



C-570-980
Administrative Review
POR: 01/01/2017-12/31/2017
Public Document
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January 31, 2020

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results of the
Administrative Review of the Countervailing Duty Order on
Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled
Into Modules, from the People's Republic of China; 2017

I. SUMMARY

The Department of Commerce is conducting an administrative review of the countervailing duty (CVD) order on crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells) from the People's Republic of China (China), covering the period of review (POR) January 1, 2017 through December 31, 2017. The mandatory respondents are JA Solar Technology Yangzhou Co., Ltd. (JA Solar) and Risen Energy Co., Ltd. (Risen Energy). This is the sixth administrative review of the CVD order on solar cells from China. We preliminarily find that JA Solar and Risen Energy received countervailable subsidies during the POR.

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

II. BACKGROUND

On December 7, 2012, we published in the *Federal Register* the CVD order on solar cells from China.¹ On December 3, 2018, Commerce published a notice of opportunity to request an

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

administrative review of the *CVD Order* for the POR January 1, 2017 through December 31, 2017.² Between December 21 and 31, 2018, we received timely requests to conduct an administrative review of the *CVD Order* from the following interested parties: Shenzhen Topray Solar Co., Ltd.; Canadian Solar International Ltd.; Risen Energy; Jinko Solar Co., Ltd. (Jinko Solar); JA Solar; Trina Solar Energy Co., Ltd. (formerly Changzhou Trina Solar Energy Co., Ltd.) (Trina Solar); Suniva Inc. (Suniva); Shanghai BYD Co., Ltd. and BYD Shangluo Industrial Co., Ltd. (collectively, the BYD Companies); SolarWorld Americas Inc. (now known as SunPower Manufacturing, Oregon LLC (SunPower)), the petitioner in the underlying CVD investigation; and Chint Solar Zhejiang Co., Ltd. (Chint Solar). On March 14, 2019, we initiated an administrative review of the *CVD Order* covering the POR.³ The *Initiation Notice* identified 68 individually named companies.

In the *Initiation Notice*, we stated that in the event we limit the number of respondents for individual examination, we intended to select respondents based on CBP entry data for U.S. imports of solar cells during the POR.⁴ On April 2, 2019, we released the Original CBP Entry Data for U.S. imports of solar cells covering the POR to interested parties under an Administrative Protective Order, and invited interested parties to submit comments regarding the Original CBP Entry Data and our respondent selection methodology.⁵

On April 12, 2019, Shenzhen Glory Industries Co., Ltd. (Shenzhen Glory), a Chinese exporter of solar cells, timely certified that it made no U.S. sales of solar cells during the POR.⁶ Our review of the record leads us to conclude that there is no record information that contradicts Shenzhen Glory's claim. On April 15, 2019, Risen Energy questioned the accuracy of the Original CBP Entry Data with respect to Risen Energy's POR entries.⁷ On April 22, 2019, JA Solar *et al.* timely commented on Risen Energy's Comments on Original CBP Entry Data, and suggested that we issue quantity and value questionnaires and select respondents based on the responses to these questionnaires.⁸

On April 30, 2019, SunPower timely withdrew its request for reviews on Chint Solar; Shenzhen Topray Solar Co., Ltd. (Topray Solar); and Zhejiang Sunflower Light Energy Science & Technology Limited Liability Company (Zhejiang Sunflower).⁹ On May 9, 2019, Chint Solar

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 83 FR 62293 (December 3, 2018).

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 9297 (March 14, 2019) (*Initiation Notice*).

⁴ See *Initiation Notice* at the section, "Respondent Selection."

⁵ See Memorandum, "Administrative Review of the Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China; Release of U.S. Customs and Border Protection Data for Respondent Selection," dated April 2, 2019 (Original CBP Entry Data).

⁶ See Shenzhen Glory's Letter, "Crystalline Silicon Photovoltaic Cells from the People's Republic of China – No Sales Certification," dated April 12, 2019 (Shenzhen Glory's Certification of No Shipments).

⁷ See Risen Energy's Letter, "Crystalline Silicon Photovoltaic Cells from the People's Republic of China: Comments on CBP Data," dated April 15, 2019 (Risen Energy's Comments on Original CBP Entry Data).

⁸ See JA Solar's Letter, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China: Rebuttal Comments on CBP Data," dated April 22, 2019.

⁹ See SunPower's Letter, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Withdrawal of Request for Administrative Review," April 30, 2019 (SunPower's

requested that we reject Suniva's request for an administrative review on the grounds that Suniva lacked the requisite standing to file the request.¹⁰ On May 22, 2019, Suniva timely withdrew its request for review in its entirety.¹¹ On May 24, 2019, Chint Solar timely withdrew its request for a review of its own POR entries, and requested that we rescind the review of Chint Solar because all other parties requesting a review of Chint Solar had also withdrawn their requests for a review of Chint Solar.¹²

On June 12, 2019, the following companies timely withdrew their requests for administrative reviews of their own entries: JA Solar,¹³ Jinko Solar,¹⁴ the BYD Companies,¹⁵ and Topray Solar.¹⁶ However, our review of the record indicates that SunPower's request for reviews on JA Solar, Jinko Solar, and the BYD Companies is still outstanding.¹⁷

On September 27, 2019, and as a result of Risen Energy's Comments on Original CBP Entry Data, we placed on the record the results of a revised query of CBP's database to account for

Request for Withdrawal of Review); *see also* SunPower's Letter, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Request for Administrative Review," dated December 31, 2018 (SunPower's Request for Review).

¹⁰ *See* Chint Solar's Letter, "Request that the Department Reject the Administrative Review Request Filed by Suniva Inc. in the Administrative Review of the Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China," dated May 9, 2019; *see also* Suniva's Letter, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China: Request for Administrative Review," dated December 31, 2018 (Suniva's Request for Review).

¹¹ *See* Suniva's Letter, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China: Withdraw of Request for Administrative Review," dated May 22, 2019 (Suniva's Request for Withdrawal of Review); *see also* Suniva's Letter, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China: Response to Request to Reject Suniva's Request for Administrative Review," dated May 22, 2019.

¹² *See* Chint Solar's Letter, "Chint Solar Withdrawal of Review Request: Administrative Review of the Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules (C-570-980) (POR: 01/01/17 – 12/31/17)," dated May 24, 2019 (Chint Solar's Request for Withdrawal of Review).

¹³ *See* JA Solar's Letter, "Administrative Review of the Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China: Withdrawal of Request for Review," dated June 12, 2019; *see also* JA Solar's Letter, "Administrative Review of the Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China: Request for Review," dated December 31, 2018.

¹⁴ *See* Jinko Solar's Letter, "Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules: Jinko's Withdrawal of Request for Administrative Review," dated June 12, 2019; *see also* Jinko Solar's Letter, "Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules: Jinko's Request for Administrative Review," dated December 31, 2018.

¹⁵ *See* BYD Companies' Letter, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Withdrawal of Request for Review – 2017 CVD Review Period," dated June 12, 2019; *see also* BYD Companies' Letter, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Requests for Review – 2017 CVD Review Period," dated December 31, 2018.

¹⁶ *See* Topray Solar's Letter, "Administrative Review of the Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China: Withdrawal of Request for Review," dated June 12, 2019; *see also* Topray Solar's Letter, "Administrative Review of the Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China: Request for Review," dated December 21, 2018.

¹⁷ *See* SunPower's Request for Withdrawal of Review; *see also* SunPower's Request for Review.

possible variations in the spelling of company names and company suffixes and invited interested parties to comment on the results of the Revised CBP Entry Data.¹⁸

On October 1, 2019, we extended the deadline for these preliminary results until no later than January 31, 2010.¹⁹

On October 4, 2019, Trina Solar timely submitted comments on the Revised CBP Entry Data, requesting that Commerce follow the “General Rule” as provided by section 777A(e)(1) of the Tariff Act of 1930, as amended (the Act), and determine an individual countervailable subsidy rate for each exporter subject to this administrative review.²⁰ Trina Solar also requested that should Commerce determine that following the exception to the General Rule is prudent in this administrative review, in accordance with section 777A(e)(2)(A)(ii), then Commerce should select Trina Solar as a mandatory respondent among the exporters accounting for the largest volume of the subject merchandise from the exporting country that can reasonably be examined.²¹ Finally, Trina Solar requested to be selected as a voluntary respondent as provided under 19 CFR 351.204(d), should Commerce limit the number of exporters to be individually examined as warranted under section 777A(e)(2) of the Act.²²

On November 5, 2019, we selected JA Solar and Risen Energy, the two Chinese producers/exporters of subject merchandise accounting for the largest volume of subject entries during the POR based on CBP entry data, as the mandatory company respondents in this administrative review.²³ On this same day, we sent a questionnaire to the Government of China (GOC) seeking information regarding alleged subsidies, and informing the GOC that it was responsible for forwarding copies of this questionnaire to JA Solar and to Risen Energy.²⁴

Between November 19, 2019, and January 6, 2020, the GOC, JA Solar, Risen Energy, and Trina Solar timely responded to our CVD Questionnaire. On January 13, 2020, JA Solar, Risen Energy, and SunPower each timely submitted benchmark data.²⁵ On January 14, 2020, we

¹⁸ See Memorandum, “Administrative Review of the Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China; Release of Revised U.S. Customs and Border Protection Data for Respondent Selection,” dated September 27, 2019 (Revised CBP Entry Data).

¹⁹ See Memorandum, “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review,” dated October 1, 2019.

²⁰ See Trina Solar’s Letter, “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People’s Republic of China: Comment on Respondent Selection and Request for Voluntary Respondent Treatment,” dated October 4, 2019.

²¹ *Id.*

²² *Id.*

²³ See Memorandum, “Administrative Review of the Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China; Respondent Selection,” dated November 5, 2019.

²⁴ See Commerce’s Letter to the GOC, “Countervailing Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China; Countervailing Duty Questionnaire,” dated November 5, 2019 (CVD Questionnaire).

²⁵ See JA Solar’s Letter, “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People’s Republic of China: Benchmark Submission,” dated January 13, 2020 (JA Solar’s Benchmarks); *see also*

informed counsel to Trina Solar that we are denying Trina Solar's request for individual examination as a voluntary respondent.²⁶ On January 23, 2020, JA Solar submitted comments on SunPower's Benchmarks arguing, essentially, that we should disregard SunPower's Benchmarks in their entirety.²⁷ Other than Risen Energy's statement in support of JA Solar's Benchmarks,²⁸ no party commented on the benchmark information submitted by JA Solar. Finally, on January 27, 2020, JA Solar submitted comments for us to consider for these preliminary results.²⁹

III. RESCISSION OF ADMINISTRATIVE REVIEW, IN PART

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation of the requested review.

Chint Solar; Topray Solar; and Zhejiang Sunflower:

Record information demonstrates that there are no outstanding requests for review regarding China Solar, Topray Solar, and Zhejiang Sunflower.³⁰ Because all parties that requested a review of these companies timely withdrew their requests for a review, we are rescinding the review with respect to these three companies pursuant to 19 CFR 351.213(d)(1).

Shenzhen Glory:

We received a timely filed certification of no-shipments from Shenzhen Glory.³¹ To confirm Shenzhen Glory's statement, we issued a no-shipments inquiry to CBP with regard to imports of subject merchandise with respect to imports of subject merchandise from Shenzhen Glory during the POR.³² On January 14, 2020, CBP responded to our no-shipments inquiry regarding Shenzhen Glory stating that it found no shipments of subject merchandise from China that were produced and/or exported by Shenzhen Glory during the POR.³³ As there is no evidence on the record that Shenzhen Glory made entries of subject merchandise into the United States during

Risen Energy's Letter, "Crystalline Silicon Photovoltaic Cells from the People's Republic of China: Benchmark Submission," dated January 13, 2020 (Risen Energy's Benchmark's) (Risen Energy submitted information to convert its glass benchmark and supported the benchmark sources submitted by JA Solar); and SunPower's Letter, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Submission of Benchmark Information," dated January 13, 2020 (SunPower's Benchmarks).

²⁶ See Memorandum, "Administrative Review of the Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China; Telephone Call with Counsel to Trina Solar Co., Ltd.," dated January 21, 2020; see also Memorandum, "Countervailing Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Selection of Voluntary Respondent," dated concurrently with this Preliminary Decision Memorandum (PDM).

²⁷ See JA Solar's Letter, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China: Rebuttal Benchmark," dated January 23, 2020.

²⁸ See Risen Energy's Benchmarks.

²⁹ See JA Solar's Letter, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Pre-Preliminary Comments," dated January 27, 2020.

³⁰ See SunPower's Request for Withdrawal of Review; see also SunPower's Request for Review; Suniva's Request for Withdrawal of Review; Suniva's Request for Review; and Chint Solar's Request for Withdrawal of Review.

³¹ See Shenzhen Glory's Certification of No Shipments.

³² See CBP message no. 0014406, dated January 14, 2020.

³³ See Memorandum, "Crystalline Silicon photovoltaic cells from the People's Republic of China (C-570-980)," dated January 21, 2020.

the POR, we are rescinding the review with respect to Shenzhen Glory, in accordance with 19 CFR 351.213(d)(3).

IV. NON-SELECTED COMPANIES UNDER REVIEW

The statute and Commerce's regulations do not directly address the establishment of rates to be applied to companies not selected for individual examination where Commerce limits its examination in an administrative review pursuant to section 777A(e)(2) of the Act. However, Commerce 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.

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 for these companies on a weighted-average of the subsidy rates calculated for JA Solar and Risen Energy (and their cross-owned companies), using their publicly-ranged sales data for exports of subject merchandise to the United States during the POR. For a list of these non-selected companies, please see the Appendix to this PDM.

V. SCOPE OF THE ORDER

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

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

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

Excluded from the scope of this order are thin film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS). Also excluded from the scope of this order are crystalline silicon photovoltaic cells, not exceeding 10,000mm² in surface area, that are permanently integrated into a consumer good whose function is other than power generation and that consumes the electricity generated by the integrated crystalline silicon photovoltaic cell. Where more than one cell is permanently

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

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

Merchandise covered by this order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 8501.61.0000, 8507.20.80, 8541.40.6015, 8541.40.6020, 8541.40.6025, 8541.40.6030, 8541.40.6035, 8541.40.6045, and 8501.31.8000.³⁴ 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 CHINA

On October 25, 2007, Commerce published its final determination on coated free sheet paper from China, finding 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.³⁵

Commerce affirmed its decision to apply the CVD law to China in numerous subsequent determinations.³⁶ Furthermore, on March 13, 2012, Public Law 112-99 was enacted which confirms that Commerce has the authority to apply the CVD law to countries designated as non-market economies under section 771(18) of the Act, such as China.³⁷ The effective date of the enacted legislation makes clear that this provision applies to this proceeding.³⁸

VII. DIVERSIFICATION OF CHINA'S ECONOMY

Concurrently with this decision memorandum, Commerce is placing the following excerpts from the *China Statistical Yearbook* from the National Bureau of Statistics of China on the record of this investigation:³⁹ Index Page; Table 14-7: Main Indicators on Economic Benefit of State-

³⁴ See Memorandum, "Request from Customs and Border Protection to Update the ACE AD/CVD Case Reference File; Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China (C-570-980)," dated August 6, 2018. This memorandum references adding the additional HTSUS subheadings, 8541.40.6015, 8541.40.6025, 8541.40.6035, and 8541.40.6045.

³⁵ See *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS from China*), and accompanying Issues and Decision Memorandum (IDM) at Comment 6.

³⁶ 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.

³⁷ Section 1(a) is the relevant provision of Public Law 112-99 and is codified at section 701(f) of the Act.

³⁸ See Public Law 112-99, 126 Stat. 265 §1(b).

³⁹ See Memorandum, "Additional Documents Memorandum," dated concurrently with this PDM.

