandum at 15.

³⁹⁰ See *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.

³⁹¹ See *New Pneumatic Off-the-Road Tires From the People's Republic of China: Preliminary Results of Countervailing Duty Review*, 75 FR 64268 (October 19, 2010) (*Off-the-Road Tires from the PRC*), unchanged in the final determination, *New Pneumatic Off-the-Road Tires From the People's Republic of China Final Results of Countervailing Duty Administrative Review*, 76 FR 23286 (April 26, 2011).

Comment 16: Whether the Department Should Apply AFA to the Ex-Im Bank Buyer's Credit Program

Petitioner's Comments:

- The Ex-Im Bank is best positioned to respond to the Department's questionnaire and participate in verification.
- The GOC refused to allow the Department to conduct verification on this program. As a result, the Department should apply total AFA to this program for the final determination.

The GOC's Rebuttal Comments:

- The record has established that the respondents in this investigation have not used the Export Buyer's Credit program.
- The Department's conduct at verification does not substitute for a finding that information could not be verified or that the GOC refused to cooperate to the best of its ability.
- The Department is aware of Ex-Im Bank's limitations in disclosing lending information, in particular information related to non-respondent companies.
- Although the Department's APO procedures might protect such information, such matters are irrelevant to Chinese secrecy laws and do not supersede such laws.
- The GOC provided sufficient information with respect to the processes and requirements for using this program, such that the Department could have confirmed use or non-use of the program with the respondents.
- At verification, the GOC provided the Department with an opportunity to examine printouts of the system query utilized by Ex-Im Bank. The Department was fully aware that it could not be permitted to repeat this query itself when it refused to examine these documents.
- Repeating the query is not the only method the Department could have used to verify non-use of this program; the Department could verify non-use with the company respondents.
- Both Trina Solar and Wuxi Suntech reported non-use of this program, but the Department chose not to verify this information.
- By declining to verify non-use at the company respondents, and aware of the Ex-Im Bank's limitations on disclosure, the Department engineered a limited verification with the GOC.
- If the Department chooses not to verify information provided by a respondent, it must presume that information is accurate.
- The record does not indicate that the GOC failed to act to the best of its ability in cooperating with these proceedings, and therefore the application of an adverse inference with respect to this program is unwarranted.

Trina Solar's Rebuttal Comments:

- Trina Solar's sole U.S. customer did not use this program.
- Department officials verified that Trina Solar's U.S. affiliate, *e.g.*, Trina Solar U.S., was Trina Solar's only U.S. customer during the POI.

- At verification, Department officials reconciled Trina Solar U.S.’s 2012 balance sheet with Trina Solar’s accounting system, the results of which are consistent with what Trina Solar Reported.
- Trina Solar U.S. provided an affidavit supporting its statements that it did not use this program.
- Even if the GOC “failed verification,” regarding this program, there is no evidence of benefit to Trina Solar.

Wuxi Suntech’s Rebuttal Comments:

- The Department has recognized that there are alternative means to verify non-use of this program by a respondent, irrespective of the GOC’s cooperation.³⁹²
- When there is no evidence of use by a respondent, as verified by the Department, there is no basis for countervailing this program, regardless of Ex-Im Bank’s actions during the course of the investigation.
- Because a seller’s records and documents are necessary for using this program, the use or non-use of the program by Wuxi Suntech’s customers was verifiable.
- Based on its own records, Wuxi Suntech was able to report non-use of this program to the Department.
- The Department’s preliminary finding was based on non-use of this program by Wuxi Suntech.
- The Department found no evidence of assistance being provided by this program during verification, verifying non-use of the program and acknowledging that Wuxi Suntech passed that part of the verification without any issue.
- Therefore, whether the GOC failed the verification aspect of this program, and whether the program grants a countervailable subsidy, are irrelevant to the Department’s preliminary finding.
- This program focuses on customers in developing nations, therefore it is highly unlikely that U.S. customers of Wuxi Suntech would benefit under this program.
- U.S. CVD laws are remedial in nature, as opposed to punitive, compensatory, or retaliatory, and therefore the Department should not penalize the company respondents because of Ex-Im Bank’s non-cooperation.
- Verification of use or non-use can be conducted by examination of company records, irrespective of government involvement.
- Wuxi Suntech reported non-use of this program, and the Department found no discrepancy regarding Wuxi Suntech’s response. Therefore it would unfairly punish Wuxi Suntech for Ex-Im Bank’s non-cooperation.
- The Department should not presume that Wuxi Suntech benefited to the fullest extent possible under this program.
- There is no evidence that any of Wuxi Suntech’s export sales to the U.S. were financed under this program.

