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Administrative Review
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December 31, 2015

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 Results of the
Countervailing Duty Administrative Review of Crystalline Silicon
Photovoltaic Cells, Whether or Not Assembled Into Modules, from
the People's Republic of China; 2013

I. SUMMARY

The Department of Commerce (the Department) is conducting the administrative review of the countervailing duty (CVD) order on crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells), from the People's Republic of China (PRC). The period of review (POR) is January 1, 2013, through December 31, 2013. The respondent is JA Solar Technology Yangzhou Co., Ltd. (JA Solar). We preliminarily find that JA Solar received countervailable subsidies from certain programs during the POR.

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

II. BACKGROUND

In December 2012, the Department published in the *Federal Register* a CVD order on solar cells from the PRC.¹ Subsequently, on December 2, 2014, the Department published in the *Federal Register* a notice of opportunity to request an administrative review of the *CVD Order* for the

¹ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Countervailing Duty Order*, 77 FR 73017 (December 7, 2012) (*CVD Order*).

period January 1, 2013, through December 31, 2013.² Pursuant to section 751(a)(1) of the Act and 19 CFR 351.213(b)(1)-(2), in December 2014, the Department received timely requests to conduct an administrative review of the *CVD Order* from interested parties: Wuxi Suntech Power Co., Ltd. (Wuxi Suntech); Canadian Solar Inc. (Canadian Solar); Yingli Green Energy Holding Company Limited (Yingli Holdings); Changzhou Trina Solar Energy Co., Ltd. (Trina Solar); tenKsolar (Shanghai) Co., Ltd.; Shanghai BYD Co., Ltd. (Shanghai BYD); Ningbo Qixin Solar Electrical Appliance Co., Ltd. (Ningbo Qixin); Era Solar Co., Ltd.; and from SolarWorld Americas, Inc. (Petitioner), which requested a review of 75 companies. On February 4, 2015, in accordance with 19 CFR 351.221(c)(1)(i), the Department published a notice of initiation of administrative review for 76 companies.³

We stated in the *Initiation Notice* that we intended to base our selection of mandatory respondents on CBP entry data for the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the *CVD Order*. On February 10, 2014, we released the results of a query performed using CBP's trade database for the POR.⁴ On February 19, 2015, the Department received timely comments on the CBP Entry Data from Petitioner.⁵ No other party submitted comments on the CBP Entry Data.

On March 11, 2015, the Department selected the following three exporters/producers as mandatory respondents for individual examination: Baoding Tianwei Yingli New Energy Resources Co., Ltd. (Baoding Yingli); Era Solar; and Yingli Energy (China) Co., Ltd. (Yingli Energy).⁶ On March 12, 2015, we sent our questionnaire seeking information regarding the alleged subsidies to the Government of China (GOC), instructing the GOC to forward the questionnaire to the mandatory respondents.⁷

On May 5, 2015, the Department received timely withdrawals of the requests to review Baoding Yingli, Yingli Energy, and certain other exporters/producers listed in the *Initiation Notice*.⁸ On

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 79 FR 71382 (December 2, 2014).

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 6041 (February 4, 2015) (*Initiation Notice*).

⁴ See Department Memorandum, "Release of Customs Entry Data for Respondent Selection in the Administrative Review of the Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China," (February 10, 2015) (CBP Entry Data).

⁵ See Letter to the Secretary from Petitioner, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Comments on CBP Data," (February 19, 2015).

⁶ See Department Memorandum, "Countervailing Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Respondent Selection," (March 11, 2015).

⁷ See Letter from the Department to the GOC, "Countervailing Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Countervailing Duty Questionnaire," (March 12, 2015).

⁸ See Letter to the Secretary from Yingli Holdings, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Withdrawal of Requests for Administrative Review," (May 5, 2015); see also Letter to the Secretary from tenKsolar (Shanghai) Co., Ltd., "*Crystalline Silicone Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Withdrawal of Request for Review and Notice of No Sales*," (February 19, 2015); see also Letter to the Secretary from Shanghai BYD, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic

July 16, 2015, the Department determined that Era Solar had improperly filed its review request.⁹ Accordingly, Era Solar was excluded from the list of mandatory respondents.¹⁰ Because the companies originally selected as mandatory respondents were no longer subject to this review, the Department examined the CBP Entry Data to select new mandatory respondents from the remaining companies for which a request for review was properly filed and for which no request for withdrawal had been submitted.¹¹ On July 28, 2015, the Department determined that with the time remaining to conduct this administrative review, it was appropriate to select one mandatory respondent, and selected JA Solar as the mandatory respondent.¹² Also on July 28, 2015, the Department sent a questionnaire to the GOC, instructing the GOC to forward this questionnaire to JA Solar.¹³ On August 11, 2015, the Department extended the deadline for completion of these preliminary results until December 1, 2015.¹⁴

On October 15, 2015, Petitioner submitted new subsidy allegations,¹⁵ and on November 18, 2015, the Department declined to initiate a review of these new allegations.¹⁶ On October 14, 2015, Petitioner requested that we verify the questionnaire responses submitted by the GOC and JA Solar.¹⁷

of China: Withdrawal of Request for Review,” (April. 6, 2015); *see also* Letter from Petitioner to the Secretary, “*Certain Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China: Withdrawal of Requests for Administrative Review*,” May 5, 2015; *see also* Letter from Canadian Solar, “*Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China: Withdrawal of Request for Administrative Review*,” (May 5, 2015).

⁹ *See* Department Memorandum, “Request for Administrative Review from Era Solar Co., Ltd.,” (July 16, 2015).

¹⁰ *See* Letter to Era Solar, “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People’s Republic of China; Request for Administrative Review from Era Solar Co., Ltd.,” (July 16, 2015).

¹¹ *See* Department Letters, “JA Companies’ Withdrawal of Request for Administrative Review,” “Trina Solar’s Withdrawal of Request for Administrative Review,” “Wuxi Suntech’s Withdrawal of Administrative Review,” (July 20, 2015) (explaining that the companies submitted their withdrawal requests after the 90 day period specified in 19 CFR 351.213(d)(1) and failed to demonstrate the requisite “extraordinary circumstances” to retroactively extend the regulatory deadline).

¹² *See* Department Memorandum, “Administrative Review of the Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Respondent Selection,” (July 28, 2015).

¹³ *See* Letter from the Department to the GOC, “Countervailing Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Countervailing Duty Questionnaire,” (July 28, 2015).

¹⁴ *See* Department Memorandum, “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Extension of Time Limit for Preliminary Results of the Countervailing Duty Administrative Review,” (Aug. 11, 2015).

¹⁵ *See* Letter to the Secretary from Petitioner, “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: New Subsidy Allegations,” (October 15, 2015).

¹⁶ *See* Department Memorandum, “Decision Memorandum in the Matter of New Subsidy Allegations Submitted On October 15, 2015, in the Countervailing Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China,” (November 18, 2015).

¹⁷ *See* Letter to the Secretary from Petitioner, “Certain Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China: Request for Verification,” (October 14, 2015).

On November 2, 2015, Petitioner timely filed an allegation that JA Solar was uncreditworthy from 2010 to 2013,¹⁸ and on November 17, 2015, we initiated an investigation on this allegation.¹⁹

On November 3, 2015, the Department further extended the deadline for completing these preliminary results until no later than December 31, 2015.²⁰

Between December 11, 2015, and December 15, 2015, we received comments from Petitioner and JA Solar for these preliminary results, which we addressed in these preliminary results to the extent practicable.

Scope of the Order

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

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

Merchandise under consideration may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, modules, laminates, panels, building-integrated modules, building-integrated panels, or other finished goods kits. Such parts that otherwise meet the definition of merchandise under consideration are included in the scope of this order.

Excluded from the scope of this order are thin film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS).

Also excluded from the scope of this order are crystalline silicon photovoltaic cells, not exceeding 10,000mm² 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

¹⁸ See Letter from Petitioner to the Department, “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China: JA Solar Creditworthiness Allegation,” (November 2, 2015).

¹⁹ See Department Memorandum, “Uncreditworthiness Allegation in the Second Administrative Review of the Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China,” (November 17, 2015).

²⁰ See Department Memorandum, “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Second Extension of Time Limit for Preliminary Results of the Countervailing Duty Administrative Review,” Nov. 3, 2015.

integrated into a consumer good, the surface area for purposes of this exclusion shall be the total combined surface area of all cells that are integrated into the consumer good.

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

Merchandise covered by this order is currently classified in the HTSUS under subheadings 8501.61.0000, 8507.20.80, 8541.40.6020, 8541.40.6030, and 8501.31.8000. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of this order is dispositive.

Partial Rescission of the 2013 Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation. For those companies named in the *Initiation Notice*²¹ for which all review requests were timely withdrawn, we are rescinding this administrative review in accordance with 19 CFR 351.213(d)(1). These companies are listed at the Appendix to this memorandum. For these companies, countervailing duties shall be assessed at rates equal to the rates of cash deposits for estimated countervailing duties required at the time of entry, or withdrawn from warehouse, for consumption, during the period January 1, 2013, through December 31, 2013, in accordance with 19 CFR 351.212(c)(2).

Companies Not Selected for Individual Review

There are two companies for which a review was requested and not rescinded, and were not selected as mandatory respondents: Trina Solar and Wuxi Suntech.²² Because JA Solar is the sole mandatory respondent, we assigned to Trina Solar and Wuxi Suntech the rate calculated for JA Solar.

III. SUBSIDIES VALUATION

Period of Review (POR)

The POR is January 1, 2013, through December 31, 2013.

Allocation Period

Under 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to

²¹ See *Initiation Notice*.

²² We note that untimely requests for withdrawal of review were also submitted on behalf of Shanghai JA Solar Technology Co., Ltd., and JingAo Solar Co., Ltd. However, we have preliminarily determined that these companies are cross-owned with the mandatory respondent, pursuant to section 351.525(b)(6) of the Act, and are, thereby, under examination.

the Average Useful Life (AUL) of the renewable physical assets used to produce the subject merchandise. Pursuant to 19 CFR 351.524(d)(2), there is a rebuttable presumption that the AUL will be taken from the IRS Tables, as updated by the U.S. Department of the Treasury. For the subject merchandise, the IRS Tables prescribe an AUL of 10 years. No interested party has challenged the use of a 10-year AUL.

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

Attribution of Subsidies

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 *CVD Preamble* to the Department’s regulations further clarifies the Department’s cross-ownership standard. According to the *CVD Preamble*, relationships captured by the cross-ownership definition include those where:

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.²³

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

²³ See *Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

(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.²⁴

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. JA Solar reported that it is cross-owned with numerous affiliates that are producers of solar cells or that provided goods or services for the production of solar cells:²⁵

1. JingAo Solar Co., Ltd.;
2. JA Solar Technology Yangzhou Co., Ltd.;
3. Jing Hai Yang Semiconductor Material (Donghai) Co., Ltd.;
4. Donghai JA Solar Technology Co., Ltd.;
5. JA (Hefei) Renewable Energy Co., Ltd. (JA Hefei);
6. Hefei JA Solar Technology Co., Ltd.;
7. Solar Silicon Valley Electronic Science and Technology Co., Ltd.;
8. Hebei Ningjin Songgong Semiconductor Co., Ltd.;
9. Shanghai JA Solar Technology Co., Ltd.;
10. Ningjin Songgong Electronic Materials Co., Ltd.;
11. JingLong Industry and Commerce Group Co., Ltd.;
12. Ningjin Guiguang Electronic Investment Co., Ltd (Ningjin Guiguang);
13. Yangguang Guifeng Electronic Technology Co., Ltd.;
14. Ninjing Jingxing Electronic Materials Co., Ltd.;
15. Ningjin Saimei Ganglong Electronic Materials Co., Ltd.;
16. Jingwei Electronic Material Co., Ltd.;
17. Ningjin Changlong Electronic Materials Manufacturing Co.;
18. Ningjin Jingfeng Electronic Materials Co., Ltd.;
19. Ningjin County Jingyuan New Energy Investment Co., Ltd. (Ninjing County Jingyuan);
20. Xingtai Jinglong Electronic Materials Co., Ltd.;
21. Hebei Yujing Electronic Science and Technology Co., Ltd.;
22. Hebei Ningtong Electronic Materials Co., Ltd.; and
23. Ningjing Sunshine New Energy Co., Ltd.

In its questionnaire responses, JA Solar reported that two holding companies hold majority ownership shares of the 23 companies listed above, and Mr. Baofang Jin is the largest shareholder of both holding companies.²⁶ Mr. Jin is also either the executive chairman or chairman of the Board of Directors of these holding companies.²⁷ As such, we preliminarily find that the 23 companies reported by JA Solar are cross-owned affiliates through the common ownership and control of Mr. Jin pursuant to 19 CFR 351.525(b)(6)(vi). Hereinafter, these

²⁴ See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

²⁵ See JA Solar's September 22, 2015, Questionnaire Response (QR), JA Solar's September 18, 2015 QR, and JA Solar's November 12, 2015 QR.

