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Investigation
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June 2, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Affirmative
Countervailing Duty 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 (Department) preliminarily 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 (PRC), as provided in section 703(b)(1) of the Tariff Act of 1930, as amended (the Act).

II. BACKGROUND

A. Initiation and Case History

On December 31, 2013, SolarWorld Industries America, Inc. (SolarWorld, or Petitioner) filed a petition with the Department seeking the imposition of countervailing duties (CVDs) on certain solar products from the PRC.¹ Supplements to the petition and our consultations with the Government of China (GOC) are described in the Initiation Checklist.² On January 22, 2014, the Department initiated a CVD investigation on certain solar products from the PRC.³

¹ See Letter from Petitioner, "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) (the petition).

² See "Countervailing Duty Initiation Checklist: Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China," (January 22, 2014).

³ See *Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Initiation of Countervailing Duty Investigation*, 79 FR 4667 (January 29, 2014) (*Initiation Notice*).



We stated in the *Initiation Notice* that we intended to base our selection of mandatory respondents on U.S. Customs and Border Protection (CBP) entry data for the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation. On February 4, 2014, the Department released the CBP entry data under administrative protective order (APO).⁴

On February 27, 2014, based on the CBP entry data, we selected Wuxi Suntech Power Co., Ltd. (Wuxi Suntech) and Changzhou Trina Solar Energy Co., Ltd. (Trina Solar) for individual examination as mandatory company respondents in this CVD investigation.⁵ No party submitted comments regarding respondent selection.

On February 28, 2014, we sent our CVD questionnaire seeking information regarding the alleged subsidies to the mandatory company respondents and the GOC.⁶ Also on that date, we sent a separate questionnaire to the company respondents, Wuxi Suntech and Trina Solar, asking them to report the quantity and value of their sales of subject merchandise to the United States during the period of investigation (POI).⁷ On March 7, 2014, Wuxi Suntech and Trina Solar timely reported this information.⁸ On March 14, 2014, Wuxi Suntech and Trina Solar reported their affiliates and cross-owned companies, as requested in our CVD questionnaire.⁹

In its affiliation response, Wuxi Suntech identified eight additional companies with whom it was cross-owned that either produced subject merchandise or inputs consumed in the production of subject merchandise, and for whom it would be submitting full responses to the Initial Questionnaire, as instructed. The cross-owned companies identified by Wuxi Suntech in its affiliation response 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). Trina Solar identified Trina Solar (Changzhou) Science & Technology Co., Ltd. (TST) as a cross-owned

⁴ See Department Memorandum, “Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Entry Data,” (February 4, 2014).

⁵ See Department Memorandum, “Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Respondent Selection,” (February 27, 2014) (Respondent Selection Memorandum).

⁶ See Letter from the Department to the PRC, “Certain Crystalline Silicon Photovoltaic Products from the People’s Republic Of China: Countervailing Duty Questionnaire,” (February 28, 2014) (Initial Questionnaire).

⁷ See Letter from the Department to Wuxi Suntech (February 28, 2014) and Letter from the Department to Trina Solar (February 28, 2014).

⁸ See Letter from Wuxi Suntech, “Crystalline Silicon Photovoltaic Products; Sales Value Mini Questionnaire Response - Wuxi Suntech Power Co., Ltd.,” (March 7, 2014); see also Letter from Trina Solar, “Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China; CVD Mini-Questionnaire Response,” (March 7, 2014).

⁹ See Letter from Wuxi Suntech, “Crystalline Silicon Photovoltaic Products: Reporting Companies and Affiliation Data,” (March 14, 2014); see also Letter from Trina Solar, “Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China; CVD Questionnaire Response to Section III Identifying Affiliated Companies,” (March 14, 2014).

producer/exporter of the subject merchandise for whom it would provide a full questionnaire response.

Responses to the remainder of the initial questionnaire from Wuxi Suntech and its cross-owned companies, as well as Trina Solar and TST were received on April 21, 2014.¹⁰ The GOC also submitted its response to our CVD questionnaire on this date.¹¹ Supplemental questionnaires were issued to the Wuxi Suntech and to Trina Solar on April 28, 2014.¹² A supplemental questionnaire was issued to the GOC on the next day.¹³ The GOC and Wuxi Suntech timely filed their responses to these supplemental questionnaires on May 12, 2014;¹⁴ Trina Solar timely filed its response on May 14, 2014.¹⁵ On May 20, 2014, Petitioner submitted comments for the Department to consider for the preliminary determination.¹⁶ To the extent we were able to consider these comments, we have done so for this preliminary determination.

Extension of Preliminary Deadline: On March 5, 2014, the Department extended the deadline for the preliminary determination until no later than 130 days after the initiation of the

¹⁰ See Letter to the Department from Trina Solar, “Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China; CVD Questionnaire Response to Section III,” (April 21, 2014); Letter to the Department from Wuxi Suntech, “Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Initial CVD Questionnaire Response – Wuxi Suntech Power Co., Ltd.” (April 21, 2014); Letter to the Department from Zhenjiang Rietech and Zhenjiang Ren De, “Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Initial CVD Questionnaire Response – Zhenjiang Rietech New Energy Science & Technology Co., Ltd. and Zhenjiang Ren De New Energy Science & Technology Co., Ltd.” (April 21, 2014); Letter to the Department from Shanghai Suntech, “Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Initial CVD Questionnaire Response – Suntech Power Co., Ltd.” (April 21, 2014); Letter to the Department from Luoyang Suntech, “Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Initial CVD Questionnaire Response – Luoyang Suntech Power Co., Ltd.” (April 21, 2014); Letter to the Department from Yangzhou Rietech, “Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Initial CVD Questionnaire Response – Yangzhou Rietech Renewal Energy Co., Ltd.” (April 21, 2014); Letter to the Department from Wuxi Sunshine, “Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Initial CVD Questionnaire Response – Wuxi Sun-shine Power Co., Ltd.” (April 21, 2014); Letter to the Department from Suntech Energy, “Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Initial CVD Questionnaire Response – Suntech Energy Engineering Co., Ltd.” (April 21, 2014); and Letter to the Department from Suzhou Kuttler, “Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Initial CVD Questionnaire Response – Kuttler Automation Systems (Suzhou) Co., Ltd.” (April 21, 2014).

¹¹ See Letter from the GOC to the Department, “Response of the Government of the People’s Republic of China to the Department’s Questionnaire: Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China” (April 21, 2014).

¹² See Letter from the Department to Wuxi Suntech, “Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Supplemental Questionnaire” (April 28, 2014) and Letter from the Department to Trina Solar, “Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Supplemental Questionnaire” (April 28, 2014)

¹³ See Letter from the Department to the GOC, “Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Supplemental Questionnaire” (April 29, 2014) (GOC Supplemental Questionnaire).

¹⁴ See Letter from the GOC to the Department, “Response of the Government of the People’s Republic of China to the Department’s Supplemental Questionnaire,” (May 12, 2014) and Letter from Wuxi Suntech to the Department, “Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Supplemental CVD Questionnaire Response,” May 12, 2014.

¹⁵ See Letter from Trina Solar to the Department, “Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China; First Supplemental Questionnaire Response,” (May 14, 2014).

¹⁶ See Letter from Petitioner to the Department, “Certain Crystalline Silicon Photovoltaic Products from China: Petitioner’s Pre-Preliminary Determination Comments,” (May 20, 2014).

investigation, based on a finding that concerned parties were cooperating in the investigation and that the investigation was extraordinarily complicated.¹⁷ Based on this finding, the Department postponed the preliminary determination until June 2, 2014, in accordance with section 703(c)(1)(B) of the Act and 19 CFR 351.205(b)(2).¹⁸

B. Period of Investigation

The POI is January 1, 2012, through December 31, 2012.

III. SCOPE COMMENTS

In accordance with the preamble to the Department's regulations, we set aside a period of time in our *Initiation Notice* for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of that notice.¹⁹ Numerous parties submitted comments on the scope of this investigation and the companion antidumping investigations.²⁰ The Department is continuing to analyze the scope comments received in these investigations. The Department plans to implement a certification requirement. The current scope, which explicitly excludes any products covered by the existing antidumping and CVD orders on crystalline silicon photovoltaic cells, whether or not assembled into modules, from the People's Republic of China,²¹ is set forth below.

IV. SCOPE OF THE INVESTIGATION

The merchandise covered by this investigation is crystalline silicon photovoltaic cells, and 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.

¹⁷ See section 703(c)(1)(B) of the Act.

¹⁸ See *Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 79 FR 13617 (March 11, 2014).

¹⁹ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997); see also *Initiation Notice*.

²⁰ See Letter from Yingli Green Energy Holding Company Limited, *et al.*, "Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China and Taiwan: Comments on Scope" (February 18, 2014); Letter from NextEra Energy, Inc., "Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: NextEra Energy Scope Comments" (February 18, 2014); Letter from Motech Industries, Inc., "Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China and Taiwan: Comments on Scope of Investigation" (February 18, 2014); Letter from Gintech Energy Corporation, "Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China and Taiwan; Gintech Comments on Scope" (February 18, 2014); Letter from Suniva, Inc., "Comments on the Scope and Request for Scope Revisions, Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China and Taiwan" (February 18, 2014); Letter from Neo Solar Power Corporation, "Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Scope Comments" (February 18, 2014); Letter from SunEdison, Inc., "Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China and Taiwan; SunEdison Comments on Scope" (February 18, 2014); Letter from Petitioner, "Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China and Taiwan: Rebuttal to Respondents' Scope Comments" (April 3, 2014).

²¹ 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).

For purposes of this investigation, subject merchandise also includes modules, laminates and/or panels assembled in the subject country consisting of crystalline silicon photovoltaic cells that are completed or partially manufactured within a customs territory other than that subject country, using ingots that are manufactured in the subject country, wafers that are manufactured in the subject country, or cells where the manufacturing process begins in the subject country and is completed in a non-subject country.

Subject merchandise includes 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 the investigation are any products covered by the existing antidumping and CVD orders on crystalline silicon photovoltaic cells, whether or not assembled into modules, from the People's Republic of China.²²

Also excluded from the scope of this investigation are 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 cell. Where more than one cell is permanently integrated into a consumer good, the surface area for purposes of this exclusion shall be the total combined surface area of all cells that are integrated into the consumer good.