³⁹² See *Chlorinated Isocyanurates From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*; 2012, 79 FR 56560 (September 22, 2014) and the accompanying Issues and Decision Memorandum at 15.

- There is no basis for presuming that any such financing was interest-free, as information placed on the record by Petitioner indicates that interest must be paid on such financing.³⁹³
- There is no reason to assume that Wuxi Suntech’s U.S. customers are uncreditworthy; such an allegation, and the accompanying analysis, should be made earlier in the investigation.
- The Department should not accept the AFA rate suggested by Petitioner.

Department’s Position: The Department determines that the application of AFA is warranted in finding that this program has been used by the company respondents. In our first questionnaire, we asked the GOC to complete the “standard questions” appendix regarding the “export credit subsidy programs,” in addition to some other questions.³⁹⁴ The standard questions appendix is attached to each initial questionnaire issued in an investigation. Respondents are required to respond to the appendix separately for each program that the Department is investigating. This appendix requests, among other information, a description of the program and its purpose, a description of the types of relevant records the government maintains, the identification of the relevant laws and regulations, and a description of the application process (along with sample application documents). In response to the Department’s initial questionnaire, the GOC stated that it had confirmed with the China Export-Import Bank that none of the respondents, nor any of their U.S. customers, used the program during the POI.³⁹⁵ The GOC provided no response to the standard questions appendix.

While the Department may not always require that the standard questions appendix be fully answered when both the government and company respondents claim a program has not been used, it was inconclusive from our analysis of the initial questionnaire responses whether the company respondents knew whether their buyers had received export buyer’s credits from the Ex-Im Bank. Therefore, in order to confirm the non-use of this program by the respondents, the Department requested additional information that was deemed necessary in this investigation in order to accurately assess whether the program had or had not been used. This included basic questions concerning the operation of the program, including abbreviated versions of questions contained in the standard questions appendix (*e.g.*, requests for a description of the application process and eligibility criteria, sample application forms, and a narrative describing how the Ex-Im Bank supervises and inspects loan usage).³⁹⁶ The GOC did not provide any of the documents requested in response to these questions, stating in response to each question that such documents “are not available as there are no fixed formats for the above documents, which are prepared by the borrowers freely.”³⁹⁷ It also provided a very brief description of other materials required for applicants, as well as noting that verification processes were in place.³⁹⁸ The GOC’s short description of the application process provided no indication of how an

³⁹³ See Petition Vol. III at Exhibit 146.

³⁹⁴ Note that there is one “standard questions” appendix for governments and one for company respondents. The government appendix is at issue here.

³⁹⁵ See the GOC’s April 21, 2014, questionnaire response at 82.

³⁹⁶ See GOC July 15, 2014 QR.

³⁹⁷ See the GOC’s July 29, 2014, questionnaire response at 14

³⁹⁸ *Id.* at 15.

exporter might be involved in the provision of export buyer's credits, other than that "the Chinese exporter should be aware of the buyer's receipt of loans and should be involved in the loan evaluation proceeding and in particular in the post-lending loan management."³⁹⁹ There was no description of how an exporter might have knowledge of such export credits, or how such export credits might be reflected in a company's books and records.

