



C-570-011
Administrative Review
POR: 6/10/2014-12/31/2015
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DATE: February 28, 2017

MEMORANDUM TO: Ronald K. Lorentzen
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Senior Director, Office I
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results of the
Administrative Review of the Countervailing Duty Order on
Certain Crystalline Silicon Photovoltaic Products from the
People's Republic of China; 2014-2015

I. SUMMARY

The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty (CVD) order on certain crystalline silicon photovoltaic products (solar products) from the People's Republic of China (PRC) (*CVD Order*). The period of review (POR) is June 10, 2014, through December 31, 2015. The Department selected Changzhou Trina Solar Energy Co., Ltd. and a cross-owned affiliate¹ (Trina Solar) and BYD (Shangluo) Industrial Co., Ltd. (BYD) as mandatory respondents.

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.

¹ See Section VII below for a full list of companies that the Department is finding to be cross-owned with Changzhou Trina Solar Energy Co., Ltd. in this review.

II. BACKGROUND

On February 18, 2015, we published a CVD order on solar products from China.² On February 3, 2016, we published a notice of “Opportunity to Request Administrative Review” of the *CVD Order*.³ Between February 24, 2016, and February 29, 2016, the Department received timely requests to conduct an administrative review of the *CVD Order* of the following interested parties: BYD; Trina Solar; Shanghai BYD Co., Ltd. (Shanghai BYD); Wuxi Suntech Power Co., Ltd. (Wuxi); Shenzhen Sungold Solar Co., Ltd. (Shenzhen); Sunny Apex Development Limited (Sunny Apex); Chint Solar (Zhejiang) Co., Ltd.; Shenzhen Jiawei Photovoltaic Lighting Co., Ltd. (Jiawei); Risen Energy Co., Ltd.; Perlight Solar Co., Ltd.; Jinko Solar Co., Ltd., Jinko Solar Import and Export Co., Ltd., Zhejiang Jinko Solar Co., Ltd. (collectively Jinko); Yingli Green Energy Holding Company Ltd., Yingli Energy (China) Co., Ltd., Baoding Tianwei Yingli New Energy Resources Co., Ltd., Baoding Jiasheng Photovoltaic Technology Co., Ltd., Beijing Tianneng Yingli New Energy Resources Co. Ltd., Hainan Yingli New Energy Resources Co., Ltd., Hengshui Yingli New Energy Resources Co., Ltd., Lixian Yingli New Energy Resources Co., Ltd., Tianjin Yingli New Energy Resources Co., Ltd., Shenzhen Yingli New Energy Resources Co., Ltd., and Yingli Green Energy International Trading Company Limited (collectively Yingli); Canadian Solar International, Ltd., Canadian Solar Manufacturing (Changshu), Inc., and Canadian Solar Manufacturing (Luoyang), Inc. (collectively Canadian Solar); Shanghai JA Solar Technology Co., Ltd. and Hefei JA Solar Technology Co., Ltd. (collectively JA Solar Companies). Between March 30, 2016 and July 5, 2016, Wuxi, Canadian Solar, Yingli, Jinko, Shanghai BYD, and Jiawei withdrew their requests for review.⁴

On April 7, 2016, in accordance with 19 CFR 351.221(c)(1)(i), the Department published in the *Federal Register* a notice of initiation of an administrative review of the *CVD Order* for 31 producers/exporters for the POR.⁵ In the *Initiation Notice* we stated that, in the event we limited the number of respondents for individual examination in this administrative review, we intended to select respondents based on the companies’ responses to the quantity and value (Q&V) questionnaire during the POR.⁶ We sent Q&V questionnaires to all companies for which requests for review had not been withdrawn on April 26, 2016.⁷ On May 17, 2016, we received timely Q&V responses from BYD, Shanghai BYD, Trina Solar, Sunny Apex, and Shenzhen. Chint, Perlight, and Risen did not submit Q&V responses by the deadline specified by the Department. However, it was later determined that this was due to a clerical mistake on the part

² See *Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Antidumping Duty Order; and Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 80 FR 8592 (February 18, 2015) (*CVD Order*).

³ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 81 FR 5712 (February 3, 2016).

⁴ See Memorandum from the Department, “Administrative Review of the Countervailing Duty Order on Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Respondent Selection,” dated August 11, 2016 (Respondent Selection Memorandum).

⁵ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 20324 (April 7, 2016) (*Initiation Notice*).

⁶ See *Initiation Notice* at the section, “Respondent Selection.”

⁷ See Letter from the Department, “Quantity and Value Questionnaire” dated April 26, 2016 (Q&V questionnaire).

of the Department in which we failed to notify their counsel of the Q&V questionnaire.⁸ On August 11, 2016, the Department issued its Respondent Selection Memorandum.⁹ We selected the two largest PRC producers/exporters of subject merchandise based on Q&V responses as mandatory respondents, BYD and Trina Solar.

We sent countervailing duty questionnaires to Trina Solar, BYD, as well as the Government of China (GOC) on August 22, 2016.¹⁰ On September 22, 2016, we sent a supplemental questionnaire to BYD regarding its response to the Department's initial Q&V questionnaire.¹¹ BYD submitted a timely response to the supplemental questionnaire on September 30, 2016.¹² In that response, BYD claimed that the entries it reported in the Q&V questionnaire were not covered by the preliminary scope in the original investigation, but were covered by the final scope language of the *CVD Order*.¹³

Trina Solar filed timely responses to the CVD questionnaire – responding to the Identifying Affiliated Companies portion of Section III of the questionnaire on September 6, 2016,¹⁴ and the rest of Section III on October 11, 2016.¹⁵ The GOC filed its timely response to Section II of the CVD questionnaire on October 11, 2016.¹⁶ The Department sent the GOC a supplemental questionnaire on October 21, 2016¹⁷ with several additional questions regarding the Export-

⁸ See Letter from Chint Solar (Zhejiang) Co., Ltd., “Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China, C-570-011; Response to Department’s Q&V Questionnaire: Response of Chint Solar (Zhejiang) Co., Ltd” dated August 16, 2016. See also Letter from Perligh Solar Co., Ltd. “Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China, C-570-011; Response to Department’s Q&V Questionnaire: Response of Perligh Solar (Zhejiang) Co., Ltd” dated August 16, 2016. After the Department filed its respondent selection memo, counsel for Perligh and Chint contacted the Department and alerted us that they had never been added to the service list on the Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) and thus never received the Q&V questionnaire.

⁹ See Respondent Selection Memo.

¹⁰ See Letter from the Department, “Certain Crystalline Silicon Photovoltaic Products from The People’s Republic of China: Countervailing Duty Questionnaire,” dated August 22, 2016 (CVD questionnaire).

¹¹ See Letter from the Department, “Supplemental Questionnaire for the Administrative Review of Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China,” dated September 22, 2016.

¹² See Letter from BYD, “Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China,” dated September 30, 2016.

¹³ The scope of the investigation was clarified between the preliminary determination and the final determination. See *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014) (*Solar Products from the PRC*) and accompanying Issues and Decision Memorandum (IDM) at 32.

¹⁴ See Letter from Trina Solar, “Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Section III (Affiliated Companies) Response,” dated September 6, 2016.

¹⁵ See Letter from Trina Solar, “Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Section III (Affiliated Companies) Response,” dated October 11, 2016. (Trina Solar’s October 11, 2016)

¹⁶ See Letter from the GOC, “GOC’s CVD Questionnaire Response: *Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China*,” dated October 11, 2016. (GOC’s October 11, 2016)

¹⁷ See Letter from the Department, “Administrative Review of the Countervailing Duty Order on Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Supplemental Questionnaire,” dated October 21, 2016.

Import Bank of China (Ex-Im Bank). The GOC filed a timely response on November 4, 2016.¹⁸ SolarWorld Americas, Inc. (Petitioner), the petitioner in this case, filed comments on BYD's response to the Identifying Affiliated Companies portion of Section III¹⁹ as well as Trina Solar's response to Section III²⁰ and the GOC's response to Section II of the questionnaire.²¹

On October 13, 2016, the Department extended the deadline for these preliminary results by 90 days to January 30, 2017.²² On January 3, 2017, the Department extended the deadline an additional 30 days until February 28, 2017.²³ The deadline for submission of benchmark data was also extended – from December 30, 2016, to January 16, 2017.²⁴ The Petitioner submitted pre-preliminary comments on February 17, 2017, regarding the application of adverse facts available (AFA),²⁵ as well as additional comments on February 22, 2017, requesting an additional respondent.²⁶

III. INTENT TO PARTIALLY RESCIND REVIEW, AND PARTIAL RESCISSION OF REVIEW

For an administrative review to be conducted, there must be a reviewable, suspended entry to be liquidated at the newly calculated assessment rate.²⁷ Thus, it is the Department's practice to rescind an administrative review when there are no reviewable entries of subject merchandise during the POR for which liquidation is suspended.²⁸ We preliminarily find that BYD has no

¹⁸ See Letter from GOC, "GOC's First Supplemental Questionnaire Response: Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China," dated November 4, 2016.

¹⁹ See Letter from SolarWorld, "Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Comments on BYD's Affiliated Companies Response," dated October 11, 2016.

²⁰ See Letter from SolarWorld, "Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Comments on Trina Solar's Section III (Affiliated Companies) Questionnaire Response," dated October 25, 2016.

²¹ See Letter from SolarWorld, "Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Comments on the Government of China's Initial Questionnaire Response," dated October 25, 2016.

²² See Department Memorandum, "Crystalline Silicon Photovoltaic Products from the People's Republic of China: Extension of Deadline for Preliminary Results in the Countervailing Duty Administrative Review," dated October 13, 2016.

²³ See Department Memorandum, "Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Extension of Deadline for Preliminary Results," dated January 3, 2017.

²⁴ See Department Memorandum, "Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Extension of Schedule for Submission of Benchmark Information in Regard to Less Than Adequate Remuneration Allegations," dated December 27, 2016.

²⁵ See Letter from SolarWorld, "Crystalline Silicon Photovoltaic Products from the People's Republic of China: Pre-Preliminary Comments," dated February 17, 2017.

²⁶ See Letter from SolarWorld, "Crystalline Silicon Photovoltaic Products from the People's Republic of China: Additional Pre-Preliminary Comments," dated February 22, 2017. We note that the Department determined that due to time and personnel constraints, it was not practicable to select an additional respondent in this proceeding.

²⁷ See section 751(a)(2)(A) of the Act (stating that an administrative review determines the normal value, export price or constructed export price, and dumping margin of an "entry"); [19 CFR 351.212\(b\)\(1\)](#) (At the end of the administrative review, the suspended entries are liquidated at the assessment rate computed for the review period).

²⁸ See, e.g., *Certain Tissue Paper Products from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 18497, 18499-18500 (April 4, 2008) (unchanged in

reviewable entries subject to the *CVD Order* and, consistent with our practice, the Department preliminarily intends to rescind its review of BYD, consistent with 19 CFR 351.213(d)(3).²⁹ We invite parties to comment on this preliminary intent to rescind and will consider any comments received for the final results.