Merchandise covered by this investigation is currently classified in the 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.

V. RESPONDENT SELECTION

Section 777A(e)(1) of the Act directs the Department to calculate individual countervailable subsidy rates for each known producer/exporter of the subject merchandise. However, when faced with a large number of producers/exporters, and, if the Department determines it is therefore not practicable to examine all companies, section 777A(e)(2)(A)(ii) of the Act and 19 CFR 351.204(c) give the Department discretion to limit its examination to a reasonable number of the producers/exporters accounting for the largest volume of the subject merchandise.

²² 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).

On February 27, 2014, the Department determined that it was not practicable to examine more than two respondents in the instant investigation.²³ Therefore, the Department selected, based on data from CBP, the two exporters/producers accounting for the largest volume of certain solar products exported from the PRC during the POI: Trina Solar and Wuxi Suntech.²⁴

VI. INJURY TEST

Because the PRC is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry. On February 14, 2014, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of certain solar products from, *inter alia*, the PRC.²⁵

VII. 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.²⁶ 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.²⁷

The Department affirmed its decision to apply the CVD law to the PRC in numerous subsequent determinations.²⁸ Furthermore, on March 13, 2012, Public Law 112-99 was enacted which makes clear that the Department has the authority to apply the CVD law to countries designated as non-market economies under section 771(18) of the Act, such as the PRC.²⁹ The effective date provision of the enacted legislation makes clear that this provision applies to this proceeding.³⁰

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

²³ See Respondent Selection Memorandum at 4-5.

²⁴ See *id.* at 4.

²⁵ See Certain Crystalline Silicon Photovoltaic Products from China and Taiwan: Inv. Nos. 701-TA-511 and 731-TA-1246-1247 (Preliminary) (February 2014); *Certain Crystalline Silicon Photovoltaic Products From China and Taiwan*, 79 FR 12221 (March 4, 2014).

²⁶ See *Coated Free Sheet Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS from the PRC*).

²⁷ See *id.*, and accompanying Issues and Decision Memorandum (IDM) at Comment 6.

²⁸ 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 IDM at Comment 1.

²⁹ Section 1(a) is the relevant provision of Public Law 112-99 and is codified at section 701(f) of the Act.

³⁰ See Public Law 112-99, 126 Stat. 265 §1(b).

(WTO), as the date from which the Department will identify and measure subsidies in the PRC for purposes of this CVD investigation.³¹

VIII. SUBSIDIES VALUATION

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.³² 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.³³ The Department notified the respondents of the 10-year AUL in the 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, then the benefits are allocated to the year of receipt rather than over the AUL.

B. Attribution of Subsidies

Cross Ownership: 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) provide additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers 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 the other corporation(s) in essentially the same ways it can use its own assets. This section of the Department's regulations states that this standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. The preamble to the Department's regulations further clarifies the Department's cross-ownership standard. According to the preamble, relationships captured by the cross-ownership definition include those where:

³¹ See, *e.g.*, *CWP from the PRC*, and accompanying IDM at Comment 2.

³² See 19 CFR 351.524(b).

³³ See U.S. Internal Revenue Service Publication 946 (2008), "How to Depreciate Property," at Table B-2: Table of Class Lives and Recovery Periods.

the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a “golden share” may also result in cross-ownership.³⁴

Thus, the Department’s regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists. The U.S. 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 way it could use its own subsidy benefits.³⁵ Based on information on the record, we preliminarily determine that cross-ownership exists, in accordance with 19 CFR 351.525(b)(6)(vi), among the following companies.

The Trina Solar Companies

As discussed above, we selected Trina Solar as a mandatory company respondent. Trina Solar reported that it is cross-owned with TST, a producer of subject merchandise located in the PRC. Since both companies produce subject merchandise, Trina Solar and TST responded collectively to the Department’s questionnaires. In the questionnaire responses, these companies stated that they have the same board of directors and chairman. Both Trina Solar and TST are ultimately wholly-owned by Trina Solar Limited (TSL), a company located in the Cayman Islands that is publicly traded on the New York Stock Exchange.³⁶ Trina Solar and TST reported that the CEO of TSL is also their shared board chairman. Therefore, based on these facts, pursuant to 19 CFR 351.525(b)(6)(vi), we preliminarily determine that Trina Solar and TST are cross-owned through their ownership by their parent company, TSL.³⁷ Because both Trina Solar and TST are producers of subject merchandise, we are attributing any subsidy received by either company to the combined sales of both companies, excluding intercompany sales, pursuant to 19 CFR 351.525(b)(6)(ii).

The Wuxi Suntech Companies

Wuxi Suntech responded to the Department’s original and supplemental questionnaires on behalf of itself and eight cross-owned affiliates: Shanghai Suntech, Zhenjiang Rietech, Zhenjiang Ren De, Luoyang Suntech, Wuxi Sunshine, Yangzhou Rietech, Suntech Energy, and Suzhou Kuttler.

³⁴ See *Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

³⁵ See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

³⁶ See Trina Solar’s April 21, 2014 questionnaire response at 10; see also Trina Solar Affiliated Company Response at Exhibit 2.

³⁷ 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.”

The sole owner of Wuxi Suntech is Power Solar System Co., Ltd. (Power Solar), which is in turn wholly-owned by Suntech Power Holdings Co., Ltd. (Suntech Power Holdings).³⁸ Wuxi Suntech directly owns more than 90 percent of the shares of Luoyang Suntech.³⁹ Suntech Power Investment Pte. Ltd. (Singapore), another wholly-owned subsidiary of Power Solar, is in turn the sole shareholder of Shanghai Suntech and Suntech Energy.⁴⁰ Suzhou Kuttler, through a series of European intermediary subsidiaries, is also a wholly-owned subsidiary of Power Solar.⁴¹ Yangzhou Rietech, Zhenjiang Rietech, and Zhenjiang Ren De are also, ultimately, wholly-owned by Power Solar.⁴² Because each of these companies are ultimately owned by the same shareholder as Wuxi Suntech, they meet the definition of cross-ownership as described in the Department's regulations at 19 CFR 351.525(b)(6)(vi). The last company, Wuxi Sunshine is not a wholly-owned subsidiary of any Suntech company, however the size of the ownership share attributable to the Suntech Group compared to the other shareholders,⁴³ as well as the proprietary shareholder agreement concerning the management of the company,⁴⁴ lead us to conclude that the assets of this company are ultimately controlled by Power Solar and Suntech Power Holdings, and thus fall within the meaning of cross-ownership as defined in 19 CFR 351.525(b)(6)(vi).

In its May 12, 2014 questionnaire response, Wuxi Suntech reported that Shanghai Suntech, Luoyang Suntech, and Wuxi Sunshine were not involved in the production of subject merchandise.⁴⁵ These companies reported that they only produced Chinese-origin cells that are not subject merchandise.⁴⁶ Therefore, we preliminarily determine that 19 CFR 351.525(b)(6)(ii) does not apply to these companies and, therefore, are not including subsidies received by these companies in our analysis for this investigation. Zhenjiang Rietech, Zhenjiang Ren De, and Yangzhou Rietech produced polysilicon wafers,⁴⁷ which are used exclusively in producing solar cells, and Suzhou Kuttler produced capital equipment for the production of solar cells.⁴⁸ Consistent with past precedent regarding these same companies and inputs,⁴⁹ we preliminarily determine that wafers and solar cell production equipment are primarily dedicated to the production of the downstream product (solar cells and other solar products, regardless of whether in or out of scope) in accordance with 19 CFR 351.525(b)(6)(iv). Therefore, we are attributing subsidies received by each of these companies to the combined sales of the company itself and

³⁸ See Wuxi Suntech's April 21 questionnaire response at 5 and Wuxi Suntech's May 12, 2014 questionnaire response at Exhibit 6.

³⁹ See Luoyang Suntech's April 21 questionnaire response at 5 and Wuxi Suntech's May 12, 2014 questionnaire response at Exhibit 6.

⁴⁰ See Shanghai Suntech's questionnaire response at 6, Suntech Energy's questionnaire response at 6, and Wuxi Suntech's May 12, 2014 at Exhibit 6.

⁴¹ See Wuxi Suntech's May 12, 2014 questionnaire response at Exhibit 6.

⁴² See *id.*

⁴³ See Wuxi Sunshine's April 21, 2014 questionnaire response at 6.

⁴⁴ See Wuxi Suntech's May 12, 2014 questionnaire response at Exhibit 30.

⁴⁵ See *id.*, at 7.

⁴⁶ See *id.*

⁴⁷ See Wuxi Suntech's April 21, 2014 questionnaire response at page 7.

⁴⁸ *Id.*

⁴⁹ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 77 FR 17439, 17446 (March 26, 2012), unchanged in *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).

the producer of subject merchandise, Wuxi Suntech, excluding inter-company sales, in accordance with 19 CFR 351.525(b)(6)(iv).

C. Denominators

In accordance with 19 CFR 351.525(b)(1)-(5), the Department considers the basis for the respondent's receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondent's exports or total sales. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs described below are explained in the "Preliminary Calculation Memoranda," prepared for this investigation.⁵⁰

IX. BENCHMARKS AND DISCOUNT RATES

The Department is investigating loans received by the respondents from Chinese policy banks and state-owned commercial banks (SOCBs), as well as non-recurring, allocable subsidies.⁵¹ The derivation of the benchmark and discount rates used to value these subsidies is discussed below.

A. Short-Term RMB-Denominated Loans

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." Normally, the Department uses comparable commercial loans reported by the company as a benchmark.⁵² If the firm did not have any comparable commercial loans during the period, the Department's regulations provide that we "may use a national average interest rate for comparable commercial loans."⁵³

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. For the reasons first 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.⁵⁴ Because of this, any loans received by the respondents from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). For the same reasons, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, the Department is selecting an external market-based benchmark interest rate. The use of an external benchmark is consistent with the Department's practice. For example, in *Lumber from Canada*, the

⁵⁰ See Department Memoranda, "Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Suntech Group Preliminary Calculation Memorandum," (Suntech Preliminary Calculation Memorandum) and "Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Trina Solar Preliminary Calculation Memorandum," both dated concurrently with this memorandum (collectively, Preliminary Calculation Memoranda).