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 China. The industrial sector in China alone is comprised of 37 listed industries and economic activities, indicating the diversification of the economy.

VIII. SUBSIDIES VALUATION

Allocation Period

Commerce normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise. Commerce finds the AUL in this proceeding to be 10 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's Class Life Asset Depreciation Range System. No interested party has challenged the use of a 10-year AUL.

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

In accordance with 19 CFR 351.525(b)(6)(i), Commerce normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provide additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent. Further, 19 CFR 351.525(c) provides that benefits from subsidies provided to a trading company which exports subject merchandise shall be cumulated with benefits provided to the firm producing the subject merchandise that is sold through the trading company, regardless of affiliation.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of another corporation in essentially the same ways it can use its own assets. This standard will normally be met where there is a majority voting interest between two corporations, or through common ownership of two (or more) corporations.⁴⁰ In certain circumstances, a large minority voting interest (for example, 40 percent) may also result in cross-ownership.⁴¹ The Court of International Trade (the CIT) upheld Commerce's authority to attribute subsidies based on whether a company could use

⁴⁰ See, e.g., *Countervailing Duties*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

⁴¹ *Id.*

or direct the subsidy benefits of another company in essentially the same ways it could use its own subsidy benefits.⁴²

JA Solar

JA Solar reported 35 affiliated companies that are producers of subject merchandise or provided goods or services used in the production of subject merchandise:⁴³

1. Shanghai JA Solar Technology Co., Ltd.;
2. JA (Hefei) Renewable Energy Co., Ltd.;
3. Hefei JA Solar Technology Co., Ltd.;
4. JA Solar Investment China Co., Ltd.;
5. JA Solar Technology Yangzhou Co., Ltd.;
6. Jing Hai Yang Semiconductor Material (Donghai) Co., Ltd.;
7. Donghai JingAo The Solar Energy Science and Technology Co., Ltd.;
8. Solar Silicon Valley Electronic Science and Technology Co., Ltd.;
9. Jingwei Electronic Materials Co., Ltd.;
10. Hebei Yujing Electronic Science and Technology Co., Ltd.;
11. Solar Silicon Peak Electronic Science and Technology Co., Ltd.;
12. Beijing Jinfeng Investment Co., Ltd.;
13. Jinglong Technology Holdings Co., Ltd.;
14. JingAo Solar Co., Ltd.;
15. Ningjin Songgong Electronic Materials Co., Ltd.;
16. Jinglong Industry and Commerce Group Co., Ltd.;
17. Ningjin Guiguang Electronic Investment Co., Ltd.;
18. Ningjin County Jingyuan New Energy Investment Co., Ltd.;
19. Hebei Jinglong Fine Chemicals Co., Ltd.;
20. Ningjin Sunshine New Energy Co., Ltd.;
21. Hebei Jinglong Sunshine Equipment Co., Ltd.;
22. Hebei Jingle Optoelectronic Technology Co., Ltd.;
23. Hebei Ningjin Songgong Semiconductor Co., Ltd.;
24. Ningjin Jingxing Electronic Material Co., Ltd.;
25. Ningjin Jingfeng Electronic Materials Co., Ltd.;
26. Ningjin Saimei Ganglong Electronic Materials Co., Ltd.;
27. Hebei Ningtong Electronic Materials Co., Ltd.;
28. Ningjin Changlong Electronic Materials Manufacturing Co. Ltd.;
29. JA Solar (Xingtai) Co., Ltd.;
30. Xingtai Jinglong Electronic Material Co., Ltd.;
31. Xingtai Jinglong PV Materials Co., Ltd.;
32. Taicang Juren PV Material Co., Ltd.;
33. JA PV Technology Co., Ltd.;
34. Ningjin Longxin Investment Co., Ltd.; and

⁴² See *Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

⁴³ See JA Solar's Letter, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Affiliated Companies Response," dated November 25, 2019 (JA Solar's Affiliation Response), at 3 and Exhibit 3.

35. Ningjin Jinglong PV Industry Investment Co., Ltd.

Our review of JA Solar's chart of corporate structure and the business activities for these companies leads us to conclude that these reported affiliated companies satisfy Commerce's cross-ownership criteria as described at 19 CFR 351.525(b)(6)(vi).⁴⁴ As a result, we preliminarily determine that the 35 companies reported by JA Solar are cross-owned in accordance with 19 CFR 351.525(b)(6)(vi). Because the information leading us to preliminarily determine that the companies reported by JA Solar are cross-owned is business proprietary in nature, our cross-ownership analysis is set forth in a separate memorandum.⁴⁵ For JA Solar's reported cross-owned 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 JA Solar's reported cross-owned input suppliers, we are attributing the subsidies received by these input suppliers to the combined sales of the input and downstream products produced by the input supplier and the downstream producer (excluding intercompany sales), pursuant to 19 CFR 351.525(b)(6)(iv).⁴⁶

Risen Energy

Risen Energy reported that it is a publicly-listed company and that the shareholders and share percentages are subject to constant change.⁴⁷ According to Risen Energy, the shareholders of Risen Energy with ownership over five percent during the POR were: (1) Mr. Lin Haifeng (29.09 percent); (2) Mr. Li Zongsong (10.22 percent); and (3) an investment fund that owns 5.11 percent.⁴⁸ Risen Energy also reported that Mr. Haifeng was the "actual controlling party of Risen {Energy}" during the POR.⁴⁹ Risen Energy also provided information stating that it "identified a company as cross-owned if Risen {Energy} or its subsidiaries owned 50% shares of the company; or, even if the shares are less than 50%, it still owns the controlling percentage of the company's shares,"⁵⁰ and provided questionnaire responses on behalf of these companies. Based on the information provided by Risen Energy, we preliminarily find Risen Energy to be cross-owned, pursuant to 19 CFR 351.525(b)(6)(iv), among and across the companies listed below, as Risen Energy, and as Mr. Haifeng as the "actual controlling party" of Risen Energy, can direct the individual assets of these corporations in essentially the same ways it can use its own assets. These companies are:

1. Risen Energy Co., Ltd.;
2. Changzhou Sveck Photovoltaic New Material Co., Ltd.;
3. Changzhou Sveck New Material Technology Co., Ltd.;

⁴⁴ See JA Solar's Affiliation at Exhibits 1 and 2. The information in these exhibits are business proprietary in nature and are not available for public summary.

⁴⁵ See Memorandum, "Administrative Review of the Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Preliminary Calculations Memorandum for JA Solar Technology Yangzhou Co., Ltd.," dated concurrently with this PDM (JA Solar's Preliminary Calculations Memorandum).

⁴⁶ *Id.*

⁴⁷ See Risen Energy's Letter, "Crystalline Silicon Photovoltaic Cells from the People's Republic of China: Section III Identifying Affiliates," dated November 25, 2019 (Risen Energy's Affiliations Response), at 4.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* at 5 and Exhibit 1.

4. JiuJiang Shengchao Xinye Technology Co., Ltd.;
5. Jiangsu Sveck New Material Co., Ltd.;
6. Ninghai Risen Energy Power Development Co., Ltd.;
7. Risen (Luoyang) New Energy Co., Ltd.;
8. Risen (Ningbo) Electric Power Development Co., Ltd.;
9. Risen (Wuhai) New Energy Co., Ltd.;
10. Zhejiang Boxin Investment Co., Ltd.; and
11. Zhejiang Twinsel Electronic Technology Co., Ltd.

For Risen Energy’s reported cross-owned 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 suppliers, we are attributing subsidies received by the input suppliers to the combined sales of the input and downstream products produced by the input supplier and downstream producer, pursuant to 19 CFR 351.525(b)(6)(iv).⁵¹

Risen Energy’s Unaffiliated Reporting Companies

On November 12, 2019, Risen Energy requested that we exempt certain reporting obligations related to certain unaffiliated processors/producers with respect to our CVD Questionnaire.⁵² In its request, Risen Energy explained that it only had exports of solar modules to the United States during the POR, and that it did not export solar cells. Risen Energy stated that it obtained the solar modules that it exported to the United States from three channels: 1) solar modules that were self-produced by Risen Energy; 2) solar modules that were processed by unaffiliated companies in China from solar cells and other parts that were provided by Risen Energy in a “back-to-back” arrangement; and 3) solar modules that were supplied and produced by unaffiliated solar module producers in China.⁵³ Risen Energy provided information indicating that the modules supplied by four of these unaffiliated Chinese solar module producers accounting for a minority of Risen Energy’s POR sales to the United States and requested that we exempt Risen Energy from providing questionnaire responses on behalf of these four companies as, according to Risen Energy, is our established practice.⁵⁴ Risen stated that it would

⁵¹ See Memorandum, “Administrative Review of the Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Preliminary Calculations Memorandum for Risen Energy Co., Ltd.,” dated concurrently with this PDM (Risen Energy’s Preliminary Calculations Memorandum). The preliminary calculations memorandums for the company respondents are hereinafter referred to collectively as the Preliminary Calculations Memoranda.

⁵² See Risen Energy’s Letter, “Crystalline Silicon Photovoltaic Cells from the People’s Republic of China: Exclusion Request,” dated November 12, 2019 (Risen Energy’s Exclusion Request).

⁵³ *Id.*

⁵⁴ *Id.* (citing, e.g., *Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination*, 84 FR 39798 (August 12, 2019)); see also *Countervailing Duty Investigation of 1,1,1,2-Tetrafluoroethene from the People’s Republic of China: Preliminary Affirmative Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 79 FR 21895 (April 18, 2014), and accompanying PDM at 10, unchanged in *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,

try its best to obtain the cooperation in responding to our CVD Questionnaire with respect to certain unaffiliated producers accounting for the largest percentage of its U.S. POR exports.⁵⁵ No interested party commented on Risen Energy’s Exclusion Request.

After examining Risen Energy’s Exclusion Request, and the information provided therein, we determined that questionnaire responses for certain unaffiliated producers were not required; however, we requested that Risen Energy provide complete questionnaire responses on behalf of certain producers that accounted for the largest percentage of Risen Energy’s U.S. POR exports as identified by Risen Energy.⁵⁶ On December 30, 2019, and January 6, 2020, Risen Energy submitted responses to our CVD Questionnaire on behalf of the certain unaffiliated producers as we identified in our Response to Risen Energy’s Exclusion Request.⁵⁷

With respect to these unaffiliated suppliers that supplied Risen Energy with modules that Risen Energy (a producer and exporter of subject merchandise) exported to the United States during the POR, while section 701(a)(1) of the Act directs Commerce to account for all countervailable subsidies provided “with respect to the manufacture, production, or export of a class or kind of merchandise imported . . . into the United States,” that does not mean that Commerce may presume the pass through of benefits received by unaffiliated input suppliers. No interested party submitted an upstream allegation, as set out in 19 351.523(a), in this review. Accordingly, in the absence of an allegation or initiation of such an allegation, Commerce did not investigate upstream subsidies for these preliminary results. Thus, Commerce lacks a basis to attribute subsidies to the solar modules supplied by Risen Energy’s unaffiliated suppliers to Risen Energy.⁵⁸

Non-Responding Cross-Owned Affiliates

Our CVD Questionnaire instructed the company respondents that they must provide a complete questionnaire response for all cross-owned affiliates that meet one of the following criteria:

- the cross-owned company produces the subject merchandise;
- the cross-owned company is a holding company or a parent company with its own operations (of your company);

2014); and *Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Preliminary Affirmative Determination* 82 FR 19657 (April 26, 2017), and accompanying PDM at 14.

⁵⁵ See Risen Energy’s Exclusion Request at 8.

⁵⁶ See Commerce’s Letter to Risen Energy, “Administrative Review of the Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Response to Exclusion Request Submitted by Risen Energy Co., Ltd., dated December 2, 2019 (Response to Risen Energy’s Exclusion Request).

⁵⁷ See Risen Energy’s Letter, “Crystalline Silicon Photovoltaic Cells from the People’s Republic of China: Section III Questionnaire Response,” dated December 30, 2019 regarding Unaffiliated Supplier I; *see also* Risen Energy’s Letter, “Crystalline Silicon Photovoltaic Cells from the People’s Republic of China: Section III Questionnaire Response,” dated January 6, 20{20}” regarding Unaffiliated Supplier II.

⁵⁸ See, e.g., *Certain Softwood Lumber Products from Canada: Final Results of Countervailing Duty Expedited Review*, 84 FR 32121 (July 5, 2019), and accompanying IDM at Comment 5.

- 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.

JA Solar and Risen Energy each identified certain affiliates for which a questionnaire response is not required because these companies did not meet any of Commerce’s criteria for providing a response. Based on our examination of the information provided on the record by the respondents to support their claims,⁵⁹ we preliminarily find that in accordance with 351.525(b), these companies do not fall under our attribution rules such that we would attribute any subsidies they may have received.

Denominators

When selecting an appropriate denominator for use in calculating the *ad valorem* subsidy rate, Commerce considers the basis for the respondents’ receipt of benefits under each program. As discussed in further detail below under “Programs Preliminarily Determined to be Countervailable,” where the program has been found to be countervailable as a domestic subsidy, we used the recipient’s total sales as the denominator (or, when appropriate, the total combined sales of the cross-owned affiliates, as described above). Where the program has been found to be contingent upon export activities, we used the recipient’s total export sales as the denominator. All sales used in our net subsidy rate calculations are net of intra-company sales and inter-company sales between the responding cross-owned companies. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs described below are explained in further detail in the Preliminary Calculations Memoranda prepared for this preliminary review.⁶⁰

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

We are examining loans received by the respondents from Chinese policy banks and state-owned commercial banks (SOCBs), as well as non-recurring, allocable subsidies.⁶¹ The derivation of the benchmark interest rates and discount rates used to measure the benefit from these subsidies are discussed below.

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, Commerce uses comparable commercial loans reported by the company as a benchmark.⁶² If the firm did not have any comparable commercial loans during the period, Commerce’s regulations provide that we “may use a national average interest rate for comparable commercial loans.”⁶³

⁵⁹ See JA Solar’s Affiliation Response at Exhibit 2; see also Risen Energy’s Affiliation Response at Exhibit 1.

⁶⁰ See Preliminary Calculations Memoranda.

⁶¹ See 19 CFR 351.524(b)(1).

⁶² See 19 CFR 351.505(a)(3)(i).

⁶³ See 19 CFR 351.505(a)(3)(ii).

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 China*,⁶⁴ 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. On July 21, 2017, Commerce conducted a re-assessment of China's financial system for CVD benchmarking purposes.⁶⁵ Pursuant to our re-assessment, we determined that there continues to be significant government intervention in the financial sector such that interest rates within China cannot be used for CVD loan rate benchmarking or discount rate purposes.⁶⁶ Consequently, we preliminarily find that any loans received by the recipients from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). For the same reasons, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, Commerce is selecting an external market-based benchmark interest rate. The use of an external benchmark under these circumstances is consistent with Commerce's practice.⁶⁷

In past proceedings involving imports from China, we calculated the external benchmark using the methodology first developed in *CFS from China*,⁶⁸ and later updated in *Thermal Paper from China*.⁶⁹ Under that methodology, we first determine which countries are similar to China in terms of gross national income, based on the World Bank's classification of countries as: low income; lower-middle income; upper-middle income; and high income. As explained in *CFS from China*,⁷⁰ this pool of countries captures the broad inverse relationship between income and interest rates. For 2003 through 2009, China fell in the lower-middle income category.⁷¹ Beginning in 2010, however, China was classified in the upper-middle income category and remained there through 2011 to 2017.⁷² 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 2003 through 2009, and the interest rates of upper-middle income countries to construct the benchmark and discount rates for the years 2010 through 2017. This is consistent with

⁶⁴ See *CFS from China* IDM at Comment 10.