Additionally, for those companies for which we received timely withdrawals of the requests for review (*i.e.*, Wuxi, Canadian Solar, Yingli, Jinko, Shanghai BYD, Jiawei), we are rescinding this administrative review, pursuant to 19 CFR 351.213(d)(1), because no other party requested review of these companies. 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 June 10, 2014, through December 31, 2015, in accordance with 19 CFR 351.212(c)(2).

IV. NON-SELECTED COMPANIES UNDER REVIEW

The statute and the Department's regulations do not directly address the establishment of rates to be applied to companies not selected for individual examination where the Department limits its examination in an administrative review pursuant to section 777A(e)(2) of the Act. However, the Department normally determines the rates for non-selected companies in reviews in a manner that is consistent with section 705(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation.

Section 705(c)(5)(A)(i) of the Act instructs the Department as a general rule to calculate an all others rate using the weighted average of the subsidy rates established for the producers/exporters individually examined, excluding any zero, *de minimis*, or rates based entirely on facts available. In this review, the preliminary subsidy rate calculated for Trina is above *de minimis* and is not based entirely on facts available. Therefore, for the companies for which a review was requested that were not selected as mandatory company respondents, and for which we did not receive a timely request for withdrawal of review, and which we are not finding to be cross-owned with the mandatory company respondents, we are preliminarily basing the subsidy rate on the rate calculated for Trina. For a list of these companies, please see the Appendix to this Decision Memorandum.

V. SCOPE OF THE ORDER

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

final); *Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation: Rescission of Antidumping Duty Administrative Review*, 77 FR 65532 (October 29, 2012), and accompanying IDM at Issue 2.

²⁹ For further discussion, see the Department's memorandum, "Preliminary Rescission of Administrative Review," dated concurrently with this memorandum.

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

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

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

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

On October 25, 2007, the Department published its final determination on coated free sheet paper from the PRC.³⁰ In *CFS from the PRC*, the Department found that:

. . . given the substantial difference between the Soviet-style economies and China's economy in recent years, the Department's previous decision not to apply the CVD law to the Soviet-style economies does not act as a bar to proceeding with a CVD investigation involving products from China.³¹

The Department affirmed its decision to apply the CVD law to the PRC in numerous subsequent determinations.³² Furthermore, on March 31, 2012, Public Law 112-99 was enacted, which confirms that the Department has the authority to apply the CVD law to countries designated as

³⁰ See *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007), and accompanying IDM at Comment 6 (*CFS from the PRC*).

³¹ *Id.*

³² See, e.g., *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008), and accompanying IDM at Comment 1.

non-market economies under section 771(18) of the Act, such as the PRC.³³ The effective date provision of the enacted legislation makes clear that this provision applies to this proceeding.³⁴

VII. DIVERSIFICATION OF THE PRC'S ECONOMY

Concurrently with this decision memorandum, the Department is placing the following excerpts from the *China Statistical Yearbook* from the National Bureau of Statistics of China on the record of this review.³⁵ Index Page; Table 14-7: Main Indicators on Economic Benefit of State-owned and State-holding Industrial Enterprise by Industrial Sector; Table 14-11: Main Indicators on Economic Benefit of Private Industrial Enterprise by Industrial Sector. This information reflects a wide diversification of economic activities in the PRC. The industrial sector in the PRC alone is comprised of 37 listed industries and economic activities, indicating the diversification of the economy.

VIII. SUBSIDIES VALUATION

POR

The POR is June 10, 2014, through December 31, 2015.

Allocation Period

Under 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to 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 ten years. No interested party has challenged the use of a ten-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

³³ Section 1(a) is the relevant provision of Public Law 112-99 and is codified at section 701(f) of the Act.

³⁴ See Public Law 112-99, 126 Stat. 265 §1(b).

³⁵ See Department Memorandum, "Additional Documents Memorandum," dated concurrently with this memorandum.

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.³⁶

Thus, the Department’s regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists. The U.S. Court of International Trade (CIT) upheld the Department’s authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.³⁷ Based on information on the record, we preliminarily determine that cross-ownership exists, in accordance with 19 CFR 351.525(b)(6)(vi), among the following companies.

The Trina Solar Companies

As discussed above, we selected Trina Solar as a mandatory company respondent. Trina reported that it is cross-owned with several affiliates that are producers of solar products or provided goods or services for the production of solar products. Based on these responses, we preliminarily find the following companies to be cross-owned:³⁸

1. Changzhou Trina Solar Energy Co., Ltd.
2. Trina Solar (Changzhou) Science & Technology Co., Ltd. (TST);
3. Yancheng Trina Solar Energy Technology Co., Ltd. (TYC);
4. Changzhou Trina Solar Yabang Energy Co., Ltd. (TYB);
5. Hubei Trina Solar Energy Co., Ltd. (THB);

³⁶ See *Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

³⁷ See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

³⁸ See Trina Solar Affiliations Response at 1-3.

6. Turpan Trina Solar Energy Co., Ltd. (TLF); and
7. Changzhou Trina PV Ribbon Materials Co., Ltd. (TRM).

In the questionnaire responses, Trina Solar reported that these companies are all ultimately wholly-owned by Trina Solar Limited (TSL), a company located in the Cayman Islands that is publicly traded on the New York Stock Exchange.³⁹ Therefore, based on these facts, and pursuant to 19 CFR 351.525(b)(6)(vi), we preliminarily determine that the seven companies reported by Trina Solar are cross-owned through their ownership by their parent company, TSL.⁴⁰ Hereinafter, these cross-owned companies are referred to collectively as Trina Solar, or the Trina Solar Companies. For the reported producers of subject merchandise, we are attributing any subsidy received by these companies to the combined sales of these companies, excluding intercompany sales, in accordance with 19 CFR 351.525(b)(6)(ii). For input producers, we are attributing subsidies received by the input producers to the combined sales of the input and downstream products produced by the input producer and downstream producer, pursuant to 19 CFR 351.525(b)(6)(iv).⁴¹

Non-Responding Cross-Owned Affiliates: Finally, our original questionnaire instructed Trina Solar to 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.

Trina 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.

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 export or total sales. The denominators we used to calculate the countervailable subsidy rate for the various subsidy programs described below are explained in further detail in the Preliminary Calculations Memorandum prepared for this preliminary review.

³⁹ See Trina Solar October 11, 2016 QR at 15; *see also* Trina Solar Affiliations Response at Exhibit 1.

⁴⁰ The Department's regulations at 19 CFR 351.525(b)(6)(vi) state that cross-ownership exists when one corporation can use or direct the assets of another corporation in essentially the same way it can use its own. Normally, however, "this standard will be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations."

⁴¹ See Department Memorandum, "Countervailing Duty Administrative Review of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Trina Solar Preliminary Calculations Memorandum," dated concurrently with this Preliminary Decision Memorandum (Trina Solar Preliminary Calculations Memorandum).

IX. INTEREST RATE BENCHMARKS, DISCOUNT RATES, INPUT, ELECTRICITY, AND LAND BENCHMARKS

We are examining loans received by Trina Solar from Chinese policy banks and state-owned commercial banks (SOCBs). We are also examining non-recurring, allocable subsidies.⁴² The derivation of the benchmark interest rates and discount rates used to measure the benefit from these subsidies are 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.⁴³ 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.”⁴⁴ As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate.

For the reasons explained in *CFS from the PRC*,⁴⁵ 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. Because of this, any loans received by Trina Solar from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). Similarly, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). There is no new information on the record of this administrative review that would lead us to deviate from our prior determinations regarding government intervention in the PRC’s banking sector.⁴⁶ 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.⁴⁷ The use of an external benchmark is consistent with the Department’s practice.⁴⁸

We first developed, in *CFS from the PRC*,⁴⁹ and more recently updated in *Thermal Paper from the PRC*,⁵⁰ the methodology used to calculate the external benchmark. 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;

⁴² See 19 CFR 351.524(b)(1).

⁴³ See 19 CFR 351.505(a)(3)(i).

⁴⁴ See 19 CFR 351.505(a)(3)(ii).

⁴⁵ See *CFS from the PRC*, and accompanying IDM at Comment 10.

⁴⁶ See the “Preferential Policy Lending,” section below.

⁴⁷ See World Bank Country Classification <http://econ.worldbank.org/>.

⁴⁸ 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), and accompanying IDM at “Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit.”

⁴⁹ See *CFS from the PRC*, and accompanying IDM at Comment 10.

⁵⁰ 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.

upper-middle income; and high income. For 2001 through 2009, the PRC fell in the lower-middle income category.⁵¹ Beginning with 2010, however, the PRC is in the upper-middle income category and remained there for 2011 to 2015.⁵² Accordingly, as explained below, we are using the interest rates of lower-middle income countries to construct the benchmark and discount rates for the years 2001-2009, and the interest rates of upper-middle income countries to construct the benchmark and discount rates for the years 2010-2015. As explained in *CFS from the PRC*,⁵³ by pooling countries in this manner, we capture the broad inverse relationship between income and interest rates.

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

In each year from 2001-2009, and 2011-2015, the results of the regression-based analysis reflected the intended, common sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates. For 2010, however, the regression does not yield that outcome for the PRC's income group. This contrary result for a single year does not lead the Department 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 benchmark for the years from 2001-2009, and 2011- 2015. For the 2010 benchmark, we are using an average of the interest rates of the upper-middle income countries.

Many of the countries in the World Bank's upper-middle and lower-middle income categories reported lending and inflation rates to the International Monetary Fund, and they are included in that agency's international financial statistics (IFS). With the exceptions noted below, we used the interest and inflation rates reported in the IFS for the countries identified as "upper-middle income" by the World Bank for 2010-2015, and "lower-middle income" for 2001-2009.⁵⁴ First, we did not include those economies that the Department considers to be non-market economies for antidumping purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments.⁵⁵ Finally, for each year the Department calculated an inflation-adjusted short-term benchmark rate and excluded any

⁵¹ See World Bank Country Classification <http://econ.worldbank.org/>; see also Department Memorandum, "Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Interest Rate Benchmark Memorandum," dated concurrently with this preliminary determination (Interest Rate Benchmark Memorandum).

⁵² See World Bank Country Classification.

⁵³ See *CFS from the PRC* IDM at Comment 10.

⁵⁴ See Interest Rate Benchmark Memorandum.

⁵⁵ For example, in certain years, Jordan reported a deposit rate, not a lending rate, and Ecuador and Timor L'Este reported dollar-denominated rates; therefore, such rates have been excluded.

countries with aberrational or negative real interest rates for the year in question.⁵⁶ Because the resulting rates are net of inflation, we adjusted the benchmark rates to include an inflation component before comparing them to the interest rates on loans issued to Trina Solar by SOCBs.⁵⁷

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.⁵⁸

In the *Citric Acid from the PRC Final Determination*, this methodology was revised by switching from a long-term markup based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where ‘n’ equals or approximates the number of years of the term of the loan in question.⁵⁹ Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.⁶⁰

Foreign Currency-Denominated Loans

To calculate benchmark interest rates for foreign currency-denominated loans, the Department is following the methodology developed over a number of successive PRC proceedings.⁶¹ For U.S. dollar short-term 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 any short-term loans denominated in other foreign currencies, we used as a benchmark the one-year LIBOR for the given currency plus the average spread between the LIBOR rate and the one-year corporate bond rate for companies with a BB rating.