⁵¹ See 19 CFR 351.524(b)(1).

⁵² See 19 CFR 351.505(a)(3)(i).

⁵³ See 19 CFR 351.505(a)(3)(ii).

⁵⁴ See *CFS from the PRC*, and accompanying IDM at Comment 10.

Department used U.S. timber prices to measure the benefit for government-provided timber in Canada.⁵⁵

In past proceedings involving imports from the PRC, we calculated the external benchmark using the methodology first developed in *CFS from the PRC*⁵⁶ and more recently updated in *Thermal Paper from the PRC*.⁵⁷ Under that methodology, we first determine which countries are similar to the PRC in terms of gross national income, based on the World Bank's classification of countries as: low income; lower-middle income; upper-middle income; and high income. As explained in *CFS from the PRC*, this pool of countries captures the broad inverse relationship between income and interest rates. For 2003 through 2009, the PRC fell in the lower-middle income category.⁵⁸ Beginning in 2010, however, the PRC is in the upper-middle income category and remained there from 2011 to 2012.⁵⁹ Accordingly, as explained further below, we are using the interest rates of lower-middle income countries to construct the benchmark and discount rates for 2003-2009, and we used the interest rates of upper-middle income countries to construct the benchmark and discount rates for 2010-2012. This is consistent with the Department's calculation of interest rates for recent CVD proceedings involving PRC merchandise.⁶⁰

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

In each of the years from 2003-2009 and 2011-2012, the results of the regression analysis reflected the intended, common sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates.⁶¹ For 2010, however, the regression does not yield that outcome for the PRC's income group.⁶² This contrary result for a single year does not lead us to reject the strength of governance as a determinant of interest rates. Therefore, we continue to rely on the regression-based analysis used since *CFS from the PRC* to compute the benchmarks for the years from 2001-2009 and

⁵⁵ 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 IDM at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."

⁵⁶ See *CFS from the PRC*, and accompanying IDM at Comment 10.

⁵⁷ See *Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (*Thermal Paper from the PRC*), and accompanying IDM at 8-10.

⁵⁸ See World Bank Country Classification, <http://econ.worldbank.org/>; see also Department Memorandum, "Crystalline Silicon Photovoltaic Products from the People's Republic of China: Interest Rate Benchmark," dated June 2, 2014 (Banking Memorandum)).

⁵⁹ See *id.*

⁶⁰ See, e.g., *Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Countervailing Duty Determination*, 78 FR 33346 (June 4, 2013) and accompanying Preliminary Decision Memorandum at "Benchmarks and Discount Rates," unchanged in *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013).

⁶¹ See Banking Memorandum.

⁶² See *id.*

2011-2012. For the 2010 benchmark, we are using an average of the interest rates of the upper-middle income countries.

Many of the countries in the World Bank's upper-middle and lower-middle income categories reported lending and inflation rates to the International Monetary Fund, and they are included in that agency's international financial statistics (IFS). With the exceptions noted below, we used the interest and inflation rates reported in the IFS for the countries identified as "upper middle income" by the World Bank for 2010-2012 and "lower middle income" for 2001-2009.⁶³ First, we did not include those economies that the Department considered to be non-market economies for antidumping purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments. For example, Jordan reported a deposit rate, not a lending rate, and the rates reported by Ecuador and Timor L'Este are dollar-denominated rates; therefore, the rates for these three countries have been excluded. Finally, for each year the Department calculated an inflation-adjusted short-term benchmark rate, we also excluded any countries with aberrational or negative real interest rates for the year in question.⁶⁴ Because the resulting rates are net of inflation, we adjusted the benchmark to include an inflation component.⁶⁵

For loans denominated in U.S. dollars, we are again following the methodology developed over a number of successive PRC investigations. Specifically, for U.S. dollar loans, the Department used as a benchmark the one-year dollar London Interbank Offering Rate (LIBOR), plus the average spread between LIBOR and the one-year corporate bond rates for companies with a BB rating. Likewise, for loans denominated in other foreign currencies, we used as a benchmark the one-year LIBOR for the given currency plus the average spread between the LIBOR rate and the one-year corporate bond rate for companies with a BB rating.

B. *Long-Term RMB-Denominated Loans*

The lending rates reported in the IFS represent short- and medium-term lending, and there are not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, the Department developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates.⁶⁶

In *Citric Acid from the PRC*, this methodology was revised by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where "n" equals

⁶³ See *id.*

⁶⁴ See *id.*

⁶⁵ See *id.*

⁶⁶ See, e.g., *Thermal Paper from the PRC*, and accompanying IDM at 10.

or approximates the number of years of the term of the loan in question.⁶⁷ Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.⁶⁸

C. *Discount Rates*

Consistent with 19 CFR 351.524(d)(3)(i)(A), we used, as our discount rate, the long-term interest rate calculated according to the methodology described above for the year in which the government provided non-recurring subsidies.⁶⁹ The interest rate benchmarks and discount rates used in our preliminary calculations are provided in the Preliminary Calculation Memoranda.⁷⁰

D. *Land Benchmark*

19 CFR 351.511(a)(2) sets forth the basis for identifying comparative benchmarks for determining whether a government good or service is provided for less than adequate remuneration (LTAR). These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation; (2) world market prices that would be available to purchasers in the country under investigation; or (3) an assessment of whether the government price is consistent with market principles. As explained in detail in previous investigations, the Department cannot rely on the use of so called “first-tier” and “second-tier” benchmarks to assess the benefits from the provision of land for LTAR in the PRC.⁷¹

For this investigation, respondent company Wuxi Suntech submitted the same 2010 Thailand benchmark information, *i.e.*, “Asian Marketview Reports” by CB Richard Ellis (CBRE), that we relied on in calculating land benchmarks in the CVD investigation of *Solar Cells from the PRC*.⁷² We initially selected this information in the laminated woven sacks investigation after considering a number of factors, including national income levels, population density, and producers’ perceptions that Thailand is a reasonable alternative to China as a location for Asian production.⁷³ In *Solar Cells from the PRC*, we also considered the fact that both Trina and Wuxi Suntech are located in areas comparable to the Bangkok industrial parks surveyed in the CBRE data. In *Solar Cells from the PRC*, we calculated annual land benchmarks covering the years

⁶⁷ See *Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009) (*Citric Acid from the PRC*) and accompanying IDM at Comment 14.

⁶⁸ See, generally, Preliminary Calculation Memoranda.

⁶⁹ See *id.*

⁷⁰ See *id.*

⁷¹ See, *e.g.*, *Laminated Woven Sacks From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination; Preliminary Affirmative Determination of Critical Circumstances, In Part; and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 72 FR 67893, 67906-08 (December 3, 2007), unchanged in *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).

⁷² See Wuxi Suntech Benchmark Data at 2; see also *Solar Cells from the PRC* at 6 and Comment 11.

⁷³ The complete history of our reliance on this benchmark is discussed in *Solar Cells from the PRC* at page 6, Comment 11. In that discussion, we reviewed our analysis from the laminated woven sacks investigation and concluded the CBRE data were still a valid land benchmark. See *id.*

2002 through 2010, and a monthly industrial rental benchmark for 2010.⁷⁴ We find that these benchmarks are suitable for the preliminary determination, adjusted accordingly for inflation to account for any benefits received by the respondent companies during the POI.⁷⁵

E. *Input Benchmarks*

We selected the benchmark for measuring the adequacy of the remuneration for polysilicon, aluminum extrusions, and solar glass in accordance with 19 CFR 351.511(a). For polysilicon, the GOC provided information indicating that imports accounted for 42 percent of domestic consumption and that production by state-invested enterprises (SIEs) accounted for four percent.⁷⁶ The Department normally relies on so-called “Tier 1” benchmarks, pursuant to 19 CFR 351.511(a)(2)(i), which include prices stemming from actual transactions between private parties, actual imports, and, in certain circumstances, actual sales from competitively run government auctions, although we do not do so where the foreign government’s presence in the input market is significant enough to lead to distorted prices.⁷⁷ It is unclear whether the GOC provided a complete picture of SIE production and whether polysilicon prices are distorted. For example, the GOC stated it maintains an ownership or management interest in only a “limited number of polysilicon producers.” It also provided no information specific to “solar grade” polysilicon. While the Department intends to issue an additional questionnaire to ensure all SIE production has been reported, we preliminarily determine that the reported import volume and reported volume of state dominated production does not demonstrate GOC predominance in the market. Therefore, we preliminarily determine to rely on prices paid by respondents for imported polysilicon to measure the adequacy of remuneration for the polysilicon supplied by the domestic producers found to be authorities.⁷⁸

For solar glass, the GOC provided information indicating that imports accounted for two percent of domestic consumption of flat glass and that production by SIEs accounted for 12 percent.⁷⁹ While “flat glass” is a much broader class of products than the solar glass at issue, there is no other information on the record at this time indicating the degree of the GOC’s involvement in the production of glass, solar or otherwise.⁸⁰ While the Department intends to issue an additional questionnaire seeking data specific to solar glass, we preliminarily determine that the volume of SIE production does not demonstrate GOC predominance in the market. Neither respondent reported importing solar glass and none of the parties offered an internal, “Tier 1” benchmark in their May 2, 2014 submissions of benchmark information under 19 CFR

⁷⁴ *See id.*

⁷⁵ *See* Memorandum to the File from Gene Calvert, “Certain Crystalline Photovoltaic Products from the People’s Republic of China; Preliminary Determination Benchmark Memorandum,” June 2, 2104 (Preliminary Benchmark Memorandum).

⁷⁶ *See* the GOC’s April 21, 2014 questionnaire response at 131-132. SIEs include companies in which the GOC maintains an ownership or management interest.