²⁶ *Id.*; see also JA Solar's December 2, 2015 QR at Exhibit 1 (SEC Form 20-F at 18). The identities of the two holding companies referenced are business proprietary in nature.

²⁷ *Id.*

cross-owned companies are referred to collectively as JA Solar, or the JA Solar Companies. For the reported producers of subject merchandise, we are attributing any subsidy received by these companies to the combined sales of these companies, excluding intercompany sales, in accordance with 19 CFR 351.525(b)(6)(ii).²⁸

Additionally, JA Solar reported that certain cross-owned holding or trading companies, JA Hefei, Ningjin Guiguang, and Ningjing County Jingyuan did not engage in production or sales activities, did not receive any subsidies, or did not export subject merchandise. As a result, we are excluding these three companies from our subsidy calculations, in accordance with 19 CFR 351.525(b)(6)(iii) and 351.525(c).

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

- the cross-owned company produces the subject merchandise;
- the cross-owned company is a holding company or a parent company (with its own operations (of your company));
- the cross-owned company supplies an input product to you for production of the downstream product produced by the respondent, or;
- the cross-owned company has received a subsidy and transferred it to your company.²⁹

JA Solar identified certain affiliates for which a questionnaire response is not required because these companies did not meet any of the Department's criteria for providing a response. As such, based on information on the record, we preliminarily find that in accordance with 351.525(b), these companies do not fall under our attribution rules such that we would attribute to JA Solar any subsidies they may have received.

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 Memorandum," prepared for this countervailing duty administrative review.³⁰

Benchmark and Discount Rates

The Department is investigating loans received by the respondents from Chinese policy banks

²⁸ See Department Memorandum, "Countervailing Duty Administrative Review of Certain Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Preliminary Calculation Memorandum," dated concurrently with this Preliminary Decision Memorandum (Preliminary Calculation Memorandum).

²⁹ See the Department's July 28, 2015 questionnaire to the GOC and to JA Solar; *see also* JA Solar's August 25, 2015 QR, and JA Solar's November 12, 2015 QR.

³⁰ See Preliminary Calculation Memorandum.

and state-owned commercial banks (SOCBs), as well as non-recurring, allocable subsidies.³¹ The derivation of the benchmark and discount rates used to value these subsidies is discussed below.

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.³² 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.”³³ Section 771(5)(E)(ii) of the Act also 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.³⁴ Because of this, any loans received by 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 Department used U.S. timber prices to measure the benefit for government-provided timber in Canada.³⁵

In past proceedings involving imports from the PRC, we calculated the external benchmark using the methodology first developed in *CFS from the PRC*³⁶ and more recently updated in *Thermal Paper from the PRC*.³⁷ 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 2001 through 2009, the PRC fell in the lower-middle

³¹ See 19 CFR 351.524(b)(1).

³² See 19 CFR 351.505(a)(3)(i).

³³ See 19 CFR 351.505(a)(3)(ii).

³⁴ 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*), and accompanying IDM at Comment 10.

³⁵ 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.”

³⁶ See *CFS from the PRC*, and accompanying IDM at Comment 10.

³⁷ 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.

income category.³⁸ Beginning in 2010, however, the PRC is in the upper-middle income category and remained there from 2011 to 2013.³⁹ Accordingly, as explained further below, we are using the interest rates of lower-middle income countries to construct the benchmark and discount rates for 2001 through 2009, and we used the interest rates of upper-middle income countries to construct the benchmark and discount rates for 2010 through 2013. This is consistent with the Department's calculation of interest rates for recent CVD proceedings involving PRC merchandise.⁴⁰

After the Department identifies the appropriate interest rates, the next step in constructing the benchmark is 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 2001 through 2009, and 2011 through 2013, 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.⁴¹ For 2010, however, the regression does not yield that outcome for the PRC's income group.⁴² 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 through 2009 and 2011 through 2013. For the 2010 benchmark, we are using an average of the interest rates of the upper-middle income countries. Based on our experience for the 2001 through 2009 period, in which the average interest rate of the lower-middle income group did not differ significantly from the benchmark rate resulting from the regression for that group, use of the average interest rate for 2010 does not introduce a distortion into our calculations.⁴³

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 (IMF). The IMF compiles that data and makes it publicly available through the 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 2010-2013 and "lower middle income" for 2001-2009.⁴⁴ 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

³⁸ See World Bank Country Classification, <http://econ.worldbank.org/>; see also Preliminary Calculation Memorandum.

³⁹ See World Bank Country Classification.

⁴⁰ See, e.g., *Drawn Stainless Steel Sinks From the People's Republic of China: Final Results of Countervailing Duty Administrative Review and Rescission in Part; 2012-2013*, 80 FR 69638 (November 10, 2015) and accompanying IDM at 12-14 (*Stainless Sinks from the PRC Review*).

⁴¹ See Benchmark Memorandum.

⁴² *Id.*

⁴³ See, e.g., *Stainless Sinks from the PRC Review*, and accompanying IDM at 14.

⁴⁴ See Benchmark Memorandum.

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.⁴⁵ Because the resulting rates are net of inflation, we adjusted the benchmark to include an inflation component.⁴⁶

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.

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.⁴⁷

In *Citric Acid from the PRC*, the Department revised this methodology 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 or approximates the number of years of the term of the loan in question.⁴⁸ Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.⁴⁹

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.⁵⁰ In addition, and as discussed below, we have preliminarily determined that JA Solar was uncreditworthy during 2012 and 2013. For non-

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ See, e.g., *Thermal Paper from the PRC*, and accompanying IDM at 10.

⁴⁸ 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.

⁴⁹ See, generally, Preliminary Calculation Memorandum.

⁵⁰ *Id.*

recurring subsidies received in those years, we have adjusted the discount rates according to 19 CFR 351.505(a)(3)(iii). The interest rate benchmarks and discount rates used in our preliminary calculations are provided in the Preliminary Calculation Memorandum.

Uncreditworthiness Regarding JA Solar

On November 18, 2015, based on an allegation submitted by Petitioner,⁵¹ we initiated an investigation of whether JA Solar was uncreditworthy during 2012 and 2013.⁵²

The examination of creditworthiness under 19 CFR 351.505(a)(4) is an attempt to determine if the company in question could obtain long-term financing from conventional commercial sources. According to 19 CFR 351.505(a)(4)(i), the Department will generally consider a firm to be uncreditworthy if, “based on information available at the time of the government-provided loan, the firm could not have obtained long-term loans from conventional commercial sources.” Pursuant to 19 CFR 351.505(a)(4)(i)(A)-(D), the Department normally examines: (1) the receipt by the firm of comparable commercial long-term loans; (2) present and past indicators of the firm’s financial health, as reflected in various financial indicators calculated from the firm’s financial statements and accounts; (3) present and past indicators of the firm’s ability to meet its costs and fixed financial obligations with its cash flow; and (4) evidence of the firm’s future financial position, such as market studies, country and industry economic forecasts, and project and loan appraisals prepared prior to the agreement between the lender and the firm on the terms of the loan.

As we explained in the CW Initiation Memorandum, our initiation decision considered a number of factors, such as JA Solar’s lack of comparable commercial loans during this time; low quick and current ratios (*i.e.*, measures of JA Solar’s ability to meet its short-term financial obligations); negative operating cash flows, which indicate that JA Solar could not cover its costs and financial obligations through operating activities and thus, further impairing JA Solar’s liquidity; and a rise in JA Solar’s “days in receivables” during 2012 and 2013, which indicates that JA Solar experienced challenges collecting payments and further liquidity problems.⁵³

After we initiated our creditworthiness investigation, we gave JA Solar an opportunity to recalculate these financial ratios itself, and to submit additional information such as internal and external studies relevant to its financial situation, for which JA Solar timely responded on December 2, 2015.⁵⁴ JA Solar’s recalculated current and quick ratios were generally consistent with the ratios we relied on when initiating the creditworthiness investigation, and for 2012 and

⁵¹ See Letter to the Secretary from Petitioner, “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: JA Solar Creditworthiness Allegation,” (November 2, 2015).

⁵² See Decision Memorandum from Mark Hoadley, Program Manager to Edward C. Yang, Senior Director, “Uncreditworthiness Allegation in the Second Administrative Review of the Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China,” November 18, 2015 (CW Initiation Memorandum).

⁵³ *Id.*

⁵⁴ See Letter to the Secretary from JA Solar, “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People’s Republic of China: Creditworthiness Questionnaire Response,” (December 2, 2015) (JA Solar CW Response).

2013 they were lower than the benchmarks relied on by the Department (*i.e.*, lower than 2.0 for current ratios, and 1.0 for quick ratios).⁵⁵ In addition, the recalculated cash flows submitted by JA Solar confirmed that its operating cash flows were negative during 2012 and 2013.⁵⁶

Receipt by the Firm of Comparable Commercial Long-Term Loans

The first factor we consider is the receipt by the firm of comparable commercial long-term loans.⁵⁷ In the case of firms not owned by the government, the receipt of such loans, unaccompanied by a government-provided guarantee, will normally constitute dispositive evidence that the firm is not uncreditworthy.⁵⁸ We preliminarily find that JA Solar did not receive comparable commercial long-term loans in the years in question (years in which it received countervailable long-term loans from the GOC or years in which allocable, non-recurring subsidies were received).

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

We next examined JA Solar's financial ratios and indicators under the factors in 19 CFR 351.505(a)(4)(i)(B)-(D). Our analysis leads us to conclude that from 2010 to 2013, JA Solar's current ratios generally decreased from 3.14 to 1.26, and that its quick ratios decreased from 1.71 to 0.67.⁵⁹ We also conclude that JA Solar's cash flows decreased from RMB 2.26 billion in 2010 to negative RMB 331.4 million in 2012, and decreased further to negative RMB 521.7 million in 2013.⁶⁰ These negative cash flows in 2012 and 2013 indicate that it was necessary for JA Solar to borrow to cover its cash outlays after servicing its long-term debts. These factors demonstrate that JA Solar had difficulty in meeting its short-term financial obligations without resorting to additional short-term borrowing and are also indicative of an inability to obtain long-term loans from conventional commercial sources.

Evidence of the Firm's Future Financial Position

Regarding evidence of the firm's financial position within the meaning of 19 CFR 351.505(a)(4)(i)(D), JA Solar did not submit any feasibility studies that indicate the outlook for its future financial position during the years at issue.

Conclusion on Creditworthiness

Based on an analysis of factors in 19 CFR 351.505(a)(4)(i)(A)-(D), we preliminarily determine that JA Solar was uncreditworthy in 2012 and 2013. Specifically, in these years, JA Solar's

⁵⁵ *Id.* at Exhibit 2.

⁵⁶ *Id.*

⁵⁷ See 19 CFR 351.505(a)(4)(i)(A).

⁵⁸ See 19 CFR 351.505(a)(4)(ii).

⁵⁹ See JA Solar's CW Response at Exhibit 2.

⁶⁰ *Id.*

financial ratios (*i.e.*, quick and current ratios) and negative cash flows indicated that it did not have sufficient liquid assets to cover its short-term obligations, and had to resort to additional borrowing to do so.⁶¹ Moreover, it had no long-term commercial loans, or equivalents, with respect to markets outside of the PRC.

Because we have preliminarily determined that JA Solar was uncreditworthy in 2012 and 2013, we have made adjustments to the long-term interest rate benchmarks for these years.⁶² These adjusted long-term interest rate benchmarks are also used as discount rates for purposes of allocating non-recurring subsidies to the POR.⁶³

Finally, we note that our review of JA Solar's organizational chart and corporate groupings leads us to conclude that only certain companies are affected by our preliminary uncreditworthiness determination.⁶⁴ Therefore, we are making adjustments to the long-term interest rate benchmarks and discount rates, as described above, with respect to calculating subsidy rates for the following companies:

- JingAo Solar Co., Ltd.;
- JA Solar Yangzhou;
- Jing Hai Yang Semiconductor Material (Donghai) Co., Ltd.;
- Donghai JA Solar Technology Co., Ltd.;
- JA Hefei;
- Hefei JA Solar Technology Co., Ltd.;
- Solar Silicon Valley Electronic Science and Technology Co., Ltd.;
- Hebei Ningjin Songgong Semiconductor Co., Ltd.; and
- Shanghai JA Solar Technology Co., Ltd.

Land Benchmark

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

⁶¹ *Id.*

⁶² *See* 19 CFR 351.505(a)(3)(iii).

⁶³ *See* Benchmark Memorandum at Overall Benchmarks – Uncreditworthy.

⁶⁴ *See* JA Solar's August 25, 2015 QR at Exhibit 1 (business proprietary in nature).

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.⁶⁵

No party in this administrative review submitted benchmark information for calculating whether land was provided for LTAR. As a result, the Department placed on the record 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*.⁶⁶ 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.⁶⁷ In *Solar Cells from the PRC*, we calculated annual land benchmarks covering the years 2002 through 2010, and a monthly industrial rental benchmark for 2010.⁶⁸ We find that these benchmarks are suitable for the preliminary results, adjusted accordingly for inflation to account for benefits received by JA Solar during the POR.⁶⁹

Input Benchmarks

We selected the benchmarks for measuring the adequacy of the remuneration for solar grade polysilicon, aluminum extrusions, and solar glass in accordance with 19 CFR 351.511(a).