The GOC did not indicate prior to or at the outset of verification that it had any concerns with the clear requests in the verification outline. It did not express any objection to these requests until the moment the Department sat down with Ex-Im Bank officials to begin this portion of the verification agenda. In our supplemental questionnaire, as well as the verification agenda, the Department made it abundantly clear that we understood that the only way to establish non-use of this program was through the GOC and not through the company respondents. At verification, the GOC repeatedly denied Department officials the opportunity to examine the basis for the GOC's contention that none of the company respondents in this investigation, or their customers, used this program during the POI. Instead, the GOC raised the novel issue that because the Department had verified non-use of this program in another manner in a previous investigation, there was no need to verify non-use of this program at all. As we noted for the GOC at the time, whatever may have occurred during the conduct of another investigation stood on the record of that investigation, and that investigation only, and did not dictate our verification procedures in this proceeding.⁴⁰⁰ Despite repeated requests to verify the basis of statements made on the record of this investigation, the GOC refused to allow the Department to query the databases and records of the Ex-Im Bank to establish the accuracy of its non-use claim.⁴⁰¹

Because of the lack of information from the GOC, and a refusal to allow us to query the Ex-Im Bank database, the Department concluded it could not verify the government's reported non-use of export buyer's credits by the company respondents. For verification purposes, the Department must be able to test books, records, or other computer systems in order to assess whether the questionnaire responses are complete and accurate. In prior CVD proceedings (*e.g.*, *Solar Cells from the PRC* and *Shrimp from the PRC*), we explained that because it is the Ex-Im Bank that provides loans to the customers of Chinese producers under this program, the Ex-Im Bank is the entity that possesses the records we need to verify the accuracy of non-use claims, because it was the lender. Such records could be tested by the Department to check whether the U.S. customers of the company respondents had received export buyer's credits, and such records could then be tied to the Ex-Im Bank's financial statements. In notifying the GOC that we intended to verify non-use at the Ex-Im Bank, our verification outline stated that we would need to review application and approval documents, among other records, and that we would need to query relevant electronic databases if relevant records were maintained electronically. We clearly stated the purpose of such procedures was to ensure the accuracy of the GOC's response to the

³⁹⁹ See the GOC's April 21, 2014, questionnaire response at 84.

⁴⁰⁰ See GOC VR at 5.

⁴⁰¹ See GOC VR at 16-17.

Department's questions that none of the respondents' customers had received export buyer's credits.⁴⁰²

In its case brief, the GOC argues that the Department could have verified non-use of export buyer's credits at the companies. Assuming *arguendo* that there were means of verifying non-use at the companies, there is still no reason the Department should not expect the GOC to permit verification of its own questionnaire responses. The GOC stated clearly in its questionnaire responses that the Ex-Im Bank had not provided export buyer's credits to the respondents' U.S. customers. It did not indicate that it had received this information second hand or from the companies, or that it was simply reporting what it understood to the best of its knowledge. Indeed, the GOC's questionnaire responses stated that it confirmed the accuracy of the reported non-use with the Ex-Im Bank itself.⁴⁰³ That the Department may inquire into non-use with company respondents does not mean that verifying non-use with the relevant government agencies is impermissible. There will still be certain occasions, such as with export buyer's credits, when the Department finds, based on the information provided by the respondents, that the proper way to verify whether the program has been used is to examine the government's books and records because it is the government that keeps and maintains the most pertinent information and documentation. In addition, with respect to the GOC's argument that the Department conducted verification of this program differently in *Chlorinated Isos from the PRC*, the facts of that case are distinguished from those here. Unlike in that investigation, none of the company respondents here provided any probative documents indicating non-use by unaffiliated U.S. customers, or customers of affiliated importers (*i.e.*, the ultimate users of the products in the United States), such as affidavits or certifications indicating non-use of this program.