⁷⁷ *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, 40485 (July 15, 2008) and accompanying IDM at “Government Provision of Rubber for Less Than Adequate Remuneration;” *see also* 19 CFR 351.511(a)(2)(i).

⁷⁸ Respondents reported imports of polysilicon along with domestic purchases in the standard LTAR purchases template. *See, e.g.,* Suntech’s April 21, 2014 questionnaire response at Exhibit 18.

⁷⁹ *See* the GOC’s April 21, 2014 questionnaire response at 211-212.

⁸⁰ The GOC reported that it does not have data specific to solar glass. *See id.* at 211.

351.301(c)(3). Therefore, in accordance with 19 CFR 351.511(a)(2)(ii), we are relying on a world market price provided by Trina Solar for solar glass.⁸¹

For aluminum extrusions, the GOC provided information indicating that imports accounted for one percent of domestic consumption of “aluminum sections” and that SIE production accounted for 10 percent.⁸² While “aluminum sections” is a much broader class of products than aluminum extrusions, there is no other information on the record at this time indicating the degree of the GOC’s involvement in the production of aluminum extrusions.⁸³ While the Department intends to issue an additional questionnaire seeking data specific to aluminum extrusions, we preliminarily determine that the reported volume of SIE production does not demonstrate GOC predominance in the market. As with solar glass, neither respondent reported importing aluminum extrusions and none of the parties offered an internal, “Tier 1” benchmark in their May 2, 2014 submissions of benchmark information under 19 CFR 351.301(c)(3). Therefore, in accordance with 19 CFR 351.511(a)(2)(ii), we are relying on a world market price for aluminum extrusions calculated from Global Trade Atlas data reported under Harmonized Tariff Schedule subheading 7604.29 (aluminum “profiles”), which data we relied on in the past as a surrogate value for the aluminum extrusions used to frame solar modules.⁸⁴

Petitioner provided two sets of information to value ocean freight: international rates for 40-foot Maersk tankers and for shipping 20-foot cargo containers.⁸⁵ It suggested using the former for polysilicon and solar glass and the latter for aluminum extrusions. Respondents provided no alternative information. We preliminarily determine to use the rates for the 20-foot cargo containers for all three inputs. Neither polysilicon nor solar glass are shipped by tanker and petitioner did not explain why a tanker rate would be appropriate for these two inputs.

X. 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.

⁸¹ See Letter from Trina Solar, “Certain Crystalline Photovoltaic Products from the People’s Republic of China; Benchmark Submission” (May 2, 2014) (Trina Solar Benchmark Submission) at Exhibits 3 and 4.

⁸² See the GOC’s April 21, 2014 questionnaire response at 172-173.

⁸³ The GOC reported that it does not have data specific to aluminum extrusions. See *id.* at 173.

⁸⁴ See *Solar Cells from the PRC Antidumping* and accompanying IDM at Comment 16. The relevant GTA data for 2012 was placed on the record of this investigation by Trina Solar. See Trina Solar Benchmark Submission at Exhibit 2.

⁸⁵ See Letter from Petitioner, “Certain Crystalline Photovoltaic Products from the People’s Republic of China; Benchmark Submission” (May 7, 2014) at Exhibits 1-4.

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.”⁸⁶ It is the Department’s practice to consider information to be corroborated if it has probative value.⁸⁷ 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.⁸⁸ However, the SAA emphasizes that the Department need not prove that the selected facts available are the best alternative information.⁸⁹ For purposes of this preliminary determination, we find it necessary to apply adverse facts available (AFA) in the following circumstances. However, we are not relying upon “secondary information” in our application of AFA in the following circumstances.

Application of AFA: Input Producers are “Authorities”

As discussed below under the section “Programs Preliminarily Determined to be Countervailable,” the Department is investigating the provision of polysilicon, aluminum extrusions, and solar glass for LTAR by the GOC. We requested information from the GOC regarding the specific companies that produced these input products that Trina Solar, Wuxi Suntech, and their respective cross-owned companies purchased during the POI.⁹⁰ 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.⁹¹ In our original and supplemental questionnaire, we requested detailed information from the GOC that would be needed for this analysis.⁹²

For each producer in which the GOC was a majority owner, we stated that 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.

⁸⁶ See, e.g., See 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.

⁸⁷ See *id.*

⁸⁸ See, e.g., SAA, at 869.

⁸⁹ See *id.* at 869-870.

⁹⁰ See Initial Questionnaire at section II-9 to II-18, and section III-13 to III-17.

⁹¹ See *id.* at section II, “Input Producer Appendix”

⁹² See *id.*; see also GOC Supplemental Questionnaire at 1-3.

- 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.
- 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).

In its initial questionnaire response of April 21, 2014, 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.⁹³ For the vast majority of these producers, it provided none of the information requested in the standard “input producers” appendix the Department issues to determine the individual owners of producers and to determine the extent of GOC control, if any, over the producers. For example, for the vast majority of producers, it did not provide capital verification reports, articles of association,

⁹³ See the GOC’s May 12, 2014 questionnaire response.

business registrations, or any other documents demonstrating the producers' ownership. For other producers, it provided some information, but not enough to trace ownership back to the ultimate individual owners, as the questionnaire requested. In response to several questions, the GOC informed the Department that it was still gathering the requested ownership information and that it expected to submit this information at a later date,⁹⁴ despite the Department's instructions that any extension request be made in writing in a separate filing prior to the due date of the questionnaire response.⁹⁵

Further, it provided no information at all regarding the identification of owners, directors, or senior managers who were also GOC or CCP officials. Nor did the GOC's May 12, 2014 supplemental questionnaire response adequately respond to these outstanding questions. We also requested that the GOC respond to the questions above regarding the role, if any, that GOC and CCP officials had as owners, directors, or senior managers of the producers, or explain in detail the efforts it undertook to obtain the requested information. In its questionnaire responses, the GOC did not provide any information regarding the role of GOC and CCP officials, nor did the GOC explain the efforts it undertook to obtain the requested information. Furthermore, the GOC stated that "there is no central informational database to search for the requested information on whether any individual owners, members of the board of directors, or senior managers is a Government or CCP official, and the industry and commerce administration does not require the companies to provide such information."⁹⁶ As such, the GOC claimed it was unable to respond to the Department's questions.⁹⁷

In addition to not providing all of the requested information regarding government and CCP officials, the GOC also declined to answer questions about the CCP's structure and functions that are relevant to our determination of whether the producers of polysilicon, aluminum extrusions, and solar glass are "authorities" within the meaning of section 771(5)(B) of the Act. In its initial questionnaire response, the GOC objected to our questions, stating that the CCP, along with other related organizations, is not a government organization and cannot be compelled to provide the GOC with information.⁹⁸

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 administrative reviews.⁹⁹ The Department requests this information because public information

⁹⁴ See, e.g., the GOC's May 12, 2014 questionnaire response at 101.

⁹⁵ See, e.g., the cover letter of the Department's February 28, 2014, CVD questionnaire, and at I-9, "Extension Requests."

⁹⁶ See the GOC's April 21, 2014 questionnaire response at 112.

⁹⁷ See *id.*

⁹⁸ See the GOC's May 12, 2014 questionnaire response at 5.

⁹⁹ 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").

suggests that the CCP exerts significant control over activities in the PRC.¹⁰⁰ The Department previously determined that “available information and record evidence indicates that the CCP meets the definition of the term ‘government’ for the limited purpose of applying the U.S. CVD law to China.”¹⁰¹ Additionally, publicly available information indicates that Chinese law requires the establishment of CCP organizations “in all companies, whether state, private, domestic, or foreign-invested” and that such organizations may wield a controlling influence in the company’s affairs.¹⁰² Because the GOC did not provide the information we requested regarding this issue, we have no further basis for reevaluating the Department’s prior factual findings on the role of the CCP. With regard to the GOC’s claim that Chinese law prohibits GOC officials from taking positions in private companies, we previously found that this particular law does not pertain to CCP officials.¹⁰³

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 the producers are “authorities” within the meaning of section 771(5)(B) of the Act. If the GOC was not able to submit the required information in the requested form and manner, it should have promptly notified 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.¹⁰⁴ Further, the GOC did not indicate that it had attempted to contact the CCP, or that it consulted any other sources. The

¹⁰⁰ See Additional Documents Memorandum at Attachment II, which includes 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,” dated May 18, 2012 (Public Body Memorandum); and its attachment, Memorandum for Paul Piquado, Assistant Secretary for Import Administration, through Lynn Fischer Fox, Deputy Assistant Secretary for AD/CVD Policy and Negotiation, Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations, and John D McInerney, Chief Counsel for Import Administration, from Shauna Biby, Christopher Cassel, Timothy Hruby, Office of Policy, Import Administration, “The relevance of the Chinese Communist Party for the limited purpose of determining whether particular enterprises should be considered to be ‘public bodies’ within the context of a countervailing duty investigation,” dated May 18, 2012 (CCP Memorandum).

¹⁰¹ See *id.*, at CCP Memorandum at 33.

¹⁰² See *id.*, at Public Body Memorandum at 35-36, and sources cited therein.

¹⁰³ See *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 75 FR 57444 (September 21, 2010), and accompanying IDM at 16.

¹⁰⁴ Section 782(c)(1) of the Act states that “[i]f an interested party, promptly after receiving a request from the administering authority or the Commission for information, notifies the administering authority or the Commission (as the case may be) that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the administering authority of the Commission (as the case may be) shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party.”

GOC's responses in prior proceedings demonstrate that it is, in fact, able to access the information we requested.¹⁰⁵

Because the GOC did not respond to our requests for information on this issue, we have no further basis for evaluating the GOC's claim that the role of the CCP is irrelevant. Thus, the Department finds, as it has in past investigations, that the information requested regarding the role of CCP officials in the management and operations of the input producers, and in the management and operations of the producers' owners, is necessary to our determination of whether these producers are authorities within the meaning of section 771(5)(B) of the Act. In addition, the GOC did not promptly notify the Department, in accordance with section 782(c) of the Act, that it was unable to submit the information requested in the requested form and manner, nor did it suggest any alternative forms for submitting this information. Further, the GOC did not provide any information regarding the attempts it undertook to obtain this information, despite the fact that we provided the GOC with a second opportunity to provide the information and significant extensions for responding to both the original and supplemental questionnaires. Therefore, we have no basis to accept the GOC's claim that it is unable to provide this information. This is particularly appropriate given that the GOC informed the Department that such information regarding the CCP is irrelevant, when the Department made it abundantly clear on the record of this investigation and previous investigations that such information is relevant to our analysis of whether input producers are "authorities" under the statute.