For any long-term foreign currency-denominated loans, the Department added the applicable short-term LIBOR rate to a spread which is calculated as the difference between the one-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.⁶²

⁵⁶ For example, we excluded Brazil from the 2010 and 2011 benchmarks because the country’s real interest rates were 34.95 percent and 37.25 percent, respectively. See Interest Rate Benchmark Memorandum.

⁵⁷ See Interest Rate Benchmark Memorandum for the adjusted benchmark rates including an inflation component.

⁵⁸ See *Light-Walled Rectangular Pipe and Tube from the People’s Republic of China: Final Affirmative Countervailing Duty Investigation Determination*, 73 FR 35642 (June 24, 2008), and accompanying IDM at 8.

⁵⁹ 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), and accompanying IDM at Comment 14 (*Citric Acid from the PRC Final Determination*).

⁶⁰ See Interest Rate Benchmark Memorandum for the resulting inflation adjusted benchmark lending rates.

⁶¹ See, e.g., *Aluminum Extrusions from the People’s Republic of China: Final Results, and Partial Rescission of Countervailing Duty Administrative Review; 2013*, 80 FR 77325 (December 14, 2015) and accompanying IDM at 14.

⁶² See Interest Rate Benchmark Memorandum.

Discount Rates

Consistent with 19 CFR 351.524(d)(3)(i)(A), we are using as the discount rate the long-term interest rate calculated according to the methodology described above for the year in which the government provided non-recurring subsidies.⁶³

Creditworthiness

Petitioner submitted allegations with respect to the creditworthiness of Trina Solar (for the years 2009 through 2015).⁶⁴

Petitioner alleges that Trina Solar did not receive significant loans from commercial banks between 2009 and 2015,⁶⁵ in accordance with 19 CFR 351.505(a)(4)(i)(A) and (ii) and the Department's practice.⁶⁶ Petitioner's allegation also focuses on Trina Solar's current ratios, which dropped as low as 0.99 during the years in questions, quick ratios, which dropped as low as 0.43, and debt-to-equity ratios, which reached as high as 3.47.⁶⁷

The Department has determined that Petitioner's allegations satisfy the requirements for an uncreditworthiness allegation in 19 CFR 351.505(a)(6)(i) for 2012-2015. Petitioner has submitted information (*i.e.*, references to the respondent's own consolidated financial statements and 20-F forms) establishing a reasonable basis to believe or suspect that Trina Solar is uncreditworthy, as well as a discussion of the record evidence relevant to the factors enumerated under 19 CFR 351.301(a)(4) for those years (discussed below).

In particular, in 2009, Trina Solar's current ratio was 1.8, slightly below the benchmark value, but its quick ratio was 1.35, which is above the benchmark value.⁶⁸ This single ratio being below its benchmark value in 2009 is not by itself a basis to suspect that Trina Solar was uncreditworthy in 2009 in light of the contrary indication provided by the quick ratio. In 2010, both ratios were well above the benchmarks; 2.36 for the current ratio and 1.88 for the quick ratio. In 2011, the Department finds dispositive proof of creditworthiness other than Trina Solar's ratios based on non-public information.⁶⁹ Finally, we note that, while the Department has previously determined that Trina Solar was uncreditworthy in 2005 and 2007, convertible notes issued by Trina in 2008 were dispositive evidence of its creditworthiness within the meaning of 19 CFR 351.505(a)(4)(ii) in that year.⁷⁰ Thus, because of this intervening finding of creditworthiness in 2008, the previous findings of uncreditworthiness in 2005 and 2007 do not

⁶³ *Id.*

⁶⁴ See SolarWorld letter, "Crystalline Silicon Photovoltaic Products from the People's Republic of China: Trina Creditworthiness Allegation," dated January 9, 2017. (Trina Solar UCW Allegation)

⁶⁵ See Trina Solar UCW Allegation at 5.

⁶⁶ See, *e.g.*, *Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 37122 (June 23, 2003), and accompanying IDM at Comment 5.

⁶⁷ See Trina Solar UCW Allegation.

⁶⁸ *Id.*

⁶⁹ See Trina Solar Preliminary Calculations Memorandum

⁷⁰ See *Solar Cells from the PRC* and accompanying IDM at 55.

provide a basis for initiating an investigation of 2009-2011. For these years, we, thus, find no reasonable basis to believe or suspect that Trina Solar is uncreditworthy based on the evidence submitted by Petitioners.

Accordingly, we have analyzed the information on the record below for 2012-2015 and we preliminarily find that Trina Solar was uncreditworthy during those three years.

We note that our analysis is based on Trina Solar's own financial data submitted in consolidated financial statements and 20-Fs and that Trina Solar did not submit rebuttal information in response to Petitioner's allegations. Nonetheless, the Department plans to issue our standard creditworthiness questionnaires to Trina Solar, providing the opportunity for Trina Solar to submit any additional information regarding the factors enumerated in 19 CFR 351.505(a)(4)(i)(A)-(D). Parties' comments in case and rebuttal briefs on responses to the creditworthiness questionnaire will be taken into consideration for the final results of review.

Receipt by the Firm of Comparable Commercial Long-Term Loans

Trina Solar did not receive what the Department considers to be comparable long-term commercial loans during the years in which we have found the companies to be uncreditworthy, within the meaning of 19 CFR 351.505(a)(4)(i)(A).⁷¹

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

Consistent with past practice, we have placed significant emphasis on low current and quick ratios during the years in question. As explained previously,

{t}hese ratios are highly relevant under 19 CFR 351.505(a)(4)(i)(B)-(C) because they are indicators of a firm's financial health and its ability to meet its costs and fixed financial obligations with cash flow. Unlike some of the other information we have been asked to consider for this analysis, the meaning of these ratios is clear: either the respondents have liquid funds available to cover upcoming obligations, or they do not. If they do not, they have no choice but to accumulate new debt in order to cover existing debt.⁷²

The record reflects that Trina Solar's current and quick ratios were both well below the benchmarks of 2.0 and 1.0 during the period 2012 through 2015.⁷³ During the same period, its

⁷¹ See the Preliminary Calculations Memoranda for a BPI discussion of the lending reported by Trina Solar and the lack of comparable long-term commercial lending relevant under 19 CFR 351.505(a)(4)(i)(A).

⁷² See, e.g., *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*, 7 FR 63788 (October 17, 2012) (*Solar Cells from the PRC*), and accompanying IDM at Comment 17.

⁷³ Current ratios were 1.19, 0.99, 1.01, and 0.99 in 2012, 2013, 2014, and 2015 respectively. Quick ratios were 0.81, 0.60, 0.57, and 0.43. As noted below, these ratios are calculated conservatively, excluding current assets unavailable for current obligations.

debt-to-equity ratios ranged between 2.12 and 3.47, well above the figures for 2006 and 2007.⁷⁴ The increasing debt-to-equity ratios confirm the Department’s reasoning that high current and quick ratios lead to increasing debt levels.

Evidence of the Firm’s Future Financial Position

There is no evidence on the record that would allow the Department to analyze Trina Solar’s future financial position as if it were being viewed during the years in question, such as market studies, country and industry forecasts, and project and loan appraisals prepared prior to loan agreements.

Accordingly, we preliminarily find that Trina Solar was uncreditworthy during the period 2012 through 2015 because it did not receive comparable long-term commercial loans, and it had current, quick, and debt-to-equity ratios that indicate uncreditworthiness during 2012 to 2015. Furthermore, no record evidence contradicts our preliminary determination.

Benchmarks to Determine Adequacy of Remuneration

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.

Land Benchmark

As detailed in previous investigations, the Department cannot rely on the use of so-called “first-tier” and “second-tier” benchmarks to assess the benefits from the provision of land for LTAR in the PRC.⁷⁵ Accordingly, Trina Solar submitted the same 2010 Thailand benchmark information,

⁷⁴ See Trina Solar UCW Allegation at Exhibit 5. The ratios are calculated from Trina Solar’s consolidated financial statements and 20-Fs (which are also consolidated). This is consistent with past practice. See, *e.g.*, *Solar Cells from the PRC*, and accompanying IDM at Comment 17. Arguably, the ratios calculated by Petitioner are too high as they included certain current assets in the numerators that would be unavailable to pay down current liabilities, such as restricted cash, advances to suppliers, and prepaid expenses.

⁷⁵ 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*,

i.e., “Asian Marketview Reports” by CB Richard Ellis (CBRE) that we relied on in calculating land benchmarks in the CVD investigation of *Solar Products from the PRC*.⁷⁶ We initially selected this information in *Laminated Woven Sacks from the PRC* after considering a number of factors, including national income levels, population density, and producers’ perceptions that Thailand is a reasonable alternative to the PRC as a location for Asian production.⁷⁷ In *Solar Cells from the PRC*, we calculated annual land benchmarks covering the years 2002 through 2010, and a monthly industrial rental benchmark for 2010.⁷⁸ We find that these benchmarks are suitable for the preliminary results, adjusted accordingly for inflation to account for benefits received by Trina Solar during the POR.⁷⁹

Input Benchmarks

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

We note that, where possible, we have removed PRC-related pricing data from all of the input benchmarks for these preliminary results for the reasons described below.

Solar Grade Polysilicon

The GOC stated that it was unable to obtain domestic production statistics for solar grade polysilicon, and noted that statistics for the value of polysilicon are not collected on a per product basis, but rather on a per company basis. As such, the GOC stated that the statistics it reported regarding polysilicon may include products other than solar grade polysilicon.⁸⁰

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. As part of the Department’s questionnaire, we requested that the GOC provide information related to PRC SIE involvement in the PRC’s solar grade polysilicon industry. Because the GOC does not track industry information for solar grade polysilicon, the

⁷³ FR 35639 (June 24, 2008) (*Laminated Woven Sacks from the PRC*).

⁷⁶ See Letter from Trina Solar, “Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Benchmark Submission,” dated January 17, 2017 (Trina Solar Benchmark Submission) at Exhibit 8; *see also Solar Products from the PRC* and accompanying IDM at 9.

⁷⁷ 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.

⁷⁸ See *Solar Cells from the PRC* and accompanying IDM at Comment 11.

⁷⁹ See Department Memorandum to the File, “Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China,” dated concurrently with this memorandum (Preliminary Benchmark Memorandum).

⁸⁰ See GOC’s October 11, 2016 QR at 15-16 and 34-35.

information provided is related only to SIE involvement in the PRC's polysilicon industry generally, rather than specific SIE involvement in the solar grade polysilicon industry specifically.⁸¹ While the GOC did provide information with respect to the PRC's polysilicon industry, we find that this information is unreliable with respect to the GOC's solar grade polysilicon industry because it is not specific to solar grade polysilicon.

