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October 9, 2012

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

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

SUBJECT: Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China

I. Summary

On March 25, 2012, the Department published the Preliminary Determination in this investigation.[1] The Department conducted verification of the questionnaire responses submitted by Suntech from June 25 through July 6, 2012, by the GOC from July 9 through July 13, 2012, and by Trina from July 16 through July 25, 2012.[2]

On June 26, 2012, the Department issued the Post-Preliminary Analysis Memorandum, which addressed several additional subsidy allegations including: the Provision of Land for LTAR to Suntech, the Provision of Electricity for LTAR, the Enterprise Income Tax Law R&D program, the Provision of Float Glass for LTAR, the Over-Rebate of VAT Export Rebates, and the creditworthiness of Suntech and Trina during certain years.[3]

The "Subsidies Valuation Information" and "Analysis of Programs" sections below describe the subsidy programs and the methodologies used to calculate benefits for the programs under investigation. Additionally, we have analyzed the comments submitted by the interested parties in their case and rebuttal briefs in the "Analysis of Comments" section below, which contains the Department's responses to the issues raised in the briefs. Based on the comments received and our verification findings, we have made certain modifications to the Preliminary Determination and the Post-Preliminary Analysis Memorandum, which are discussed below under each program. We recommend that you approve the positions described in this memorandum.

[1] Attached to this memorandum are tables of acronyms and abbreviations, and administrative and legal authorities.
[2] See Suntech Verification Report, GOC Verification Report, and Trina Verification Report.
[3] See Post-Preliminary Analysis Memorandum.

On February 3, 2012, we published a preliminary affirmative determination of critical circumstances, finding that there was a reasonable basis to believe or suspect that certain subsidy allegations under investigation are inconsistent with the SCM agreement, and that there have been massive imports of solar cells over a relatively short period from Suntech, Trina Solar, and other producers or exporters. As such, we determined that critical circumstances exist for Suntech, Trina, and all other PRC producers and exporters, pursuant to section 703(e)(1) of the Act, and 19 CFR 351.206.[4] Consequently, after the Preliminary Determination, we instructed CBP to suspend all entries on or after December 27, 2011, which is 90 days before the publication of the Preliminary Determination on March 26, 2012.[5] After reviewing comments from all parties concerning the preliminary determination of critical circumstances (Comments 3, 4, and 5, below), we continue to determine that critical circumstances exist for Suntech, Trina, and all other producers and exporters.

Below is a complete list of the issues in this investigation for which we received case brief and rebuttal comments from interested parties.

General
Comment 1: Simultaneous Application of CVD and AD NME Measures
Comment 2: Cut-Off Date for Measurement of Subsidies

Critical Circumstances
Comment 3: Critical Circumstances: Early Knowledge
Comment 4: Critical Circumstances: Other Factors Contributing to Import Surges
Comment 5: Critical Circumstances: The Length of the Base and Comparison Periods

Provision of Goods and Services for LTAR
Comment 6: Whether Polysilicon Producers Are Authorities
Comment 7: Whether Polysilicon Producers Were Entrusted or Directed to Supply Polysilicon to the Solar Cells Industry for LTAR
Comment 8: Specificity of the Provision of Polysilicon for LTAR
Comment 9: Use of an In-Country Benchmark to Measure the Benefit from the Provision of Polysilicon for LTAR
Comment 10: The Department's Determinations Not to Investigate Aluminum Extrusions and Rolled Glass Provided at LTAR
Comment 11: The Provision of Land to Trina
Comment 12: Use of AFA to Determine an Electricity Benchmark

[4] See Preliminary CVD Critical Circumstances Determination, 77 FR at 5489.
[5] On July 24, 2012, we instructed CBP to terminate suspension of entries, beginning on that date, in accordance with our obligations under the SCM, until a final affirmative ITC determination is published.

II. Subsidy Valuation Information

A. Period of Investigation

The POI for which we are measuring subsidies is January 1, 2010, through December 31, 2010.