In its questionnaire responses, the GOC provided incomplete ownership information for many of the companies that produced polysilicon, aluminum extrusions, and solar glass purchased by Trina Solar and Wuxi Suntech.¹⁰⁶ For example, the GOC did not provide information such as articles of association, capital verification reports, or any other business documents demonstrating the owners of these input producers. While the GOC did provide some information, it was not enough information to trace the ownership back to the ultimate individual owners. In its May 12, 2014 supplemental questionnaire response, the GOC did provide updated ownership information for certain input producers, but this information is still incomplete.¹⁰⁷

Therefore, we preliminarily determine that necessary information is not available on the record and that the GOC withheld information that was requested of it and, thus, that the Department must rely on "facts otherwise available" in making our preliminary determination.¹⁰⁸ Moreover, by stating that the requested information is not relevant, the GOC placed itself in the position of

¹⁰⁵ See, e.g., *High Pressure Steel Cylinders from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012), and accompanying IDM at "Use of Facts Available and Adverse Inferences."

¹⁰⁶ See, e.g., the GOC's April 21, 2014, questionnaire response at Exhibits H.1 (Polysilicon), H.18 (Aluminum Extrusions), and H.19 (Solar Glass).

¹⁰⁷ See, e.g., the GOC's May 12, 2014, questionnaire response at Exhibits S1-A1 and S1-C1.

¹⁰⁸ See sections 776(a)(1) and (a)(2)(A) of the Act.

the Department, yet only the Department can determine what is relevant to its investigation.¹⁰⁹ Furthermore, stating that it is unable to obtain the information because the CCP is not the government is effectively telling the Department to reach the conclusion based on the statements of the GOC without any of the information that the Department considers necessary and relevant to evaluating fully the role of the CCP in the government and in input producers. Consequently, we preliminarily determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information and an adverse inference is warranted in the application of facts available.¹¹⁰ As AFA, we are finding that all of the producers of polysilicon, aluminum extrusions, and solar glass purchased by the respondents during the POI are “authorities” within the meaning of section 771(5)(B) of the Act.

Application of AFA: Provision of Electricity for LTAR

The GOC did not provide complete responses to the Department’s questions regarding the alleged provision of electricity for LTAR. These questions requested information to determine whether the provision of electricity constituted a financial contribution within the meaning of section 771(5)(D) of the Act, whether such a provision provided a benefit within the meaning of section 771(5)(E) of the Act, and whether such a provision was specific within the meaning of section 771(5A) of the Act. In the Department’s original questionnaire, for each province in which a respondent is located, the Department asked the GOC to provide a detailed explanation of: (1) how increases in the cost elements in the price proposals led to retail price increases for electricity; (2) how increases in labor costs, capital expenses, and transmission and distribution costs are factored into the price proposals for increases in electricity rates; and (3) how the cost element increases in the price proposals and the final price increases were allocated across the province and across tariff end-user categories. In its initial questionnaire response, the GOC did not adequately address these questions.¹¹¹

The GOC did not explain how cost elements in the price proposals led to retail price increases, but stated, without any supporting documents, that the cost elements are “obtained directly from

¹⁰⁹ See *Ansaldo Componenti, S.p.A. v. United States*, 628 F. Supp. 198, 205 (CIT 1986) (stating that “[i]t is Commerce, not the respondent, that determines what information is to be provided”). The Court in *Ansaldo* criticized the respondent for refusing to submit information which the respondent alone had determined was not needed, for failing to submit data which the respondent decided could not be a basis for the Department’s decision, and for claiming that submitting such information would be “an unreasonable and unnecessary burden on the company.” *Id.*; see also *Essar Steel Ltd. v. United States*, 721 F. Supp. 2d 1285, 1298-99 (CIT 2010) (stating that “[r]egardless of whether Essar deemed the license information relevant, it nonetheless should have produced it [in] the event that Commerce reached a different conclusion” and that “Commerce, and not Essar, is charged with conducting administrative reviews and weighing all evidence in its calculation of a countervailing duty margin”); *NSK*, 919 F. Supp. at 447 (“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.’”); *Nachi-Fujikoshi Corp. v. United States*, 890 F. Supp. 1106, 1111 (CIT 1995) (“Respondents have the burden of creating an adequate record to assist Commerce’s determinations.”).

¹¹⁰ See section 776(b) of the Act.

¹¹¹ See *Galvanized Steel Wire From the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Determination*, 76 FR 55031, 55036 (September 6, 2011), unchanged in *Galvanized Steel Wire From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 17418 (March 26, 2012).

the data provided by the power generating companies and grid companies”¹¹² and that electricity rates are “fully reflective of the changes in the supply and demand of the market, and further the international commitments and government policies made by the GOC for energy conservation and emission reduction.”¹¹³

Moreover, when the Department asked the GOC to explain how the National Development and Reform Commission (NDRC) determines that the price adjustments proposed by the provinces reflect all relevant cost elements, and to explain how the NDRC determines that all relevant cost elements are accurately reported by the provincial level price bureaus, the GOC responded that the NDRC “corresponds with power generating companies, grid companies, and local price bureaus in cross-checking these data to ensure that the price adjustment proposals are comprehensive, true, accurate, and reliable,” with no explanation of how it “corresponds” with these various parties.¹¹⁴ When the Department requested this information again in its supplemental questionnaire to the GOC, the GOC responded that the documents are for the “NDRC’s review only.”¹¹⁵

Consequently, we preliminarily determine that the GOC withheld information that was requested of it and, thus, that the Department must rely on “facts available” in making our preliminary determination.¹¹⁶ Moreover, we preliminarily determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. The GOC did not adequately answer the questions, nor did the GOC ask for additional time to gather and provide such information. Consequently, an adverse inference is warranted in the application of facts available.¹¹⁷ In drawing an adverse inference, we find that the GOC’s provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act. Because the GOC refused to provide information concerning the relationship (if any) between provincial tariff schedules and cost, we also relied on an adverse inference in selecting the benchmark for determining the existence and amount of the benefit.¹¹⁸ The benchmark rates we selected are derived from the record of this investigation and are the highest electricity rates on the record for the applicable rate and user categories. For details regarding the remainder of our analysis, *see* the “Provision of Electricity for LTAR” section, below.

Application of AFA: Land Provided is Specific to the Solar Products Industry

In the Initial Questionnaire, the Department stated that if the GOC 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 or residing in an industrial park), the GOC must provide a discussion of how the prices paid by the respondents were determined. The Department requested that the GOC provide information on the policies of the relevant local governments that had jurisdiction over the land and land-use rights. All respondent companies

¹¹² *See* the GOC’s April 21, 2014 questionnaire response at 188.

¹¹³ *See id.*

¹¹⁴ *See id.*, at 189-190.

¹¹⁵ *See* the GOC’s May 12, 2014 questionnaire response at 8.

¹¹⁶ *See* section 776(a)(2)(A) of the Act.

¹¹⁷ *See* section 776(b) of the Act.

¹¹⁸ *See* section 776(b)(4) of the Act.

are located in Jiangsu Province. 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.”¹¹⁹ Effective January 1, 2007, 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” (Jiangsu Circular) set new minimal standards related to the transfer prices of land use rights, such that land for industrial use must be transferred through bidding, auction, or quotation, and neither the floor price nor the settlement price of transfer shall be lower than the minimum transfer price corresponding to the land grade at the place where the land is located.¹²⁰

In addition, in its questionnaire response, Trina Solar explained that its land-use rights had been purchased through a public bidding process and that all of its land was located in an industrial park. Therefore, in our supplemental questionnaire to the GOC, we asked the GOC to provide information regarding the public bidding process, demonstrating, among other things, 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. The GOC provided the “minimum transfer price,” or floor price, for land acquired by Trina Solar after 2008, but it did not provide the requested information for all of the tracts of land provided by the local land bureau to Trina Solar.¹²¹

Because the GOC did not provide complete responses to either the Department’s initial or supplemental questions regarding the derivation of the prices paid by Trina Solar for land-use rights, the Department is unable to determine whether or not the provision of these land use rights was specific. Therefore, we preliminarily determine that the GOC withheld information that was requested of it and, thus, that the Department must rely on facts available pursuant to section 776(a)(2)(A) of the Act in making our preliminary specificity determination for Trina Solar. Moreover, we preliminarily determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. The GOC refused to provide necessary information regarding prices paid by Trina Solar for its tracts of land. In its first response, quoted above, the GOC appears to be suggesting it cannot obtain information from local governments regarding land transactions. However, such information has been provided in other proceedings, such as the investigation of laminated woven sacks,¹²² and some information from the local government was, in fact, provided in this investigation. Consequently, the GOC has not cooperated to the best of its ability and an adverse inference is warranted in the application of facts available.¹²³ In drawing an adverse inference, we find that the GOC’s provision of certain Trina Solar land tracts is specific within the meaning of section 771(5A) of

¹¹⁹ See the GOC’s April 21, 2014 questionnaire response at 193.

¹²⁰ See *id.*, at 193-194.

¹²¹ See the GOC’s May 12, 2014 questionnaire response at 9-10; see also the GOC’s April 21, 2014 questionnaire response at Exhibit H.12.

¹²² See, e.g., Additional Documents Memorandum at Attachment V (includes a public version of the Department’s report from the laminated woven sacks government verification during which the Department requested and received several official land documents involving the respondents in that investigation as well as companies that were not even part of that investigation; e.g., “We asked for and were provided . . . land contracts as well as the accompanying agreements for several companies located in the New Century Industrial Park.”). In this investigation, the GOC provided documentation concerning the public auction of one Trina Solar tract, but did not explain why it was unable to provide the same information for the other tracts.