⁶⁵ See Memorandum, "Review of China's Financial System Memorandum," dated concurrently with this PDM.

⁶⁶ *Id.*

⁶⁷ See, e.g., *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2015*, 82 FR 46754 (October 6, 2017), and accompanying PDM at 21, unchanged in *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2015*, 83 FR 16055 (April 13, 2018).

⁶⁸ See *CFS from China* IDM at Comment 10.

⁶⁹ 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 China*), and accompanying IDM at 8-10.

⁷⁰ See World Bank Country Classification, <http://data.worldbank.org/about/country-and-lending-groups> (World Bank Country Classification); see also Memorandum, "Administrative Review of the Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China; Interest Rate Benchmark Memorandum," dated concurrently with this PDM (Interest Rate Benchmark Memorandum).

⁷¹ See Interest Rate Benchmark Memorandum.

⁷² See World Bank Country Classification.

Commerce's calculation of interest rates for recent CVD proceedings involving Chinese merchandise.⁷³

After Commerce identifies 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 2003 through 2009, and 2011 through 2016, 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.⁷⁴ For 2010, however, the regression does not yield that outcome for China's income group.⁷⁵ This contrary result for a single year does not lead us to reject the strength of governance as a determinant of interest rates. Therefore, we continue to rely on the regression-based analysis used since *CFS from China* to compute the benchmark for the years from 2003 through 2009, and 2011 through 2017. 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 through 2017, and "lower-middle income" for 2001 through 2009.⁷⁶ First, we did not include those economies that Commerce 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. Finally, for each year Commerce calculated an inflation-adjusted short-term benchmark rate we excluded any countries with aberrational or negative real interest rates for the year in question.⁷⁷ Because the resulting rates are net of inflation, we adjusted the benchmark rates to include an inflation component.⁷⁸

⁷³ See, e.g., *Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Countervailing Duty Determination*, 78 FR 33346 (June 4, 2013), and accompanying PDM at the section "Benchmarks and Discount Rates," unchanged in *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Shrimp from China*).

⁷⁴ See Interest Rate Benchmark Memorandum.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

Long-Term RMB-Denominated Loans

The lending rates reported in the IFS represent short-and medium-term lending, and there is not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, Commerce 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.⁷⁹

In the *Citric Acid from China*, 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.⁸⁰ Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.⁸¹

Foreign Currency-Denominated Loans

To calculate benchmark interest rates for foreign currency-denominated loans, Commerce is following the methodology developed over a number of successive proceedings regarding China.⁸² For U.S. dollar short-term loans, Commerce 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.

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 GOC provided non-recurring subsidies.⁸³

Benchmarks to Determine the 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), Commerce 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

⁷⁹ See, e.g., *Thermal Paper from China* IDM at 10.

⁸⁰ See *Citric Acid and Certain Citrate Salts from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009) (*Citric Acid from China*), and accompanying IDM at Comment 14.

⁸¹ See Interest Rate Benchmark Memorandum for the resulting inflation adjusted benchmark lending rates.

⁸² 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.

⁸³ See Preliminary Calculation Memoranda.

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 explained in detail in previous investigations, we cannot rely on the use of “tier one” and “tier two” benchmarks to assess the benefits from the provision of land for less than adequate remuneration (LTAR) in China. Specifically, in *Sacks from China*, we determined that “Chinese land prices are distorted by the significant government role in the market,” and hence, no usable “tier one” benchmarks exist.⁸⁴ Furthermore, we found that “tier two” benchmarks (world market prices that would be available to purchasers in China) are not appropriate.⁸⁵

On October 2, 2018, Commerce completed a memorandum analyzing developments in China’s land market since 2007.⁸⁶ The Land Benchmark Analysis was prepared to assess the continued application of Commerce’s land for LTAR benchmark methodology, as established in 2007 in *Sacks from China*.⁸⁷ As discussed in the Land Benchmark Analysis, although reforms in China’s land markets have improved the use-rights of some landholders, such improvements have not been comprehensive, and reforms have been implemented on an *ad hoc* basis.⁸⁸ The reforms to date have not addressed the fundamental institutional factors that underlie the Chinese government’s monopoly control over land-use, which precludes landholders from putting their land to its best use and realizing the market value of their landholdings.⁸⁹ The GOC still owns all land in China, and exercises direct control over the sale of land-use rights and land pricing in the primary market and indirect control in the secondary market.⁹⁰

As a result, and consistent with our methodology established in *Sacks from China*, we determine that we cannot use a first-tier, domestic Chinese land price for benchmarking purposes. We also

⁸⁴ 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*, 74 FR 67893, 67906-08 (December 3, 2007) (*Sacks from China*).

⁸⁵ *Id.*

⁸⁶ See Memorandum, “Administrative Review of the Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Land for LTAR Memorandum,” dated concurrently with this PDM (Land Benchmark Analysis) (containing a memorandum titled, “Benchmark Analysis of the Government Provision of Land-Use Rights in China for Countervailing Duty Purposes,” dated October 2, 2018).

⁸⁷ *Id.* at 2.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

determine that because land is generally not simultaneously available to an in-country purchaser while located and sold out-of-country on the world market, we cannot use second tier world prices as a benchmark for land-use rights. Finally, because land prices in China are not consistent with market principles, and reflect the government's control and allocation of land-use on an administrative basis, we will continue to use land-use prices outside of China as a third tier benchmark. Accordingly, consistent with our past practice, we are relying on the use of so-called "tier three" benchmarks for purposes of calculating a benefit for this program.

We are placing on the record benchmark information to value land from "Asian Marketview Reports" by CB Richard Ellis (CBRE) for Thailand 2010.⁹¹ We used this benchmark in prior segments of this proceeding, and in other proceedings such as the CVD investigation of certain iron mechanical transfer drive components from China.⁹² We initially selected this information in the *Sacks from China* investigation after considering a number of factors, including national income levels, population density, and producers' perceptions that Thailand is a reasonable alternative to China as a location for Asian production.⁹³ We find that this benchmark, appropriately indexed, continues to be suitable for these preliminary results, and we relied on it for our calculation of benefits relating to the company respondents' land purchases.

JA Solar submitted a proposed land benchmark that contains world market land prices from locations such as, *e.g.*, Warsaw, Poland; Stockholm, Sweden; and Atlanta, Georgia.⁹⁴ We find that locations such as these are not reasonable alternatives to China as locations for Asian production. And while JA Solar included consumer price index data collected by the World Bank in its benchmark submission, its submission does not include data that allows us to evaluate these locations' economic comparability with respect to China.

We will continue to examine benchmark prices on a case-by-case basis, and will consider the extent to which proposed benchmarks represent prices in a comparable setting (*e.g.*, a country proximate to China; the country's level of economic development, *etc.*). Therefore, we invite parties to submit alternative benchmark data that is consistent with the guidance provided in *Sacks from China* and the Land Benchmark Analysis.⁹⁵ Interested parties have seven days from the publication of these preliminary results in the *Federal Register* to provide information to

⁹¹ See Memorandum, "Administrative Review of the Countervailing Duty Order of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Asian Marketview Report," dated concurrently with this PDM (Land Benchmark Data Memorandum) (containing "Asian Marketview Report" pricing data).

⁹² See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012) (*Solar Cells from China Investigation*), and accompanying IDM at 6 and Comment 11; see also *Countervailing Duty Investigation of Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Preliminary Affirmative Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 81 FR 21316 (April 11, 2016), and accompanying IDM at 13.

⁹³ The complete history of our reliance on this benchmark is discussed in the *Solar Cells from China Investigation* IDM. In that discussion, we reviewed our analysis from the *Sacks from China* investigation and concluded that the CBRE data remained a valid benchmark.

⁹⁴ See JA Solar's Benchmarks at Exhibit 6A.

⁹⁵ See Land Benchmark Analysis at 30-31.

rebut, clarify, or correct information in the Land Benchmark Analysis or the Land Benchmark Data Memorandum.

Input Benchmarks

For each of the inputs used in the production of subject merchandise, as discussed below in the section, “Use of Facts Otherwise Available and Application of Adverse Inferences,” we preliminarily determine that all the domestic producers who supplied the inputs to JA Solar and Risen Energy during the POR are “authorities” within the meaning of section 771(5)(B) of the Act. Therefore, the prices from these 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.

Solar Grade Polysilicon

For solar grade polysilicon, the GOC provided information indicating that imports of solar grade polysilicon accounted for 35.23 percent of domestic consumption of all grades of polysilicon.⁹⁶ The production of polysilicon by state-invested enterprises (SIEs) that accounts for the total domestic consumption is business proprietary in nature.⁹⁷ The GOC stated, however, 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 and may include other products. As such, the GOC stated that the statistics it reported regarding polysilicon may include products other than solar grade polysilicon.⁹⁸

Commerce 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 Commerce’s questionnaire, we requested that the GOC provide information related to SIE involvement in China’s solar grade polysilicon industry. Because the GOC does not track industry information for solar grade polysilicon, the information provided is related only to SIE involvement in China’s polysilicon industry generally, rather than specific SIE involvement in the solar grade polysilicon industry specifically.⁹⁹ While the GOC did provide information with respect to China’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 to determine the GOC’s involvement in the solar grade polysilicon industry, and, pursuant to section 776(a)(1) of the Act, we have determined that it is appropriate to rely on the facts

⁹⁶ See GOC December 30, 2019 QR at 51-52.

⁹⁷ *Id.* at 50. SIEs include companies in which the GOC maintains an ownership or management interest.

⁹⁸ *Id.* at 53.

⁹⁹ *Id.*

otherwise available in reaching our determination regarding the GOC's involvement in China's 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.¹⁰⁰ 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 China's solar grade polysilicon market leads to significantly distorted solar grade polysilicon prices in China. Thus, we preliminarily find that it is not appropriate to rely on transactions in China as a benchmark for solar grade polysilicon and are relying instead on a simple average of the world market (tier two) solar grade polysilicon prices published by Bloomberg New Energy Finance (Bloomberg), Energy Trend, and PV Infolink, pursuant to 19 CFR 351.511(a)(2)(ii).¹⁰¹ This is consistent with our prior practice in this proceeding.¹⁰²

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.¹⁰³ As part of Commerce's questionnaire, we requested that the GOC provide information related to 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. While the GOC did provide information with respect to China'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 preliminarily 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 China's 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.¹⁰⁴ 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 China's solar glass market leads to significantly distorted solar glass prices in China. Thus, we preliminarily find that it is not appropriate to rely

¹⁰⁰ See *CVD Preamble*, 63 FR at 65377.

¹⁰¹ See SunPower's Benchmarks; see also JA Solar's Benchmarks.

¹⁰² 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; 2015*, 83 FR 34828 (July 23, 2018) (*Solar Cells from China 2015 AR*), and accompanying IDM at Comment 12, where we relied on a simple average of world market prices as the benchmark for the provision of solar grade polysilicon for LTAR.

¹⁰³ See GOC's December 30, 2019 QR at 115.

¹⁰⁴ See *CVD Preamble*, 63 FR at 65377.

on transactions in China as a benchmark for solar glass and are relying on the world market prices (tier two) published by Greentech Media and PV Insights as provided by JA Solar.¹⁰⁵

While SunPower submitted pricing data published by the United Nations Comtrade Database (Comtrade) for Commerce to consider when constructing the solar glass benchmark, we find the pricing data published by Greentech Media and PV Insights preferable to the Comtrade data because the Comtrade data has drawbacks that the Greentech Media and PV Insights data do not. Specifically, the Comtrade source provides monthly prices, but represents prices for tempered glass, which is a broader category of glass that includes solar glass but also non-solar glass products.¹⁰⁶ Excluding the Comtrade data on this basis when constructing the solar glass benchmark is consistent with our practice in the most recently completed review.¹⁰⁷ As such, because the data published by Greentech Media and PV Insights provide global monthly prices that are specific to solar glass, we find that it is appropriate to rely on these two data sources when constructing the solar glass benchmark. We note that while the world market prices from PV Insights cover the entire POR, the Greentech Media prices cover only a portion of the POR.¹⁰⁸ Accordingly, when constructing the solar glass benchmark, we will use a simple average of the monthly prices of the Greentech Media and PV Insights prices for the months the Greentech Media data is available, and rely solely on the PV Insights data for the remaining months. Constructing an LTAR benchmark in this fashion is consistent with our past practice in this proceeding.¹⁰⁹

Aluminum Extrusions

In its questionnaire response, the GOC stated that it does not maintain production statistics in China specifically for aluminum extrusions, and instead provided information for aluminum sections which, the GOC claims, is a much broader category that includes aluminum extrusions, aluminum sheets/plates, aluminum strips, and aluminum foils.¹¹⁰ As part of Commerce's questionnaire, we requested that the GOC provide information related to SIE involvement in China'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.¹¹¹ While the GOC did provide information with respect to China'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.

¹⁰⁵ See JA Solar's Benchmarks.

¹⁰⁶ See SunPower's Benchmarks.

¹⁰⁷ 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 and Rescission of Review, in Part; 2016*, 84 FR 45125 (*Solar Cells from China 2016 AR*), and accompanying IDM at Comment 2.

¹⁰⁸ See JA Solar's Benchmarks at 4.

¹⁰⁹ See *Solar Cells from China 2016 AR* IDM at Comment 7, where Commerce constructed the ocean freight benchmark by averaging monthly Maersk freight prices with monthly Xeneta prices where the monthly prices from both sources were available and relying only on the monthly Xeneta prices when the Maersk monthly prices were not available.

¹¹⁰ See GOC's December 30, 2019 QR at 93.

¹¹¹ *Id.* at 96.

Consequently, and as detailed below in the section, “Use of Facts Otherwise Available and Application of Adverse Inferences,” we preliminarily 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 China’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 China’s aluminum extrusions market leads to significantly distorted aluminum extrusions prices in China. Thus, we preliminarily find that it is not appropriate to rely on transactions in China as a benchmark for the company respondents’ purchases of aluminum extrusions.

With respect to the appropriate benchmark to use for determining the subsidy rate for the provision of aluminum extrusions for LTAR for these preliminary results, the record contains two possible sets of world market price data: an annual 2017 world market price for aluminum frames compiled by IHS Markit (IHS) as provided by JA Solar,¹¹² and monthly export data for aluminum extrusions compiled by Comtrade that was provided by SunPower.¹¹³ We have relied on these sources in prior segments for valuing respondents’ purchases of aluminum extrusions.¹¹⁴

In evaluating each set of data, we find that neither source is ideal. The IHS data is provided on an annual basis but is specific to the products that are manufactured by the respondents (*i.e.*, aluminum frames for solar modules); while the Comtrade data is provided on a monthly basis covering merchandise classified in the Harmonized Tariff Schedule of the United States (HTS) under HTS classifications, 7604.21, 7604.29, and 7610.10. In the instant review the GOC reported that during the POR, aluminum solar frames were imported (at least into China) under HTS headings 76.04 and 7616.9910, which include the headings 7604.21 and 7604.29, but not 7610.10.¹¹⁵ We note that in the final results for the most recently completed administrative review, in the interest of maintaining product comparability between the benchmark and the products purchased by the respondents, we did not include merchandise reported under HTS code 7610.10 in the benchmark for measuring the respondents’ aluminum extrusions purchases.¹¹⁶ Consistent with our determination in the most-recently completed review, we preliminarily determine that it is not appropriate include merchandise reported under HTS code 7610.10 in constructing the aluminum extrusions benchmark for these preliminary results.

With respect to aluminum products reported under HTS codes 7604.21 and 7604.29, we have noted in the most recently completed review that products covered by 7604.21 are categorized as alloyed aluminum hollow profiles and that products covered under 7604.29 are categorized as alloyed aluminum bars, rods, and profiles, other than hollow profiles.¹¹⁷

¹¹² See JA Solar’s Benchmarks at Exhibit 2.