B. Attribution of Subsidies

The Department's regulations at 19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides that the Department will attribute

subsidies received by certain other companies to the combined sales of those companies when: (1) two or more corporations with cross-ownership produce the subject merchandise; (2) a firm that received a subsidy is a holding or parent company of the subject company; (3) a cross-owned firm supplies the subject company with an input that is produced primarily for the production of the downstream product; or (4) a corporation producing non-subject merchandise received a subsidy and transferred the subsidy to the cross-owned subject corporation.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This regulation states that 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. The CIT has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.[6]

In the Preliminary Determination, the Department determined that Suntech was cross-owned with five of its affiliates, including other producers of solar cells, producers of equipment used to produce solar cells, and producers of polysilicon, the primary input into solar cells.[7] In the Post-Preliminary Analysis Memorandum, we determined that five additional affiliates were cross-owned with Suntech.[8] These additional companies were producers of solar cells or provided goods and services for the production of solar cells. In the Preliminary Determination, we also determined that Trina is cross-owned with one of its affiliates, a producer of solar cells.[9] We made no additional determinations regarding Trina and its affiliates in the Post-Preliminary Analysis Memorandum. We received no comments on these determinations and continue to treat these affiliates as cross-owned with Suntech and Trina. In the sections below, we refer to these companies collectively as "Suntech" and "Trina," unless otherwise noted.

C. Allocation Period

Under 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the AUL of the renewable physical assets used to produce the subject merchandise. Pursuant to 19 CFR 351.524(d)(2), there is a rebuttable presumption that the AUL will be taken from the IRS Tables, as updated by the U.S. Department of the Treasury. For the subject merchandise, the IRS Tables prescribe an AUL of 10 years. No interested party has challenged the use of a 10-year AUL. However, for the reasons first explained in the CWP investigation, and discussed below under Comment 2, we are using the date of December 11, 2001, the date on which the PRC became a member of the WTO, as the earliest date from which the Department will identify and measure subsidies in the PRC.

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

[6] See Fabrique, 166 F. Supp. 2d at 600-604.
[7] See Preliminary Determination, 77 FR at 17445.
[8] Post-Preliminary Analysis Memorandum at 5-7.
[9] See Preliminary Determination, 77 FR at 17445.

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.

D. Loan Benchmarks and Discount Rates for Allocating Non-Recurring Subsidies

For loan benchmarks in the Preliminary Determination, we followed the methodology, with certain modifications, first established in the CFS from the PRC investigation for calculating interest rate benchmarks for preferential policy lending in the PRC.[10] This methodology and modifications are discussed below under Comment 16. In the Post-Preliminary Analysis Memorandum, we determined that Suntech was uncreditworthy in 2010 and that Trina was uncreditworthy in 2005, 2007, and 2008, based on their poor financial ratios and large negative cash flows.[11] Consequently, we stated our intention to adjust the interest rate benchmarks in accordance with 19 CFR 351.505(a)(3)(iii). We also placed on the record the data we intended to use in making the adjustments and have used that data for this final determination. Further, as explained in Comment 17, below, we no longer find Trina uncreditworthy in 2008.

In the Preliminary Determination, the Department used, as the discount rate for non-recurring subsidies, the long-term benchmark interest rate which we calculated in accordance with the methodology applied in previous PRC investigations with certain modifications. While no party commented on the use of long-term interest rate benchmarks as discount rates, the GOC commented on the methodology used to calculate those benchmarks. As indicated above, the parties' arguments are discussed below under Comment 16. In addition, we have determined that Suntech was uncreditworthy in 2010 and that Trina was uncreditworthy in 2005 and 2007. For non-recurring subsidies received in those years, we have adjusted the discount rates according to 19 CFR 351.505(a)(3)(iii).