¹²³ See section 776(b) of the Act.

the Act. For details regarding the remainder of our analysis for this program, *see* the “Provision of Land for LTAR” section below.

Application of AFA: Other Reported Subsidies Are Specific

In its response to our question in the Initial Questionnaire on whether the company respondents received any other subsidies that were not already reported, the GOC objected to the request for information on other subsidy programs in the absence of a proper allegation.¹²⁴ In their questionnaire responses, the mandatory company respondents reported numerous additional grants in addition to those that were alleged in the petition.¹²⁵ When again asked about the additional subsidies reported by Wuxi Suntech and Trina Solar, the GOC again refused to provide the requested information stating “that it has no comment on the other subsidies reported by the respondents.”¹²⁶

The Department has the authority pursuant to section 775 of the Act to examine subsidies discovered during the course of an investigation. Because the GOC declined to provide information necessary for our analysis of whether these grants are specific, we find that the GOC withheld information that was requested. Thus, we are preliminarily determining to use facts available pursuant to section 776(a)(2)(A) of the Act. Further, the GOC has not cooperated to the best of its ability in responding to our request for information stating, “it has no comment on the other subsidies reported by the respondents” and, therefore, we find the use of AFA is warranted in determining the specificity of the grants the respondents reported pursuant to section 776(b) of the Act. Accordingly, as AFA, we are finding all of these additional grant programs to be specific (hereinafter, referred to as the “Discovered Grants” to distinguish them from other grants provided under programs named in the petition). A list of all Discovered Grants identified publicly by the respondents and found to be used in the POI is included in the Preliminary Calculation Memoranda. Most grants provided prior to the POI did not pass the “0.5 percent test” provided for in 19 CFR 351.524(b)(2) (discussed below) and, thus, no benefit is allocable to the POI from these grants. A list of the grants provided prior to the POI that can be identified publicly is included in the Preliminary Calculation Memoranda.

XI. ANALYSIS OF PROGRAMS

Based upon our analysis of the record and the responses to our questionnaires, we preliminarily determine the following:

A. Programs Preliminarily Determined To Be Countervailable

1. Grant Programs

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

¹²⁴ *See* the GOC’s April 21, 2014 questionnaire response at 222.

¹²⁵ *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.

¹²⁶ *See* the GOC’s May 12, 2014 questionnaire response at 16.

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 development of famous brands are to be developed to promote sustainable development in Wuxi City.¹²⁷ 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.¹²⁸ 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...”¹²⁹ 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.¹³⁰

We preliminarily 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,¹³¹ 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 (*i.e.*, the POI). To calculate the subsidy, we divided the full amount of the grant received in the POI by the appropriate total sales denominator, as discussed in the “Subsidies Valuation Information” section above, and in the Preliminary Calculation Memoranda, to determine a subsidy rate less than 0.005 percent *ad valorem*. As such, this subsidy has no impact on the overall subsidy rate.

b. 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

¹²⁷ See the GOC’s April 21, 2014 questionnaire response at 6.

¹²⁸ See *id.*, at page 3 of Exhibit A.1.

¹²⁹ See *id.*, at page 4 of Exhibit A.1.

¹³⁰ See *id.*, at 8.

¹³¹ 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 IDM 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 IDM at the section “Subsidies for Development of Famous Export Brands and China World Top Brands at Central and Sub-Central Level.”

electricity generation and the costs of fossil electricity generation.¹³² 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.¹³³ Article 2 of the “Notice Concerning the Implementation of the Golden Sun Demonstration Project” states that the Golden Sun program is designed to accelerate the industrialization and development of the domestic photovoltaic power industry and to promote the progress of photovoltaic power generation technology.¹³⁴ Financial assistance through this program includes support for, *inter alia*, the following: (1) the use of large-scale mining, commercial enterprises, and public welfare institutions to construct the user’s side of the electrical grid for photovoltaic power generation demonstration projects; (2) increasing the power supply capacity in remote locations; and (3) construction of large-scale grid-connected photovoltaic power generation demonstration projects in solar energy rich regions.¹³⁵

To be eligible for financial support for this program, the GOC states that projects must: (1) be included in the Golden Sun program within the local geographic region; (2) have an installed capacity of not less than 300 kWh; (3) have a construction period of not more than one year, and an operation period of not less than 20 years; (4) the total assets of the owner hosting the project must not be less than 100 million Yuan, and its capital must not be less than 30 percent of the total investment; and (5) the photovoltaic project must be technologically advanced, and the project’s host must be able to operate and protect the project.¹³⁶ Project applications are then reviewed by the GOC’s Ministry of Finance, Ministry of Science, and the National Energy Board.¹³⁷ According to the GOC, grid-connected photovoltaic power generation projects can receive up to 50 percent of their total investment from the GOC. For independent photovoltaic power generation systems located in distant areas without an established electrical grid, project operators can receive up to 70 percent of their total investment from the GOC.¹³⁸

To receive funding under this program, the GOC states that an operator of an eligible project must complete any preparation work beforehand, which includes inviting bids for necessary equipment, finalizing plans for the project’s construction, and submitting application documents to the GOC.¹³⁹ Once these documents are approved by the GOC, the Ministry of Finance will allocate the funds to the project’s operator.¹⁴⁰

Trina Solar reported that it received a grant pursuant to this program during the POI from the Jiangsu Reform and Development Committee for installing a photovoltaic energy-generating project.¹⁴¹ We preliminarily determine that the grant received by Trina Solar through the Golden Sun program confers a countervailable subsidy. The grant is a financial contribution pursuant to

¹³² See the GOC’s April 21, 2014 questionnaire response at 20.

¹³³ See *id.*, at Exhibit A.8 at Article 1.

¹³⁴ See *id.*

¹³⁵ See *id.* at Article 4.

¹³⁶ See *id.*, at 26 and Exhibit A.8 at Article 5.

¹³⁷ See *id.*, at 25.

¹³⁸ See *id.*, at Exhibit A.8, Article 7.

¹³⁹ See *id.*, at 25.

¹⁴⁰ See *id.*

¹⁴¹ See Trina Solar’s April 21, 2014, questionnaire response at 15-25.

section 771(5)(D)(i) of the Act and provides a benefit in the amount of the grant provided, pursuant to 19 CFR 351.504(a). We 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 its initial questionnaire response, the GOC contends that the Golden Sun program is similar to several programs alleged in the CVD petition for wind towers from the PRC that the Department determined not to investigate.¹⁴² According to the GOC, the Department determined the benefit element of a subsidy had not been demonstrated, despite the petition's allegation that wind tower producers benefitted through an increase in demand caused by the GOC's financial assistance to the operators of wind tower projects.¹⁴³ Thus, the GOC contends that the Department should discontinue its investigation of the Golden Sun program because it does not benefit Chinese producers of subject merchandise, only those involved in the construction of solar power projects.¹⁴⁴ However, in the instant investigation, the GOC's argument is unavailing because Trina Solar reported having benefitted directly from the program as the recipient of the grant.

In accordance with 19 CFR 351.504(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 Preliminary Calculation Memoranda. 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 Preliminary Calculation Memoranda. On this basis, we preliminarily determine a countervailable subsidy rate of 0.10 percent *ad valorem* for Trina Solar.

c. Discovered Grants

As discussed above, the Department is preliminarily determining as AFA that numerous grants from the GOC to the respondents discovered during the course of this investigation are countervailable. We preliminarily determine a countervailable subsidy rate for these so-called "discovered grants" of 0.22 percent *ad valorem* for Trina Solar and 0.16 percent *ad valorem* for Wuxi Suntech.

2. Provision of Inputs for LTAR

a. Provision of Polysilicon for LTAR

Petitioner alleged that the respondents received countervailable subsidies in the form of the provision of polysilicon 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

¹⁴² See the GOC's April 21, 2014 questionnaire response at 20-21.

¹⁴³ See *Utility Scale Wind Towers From the People's Republic of China: Initiation of Countervailing Duty Investigation*, 77 FR 3447 (January 24, 2012), and accompanying Initiation Checklist at 38-39; see also the GOC's April 21, 2014 questionnaire response at 20-21.

¹⁴⁴ See the GOC's April 21, 2014 questionnaire response at 20-21.

government's provision of polysilicon, in part, on AFA. Specifically, we determine as AFA that the producers of the polysilicon purchased by both respondents are "authorities" within the meaning of section 771(5)(B) of the Act and, as such, that the provision of polysilicon constitutes a financial contribution under section 771(5)(D)(iii) of the Act.

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. Accordingly, we preliminarily determine that the provision of polysilicon is limited to specific industries under section 771(5A)(D)(iii) of the Act, namely the solar and semiconductor industries.

Lastly, a benefit is being conferred because the polysilicon is being provided for LTAR. As discussed above under the "Subsidies Valuation Information" section, the Department is selecting for polysilicon benchmarks prices respondents reported for contemporaneous imports of polysilicon. The Department adjusted the benchmark price to include delivery charges, import duties, and value added tax (VAT) pursuant to 19 CFR 351.511(a)(2)(iv).¹⁴⁵ Regarding delivery charges, we included ocean freight and the inland freight charges that would be incurred to deliver polysilicon to respondents' production facilities. We added import duties as reported by the GOC, and the VAT applicable to imports of polysilicon into the PRC, also as reported by the GOC.¹⁴⁶ 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.¹⁴⁷

Based on this comparison, we preliminarily determine that polysilicon was 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.¹⁴⁸ We divided the total benefits for each respondent by the appropriate total sales denominator, as discussed in the "Subsidies Valuation Information" section above, and in the Preliminary Calculation Memoranda. On this basis, we preliminarily determine a countervailable subsidy rate of 0.84 percent *ad valorem* for Trina Solar and 3.47 percent *ad valorem* for Wuxi Suntech.

b. Provision of Aluminum Extrusions for LTAR

Petitioner alleged that the respondents 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

¹⁴⁵ The Department concludes that these data do not already include delivery charges. *See* Preliminary Benchmark Memorandum.