¹¹³ See SunPower’s Benchmarks at Exhibit 3.

¹¹⁴ See, *e.g.*, *Solar Cells from China 2016 AR IDM* at Comment 2.

¹¹⁵ See GOC’s December 30, 2019 QR at 97-98.

¹¹⁶ See *Solar Cells from China 2016 AR IDM* at Comment 2.

¹¹⁷ *Id.*

In prior segments of this proceeding, we averaged both the Comtrade and IHS data because each contained strengths and flaws.¹¹⁸ We explained in the most recently completed review that Commerce's practice calls for the use of monthly values in assessing the benefits from the provision of inputs for LTAR, and the monthly Comtrade data was preferable to the annual IHS value in that regard.¹¹⁹ We noted, however, that Commerce's practice is normally to rely on data reflecting the narrowest category of products encompassing the input product, which was the IHS data (which reflects prices for aluminum frames) over the Comtrade data (which encompasses a broader range of aluminum products).¹²⁰

In the instant review, in the interest of maintaining product comparability between the benchmark and the products purchased by the respondents, and to rely on data that reflects the narrowest category of products encompassing the input products, we preliminarily determine to rely solely on the 2017 average annual price for aluminum frames as compiled by IHS as the aluminum extrusions benchmark for these preliminary results, as the IHS data is specific to the input products under examination.

Ocean Freight

SunPower and JA Solar each provided POR information to value ocean freight.¹²¹ SunPower provided international rates from Descartes for 20-foot containers, while JA Solar provided international rates for 20-foot containers provided by Xeneta. For these preliminary results, we preliminarily determine to rely on an average of the Descartes and Xeneta data to value ocean freight. Our review of the Xeneta ocean freight values leads us to conclude that they contain terminal handling charges.

Under 19 CFR 351.511(a)(2)(iv), we have, where appropriate, adjusted the benchmark price to reflect the price that a firm actually would pay if it imported the product, including delivery and import duties.

Inland Freight Charges

For these preliminary results, we are basing the company respondents inland freight charges on the freight charges submitted by the respondent companies, which are based on their actual experiences.¹²² This is consistent with our past practice in this proceeding.¹²³

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ See SunPower's Benchmarks at Exhibit 5; see also JA Solar's Benchmarks at Exhibit 7.

¹²² See JA Solar's December 30, 2019 QR at Vol. I, Exhibit 14; see also Risen Energy's December 30, 2019 QR at Exhibit 11.

¹²³ See *Solar Cells from China 2015 AR* IDM at Comment 8.

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

Sections 776(a)(1) and (2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply “facts otherwise available” if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.¹²⁴

Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an adverse facts available (AFA) rate from among the possible sources of information, Commerce’s practice is to ensure that the rate is sufficiently adverse “as to effectuate the statutory purposes of the AFA rule to induce respondents to provide the Department with complete and accurate information in a timely manner.”¹²⁵ Commerce’s practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”¹²⁶

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”¹²⁷ It is Commerce’s practice to consider information to be corroborated if it has probative value.¹²⁸ In analyzing

¹²⁴ The Trade Preferences Extension Act of 2015 made numerous amendments to the antidumping duty and CVD law, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act, as summarized below. *See Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015). The 2015 law does not specify dates of applications for those amendments. On August 6, 2015, Commerce published an interpretive rule, in which it announced the applicability dates for each amendment of the Act, except for amendments contained in section 771(7) of the Act, which relate to determinations of material injury by the International Trade Commission. *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015). Therefore, the amendments apply to this review.

¹²⁵ *See, e.g., Drill Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011) (*Drill Pipe from China*); *see also Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

¹²⁶ *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I (1994) (SAA) at 870.

¹²⁷ *Id.*

¹²⁸ *Id.*

whether information has probative value, it is Commerce’s practice to examine the reliability and relevance of the information to be used.¹²⁹ However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.¹³⁰ Moreover, under section 776(c)(2) of the Act, Commerce is not required to corroborate any CVD rate applied in a separate segment of the same proceeding.

Finally, under the new section 776(d) of the Act, Commerce may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, Commerce is not required for purposes of 776(c), or any other purpose, to estimate what the countervailable subsidy rate would have been if the interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.¹³¹

We requested information from the GOC regarding the specific companies that produced the input products (*e.g.*, solar glass, aluminum extrusions, and solar grade polysilicon) that the respondents and their respective cross-owned 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.¹³² In our CVD Questionnaire, we requested detailed information from the GOC that would be needed for this analysis.¹³³ Specifically, for input producers in which the GOC maintained majority ownership or non-majority ownership, we requested that the GOC provide Commerce with the information that is relevant to our analysis on whether that producer is an “authority,” such as translated copies of capital verification reports, articles of association, and information identifying individual owners, members of the board of directors or senior managers who were either GOC or Chinese Communist Party (CCP) officials during the POR.¹³⁴

While the GOC provided some information, such as “basic registration information” from its Enterprise Credit Information Publicity System (ECIPS) for the suppliers that provided the respondents with solar grade polysilicon, solar glass, and aluminum extrusions, the GOC did not provide requested information regarding, *e.g.*, articles of incorporation, capital verification reports, and articles of association. Instead of providing the information requested, the GOC stated that information from its ECIPS constitutes a sufficient demonstration of the ownership status of the input producers, and that it failed to see how items such as articles of incorporation, capital verification reports, and articles of association would help Commerce to make a determination on whether a producer is a government authority.¹³⁵

¹²⁹ *Id.* at 869.

¹³⁰ *Id.* at 869-870.

¹³¹ *See* section 776(d)(3) of the Act.

¹³² *See* CVD Questionnaire at section II.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *See, e.g.*, GOC’s December 30, 2019 QR at 35.

In addition, the GOC provided no information at all regarding the identification of owners, directors, or senior management who were also GOC or CCP officials.¹³⁶ It simply stated that there is no central informational database from which 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."¹³⁷ The GOC concluded its response to this question by stating "{i}f the Department insists on the necessity of this information, the Department should collect this information through the respondents, via their suppliers directly."¹³⁸

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 Commerce, not the GOC, to determine what information is relevant to our investigations and administrative reviews.¹³⁹ Commerce requests this information because public information suggests that the CCP exerts significant control over activities in China.¹⁴⁰ Commerce previously determined that "available information and record evidence indicates that the CCP meets the definition of the term 'government' for the limited purpose of applying the U.S. CVD law to China."¹⁴¹ 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.¹⁴² Because the GOC did not provide the information we requested regarding this issue, we have no further basis for reevaluating Commerce's prior factual findings on the role of the CCP. And while the GOC reported that Chinese law prohibits GOC officials

¹³⁶ *Id.* at 48.

¹³⁷ *Id.* at 39.

¹³⁸ *Id.* at 48-49.

¹³⁹ See *NSK, Ltd. v. United States*, 919 F. Supp. 442, 447 (CIT 1996) (NSK) ("NSK's assertion that the information it submitted to Commerce provided a sufficient representation of NSK's cost of manufacturing misses the point that 'it is Commerce, not the respondent, that determines what information is to be provided for an administrative review.'"); and *Ansaldo Componenti, S.p.A. v. United States*, 628 F. Supp. 198, 205 (CIT 1986) (*Ansaldo*) (stating that "{i}t is Commerce, not the respondent, that determines what information is to be provided").

¹⁴⁰ See Additional Documents Memorandum, which includes Memorandum to Paul Piquado, Assistant Secretary for Import Administration, through Lynn Fischer Fox, Deputy Assistant Secretary for AD/CVD Policy and Negotiation, Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations, and John D McInerney, Chief Counsel for Import Administration, from Shauna Biby, Christopher Cassel, Timothy Hruby, Office of Policy, Import Administration, "Section 129 Determination of the Countervailing Duty Investigation of Circular Welded Carbon Quality Steel Pipe; Light-Walled Rectangular Pipe and Tube; Laminated Woven Sacks; and Off-the-Road Tires from the People's Republic of China: An Analysis of Public Bodies in the People's Republic of China in Accordance with the WTO Appellate Body's Findings in WTO DS379," dated May 18, 2012 (Public Body Memorandum); and its attachment, Memorandum for Paul Piquado, Assistant Secretary for Import Administration, through Lynn Fischer Fox, Deputy Assistant Secretary for AD/CVD Policy and Negotiation, Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations, and John D McInerney, Chief Counsel for Import Administration, from Shauna Biby, Christopher Cassel, Timothy Hruby, Office of Policy, Import Administration, "The relevance of the Chinese Communist Party for the limited purpose of determining whether particular enterprises should be considered to be 'public bodies' within the context of a countervailing duty investigation," (May 18, 2012) (CCP Memorandum).

¹⁴¹ *Id.* at CCP Memorandum at 33.

¹⁴² *Id.* at Public Body Memorandum at 35-36, and sources cited therein.

from concurrently holding a position in a private company,¹⁴³ we previously found that this particular law does not pertain to CCP officials.¹⁴⁴

The information we requested regarding the ultimate owners of the producers and the role of government/CCP officials and CCP committees in the management and operations of the input producers, which sold inputs to the respondents, is necessary to our determination of whether the producers are “authorities” within the meaning of section 771(5)(B) of the Act. If the GOC was not able to submit the required information in the requested form and manner, it should have promptly notified Commerce, 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.¹⁴⁵ 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 or CCP official, 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.”¹⁴⁶ 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.¹⁴⁷ 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.

As a result, we preliminarily determine that the GOC has the necessary information that was requested of it but withheld that information. In doing so, the GOC significantly impeded this administrative review. Therefore, in accordance with sections 776(a)(1), 776(a)(2)(A), and 776(a)(2)(C) of the Act, Commerce must rely on “facts otherwise available” in issuing these preliminary results. Moreover, we preliminarily find that the GOC did not act to the best of its ability to comply with our request for information, as a result of its withholding of the information requested of it. Consequently, we find that an adverse inference is warranted in selecting from the facts available pursuant to section 776(b) of the Act. Thus, as AFA, and as explained below, we are finding that certain producers of solar grade polysilicon, aluminum extrusions, and solar glass purchased by the respondents during the POR are “authorities” within the meaning of section 771(5)(B) of the Act.

¹⁴³ See GOC’s December 30, 2019 QR at 44.

¹⁴⁴ 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.

¹⁴⁵ 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.”

¹⁴⁶ See GOC’s December 30, 2019 QR at 48.

¹⁴⁷ 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.”

Application of Facts Available: The GOC's Involvement in China's Solar Grade Polysilicon, Solar Glass, and Aluminum Extrusions Industries Results in the Significant Distortion of Prices

In response to our questions concerning its role in the production of solar grade polysilicon, the GOC provided no information specific to “solar grade” polysilicon.¹⁴⁸ The GOC also reported that there is no specific solar polysilicon association in China, but that in order to obtain information for solar grade polysilicon, it consulted some related industry associations (for example, the China Nonferrous Metals Industry Association, the China Chamber of Commerce of Metals, Minerals, and Chemicals Importers and Exporters).¹⁴⁹ The GOC explained that China's National Bureau of Statistics (SSB) is the government agency that is responsible for nationwide statistics, and is relied upon as the source for domestic production.¹⁵⁰

With respect to the information that the GOC did provide in its questionnaire response, the GOC provided information regarding SIE involvement in the general polysilicon industry based solely on information collected from the SSB, stating that there were 77 producers of polysilicon during the POR; the number of which the GOC maintains an ownership or management interest is business proprietary.¹⁵¹ However, we find the information in the GOC's response to be unreliable because it is not specific to solar grade polysilicon. Therefore, we preliminarily determine that necessary information regarding the solar grade polysilicon industry in China 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 China's solar grade polysilicon market, and whether this government involvement significantly distorts the prices in this industry in China.

Public documents from the record of the solar products investigation, placed on the record of this proceeding by Commerce, contain the following information relevant to determining whether the GOC's involvement in China's solar grade polysilicon market significantly distorts prices:

- The petition for *Solar Products from China* 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.”¹⁵²
- A *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,

¹⁴⁸ See GOC's December 30, 2019 QR at 32.

¹⁴⁹ *Id.* at 51-52.

¹⁵⁰ *Id.*

¹⁵¹ *Id.* at 50.

¹⁵² See Petitioner's Letter, “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 China Petition*) at 38 (citing *China - Measures Related to the Exportation of Various Raw Materials*, Report of the Panel, WT/DS394/R (July 5, 2011), Exhibit III-51, placed on the record of this proceeding concurrently with this PDM).

access to the industry, land use, and lending from state-owned commercial banks (SOCBs).¹⁵³

- 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 China must adhere to.¹⁵⁴

We also note that major Chinese producers of solar grade polysilicon received subsidies (*e.g.*, preferential tax treatments, financial incentives, and grants) from the GOC, which aided these companies in producing solar grade polysilicon during the POR.¹⁵⁵ Indeed, Daqo New Energy’s 2017 SEC 20-F states that the overall operational results of this Chinese solar grade polysilicon producer could be adversely affected if the GOC discontinued any of the subsidies that it received,¹⁵⁶ and that the company received “unrestricted cash government subsidies” that ranged from approximately \$3.58 million in 2015 to \$6.67 million in the 2017 POR.¹⁵⁷

Separately, as discussed above, 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.¹⁵⁸ Because the GOC does not track industry information for solar glass, the information provided by the GOC is related only to SIE involvement in the tempered glass industry, rather than specific SIE involvement in the solar glass industry, as requested by Commerce. While the GOC did provide information with respect to China’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, we preliminarily determine that necessary information regarding the solar glass industry in China is not on the record and, pursuant to section 776(a)(1) of the Act, we have preliminarily determined that it is appropriate to rely on the facts otherwise available in reaching our determination regarding the GOC’s involvement in China’s solar glass market. Record information from IHS Technology indicates that subsidies provided by the GOC to Chinese solar glass producers caused domestic suppliers to increase production and exports, and we have preliminarily relied on that information in reaching our determination that the GOC’s actions distort the Chinese solar market sector.¹⁵⁹

We also note that SunPower, citing the same information from IHS Technology, contends that solar glass benchmark prices started decreasing dramatically “by about 50 percent from 2009 to 2014” due to China’s “massive oversupply in the market,” and that “{e}ncouraged by

¹⁵³ See “Chinese Solar Firm Revises Price Mark,” Keith Bradsher, *New York Times*, (August 27, 2009) Volume I of the Petition at Exhibit I-1B, placed on the record of this proceeding concurrently with this PDM.

¹⁵⁴ See Polysilicon Productions Data, placed on the record of this proceeding concurrently with this PDM.

¹⁵⁵ See “United States Securities and Exchange Commission, Form 20-F, Daqo New Energy Corp.,” for the year ending December 31, 2017 at 18 (Daqo New Energy’s 2017 SEC 20-F); *see also* “GCL-Poly Energy Holdings Limited, Annual Report 2017,” at 10 and 26. We have placed these documents on the record of the instant review in the Additional Documents Memorandum.

¹⁵⁶ See Daqo New Energy’s 2017 SEC 20-F at 18.

¹⁵⁷ *Id.* at F-15.

¹⁵⁸ See GOC’s December 30, 2019 QR at 115.