E. LTAR Benchmarks

Provision of Polysilicon for LTAR

In the Preliminary Determination, we used the "Silicon Pricing Index" published by the firm Photon Consulting to measure the benefit from polysilicon provided for LTAR.[12] We received no comments on this determination and continue to rely on the index for this final determination. We have determined that the GOC is the predominant provider of polysilicon in the PRC and that its significant presence in the market distorts all transaction prices.[13] As a result, we cannot rely on domestic prices in the PRC as a "tier-one" benchmark. For the same reasons, we determine that import prices into the PRC cannot serve as a benchmark. Therefore, for the final determination, we have continued to rely on tier-two benchmarks, i.e., world market prices available to purchasers in the PRC, pursuant to 19 CFR 351.511(a)(2)(ii).

[10] See Preliminary Determination, 77 FR at 17447-48.
[11] See Post-Preliminary Analysis Memorandum at 6-7 and Comment 17 below for detailed analysis.
[12] See Preliminary Determination, 77 FR at 17448-49.
[13] See id.

Provision of Land for LTAR
In the Preliminary Determination, we relied on information obtained from CBRE, a global commercial real estate broker, as the benchmark for land purchased in the PRC.[14] This information specified rates paid for land purchased in industrial parks outside Bangkok, Thailand. Arguments concerning this benchmark are addressed below under Comment 11. After reviewing parties' comments, we continue to rely on this same information for this final determination. In addition, for this final determination, we are countervailing land leased as well as purchased. As a benchmark for leased land, we are relying on rental rates for land in industrial parks outside Bangkok, Thailand from the same CBRE report, already on the record of this investigation. These rates have been used in countervailing leased land in prior PRC investigations.[15]

Provision of Electricity for LTAR
In the Post-Preliminary Analysis Memorandum, we relied, as AFA, on information supplied by the GOC as a benchmark for measuring the benefit from electricity provided to Suntech and Trina for LTAR.[16] We continue to rely on this same information, provincial tariff schedules for electricity, for this final determination. Arguments concerning the appropriateness of this benchmark are addressed below under Comment 12.

F. Denominators

When selecting an appropriate denominator for use in calculating the ad valorem subsidy rate, the Department considers the basis for the respondent's receipt of benefits under each program. As discussed in further detail below, where the program has been found to be an export subsidy, we used the recipient's total export sales as the denominator (or the total combined export sales of the appropriate cross-owned affiliates, as described above). Where the program has been found to be countervailable as a domestic subsidy, we used the recipient's total sales as the denominator (or the total combined sales of the appropriate cross-owned affiliates, as described above). For a further discussion of the denominators used, see the Final Analysis Memoranda.

III. Use of Facts Otherwise Available and Adverse Inferences

Polysilicon Producers are Authorities
In the Preliminary Determination,[17] relying upon the facts available with an adverse inference, we found that all producers of polysilicon purchased by Suntech and Trina were authorities within the meaning of section 771(5)(B) of the Act. For this final determination, we continue to determine, as AFA, that these producers are authorities, for the reasons described in the Preliminary Determination. Arguments from the GOC concerning this determination are discussed below under Comments 6, 7 and 27.

[14] See id., 77 FR at 17448.
[15] See Seamless Pipe IDM at 22-23.
[16] See Post-Preliminary Analysis Memorandum at 9.
[17] See Preliminary Determination, 77 FR at 17442-17444.

Provision of Land for LTAR

In the Preliminary Determination, relying upon the facts available with an adverse inference, we found that land provided to Trina was countervailable because the GOC did not provide complete information regarding the derivation of the prices paid by Trina for land-use rights. As such, the Department was unable to determine whether or not the provision of these land use rights was specific.[18] We continue to find, for the same reasons as in the Preliminary Determination, that Trina's land is countervailable in its entirety. Arguments concerning the appropriateness of this finding and the GOC's efforts to cooperate with our requests for information are discussed below under Comments 11 and 27.