For polysilicon, the GOC provided information indicating that imports of polysilicon accounted for 36.3 percent of domestic consumption and that production by state-invested enterprises (SIEs) accounted for 4.4 percent.⁷⁰ The GOC stated, however, that it was unable to obtain statistics for solar grade polysilicon, and noted that statistics for the value of polysilicon are not collected on a per product basis, but rather on a per company basis. As such, the GOC stated that the statistics it reported regarding polysilicon may include products other than polysilicon.⁷¹

⁶⁵ 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).

⁶⁶ See Benchmark Memorandum; see also *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012) (*Solar Cells from the PRC*), and accompanying IDM at 6 and Comment 11.

⁶⁷ The complete history of our reliance on this benchmark is discussed in *Solar Cells from the PRC, and accompanying IDM* at 6 and 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. *Id.*

⁶⁸ *Id.*

⁶⁹ See Department Memorandum to the File, “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China,” dated concurrently with this memorandum (Preliminary Benchmark Memorandum).

⁷⁰ See GOC’s September 18, 2015 QR at 61-64. SIEs include companies in which the GOC maintains an ownership or management interest.

⁷¹ See GOC’s September 18, 2015 QR at 63-64.

The Department normally relies on so-called “first-tier” benchmarks, pursuant to 19 CFR 351.511(a)(2)(i), which include prices stemming from actual transactions between private parties, actual imports, and, in certain circumstances, actual sales from competitively run government auctions. Although no party suggested the use of a “first-tier” benchmark for polysilicon or submitted information specifically for this purpose, JA Solar imported portions of the polysilicon it used during the POR. Under 19 CFR 351.511(a)(2)(i), actual imports may be considered a “first-tier” benchmark.

Notwithstanding the regulatory preference for the use of prices stemming from actual transactions in the country, where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative in the hierarchy.⁷²

For these preliminary results, as explained below in the section, “Use of Facts Otherwise Available and Adverse Inferences,” we are finding that the GOC’s involvement in the PRC’s solar grade polysilicon market leads to significantly distorted solar grade polysilicon prices in the PRC. Thus, we preliminarily do not find it appropriate to rely on transactions in the PRC as a benchmark for polysilicon and are relying instead on a simple average of the solar grade polysilicon prices published by EnergyTrend and Greentech Media, pursuant to 19 CFR 351.511(a)(2)(ii).⁷³ Petitioner also submitted solar grade polysilicon pricing information, but the underlying source information regarding these prices is illegible, and thus, we are not able to properly evaluate this proposed benchmark.⁷⁴

None of the parties has offered an internal “first-tier” benchmark for valuing solar glass or aluminum extrusions and we have no benchmark prices from actual transactions in the Chinese market for these inputs. Thus, we are relying on world market prices to determine the subsidy rate for the provision of aluminum extrusions and solar glass for LTAR for these preliminary results of review. For aluminum extrusions, we are relying on world market prices for aluminum frames for solar modules as compiled by the consulting firm IHS Technology, as suggested by JA Solar.⁷⁵

For solar glass, we are relying on GTA data submitted by Petitioner for HTS heading 7007.19, safety glass, toughened, tempered, or other.⁷⁶ While JA Solar submitted a benchmark for solar glass, this benchmark’s unit of measure is in square meters, while JA Solar reported its solar glass purchases in a different unit of measure and we have no factor to convert these units to a consistent unit of measure.

Petitioner and JA Solar each provided information to value ocean freight.⁷⁷ Each provided international rates for Maersk containers; however, JA Solar’s information is contemporaneous

⁷² See *CVD Preamble*, 63 FR at 65377.

⁷³ See JA Solar’s Benchmark Submission.

⁷⁴ See Petitioner’s Benchmark Submission at Exhibit 5.

⁷⁵ See JA Solar’s Benchmark Submission at Exhibit 2.

⁷⁶ See Petitioner’s Benchmark Submission at Exhibit 7.

⁷⁷ *Id.* at Exhibit 4 and JA Solar’s Benchmark Submission at Exhibit 4. We note that the Department relied upon the same ocean freight information submitted by JA Solar in the 2013 administrative review of the countervailing duty

with the POR and for 20-foot cargo containers, while Petitioner’s information indicates that it was sourced from 2012 shipping prices, adjusted for the 2013 POR by a price index, and is for 40-foot tankers, which would not be used for the transportation of polysilicon billets, aluminum extrusions, or glass. We preliminarily determine to rely on the shipping information submitted by JA Solar.

IV. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Sections 776(a)(1) and (2) of the Tariff Act of 1930, as amended (the Act), provide that the Department, subject to section 782(d) of the Act, shall apply “facts otherwise available” if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, 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.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the antidumping and CVD law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.⁷⁸ The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.⁷⁹

Section 776(b) of the Act 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. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.⁸⁰ Further, section 776(b)(2) of the Act

order on *Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review; 2013*, 80 FR 77318 (December 14, 2015) and accompanying IDM at 27.

⁷⁸ See TPEA, Pub. L. No. 114-27, 129 Stat. 362 (2015). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the International Trade Commission. See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (Applicability Notice). The text of the TPEA may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>.

⁷⁹ See *Applicability Notice*, 80 FR at 46794-95.

⁸⁰ See section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).

states that an adverse inference may include reliance on information derived from the petition, the final determination from the countervailing duty investigation, a previous administrative review, or other information placed on the record.⁸¹

Section 776(c) of the Act provides that, in general, when the Department relies on secondary information rather than on information obtained in the course of a review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.⁸² Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.⁸³ Further, and under the TPEA, the Department is not required to corroborate any countervailing duty applied in a separate segment of the same proceeding.⁸⁴

Finally, under the new section 776(d) of the Act, when applying an adverse inference, the Department may use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that the Department considers reasonable to use.⁸⁵ The TPEA also makes clear that, when selecting facts available with an adverse inference, the Department is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.⁸⁶

Application of Adverse Facts Available (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 the JA Solar Companies purchased during the POR. Specifically, we sought information from the GOC that would allow us to determine whether the producers are “authorities” within the meaning of section 771(5)(B) of the Act. In our original and supplemental questionnaire, we requested detailed information from the GOC that would be needed for this analysis.⁸⁷

⁸¹ See also 19 CFR 351.308(d).

⁸² See also 19 CFR 351.308(c).

⁸³ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. 1 at 870 (1994).

⁸⁴ See section 776(c)(2) of the Act; TPEA, section 502(2).

⁸⁵ See section 776(d)(1) of the Act; TPEA, section 502(3).

⁸⁶ See section 776(d)(3) of the Act; TPEA, section 502(3).

⁸⁷ See Department’s March 12, 2015, Questionnaire to the GOC at sections II-10 to II-16, and section III-16, and the Department’s October 29, 2015, Questionnaire to the GOC.

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.”⁸⁸

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

For each producer that the GOC claimed was privately owned by individuals or companies during the POR we requested the following.⁸⁹

- Translated copies of source documents that demonstrate the producer’s ownership during the POR, 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 POR.
- A statement regarding whether the producer had ever been a 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 POR, 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.⁹⁰

- 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 POR.
- 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.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

- 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 questionnaire responses, the GOC provided incomplete ownership information for the companies that produced polysilicon, aluminum extrusions, and solar glass purchased by JA Solar.⁹¹ For some producers or owners of the respective company, it provided none, or only parts, 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, while the GOC provided business registrations for a number of producers, it did not submit any articles of associations for these input producers as requested. For other producers, it provided some information, but not enough to trace ownership back to the ultimate individual owners, as the requested in the questionnaire.

Further, the GOC provided no information at all regarding the identification of owners, directors, or senior managers who were also GOC or CCP officials.⁹² On October 29, 2015, we issued a supplemental questionnaire to the GOC requesting that it provide the remaining ownership information for the input producers. We again 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.⁹³ In its supplemental response, the GOC did not provide any information regarding the role of GOC and CCP officials with the producers, nor did the GOC explain the efforts it undertook to obtain the requested information, noting that there are numerous input producers.⁹⁴ The GOC simply stated that there is no central informational database to search for the requested information. The GOC further responded that, because organizations such as the CCP, People's Congress and the Chinese People's Consultative Conference are not government bodies, it cannot require them to provide the requested information. In addition, the GOC noted in that response that no party provided any evidence demonstrating that the owners, board of directors or managers of the suppliers of the respondents are officials of the above-mentioned organizations.⁹⁵ In the supplemental questionnaire response, the GOC again did not provide complete information requested in the input producer questionnaire regarding ownership to determine the ultimate individual owners, *etc.*, for any of the individual input producers.⁹⁶

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

⁹¹ See GOC's September 18, 2015 QR at 108.

⁹² *Id.*

⁹³ See the Department's October 29, 2015, Questionnaire to the GOC at 1.

⁹⁴ See GOC's November 13, 2015 QR at 2.

⁹⁵ *Id.* at 3.

⁹⁶ *Id.*

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 that the involvement of CCP officials in the management or operations of the input producers, “would not make the management and business operations of the Company in which he/she serves subject to any intervention by the GOC.”⁹⁷ Additionally, the GOC stated that Chinese law prohibits GOC officials from taking positions in private companies.⁹⁸ 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 of CCP official, and the industry and commerce administration does not require the companies to provide such information.”⁹⁹ As such, the GOC claimed it was unable to respond to the Department’s questions.¹⁰⁰

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.¹⁰¹ The Department requests this information because public information suggests that the CCP exerts significant control over activities in the PRC.¹⁰² 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.”¹⁰³ Additionally, publicly available information indicates that Chinese law requires the establishment of CCP organizations “in all companies, whether state, private,

⁹⁷ See GOC’s September 18, 2015 QR at 54.

⁹⁸ *Id.*

⁹⁹ *Id.* at 59.

¹⁰⁰ *Id.*

¹⁰¹ 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”).

¹⁰² See Department Memorandum, “Additional Documents Memorandum,” dated concurrently with this 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,” (May 18, 2012) (CCP Memorandum).

¹⁰³ *Id.*, at CCP Memorandum at 33.

domestic, or foreign-invested” and that such organizations may wield a controlling influence in the company’s affairs.¹⁰⁴ Because the GOC did not provide the information 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.¹⁰⁵ Indeed, record information submitted by JA Solar in the instant proceeding states that Mr. Baofang Jin, executive chairman of JA Solar’s parent company, serves as a vice-chairman of the Chinese People’s Political Consultative Conference of Ningjin County.¹⁰⁶

The information we requested regarding the ultimate owners of the producers and the role of government/CCP officials and CCP committees in the management and operations of the input producers, which sold inputs to the respondent, is necessary to our determination of whether the producers are “authorities” within the meaning of section 771(5)(B) of the Act. If the GOC was not able to submit the required information in the requested form and manner, it should have promptly notified 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.¹⁰⁷ Instead, the GOC simply stated that “{t}here is no central informational database to search for the requested information and the and the industry and commerce administration does not require the companies to provide such information. Because organizations such as the CCP, People’s Congress and the Chinese People’s Consultative Conference are not government bodies, the GOC cannot require them to provide the requested information.”¹⁰⁸ Further, the GOC did not indicate that it had attempted to contact the CCP, or that it consulted any other sources. The GOC’s responses in prior proceedings demonstrate that it is, in fact, able to access the information we requested.¹⁰⁹

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

¹⁰⁴ *Id.*, at Public Body Memorandum at 35-36, and sources cited therein.

¹⁰⁵ 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.

¹⁰⁶ See JA Solar’s December 2, 2015 QR at Exhibit 1 (SEC Form 20-F) at 69.

¹⁰⁷ 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.”

¹⁰⁸ See GOC’s November 13, 2015 QR at 3.

¹⁰⁹ 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.”

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 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 review and numerous 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 JA Solar.¹¹⁰ For example, the GOC did not provide complete information such as articles of association, capital verification reports, or any other business documents demonstrating the owners of any of the input producers that supplied JA Solar. While the GOC did provide some information, it was not enough information to trace the ownership back to the ultimate individual owners. In its supplemental questionnaire response, the GOC again did not provide the detailed information as requested or explain in detail its efforts taken to obtain the information requested by the Department, such that this information is still incomplete. Specifically, the GOC stated that "there are numerous producers," and that the GOC's initial questionnaire response provided sufficient information to demonstrate the ownership status of the related input producers during the POR.¹¹¹

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 these preliminary results.¹¹² Moreover, by stating that the requested information is not relevant, the GOC placed itself in the position of the Department, yet only the Department can determine what is relevant to its investigation.¹¹³

¹¹⁰ See, e.g., GOC's September 18, 2015 QR at 43-71, and at Exhibits 10, 11, 32, 33, 34, and 35.

¹¹¹ See GOC's November 18, 2015 QR at 2.

¹¹² See sections 776(a)(1) and (a)(2)(A) of the Act.