¹⁵⁹ See “Solar Glass Price Plunge to Cease as Trade Sanctions Take Effect,” IHS Technology, (October 28, 2014) placed on the record of this proceeding concurrently with this PDM; *see also* SunPower’s Benchmarks at Exhibit 3C, where SunPower placed this same IHS Technology document on the instant record.

government subsidies, many Chinese glass manufacturers entered the solar glass segment and started an aggressive pricing strategy in overseas markets, following a similar pattern to China's participation in module space. The price undercutting caused a strong oversupply and price collapse in the market."¹⁶⁰ SunPower argues that, "{t}o this day, solar glass prices remain low due to the oversupply of the market by subsidized Chinese glass producers."¹⁶¹ SunPower also provided an analysis of what it concludes would be "an actual 'market price' had China not illegally oversupplied the world market," and contends that its analysis calculates a world market price that would be available to the respondents.¹⁶² While SunPower did not explicitly request that we incorporate its theoretical world market price for solar glass into the solar glass benchmark, we find that it would not be appropriate to rely on this data because it is an annual price that was calculated using a 2009 price for solar glass indexed to a 2017 price using annual growth rates,¹⁶³ where the solar glass prices from PV Insights and Greentech Media are monthly prices that are contemporaneous to the POR. We noted in the most recently completed review that Commerce's practice is to rely on inflated non-contemporaneous data when there is no contemporaneous data on the record.¹⁶⁴

Finally, as discussed above, the GOC stated that it does not maintain production statistics in China specifically for aluminum extrusions, and instead provided information for aluminum sections.¹⁶⁵ Thus, the information provided by the GOC relates only to SIE involvement in the aluminum sections industry, rather than specific SIE involvement in the aluminum extrusions industry, as requested by Commerce.¹⁶⁶ While the GOC did provide information with respect to China'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. Therefore, we preliminarily determine that necessary information regarding the aluminum extrusions industry in China 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 China's aluminum extrusions market, and whether this government involvement significantly distorts the prices in this industry in China.

Other record information is relevant to the GOC's involvement in China's aluminum extrusions industry and how it affects pricing in China, and we rely on those facts otherwise available in reaching our preliminary determination. Public information from the record of the *Solar Cells from China First AR*, placed on this record, indicates that the GOC manages China'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.¹⁶⁷

¹⁶⁰ See SunPower's Benchmarks at 2.

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ See *Solar Cells from China 2016 AR IDM* at Comment 7.

¹⁶⁵ See GOC's December 30, 2019 QR at 93.

¹⁶⁶ *Id.*

¹⁶⁷ 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; 2012*, 80 FR 41003 (July 14, 2015) (*Solar Cells from China First AR*), at Petitioner's Letter, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: New Subsidy Allegations," (February 27, 2014)

Moreover, record information from *Solar Cells from China First AR* also contains information indicating that GOC-owned or -controlled enterprises account for a large proportion of aluminum extrusions that are produced in China.¹⁶⁸ The record information from *Solar Cells from China First AR* discussed above has been placed on the record of this proceeding by Commerce.

In the absence of further information, the record information discussed above suggests that prices in China'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 China's solar grade polysilicon, solar glass, and aluminum extrusions industries significantly distorts the prices in these industries. In particular, we find that the GOC's involvement in these Chinese markets (*i.e.*, solar grade polysilicon, aluminum extrusions, and solar glass) distorts both domestically-produced input prices as well as prices for imports of these inputs, because imports must compete with domestically-produced inputs in these Chinese markets. As such, we are not relying on domestic prices in these markets in China as "tier one" benchmarks pursuant to 19 CFR 351.511(a)(2)(i). The use of external benchmarks is consistent with our past practice.¹⁶⁹ 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). Our selection of these input benchmarks is discussed above.

Application of AFA: Provision of Electricity for LTAR

The GOC did not provide complete responses to Commerce's questions regarding the provision of electricity for LTAR. These questions solicited information needed to determine whether the provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act, whether such a provision provides a benefit within the meaning of section

(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 proceeding concurrently with this PDM.

¹⁶⁸ 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"; and 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 PDM.

¹⁶⁹ 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.

771(5)(E) of the Act, and whether such a provision is specific within the meaning of section 771(5A) of the Act.

In order for Commerce to analyze the financial contribution and specificity of this program, we requested that the GOC provide information regarding the roles of provinces and the National Development and Reform Commission (NDRC), and cooperation between the provinces and the NDRC in electricity price adjustments. Specifically, Commerce requested that the GOC provide detailed explanations to questions including, but not limited to: (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.¹⁷⁰ Commerce requested this information in order to determine the process by which electricity prices and price adjustments are derived, to identify the entities that manage and impact the price adjustment process, and to examine the cost elements included in the derivation of electricity prices in effect throughout China during the POR.

In its December 30, 2019 response, the GOC did not adequately address these questions.¹⁷¹ The GOC responded by stating that since 2015, a number of market reforms occurred in China's electricity market and that the responsibility of setting electricity sale prices within each province has moved from the NDRC to the Provincial Governments.¹⁷² According to the GOC, the "Notice of the NDRC on Completing Price Linkage Mechanism Between Coal and Electricity (NDRC 2015-3169)" went into effect on January 1, 2016 which, according to the GOC, added a market-oriented character of electricity pricing.¹⁷³ The GOC stated that electricity prices are classified by end-user categories such as residential prices, agricultural use prices, large industrial use prices, and/or industrial and commercial prices. The GOC also contends that within each category for each province in question, the electricity prices are equally applied to all end users and that no specificity exists with regard to electricity prices.¹⁷⁴

The GOC reported that since January 1, 2016, all of the provincial governments have been given the authority to prepare and to publish electricity tariff rates in their own jurisdictions, and that notices regarding the adjustment of electricity sale prices issued by the NDRC since then has required provincial pricing departments to set specific electricity prices and to report the electricity tariff after adjustment to the NDRC for the record.¹⁷⁵ The GOC reported that the creation of this new structure has eliminated the need for the provincial price proposals that had previously been used by the NDRC to set the prices for each province.¹⁷⁶ The GOC continued by stating that because the provinces now set their own prices, the provincial price proposals are no longer needed. As such, the GOC argues, Commerce's question asking the GOC to provide

¹⁷⁰ See CVD Questionnaire at Electricity Appendix.

¹⁷¹ See GOC's December 30, 2019 QR at 72-82.

¹⁷² *Id.* at 73.

¹⁷³ *Id.*

¹⁷⁴ See GOC's December 30, 2019 QR at 73.

¹⁷⁵ *Id.* at 74.

¹⁷⁶ *Id.*

Provincial Price Proposals for each province in which a mandatory respondent (or cross-owned affiliate) was located during the POR is no longer applicable.¹⁷⁷

Despite the GOC's claims that provincial authorities have more authority in setting their own electricity tariff rates, the NDRC's "Notification on Lowering Coal-fired Electricity On-grid Price and General Industrial and Commercial Electricity Price, FGJF {2015} No. 3105" (Notice 3105) provides general guidelines for changing electricity price, including calculation formulas and selling price adjustments.¹⁷⁸ Notice 3105 states that provincial price authorities "shall formulate and release specific regulation plan of on-grid price and sales price in the province (Region, Municipality) according to average regulation standard regulated in the appendix, and report to National Development and Reform Commission for filing."¹⁷⁹ Further, the NDRC's notice on "Adjusting Schedule of Coal-fired Power Generation Grid Purchase Price and Sale Price of Industrial and Commercial Electricity of Each Province (District or City) FaGai JiaGe No. {2015} 748" (Notice 748) is based upon consultations between the NDRC and the National Energy Administration, and states that provinces "develop and issue specific adjustment plan of electricity price and sales price in accordance with the average price adjustment standard of Annex 1, and reported to our Commission for the record."¹⁸⁰ However, we note that the GOC did not include Annex 1 of Notice 748 (in either its original Chinese form nor in an English translation) in its questionnaire response.¹⁸¹ As a result, information that is crucial for our understanding for how electricity prices are developed (*i.e.* Annex 1 of Notice 748) and for our evaluation with respect to the countervailability of this program, is missing from the record.

Finally, the GOC stated that according to the "Pricing Catalogues of Central Government," the pricing department of the State Council is in charge of setting guidelines for electricity pricing, and it is for the provincial pricing authority to implement those guidelines and to formulate the specific price levels for the electricity users within their relevant jurisdictions.¹⁸² As an example, the GOC provided the "Pricing Catalogues of Guangdong Province." (Guangdong Province Price Catalog)¹⁸³ According to the GOC, the NDRC establishes the specific formulas, including the variable factors that need to be considered by the provincial pricing authority in the calculation of the change of the electricity on-grid price.¹⁸⁴ The GOC states that following the principles and formulas set by the NDRC, it is for the provincial authorities to make specific calculations of price changes using the specific data of their own provinces based on the variable factors provided in the formula.¹⁸⁵

Contrary to the GOC's claims, the record does not support the GOC's claims that the relevant provincial pricing authorities determine and issue electricity prices within their own jurisdictions. Rather, record information such as Notices 748 and 3105, and the Guangdong Province Price

¹⁷⁷ *Id.*

¹⁷⁸ *Id.* at Exhibit II E.22.

¹⁷⁹ *Id.*

¹⁸⁰ *See* GOC's December 30, 2019 QR at Exhibit II E.23.

¹⁸¹ *Id.*

¹⁸² *Id.* at 76 and Exhibit II E.34.

¹⁸³ *Id.* at 76 and Exhibit II E.38.

¹⁸⁴ *Id.* at 76.

¹⁸⁵ *Id.*

Catalog (which states that its pricing determination has been reviewed *and approved* (emphasis added) by both the Provincial Government and the NDRC). Specifically, the NDRC mandates an average price adjustment target for each province. As a result of this mandate, each province is obligated to set electricity prices within the range mandated by the NDRC.¹⁸⁶

And while the GOC claims that the Provincial Price Proposals have been eliminated due to the new structure that has been put into place since 2016, none of the documentation the GOC submitted to support its claim explicitly eliminates the Provincial Price Proposals.

Commerce additionally requested that the GOC explain, for each respondent in which a respondent or cross-owned company is located, how increases in labor costs, capital expenses, and transmission and distribution costs are factored in Provincial Price Proposals, and how cost element increases, and final price increases were allocated across the province and across tariff end-user categories. The GOC failed to provide a complete response to this request. The GOC stated that because of the adjustments that took place in 2016 and 2017, price proposals were not used by the provinces in preparation of their price schedules, and that this question related to the proposal is not applicable.¹⁸⁷

As discussed above, the GOC failed to fully explain the roles and nature of the cooperation between the NDRC and provincial authorities in deriving electricity prices adjustments. The information provided by the GOC indicates that despite its claims that the responsibility for setting prices within each province has moved from the NDRC to the provincial governments, the NDRC continues to play a major role in setting and adjusting prices. Further, the GOC failed to explain both the derivation of the price reductions directed to the provinces by the NDRC and the derivation of the prices by the provinces themselves. Finally, the GOC reported that provinces were directed by the NDRC to develop and issue specific adjustment plans regarding electricity prices and sales prices in accordance with the average price adjustment standard as specified in Annex 1 of Notice 748, but the GOC failed to provide Annex 1. Consequently, we preliminarily find, in accordance with sections 776(a)(1), (2)(A), and (C) of the Act, that information necessary to our analysis of financial contribution and specificity is not available on the record because the GOC withheld information requested by us, thereby significantly impeding this proceeding. Thus, we must rely on “facts available” in making our determination for these preliminary results.¹⁸⁸

Moreover, we preliminarily determine, in accordance with section 776(b) of the Act, that the GOC failed to cooperate to the best of its ability to comply with our request for necessary information. As a result, application of facts otherwise available with an adverse inference is warranted.¹⁸⁹ Based on AFA, 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. We are also relying on AFA in selecting the benchmark for determining the existence and amount of any benefit provided to the

¹⁸⁶ See, e.g. Notice 748 at Article 10 and Notice 3105 at Articles II and X.

¹⁸⁷ See GOC’s December 30, 2019 QR at 79.

¹⁸⁸ See section 776(a)(2)(A) of the Act.

¹⁸⁹ See section 776(b) of the Act.

respondents.¹⁹⁰ The benchmark rates we selected are derived from the record of this administrative 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 section “Provision of Electricity for LTAR,” below.

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

As discussed below in the section “Programs Preliminarily Determined to be Countervailable,” Commerce is examining the provision of land-use rights programs for less than adequate remuneration. We requested information from the GOC regarding the program.

Our review of the GOC’s questionnaire response shows that the GOC did not respond fully to certain sections regarding this program. 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).¹⁹¹ Rather than responding directly to these questions, the GOC instead referred Commerce to various Chinese land laws and to the respondents’ questionnaire responses.¹⁹²

The information requested regarding the provision of land and land-use rights to the company respondents 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.¹⁹³ Thus, we preliminarily find that the information requested, but not provided, was available to the GOC.

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 proceeding. Furthermore, given that the GOC has provided information regarding the provision of land and land-use rights in previous CVD proceedings involving China, 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, Commerce 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 can 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

¹⁹⁰ *See* section 776(b)(4) of the Act.

¹⁹¹ *See* GOC’s December 30, 2019 QR at 62-72.

¹⁹² *Id.*

¹⁹³ *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 PDM at 10 (“we examined these companies’ land-use rights agreements and discussed the agreements with the relevant government authorities”), unchanged in *Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances*, 73 FR 40480 (July 15, 2008).

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. In applying AFA to choose from the facts available, we are relying on the basis for the initiation of this program in the underlying investigation of this CVD order. With respect to financial contribution and specificity, the petitioner submitted information that the GOC is the ultimate land owner in China, and that certain local governments in China provide land for preferential prices (or even for free) to Chinese solar cell producers.¹⁹⁴ Record information also indicates that the GOC provides "cheap land" to the Chinese photovoltaic manufacturing sector.¹⁹⁵ The respondent companies each reported that they acquired land-use rights during the AUL. Therefore, it is reasonable to conclude, as AFA, that the respondent companies benefitted from this program during the POR.

Application of AFA: Export Buyer's Credits

Commerce 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 information needed to allow Commerce to analyze this program fully, and which we requested in our questionnaire.¹⁹⁶ In its questionnaire response, 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).¹⁹⁷ The GOC provided "The Administrative Measures of the Export Buyer's Credit of EIBC" (published and executed in 2000) (Administrative Measures), for which Article 5 of Chapter 2 states that the business contract supported by the export buyer's credit should be over \$2 million.¹⁹⁸ In our CVD Questionnaire, we asked the GOC to provide original and translated copies of laws, regulations or other governing documents cited by the GOC in its supplemental questionnaire response in the CVD investigation of Certain Amorphous Silicon Fabric from China (GOC Certain Amorphous Silicon Fabric SQR).¹⁹⁹ In GOC Certain Amorphous Silicon Fabric SQR, the GOC stated that the China Ex-Im Bank adopted certain internal guidelines in 2013, which may have eliminated this \$2 million minimum requirement.²⁰⁰

Our review of the instant record leads us to conclude that the GOC failed to even reference the China Ex-Im Bank's 2013 revision of this program as referenced in the GOC Certain Amorphous Silicon Fabric SQR. Moreover, while the GOC states that the China Ex-Im Bank "will execute the lending contract by releasing the funds directly to the exporter,"²⁰¹ information on the record also states that the China Ex-Im Bank may disburse export buyer's credits through the importer's

¹⁹⁴ See Initiation Checklist at the section, "Government Provision of Land for LTAR."

¹⁹⁵ See "China's Solar PV Manufacturing and Subsidies from the Perspective of State Capitalism," at 97, which is included in the Additional Documents Memorandum.

¹⁹⁶ See CVD Questionnaire at II-26-II-27.

¹⁹⁷ See GOC's December 30, 2019 QR at 125-126.

¹⁹⁸ *Id.* at Exhibit II F.1.

¹⁹⁹ See CVD Questionnaire at II-27. The GOC provided the GOC Certain Amorphous Silicon Fabric SQR in its December 30, 2019 QR at Exhibit II F.3.

²⁰⁰ See GOC's December 30, 2019 QR at Exhibit II F.3.