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

Notwithstanding the regulatory preference for the use of prices stemming from actual transactions in the country, where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative in the hierarchy.⁸² 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 world market solar grade polysilicon prices (tier two) published by Bloomberg, EnergyTrend, Greentech Media, and IHS Inc. (IHS) pursuant to 19 CFR 351.511(a)(2)(ii).⁸³

Solar Glass

As an initial matter, the GOC stated in its questionnaire responses that it does not collect production, consumption, and industry information specific to solar glass, and instead submitted information related to tempered glass, which the GOC stated encompasses solar glass.⁸⁴ As part of the Department's questionnaire, we requested that the GOC provide information related to PRC SIE involvement in the solar glass industry. Because the GOC does not track industry information for solar glass, the information provided is related only to SIE involvement in the tempered glass industry, rather than specific SIE involvement in the solar glass industry.⁸⁵ While the GOC did provide information with respect to the PRC's tempered glass industry, we find that this information is unreliable with respect to the GOC's solar glass industry because it is not specific to solar glass.

Therefore, and as detailed below in the section, "Use of Facts Otherwise Available and Application of Adverse Inferences," we find that necessary information is not available on the record and, pursuant to section 776(a)(1) of the Act, we have determined that it is appropriate to

⁸¹ *Id.*, at 34.

⁸² *See CVD Preamble*, 63 FR at 65377.

⁸³ *See* Letter from SolarWorld, "Crystalline Silicon Photovoltaic Products from the People's Republic of China: Submission of Benchmark Information," dated January 17, 2016. (Petitioner Benchmark Submission) and Trina Solar Benchmark Submission.

⁸⁴ *See* the GOC's October 11, 2016 QR at 76-77.

⁸⁵ *Id.*, at 77-79.

rely on the facts otherwise available in reaching our determination regarding the GOC's involvement in the PRC solar glass market. Where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative in the hierarchy.⁸⁶ 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 glass market leads to significantly distorted solar glass prices in the PRC. Thus, we preliminarily do not find it appropriate to rely on transactions in the PRC as a benchmark for solar glass and are relying instead on a simple average of the world market prices (tier two) published by IHS and the United Nations Comtrade Database (Comtrade), pursuant to 19 CFR 351.511(a)(2)(ii).⁸⁷ The IHS data includes an annual global value specifically for solar glass. The Comtrade data allows for the calculation of monthly averages for tempered glass, a broader category of glass that includes solar glass. Because the Department's practice calls for the use of monthly values in assessing the benefits from the provision of inputs for LTAR, we have averaged the annual IHS value with the monthly Comtrade average unit values to derive monthly benchmarks that reflect, in part, the value for solar glass.

Aluminum Extrusions

In its questionnaire responses, the GOC stated that it does not maintain production statistics in the PRC specifically for aluminum extrusions, and instead provided information for aluminum sections.⁸⁸ As part of the Department's questionnaire, we requested that the GOC provide information related to PRC SIE involvement in the PRC's aluminum extrusions industry. However, because the GOC does not track industry information specifically for aluminum extrusions, the information provided is related only to SIE involvement in the aluminum sections industry, rather than specific SIE involvement in the aluminum extrusions industry.⁸⁹ While the GOC did provide information with respect to the PRC's aluminum sections industry, we find that this information is unreliable with respect to the GOC's aluminum extrusions industry because it is not specific to aluminum extrusions.

Consequently, and as detailed below in the section, "Use of Facts Otherwise Available and Application of Adverse Inferences," we find that necessary information is not available on the record and, pursuant to section 776(a)(1) of the Act, we have determined that it is appropriate to rely on the facts otherwise available in reaching our determination regarding the GOC's involvement in the PRC's aluminum extrusions market. For these preliminary results, as explained below in the section, "Use of Facts Otherwise Available and Adverse Inferences," we are finding that the GOC's involvement in the PRC's aluminum extrusions market leads to significantly distorted aluminum extrusions prices in the PRC. Thus, we preliminarily do not find it appropriate to rely on transactions in the PRC as a benchmark for Trina Solar's purchases of aluminum extrusions, and we are relying on an average of the world market prices (tier two) of aluminum extrusions and aluminum frames compiled by IHS and Comtrade to determine the

⁸⁶ See *CVD Preamble*, 63 FR at 65377.

⁸⁷ See Petitioner Benchmark Submission and Trina Solar Benchmark Submission.

⁸⁸ See the GOC's October 11, 2016 QR at 56.

⁸⁹ *Id.*

subsidy rate for the provision of aluminum extrusions for these preliminary results of review.⁹⁰ Because the Department’s practice calls for the use of monthly values in assessing the benefits from the provision of inputs for LTAR, we have averaged the annual IHS value with the monthly Comtrade average unit values to derive monthly benchmarks that reflect, in part, the value for aluminum extrusions. Because there were no monthly benchmark figures submitted for 2014, we only used the IHS annual figures for that portion of the POR.

Transportation

Petitioner and Trina Solar each provided information to value ocean freight.⁹¹ Petitioner provided international rates for Maersk 40-foot containers, while Trina Solar provided international rates for 20-foot containers. For these preliminary results, we preliminarily determine to rely on an average of this ocean freight data.⁹²

X. USE OF FACTS OTHERWISE AVAILABLE AND APPLICATION OF ADVERSE INFERENCES

Section 776(a) of the Act provides that the Department shall, subject to section 782(d) of the Act, use the “facts otherwise available” if: (1) necessary information is not on the record; or (2) an interested party or any other person withholds information that has been requested; 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; significantly impedes a proceeding; or provides information that cannot be verified as provided by section 782(i) of the Act. 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.

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.⁹³ Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the countervailing duty investigation, a previous administrative review, or other information placed on the record.⁹⁴

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

⁹⁰ See Petitioner Benchmark Submission, and Trina Solar Benchmark Submission.

⁹¹ *Id.*

⁹² See 19 CFR 351.511(a)(2)(ii), “Where there is more than one commercially available world market price, the Secretary will average such prices to the extent practicable, making due allowance for factors affecting comparability.”

⁹³ See section 776(b)(1)(B) of the Act; See also Pub. L. No. 114-27, 129 Stat. 362, the Trade Preferences Extension Act of 2015 (TPEA) (June 29, 2015), section 502(1)(B).

⁹⁴ See also 19 CFR 351.308(d).

practicable, corroborate that information from independent sources that are reasonably at its disposal.⁹⁵ 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.⁹⁶ Further, and under the TPEA, the Department is not required to corroborate any countervailing duty applied in a separate segment of the same proceeding.⁹⁷

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.⁹⁸ 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.⁹⁹

Application of Adverse Facts Available: Input Producers are “Authorities”

We requested information from the GOC regarding the specific companies that produced solar glass, polysilicon, and aluminum extrusions that the Trina 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.¹⁰⁰ In our original questionnaire, we requested detailed information from the GOC that would be needed for this analysis.¹⁰¹ 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,” such as translated copies of capital verification reports and articles of association.¹⁰²

For each producer that the GOC claimed was not majority government-owned and that produced an input purchased by the respondent companies during the POR, we requested information including:¹⁰³

- Capital verification reports, articles of association, share transfer agreements, or financial statements.
- A chart detailing the name and respective ownership level (as a percentage) of each owner of the input producer company, which traced such ownership to the ultimate individual or state owners during the POR.

⁹⁵ See also 19 CFR 351.308(c).

⁹⁶ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. 1 at 870 (1994).

⁹⁷ See section 776(c)(2) of the Act; TPEA, section 502(2).

⁹⁸ See section 776(d)(1) of the Act; TPEA, section 502(3).

⁹⁹ See section 776(d)(3) of the Act; TPEA, section 502(3).

¹⁰⁰ See the Department’s August 22, 2016 Questionnaire to the GOC at the sections II and III.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

- The nature and level of the government entity (*e.g.*, central government ministry, SASAC, central and/or provincial SIE, municipality, township enterprise, Chinese Communist Party (CCP) official, *etc.*).
- Information on whether the CCP maintains a role in selecting and monitoring senior management in these entities.
- A discussion on whether the entity is required to carry out obligations on behalf of the Government and/or the CCP, such as public obligations or services these producer entities are required to render.
- Information identifying any individual owners, members of the board of directors, or senior managers of these producer entities who were Government or CCP officials during the POR.

While the GOC provided information such as business registrations for a number of input producers, it did not provide the articles of association for many input producers, as requested. Further, the GOC provided no information at all regarding the identification of owners, directors, or senior management who were also GOC or CCP officials.¹⁰⁴ It simply stated that there is no central informational database to search for the requested information, and stated that our questions on the CCP's role into the respondent companies' input providers are "irrelevant to this proceeding and do not go to whether the suppliers at issue are 'public bodies' for the purposes of the Department's LTAR analysis."¹⁰⁵

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.¹⁰⁶ The Department requests this information because public information suggests that the CCP exerts significant control over activities in the PRC.¹⁰⁷ The Department previously determined that "available information and record evidence indicates that the CCP

¹⁰⁴ See, *e.g.*, the GOC's October 11, 2016 QR at 22-33.

¹⁰⁵ *Id.* at 22.

¹⁰⁶ See *NSK, Ltd. v. United States*, 919 F. Supp. 442, 447 (CIT 1996) ("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) (stating that "{i}t is Commerce, not the respondent, that determines what information is to be provided").

¹⁰⁷ See Additional Documents Memorandum at Attachment II, which includes Memorandum for Paul Piquado, Assistant Secretary for Import Administration, through Lynn Fischer Fox, Deputy Assistant Secretary for AD/CVD Policy and Negotiation, Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations, and John D McNerney, Chief Counsel for Import Administration, from Shauna Biby, Christopher Cassel, Timothy Hraby, 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 McNerney, Chief Counsel for Import Administration, from Shauna Biby, Christopher Cassel, Timothy Hraby, 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).

meets the definition of the term ‘government’ for the limited purpose of applying the U.S. CVD law to China.”¹⁰⁸ Additionally, publicly available information indicates that Chinese law requires the establishment of CCP organizations “in all companies, whether state, private, domestic, or foreign-invested” and that such organizations may wield a controlling influence in the company’s affairs.¹⁰⁹ 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.¹¹⁰

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.¹¹¹ Instead, the GOC simply stated that “{t}here is no central informational database to search for the requested information on whether any individual owners, members of the board of directors, or senior managers is a Government of CCP official, and the and the industry and commerce administration does not require the companies to provide such information. Therefore, the GOC cannot obtain the information requested by the Department.”¹¹² 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.¹¹³

Because the GOC did not respond to our request for information on this issue, we have no further basis for evaluating the GOC’s claim that the role of the CCP is irrelevant. Thus, the Department finds, as it has in past proceedings, that the information requested regarding the role of CCP officials in the management and operations of the input producers, and in the management and operations of the producers’ owners, is necessary to our determination of whether these producers are authorities within the meaning of section 771(5)(B) of the Act. In

¹⁰⁸ *Id.*, at CCP Memorandum at 33.

¹⁰⁹ *Id.*, at Public Body Memorandum at 35-36, and sources cited therein.