We do not agree with the GOC and the company respondents that we cannot apply AFA for this program given no indication on the record that the program was used by the respondents' customers. We were prevented by the GOC from examining the only source documentation (the Ex-Im Bank's books and records) that would have been probative in this respect. The GOC and the respondents cannot now insist that we should make our decision based on evidence compiled from second best sources, such as the company respondents' records. While the GOC stated in its questionnaire response that exporters are involved in the provision of export credits to their buyers and would have records of their involvement, such records (*e.g.*, copies of applications and compliance records) are not the type of information that are ideally suited for verification. Verification is ideally suited for ledgers, journals, databases, etc. that can be tied to audited financial statements and tax returns and other documents for which completeness can be determined. The Department cannot typically look at the contents of a filing cabinet or binder and determine whether it includes everything that it is supposed to include. Absent a well-documented understanding of how an exporter would be involved in the application of its customer for an export buyer credit and what records the exporter might retain, we would have no way of knowing whether the records we review at a company verification necessarily include

⁴⁰² See the Department's Letter to the GOC, "Countervailing Duty Investigation of Crystalline Silicon Photovoltaic Products from the People's Republic of China: Government Verification Outline," (August 20, 2014) at 7; *see also* See GOC July 15, 2014, QR at A-2.

⁴⁰³ See, *e.g.*, the GOC's April 21, 2014, questionnaire response at 82-83.

any applications or compliance records that an exporter might have from its participation in the provision of export credits to its buyers.

Finally, in regard to the company respondents' arguments that they themselves could not even have theoretically benefited from this program given that it was directed at their customers, we note where we have had such allegations and where we have found that such export buyer's credits have been used, we have consistently found such financing to be countervailable as a subsidy benefitting the exporter.⁴⁰⁴ And while Trina Solar did certify on behalf of its U.S. affiliated importer that that importer did not use buyer's credits,⁴⁰⁵ it provided no submission/certifications/affidavits from the customers of the affiliated importer. The GOC's description of the program refers to "buyers" and "customers," and does not indicate that only importers would be eligible to receive buyer's credits. Moreover, Ex-Im Bank's own annual report does not limit the program to developing nations, as Wuxi Suntech claims. Merely noting that "the Bank continued to reinforce its support to the developing world"⁴⁰⁶ is not akin to saying that "support is limited to the developing world," and no other evidence on the record supports Wuxi Suntech's claim. Therefore, as stated above in the section "Application of Facts Available and Adverse Inferences," the Department determines that AFA is warranted in determining that the respondents have used and benefited from this program. Although Wuxi Suntech argues that the Department should account for interest paid as part of the financing cost for this program, as described as part of our AFA methodology, above, we are selecting, as AFA, the highest calculated rate for the same or similar program, *i.e.*, 10.54 percent. There is no basis for Wuxi Suntech to claim that this calculated rate does not account for any interest paid on loans.

Comment 17: Whether the Department Should Find Trina Solar and Wuxi Suntech to be Uncreditworthy

Petitioner's Comments:

- The Department should find Trina Solar and Wuxi Suntech to be uncreditworthy during the POI.
- In the prior investigation of *Solar Cells from the PRC*, the Department found Trina Solar to be uncreditworthy in 2005 and 2007, and Wuxi Suntech was uncreditworthy in 2010.
- Record evidence indicates that both Trina Solar and Wuxi Suntech remained uncreditworthy during the POI.
- Petitioner also requests that the Department find loans to solar products to a *de facto* export subsidy, as it contends we did in *Solar Cells from the PRC*.

Wuxi Suntech Comments:

- The Department did not initiate or investigate Petitioner's late uncreditworthiness allegations; therefore there is no basis to find Wuxi Suntech to be uncreditworthy during the POI.

⁴⁰⁴ See, e.g., *Steel Wire Rod from Italy*, 63 FR at 40480; *Steel Products from Austria*, 50 FR at 33369; *Tillage Tools from Brazil*, 50 FR at 34525; *Platform Jackets and Piles from Korea*, 50 FR at 29461.

⁴⁰⁵ See Trina Solar's May 2, 2014 submission, "Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China; Factual Information Submission" at Exhibit 1.