¹¹³ 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

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.¹¹⁴ As AFA, we are finding that all of the producers of polysilicon, aluminum extrusions, and solar glass purchased by the respondents during the POR are “authorities” within the meaning of section 771(5)(B) of the Act.

Application of Facts Available: The GOC’s Involvement in the PRC’s Solar Grade Polysilicon Industry Results in the Significant Distortion of Prices

In response to our questions concerning its role in the production of solar grade polysilicon, the GOC provided no information specific to “solar grade” polysilicon.¹¹⁵ In response to our supplemental questions, the GOC stated the National Bureau of Statistics or State Statistical Bureau (SSB) has not begun information collection for specific types of polysilicon. What the SSB records in its database is polysilicon, which includes solar grade polysilicon and others.¹¹⁶ The GOC also reported that there is no specific polysilicon association in the PRC, but that in order to obtain information for solar grade polysilicon, it consulted some related industry associations (for example, the China Chamber of Commerce of Metals, Minerals and Chemicals).¹¹⁷ It explained, however, that those associations only gather information from enterprises that are members of the associations.¹¹⁸ The GOC explained that the SSB is the government agency that is responsible for nationwide statistics, and is relied upon as the source for domestic production figures.¹¹⁹

With respect to the information that the GOC did provide in its questionnaire response, the GOC provided information regarding state-involved enterprise (SIE) involvement in the polysilicon industry based solely on information collected from the SSB.¹²⁰ The GOC stated in its questionnaire response that there were 69 producers of polysilicon during the POR.¹²¹ However, we find the information in the GOC’s response to be unreliable because it is not specific to solar grade polysilicon. Therefore, we preliminarily determine that necessary information is not available on the record and, pursuant to section 776(a)(1) of the Act, we will rely on the facts otherwise available in reaching our determination on the GOC’s involvement in the PRC solar grade polysilicon market, and whether this government involvement significantly distorts the prices in this industry in the PRC.

Commerce’s determinations.”).

¹¹⁴ See section 776(b) of the Act.

¹¹⁵ See GOC’s November 13, 2015 QR at 4.

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 1.

¹¹⁸ *Id.* at 2.

¹¹⁹ *Id.*

¹²⁰ See GOC’s September 18, 2015 QR at 136-137.

¹²¹ *Id.* at 61.

Public information from the record of the solar products investigation placed on the record of this proceeding contains the following information relevant to determining whether the GOC's involvement in the PRC solar grade polysilicon market significantly distorts prices:

- The petition for *Solar Products from the PRC* points to a WTO Dispute Settlement Panel determination that the GOC maintains WTO-inconsistent export restraints on silicon exports, and contends that these restraints operate to ensure “an abundant domestic supply of silicon in China, thus artificially depressing the domestic price of polysilicon.”¹²²
- A 2009 *New York Times* article explaining that the GOC's State Council, or cabinet, has the ability to manage several key aspects of the solar grade polysilicon industry, including its capacity, access to the industry, land use, and lending from state-owned commercial banks (SOCBs).¹²³
- Another article on the record explains that the GOC maintains “Polysilicon Industry Access Standards,” outlining rules and restrictions that prospective solar grade polysilicon manufacturers in the PRC must adhere to.¹²⁴

In the absence of further information, this public information on the record reflects a recognition of significant distortion of prices in the PRC's solar grade polysilicon industry. Prices are distorted if they are higher or lower than what would be a normal price in a competitive market without government intervention such as limiting access to an industry and financing, which reduces competition. When government intervention in the marketplace actively manages the amount of supply through means such as capacity restrictions, limitations on access to the industry and subsidization of uneconomic production, it prevents a price from achieving its competitive equilibrium level, and it can result in a significant distortion of prices in the market. Thus, based on the information detailed above, and the unreliability of the information submitted by the GOC, we find that the facts otherwise available on the record of this case support a determination that the GOC's involvement in the PRC's solar grade polysilicon industry significantly distorts the prices in this industry. As such, we are not relying on domestic prices in the solar grade polysilicon market in the PRC as a “tier one” benchmark pursuant to 19 CFR 351.511(a)(2)(i). Consequently, we are relying on world market prices as our benchmarks for the provision of polysilicon for LTAR program, pursuant to 19 CFR 351.511(a)(2)(ii). The use of an external benchmark is consistent with our past practice.¹²⁵

¹²² See Letter to the Secretary, “Petition for the Imposition of Antidumping and Countervailing Duties: Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China and Taiwan (December 31, 2013) (*Solar Products from the PRC Petition*) at 38, citing *China - Measures Related to the Exportation of Various Raw Materials*, Report of the Panel, WT/DS394/R (July 5, 2011), Exhibit III-51, placed on the record of this proceeding on December 31, 2015.

¹²³ See “Chinese Solar Firm Revises Price Mark,” Keith Bradsher, *New York Times*, (August 27, 2009) Volume I of the Petition at Exhibit I-1B, placed on the record of this proceeding on December 31, 2015.

¹²⁴ See Polysilicon Productions Data, placed on the record of this proceeding on December 31, 2015.

¹²⁵ See, e.g., *Countervailing Duty Investigation of 1,1,1,2 Tetrafluoroethane From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 62594 (October 20, 2014) (*Tetrafluoro from the PRC*) and accompanying IDM at 14 and 27.

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 September 18, 2015 response, the GOC did not adequately address these questions.¹²⁶

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 the data provided by the power generating companies and grid companies,"¹²⁷ 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."¹²⁸

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.¹²⁹ 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."¹³⁰

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.¹³¹ 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 our questions, nor did the GOC ask for additional time to gather and provide

¹²⁶ See GOC's September 18, 2015 QR at 85-92.

¹²⁷ *Id.* at 89.

¹²⁸ *Id.* at 89-90.

¹²⁹ *Id.* at 91.

¹³⁰ See GOC's November 13, 2015 QR at 5.

¹³¹ See section 776(a)(2)(A) of the Act.

such information. Consequently, an adverse inference is warranted in the application of facts available.¹³² 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.¹³³ The benchmark rates we selected are derived from the record of this review and are the highest electricity rates on the record for the applicable rate and user categories. For details regarding the remainder of our analysis, see the "Provision of Electricity for LTAR" section, below.

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

With respect to questions on JA Solar's land-use rights, the GOC informed the Department that it was not able to obtain all of the information requested in the time provided by the Department (*i.e.*, 37 days from the date of the questionnaire), and made no mention of whether it expected to submit this information at a later date.¹³⁴ The GOC did not submit an extension request to submit this information. Specifically, the GOC did not provide information concerning the entities that provided land-use rights to the JA Solar Companies for and did not provide other relevant information regarding land, as discussed below.

In the GOC's September 18, 2015 QR, the GOC claimed that the provision of land or land-use rights to the respondents for LTAR as a subsidy program was non-existent, and that the GOC expressly asserts and does not waive the fact that there is no alleged program.¹³⁵ And while the GOC did provide a listing of the names and addresses of the government authorities that are responsible for administering land-use rights in the different provinces where the JA Solar Companies are located, the GOC provided no information regarding land-use rights received by JA Solar. Further, the GOC did not provide any application or approval documents for land-use rights obtained by the JA Solar Companies as requested, and only stated that we should refer to JA Solar's responses for this information.¹³⁶ The GOC explained that, "In view of the number of respondents, the GOC has not obtained all information within the limited amount of time provided by the Department."¹³⁷ However, the GOC did not explain the difficulties it had in gathering the requested information, nor did it request an extension for submitting this information. When we attempted to gather this information again in a supplemental questionnaire, the GOC provided a discussion on how land-use rights obtained after 2008 were acquired through either a public bid invitation, auction, or quotation process, but it failed to provide any information on how the JA Solar Companies acquired their land.¹³⁸ Moreover, while the GOC provided this very brief statement regarding the provision of land-use rights post

¹³² See section 776(b) of the Act.

¹³³ See section 776(b)(4) of the Act.

¹³⁴ See GOC's September 18, 2015 QR at 75.

¹³⁵ *Id.* at 72.

¹³⁶ *Id.* at 75.

¹³⁷ *Id.*

¹³⁸ See GOC's November 13, 2015 QR at 6.

January 1, 2008, it provided no explanation at all regarding the provision of land-use rights before the 2008 land-use rights regime change, instead simply providing copies of the laws that were enforce before 2008. The GOC reiterated that the Department should reference JA Solar's responses for information concerning the particular land-use rights under examination.¹³⁹

Pre-2008 Land-Use Rights

JA Solar obtained land-use rights prior to 2008 based on contractual agreements. According to the GOC, the application and land approval procedures prior to 2008 are documented in the Land Administration Law of the People's Republic of China (2004) and the Regulation on the Implementation of the Land Administration Law of the People's Republic of China (1998).¹⁴⁰ The Department requested that the GOC provide a description of the application and approval process prior to 2008, which it failed to do, referring to the Land Administration Law and the Regulation on the Implementation of the Land Administration Law of the People's Republic of China (1998) instead.¹⁴¹ For each of JA Solar's cross-owned affiliates that applied for, received, or accrued assistance, we asked the GOC to provide a copy of at least one application and approval package or other supporting documentation, from which to discern whether these companies' land-use rights were contingent on any particular status or activity. However, the GOC did not provide this requested information.¹⁴² The Department also requested that the GOC provide information on the policies of the relevant local governments that had jurisdiction over the land and land-use rights. As indicated above, the JA Solar Companies are located in different provinces. The GOC stated that the price of land and land-use rights were administered by the local jurisdictions, but provided no additional information concerning those policies.¹⁴³

Post January 1, 2008 Land-Use Rights

JA Solar's post-January 1, 2008, land-use rights were purchased through a public bidding process.¹⁴⁴ Also, JA Solar stated that certain land-use rights are located in industrial zones.¹⁴⁵ According to the procedures in effect since 2008, land for industrial/commercial use must be transferred through bidding by invitation, auction, or quotation, and a floor price is set by which the land authority determines the floor price, according to the land valuation results.¹⁴⁶ Specifically, for land assigned after January 1, 2008, the application and approval of land-use rights follow the Provisions on the Assignment of State-owned Construction Land Use Right through Bid Invitation Auction and Quotation.¹⁴⁷ According to the GOC, the Ministry of Land Resources issued the National Standards for the Minimum Transfer Prices of Land for Industrial Purposes. These standards are the minimum control standards that must be executed by the municipal and county governments in transferring land for industrial/commercial use and in determining the transfer prices of land use rights.

¹³⁹ *Id.*

¹⁴⁰ See GOC's September 18, 2015 QR at 84.

¹⁴¹ *Id.* at 83-84.

¹⁴² *Id.*

¹⁴³ *Id.* at 73-74.

¹⁴⁴ See, e.g., JA Solar's September 25, 2015 QR at Vol. 3, Exhibit 11.

¹⁴⁵ *Id.* at Vol. 9, Exhibit 12.

¹⁴⁶ See GOC's September 18, 2015 QR at 84 and at Exhibit 25.

¹⁴⁷ *Id.*; see also the GOC's November 13, 2015 QR at 5-6.

As noted, all of JA Solar’s post-January 1, 2008, land-use rights were purchased through the public bidding process. 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, providing the public notices inviting bids, and demonstrating the number of bidders for all of JA Solar’s land-use rights purchases since the beginning of 2008. The GOC did not provide the requested information for any of the tracts of land provided by the local land bureaus to JA Solar, and stated that we should refer to JA Solar’s questionnaire responses for bid application and approval documents.¹⁴⁸ Moreover, while the GOC provided the brief description of the post January 1, 2008 land-use rights regime noted above, it provided no information concerning the minimum floor prices dictated by local policies established under that regime; nor did it provide any information concerning the number of bidders.¹⁴⁹

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 JA Solar for land-use rights acquired both pre-2008 and post January 1, 2008, the Department is unable to determine whether 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 JA 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 JA Solar for its tracts of land in its questionnaire responses. Consequently, the GOC has not cooperated to the best of its ability and an adverse inference is warranted in the application of facts available.¹⁵⁰ In drawing an adverse inference, we find that the GOC’s provision of land tracts to JA Solar is specific within the meaning of section 771(5A) of the Act given the GOC’s failure to provide information regarding how land prices were determined for land-use rights held by the JA Solar Companies in certain instances (land provided before 2008, and land that is auctioned). Finally, because the GOC provided no information regarding the entities that provided land-use rights to the JA Solar Companies, we preliminarily determine as AFA that these entities are authorities and that the provision of land-use rights to the JA Solar Companies constitutes a financial contribution. For details regarding the remainder of our analysis for this program, see the “Provision of Land for LTAR” section below.

Application of AFA: Other Subsidies

The JA Solar Companies reported receiving assistance with respect to “Other Programs.”¹⁵¹ In its September 18, 2015 QR regarding these programs, the GOC stated that has cooperated with the Department regarding requests for information, and citing Article 11.2 of the WTO

¹⁴⁸ See GOC’s November 13, 2015 QR at 5-6.

¹⁴⁹ See *Solar Cells from the PRC First AR* and accompanying IDM at 18, where the Department relied on AFA to find the provision of land for LTAR was countervailable because the GOC did not provide complete responses to our questionnaires regarding the derivation of the prices paid by the respondents in that review.