¹⁴⁶ *See* the GOC's April 21, 2014, questionnaire response at 176; *see also* the Preliminary Benchmark Memorandum for a full explanation of how the benchmarks were adjusted.

¹⁴⁷ With one exception, each respondent reported imports during every month. For the single month during which one respondent had no imports, we averaged that respondent's import values for the month before and the month after.

¹⁴⁸ *See* 19 CFR 351.511(a).

determine as AFA that the producers of the aluminum extrusions purchased by both respondents are “authorities” within the meaning of section 771(5)(B) of the Act and, as such, that the provision of aluminum extrusions constitutes a financial contribution under section 771(5)(D)(iii) of the Act.

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 injury analysis of the ITC. 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.”

The GOC provided none of the information requested concerning amounts purchased by individual industries. The petition provided information demonstrating the largest aluminum extrusions producer, Zhonhwang Holdings Ltd, has three categories of customers: transportation, machinery and equipment, and electric power engineering industries.¹⁴⁹ While the end uses listed by the GOC are numerous, section 771(5A)(D)(iii)(I) of the Act clearly directs the Department to conduct its analysis on an industry or enterprise basis.¹⁵⁰ Given the entirety of the record, we preliminarily determine that the provision of aluminum extrusions is limited to specific industries under section 771(5A)(D)(iii) of the Act.

Lastly, a benefit is being conferred because the aluminum extrusions are being provided for LTAR. 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.¹⁵¹ 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).¹⁵² 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.¹⁵³ 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 transactions, including VAT and delivery charges.

Based on this comparison, we preliminarily 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.¹⁵⁴ We divided the total benefits for each respondent by the appropriate total sales denominator, as discussed in the “Subsidies

¹⁴⁹ See the petition at 52 and Exhibit III-80 (the annual report of Zhonhwang Holdings Limited).

¹⁵⁰ See *Light-Walled Rectangular Pipe and Tube From People’s Republic of China: Final Affirmative Countervailing Duty Investigation Determination*, 73 FR 35642 (June 24, 2008), and accompanying IDM at Comment 7; see also *Certain Kitchen Shelving and Racks from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 37012 (July 27, 2009), and accompanying IDM at “Provision of Wire Rod for Less Than Adequate Remuneration.”

¹⁵¹ See Trina Solar Benchmark Submission at Exhibit 2.

¹⁵² The Department concludes that these data do not already include delivery charges. See Preliminary Benchmark Memorandum.

¹⁵³ See the GOC’s April 21, 2014, questionnaire response at 134; see also the Preliminary Benchmark Memorandum for a full explanation of how the benchmarks were adjusted.

¹⁵⁴ See 19 CFR 351.511(a).

Valuation Information” section above, and in the Preliminary Calculation Memoranda. On this basis, we preliminarily determine a countervailable subsidy rate of 0.85 percent *ad valorem* for Trina Solar and 13.46 percent *ad valorem* for Wuxi Suntech.

c. Provision of Electricity for LTAR

Petitioner alleged that particular industries are eligible for discounted electricity rates pursuant to the GOC’s policy to promote production of such industries, and that central, provincial, and local governments established policies to provide preferential electricity rates to attract investment to their respective areas. The petition also noted that the Department previously found that electricity prices are set by the central government, and that those rates differ on a regional basis. The petition further alleged that several Chinese provinces offer power at preferential rates to local subject merchandise producers. Thus, according to the petition, producers of subject merchandise likely receive electricity at no cost or at rates that are well below market value.

Because of the GOC’s unwillingness to remedy deficiencies in its questionnaire responses, as explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are basing our determination regarding the government’s provision of electricity, in part, on AFA. In a CVD proceeding, the Department requires information from both the government of the country whose merchandise is under investigation and the foreign producers and exporters. When the government fails to provide requested information concerning alleged subsidy programs, the Department, as AFA, typically finds that a financial contribution exists under the alleged program and that the program is specific.¹⁵⁵ However, where possible, the Department will rely on respondents’ reported information to determine the existence and the amount of the benefit to the extent that such information is useable and verifiable. Thus, we relied on the usage information reported by the respondents in each instance. Wuxi Suntech and Trina Solar each provided data on electricity consumed and electricity rates paid during the POI.¹⁵⁶

As described above in detail, the GOC did not provide certain information requested regarding its provision of electricity to the respondents and, as a result, we determine as AFA 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 companies’ reported consumption volumes and rates paid. We compared the rates paid by the respondents to the benchmark rates, which, as discussed above, 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 the prices paid by each company.

¹⁵⁵ See, *e.g.*, *Hardwood and Decorative Plywood from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*; 2011 78 FR 58283 (September 23, 2013), and accompanying IDM at Comment 3, “Provision of Electricity.”

¹⁵⁶ See Trina Solar’s April 21, 2014 questionnaire response at Exhibit 43; *see also* Wuxi Suntech’s April 21, 2014 questionnaire response at Exhibit 23.

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.¹⁵⁷ 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.¹⁵⁸

To calculate the subsidy rates, we divided the benefit amount by the appropriate total sales denominator, as discussed in the Preliminary Calculation Memoranda. On this basis, we preliminarily determine countervailable subsidy rates for this program of 1.25 percent *ad valorem* for Trina Solar and 0.85 percent *ad valorem* for Wuxi Suntech.

d. Provision of Solar Glass for LTAR

Petitioner alleged that the respondents received countervailable subsidies in the form of the provision of solar glass for LTAR. For the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are basing our preliminary determination regarding the GOC’s provision of solar glass, in part, on AFA. Specifically, we determine as AFA that the producers of the solar glass purchased by both respondents are “authorities” within the meaning of section 771(5)(B) of the Act and, as such, that the provision of solar glass constitutes a financial contribution under section 771(5)(D)(iii) of the Act.

In response to our questions concerning specificity, the GOC stated: “[a]s a basic material input, solar glass is suitable for many downstream applications including use in the solar industry.” 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.¹⁵⁹ Thus, solar glass is a particular type of flat and rolled glass most suitable for particular purposes and customers. Based on this, we preliminarily determine that the provision of polysilicon is limited to specific industries under section 771(5A)(D)(iii) of the Act, namely the solar industry.

Lastly, a benefit is being conferred because the solar glass is being provided for LTAR. As discussed above under the “Subsidies Valuation Information” section, the Department is selecting as a solar glass benchmark the world pricing data provided by Trina Solar.¹⁶⁰ The Department adjusted the benchmark price to include delivery charges, import duties, and value added tax (VAT) pursuant to 19 CFR 351.511(a)(2)(iv).¹⁶¹ We added import duties as reported by the GOC, and the VAT applicable to imports of solar glass into the PRC, also as reported by the GOC.¹⁶² In calculating VAT, we applied the applicable VAT rate to the benchmark after

¹⁵⁷ See the GOC’s April 21, 2014 questionnaire response at Exhibit H.11.

¹⁵⁸ See “Application of AFA: Provision of Electricity for LTAR” section, above.

¹⁵⁹ See the petition at 58-59 and Exhibit III-92.

¹⁶⁰ See Trina Solar Benchmark Submission at Exhibits 3 and 4.

¹⁶¹ The Department concludes that these data do not already include delivery charges. See Preliminary Benchmark Memorandum.

¹⁶² See the GOC’s April 21, 2014, questionnaire response at 214; see also the Preliminary Benchmark Memorandum for a full explanation of how the benchmarks were adjusted.

first adding amounts for ocean freight and import duties. We compared the benchmark prices to the respondents' reported purchase prices for individual transactions, including VAT and delivery charges.

Based on this comparison, we preliminarily determine that solar glass was provided by the GOC to the company respondents for LTAR and that a benefit exists for each respondent in the amount of difference between the benchmark prices and the prices each respondent paid.¹⁶³ We divided the total benefits for each respondent by the appropriate total sales denominator, as discussed in the "Subsidies Valuation Information" section above, and in the Preliminary Calculation Memoranda. On this basis, we preliminarily determine a countervailable subsidy rate of 14.13 percent *ad valorem* for Trina Solar and 15.11 percent *ad valorem* for Wuxi Suntech.

3. Provision of Land for LTAR

Petitioner alleged that Trina Solar and Wuxi Suntech benefited from the provision of land to subject merchandise producers by the GOC at either a discounted rate or for free. The sale of land-use rights constitutes a financial contribution from a government authority in the form of providing goods or services pursuant to section 771(5)(D)(iii) of the Act. As discussed above in the "Application of AFA: Land Provided is Specific to the Solar Products Industry" section, the Department preliminarily determines as AFA that the provision of land to Trina Solar was specific.

In order to calculate 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 Preliminary Calculation Memoranda, to derive preliminary subsidy rates of 0.10 percent *ad valorem* for Trina Solar.

Wuxi Suntech and its cross-owned companies also reported land purchases during the AUL period.¹⁶⁴ As discussed above, the GOC provided a circular for Jiangsu province indicating the minimum prices for "primary" sales (*i.e.*, sales from the government to a private party, not from one private party to another) in that province after January 1, 2007. The GOC provided additional information in response to our questions concerning Wuxi Suntech's land and land-

¹⁶³ See 19 CFR 351.511(a).

¹⁶⁴ See, *e.g.*, Wuxi Suntech's April 21, 2014 questionnaire response at 43-49.

use rights. Information provided by the GOC and Wuxi Suntech indicates all land-use rights provided through the so-called primary market after January 1, 2007, were above the minimum. The information indicated no primary market sales before January 1, 2007. Thus, we preliminarily determine that Wuxi Suntech appears not to have benefited from this program. We intend to request additional information regarding land-use rights provided to Wuxi Suntech after this preliminary determination. Specifically, the Department intends to request additional information from the GOC regarding the reported private nature of some of the parties from which Wuxi Suntech rented or purchased land or land-use rights.