⁴⁰⁶ See Wuxi Suntech's Rebuttal Brief at 7.

- The Department’s prior determination that Wuxi Suntech was uncreditworthy in 2010 is not relevant to this investigation.

Trina Solar’s Rebuttal Comments:

- The Department did not initiate an uncreditworthiness investigation. Moreover, Petitioner has failed to provide sufficient evidence to meet the legal standing for initiating a creditworthiness investigation.

Department’s Position: In its May 20, 2014, “Pre-Preliminary Determination Comments,” which were filed less than two weeks before the scheduled date for the signing of the *Preliminary Determination*, Petitioner requested that the Department find Trina Solar and Wuxi Suntech uncreditworthy.⁴⁰⁷ Section 351.505(a)(6)(i) of the Department’s regulations states that normally, the Secretary will not consider the uncreditworthiness of a firm absent a specific allegation by the petitioner that is supported by information establishing a reasonable basis to believe or suspect that the firm is uncreditworthy. In deciding whether to initiate an uncreditworthiness investigation, the Department’s practice is to evaluate information such as: 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, such a market studies, country and industry economic forecasts, and projects and loan appraisals prepared prior to the agreement between the lender and the firm on the terms of the loan.⁴⁰⁸

We conclude that Petitioner’s comments do not meet the threshold for initiating an uncreditworthiness analysis. Our examination of these comments leads us to conclude that they are not a “specific allegation” as required by 19 CFR 351.505(a)(6)(i). Petitioner does not provide a time period for the Department to investigate whether Trina Solar and Wuxi Suntech are uncreditworthy. Rather, Petitioner simply refers to a prior investigation where the Department had found Trina Solar to be uncreditworthy in 2005 and 2007 (seven and five years prior to the POI, respectively), and Wuxi Suntech in 2010 (two years prior to the POI). For 2012, Petitioner only cites to a few news articles indicating that Trina Solar and Wuxi Suntech were not profitable. Nowhere did Petitioner provide information indicating whether Trina Solar or Wuxi Suntech are unable to obtain long-term commercial loans, nor did it provide present and past indicators of either company’s financial health (*e.g.*, current ratios, quick ratios, etc.) We note that both Trina Solar and Wuxi Suntech have provided public versions of their 2012 annual reports in their questionnaire responses, which contain the information necessary for Petitioner to make such calculations for the POI.⁴⁰⁹ Furthermore, Petitioner failed to note in its allegation information on Trina Solar’s or Wuxi Suntech’s future financial position, such as market studies or country and industry forecasts.

⁴⁰⁷ See the Letter to the Secretary, “Certain Crystalline Silicon Photovoltaic Products from China: Petitioner’s Pre-Preliminary Determination Comments,” (May 20, 2014) at 29-31.

⁴⁰⁸ See 19 CFR 351.505(a)(4)(i).

⁴⁰⁹ See Trina Solar’s April 21, 2014, questionnaire response at Exhibit 17, and Wuxi Suntech’s April 21, 2014, questionnaire response at Exhibit 4.

Based on the totality of the circumstances, we did not initiate an uncreditworthiness analysis with respect to Trina Solar and Wuxi Suntech, nor do we have any basis to find Trina Solar and Wuxi Suntech to be uncreditworthy for this final determination.

With respect to Petitioner’s request that we find loans provided to the solar industry to be a *de facto* export subsidy consistent with *Solar Cells from the PRC*,⁴¹⁰ we note that in *Solar Cells from the PRC*, with respect to the program “Preferential Policy Lending,” we found these loans to be countervailable because Article 25 of the PRC’s Renewable Energy Law calls for PRC financial institutions to offer favorable loans to the renewable energy industry.⁴¹¹ We also stated that Catalogue No. 40 listed encouraged projects, including solar energy, which the GOC targets through the provision of loans and other forms of assistance.⁴¹² Thus, in *Solar Cells from the PRC*, we found these loans to be specific to the PRC renewable energy industry, including solar cells, pursuant to 771(5A)(D)(i) of the Act.⁴¹³ We noted no export component with respect to the provision of these loans in *Solar Cells from the PRC*.