For this final determination, we also are relying on the facts available, with an adverse inference, to find that certain tracts of land provided to Suntech are countervailable. In the Post-Preliminary Analysis Memorandum, we concluded that there was no basis on the record to find the land provided to Suntech to be specific. Therefore, we found the provision of land to Suntech to be not countervailable. Based on an evaluation of all of the information on the record as well as the results of verification, we now find for purposes of this final determination that the GOC did not provide sufficient information regarding a number of the tracts of land held by the 11 cross-owned companies that would allow the Department to perform the necessary analysis for each such tract.

We first asked about this issue in our initial questionnaire. In its January 31, 2012 questionnaire response, the GOC provided only a short, abstract response about how land is transferred in the PRC. It made no attempt to provide the details of the particular Suntech and Trina transactions under examination. In a supplemental questionnaire, we asked for the information pertaining to Suntech's land a second time. In its May 3, 2012 response, the GOC described the minimum price rules that must be applied by local governments and provided two related circulars issued by the central government's Ministry of Land and Resources.[19] In another supplemental questionnaire, we asked the GOC to explain how the circulars provided related to the specific transactions under examination. In its June 8, 2012 response, the GOC provided a circular issued by Jiangsu province, in which most of Suntech's facilities are located. It is these provincial government measures that implement the two central government circulars. At verification, the GOC explained how the prices paid by Suntech for its land related to the Jiangsu circular.[20]

The Jiangsu circular, however, became effective only on January 1, 2007,[21] whereas several tracts of land were provided to Suntech before that date. In addition, the GOC provided no details concerning land provided to Suntech outside Jiangsu province. It is clear from the record that provincial and local governments are free to establish separate benchmarks for "different regions and different industries" in accordance with "local industrial development policies."[22] While, according to the GOC, such separate benchmarks must be above the central government

[18] See Preliminary Determination, 77 FR at 17444-45.
[19] See GOC's May 3, 2012 questionnaire response at 3-4.
[20] See GOC Verification Report at 2-4.
[21] See GOC's June 8, 2012 questionnaire response at Exhibit S4-10-a, article V. At verification, the GOC stated that before January 1, 2007, land prices were "what the market demanded." See GOC Verification Report at 3. The GOC provided no information in its questionnaire responses demonstrating pre-2007 land was provided at market prices and did not offer to do so at verification.
[22] See GOC Verification Report at 4.

minimums, they still provide for the possibility that Suntech enjoyed preferential land rates outside Jiangsu province.[23] In addition, the GOC provided no information regarding how rental rates paid by Suntech were determined or how they relate to local pricing policies. For example, while one of the central government circulars contains a paragraph requiring the "capitalized" value of leased land to be at or above the minimum prices,[24] there are no details on the record concerning how the capitalized value should be calculated.

Thus we determine that the GOC has withheld information requested of it, within the meaning of section 776(a)(2)(A) of the Act, regarding land leased by Suntech, land purchased before January 1, 2007, and land purchased outside Jiangsu province. Furthermore, as described above, after the GOC's original deficient response to our questionnaire, we notified it of the deficiencies, pursuant to section 782(d) of the Act, and provided it an opportunity to remedy the deficiencies. Although it provided information pertaining to land in Jiangsu province provided on or after January 1, 2007, the record remained deficient with respect to the other tracts of land. As such, the use of facts otherwise available is warranted under section 776(a) of the Act. Moreover, we determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information and that an adverse inference is warranted under section 776(b) of the Act. As noted above, we asked the GOC repeatedly to provide information regarding the derivation of the prices paid by Suntech for its land. The GOC was not forthcoming with the requested information, providing only piecemeal bits of information, and leaving gaps in the record that could have been filled by information in the GOC's possession (that is, information regarding leased land, land purchased before January 1, 2007, and land purchased outside of Jiangsu province). As AFA, we are determining that all land leased by Suntech, purchased by Suntech before 2007, or purchased outside Jiangsu province is specific. Thus, such land is countervailable when the record indicates the provision of land constituted a financial contribution from an "authority" within the meaning of section 771(5)(B) of the Act and conferred a benefit within the meaning of section 771(5)(E) of the Act.