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.”¹⁶⁵

Wuxi Suntech and Trina Solar, as well as their cross-owned companies, reported having loans outstanding from banks in China during the POI.¹⁶⁶ The Department finds that these loans are countervailable. 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.”¹⁶⁷ 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.”¹⁶⁸

Renewable energy is also among the “Encouraged Category” of projects listed in the “Directory Catalogue on Readjustment of Industrial Structure,”¹⁶⁹ 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

¹⁶⁵ See Volume III of the Petition, “Information Relating to the People’s Republic of China -- Countervailing Duties,” at 10.

¹⁶⁶ See Trina Solar’s April 21, 2014 questionnaire response at Exhibits 22 and 23; *see also*, Wuxi Suntech’s April 21, 2014 questionnaire response at Exhibit 5.

¹⁶⁷ See the GOC’s April 21, 2014 questionnaire response at Exhibit A.3

¹⁶⁸ See the Petition at page 49 of Exhibit III-10.

¹⁶⁹ 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”)

list of encouraged projects the GOC develops through loans and other forms of assistance, and which the Department relied upon in prior specificity determinations.¹⁷⁰

Therefore, given the evidence demonstrating the GOC's objective of developing the renewable energy sector, and producers of certain solar products in particular, through preferential loans, we preliminarily determine there is a program of preferential policy lending specific to producers of certain solar products within the meaning of section 771(5A)(D)(i) of the Act. We also preliminarily find that loans from state owned commercial banks (SOCBs) under this program constitute financial contributions, pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act, because SOCBs are "authorities."¹⁷¹ 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.¹⁷² To calculate the benefit from this program, we used the benchmarks discussed above under the "Subsidy Valuation Information" section.¹⁷³ On this basis, we preliminarily determine a subsidy rate of 0.56 percent *ad valorem* for Trina Solar and 1.06 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.¹⁷⁴ 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.¹⁷⁵ Where these expenditures form the value of certain intangible assets, the expenditures may be amortized based on 150 percent of the intangible assets costs.¹⁷⁶

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

¹⁷⁰ 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 IDM at "Government Policy Lending" section.

¹⁷¹ See, e.g., *Tires Final Determination*, and accompanying IDM at Comment E2.

¹⁷² See section 771(5)(E)(ii) of the Act.

¹⁷³ See also 19 CFR 351.505(c).

¹⁷⁴ See the GOC's April 21, 2014 questionnaire response at Exhibit B.3.

¹⁷⁵ See *id.*, at Exhibit B.5.

¹⁷⁶ See *id.*

Developmental Areas in the High Technology Industry (2007).”¹⁷⁷ 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.” Among the subjects included in Article 6 of the list are “Solar energy” and “Solar photovoltaic technology.”

Wuxi Suntech’s cross-owned companies Zhenjiang Rietech, Yangzhou Rietech, and Suzhou Kuttler, each reported using this program during the POI.¹⁷⁸ In addition, both Trina Solar and TST reported using this program during the POI.¹⁷⁹

We preliminarily determine 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).¹⁸⁰ 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 standard tax rate of 25 percent (*i.e.*, 25 percent of the tax credit). We then divided the tax savings by the appropriate total sales denominator for each respondent, respectively.

On this basis, we preliminarily determine a countervailable subsidy rate of 0.10 percent *ad valorem* for Trina Solar and 0.52 percent *ad valorem* for Wuxi Suntech under this program.

b. Preferential Tax Programs for High or New Technology Enterprises

This program was established on January 1, 2008 by the Enterprise Income Tax Law of the PRC (Decree 63 of the PRC, 2007). Under Article 28 of that law, companies recognized as high or new technology enterprises (HNTEs), are eligible for a reduced income tax rate of 15 percent, in lieu of the regular rate of 25 percent. 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

¹⁷⁷ See *id.*, at Exhibit B.6.

¹⁷⁸ 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.

¹⁷⁹ See Trina Solar’s April 21, 2014 questionnaire response at 29.

¹⁸⁰ These credits can be for either expensed or capitalized R&D expenditures. If a credit is for capitalized expenditures (*e.g.*, the expenditures were made toward developing an “intangible asset” or patent), however, the 50 percent deduction is amortized across the useful life of the developed asset. Therefore, even credits for capitalized expenditures would be allocated over tax returns filed during a number of years and would thus be recurring. See GOC’s March 1, 2012 questionnaire response at 13 and GOC’s May 8, 2012 questionnaire response at 2.

research and development and in the transformation of their scientific and technological achievements.¹⁸¹ Article 6 of the Annex to this circular also specifically identifies the HNTes that qualify for key state support, which includes renewable, clean energy technologies such as solar photovoltaic technologies.¹⁸² 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.¹⁸³ Enterprises that meet the eligibility criteria will be certified as HNTes by the approving GOC authority, and this designation remains effective for three years.¹⁸⁴

Wuxi Suntech's cross-owned companies, Zhenjiang Rietech, and Suzhou Kuttler, each reported using this program during the POI.¹⁸⁵ In addition, Trina Solar and TST also reported using this program during the POI.¹⁸⁶ 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.¹⁸⁷

We preliminarily determine 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 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.

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. We then divided these amounts by the appropriate total sales denominator, as discussed in the "Subsidies Valuation Information" section above, and in the Preliminary Calculation Memoranda. On this basis, we preliminarily determine a countervailable subsidy rate of 0.41 percent *ad valorem* for Trina Solar and 0.55 percent *ad valorem* for Wuxi Suntech.

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

¹⁸¹ See the GOC's April 21, 2014 questionnaire response at Exhibit B.7.

¹⁸² See *id.*

¹⁸³ See *id.*, at Exhibit B.7, Article 11.

¹⁸⁴ See *id.* at Article 12.

¹⁸⁵ See Zhenjiang Rietech's April 21, 2014 questionnaire response at 28; see also Suzhou Kuttler's April 21, 2014 questionnaire response at 28.

¹⁸⁶ See Trina Solar's April 21, 2014 questionnaire response at 38.

¹⁸⁷ See the GOC's April 21, 2014 questionnaire response at 59-71.

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.¹⁸⁸ The Department previously found this program to be countervailable.¹⁸⁹ Trina Solar reported using this program from 2005 through 2009. We preliminarily determine 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.¹⁹⁰ We further preliminarily 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.¹⁹¹ Because the rebates under this program were tied to purchased equipment, we preliminarily 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.

For those companies that received benefits under this program, we applied the “0.5 percent test,” pursuant to 19 CFR 351.524, 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 preliminarily determine that Trina Solar received a countervailable subsidy rate of 0.00 percent *ad valorem* under this program.

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.¹⁹² In accordance with the policy outlined in this document, the China Export & Credit Insurance Corporation (SINOSURE) provides export credit insurance to policyholders.¹⁹³

To determine whether an export insurance program is countervailable, we must examine whether the premium rates charged are adequate to cover the program’s long-term operating costs and

¹⁸⁸ See *id.*, at 73.

¹⁸⁹ See *Citric Acid from the PRC*, and accompanying IDM at 20; see also *CFS from the PRC*, and accompanying IDM at 13-14.

¹⁹⁰ See section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1).

¹⁹¹ See 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).

¹⁹² See the GOC’s April 21, 2014 questionnaire response at 86-87; see also Exhibit E.1

¹⁹³ See *id.*, at 86.

losses.¹⁹⁴ 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."¹⁹⁵ 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 2009-2012.¹⁹⁶ 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.¹⁹⁷ 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 of 19 CFR 351.520(a)(1). Thus, we preliminarily determine that this program is countervailable during the POI.

Wuxi Suntech maintained an insurance policy with SINOSURE during the POI.¹⁹⁸ The company also reported receiving claim payouts from SINOSURE during this time period.¹⁹⁹ Those payouts were recorded in the company's accounting system as "Subsidies Income."²⁰⁰ Because insurance provided through this program is contingent upon export performance, we preliminarily 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 preliminary CVD rate for this program, this benefit amount is divided by Wuxi Suntech's total exports. We thus determine the preliminary countervailable subsidy received by Wuxi Suntech under this insurance program to be 0.03 percent *ad valorem*.

¹⁹⁴ See 19 CFR 351.520(a)(1).

¹⁹⁵ See the GOC's April 21, 2014 questionnaire response at 95.

¹⁹⁶ See *id.*, at Exhibit E.2; see also the GOC's May 12, 2014 questionnaire response at Exhibit S1-F.

¹⁹⁷ See *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.

¹⁹⁸ See Wuxi Suntech's April 21, 2014 questionnaire response at Exhibit 35.

¹⁹⁹ See *id.* at 54

²⁰⁰ See *id.* at 53.

B. Programs Preliminarily Determined To Be Not Used or Not to Confer a Measurable Benefit During the POI

1. Grant Programs

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

2. Debt Forgiveness

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

5. Export Credit Subsidies

XII. ITC NOTIFICATION

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an APO, without the written consent of the Assistant Secretary for Enforcement and Compliance.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

XIII. DISCLOSURE AND PUBLIC COMMENT

The Department intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.²⁰¹ Case briefs may be submitted to Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS) no later than seven days after the date on which the last verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in the case briefs, may be submitted no later than five days after the deadline for case briefs.²⁰²

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.²⁰³ This summary should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing, or to participate if one is requested, must do so in writing within 30 days after the publication of this preliminary determination in the *Federal Register*.²⁰⁴ Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a date, time and location to be determined. Parties will be notified of the date, time and location of any hearing.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using IA ACCESS.²⁰⁵ Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time,²⁰⁶ on the due dates established above.

XIV. VERIFICATION

As provided in section 782(i)(1) of the Act, we intend to verify the information submitted in response to the Department's questionnaires.

²⁰¹ See 19 CFR 351.224(b).

²⁰² See 19 CFR 351.309(d).

²⁰³ See 19 CFR 351.309(c)(2) and (d)(2).

²⁰⁴ See 19 CFR 351.310(c).

²⁰⁵ See 19 CFR 351.303(b)(2)(i).

²⁰⁶ See 19 CFR 351.303(b)(1).

XV. CONCLUSION

We recommend that you approve the preliminary findings described above.

✓ _____
Agree Disagree

Paul Piquado
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

2 June 2014
Date