²⁰¹ See GOC's December 30, 2019 QR at 128.

bank.²⁰² In responding to our request that the GOC provide a list of all partner and/or correspondent banks involved in the disbursement of funds under this program, the GOC stated that it believes that none of the respondents under review applied for, used, or benefitted from this program, and that whether or not the China Ex-Im Bank uses a partner bank in an African infrastructure project, for example, is irrelevant to this case.²⁰³

Pursuant to sections 776(a)(2)(A) and (a)(2)(C) of the Act, when an interested party withholds information requested by Commerce and/or significantly impedes a proceeding, Commerce uses facts otherwise available. Because the GOC withheld the requested information described above, Commerce is unable to fully understand and analyze the operation of this program, thereby impeding this proceeding. Accordingly, 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 of information and significantly impeding this proceeding, failed to cooperate with Commerce by not acting to the best of its ability. As a result, we preliminarily determine that the application of AFA is warranted in determining the countervailability of this program.

As noted above, the GOC has not answered our questions to the best of its ability 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 Commerce's information requests, we determine, as AFA, that this program constitutes a financial contribution and meets the specificity requirements of the Act.²⁰⁴

The GOC has not provided information with respect to whether it uses third-party banks to disburse/settle export buyer's credits from the China Ex-Im Bank. Such information is essential to understanding how export buyer's credits flow to/from foreign buyers and the China Ex-Im Bank. Such information is essential to understanding how export buyer's credits flow to/from foreign buyers and the China Ex-Im Bank. Absent the requested information, the GOC's and respondent companies' claims of non-use of this program are not verifiable. For example, record evidence indicates that the loans associated with this program are not limited to direct disbursements through the China Ex-Im Bank.²⁰⁵ Specifically, the record indicates that customers can open loan accounts for disbursements through this program with third-party banks, whereby the funds are first sent to the importer's account, which could be at the China Ex-Im Bank or third-party banks, and that these funds are then sent to the exporter's bank account.²⁰⁶ Because of the complicated structure of loan disbursements for this program, Commerce's complete understanding of how this program is administered is necessary.

²⁰² See GOC's December 30, 2019 QR at Exhibit II F.2, "The Implementing Rules for the Export Buyer's Credit of the Export-Import Bank of China," at the section, "the cohesion and sign of trade contract and loan agreement."

²⁰³ See GOC's December 30, 2019 QR at 126.

²⁰⁴ See, e.g., *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."

²⁰⁵ See China Ex-Im Bank Additional Information at Attachment II.

²⁰⁶ *Id.*

We note that Commerce has reviewed this program in the most recently completed administrative review of this CVD order, in which we explicitly questioned the GOC about the 2013 review and on whether funds from this program may be disbursed through third-party banks.²⁰⁷ Thus, the GOC's refusal to even reference any 2013 revisions to the administrative measures,²⁰⁸ which provide internal guidelines for how this program is administered by the China Ex-Im Bank, and a list of partner/correspondent banks that are used to disperse funds through this program, constitutes withholding necessary information and impeded Commerce's ability to conduct its investigation of this program.

Therefore, we preliminarily find that the GOC has not cooperated to the best of its ability and, as AFA, find that JA Solar and Risen Energy both used and benefited from this program. This finding is not contradicted by non-verifiable claims of non-use and certifications of non-use from their customers.²⁰⁹ As a result, and based on AFA, we find the loans provided by the GOC through the China Ex-Im Bank constitute a financial contribution under sections 771(5)(B)(i) and 771(5)(D)(i) of the Act. These loans also provide a benefit under section 771(5)(E)(ii) of the Act in the amount of the difference between the amounts the recipient paid and would have paid on comparable commercial loans. Finally, the receipt of loans under this program is tied to export performance and, therefore, this program is specific pursuant to sections 771(5A)(A)-(B) of the Act.

In applying AFA to choose from the facts available, we are relying on the basis for the initiation of this program in the underlying investigation of this CVD order. Specifically, the petitioner submitted information stating that the China Ex-Im Bank provides assistance to exporters through export buyer's credits with the goal of supporting the export of Chinese products. According to information submitted by the petitioner, eligibility for these buyer's credits requires that the Chinese content of exported goods used in the underlying project comprise no less than 50 percent of the contract's value.²¹⁰ The respondent companies reported that they exported Chinese origin solar cells during the POR and, thus, were eligible to benefit from this program during the POR.

Under section 776(d) of the Act, Commerce 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

²⁰⁷ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review and Intent to Rescind the Review, in Part; 2016*, 84 FR 5051 (February 20, 2019), and accompanying PDM at 33-36, unchanged *Solar Cells from China 2016 AR* IDM at Comment 1.

²⁰⁸ See GOC's December 30, 2019 QR at Exhibit II F.3.

²⁰⁹ In prior proceedings, including a prior segment of this proceeding, we have accepted certifications of non-use from a respondent company and its consumers in certain limited situations. 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; 2013*, 81 FR 46904 (July 19, 2016) (*Solar Cells from China Second AR*), and accompanying IDM at 9-12. However, the program was amended in 2013, and as discussed above, the GOC has not provided information regarding the program's amendments. Accordingly, we preliminarily determine that that is not appropriate to accept JA Solar's and Risen Energy's certifications of non-use because we do not know enough about the program to verify those certifications of non-use.

²¹⁰ See Initiation Checklist at the section, "Export Credit Subsidy Programs."

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, Commerce 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.²¹¹

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.²¹² 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.²¹³ Applying that practice to this proceeding, we determine that there are no rates calculated for this program in any segment of this proceeding. Accordingly, we are preliminarily applying an AFA rate of 5.46 percent *ad valorem*, which was the rate calculated for company respondent Lightway Green New Energy Co., Ltd.’s usage of a similar/comparable program, the Preferential Policy Lending to the Renewable Energy Industry (Preferential Policy Lending) Program, in the 2012 administrative review of this proceeding under step two of our hierarchy.²¹⁴ In the instant review, we conclude that the Export Buyer’s Credit Program provides loan support through export buyer’s credits.²¹⁵ Based on the description of the Export Buyer’s Credit Program, we find that the Preferential Policy Lending Program and the Export Buyer’s Credit Program are similar/comparable programs as both programs provide access to loans. In accordance with section 776(c)(2) of the Act, we do not need to corroborate this rate, because this CVD rate was applied in a separate segment of this proceeding.

JA Solar submitted a study conducted by the U.S. Export Import Bank (U.S. Ex-Im Bank) on export credit agencies of foreign countries, including the Export Buyer’s Credit Program that is financed through the China Ex-Im Bank,²¹⁶ which, JA Solar contends, shows that no U.S. entities received export buyer’s credits from the China Ex-Im Bank to finance the purchase of solar cells or modules during the POR. Further, JA Solar continues, the data in this report does not include a single reference of any export financing from China being received by an entity in the United

²¹¹ See section 776(d)(3) of the Act.

²¹² 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 China*), and accompanying 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”).

²¹³ See *Shrimp from China* IDM at 13-14.

²¹⁴ See *Solar Cells First AR* IDM at 18.

²¹⁵ See *SolarWorld Americas, Inc. v. United States*, CIT No. 15-00232 (CIT), sustaining Commerce’s CVD AFA hierarchy and selection of AFA rate for CVD reviews.

²¹⁶ See JA Solar’s Benchmark’s at 5-6 and Exhibit 8.

States.²¹⁷ According to JA Solar, the study by the U.S. Ex-Im Bank provides U.S.-government-researched data that corroborates the declarations of non-use of the Export Buyer's Credit Program from JA Solar's U.S. customers.

In reviewing the "China Research Methodology" that the U.S. Ex-Im Bank used to conduct this study, we note that the U.S. Ex-Im Bank noted that the China Ex-Im Bank's 2017 Annual Report was not published in time for the U.S. Ex-Im Bank "to include relevant data in this year's report."²¹⁸ The U.S. Ex-Im Bank stated further that as a result, it did not use the same methodology as it did in the prior year when it included information from the China Ex-Im Bank's Annual Report to calculate the size of the China Ex-Im Bank's Export Buyer's Credit Program for 2016. The U.S. Ex-Im Bank stated that for its 2017 report, it "was only able to use information derived from public sources, as opposed to a combination of public-facing sources and the CEXIM {China Ex-Im Bank} annual report."²¹⁹

Contrary to JA Solar's argument that the U.S. Ex-Im Bank's report corroborates the declarations of non-use from its U.S. customers, because this report only relies on information that was derived from public sources, and does not include "relevant data" from the China Ex-Im Bank itself, we find that this report does not definitively demonstrate that JA Solar's U.S. customers did not use the Export Buyer's Credit Program. Therefore, we continue to find this program to be countervailable based on AFA. We note that because Commerce is "offsetting" the amount of the countervailable duties from this export program with respect to the companion antidumping duty order, there will be no net effect on the total duties that will be collected by CBP as a result of our finding this program to be countervailable.

Application of AFA: Other Subsidies

JA Solar and Risen Energy each 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, 2007, and the end of the POR?"²²⁰ We also requested that the GOC provide information on "any other non-recurring benefits" received by the respondent companies during the AUL and that the GOC coordinate with the respondent companies to determine the usage of such programs.²²¹ In its response, the GOC stated that it has cooperated with Commerce 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 is warranted or required, and that it is willing to respond to Commerce's specific questions regarding these other programs in a supplemental questionnaire.²²²

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *See, e.g.*, JA Solar's December 30, 2019 QR at Vol. I, page III-45; *see also* Risen Energy's December 30, 2019 QR at 31.

²²¹ *See* CVD Questionnaire at II-29.

²²² *See* GOC's December 30, 2019 QR at 138-139.

Given the GOC's response, we preliminarily determine that the use of facts available pursuant to sections 776(a)(2)(A) and 776(a)(2)(D) of the Act is warranted in determining the countervailability of these apparent subsidies reported by JA Solar and Risen Energy. The GOC withheld information that was requested of it by not providing information regarding these subsidies in response to our request for information as noted above.²²³ Furthermore, because the GOC failed to respond to the best of its ability regarding our question on these other reported subsidies, we determine that an adverse inference is warranted with respect to these subsidies pursuant to section 776(b) of the Act. As a result, we are finding that, as AFA, these other reported subsidies reported by JA Solar and Risen Energy provide a financial contribution and are specific within the meaning of sections 771(5)(D) and 771(5A) of the Act, respectively.

In applying AFA in accordance with section 776(b) of the Act, we are relying on the usage information (*e.g.*, the names of the reported assistance programs, dates the reported assistance was provided, and the reported amounts of the assistance that was received by the respondents) reported by JA Solar and Risen Energy to find that these programs provided a financial contribution within the meaning of section 771(D) of the Act. Based on the GOC's decision not to provide information related to specificity regarding these other reported subsidies, we are applying AFA, in accordance with section 776(b) of the Act, to find that these other subsidies as reported by JA Solar and Risen Energy are specific within the meaning of section 771(5A) of the Act.

Finally, to preliminarily determine whether benefits were provided as a result of these other reported subsidies, within the meaning of section 771(5)(E) of the Act, we are relying on the usage information provided by JA Solar and Risen Energy.

XI. ANALYSIS OF PROGRAMS

Programs Preliminarily Determined to be Countervailable

Government Provision of Inputs for LTAR

In a CVD proceeding, Commerce 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, Commerce, as AFA, typically finds that a financial contribution exists under the alleged program and that the program is specific.²²⁴ However, where possible, Commerce will rely on respondents' reported information to determine the existence and the amount of the benefit to the extent that such information is useable and verifiable. Thus, we relied on the usage information reported by JA Solar and Risen Energy, as each provided data on the inputs they consumed, and the prices that they paid for these inputs, during the POR.

²²³ See section 776(a)(2)(A) of the Act.

²²⁴ 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.

1. Provision of Solar Grade Polysilicon for LTAR

In the original investigation, Commerce determined this program to be countervailable based on AFA.²²⁵ 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.²²⁶ As explained in the Public Body Memorandum, majority state-owned enterprises in China possess, exercise, or are vested with governmental authority.²²⁷ 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.²²⁸

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 the respondents are “authorities” within 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.²²⁹

For instances where record evidence indicates that the solar grade polysilicon producers that provided inputs to the company respondents are located outside of China, 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 solar grade polysilicon is highly varied within China’s economy.”²³⁰ However, the GOC provided no information concerning the industries consuming polysilicon (solar grade or otherwise) and the amounts purchased by those individual industries. Record information indicates that polysilicon may be classified into 50 or more different grades with different specifications specific to the user and the application (*e.g.*, float zone grade, electronic grade, secondary or test wafer grade, solar grade, and scrap grade, *inter alia*).²³¹ Because the GOC provided no new information on

²²⁵ See *Solar Cells from China Investigation* IDM at 12-13.

²²⁶ See, *e.g.*, GOC’s December 30, 2019 QR at Exhibit II E.1.

²²⁷ See Public Body Memorandum.

²²⁸ 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 China 2012 AR*), and accompanying IDM at 48-50.

²²⁹ See, *e.g.*, GOC’s December 30, 2019 QR at Exhibit II E.1.

²³⁰ See GOC’s December 30, 2019 QR at 33.

²³¹ See “Poly Plant Project, Resource Center Polysilicon Products,” placed on the record in the Additional Documents Memorandum.

the industries that consume solar grade polysilicon in China in this segment of the proceeding, we are relying on record information in finding that solar grade polysilicon is limited to specific industries within the meaning of section 771(5A)(D)(iii) of the Act, namely, the solar and semiconductor industries.²³²

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, we are relying on world market prices (an average of the solar grade polysilicon world market prices published by Bloomberg, Energy Trend, and PV Infolink) to calculate a benefit for both JA Solar and Risen Energy. We adjusted the benchmark price to include delivery charges, import duties, and value added tax (VAT) pursuant to 19 CFR 351.511(a)(2)(iv).²³³ Regarding delivery charges, we included ocean freight and the inland freight charges that would be incurred to deliver polysilicon to the respondents’ production facilities. We added import duties and VAT as reported by the GOC.²³⁴ In calculating VAT, we applied the applicable VAT rate to the benchmark after first adding amounts for ocean freight and import duties. We compared these monthly benchmark prices to JA Solar’s and Risen Energy’s reported purchase prices for individual domestic transactions, including VAT and delivery charges.

Based on this comparison, we preliminarily determine that solar grade polysilicon was provided for LTAR and that a benefit exists for both respondents in the amount of the difference between the benchmark prices and the prices paid by JA Solar and Risen Energy.²³⁵ 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 countervailable *ad valorem* subsidy rates under this program of 0.18 percent for JA Solar, and 0.00 percent for Risen Energy.

2. Provision of Solar Glass for LTAR

Commerce determined this program to be countervailable in the first administrative review.²³⁶ In its questionnaire responses in the instant review, the GOC indicated that certain producers of solar glass that provided inputs to the company respondents are majority-owned by the government.²³⁷ As explained in the Public Body Memorandum, majority state-owned enterprises in China possess, exercise, or are vested with governmental authority.²³⁸ 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

²³² Commerce’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.

²³³ Commerce concludes that these data do not already include delivery charges. See the benchmark information submitted by the JA Solar, Risen Energy, and SunPower.

²³⁴ See GOC’s December 30, 2019 QR at 56.

²³⁵ See 19 CFR 351.511(a).

²³⁶ See *Solar Cells from China First AR IDM* at 29-30.

²³⁷ See, e.g., GOC’s December 30, 2019 QR at II.E.29.

²³⁸ See Public Body Memorandum.

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.²³⁹

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 respondent 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 . . .”²⁴⁰ However, the GOC provided none of the information requested concerning amounts purchased by individual industries. In the first administrative review 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.²⁴¹ Record information also states that “{t}o ensure high solar energy transmittance, glass with low iron oxide is typically used in solar panel manufacturing.”²⁴² Thus, we continue to find that solar glass is a particular type of flat and rolled glass most suitable for particular purposes and customers. Based on our finding, 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) of the Act, namely, the solar industry.