¹⁵⁰ See section 776(b) of the Act.

¹⁵¹ See, e.g., JA Solar’s September 18, 2015QR at Vol. I, Exhibit 22 (Other Programs).

Agreement on Subsidies and Countervailing Measures, stated that no reply to questions on these other programs are warranted or required.¹⁵² We reiterated our questions on these other subsidies in a supplemental questionnaire,¹⁵³ for which the GOC stated that it “objects to inquiries concerning purported subsidies to which no timely allegation have been filed, and as to which the Department has not initiated any investigation.”¹⁵⁴ The GOC stated that it has no comments on other subsidies reported by JA Solar.¹⁵⁵

Given the GOC’s responses, we preliminarily determine that the use of facts available pursuant to sections 776(a)(2)(A) and 776(a)(2)(D) of the Act is warranted in determining the countervailability of these apparent subsidies reported by JA Solar. The GOC withheld information that was requested of it by not providing information regarding these subsidies in response to our requests for information noted above. Because the GOC failed to respond to the best of its ability regarding our questions on other, reported subsidies provided by the GOC, we determine that an adverse inference is warranted with respect to these subsidies pursuant to section 776(b) of the Act. As a result, we are finding that, as AFA, these other subsidies reported by JA Solar provide a financial contribution and are specific within sections 771(5)(D) and 771(5A) of the Act, respectively. To preliminarily determine whether benefits were provided as a result of these other subsidies within the meaning of section 771(5)(E) of the Act, the Department relied on the usage information provided by the JA Solar Companies.

V. ANALYSIS OF PROGRAMS

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

Programs Preliminarily Determined to be Countervailable

Provision of Inputs for LTAR

Provision of Polysilicon for LTAR

In the original investigation, the Department determined this program to be countervailable based on AFA.¹⁵⁶ 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 polysilicon, in part, on AFA. Specifically, we determine as AFA that all of the producers of the polysilicon purchased by the respondents are “authorities” within the meaning of section 771(5)(B) of the Act and, as such, that the provision of polysilicon constitutes a financial contribution under section 771(5)(D)(iii) of the Act.

In response to our questions concerning specificity, the GOC stated: “There are a vast number of uses for polysilicon, and the type of consumers that may purchase polysilicon is highly varied

¹⁵² See the GOC’s September 18, 2015 QR at 161-162.

¹⁵³ See the Department’s October 29, 2015 questionnaire to the GOC at 3.

¹⁵⁴ See the GOC’s November 13, 2015 QR at 7.

¹⁵⁵ *Id.*

¹⁵⁶ See *Solar Cells from the PRC*, and accompanying IDM at 12-13.

within China's economy."¹⁵⁷ However, the GOC provided no information concerning the industries consuming polysilicon and the amounts purchased by those individual industries. In the most-recently completed review of subject merchandise, we found this program to be specific based on the statements of the GOC, that "Polysilicon has a wide range of uses, including but not limited to use in the solar and semiconductor industries." Because the GOC provided no information on the industries that consume polysilicon in the PRC, we are relying on the prior statements of the GOC in finding that polysilicon is limited to specific industries within the meaning of section 771(5A)(D)(iii) of the Act, namely the solar and semiconductor industries.¹⁵⁸

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 relying on world market prices, an average of the solar grade polysilicon world market prices published by EnergyTrend and Greentech Media submitted by JA Solar in its benchmark submission,¹⁵⁹ to calculate a benefit for JA Solar. 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).¹⁶⁰ Regarding delivery charges, we included ocean freight and the inland freight charges that would be incurred to deliver polysilicon to JA Solar's production facilities. We added import duties and VAT as reported by the GOC.¹⁶¹ 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 JA Solar's reported purchase prices for individual domestic transactions, including VAT and delivery charges.

Based on this comparison, we preliminarily determine that polysilicon was provided for LTAR and that a benefit exists for JA Solar in the amount of the difference between the benchmark prices and the prices paid by JA Solar.¹⁶² We divided JA Solar's total benefits by the appropriate total sales denominator, as discussed in the "Subsidies Valuation Information" section above, and in the Preliminary Calculation Memorandum. On this basis, we preliminarily determine a countervailable subsidy rate of 0.05 percent *ad valorem* for JA Solar.

Provision of Solar Glass for LTAR

The Department determined this program to be countervailable in the first administrative review.¹⁶³ 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 respondent are "authorities" within the meaning of section

¹⁵⁷ See GOC September 18, 2015 QR at 43.

¹⁵⁸ The Department's questionnaire states that it will not revisit specificity and financial contribution decisions in administrative reviews unless the government or company respondents provide new information challenging the prior conclusions.

¹⁵⁹ See JA Solar's Benchmark Submission at Exhibits 1A and 1B; see also 19 CFR 351.511(a)(2)(iii).

¹⁶⁰ The Department concludes that these data do not already include delivery charges. See Preliminary Benchmark Memorandum.

¹⁶¹ See GOC's September 18, 2015, QR at 65.

¹⁶² See 19 CFR 351.511(a).

¹⁶³ See *Solar Cells from the PRC First AR* at 29-30.

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.”¹⁶⁴ The GOC provided none of the information requested concerning amounts purchased by individual industries. In the first administrative review with respect to this program, we relied on 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.¹⁶⁵ 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 solar glass 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 its solar glass benchmark on GTA data for HTSUS subheading 7007.19, *e.g.*, “safety glass, toughened or tempered,” as provided by Petitioner.¹⁶⁶ The Department adjusted the benchmark price to include delivery charges, import duties, and VAT pursuant to 19 CFR 351.511(a)(2)(iv).¹⁶⁷ We added import duties and VAT as reported by the GOC.¹⁶⁸ In calculating VAT, we applied the applicable VAT rate to the benchmark after first adding amounts for ocean freight and import duties. We compared the benchmark prices to the respondent’s reported purchase prices for individual transactions, including VAT and delivery charges.

Based on this comparison, we preliminarily determine that solar glass was provided to JA Solar for LTAR and that a benefit exists in the amount of difference between the benchmark prices and the prices paid by JA Solar.¹⁶⁹ We divided JA Solar’s total benefits by the appropriate total sales denominator, as discussed in the “Subsidies Valuation Information” section above, and in the Preliminary Calculation Memorandum. On this basis, we preliminarily determine a countervailable subsidy rate of 11.36 percent *ad valorem* for JA Solar.

Provision of Electricity for LTAR

In the original investigation, the Department determined this program to be countervailable based on the application of AFA.¹⁷⁰ For the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are basing our determination regarding the GOC’s provision of electricity in part on AFA. For these preliminary results, we determine that JA Solar received a countervailable subsidy from electricity provided for LTAR.

¹⁶⁴ See GOC September 18, 2015, QR at 116.

¹⁶⁵ See *Solar Cells from the PRC First AR* at 23-25.

¹⁶⁶ See Petitioner’s Benchmark Submission at Exhibit 7.

¹⁶⁷ The Department concludes that these data do not already include delivery charges. See Preliminary Benchmark Memorandum.

¹⁶⁸ See GOC’s September 18, 2015, QR at 115.

¹⁶⁹ See 19 CFR 351.511(a).

¹⁷⁰ See *Solar Cells from the PRC*, and accompanying IDM at 14-15.

Because the GOC's did not 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 from 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.¹⁷¹ 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.¹⁷² Thus, we relied on the usage information reported by JA Solar, as it provided data on the electricity it consumed and electricity rates it paid during the POR.¹⁷³

As described above in detail, the GOC did not provide certain information requested regarding its provision of electricity to JA Solar 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 JA Solar's reported consumption volumes and rates paid. We compared the rates paid by JA Solar to the benchmark rates, which, as discussed above, are the highest rates charged in the PRC during the POR. We made separate comparisons by price category (*e.g.*, great industry peak, basic electricity, *etc.*). We multiplied the difference between the benchmark and the price paid by the consumption amount reported for that month and price category. We then calculated the total benefit during the POR for JA Solar by summing the difference between the benchmark prices and the prices paid by each company.

To calculate the electricity benchmark, in accordance with 19 CFR 351.511(a)(2), we selected the highest rates in 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.¹⁷⁴ 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 review.¹⁷⁵

To calculate the subsidy rate, we divided the benefit amount by the appropriate total sales denominator, as discussed in the Preliminary Calculation Memorandum. On this basis, we preliminarily determine a countervailable subsidy rate for this program of 2.54 percent *ad valorem* for JA Solar.

¹⁷¹ 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."

¹⁷² See, generally, JA Solar's September 18, 2015, QR and JA Solar's November 12, 2015, QR.

¹⁷³ *Id.*

¹⁷⁴ See GOC's September 18, 2015, QR at Exhibit 29.

¹⁷⁵ See "Application of AFA: Provision of Electricity for LTAR" section, above.

Provision of Land for LTAR

In the original investigation, the Department determined this program to be countervailable based on the application of AFA.¹⁷⁶ For the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are basing our determination regarding the GOC’s provision of land in part on AFA. For these preliminary results, we determine that JA Solar received a countervailable subsidy through land provided for LTAR.

As discussed above in the “Use of Facts Otherwise Available and Adverse Inferences” section, the Department continues to determine as AFA that the provision of land to JA Solar was specific and constitutes a financial contribution.

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 JA Solar’s countervailed tracts. We then subtracted the price actually paid for each tract to derive the total unallocated benefit. Because land is related to the respondents’ capital structure, we treated the amount of the unallocated benefit as a non-recurring subsidy, pursuant to 19 CFR 351.524(c)(2)(iii). We thus conducted the “0.5 percent test,” as instructed by 19 CFR 351.524(b)(2), for the year of the relevant land-use agreement by dividing the total unallocated benefit for each tract by the appropriate sales denominator. If more than one tract was provided in a single year, we combined the total 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 POR. We then summed all of the benefits attributable to the POR and divided this amount by the appropriate total sales denominator, as discussed in the “Subsidies Valuation Information” section above, and in the Preliminary Calculation Memorandum, to derive a preliminary subsidy rate of 0.02 percent *ad valorem* for JA Solar.

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

In the original investigation, the Department determined this program to be countervailable.¹⁷⁷ Article 25 of the PRC’s Renewable Energy Law (REL) specifically calls for financial institutions to offer favorable loans to the renewable energy industry. In addition, Catalogue No. 40 contains a list of encouraged projects, including solar energy, which the GOC targets through the provision of loans and other forms of assistance.

In the original investigation, the Department determined that this program conferred countervailable subsidies on subject merchandise because: 1) it provides a financial contribution pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act, and 2) the loans provide a benefit pursuant to 771(E)(ii) equal to the difference between what the recipients paid on their loans and

¹⁷⁶ See *Solar Cells from the PRC*, and accompanying IDM at 7-8.

¹⁷⁷ See *Solar Cells from the PRC*, and accompanying IDM at 12, “Preferential Policy Lending.”

the amount they would have paid on comparable commercial loans.¹⁷⁸ The Department further determined that there is a program of preferential policy lending specific to the renewable energy industry, including solar cells, within the meaning of section 771(5A)(D)(i) of the Act. There is no new information on the record for us to reconsider this determination. Therefore, we continue to find that this program provides a countervailable subsidy.

In its initial response, the GOC stated that this above program does not exist and that no loans to any of the respondents were issued pursuant to a policy lending program. The GOC further claimed that if an industrial policy existed, it had “no connection to or effect upon the decision of any bank to issue loans to any respondent,” and thus those loans did not constitute a countervailable subsidy.¹⁷⁹ The GOC provided no documentation in support of these assertions that would call into question the Department’s conclusions from the investigation.

JA Solar reported having loans outstanding from banks in China during the POR under this program.¹⁸⁰ To calculate the benefit under this program, we used the benchmarks described under “Benchmark and Discount Rates” above. We divided the total benefits received during the POR by the appropriate total sales denominator, as discussed in the “Subsidies Valuation Information” section above, and in the Preliminary Calculation Memorandum. On this basis, we determine a countervailable subsidy rate of 4.19 percent *ad valorem* for JA Solar under this program.

Tax Benefit Programs

“Two Free, Three Half Program”

Under Article 8 of the Foreign-Invested Enterprises (FIE) Tax Law, an FIE that is “productive” and scheduled to operate for more than ten years may be exempted from income tax in the first two years of profitability and pay income taxes at half the standard rate for the next three years.¹⁸¹ According to the GOC, the “Two Free, Three Half” program was terminated effective January 1, 2008, by the Enterprise Income Tax Law, but companies already enjoying the preference were permitted to continue paying taxes at reduced rates for five additional years.¹⁸² Although this law has been terminated by the *PRC Corporate Income Tax Law*, effective in 2008, the PRC State Council issued a notice stipulating a transitional period for the tax programs, which is the *Notice of the State Council on Implementation of Transitional Preferential Policies in Respect of the Enterprise Income Tax* (Transitional Policies).¹⁸³

¹⁷⁸ *Id.*

¹⁷⁹ See Letter to the Department from the GOC, “GOC Initial CVD Questionnaire Response: Second Administrative Review of the Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China (C-570-980),” (September 18, 2015) (GOC’s September 18, 2015 QR) at 4

¹⁸⁰ See Letters to the Secretary from JA Solar, “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People’s Republic of China: Countervailing Duty Questionnaire Response – Section III,” (September 18, 2015) (JA Solar’s September 18, 2015 QR).