Provision of Electricity for LTAR

In the Post-Preliminary Analysis Memorandum, relying on the facts available with an adverse inference, we found that the provision of electricity to Suntech and Trina 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.[25] We also relied on AFA in selecting the benchmark for determining the existence and amount of the benefit.[26] For this final determination, we continue to determine, relying upon AFA, that the provision of electricity constitutes a financial contribution and is specific. We also continue to determine that an adverse inference is appropriate in measuring the benefit from electricity provided to Suntech and Trina. However, where possible, the Department will rely on the 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 have relied on the usage information reported by the respondents in each

[23] At verification, the GOC stated Jiangsu province had not established separate benchmarks pursuant to industrial development or other policies; i.e., all enterprises had to pay above the same minimum prices for the same grades of land.
[24] See GOC's May 3, 2012 questionnaire response at Exhihit-S2-1-c, article 4.
[25] See Post-Preliminary Analysis Memorandum at 2-3.
[26] See id.

instance. Arguments from the GOC concerning the use of an adverse inference in measuring the benefit are discussed below under Comment 12.

Export Buyer's Credits

The Department has determined that the use of AFA is warranted in determining the countervailability of Export Buyer's Credits. As discussed in detail below under Comment 18, the GOC refused to allow the Department to examine records regarding the recipients of export buyer's credits and refused to allow the Department to examine or query electronic databases regarding such recipients. Pursuant to section 776(a)(2)(D) of the Act, when an interested party provides information that cannot be verified, the Department uses the facts otherwise available. Further, pursuant to section 776(b) of the Act, we find that the GOC failed to cooperate by not acting to the best of its ability, because it refused to allow the Department to pursue the most appropriate methods of verification of this program and failed to provide details concerning alternative methods. Accordingly, an adverse inference is warranted. As AFA, we find, as discussed below under Comment 19, that both Suntech and Trina benefitted from this program at the rate of 10.54 percent ad valorem, the highest rate determined for a similar program in a prior PRC proceeding.

Subsidies Discovered During the Investigation

In the Preliminary Determination and in the Post-Preliminary Analysis Memorandum, we determined, as AFA, that numerous subsidies discovered during the course of this investigation were countervailable grants.[27] For this final determination, we continue to determine, as AFA, that these subsidies are countervailable grants. Arguments from the GOC and Trina concerning whether the use of AFA was appropriate in analyzing these subsidies and whether the Department properly investigated these subsidies are discussed below under Comment 23.

"Bonus for Employees from Government"

As discussed below under Comment 24, during verification of Trina's questionnaire responses, the Department examined Trina's "special payables" account to confirm it had correctly reported all countervailable grants it received. The Department examined this account because Trina stated it had been required by PRC GAAP to record certain subsidies from the GOC in this account. With one exception, for each entry in the account, Trina was able to tie the entry to a grant reported in its questionnaire response, or to demonstrate that the entry represented something other than a countervailable subsidy. The exception was an entry labeled "bonus for employees from government."

The Department first asked Trina to report "other subsidies" in our initial questionnaire. Specifically, we stated: "Did the GOC (or entities owned directly, in whole or in part, by the GOC or any provincial or local government) provide, directly or indirectly, any other forms of assistance to your company? If so, please describe such assistance in detail, including the amounts, date of receipt, purpose and terms, and answer all questions in the appropriate appendices." In our second supplemental questionnaire, we asked Trina to confirm that it had reported all non-recurring subsidies. Trina provided updated information in response to that question concerning a number of additional subsidies it had received over the AUL, but it

[27] See Preliminary Determination, 77 FR at 17445 and Post-Preliminary Analysis Memorandum at 3-5.

provided no information concerning the amount at issue. In the same response it claimed that, with the updated information, it had identified all non-recurring subsidies provided by the GOC.