The facts are similar in the instant investigation. As we stated above for the program, “Preferential Loans and Directed Credit,” we are finding loans under this program to be specific to producers of solar products, as warranted under section 771(5A)(D)(i) of the Act. We find no reason to find these loans to be a *de facto* export subsidy.

Comment 18: Whether the Department Should Adjust the Sales Denominators Used in Calculating Subsidy Benefits for Wuxi Suntech

Wuxi Suntech Comments:

- When using Wuxi Suntech’s total sales as a denominator, the Department should add “Other Business Revenue” to the “Main Business Revenue” to arrive at the denominator for total sales.
- To arrive at Yangzhou Rietech’s total sales, the Department should include “Other Business Revenue” and “Main Business Revenue,” minus the freight adjustment.

No other party commented on this issue.

Department’s Position: In the *Preliminary Determination*, the Department used as a total sales denominator for Wuxi Suntech the company’s “Main Business Revenue,” as reported in Exhibit 7 of the company’s April 21, 2014 questionnaire response. Subsequent to that action, on July 25, 2014 the Department issued a supplemental questionnaire seeking further clarification regarding Wuxi Suntech’s reported sales figures. In its response, Wuxi Suntech noted that pursuant to Chinese accounting regulations, it recorded revenues outside of its main business line in its account for “Other Business Revenue,” which “mainly consists of sales of defective solar cells

⁴¹⁰ See Letter to the Secretary, “Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Case Brief of SolarWorld Americas, Inc.” (October 16, 2014) (Petitioner’s Case Brief) at 34, citing *Solar Cells from the PRC* and accompanying Issues and Decision Memorandum at 12.

⁴¹¹ See *Solar Cells from the PRC* and accompanying Issues and Decision Memorandum at 12.

⁴¹² *Id.*

⁴¹³ *Id.*

and spare parts, etc.”⁴¹⁴ Wuxi Suntech also provided revised sales figures for “Other Business Revenue,” noting that the figures it had previously provided for the years 2010-2012 were incorrect.⁴¹⁵ These figures, in turn, provided the basis for our review of Wuxi Suntech’s sales while at verification, where we noticed no discrepancies with the reported figures.⁴¹⁶ Thus, we agree with Wuxi Suntech that the total sales denominator used in calculating its CVD margins should include the figures for “Other Business Revenue.”

To calculate the CVD margins applicable to Yangzhou Rietech’s use of subsidies in the *Preliminary Determination*, the Department used the sales figures reported by the company in its initial questionnaire response of April 21, 2014. As part of the July 25, 2014 supplemental questionnaire, we also sought further clarification regarding some inconsistencies in Yangzhou Rietech’s reported sales figures.⁴¹⁷ In response, Yangzhou Rietech resubmitted corrected sales figures, noting that it had initially only submitted sales figures represented in its “Main Business Revenue” accounts, inadvertently omitting its “Other Business Revenue” accounts from the reported sales figures.⁴¹⁸ This corrected reporting, along with an appropriate FOB adjustment, formed the basis of our verification of sales data for the company.⁴¹⁹ We noted in the verification report, and Suntech has acknowledged in its brief, that those sales figures reflect a double counting of the Yangzhou Rietech’s freight expenses.⁴²⁰ There were, however, no other inconsistencies with the corrected sales figures reported in the August 6, 2014 supplemental questionnaire response. As such, we agree with Suntech that Yangzhou Rietech’s denominator should be adjusted to include the “Other Business Revenue” sales figures that were not included in the calculations for the *Preliminary Determination*, as well as the correct freight adjustment.

Comment 19: Whether the Department Should Accept the Minor Corrections Presented by Wuxi Suntech at Verification

Wuxi Suntech Comments:

- The Department should fully accept the minor corrections presented by Wuxi Suntech at verification.

No other party commented on this issue.