¹¹⁰ 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.

¹¹¹ 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.”

¹¹² See GOC’s October 11, 2016 QR at 31.

¹¹³ 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.”

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 proceedings that such information is relevant to our analysis of whether input producers are "authorities" under the statute.

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.¹¹⁴ Further, 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.¹¹⁵ Therefore, for certain domestic producers of solar grade polysilicon, aluminum extrusions and solar glass purchased by the Trina Solar companies during the POR, we are relying upon AFA to find that these producers 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, Solar Glass, and Aluminum Extrusions Industries Results in the Significant Distortion of Prices

Solar Grade Polysilicon

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.¹¹⁶ The GOC also reported that there is no specific solar 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 The GOC explained that the National Bureau of Statistics of China (SSB) is the government agency that is responsible for nationwide statistics, and is relied upon as the source for domestic production.¹¹⁸

With respect to the information that the GOC did provide in its questionnaire response, the GOC provided information regarding SIE involvement in the polysilicon industry based solely on information collected from the SSB, stating that there were 62 producers of polysilicon during the POR.¹¹⁹ However, we find the information in the GOC's response to be unreliable for our purposes because it is not specific to solar grade polysilicon. Therefore, we preliminarily

¹¹⁴ See sections 776(a)(1) and (a)(2)(A) of the Act.

¹¹⁵ See section 776(b) of the Act.

¹¹⁶ See GOC's October 11, 2016 QR at 53.

¹¹⁷ *Id.* at 34.

¹¹⁸ *Id.* at 15.

¹¹⁹ *Id.* at 33.

determine that necessary information regarding the solar grade polysilicon industry in the PRC 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.

Public documents from the record of the solar products investigation, placed on the record of this review by the Department, contain 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.”¹²⁰
- 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).¹²¹
- A Polysilicon Productions Data article explaining that the GOC maintains “Polysilicon Industry Access Standards,” outlining rules and restrictions that prospective solar grade polysilicon manufacturers in the PRC must adhere to.¹²²

Aluminum Extrusions

In response to our questions concerning SIE involvement in the production of aluminum extrusions, the GOC provided no information specific to aluminum extrusions – instead reporting that there is no specific SSB category on aluminum extrusions, only on the broader category of aluminum sections.¹²³

With respect to the information that the GOC did provide in its questionnaire response, the GOC provided information regarding SIE involvement in the aluminum industry based solely on information collected from the SSB, stating that there were 1,366 producers of aluminum in 2014 and 1,388 producers of aluminum in 2015.¹²⁴ However, we find the information in the GOC's response to be unreliable for our purposes because it is not specific to aluminum extrusions. Therefore, we preliminarily determine that necessary information regarding the aluminum extrusions industry in the PRC is not available on the record and, pursuant to section 776(a)(1) of

¹²⁰ 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 56, 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 review concurrently with this Decision Memorandum.

¹²¹ 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 review concurrently with this Decision Memorandum.

¹²² See Polysilicon Productions Data, placed on the record of this review concurrently with this Decision Memorandum.

¹²³ *Id.* at 54.

¹²⁴ *Id.* at 55.

the Act, we will rely on the facts otherwise available in reaching our determination on the GOC's involvement in the PRC aluminum extrusions market, and whether this government involvement significantly distorts the prices in this industry in the PRC.

With respect to the GOC's involvement in the PRC's aluminum extrusions industry and how it affects pricing, public information from *Solar Cells from the PRC First AR* indicates that the GOC manages the PRC's aluminum industry, with a focus on the provision of low cost aluminum products at each stage of the value chain in order to provide the cheapest possible inputs for users on the higher end of the chain. In a paper circulated among several of the relevant government ministries and organizations, the PRC has explicitly stated its target to:

“(i)increase advanced design and manufacturing capacity of aluminum processing equipment, and eliminate backward equipment with low-level technology and bad product quality” as well as giving, “priorities to the development of production technologies and equipment for high value-added products, including high-grade aluminum plate, strip, foil, large-sized rail-use aluminum alloy products, and etc.; popularize new high-efficiency low-cost, low-energy-consumption, short-process, and environmentally friendly aluminum processing technologies and techniques.”¹²⁵

Moreover, record information from *Solar Cells from the PRC First AR* also contains information indicating that GOC-owned or -controlled enterprises account for a large proportion of aluminum extrusions that are produced in the PRC.¹²⁶ The record information from *Solar Cells from the PRC First AR* discussed above has been placed on the record of this review by the Department.¹²⁷

Solar Glass

In response to our questions concerning its role in the production of solar glass, the GOC provided no information specific to solar glass – instead reporting that there is no specific SSB category on solar glass, only on the broader category of tempered glass.¹²⁸

With respect to the information that the GOC did provide in its questionnaire response, the GOC

¹²⁵ See, e.g., *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 41003 (July 14, 2015) (*Solar Cells from the PRC First AR*) at 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,” (February 27, 2014) (Petitioner's Aluminum Extrusions NSA) at Exhibit 2, “Notice of Guidelines on Accelerating the Adjustment of Aluminum Industry Structure,” Fa Gai Yun Xing (2006) No. 589, placed on the record of this review concurrently with this Decision Memorandum.

¹²⁶ See Petitioner's Aluminum Extrusions NSA at Exhibit 3, “Aluminum Corporation of China 2010 Annual Report, Excerpts;” see also Petitioner's Aluminum Extrusions NSA at Exhibit 4, “Aluminum Corporation of China Website Excerpt;” see also Petitioner's Aluminum Extrusions NSA at Exhibit 5, “U.S-China Economic and Security Review Commission, An Analysis of State-Owned Enterprises and State Capitalism in China,” (October 26, 2011). We have placed these documents on the instant record dated concurrently with this Decision Memorandum.

¹²⁷ See Memorandum from the Department “Placing Information on the Record” dated concurrently with this memorandum.

¹²⁸ *Id.* at 76.

provided information regarding SIE involvement in the solar glass industry based solely on information collected from the SSB, stating that there were 366 producers of glass in 2014 and 394 producers of glass in 2015.¹²⁹ However, we find the information in the GOC's response to be unreliable for our purposes because it is not specific to solar glass. Therefore, we preliminarily determine that necessary information regarding the solar glass industry in the PRC 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 glass market, and whether this government involvement significantly distorts the prices in this industry in the PRC.

The Department has previously determined that the GOC's involvement in the solar glass industry has had distortionary effects on pricing,¹³⁰ and that assessment is supported by public and business-proprietary information on the record of this review. In particular, a report details the high levels of subsidization of the Chinese glass industry and how that subsidization has led to overcapacity.¹³¹ Further, the record indicates that there has been little import penetration of solar glass into the Chinese economy.¹³² Finally, as discussed above, all of Trina Solar's solar glass purchases came from producers that we are preliminarily determining to be authorities, which suggests dominant government presence in the market.

In the absence of further information, the record information discussed above suggests that prices in the PRC's solar grade polysilicon, solar glass, and aluminum extrusions industries are significantly distorted. Prices are distorted if they are higher or lower than what would be a normal price in a competitive market without government intervention such as limiting access to an industry and financing, which reduces competition. When government intervention in the marketplace actively manages the amount of supply through means such as capacity restrictions, limitations on access to the industry and subsidization of uneconomic production, it prevents a price from achieving its competitive equilibrium level, and it can result in a significant distortion of prices in the market. Thus, based on the information detailed above, and the unreliability of the information submitted by the GOC with respect to these input markets, we find that the facts otherwise available on the record of this case support a determination that the GOC's involvement in the PRC's solar grade polysilicon, solar glass, and aluminum extrusions industries significantly distorts the prices in these industries. As such, we are not relying on domestic prices in these markets in the PRC as "tier one" benchmarks pursuant to 19 CFR 351.511(a)(2)(i). The use of external benchmarks is consistent with our past practice.¹³³

¹²⁹ *Id.* at 77.

¹³⁰ *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2013*, 81 FR 46904 (July 19, 2016) (*Solar Cells from the PRC Second AR*) and accompanying IDM at 5-6.

¹³¹ *See Solar Products from the PRC Petition, Volume III* at Exhibit III-95.

¹³² While the GOC was unable to provide data concerning domestic production specific to solar glass, it was able to provide data regarding imports of solar glass. The GOC reported only 1,397 metric tons of solar glass were imported into the PRC during 2015. *See, e.g.*, GOC's October 11, 2016 questionnaire response at 78. In addition, BPI data on the record also indicates a lack of import penetration into the PRC. *See* Trina Solar's October 11, 2016 at Exhibit 19; *see also* Petitioner Benchmark Submission at Exhibit 8.

¹³³ *See, e.g., Countervailing Duty Investigation of 1,1,1,2 Tetrafluoroethane from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 62594 (October 20, 2014), and accompanying IDM at 14 and 27.

Consequently, we are relying on world market prices (tier two) as our benchmarks for the provision of solar grade polysilicon, solar glass, and aluminum extrusions for LTAR programs, pursuant to 19 CFR 351.511(a)(2)(ii). The calculation of these input benchmarks is discussed above.

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 CVD 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 October 11, 2016 response, the GOC did not adequately address these questions.¹³⁴

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,"¹³⁵ 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."¹³⁶

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.¹³⁷ When asked to provide original Provincial Price Proposals (with English translations) for each province in which Trina Solar had locations, the GOC replied that, "The proposals of this kind are drafted by the provincial governments and submitted to the NDRC. They are working documents for the NDRC's review only. The GOC is therefore unable to provide them with this response."¹³⁸

¹³⁴ See GOC's October 11, 2016 QR at 97-103.

¹³⁵ *Id.* at 101.

¹³⁶ *Id.*

¹³⁷ *Id.* at 100-101.

¹³⁸ *Id.* at 99.

Consequently, we preliminarily determine that necessary information is not on the record of this review because the GOC withheld information that was requested of it and, thus, that the Department must rely on “facts available” in making our preliminary determination.¹³⁹ 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.¹⁴⁰ The GOC did not adequately answer our questions, nor did the GOC ask for additional time to gather and provide such information. Consequently, an adverse inference is warranted in the application of facts available.¹⁴¹ 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.¹⁴² 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 Trina Solar is Specific to the Solar Products Industry

As discussed below in the section “Programs Preliminarily Determined to be Countervailable,” the Department is investigating the provision of land-use rights programs for LTAR. We requested information from the GOC regarding the program.

Our review of the GOC’s initial questionnaire response shows that the GOC did not respond fully to certain sections regarding these programs. Specifically, we asked the GOC to identify all instances in which it provided land or land-use rights to the mandatory respondents during the AUL, to answer questions regarding the eligibility for and the actual use of the assistance provided, and to provide at least one completed application and approval package (*i.e.*, agreements for the company respondents’ land-use rights).¹⁴³ Rather than responding directly to these questions, the GOC instead referred the Department to various PRC land laws and to Trina Solar’s questionnaire responses.¹⁴⁴

The information requested regarding the provision of land and land-use rights to Trina Solar and the basis for which they were provided is crucial for our analysis to determine whether an alleged subsidy constitutes a financial contribution and is specific. This type of information has been provided and verified in previous investigations.¹⁴⁵ Thus, we preliminarily find that the information requested, but not provided, was available to the GOC.