Finally, a benefit is being conferred because the solar glass is being provided for LTAR. As discussed above under the “Subsidies Valuation Information” section, we are relying on the solar glass benchmarks published by Greentech Media and PV Insights. We adjusted the benchmark price to include delivery charges, import duties, and VAT pursuant to 19 CFR 351.511(a)(2)(iv).²⁴³ We added import duties and VAT as reported by the GOC.²⁴⁴ In calculating VAT, we applied the applicable VAT rate to the benchmark after first adding amounts for ocean freight and import duties. We then 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 both respondents for LTAR and that a benefit exists in the amount of difference between the

²³⁹ See, e.g., *OCTG from China 2012 AR* IDM at 48-50.

²⁴⁰ See GOC’s December 30, 2019 QR at 105.

²⁴¹ See *Solar Cells from China First AR* IDM at 23-25.

²⁴² See “Sino Voltaics, Solar Glass: Applications and Comparison to Light-Trapping,” placed on the record in the Additional Documents Memorandum.

²⁴³ Commerce concludes that these data do not already include delivery charges. See the benchmark information submitted by JA Solar, Risen Energy, and SunPower.

²⁴⁴ See GOC’s December 30, 2019 QR at 119.

benchmark prices and the prices paid by these company respondents.²⁴⁵ We divided the company respondents' 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 countervailable *ad valorem* subsidy rates of 7.06 percent for JA Solar, and 6.70 percent for Risen Energy.

3. Provision of Aluminum Extrusions for LTAR

Commerce determined this program to be countervailable in the first administrative review based on AFA.²⁴⁶ In its questionnaire response in the instant review, the GOC indicated that certain producers of aluminum extrusions that provided inputs to the company respondents are majority-owned by the government.²⁴⁷ As explained in the Public Body Memorandum, majority state-owned enterprises in China possess, exercise, or are vested with governmental authority.²⁴⁸ 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.²⁴⁹

In addressing our questions on specificity, the GOC stated that "{t}here 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."²⁵⁰ However, the GOC provided none of the information we requested concerning amounts consumed by individual industries.

In the third administrative review, the GOC reported six industries consuming aluminum extrusions: building and construction, transportation, electrical, machinery and equipment, consumer durables, and other industries.²⁵¹ However, the GOC has not provided such information since the third administrative review, and it did not provide this information in the instant review. Thus, for these preliminary results, we continue to find that the recipients of aluminum extrusions are limited in number to the industries listed by the GOC in the third administrative review, and that the provision of aluminum extrusions is *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act. This is consistent with our past practice in the most recently completed segment of this proceeding.²⁵² While the GOC indicates aluminum extrusions are used in a variety of industries and sectors across China, we continue to find, consistent with the most recently completed review, that the industries within those sectors that

²⁴⁵ See 19 CFR 351.511(a).

²⁴⁶ See *Solar Cells from China First AR IDM* at 28.

²⁴⁷ See, e.g., GOC's December 30, 2019 QR at I.E.25.

²⁴⁸ See Public Body Memorandum.

²⁴⁹ See, e.g., *OCTG from China 2012 AR IDM* at 48-50.

²⁵⁰ See GOC's December 30, 2019 QR at 83.

²⁵¹ See *Solar Cells from China Third AR IDM* at Comment 3.

²⁵² See *Solar Cells from China 2016 AR IDM* at Comment 2.

actually consume aluminum extrusions are limited in number. The statute notes that the term “enterprise or industry” “includes a group of such enterprises or industries.”²⁵³

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 the 2017 average annual price for aluminum frames as compiled by IHS. We adjusted the benchmark price to include delivery charges, import duties, and VAT pursuant to 19 CFR 351.511(a)(2)(iv).²⁵⁴ We added import duties and VAT as reported by the GOC.²⁵⁵ In calculating VAT, we applied the applicable VAT rate to the benchmark after first adding amounts for ocean freight and import duties. We then compared these monthly benchmark prices to the respondents’ reported purchase prices for individual transactions, including VAT and delivery charges.

Based on this comparison, we preliminarily determine that aluminum extrusions were provided to both respondents for LTAR and that a benefit exists in the amount of difference between the benchmark prices and the prices paid by the respondents.²⁵⁶ We divided the company respondents’ 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 countervailable *ad valorem* subsidy rates of 0.00 percent for JA Solar, and 0.03 percent for Risen Energy.

4. Provision of Electricity for LTAR

In the original investigation, Commerce determined this program to be countervailable based on the application of AFA.²⁵⁷ 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.

There is no dispute that electricity prices vary from province to province in China. What has been at issue in Commerce’s numerous determinations that the provision of electricity is countervailed is why prices vary from province to province and who makes the decision – ultimately – to set or allow distinct prices in each province. In so far as provincial governments are solely responsible for setting prices, there may well be no basis for finding the program regionally specific under section 771(5A)(D)(iv) of the Act because all recipients within the jurisdiction of the price setting authority would be paying the same prices; thus there would be no price discrimination on the part of the authority granting the subsidy. However, in so far as the varying prices are set by authorities of the central government in Beijing, and there is no indication on the record that such variances are in accordance with market principles or cost differences, there is in fact a regionally specific subsidy program, because the central Beijing authority is setting different prices in different provinces without explanation.

²⁵³ See section 771(5A)(D) of the Act.

²⁵⁴ Commerce concludes that these data do not already include delivery charges. See the benchmark information submitted by JA Solar, Risen Energy, and SunPower.

²⁵⁵ See GOC’s December 30, 2019 QR at 97-98.

²⁵⁶ See 19 CFR 351.511(a).

²⁵⁷ See *Solar Cells from China Investigation* IDM at 14-15.

The GOC claims that since 2015, the responsibility for setting electricity sale prices within each province has moved from the NDRC to the provincial governments. According to the GOC,

“{T}he relevant pricing authorities are required to take into account the overall demand and supply present in their respective electricity markets, as well as the costs of electricity generation and transmission. The retail prices of electricity consist of four parts: purchasing cost, transmission prices, transmission losses, and governmental surcharges. The differences in these costs as well as other costs like coal prices, among others, among others, are analyzed mainly on a provincial basis, and the provincial government plays a key role in collecting cost information formulating electricity prices for provincial are under its jurisdictions respectively.”²⁵⁸

On its face, this sounds like it might be a non-countervailable program, as the GOC claims in its questionnaire response. The provincial governments appear to play a significant role in setting prices and in so far as the central government is involved its approval of different prices for different regions appears to be tied to normal commercial price-setting factors: supply, demand, cost. However, the GOC refuses to provide key information that would allow Commerce to confirm its claims. In particular, the GOC did not provide: the provincial price proposals for each of the relevant provinces that might demonstrate the provinces are setting prices and that they are setting prices in accordance with supply, demand, and cost;²⁵⁹ a detailed description of the cost elements and price adjustments that were discussed between the provinces and the NDRC;²⁶⁰ province-specific explanations linking particular costs to retail prices,²⁶¹ and the price adjustment standard of Annex 1 regarding Notice 748.

Therefore, as AFA, Commerce determines that, contrary to the GOC’s narrative, the provision of electricity is a countervailable subsidy program whereby the central Chinese government, through the NDRC in Beijing, arbitrarily sets different prices in different regions under its authority (*i.e.*, the provinces) without commercial or market considerations, but instead for development purposes. The amount of the subsidy is what we infer to be the difference between what the respondent pays, and the highest tariffs set for any province. Record information supports the inference that there is a regionally specific program wherein prices are set differently within the jurisdiction of the authority providing the subsidy. Specifically, by the GOC’s own admission, the NDRC plays a major role in setting electricity prices: the NDRC mandates an average price adjustment target for each province,²⁶² and provincial price proposals are submitted to the NDRC for its review and approval.²⁶³ Based on record information, the NDRC appears to be involved in every step of the process.

²⁵⁸ See GOC’s December 30, 2019 QR at 73.

²⁵⁹ *Id.* at 74.

²⁶⁰ *Id.* at 76-77.

²⁶¹ *Id.* at 77-78.

²⁶² See, *e.g.*, Notice 748 at Article 10 and Notice 3105 at Articles II and X.

²⁶³ See, *e.g.*, GOC’s December 30, 2019 QR at Exhibit II E.38, Guangdong Province Price Catalog.

Therefore, as AFA, we infer from the fact that the NDRC is significantly involved in the setting of electricity prices that the NDRC is the authority providing the subsidy. Moreover, the schedules submitted by the GOC constitute a clear factual basis for the inference that the NDRC has subsidized electricity consumers in certain regions by arbitrarily setting different prices across the provinces.²⁶⁴ Therefore, for these preliminary results, we continue to find that the provision of electricity constitutes a countervailable subsidy program.

To determine the existence and the amount of any benefit under this program pursuant to section 771(5)(E)(iv) of the Act and 19 CFR 351.511, we relied on the company respondents' reported consumption volumes and rates paid. We compared the rates paid by company respondents to the benchmark rates, which, as discussed below, are the highest rates charged in China during the POR. We made separate comparisons by price category (*e.g.*, great industry peak, basic electricity, *etc.*). We multiplied the difference between the benchmark and the price paid by the consumption amount reported for that month and price category. We then calculated the total benefit during the POR for the company respondents by summing the difference between the benchmark prices and the prices paid by each company.

To calculate the electricity benchmark, in accordance with 19 CFR 351.511(a)(2), we selected the highest rates in China 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.²⁶⁵ 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.²⁶⁶

To calculate the subsidy rate, we divided the benefit amount by the appropriate total sales denominator, as discussed in the Preliminary Calculation Memoranda. On this basis, we preliminarily determine countervailable *ad valorem* subsidy rates of 1.71 percent for JA Solar, and 0.34 percent for Risen Energy.

5. Provision of Land for LTAR

In the original investigation, Commerce determined this program to be countervailable based on the application of AFA.²⁶⁷ 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 both respondents received a countervailable subsidy through land provided for LTAR.

As discussed above in the "Use of Facts Otherwise Available and Adverse Inferences" section, Commerce 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

²⁶⁴ See GOC's December 30, 2019 QR at Exhibit II.E.24.

²⁶⁵ *Id.*

²⁶⁶ See "Application of AFA: Provision of Electricity for LTAR" section, above; see also *Changzhou Trina Solar et al. v. United States*, CIT No. 17-00198 (CIT 2018), stating that "assuming a countervailable subsidy exists, Commerce acted in accordance with the law in using the highest of all provincial rates on the record to calculate the benchmark" for this program.

²⁶⁷ See *Solar Cells from China Investigation* IDM at 7-8.

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.

To calculate the benefit, we first multiplied the Thailand industrial land benchmarks discussed above under the “Land Benchmark” section, by the total area of JA Solar’s and Risen Energy’s countervailed tracts. We then subtracted the price 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 any benefit amounts across the terms of the land-use agreements, using the standard allocation formula of 19 CFR 351.524(d), and determined the amount attributable to the POR. We then summed all of the benefits attributable to the POR and divided this amount by the appropriate total sales denominator, as discussed in the “Subsidies Valuation Information” section above, and in the Preliminary Calculation Memoranda, to derive preliminary subsidy *ad valorem* subsidy rates of 1.17 percent for JA Solar, and 0.41 percent for Risen Energy.

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

In the original investigation, Commerce determined this program to be countervailable.²⁶⁸ Article 25 of China’s Renewable Energy Law specifically calls for financial institutions to offer favorable loans to the renewable energy industry. In addition, Catalogue No. 40 contains a list of encouraged projects, including solar energy, which the GOC targets through the provision of loans and other forms of assistance.

In the original investigation, Commerce determined that this program conferred countervailable subsidies on subject merchandise because: 1) the loans provide 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.²⁶⁹ Commerce further determined that there is a program of preferential policy lending specific to the renewable energy industry, including solar cells, within the meaning of section 771(5A)(D)(i) of the Act. There is no new information on the record that would cause us to 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

²⁶⁸ *Id.* at 12, “Preferential Policy Lending.”

²⁶⁹ *Id.*

connection to or effect upon the decision of any bank to issue loans to any respondent,” and thus those loans did not constitute a countervailable subsidy.²⁷⁰ However, the GOC provided no documentation in support of these assertions that would call into question Commerce’s conclusions from the investigation.

JA Solar and Risen Energy each reported having loans outstanding from banks in China during the POR under this program.²⁷¹ To calculate the benefit under this program, we used the benchmarks described under the section, “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 Memoranda. On this basis, we preliminarily determine countervailable *ad valorem* subsidy rates of 1.55 percent for JA Solar, and also 1.55 percent for Risen Energy.

Income Tax Programs

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

Article 28.2 of the Enterprise Income Tax Law of China provides for the reduction of the income tax rate to 15 percent, from 25 percent, for enterprises that are recognized as HNTEs, regardless of whether the enterprise is a Foreign Invested Enterprise (FIE) or domestic company.²⁷² Circular 172 provides details regarding the type of enterprises that qualify for HNTE status and it identifies eligible projects, which include renewable, clean energy technologies such as solar photovoltaic technologies.

Commerce determined in the original investigation that this program confers a countervailable subsidy, because the income tax reduction provides a financial contribution in the form of revenue foregone by the government, and it confers a benefit to the recipients in the amount of the tax savings, pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).²⁷³ Commerce also found that the income tax reduction afforded by this program is limited as a matter of law to certain enterprises, *i.e.*, HNTEs and, thus, is specific under section 771(5A)(D)(i) of the Act. There is no new information on the record for us to reconsider our prior determination. Therefore, we continue to find that this program provides a countervailable subsidy.

JA Solar and Risen Energy each reported benefitting from this program during the POR.²⁷⁴ To calculate the benefit from this program, we treated the income tax reductions claimed by the respondents as recurring benefits, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we compared the company’s tax rates (15 percent) applicable under this program to the rate that would have been paid otherwise by the respondents (the standard income tax rate of 25 percent). We then divided the difference between these two amounts by

²⁷⁰ See GOC’s December 30, 2019 QR at 4-5.

²⁷¹ See, *e.g.*, JA Solar’s December 30, 2019 QR, Vol. 5 at Exhibit 8; see also Risen Energy’s December 30, 2019 QR at Exhibit 6-1.

²⁷² See *Solar Cells from China Investigation* IDM at 16.

²⁷³ *Id.*

²⁷⁴ See, *e.g.*, JA Solar’s December 30, 2019 QR Vol. 1 at III-11; see also Risen Energy’s December 30, 2019 QR at 8.

the appropriate total sales denominator, as discussed in the “Denominators” section above. On this basis, we preliminarily determine countervailable *ad valorem* subsidy rates of 0.80 percent for JA Solar, and 0.79 percent for Risen Energy.

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

In the original investigation, Commerce determined this program to be countervailable.²⁷⁵ Article 30.1 of the Enterprise Income Tax Law of China created a new program regarding the deduction of research and development expenditures by companies, which allows enterprises to deduct, through tax deductions, research expenditures incurred in the development of new technologies, products, and processes. As explained in *Solar Cells from China Investigation*, 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.²⁷⁶ Specifically, 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 costs of the intangible assets.

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

JA Solar and Risen Energy each reported benefitting from this program during the POR.²⁷⁷ To calculate the benefit from this program, we treated the tax deduction as a recurring benefit, consistent with 19 CFR 351.524(c)(1).²⁷⁸ 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.

On this basis, we preliminarily determine countervailable *ad valorem* subsidy rates of 0.37 percent for JA Solar, and 0.11 percent for Risen Energy.

²⁷⁵ See *Solar Cells from China Investigation* IDM at 17.

²⁷⁶ *Id.*

²⁷⁷ See, e.g., JA Solar’s December 30, 2019 QR, Vol 1 at III-11; see also Risen Energy’s December 30, 2019 QR at 8.