Department’s Position: At verification, the Department indicated to Wuxi Suntech that it was accepting the minor corrections presented by the company, and that they should be filed on the record of the investigation.⁴²¹ Wuxi Suntech filed the minor corrections presented at verification in a timely manner on August 28, 2014, and as such they form a part of the record in this investigation.

⁴¹⁴ See Wuxi Suntech’s August 6, 2014 questionnaire response at 1.

⁴¹⁵ *Id.* at Exhibit 3.

⁴¹⁶ See Wuxi Suntech VR at 3.

⁴¹⁷ See the Department’s July 25, 2015, supplemental questionnaire to Wuxi Suntech.

⁴¹⁸ See the Department’s August 6, 2014, supplemental questionnaire to Wuxi Suntech at 3.

⁴¹⁹ See Wuxi Suntech VR at 4.

⁴²⁰ See Suntech Verification Report at 4.

⁴²¹ *Id.* at 1.

Attachment

Subsidies “Discovered” During the Course of this Investigation Regarding Trina Solar

Program Name		AFA Rate
Tax Program		
1	Deduction for Wages Paid for Placement of Disabled Persons	9.71%
Grant Programs		
1	Talented People Income Tax Refund	0.58%
2	Changzhou Treasury Project Award	0.58%
3	Changzhou Treasury Financial Grant	0.58%
4	Science Technology Bureau Grant	0.58%
5	Changzhou Treasury Grant for Research and Development	0.58%
6	Changzhou Treasury Bureau Support Fund for Exportation and International Market Development	0.58%
7	Recycling Grant	0.58%
8	Social Security Grant	0.58%
9	Other International Development Service Expenses	0.58%
10	Changzhou Treasury Bureau Other Manufacturing Expenses	0.58%
11	China Treasury Department Grant	0.58%
12	Patent Grant	0.58%
13	High Efficiency Crystalline Solar Cell Key Technical Problem Research and Development	0.58%
14	Patent Grant	0.58%
15	Science Technical Award	0.58%
16	Exportation Credit Insurance Support Grant	0.58%
17	Special Capital Transfer to Non-Operating Revenue	0.58%
18	Patent Award	0.58%
19	Patent Award	0.58%
20	Changzhou Treasury Bureau Grant for Waste Water Recycling	0.58%
21	Changzhou Treasury Bureau Grant – Five Big Industrial Special Fund for Capital	0.58%
22	Innovation Award Grant	0.58%
23	New Technology Application Award	0.58%
24	Grant for Post-Doctoral Station	0.58%
25	National Key New Product Project Grant	0.58%
26	Science Technology Infrastructure Rolling Support	0.58%
27	Water-saving Technology Award	0.58%
28	Grant for Key Lab Construction Support Fund	0.58%
Total CVD AFA Methodology Rate:		25.95%

Source of AFA rates:

- Tax Program – *New Pneumatic Off-the-Road Tires From the People’s Republic of China: Preliminary Results of Countervailing Duty Review*, 75 FR 64268 (October 19, 2010) (*Off-the-Road Tires from the PRC*), unchanged in the final determination, *New Pneumatic Off-the-Road Tires From the People’s Republic of China Final Results of Countervailing Duty Administrative Review*, 76 FR 23286 (April 26, 2011) and accompanying Issues and Decision Memorandum at the program, “VAT and Import Duty Exemptions on Imported Material.”
- Grant Programs – *Chlorinated Isocyanurates From the People’s Republic of China: Final Affirmative Countervailing Duty Determination; 2012*, 79 FR 56560 (September 22, 2014) and accompanying Issues and Decision Memorandum at the program, “Special Fund for Energy Saving Technology.”

We note that while the name of the program, “Talented People Income Tax Refund” indicates that it is a tax program, the Department discovered this assistance at Trina Solar’s verification when examining the company’s accounts for “government grants.”⁴²² As such, we are treating this assistance as a grant program with respect to our CVD AFA methodology.

⁴²² See Trina Solar VR at 7.