¹³⁹ *See* section 776(a)(1) and (a)(2)(A) of the Act.

¹⁴⁰ *See* section 776(b)(1) of the Act.

¹⁴¹ *Id.*

¹⁴² *See* section 776(b)(4) of the Act.

¹⁴³ *See* the GOC’s October 11, 2016 QR at 87-97.

¹⁴⁴ *Id.*, at 91-92.

¹⁴⁵ *See, e.g., See Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 72 FR 71360, 71363 (December 17, 2007) and accompanying Preliminary Determination Memorandum (PDM) at page 10 (“we examined these companies’ land-use rights

Pursuant to section 776(a) of the Act, we preliminarily determine that information regarding the provision of land and land-use rights is not on the record of this review. Furthermore, given that the GOC has provided information regarding the provision of land and land-use rights in previous proceedings, we preliminarily determine that the GOC has the necessary information that was requested of it and, thus, that the GOC withheld this information within the meaning of section 776(a)(2)(A) of the Act. Accordingly, the Department must rely on “facts otherwise available” in issuing its preliminary determination, pursuant to section 776(a)(2)(A) of the Act. Moreover, because the GOC withheld information that it is able to provide, we preliminarily find that the GOC did not act to the best of its ability to comply with our request for information. Consequently, we find that an adverse inference is warranted in the application of facts available pursuant to section 776(b) of the Act. In drawing an adverse inference, we find that the GOC’s provision of land-use rights constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act.

Application of AFA: Export Buyer’s Credits

The Department has determined that the use of AFA is warranted in determining the countervailability of the Export Buyer’s Credit program because the GOC did not provide the requested information needed to allow the Department to analyze this program fully. In its questionnaire responses, the GOC claimed that none of the U.S. customers of the respondent companies used export buyer’s credits from the China Export-Import Bank (China Ex-Im Bank) during the POR.¹⁴⁶ The GOC also stated that “for a business contract to be supported by the export buyer’s credit, the contract amount must be more than 2 million U.S. dollars.”¹⁴⁷ Information on the record indicates that the GOC revised this program in 2013 to eliminate this minimum requirement.¹⁴⁸ In response to our request that it provide the documents pertaining to the 2013 program revision, the GOC refused to provide them, stating that the “The Export-Import Bank of China has confirmed to the GOC that its 2013 revised Administrative Measures are internal to the bank, non-public, and not available for release.”¹⁴⁹ Through its response to the Department’s supplemental questionnaire, the GOC refused to provide the requested information or any information concerning the 2013 program revision, which is necessary for the Department to analyze how the program functions.

Moreover, information on the record also indicates that the China Ex-Im Bank may disburse Export Buyer’s Credits directly or through a third-party partner and/or correspondent banks.¹⁵⁰ We asked the GOC to confirm whether it extended credit through third-party banks. Instead of providing a response stating whether third party banks play a role in the disbursement/settlement of export buyer’s credits, the GOC replied that “Since none of the U.S. customers of the respondent used the Export Buyer’s Credit from EX-IM Bank during the POI, this question is not

agreements and discussed the agreements with the relevant government authorities”) (unchanged in the *OTR Tires from the PRC Final Determination*).

¹⁴⁶ See the GOC’s October 11, 2016 QR at 104

¹⁴⁷ See the GOC’s October 11, 2016 QR at 105.

¹⁴⁸ See Department Memorandum, “Placing Information on the Record” (October 21, 2016).

¹⁴⁹ See the GOC’s November 4, 2016 Supplemental QR at 1-2.

¹⁵⁰ See Department Memorandum, “Placing Information on the Record,” (October 21, 2016).

applicable.”¹⁵¹ The Department also requested that the GOC provide a list of all third-party banks involved in the disbursement/settlement of Export Buyer’s Credits. Instead of providing the information requested, the GOC again advised us that our question is not applicable.¹⁵²

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

As noted above, the GOC has not answered our questions with respect to this program. As a result, the GOC has not provided information that would permit us to make a determination as to whether this program constitutes a financial contribution and whether this program is specific. Because the GOC has not cooperated to the best of its ability in response to the Department’s specific information requests, we determine, as AFA, that this program constitutes a financial contribution and meets the specificity requirements of the Act.¹⁵³

Moreover, the GOC has not provided information with respect to whether the China Ex-Im Bank limits the provision of Export Buyer’s Credits to business contracts exceeding USD 2 million. In addition, the GOC has not provided information on whether it uses third-party banks to disburse/settle Export Buyer’s Credits. Such information is critical to understanding how Export Buyer’s Credits flow to/from foreign buyers and the China Ex-Im Bank. The nature of the GOC’s responses to those information requests further indicates that any attempt to request the information again from the GOC would be futile. Absent the requested information, the GOC’s and respondent company’s claims of non-use of this program are not verifiable.¹⁵⁴ Therefore, we preliminarily find that the GOC has not cooperated to the best of its ability and, as AFA, find that Trina Solar used and benefited from this program, despite its claims of non-use and certifications of non-use from its customers.¹⁵⁵

¹⁵¹ See the GOC’s November 4, 2016 Supplemental QR at 1-3.

¹⁵² *Id.*

¹⁵³ See *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People’s Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35308 (June 2, 2016) and accompanying IDM at “Use of Facts Otherwise Available and Adverse Inferences.”

¹⁵⁴ The Court of International Trade recently sustained our finding that “only the GOC, and in particular the PRC Ex-Im, could provide and verify the information needed to determine whether a benefit was conferred to Respondents during the POI from the Export Buyer’s Credit Program.” See *Changzhou Trina Solar Energy Co. v. United States*, Slip Op. 16-121, at 33-34 (CIT December 30, 2016).

¹⁵⁵ In prior proceedings, we have accepted certifications of non-use from a respondent company and its consumers in certain limited situations. See, e.g., *Solar Cells from the PRC Second AR* and accompanying IDM at 11. However, the program was apparently amended in 2013, and, as discussed above, the GOC has not provided information regarding the program’s amendments. Accordingly, we preliminarily determine that it is not appropriate to accept Trina Solar’s certifications of non-use because we do not know enough about the program to verify those certifications of non-use. See Trina Solar October 11 response at 78-80, as well as Exh. 27 (certificate of non-use of buyer’s credits by Trina Solar’s U.S. affiliate).

Under the new section 776(d) of the Act, the Department may use as AFA a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, the Department is not required for purposes of 776(c), or any other purpose, to estimate what the countervailable subsidy rate would have been if the non-cooperating interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.¹⁵⁶

Consistent with section 776(d) of the Act and our established practice, we selected the highest calculated rate for the same or similar program as AFA.¹⁵⁷ When selecting rates in an administrative review, we first determine if there is an identical program from any segment of the proceeding and use the highest calculated rate for the identical program (excluding *de minimis* rates). If no such identical program exists, we then determine if there is a similar/comparable program (based on the treatment of the benefit) within the same proceeding and apply the highest calculated rate for the similar/comparable program, excluding *de minimis* rates. Where there is no comparable program, we apply the highest calculated rate from any non-company specific program in any CVD case involving the same country, but we do not use a rate from a program if the industry in the proceeding cannot use that program.¹⁵⁸ On this basis, we are applying an AFA rate of 0.58 percent *ad valorem*, the rate determined for Trina Solar for preferential loans and directed credit during the original investigation of this proceeding.¹⁵⁹ In accordance with section 776(c)(2) of the Act, we do not need to corroborate this rate, because this countervailing duty rate was applied in a separate segment of this proceeding.

Application of AFA: Other Subsidies

Trina Solar reported receiving assistance with respect to our question, “Did your government (or entities owned directly, in whole or in part, by your government or any provincial or local government) provide, directly or indirectly, any other forms of assistance to your company between January 1, 2005, and the end of the POR?”¹⁶⁰ In its responses to our question regarding this government assistance reported by the company respondents, the GOC stated that it has cooperated with the Department regarding requests for information, and citing Article 11.2 of the WTO Agreement on Subsidies and Countervailing Measures, stated that no reply to questions on these other programs are warranted or required.¹⁶¹

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 Trina Solar. First, necessary

¹⁵⁶ See section 776(d)(3) of the Act.

¹⁵⁷ See, e.g., *Certain Frozen Warmwater Shrimp from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Shrimp from the PRC*) IDM at 13; see also *Essar Steel Ltd. v. United States*, 753 F.3d 1368, 1373-1374 (Fed. Cir. 2014) (upholding “hierarchical methodology for selecting an AFA rate”).

¹⁵⁸ See *Shrimp from the PRC* IDM at 13-14.

¹⁵⁹ See *Solar Products from the PRC* and accompanying IDM at 24-25.

¹⁶⁰ See Trina Solar’s October 11, 2016 QR at 84.

¹⁶¹ See the GOC’s October 11, 2016 QR at 115-116.

information regarding whether these programs provide a financial contribution within the meaning of section 771(5)(D) of the Act, and whether these programs are specific within the meaning of section 771(5A) of the Act, is not on the record of this review.¹⁶² Further, 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.¹⁶³ Because the GOC expressly declined to provide the requested information, we find that the GOC failed to respond to the best of its ability regarding our questions on other, reported subsidies provided by the GOC, and 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, using AFA, these other subsidies reported by Trina Solar provide a financial contribution and are specific within the meaning of 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 Trina Solar.

XI. ANALYSIS OF PROGRAMS

A. Programs Preliminarily Determined to Be Countervailable

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, using AFA, typically finds that a financial contribution exists under the alleged program and that the program is specific.¹⁶⁴ 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.¹⁶⁵ Thus, we relied on the usage information reported by Trina Solar, as it provided data on the inputs it consumed, and the prices that it paid for these inputs, during the POR.¹⁶⁶

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

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 section 771(E)(ii) equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans.¹⁶⁷ The Department further determined that there is a program of preferential policy lending specific to the renewable energy industry, including solar products, within the meaning of section 771(5A)(D)(i) of the Act. There is no new information on the record that would cause us to

¹⁶² See section 776(a)(1) of the Act.

¹⁶³ See section 776(a)(2)(A) of the Act.

¹⁶⁴ 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."

¹⁶⁵ See, generally Trina Solar's October 11, 2016 QR.

¹⁶⁶ See *Solar Products from the PRC* and accompanying IDM at 24-25.

¹⁶⁷ *Id.*

reconsider this determination. Therefore, we continue to find that this program provides a countervailable subsidy.

In its questionnaire responses in this segment of the proceeding, the GOC stated that this program does not exist and that no loans to any of the respondents were issued pursuant to a policy lending program. The GOC further claimed that if an industrial policy existed, it had “no connection to or effect on the decision of any bank to issue loans to any respondent companies,” and, thus, those loans did not constitute a countervailable subsidy.¹⁶⁸ However, the GOC provided no documentation in support of these assertions that would call into question the Department’s conclusions from the investigation.