²⁷⁸ See *Solar Cells from China Investigation* IDM at 17, “Enterprise Income Tax Law, Research and Development (R&D) Program.”

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

In the original investigation, Commerce determined this program to be countervailable.²⁷⁹ Circular 37 exempts foreign invested enterprises (FIEs) and certain domestic enterprises from VAT and tariffs on imported equipment used in their production so long as the equipment does not fall into prescribed lists of non-eligible items, in order to encourage foreign investment and to introduce foreign advanced technology equipment and industry technology upgrades. As of January 1, 2009, the GOC discontinued VAT exemptions under this program, but companies can still receive import duty exemptions.²⁸⁰ There is no new information on the record for us to reconsider this determination. Therefore, we continue to find that this program provides a countervailable subsidy.

In the investigation, we found that VAT and tariff exemptions on imported equipment confer a countervailable subsidy. The exemptions are a financial contribution in the form of revenue forgone by the GOC, and they provide a benefit to the recipient in the amount of the VAT and tariff savings.²⁸¹ We also determined that the VAT and tariff exemptions afforded by this program are specific under section 771(5A)(D)(iii)(I) of the Act because the program is limited to certain enterprises, *i.e.*, FIEs and domestic enterprises involved in “encouraged” projects.

Since this indirect tax program is provided for, or tied to, the capital structure or capital assets of a firm, Commerce treats this tax program as providing a non-recurring benefit and allocates the amount of the VAT and/or tariff exemptions, as applicable in the given year, over the AUL.²⁸² Record information indicates that both respondents received benefits during the AUL from this program that are allocable to the POR.²⁸³ To calculate the countervailable subsidy for the POR, we used our standard methodology for non-recurring grants.²⁸⁴ In the years that the benefits received by the company respondents under this program did not exceed 0.5 percent of relevant sales for that year, we expensed those benefits in the years that they were received, pursuant to 19 CFR 351.524(b)(2). We used the discount rates described above in the section “Subsidies Valuation Information,” to calculate the amount of the benefit allocable to the POR. We then divided the benefit amount by the appropriate sales denominator. On this basis, we preliminarily determine countervailable *ad valorem* subsidy rates of 0.00 percent for JA Solar, and 0.01 for Risen Energy.

Export Financing

1. Export Buyer’s Credits Program

Through this program, the China Ex-Im Bank provides loans at preferential rates for the purchase of exported goods from China. As explained above section, “Use of Facts Otherwise

²⁷⁹ See *Solar Cells from China* IDM at 18.

²⁸⁰ *Id.*

²⁸¹ See section 771(5)(D)(ii) of the Act; and 19 CFR 351.510(a)(1).

²⁸² See 19 CFR 351.524(c)(2)(iii); and 19 CFR 351.524(d)(2).

²⁸³ See JA Solar’s December 30, 2019 QR Vol. V at III-14; see also Risen Energy’s December 30, 2019 QR at 8.

²⁸⁴ See 19 CFR 351.524(b).

Available and Adverse Inferences,” we are determining, based on AFA, that both respondents used this program during the POI, and that a countervailable subsidy was conferred. Therefore, we determine a countervailable subsidy rate of 5.46 percent *ad valorem* for JA Solar, and 5.46 percent *ad valorem* for Risen Energy under this program.

2. Export Seller’s Credits Program

Commerce has previously found this program to be countervailable, based on the information the GOC provided in its Circular of the Export-Import Bank of China Regarding the Printing and Distribution of the Export-Import Bank of China Interim Rules of the Seller’s Credit on Exports (Revised),” dated August 25, 2000.²⁸⁵ In the instant review, the GOC stated that we should refer to the responses from the company respondents for more details.²⁸⁶ Thus, there is no new information on the record that would cause us to reconsider our determination regarding the countervailability of this program. Therefore, we continue to find that this program provides a countervailable subsidy.

As a result of the GOC’s response, we continue to find the loans provided by the GOC under this program constitute financial contributions under sections 771(5)(B)(i) and 771(5)(D)(i) of the Act. These loans also provide a benefit under section 771(5)(E)(ii) of the Act in the amount of the difference between the amounts the recipient paid and would have paid on comparable commercial loans. Finally, the receipt of loans under this program is tied to actual or anticipated exportation or export earnings and, therefore, this program is specific pursuant to sections 771(5A)(A)-(B) of the Act.

Risen Energy reported having outstanding loans from the Ex-Im Bank during the POR, which were provided under this program.²⁸⁷ To calculate the benefit under this program, we used the benchmarks described under the section, “Benchmark and Discount Rates” above. In conducting this comparison, we used the interest rates described in the “Benchmarks and Discount Rates” section above. We divided the benefits by Risen Energy’s export sales during the POR. On this basis, we preliminarily determine a countervailable *ad valorem* subsidy rate of 0.08 percent for Risen Energy. JA Solar reported that none of its cross-owned affiliates had outstanding loans from this program during the POR.²⁸⁸

Other Subsidy Programs

JA Solar and Risen Energy each reported that they received benefits from various grants and income tax programs during the AUL.²⁸⁹ As stated above in the section, “Use of Facts Otherwise Available and Adverse Inferences,” Commerce has preliminarily determined that numerous additional grants and income tax provided to the company respondents are

²⁸⁵ See, e.g., *Solar Cells from China Third AR Preliminary PDM* at 43, unchanged in *Solar Cells from China Third AR*.

²⁸⁶ See GOC’s December 30, 2019 QR at 5.

²⁸⁷ See, e.g., Risen Energy’s December 30, 2019 QR at 6 and Exhibit 6-2.

²⁸⁸ See, e.g., JA Solar’s December 30, 2019 QR Vol. 1 at III-11.

²⁸⁹ See, e.g. JA Solar’s December 30, 2019 QR Vol. 1 at III-45; see also Risen Energy’s December 30, 2019 QR at 31.

countervailable based upon AFA. The majority of the grants received by both JA Solar and Risen Energy do not pass the “0.5 percent test” described in CFR 351.524(b)(2), and thus are allocated to the year of receipt.²⁹⁰ However, JA Solar and Risen Energy each received grants that were expensed during the POR. We calculated *ad valorem* subsidy rates of 0.85 percent for JA Solar, and 0.92 percent for Risen Energy for these reported grants and income tax programs.²⁹¹

Programs Preliminarily Determined To Be Not Used Or Not To Confer A Measurable Benefit During the POR

Grant Program

Golden Sun Demonstration Program

Commerce determined this program to be countervailable in the original investigation.²⁹² This program was established in 2009 under Article 20 of China’s Renewable Energy Law to provide assistance to firms in the construction of photovoltaic electricity-generation projects. As detailed in Circular 397, this program was designed to provide one-time assistance to recipients over the course of its two-year term. 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 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.

JA Solar and Risen Energy each reported receiving grants from this program during the AUL.²⁹³ Commerce 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 that all benefits JA Solar and Risen Energy received from this program during the AUL were fully expensed prior to the POR.²⁹⁴

²⁹⁰ See Preliminary Calculations Memoranda.

²⁹¹ *Id.*

²⁹² See *Solar Cells from China Investigation* IDM at 11-12.

²⁹³ See, e.g., JA Solar’s December 30, 2019 QR Vol. I at Exhibit 1; see also Risen Energy’s December 30, 2019 QR at 9.

²⁹⁴ See Preliminary Calculations Memoranda.

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. VAT Refunds/Rebates for FIEs Purchasing Domestically-Produced Equipment

Commerce determined this program to be countervailable in the original investigation.²⁹⁵ According to Trial Measure 171, the GOC refunds the VAT on purchases of certain Chinese produced equipment to FIEs if the equipment is used for certain encouraged projects. In the instant review, the GOC stated that certain of JA Solar’s affiliates used this program during the AUL, and that we should to the responses from the company respondents for more details.²⁹⁶ Thus, there is no new information on the record that would cause us to reconsider our determination regarding the countervailability of this program. Therefore, we continue to find that this program provides a countervailable subsidy. The refunds under this program are a financial contribution in the form of revenue foregone by the GOC and they provide a benefit to the recipients in the amount of the tax savings. We also continue to maintain that these refunds are contingent upon the use of domestic over imported equipment and, are specific under section 771(5A)(A) and (C) of the Act.²⁹⁷

Since this indirect tax refund is provided for, or tied to, the capital structure or capital assets of a firm, we are treating these tax refunds as non-recurring benefits and allocated any benefits to JA Solar over the AUL.²⁹⁸ To calculate a benefit under this program, for the years in which the refunded amount was less than 0.5 percent of the relevant sales value, we expensed those refunds in the year of receipt, consistent with 19 CFR 351.524(a). For the years in which refunds were greater than or equal to 0.5 percent of the relevant sales value, we allocated the refund amount over the AUL. We used then used the discount rate described above in the “Subsidies Valuation Information” section to calculate the amount of the benefit allocated to the POR.

On this basis, we determine that all benefits JA Solar received from this program during the AUL were fully expensed prior to the POR.²⁹⁹ Risen Energy reported that none of its cross-owned affiliates used this program during the AUL.³⁰⁰

²⁹⁵ See *Solar Cells from China Investigation* IDM at 18-19.

²⁹⁶ See GOC’s December 30, 2019 QR at 17.

²⁹⁷ See *Solar Cells from China Investigation* IDM at 18-19.

²⁹⁸ *Id.*; see also 19 CFR 351.524(c)(2)(iii); and 19 CFR 351.524(d)(2).

²⁹⁹ See Preliminary Calculations Memoranda.

³⁰⁰ See, e.g., Risen Energy’s December 30, 2019 QR Vol. 1 at 8.

Export Credit Subsidies

Export Credit Insurance from SINOSURE

The company respondents were insured by SINOSURE during the POR.³⁰¹ Section 351.520(a)(1) of Commerce's regulations instructs that in the case of export insurance, a benefit exists if the premium rates charged are inadequate to cover the long-term operating costs and losses of the program. Pursuant to 19 CFR 351.520(a)(2), if the premium rates are inadequate, the amount of the benefit is the difference between the amount of premiums paid by the firm and the amount received by the firm under the insurance program during the POR. Our examination of the information provided by the company respondents on their use of this program leads us to conclude that neither JA Solar nor Risen Energy benefitted from this program during the POR, within the meaning of 19 CFR 351.520(a)(2).³⁰² Accordingly, we preliminarily determine that this program provided no measurable benefit to the respondents during the POR. As such, for these preliminary results, it was not necessary to examine whether the rates charged by SINOSURE are adequate to cover the program's long-term operating costs and losses pursuant to 19 CFR 351.520(a)(1).

XII. DISCLOSURE AND PUBLIC COMMENT

Commerce intends to disclose to interested parties the calculations performed in connection with these preliminary results within five days of its public announcement.³⁰³ Case briefs may be submitted to Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) at a date to be determined by Commerce, 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.³⁰⁴ Commerce will notify the parties when it has determined a deadline for case briefs. 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.³⁰⁵

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.³⁰⁶ Hearing requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues parties intend

³⁰¹ See, e.g., JA Solar's December 30, 2019 QR Vol. 1 at III-42; see also Risen Energy's December 30, 2019 QR at 30.

³⁰² Due to the proprietary nature of the information on which we based our analysis, see Commerce's discussion of this issue in the Preliminary Calculations Memoranda.

³⁰³ See 19 CFR 351.224(b).

³⁰⁴ 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.

³⁰⁵ See 19 CFR 351.309(c)(2) and 351.309(d)(2).

³⁰⁶ See 19 CFR 351.310(c).

to present at the hearing. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a time to be determined. Prior to the hearing, Commerce will contact all parties who submitted case or rebuttal briefs to determine if they wish to participate in the hearing. Commerce 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.³⁰⁷ Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time,³⁰⁸ on the due dates established above (or, where applicable, to be established by Commerce at a later date).

XIII. RECOMMENDATION

We recommend that you approve the preliminary findings described above.



Agree

Disagree

1/31/2020

X 

Signed by: JEFFREY KESSLER
 Jeffrey I. Kessler
 Assistant Secretary
 for Enforcement and Compliance

³⁰⁷ See 19 CFR 351.303(b)(2)(i).

³⁰⁸ See 19 CFR 351.303(b)(1).

Appendix

Non-Selected Companies Under Review

1. Anji DaSol Solar Energy Science & Technology Co., Ltd.
2. Baoding Jiasheng Photovoltaic Technology Co., Ltd.
3. Baoding Tianwei Yingli New Energy Resources Co., Ltd.
4. Beijing Tianneng Yingli New Energy Resources Co., Ltd.
5. BYD (Shangluo) Industrial Co., Ltd.
6. Canadian Solar (USA) Inc.
7. Canadian Solar Inc.
8. Canadian Solar International Ltd.
9. Canadian Solar Manufacturing (Changshu) Inc.
10. Canadian Solar Manufacturing (Luoyang) Inc.
11. Changzhou Trina Solar Yabang Energy Co., Ltd.
12. CSI Cells Co., Ltd.
13. CSI-GCL Solar Manufacturing (Yancheng) Co., Ltd.
14. De-Tech Trading Limited HK
15. Dongguan Sunworth Solar Energy Co., Ltd.
16. Eoply New Energy Technology Co., Ltd.
17. ERA Solar Co., Ltd.
18. ET Solar Energy Limited
19. Hainan Yingli New Energy Resources Co., Ltd.
20. Hangzhou Sunny Energy Science and Technology Co., Ltd.
21. Hengdian Group DMEGC Magnetics Co., Ltd.
22. Hengshui Yingli New Energy Resources Co., Ltd.
23. Hubei Trina Solar Energy Co., Ltd.
24. JA Technology Yangzhou Co., Ltd.
25. Jiangsu High Hope Int'l Group
26. Jiawei Solarchina (Shenzhen) Co., Ltd.
27. Jiawei Solarchina Co., Ltd.
28. Jinko Solar (U.S.) Inc.
29. Jinko Solar Co., Ltd.
30. Jinko Solar Import and Export Co., Ltd.
31. Jinko Solar International Limited
32. LERRI Solar Technology Co., Ltd.
33. Lightway Green New Energy Co., Ltd.
34. Lixian Yingli New Energy Resources Co., Ltd.
35. Luoyang Suntech Power Co., Ltd.
36. Nice Sun PV Co., Ltd.
37. Ningbo ETDZ Holdings, Ltd.
38. Ningbo Qixin Solar Electrical Appliance Co., Ltd.
39. Shanghai BYD Co., Ltd.
40. Shenzhen Sungold Solar Co., Ltd.
41. Shenzhen Yingli New Energy Resources Co., Ltd.
42. Sumec Hardware & Tools Co., Ltd.

43. Sunpreme Solar Technology (Jiaxing) Co., Ltd.
44. Systemes Versilis, Inc.
45. Taizhou BD Trade Co., Ltd.
46. TenKsolar (Shanghai) Co., Ltd.
47. Tianjin Yingli New Energy Resources Co., Ltd.
48. Tianneng Yingli New Energy Resources Co., Ltd.
49. Toenergy Technology Hangzhou Co., Ltd.
50. Trina Solar (Changzhou) Science & Technology Co., Ltd.
51. Trina Solar Energy Co., Ltd. (formerly known as Changzhou Trina Solar Energy Co., Ltd.)
52. Turpan Trina Solar Energy Co., Ltd.
53. Wuxi Suntech Power Co., Ltd.
54. Wuxi Tianran Photovoltaic Co., Ltd.
55. Yancheng Trina Solar Energy Technology Co., Ltd.
56. Yingli Energy (China) Co., Ltd.
57. Yingli Green Energy Holding Company Limited
58. Yingli Green Energy International Trading Company Limited
59. Zhejiang ERA Solar Technology Co., Ltd.
60. Zhejiang Jinko Solar Co., Ltd.