¹⁸¹ See GOC’s September 18, 2015 QR at 5.

¹⁸² *Id.* at 6.

¹⁸³ *Id.* at Exhibit 5.

According to this notice, beginning January 1, 2008, those enterprises receiving the Two Free, Three Half program tax benefits will continue to receive the benefits until the expiration of the tax benefits; however, for enterprises that did not receive the Two Free, Three Half tax benefits before 2008, the period of tax benefits would begin in 2008.¹⁸⁴ Because JA Solar did not receive the tax benefit before 2008, its transitional period was from 2008 to 2012, and benefits for this program were claimed by JA Solar on its 2013 tax return.¹⁸⁵

The Department found this program to be countervailable in the original investigation.¹⁸⁶

Consistent with the original investigation, we continue to find that the “Two Free, Three Half” income tax exemption/reduction confers a countervailable subsidy. This exemption/reduction is a financial contribution in the form of revenue foregone by the GOC and it provides a benefit to the recipient in the amount of the tax savings.¹⁸⁷ We also determine that the exemption/reduction afforded by the program is limited as a matter of law to certain enterprises, *i.e.*, productive FIEs, and, hence, is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit, we treated the tax savings enjoyed by JA Solar as a recurring benefit, consistent with 19 CFR 351.524(c)(1). We divided JA Solar’s tax savings for the return filed during the POI by the appropriate total sales denominator, in accordance with 19 CFR 351.525(b)(6)(ii) and 19 CFR 351.525(b)(6)(iv), respectively. On this basis, we determine a countervailable subsidy rate of 0.09 percent *ad valorem* for JA Solar under this program.

For this preliminary determination, we are making a program-wide change determination based on our finding that the “Two Free, Three Half” program has been terminated as of January 1, 2014.¹⁸⁸ The Department makes a program-wide change determination when we find pursuant to 19 CFR 351.526(a)(1) that subsequent to the POR, but before the preliminary determination, a “program-wide” change as defined under 19 CFR 351.526(b) has occurred, and the Department is able to measure the change in the amount of the subsidy provided as required under 19 CFR 351.526(a)(2).¹⁸⁹ Based on our understanding of the Transitional Policies, we find that no substitute program was created when this program was terminated, and, because this was a national program, the local governments did not have the authority to create a substitute program or continue to use this program at the local level.¹⁹⁰ Given that the income tax for 2012 was payable in 2013, the last year benefits under this program could be claimed was 2013. Therefore, we find that no residual benefits remained under this program beyond December 31, 2013. Furthermore, the change in the amount of countervailable subsidies under this program is measureable. Accordingly, pursuant to section 19 CFR 351.526(d), we are adjusting the cash

¹⁸⁴ *Id.*

¹⁸⁵ See JA Solar’s September 18, 2015 QR at Vol. XI, Exhibit 4.

¹⁸⁶ See *Solar Cells from the PRC* and accompanying IDM at 15-16.

¹⁸⁷ See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).

¹⁸⁸ See, *e.g.*, *Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires From the People’s Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, In Part*, 80 FR 34888 (June 18, 2015) (*Light Truck Tires from the PRC*) and accompanying IDM at 32 and Comment 15.

¹⁸⁹ See 19 CFR 351.526(a).

¹⁹⁰ See *Light Truck Tires from the PRC* and accompanying IDM at Comment 15.

deposit rate for JA Solar, and the companies not selected for individual review, specifically by excluding the from the required cash deposit rate calculated for the POR under this program.

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

Article 28.2 of the Enterprise Income Tax Law of the PRC provides for the reduction of the income tax rate to 15 percent, from 25 percent, for enterprises that are recognized as HNTEs, regardless of whether the enterprise is an FIE or domestic company.¹⁹¹ Circular 172 provides details regarding the type of enterprises that qualify for HNTE status and it identifies eligible projects, which include renewable, clean energy technologies such as solar photovoltaic technologies.

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

JA Solar reported benefitting from this program.¹⁹² To calculate the benefit JA Solar received from this program, we treated the income tax reductions claimed by JA Solar as recurring benefits, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we compared the company's tax rates (15 percent) applicable under this program to the rate that would have been paid by JA Solar otherwise (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 "Benchmarks and Discount Rates" section above. On this basis, we determine a countervailable subsidy rate of 0.03 percent *ad valorem* for JA Solar under this program.

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

In the original investigation, the Department determined this program to be countervailable.¹⁹³ Article 30.1 of the Enterprise Income Tax Law of the PRC created a new program regarding the deduction of research and development expenditures by companies, which allows enterprises to deduct, through tax deductions, research expenditures incurred in the development of new technologies, products, and processes. As explained in *Solar Cells from the PRC*, the income tax deduction afforded by this program is limited as a matter of law to certain enterprises, those with R&D in eligible high-technology sectors.¹⁹⁴ Article 95 of Regulation 512 provides that, if eligible research expenditures do not "form part of the intangible assets value," an additional 50

¹⁹¹ See GOC's September 18, 2015 QR at 19.

¹⁹² See JA Solar's September 18, 2015 QR at Exhibit XVI.

¹⁹³ See *Solar Cells from the PRC*, and accompanying IDM at 17.

¹⁹⁴ *Id.*

percent deduction from taxable income may be taken on top of the actual accrual amount. Where these expenditures form the value of certain intangible assets, the expenditures may be amortized based on 150 percent of the intangible assets costs.

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

JA Solar reported benefitting from this program during the POR.¹⁹⁵ To calculate the benefit from this program, we treated the tax deduction as a recurring benefit, consistent with 19 CFR 351.524(c)(1).¹⁹⁶ To compute the amount of the tax savings, we calculated the amount of tax each respondent would have paid absent the tax deductions. We then divided the tax savings by the appropriate total sales denominator for each respondent, respectively.

On this basis, we determine a countervailable subsidy rate of 0.01 percent *ad valorem* for JA Solar under this program.

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

In the original investigation, the Department determined this program to be countervailable.¹⁹⁷ Circular 37 exempts FIEs and certain domestic enterprises from VAT and tariffs on imported equipment used in their production so long as the equipment does not fall into prescribed lists of non-eligible items, in order to encourage foreign investment and to introduce foreign advanced technology equipment and industry technology upgrades. As of January 1, 2009, the GOC discontinued VAT exemptions under this program, but companies can still receive import duty exemptions.¹⁹⁸ There is no new information on the record for us to reconsider this determination. Therefore, we continue to find that this program provides a countervailable subsidy.

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

¹⁹⁵ See JA Solar's September 18, 2015 QR at Vol. XI.

¹⁹⁶ See *Solar Cells from the PRC*, and accompanying IDM at 17, "Enterprise Income Tax Law, Research and Development (R&D) Program."

¹⁹⁷ See *Solar Cells from the PRC*, and accompanying IDM at 18. Note that the GOC did not provide any laws or regulations in its submissions on the record of this review pertaining to this program.

¹⁹⁸ *Id.*

tariff savings.¹⁹⁹ We also determined that the VAT and tariff exemptions afforded by the program are specific under section 771(5A)(D)(iii)(I) of the Act because the program is limited to certain enterprises, *i.e.*, FIEs and domestic enterprises involved in “encouraged” projects.

JA Solar reported benefits from this program.²⁰⁰ Since this indirect tax is provided for, or tied to, the capital structure or capital assets of a firm, as reported by JA Solar, the Department treated this tax as a non-recurring benefit and allocated the amount of the VAT and/or tariff exemptions, as applicable in the given year, over the AUL.²⁰¹ To calculate the countervailable subsidy, we used our standard methodology for non-recurring grants.²⁰² In the years that the benefits received by JA Solar under this program did not exceed 0.5 percent of relevant sales for that year, we expensed those benefits in the years that they were received, pursuant to 19 CFR 351.524(b)(2). We used the discount rates described above in the section “Subsidies Valuation Information,” to calculate the amount of the benefit allocable to the POR. We then divided the benefit amount by the appropriate sales denominator.

On this basis, we determine a countervailable subsidy rate of 0.38 percent *ad valorem* for JA Solar under this program.

VAT Refunds/Rebates for FIEs Purchasing Domestically-Produced Equipment

The Department found this program to be countervailable in the original investigation.²⁰³ There is no new information on the record of the instant review for us to reconsider this determination. According to Trial Measure 171, the GOC refunds the VAT on purchases of certain Chinese produced equipment to FIEs if the equipment is used for certain encouraged projects. JA Solar reported using this program.²⁰⁴

The Department continues to find that the rebates under this program are a financial contribution in the form of revenue foregone by the GOC and they provide a benefit to JA Solar in the amount of the tax savings.²⁰⁵ We also continue to determine that the VAT rebates are contingent upon the use of domestic over imported equipment and, hence, specific under section 771(5A)(A) and (C) of the Act.

Since this indirect tax is provided for, or tied to, the capital structure or capital assets of a firm, as reported by JA Solar, the Department treated this tax as a non-recurring benefit and allocated the benefit to the firms over the AUL.²⁰⁶ To calculate a benefit under this program, for the years in which the rebate amount was less than 0.5 percent of the relevant sales figure, we expensed the

¹⁹⁹ See section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1).

²⁰⁰ See JA Solar’s September 18, 2015 QR.

²⁰¹ See 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).

²⁰² See 19 CFR 351.524(b).

²⁰³ See *Solar Cells from the PRC* and accompanying IDM at 31-32, “VAT Rebates on FIE Purchases of Chinese-Made Equipment.” Note that the GOC did not provide any laws or regulations in its submissions on the record of this review pertaining to this program.

²⁰⁴ See JA Solar’s September 18, 2015 QR.

²⁰⁵ See section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1).

²⁰⁶ See 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).

rebates in the year of receipt, consistent with 19 CFR 351.524(a). For those years in which the VAT rebates were greater than or equal to 0.5 percent, we allocated the rebate amount over the AUL. We used the discount rates described above in the “Subsidies Valuation Information” section to calculate the amount of the benefit allocable to the POI.

On this basis, we determine a countervailable subsidy rate of 0.01 percent *ad valorem* for JA Solar.

Grant Program

Golden Sun Demonstration Program

The Department determined this program to be countervailable in the original investigation.²⁰⁷ This program was established in 2009 under Article 20 of the REL to provide assistance to firms in the construction of photovoltaic electricity-generation projects. As detailed in Circular 397, this program was designed to provide one-time assistance to recipients over the course of its two-year term. JA Solar reported receiving grants from this program.²⁰⁸ There is no new information on the record for us to reconsider our determination from the original investigation.

As a result, we continue to find that grants from this program provide a financial contribution pursuant to section 771(5)(D)(i) of the Act and a benefit, in the amount of the grant provided, pursuant to 19 CFR 351.504(a). We continue to find that grants from this program are specific as a matter of law to certain enterprises, namely those involved in the construction of solar-powered projects, pursuant to section 771(5A)(D)(i) of the Act. The Department continues to treat these grants as a non-recurring subsidy and thus performed the “0.5 percent test” for the year the grant was approved, in accordance with 19 CFR 351.504(c)(1) and 19 CFR 351.524(b)(2). Specifically, we divided the total approved amount by the appropriate total sales denominator. For those years in which the grants received were greater than or equal to 0.5 percent, we allocated the rebate amount over the AUL. We used the discount rates described above in the “Subsidies Valuation Information” section to calculate the amount of the benefit allocable to the POR.

On this basis, we determine a countervailable subsidy rate of 0.25 percent *ad valorem* for JA Solar under this program.

Other Subsidies

As stated above in the section, “Use of Facts Otherwise Available and Adverse Inferences,” the Department has preliminarily determined that numerous additional grants provided to JA Solar are countervailable based upon AFA. Pursuant to 19 CFR 351.524(c), the Department normally treats grants as non-recurring subsidies. As such, the Department applied the “0.5 percent test” of 19 CFR 351.524(b) to each grant, individually, to determine whether it should be allocated. For each grant allocated to the POR, we calculated the subsidy by dividing the allocable amount

²⁰⁷ See *Solar Cells from the PRC* and accompanying IDM at 11-12.

²⁰⁸ See JA Solar’s September 18, 2015 QR. The dates for which JA Solar received grants from this program are business proprietary.

of the grant by the appropriate sales figure. JA Solar’s program descriptions indicate that certain grants were export contingent. As a result, we determine that such grants were export subsidies and used the JA Solar’s total export sales as the denominator. If the subsidy rate calculated for any particular grant was less than 0.005 percent *ad valorem*, that grant was determined to have no impact on the overall subsidy rate, and was therefore disregarded. After summing all of the subsidy rates arising from these remaining grants, rounded to the nearest one-hundredth of one percent, we calculated a combined subsidy rate of 0.78 percent *ad valorem* for JA Solar.