Trina Solar reported having loans outstanding from banks in the PRC during the POR under this program.¹⁶⁹ 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 preliminarily determine a countervailable *ad valorem* subsidy rate of 0.03 percent for Trina Solar.

Provision of Inputs for LTAR

1. Provision of Solar Grade Polysilicon for LTAR

In this administrative review, the GOC indicated that certain producers of solar grade polysilicon that provided inputs to the company respondents are majority-owned by the government.¹⁷⁰ As explained in the Public Body Memorandum, majority state-owned enterprises in the PRC possess, exercise, or are vested with governmental authority.¹⁷¹ The GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector. Therefore, we preliminarily determine that these entities constitute “authorities” within the meaning of section 771(5)(B) of the Act and that company respondents received a financial contribution from them in the form of a provision of a good, pursuant to section 771(5)(D)(iii) of the Act.¹⁷²

Further, for the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are also basing our determination regarding the government’s provision of solar grade polysilicon, in part, on AFA. Specifically, we determine as AFA that certain producers of the solar grade polysilicon purchased by Trina Solar are “authorities” within

¹⁶⁸ See the GOC’s October 11, 2016 QR at 2.

¹⁶⁹ See Trina Solar’s October 11, 2016 QR at Exhibit 11.

¹⁷⁰ See, e.g., the GOC’s October 11, 2016 QR at Exhibit II.E.1.

¹⁷¹ See Public Body Memorandum.

¹⁷² See, e.g., *Certain Oil Country Tubular Goods from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 52301 (September 3, 2014) (*OCTG from the PRC 2012 AR*) and accompanying IDM at 48-50.

the meaning of section 771(5)(B) of the Act and, as such, that the provision of solar grade polysilicon constitutes a financial contribution under section 771(5)(D)(iii) of the Act.¹⁷³

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

In response to our questions concerning specificity, the GOC stated, “There are a vast number of uses for solar grade polysilicon, and the type of consumers that may purchase polysilicon is highly varied within China’s economy.”¹⁷⁴ However, the GOC provided no information concerning the industries consuming polysilicon (solar grade or otherwise) or the amounts purchased by those individual industries. In the original investigation, 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.”¹⁷⁵ Because the GOC provided no new information on the industries that consume polysilicon in the PRC in this segment of the proceeding, we are relying on the prior statements of the GOC in finding that use of polysilicon is limited to specific industries within the meaning of section 771(5A)(D)(iii)(I) of the Act, namely, the solar and semiconductor industries.¹⁷⁶

Finally, we preliminarily determine that a benefit is being conferred because the polysilicon is being provided for LTAR. As discussed above under the “Subsidies Valuation Information” section, the Department is relying on world market prices—an average of the solar grade polysilicon world market prices published by Bloomberg, EnergyTrend, Greentech Media, and IHS—as a benchmark to measure the extent of the benefit conferred for Trina 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).¹⁷⁷ Regarding delivery charges, we included ocean freight and the inland freight charges that would be incurred to deliver polysilicon to Trina Solar’s production facilities. We added import duties and VAT as reported by the GOC.¹⁷⁸ 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 Trina 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 Trina Solar in the amount of the difference between the benchmark

¹⁷³ See, e.g., the GOC’s October 11, 2016 QR at Exhibit II.E.1.

¹⁷⁴ See the GOC’s October 11, 2016 QR at 16.

¹⁷⁵ See *Solar Products from the PRC* and accompanying IDM at 19-20.

¹⁷⁶ 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. See *CVD Questionnaire, Section I*.

¹⁷⁷ The Department concludes that these data do not already include delivery charges. See Preliminary Benchmark Memorandum.

¹⁷⁸ See GOC’s October 11, 2016 QR at 38.

prices and the prices paid by Trina Solar.¹⁷⁹ We divided the total benefits by the appropriate total sales denominator, as discussed in the “Subsidies Valuation Information” section above, and in the Preliminary Calculation Memoranda. On this basis, we preliminarily determine a countervailable *ad valorem* subsidy rate of 0.26 percent for Trina Solar.

2. Provision of Solar Glass for LTAR

The Department determined this program to be countervailable in the investigation based, in part, on AFA.¹⁸⁰ In its questionnaire responses in this review, the GOC indicated that certain producers of solar glass that provided inputs to the company respondents are majority-owned by the government.¹⁸¹ As explained in the Public Body Memorandum, majority state-owned enterprises in the PRC possess, exercise, or are vested with, governmental authority.¹⁸² The GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector. Therefore, we preliminarily determine that these entities constitute “authorities” within the meaning of section 771(5)(B) of the Act and that company respondents received a financial contribution from them in the form of a provision of a good, pursuant to section 771(5)(D)(iii) of the Act.¹⁸³

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 certain producers of the solar glass purchased by Trina Solar are “authorities” within the meaning of section 771(5)(B) of the Act and, as such, that the provision of solar glass constitutes a financial contribution under section 771(5)(D)(iii) of the Act.

In response to our questions concerning specificity, the GOC stated: “{t}here are a vast number of uses for solar glass. The industries that purchase/use solar glass are not limited, and the solar panel industry in China is not a disproportionate or predominant consumer of solar glass . . .”¹⁸⁴ However, the GOC provided no information concerning amounts purchased by individual industries. In the investigation of this *CVD Order* with respect to this program, we relied on information demonstrating that solar glass has lower iron content than other types of glass, in order to allow the transmission of more sunlight, and that solar glass has a particular thickness of between three and four millimeters.¹⁸⁵ We continue to find that solar glass is a particular type of flat and rolled glass most suitable for particular purposes and customers. Furthermore, in the investigation of this order, the GOC identified only the solar industry as using solar glass.¹⁸⁶ Based on this, and the lack of new information provided in this segment of the proceeding, we preliminarily determine that the provision of solar glass is limited to specific industries under section 771(5A)(D)(iii)(I) of the Act, namely, the solar industry.

¹⁷⁹ See 19 CFR 351.511(a).

¹⁸⁰ See *Solar Products from the PRC Investigation* and accompanying IDM at 22-23.

¹⁸¹ See, e.g., the GOC’s October 11, 2016 QR at Exhibit II.E.24.

¹⁸² See Public Body Memorandum.

¹⁸³ See, e.g., *OCTG from the PRC 2012 AR* and accompanying IDM at 48-50.

¹⁸⁴ See the GOC’s October 11, 2016 QR at 168.

¹⁸⁵ See *Solar Products from the PRC Investigation* and accompanying IDM at 71.

¹⁸⁶ See *Solar Products from the PRC Investigation* and accompanying IDM at 71.

Finally, a benefit is conferred because the solar glass is being provided for LTAR. As discussed above under the “Subsidies Valuation Information” section, the Department is relying on the solar glass benchmarks published by IHS and the United Nations Comtrade Database. The Department adjusted the benchmark price to include delivery charges, import duties, and VAT pursuant to 19 CFR 351.511(a)(2)(iv).¹⁸⁷ We added import duties and VAT as reported by the GOC.¹⁸⁸ 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 Trina Solar for LTAR during the POR and that a benefit exists in the amount of difference between the benchmark prices and the prices paid by Trina Solar.¹⁸⁹ We divided Trina Solar’s total benefits by the appropriate total sales denominator, as discussed in the “Subsidies Valuation Information” section above, and in the Preliminary Calculation Memoranda. On this basis, we preliminarily determine a countervailable *ad valorem* subsidy rate of 10.17 percent for Trina Solar.

3. Provision of Aluminum Extrusions for LTAR

The Department determined this program to be countervailable in the first administrative review based, in part, on AFA.¹⁹⁰ 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 Trina Solar are “authorities” within the meaning of section 771(5)(B) of the Act and,¹⁹¹ 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 “There are a vast number of uses for aluminum extrusions. The industries that purchase/use aluminum extrusions are not limited, and the solar panel industry in China is not a disproportionate or predominant consumer of aluminum extrusions. . . .”¹⁹² However, in the original investigation of this proceeding, the GOC reported that aluminum extrusions were found to be specific as it was mainly used in six industries – construction, transportation, mechanical and electrical equipment industry, consumer durable goods, electricity, and “other” industries.¹⁹³ As neither the GOC nor Trina Solar have offered evidence that the industries using aluminum extrusions are not limited in number, the

¹⁸⁷ The Department concludes that these data do not already include delivery charges. *See* Preliminary Benchmark Memorandum.

¹⁸⁸ *See* the GOC’s October 11, 2016 QR at 82.

¹⁸⁹ *See* 19 CFR 351.511(a).

¹⁹⁰ *See Solar Products from the PRC Investigation* and accompanying IDM at 20.

¹⁹¹ We note that the record does not indicate that the GOC maintains a majority ownership interest in the producer of aluminum extrusions that provided inputs to the company respondents during the POR.

¹⁹² *See* GOC’s October 11, 2016 QR at 44.

¹⁹³ *See Solar Products from the PRC*, and accompanying IDM at 68-69. The CIT sustained this finding as supported by substantial evidence. *See Changzhou Trina Solar Energy Co. v. United States*, Slip Op. 16-121, at 29-30 (CIT December 30, 2016).

Department continues to find the provision of aluminum of extrusions for LTAR to be specific under 771(5A)(D)(iii)(I) of the Act.

Finally, a benefit is conferred to the extent that aluminum extrusions are being provided for LTAR. As discussed above under the “Subsidies Valuation Information” section, we are basing our aluminum extrusions benchmark on an average of the world market prices of aluminum extrusions and aluminum frames compiled by IHS and Comtrade. We adjusted the benchmark price to include delivery charges, import duties, and VAT pursuant to 19 CFR 351.511(a)(2)(iv).¹⁹⁴ We added import duties and VAT as reported by the GOC.¹⁹⁵ 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 Trina Solar’s reported purchase prices for individual transactions, including VAT and delivery charges.

Based on this comparison, we preliminarily determine that aluminum extrusions were provided to Trina Solar for LTAR during the POR and that a benefit exists in the amount of difference between the benchmark prices and the prices paid by these company respondents.¹⁹⁶ We divided Trina 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 *ad valorem* subsidy rate of 1.59 percent for Trina Solar.

4. Provision of Electricity for LTAR

In the original investigation, the Department determined this program to be countervailable based, in part, on the application of AFA.¹⁹⁷ 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 Trina Solar received a countervailable subsidy from electricity provided for LTAR.

As described above in detail, the GOC did not provide certain information requested regarding its provision of electricity to the company respondents and, as a result, we determine, as 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 Trina Solar’s reported consumption volumes and rates paid. We compared the rates paid by Trina 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

¹⁹⁴ The Department concludes that these data do not already include delivery charges. *See* Preliminary Benchmark Memorandum.

¹⁹⁵ *See* the GOC’s October 11, 2016 QR at 60.

¹⁹⁶ *See* 19 CFR 351.511(a).

¹⁹⁷ *See Solar Products from the PRC*, and accompanying IDM at 21-22.

category. We then calculated the total benefit during the POR for Trina Solar by summing the difference between the benchmark prices and the prices paid by Trina Solar.

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.¹⁹⁸ This benchmark reflects an adverse inference, which we drew as a result of the GOC’s failure to cooperate by not acting to the best of its ability to provide requested information about its provision of electricity in this review.¹⁹⁹

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 *ad valorem* subsidy rate of 0.82 percent for Trina Solar.

5. Provision of Land for LTAR

In the original investigation, the Department determined this program to be countervailable based, in part, on the application of AFA.²⁰⁰ 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 Trina 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 the company respondents was made by “authorities” within the meaning of section 771(5)(B) of the Act and thus constitutes a financial contribution within the meaning of section 771(5)(D) of the Act, and is also specific pursuant to section 771(5A)(D) of the Act.

In order to calculate the benefit, we first multiplied the Thailand industrial land benchmarks discussed above under the “Land Benchmark” section, by the total area of Trina Solar’s countervailed tracts. We then subtracted the price actually paid for each tract to derive the total unallocated benefit. 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

¹⁹⁸ See the GOC’s October 11, 2016 QR at II.E.35.

¹⁹⁹ See “Application of AFA: Provision of Electricity for LTAR” section, above.

²⁰⁰ See *Solar Products from the PRC*, and accompanying IDM at 23.

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 the preliminary subsidy *ad valorem* subsidy rate of 0.25 percent for Trina Solar.

Tax Benefit Programs

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

In the original investigation, the Department determined this program to be countervailable.²⁰¹ 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 Products 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.²⁰² Article 95 of Regulation 512 provides that, if eligible research expenditures do not “form part of the intangible assets value,” an additional 50 percent deduction from taxable income may be taken on top of the actual accrual amount. Where these expenditures form the value of certain intangible assets, the expenditures may be amortized based on 150 percent of the intangible assets costs.

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.

Trina Solar reported benefitting from this program during the POR through the respondent Changzhou Trina Solar Energy Co., Ltd. as well as the affiliated company TST.²⁰³ To calculate the benefit from this program, we treated the tax deduction as a recurring benefit, consistent with 19 CFR 351.524(c)(1).²⁰⁴ To compute the amount of the tax savings, we calculated the amount of tax each respondent company would have paid absent the tax deductions. We then divided the tax savings by the appropriate total sales denominator for each respondent company.

On this basis, we preliminarily determine a countervailable *ad valorem* subsidy rate of 0.06 percent for Trina Solar.

2. Preferential Tax Programs from High or New Technology Enterprises (HNTEs)

²⁰¹ See *Solar Products from the PRC*, and accompanying IDM at 25.

²⁰² *Id.*; see also GOC Questionnaire Response at Exhibit B.2.

²⁰³ See Trina Solar’s October 11, 2016 QR at 18.

²⁰⁴ See *Solar Products from the PRC*, and accompanying IDM at 26, “Tax Offsets for Research and Development (R&D) under the Enterprise Income Tax Law.”

In the original investigation, the Department determined this program to be countervailable.²⁰⁵ This program was established on January 1, 2008, by the Enterprise Income Tax Law of the PRC. Companies recognized as HNTEs are eligible for a reduced income tax rate of 15 percent in lieu of the regular rate of 25 percent.²⁰⁶

The Department determined in the investigation that the income tax reduction is a financial contribution in the form of revenue forgone by the government, and it provides a benefit to the recipients in the amount of the tax savings, pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).²⁰⁷ The Department also determined 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.²⁰⁸ 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 this administrative review, Trina Solar reported benefits from this program.²⁰⁹ To calculate the benefit from this program, we treated the income tax reductions claimed by Trina Solar as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we compared the reduced tax rate (15 percent) to the rate that would have otherwise been paid by the company (the standard income tax rate of 25 percent). We multiplied the difference by the taxable income of the company, then divided that amount by the appropriate total sales denominator. On this basis, we determine a countervailable *ad valorem* subsidy rate of 0.00 for Trina Solar.

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

The Department found this program to be countervailable in the original investigation.²¹⁰ According to “Trial Administrative Measures on Purchase of Domestically Produced Equipment by FIEs (GUOSHUIFA (1999) No. 171)”, the GOC refunds the VAT on purchases of certain Chinese produced equipment to FIEs if the equipment is used for certain encouraged projects.²¹¹ There is no new information on the record of the instant review that would cause us to reconsider this determination.

The Department continues to find that the rebates provided under this program are a financial contribution in the form of revenue foregone by the GOC, and they provide a benefit to the Trina Solar in the amount of the tax savings.²¹² 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.

²⁰⁵ See *Solar Products from the PRC*, and accompanying IDM at 26-28.

²⁰⁶ See GOC’s October 11, 2016 QR at 6-8. See also *Solar Products from the PRC*, and accompanying IDM at 26.

²⁰⁷ See *Solar Products from the PRC*, and accompanying IDM at 27.

²⁰⁸ *Id.*

²⁰⁹ See Trina Solar’s October 11, 2016 QR at 20.

²¹⁰ See *Solar Products from the PRC* and accompanying IDM at 28, “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.

²¹¹ *Id.*

²¹² See section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1).

Trina Solar reported using this program.²¹³ Since this indirect tax is provided for, or tied to, the capital structure or capital assets of a firm, as reported by Trina Solar, the Department treated this tax as a non-recurring benefit and allocated the benefit to the firms over the AUL.²¹⁴ 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 rebates in the year of receipt, consistent with 19 CFR 351.524(a). For those years in which the VAT rebates were greater than or equal to 0.5 percent, we allocated the rebate amount over the AUL. We used the discount rates described above in the “Subsidies Valuation Information” section to calculate the amount of the benefit allocable to the POI.

On this basis, we preliminarily determine a countervailable *ad valorem* subsidy rate of 0.00 percent for Trina Solar.

Export Buyer’s Credits

The Department determined this program to be countervailable in the original investigation based on AFA.²¹⁵ Through this program, the Ex-Im Bank provides loans at preferential rates for the purchase of exported goods from the PRC. As explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are determining, relying upon AFA, that this program provides a countervailable subsidy and that Trina Solar used this program during the POR. On this basis, we determine a countervailable subsidy rate of 0.58 percent *ad valorem*, the rate determined for Trina Solar for preferential loans and directed credit during the original investigation of this proceeding.²¹⁶

Grant Program

Golden Sun Demonstration Program

The Department determined this program to be countervailable in the original investigation.²¹⁷ This program was established in 2009 under Article 20 of the Renewable Energy Law to provide assistance to firms in the construction of photovoltaic electricity-generation projects. As detailed in the “Notice Concerning the Implementation of the Golden Sun Demonstration Project,” (CaiJian {2009} No. 397), the GOC allocated renewable energy funds to support the implementation of the Golden Sun demonstration program.²¹⁸ There is no new information on the record that would cause us to reconsider our determination from the original investigation.

As a result, we continue to find that grants from this program provide a financial contribution pursuant to section 771(5)(D)(i) of the Act and a benefit, in the amount of the grant provided, pursuant to 19 CFR 351.504(a). We continue to find that grants from this program are specific

²¹³ See, Trina Solar’s October 11, 2016 QR at 23.

²¹⁴ See 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).

²¹⁵ See *Solar Products from the PRC* and accompanying IDM at 30.

²¹⁶ *Id.*, at 24-25.

²¹⁷ *Id.*, at 17-18.

²¹⁸ *Id.*

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.

Trina Solar reported receiving grants from this program.²¹⁹ 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 preliminarily determine a countervailable *ad valorem* subsidy rate of 0.03 percent for Trina Solar.

Other Subsidy Programs

Trina Solar reported that they received various grants during the AUL.²²⁰ 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 the company respondents are countervailable based upon AFA. The majority of the grants received by Trina Solar do not pass the “0.5 percent test” described in CFR 351.524(b)(2), and thus are allocated to the year of receipt.²²¹ However, Trina Solar received several grants that were expensed during the POR. We calculated an *ad valorem* subsidy rate of 0.15 percent for Trina Solar for these grants.²²²

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

Tax Benefit Programs

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

²¹⁹ See Trina Solar’s October 11, 2016 QR at 24.

²²⁰ See e.g., Trina Solar’s October 11, 2016 QR at 84.

²²¹ See Preliminary Calculations Memoranda.

²²² *Id.*

Other Tax Programs

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

Programs Preliminarily Determined to Be Not Countervailable During the POR

Export Credit Subsidies

Export Credit Insurance from SINOSURE

The GOC and Trina Solar were insured by SINOSURE during the POR.²²³ 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.²²⁴ The GOC provided a chart summarizing SINOSURE's overall long-term operating costs and losses for 2006 through 2015 in response to the Department's questionnaire.²²⁵ Our review of this chart and SINOSURE's 2014 and 2015 Annual Reports²²⁶ 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.

XII. VERIFICATION

Petitioner has requested that the Department conduct verifications in this administrative review.²²⁷ Section 782(i)(3)(B) of the Act provides that the Department will conduct verifications in administrative reviews where (1) a verification is timely requested by an interested party, and (2) no verification has been conducted during the two immediately preceding reviews (unless "good cause" for verification is shown). 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 submitted in this administrative review.

XIII. 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 its public announcement.²²⁸ Case briefs may

²²³ See the GOC's October 11, 2016 QR at 108; see also Trina Solar's October 11, 2016 QR at 80.

²²⁴ See 19 CFR 351.520(a)(1).

²²⁵ See the GOC's October 11, 2016 QR at 114.

²²⁶ *Id.*, at Exhibit G.1.

²²⁷ See Letter from SolarWorld, "Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Request for Verification," dated July 15, 2016.

²²⁸ See 19 CFR 351.224(b).

be submitted to ACCESS at a date to be determined by the Department, 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.²²⁹ 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.²³⁰

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.²³¹ 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, 1401 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.²³² Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time,²³³ on the due dates established above.

Parties will have seven days after the publication of this memorandum to rebut, clarify, or correct information that the Department has placed on the record concurrently with this memorandum.²³⁴

²²⁹ See 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1). Interested parties will be notified through ACCESS regarding the deadline for submitting case briefs.

²³⁰ See 19 CFR 351.309(c)(2) and 351.309(d)(2).

²³¹ See 19 CFR 351.310(c).

²³² See 19 CFR 351.303(b)(2)(i).

²³³ See 19 CFR 351.303(b)(1).

²³⁴ See 19 CFR 351.301(c)(4).

XIV. CONCLUSION

We recommend that you approve the preliminary findings described above.



Agree

Disagree

2/28/2017

X *Ronald K. Lorentzen*

Signed by: RONALD LORENTZEN

Ronald K. Lorentzen
Assistant Secretary
for Enforcement and Compliance

Appendix

Non-Selected Companies Under Review

1. Chint Solar (Zhejiang) Co., Ltd.
2. Hefei JA Solar Technology Co., Ltd.
3. Perlight Solar Co., Ltd.
4. Risen Energy Co., Ltd.
5. Shanghai JA Solar Technology Co., Ltd.
6. Shenzhen Sungold Solar Co., Ltd.
7. Sunny Apex Development Limited