1. Environmental Protection Funds
2. Large Diameter High Minority Carrier Lifetime Solar Grade Silicon Single Crystal Pulling Rod Cut Side Industry, Pump Oil Recovery Projects
3. 2009 Technology R&D
4. 2012 Technology Reconstruction Special Fund for Industrial Enterprise
5. Grant for Major Project Within Strategic Emerging Industries of 2010
6. Special Grant on Innovative Enterprises
7. Special Grant for Supporting Economic Development
8. Supporting Fund for ISO14000 Policy
9. Award for Excellent Enterprises
10. Award for Standardization of Safety Production
11. Award for Excellent Research and Development Institution
12. Award for High-new Technology Enterprises of Hefei
13. Grant for Innovation Platform Project of Anhui
14. Encourage Fund for Good Export Performance of 2012
15. Award for Production and Sales Increase of Industrial Enterprises of 2012
16. Patent Grant of High-Tech Zone
17. Award for Income Increase of 2012
18. Grand for Engineering and Technology Research Center of 2012
19. Grant for Export Increase for Hefei
20. Special Fund for Fixed Assets Investment
21. Award for Cleaning Production
22. Desilting Expense of Merchants of High-Tech Zone
23. Promotion Funds on the Utilization of Foreign-Invested Projects of Year 2011
24. Grant for New Product Development Project
25. Patent Funds
26. Science and Technology Awards
27. Special Funds for the Technological Project and Achievement
28. Award for Scientific and Technological Advancement
29. Grants for Personal Income Tax Rebates
30. Supporting funds for production capacity expansion
31. Grants for Personal Income Tax Rebates of Niushan Town, Donghai County
32. Grants for Enterprise Income Tax Rebates
33. Special Funds on the Purpose of “Concerning People’s Livelihood and Increasing Employment Rate”
34. Awards for High-Tech Enterprise (Science and Technology Bureau)
35. Funds for the Development of Small and Medium-Sized Enterprises of Year 2012
36. Awards for Countrywide Advanced Units and Individuals of Economic and Social

- Development of Year 2010
37. Provincial Funds on Patent for Utility Models of Year 2010
 38. Grants for Productivity Promotion of Donghai County
 39. International Market Development Fund
 40. 2010 Provincial Award for Environmental Protection
 41. 400MW Mono-Allcon Cell Project Technology Innovation Support Fund
 42. High-Efficiency Solar Cell R&D and Industrialization
 43. Key Technology Development and Industrialization of High-Reliability Off-Grid PV System
 44. Award for Foreign Investment in Encouraged Segment
 45. Year 2012 Special Support Fund for SINOSURE
 46. Monocrystalline silicon deep processing project fund
 47. Scientific research fund
 48. Special subsidies for heavily-doped CzSi monocrystalline silicon industrial technology research and development
 49. Electronic information industry development fund (large diameter, hypoxia carbon thin Si wafers for solar cells industrialization project)
 50. Subsidy on High-tech technological renovation
 51. Provincial Innovation Project for 2006
 52. Special subsidy for information industry (Industrialization of large diameter, low-oxygen and carbon thin monocrystalline silicon solar cell and 30MW high efficient solar modules)
 53. International market development funds
 54. Hypoxia large diameter carbon silicon high-tech industrialization demonstration project funds
 55. Information industry development fund
 56. Provincial Science and Technology Research and Development Program funds (development and industrialization of large area of ultra-thin silicon chip for high-efficiency solar cell)
 57. Energy conservation award
 58. County level special funds for environmental protection
 59. Land subsidy
 60. 2011 special funds for technological transformation (large diameter, hypoxia carbon ultra-thin silicon wafers industrialization project)
 61. Fiscal and taxation bonus
 62. Award for company who has made great development in three years
 63. 011 imported products discount funds
 64. Trainee allowance
 65. "Giant program" Support funds
 66. Tax incentive funds
 67. Wastewater Treatment Fund
 68. Strategic emerging industry development funds (Photovoltaic Materials and Technology National and Local Joint Engineering Laboratory)
 69. Project incentive funds
 70. 2013 Annual Innovation System
 71. R&D Fund

72. Fund for Technical Renovation Project
73. R&D Fund for crystalline silicon thin film solar cell technology and innovation of photovoltaic module solar cell welding technology
74. Grant for recognition of HNTE
75. Fund for solar photovoltaic power generation system MWT high-conversion-cell module
76. Machinery & Electronic and High & New Technology product Special Fund
77. Encouragement fund for purchase of international advanced R&D Devices
78. Funds for R&D projects for optimization of export of machinery & electronic and high-tech products
79. Shanghai Famous Brand Award
80. Year 2010 Special Support Fund for SINOSURE
81. Year 2012 Special Support Fund for SINOSURE
82. Year 2013 Special Support Fund for SINOSURE
83. Wire Cutting Project Support Fund
84. Supporting fund for importing equipment
85. Technology upgrading fund
86. Bonus for taxation
87. Patent Subsidy
88. Land administration fees subsidy

Programs Preliminarily Determined To Be Not Used or Not to Confer a Measurable Benefit During the POR

Provision of Inputs for LTAR

1. *Provision of Aluminum Extrusions for LTAR*

The Department determined this program to be countervailable in the first administrative review based on AFA.²⁰⁹ For the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are basing our determination regarding the government’s provision of aluminum extrusions, in part, on AFA. Specifically, we determine as AFA that the producers of the aluminum extrusions purchased by JA Solar 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 addressing our questions on specificity, the GOC stated that “Aluminum extrusions in China are consumed by a diverse range of industries.”²¹⁰ The GOC also provided a list of a few dozen “major end-use” applications for aluminum and aluminum extrusions in the United States taken from the aluminum extrusions injury analysis of the ITC stating, “The consumption pattern for aluminum extrusions in China is actually more pronounced away from the electrical sector than in North America.”²¹¹ However, the GOC provided none of the information requested concerning amounts purchased by individual industries.

²⁰⁹ See *Solar Cells from the PRC First AR* at 28.

²¹⁰ See GOC September 18, 2015, QR at 140.

²¹¹ *Id.* at 143.

The GOC reported six industries consuming aluminum extrusions: construction industry, transportation industry, mechanical and electrical equipment industry, consumer durable goods industry, electricity, and other industries.²¹² Thus, we find that the recipients of aluminum extrusions are limited in number to the industries listed by the GOC, and that the provision of aluminum extrusions is *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act. This is consistent with our past practice.²¹³ Although the GOC claims its information indicates aluminum extrusions are used in a variety of industries and sectors across the PRC, the industries within those sectors that actually consume aluminum extrusions are limited in number. The statute notes that the term “enterprise or industry” “includes a group of such enterprises or industries.”²¹⁴

Lastly, a benefit is conferred to the extent that aluminum extrusions are being provided for LTAR. As discussed above under the “Subsidies Valuation Information” section, we are basing our aluminum extrusions benchmark on world market prices for aluminum frames for solar modules as compiled by the consulting firm IHS Technology, as suggested by JA Solar.²¹⁵ We adjusted the benchmark price to include delivery charges, import duties, and VAT pursuant to 19 CFR 351.511(a)(2)(iv).²¹⁶ We added import duties and VAT as reported by the GOC.²¹⁷ 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 JA Solar’s reported purchase prices for individual transactions, including VAT and delivery charges.

Based on this comparison, we preliminarily determine that aluminum extrusions were not provided for LTAR during the POR and that no benefit exists for JA Solar.²¹⁸ We divided JA Solar’s total benefits by the appropriate total sales denominator, as discussed in the “Subsidies Valuation Information” section above, and in the Preliminary Calculation Memorandum. On this basis, we preliminarily determine a countervailable subsidy rate of 0.00 percent *ad valorem* for JA Solar.

Grant Programs²¹⁹

1. 2010 Special Funds for the Development of Five Key Industries (Equipment Manufacturing Industry, Electronic Information Industry, New Materials Industry,

²¹² *Id.* at 144-145.

²¹³ See *Solar Cells from the PRC First AR* at 21-23; see also *CWP from the PRC* and accompanying Issues and Decision Memorandum at 62.

²¹⁴ Section 771(5A)(D) of the Act.

²¹⁵ See JA Solar’s Benchmark Submission at Exhibit 2.

²¹⁶ The Department concludes that these data do not already include delivery charges. See Preliminary Benchmark Memorandum.

²¹⁷ See GOC September 18, 2015, QR at 138-139.

²¹⁸ See 19 CFR 351.511(a).

²¹⁹ Please note that certain programs (*see **) were found to be non-recurring subsidies and, therefore, the Department is examining benefits provided under these programs for the period between January 1, 2004, and the end of the POR.

- Biological Technology and Pharmaceutical Industry, and New Energy Industry) by Changzhou Municipal Government and Xinbei District Government, Changzhou*
2. Development Credit Insurance Funds supported by Changzhou Municipal Government*
 3. Award for Science and Technology Progress by Changzhou Municipal Government*
 4. Financial Subsidies for 2009 by Changzhou Municipal Government*
 5. Award from the export processing zone of Changzhou by Changzhou Municipal Government*
 6. Subsidy of 3.15 Income by Changzhou Municipal Government*
 7. Award for Municipal Technology Center Enterprise by Changzhou Municipal Government*
 8. Credit Guarantee Supporting Funds by Changzhou Municipal Government*
 9. Award for Water Conservation by Changzhou Municipal Government*
 10. Subsidy for Other Technology Research Development Expenses by Changzhou Municipal Government*
 11. Subsidy for Applied Technology Research and Development by Xinbei District Government, Changzhou*
 12. Incentives for Listed Enterprises by Changzhou Municipal Government*
 13. Patent Award by Changzhou Municipal Government*
 14. Award for listing by Changzhou Municipal Government*
 15. Incentive for Patents Invention from Xinbei District Government, Changzhou*
 16. Science and Technology Progress Award by Xinbei District Government, Changzhou*
 17. Top 10 in Tax Paid Amount of Year 2008 Award*
 18. Funding for Technological Transformation of 50 MW Highly Efficient Ultra-Thin Silicon Solar Cells Production Line by Xinbei District Government, Changzhou*
 19. Funding for 100 KW grid-connected photovoltaic generation system by Changzhou Municipal Government*
 20. Subsidies for the Overseas Exports by Changzhou Municipal Government*
 21. Funding for International Trade Fair Booth, Exhibition, Exhibits, Transportation, Costs of Exploring International Markets by Changzhou Municipal Government*
 22. Funding for technology development promotion center topics by Changzhou Municipal Government*
 23. Funding to further promote the Steady Growth of Foreign Trade Act of 2009 by Changzhou Municipal Government*
 24. Grants for major technology transformation project on equipment by Changzhou Municipal Government*
 25. Patent award by Xinbei District Government, Changzhou*
 26. Grants for efficient screen printing silicon solar battery development project by Xinbei District Government, Changzhou*
 27. Incentives for Patents of Invention by Changzhou Municipal Government*
 28. Funds for Promoting SME to be Listed by Jiangsu Finance Department/Funds for Technology Improvement by Jiangsu Province*
 29. Award for Provincial Engineering Technology Center*
 30. Awards for Jiangsu Famous Brand Products*
 31. Supporting Funds for “Going Global”*
 32. Subsidies for Foreign Cell Installation Experts*
 33. Grants for National High Technology Industry*

34. Science and Technology Award*
35. Subsidies for Environmental Protection*
36. BIPV Projects*
37. Funding on Infrastructure*
38. Grants for Employee Bonuses*
39. Wuxi Airport 800 KW Program*
40. PV Technology Research Institute of Jiangsu (Suntech)*
41. Fund for Solar Optoelectronic Application Demonstration by Management Committee of the New District*
42. Self-Research on Core Equipment of Solar PV and Semiconductor Lighting Industry/Self-Research on New Online Direct Method of PEVCD*
43. Demonstration Project of 300 KW Roof Solar PV Grid Power Generation System*
44. Industrialization and Research of New Solar Cells*
45. Research and Industrialization of Thin Film Cells*
46. Research on Highly Efficient and Low-Cost Thin Film Cells*
47. Technology and Application Research on Glass-Base Suede Gazno Transparent and Electrically Conductive Film Manufacture*
48. Demonstration Program of 300 KW Roof Solar PV Grid Power Generation System*
49. Renewable Energy of Finance Bureau, Wuxi City*
50. Research on New-Style High-Transmission Solar Cell Reducing the Reflection Film with Nano Structure*
51. Fund for Construction of Energy Institution by the Management Committee of New District*
52. Public Welfare Project Funding from Supervision and Examination Station of Product Quality, Wuxi City*
53. Provincial Export Credit Insurance Supporting Development Fund Allocation by Management Committee of New District from December 2008 to June 2009*
54. Patent Fund from Management Committee of New District, Wuxi Government*
55. Special Reward for “333” Program by Municipal Organization Department*
56. Science and Research Budget Allocation for Renewable Energy Construction Application Technology Project by Construction Bureau of Wuxi*
57. Photovoltaic Technology Research Expenses by Personnel Bureau*
58. Social Insurance Fund for Employers from Sichuan Earthquake Stricken Area*
59. Import Discount by Jiangsu Provincial Government*
60. Employment Expansion Planning Reward by Management Committee of New District*
61. Fund for Demonstration Company of 2009 Provincial Intelligence Introduction Program*
62. The First Group of Patent Fund in 2010 Provided by the Wuxi Government*
63. Research, Development, and Industrialization of Technology and Key Equipment for P-Type Solar Power Cells with High Efficiency and Low Cost*
64. Award for Luoyang City Outstanding Private Enterprise for 2009*
65. Plan for Thousand Talents*
66. Fund for Henan Industry Structure Adjustment and High-New Technology Industrialization Program*
67. Discount Loans for Luoyang High-New Technology Industrialization Program (1.5 million RMB)*

68. Research and Development Expenditure for Highly Efficient Crystalline Silicon Solar Cells*
69. Special Reward for the 2008 Annual Investment Invitation of Major Program*
70. Reward for Industry Development in the High-New District*
71. Investment Invitation Reward in the High-New District*
72. Shanghai Major Program for Industrialization of Innovation and High-New Technology in 2010*
73. Key technology renovation regarding industrialization of PV cells*
74. Ultra-thin PV cells with annual productivity of 10 MW*
75. Research and Development and Industrialization of Effective Crystalline Silicon Solar Cell*
76. PV energy technology research center of Jiangsu Province*
77. Research, development, and application of high temperature dispersing furnace with wide and closed-pipe*
78. Industrialization research on highly efficient PV cells with new structure*
79. Independent PV power generating system with mixing storage capability of ultracapacitor*
80. Demonstration program of high-tech industrialization on solar cell*
81. Solar cells expansion project with a 120 MW annual productivity*
82. Science subsidy from New District Management Committee of Wuxi government*
83. Patent Fund from New District Management Committee of Wuxi City*
84. Fund for Construction of Patent Theme Database by Enterprises*
85. Fund for Introduction of Talents*
86. Reward for Nation-recognized Enterprise Tech Center*
87. Standard for Program Construction*
88. Social Security Refund for Employment of People from Earthquake Stricken Area in the Second Quarter of 2010*
89. Export Credit Insurance Fund in the second quarter*
90. Employment Activities Fund*
91. Energy-saving and Economy-recycling Fund*
92. Fund for Introduction of Talents of National and Provincial Level*
93. Patent Fund*
94. Fund for Introduction of Talents in Wuxi City*
95. Reward for Establishment of General Standard of Polysilicon Solar Cell*
96. Post-doctoral Fund*
97. Import Discounting by New District Government of Wuxi City*
98. Reward for Provincial Famous Brand*
99. Economic Development Fund for Private Enterprises*
100. Reward for Science and Technology Development*
101. Fund for Foreign Trade Development*
102. First Prize for Provincial Science and Technology Development*
103. Reward for Recognition as Provincial Technology Center*
104. Fund for Six Biggest Expenses*
105. Reward Fund for Recycled Economy*
106. Renewable Energy Development Fund*
107. Adjusting the balance government grants of last year*

108. Science and Technology and Other Fund and Reform Fund for Potential of Enterprises*
109. Tengfei Prize*
110. Reform Fund for Potential of Enterprises*
111. Science and Technology and Other Fund*
112. Fund for Clean Production Enterprises*
113. Renewable Energy Fund*
114. National “863” Program*
115. Reward by Trade Promotion Commission*
116. Standard Fund by Financial Bureau of New District*
117. Fund for Employment of People from Earthquake Stricken Area*
118. Export Credit Insurance Fund by Management Committee of New District*
119. Patent Fund by Management Committee of New District of Wuxi City*
120. Free Financing Program Contract of Innovation Fund in Luoyang High-New Technology Industry Development District (Energy-Saving and Pollution-Reduction Type)*
121. Special Fund for Information Development of “Double-Hundred” Planning Program*
122. International Science and Technology Cooperation Fund Program/Science and Research Planning Program of Shanghai City*
123. Shanghai Major Program for Industrialization of Innovation and High-New Technology in 2009*
124. Technical Improvement of Energy Saving and Pollution Deduction Program in 2009*
125. Program for Encouraging Purchase of International Advanced Research Equipment in 2009*
126. Technical Innovation Program in Minhang District in 2010*
127. 2010 Shanghai Pujiang Talent Plan*
128. Technology Introduction and Innovation Plan in Shanghai City (Exclusively for Thin Film Cells)*
129. Development and Industrialization of Advanced Manufacturing Tech for Production of Highly Efficient and Low-cost Wafers*
130. Polysilicon Wet Etching Insulation Machine*
131. Research and Development and Industrialization of Complete Set of Production Line for Photovoltaic Cells and Key Technology for Wet Processing Equipment*
132. Research and Development and Industrialization of SC0809 Efficient Low-cost P-type Solar Cell Texturing Cleaning Equipment*
133. Research and Development and Industrialization of efficient low-cost p-type solar cell texturing cleaning equipment*
134. Science and Technology Development Planning Fund*
135. High-tech Development Fund from the Financial Bureau of Wuzhong*
136. Fund for Municipal High-tech Enterprises*
137. Fund for Support of Introduced Research and Development Institute from the Financial Bureau of Wuzhong District*
138. Science and Technology Innovation Reward from Financial Bureau of Wuzhong District*
139. Big taxpayer incentives granted by the Financial Bureau of Wuzhong District*
140. Taxpayer reward from Financial Bureau of Wuzhong District*
141. Export Product Research and Development Fund
142. Subsidies for Development of “Famous Brands” and “China World Top Brands”

143. Sub-Central Government Subsidies for Development of “Famous Brands” and “China World Top Brands”
144. Special Energy Fund (Established by Shandong Province)
145. Funds for Outward Expansion of Industries in Guangdong Province

Tax Benefit Programs

1. Income Tax Reductions for Export-Oriented Enterprises
2. Income Tax Benefits for FIEs Based on Geographic Locations – Preferential Tax
3. Local Income Tax Exemption and Reduction Programs for “Productive” FIEs
4. Tax Refunds for Reinvestment of FIE Profits in Export-Oriented Enterprises
5. Tax Reductions for High and New-Technology Enterprises Involved in Designated Project
6. Preferential Income Tax Policy for Enterprises in the Northeast Region
7. Guangdong Province Tax Programs

Other Tax Programs

1. VAT and Tariff Exemptions for Purchases of Fixed Assets Under the Foreign Trade and Development Fund Program
2. The Over-Rebate of VAT Program

Programs Preliminarily Determined To Be Not Countervailable During the POR

Export Credit Subsidies

1. Export Buyer’s Credits from China EX-IM Bank
2. Export Credit Insurance from SINOSURE

The GOC and JA Solar each reported that JA Solar were insured by SINOSURE during the POR.²²⁰ 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 losses.²²¹ The GOC provided a chart summarizing SINOSURE’s overall long-term operating costs and losses for 2006 through 2013 in response to the Department’s questionnaire.²²² Our review of this chart and SINOSURE’s 2013 Annual Report leads us to conclude that the annual premiums collected by SINOSURE were adequate to cover its long-term operating costs and losses of the program. As such, we preliminarily determine that this program was not countervailable during the POR.

²²⁰ See GOC’s September 18, 2015 QR at 159; see also JA Solar’s September 18, 2015 QR at Vol. I, page 28.

²²¹ See 19 CFR 351.520(a)(1).

²²² See GOC’s September 18, 2015 QR at 161, and at Exhibit 46 (SINOSURE’s 2013 Annual Report).

VI. VERIFICATION

Although verification in this review is not mandatory, the Department is currently determining whether “good cause” exists in this review for verification of the questionnaire responses of the GOC and JA Solar.

VII. DISCLOSURE AND PUBLIC COMMENT

The Department intends to disclose to interested parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Case briefs may be submitted to Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) within 30 days of publication of these preliminary results, and rebuttal briefs, limited to issues raised on the case briefs, may be submitted no later than five days after the deadline for the submission for case briefs.²²³

Parties who submit case or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.²²⁴

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S Department of Commerce, filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time, within 30 days after the date of publication of this notice.²²⁵ Hearing requests should contain the party’s name, address, and telephone number, the number of participants, and a list of the issues parties intend to present at the hearing. If a request for a hearing is made, 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 time to be determined. Prior to the hearing, the Department will contact all parties who submitted case or rebuttal briefs to determine if they wish to participate in the hearing. The Department will then distribute a hearing schedule to these parties prior to the hearing and only those parties listed on the schedule may present issues raised in their briefs.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using ACCESS.²²⁶ Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time,²²⁷ on the due dates established above.

²²³ See 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1).

²²⁴ See 19 CFR 351.309(c)(2) and 351.309(d)(2).

²²⁵ See 19 CFR 351.310(c).

²²⁶ See 19 CFR 351.303(b)(2)(i).

²²⁷ See 19 CFR 351.303(b)(1).

VIII. CONCLUSION

We recommend that you approve the preliminary findings described above.

✓
Agree

Disagree

Paul Piquado
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

21 DECEMBER 2015
Date

Appendix

Rescinded Companies

1. Yingli Energy (China) Company Limited
2. Yingli Green Energy Holding Company Limited
3. Baoding Tianwei Yingli New Energy Resources Co., Ltd.
4. Baoding Jiasheng Photovoltaic Technology Co. Ltd.
5. Beijing Tianneng Yingli New Energy Resources Co. Ltd.
6. Hainan Yingli New Energy Resources Co., Ltd.
7. Hengshui Yingli New Energy Resources Co., Ltd.
8. Lixian Yingli New Energy Resources Co., Ltd.
9. Tianjin Yingli New Energy Resources Co., Ltd.
10. Yingli Green Energy International Trading Company Limited
11. Yingli Green Energy Americas, Inc.
12. Era Solar Co., Ltd.
13. Canadian Solar, Inc.
14. Canadian Solar International Limited
15. Canadian Solar Manufacturing (Changshu) Inc.
16. Canadian Solar Manufacturing (Luoyang) Inc.
17. Canadian Solar (USA) Inc.
18. CSG PVTech Co., Ltd.
19. Changzhou NESL Solartech Co., Ltd.
20. DelSolar Co., Ltd.
21. Dongfang Electric (Yixing) MAGI Solar Power Technology Co., Ltd.
22. ET Solar Energy Limited
23. Hengdian Group DMEGC Magnetics Co., Ltd.
24. Himin Clean Energy Holdings Co., Ltd.
25. Innovosolar
26. Jiawei Solarchina Co., Ltd.
27. Jinko Solar Co., Ltd.
28. Jinko Solar Import and Export Co, Ltd.
29. Jinko Solar International Limited
30. Jiangsu Green Power PV Co., Ltd.
31. Jiangsu Sunlink PV Technology Co., Ltd.
32. Konca Solar Cell Co., Ltd.
33. Kuttler Automation Systems (Suzhou) Co., Ltd.
34. LDK Solar Hi-Tech (Suzhou) Co., Ltd.
35. LDK Solar Hi-Tech (Nanchang) Co., Ltd.
36. Lightway Green New Energy Co., Ltd.
37. Leye Photovoltaic Science Tech.
38. Magi Solar Technology
39. Motech (Suzhou) Renewable Energy Co., Ltd.
40. Ningbo ETDZ Holdings, Ltd.
41. Ningbo Ulica Solar Science & Technology Co., Ltd.
42. Perlight Solar Co., Ltd.
43. ReneSola J iangsu Ltd.

44. Renesola Zhejiang Ltd.
45. Sumec Hardware & Tools Co., Ltd.
46. Solarbest Energy-Tech (Zhejiang) Co., Ltd.
47. Shenglong PV-Tech
48. ShunFeng PV
49. Sopray Energy Co., Ltd.
50. Luoyang Suntech Power Co., Ltd.
51. Suntech Power Co., Ltd.
52. Shenzhen Suntech Power Co., Ltd.
53. Suzhou Shenglong PV-Tech Co., Ltd.
54. Tianwei New Energy (Chengdu) PV Module Co., Ltd.
55. Upsolar Group, Co. Ltd.
56. Wanxiang Import & Export Co., Ltd.
57. Yangzhou Rietech Renewal Energy Co., Ltd.
58. Yangzhou Suntech Power Co., Ltd.
59. Wuxi Sunshine Power Co., Ltd.
60. Zhiheng Solar Inc.
61. Zhejiang ZG-Cells Co., Ltd.
62. Zhejiang Xinshun Guangfu Science and Technology Co., Ltd.
63. Zhejiang Jiutai New Energy Co., Ltd.
64. Zhejiang Shuqimeng Photovoltaic Technology Co., Ltd.
65. Zhenjiang Rietech New Energy Science & Technology Co., Ltd.
66. Trina Solar (Changzhou) Science & Technology Co., Ltd.
67. tenKsolar (Shanghai) Co., Ltd.
68. Shanghai BYD Company Limited
69. BYD (Shangluo) Industrial Co., Ltd.
70. Ningbo Qixin Solar Electrical Appliance Co., Ltd.