The Department determines that the use of facts available pursuant to section 776(a)(2)(D) of the Act is warranted in determining the countervailability of this apparent subsidy. Trina was unable to establish its claim that it had identified all non-recurring subsidies provided by the GOC. In addition, the Department determines an adverse inference is warranted. As discussed above, the Department discovered numerous unreported subsidies during the course of this investigation. As such, in addition to requesting information concerning the discovered subsidies, we asked Trina to confirm that all additional non-recurring subsidies had been reported. Trina was unable to establish at verification its reported statement that it had done so. Thus, it failed to cooperate to the best of its ability. As AFA, we determine that the amount entered under "bonus for employees from government" in Trina's special payables account is a countervailable grant.

IV. Critical Circumstances

Section 703(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect: (A) that "the alleged countervailable subsidy" is inconsistent with the SCM agreement of the WTO, and (B) that there have been massive imports of the subject merchandise over a relatively short period. To determine whether imports of the subject merchandise under investigation have been "massive," 19 CFR 351.206(h)(1) provides that the Department normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, 19 CFR 351.206(h)(2) provides that imports must increase by at least 15 percent during the "relatively short period" to be considered "massive."

A "relatively short period" is defined in the regulations as normally being the period beginning on the date the proceeding begins (i.e., the date the petition is filed) and ending at least three months later. The regulations also provide, however, that, if the Department finds that importers, or exporters or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, the Department may consider a period of not less than three months from that earlier time. The Department preliminarily found,[28] and continues to find, that importers, exporters, and producers had reason to believe that a proceeding was likely in September 2011, two months prior to the filing of the petition (see Comment 3, below). Because the record indicates parties had such knowledge in mid September 2011, but possibly as early as the beginning of September 2011, we have examined whether imports were massive over a period beginning in September 2011 and over a period beginning in October 2011. Either way, the Department continues to Determine that imports were greater than 15 percent and were therefore "massive" (see Comment 4, below). In conducting this analysis, we continue to use data provided by the respondents for shipments through December 2011 (see Comment 5, below). Furthermore, we continue to find that the respondents received subsidies that are inconsistent with the SCM agreement because they are export subsidies. Therefore, we continue to determine that critical circumstances exist for Suntech, Trina, and all other producers and exporters.

[28] See Preliminary CVD Critical Circumstances Determination, 77 FR at 5489.

V. Terminated Programs

The GOC reported that six programs used by the respondents have been terminated. In the Preliminary Determination, we determined that no program-wide-change adjustments to the cash deposit rate were warranted under 19 CFR 351.526(a). We noted that the GOC did not request program-wide-change adjustments and that it did not provide all of the documentation necessary to conduct such an evaluation. We also noted that several of the programs the GOC claims were terminated had residual benefits in the POI. For example, certain parties continue to enjoy benefits from the "Two Free, Three Half" income tax program for FIEs. We received no comments on this determination. Therefore, we are not making any adjustments to the cash deposit rates in this final determination for terminated programs.

VI. Analysis of Programs

A. Programs Determined To Be Countervailable

1. Golden Sun Demonstration Program

This program was established in 2009 under Article 20 of the REL to provide assistance to firms in the construction of photovoltaic electricity-generation projects. As detailed in Circular 397, this program was designed to provide one-time assistance to recipients over the course of its two-year term. Trina reported receiving grants through this program,[29] and in the Preliminary Determination, we found that this program conferred a countervailable subsidy.[30] During verification of Trina, the Department reviewed the company's use of this program, the entire amount approved, and the amount of the grant received in the POI.[31] We also discussed the operation of the program with provincial and central government officials.[32] In addition, we verified that no grants were received by Suntech before or during the POI under this program.[33]

After considering arguments from the GOC and Trina concerning the countervailability of this program (see Comment 21), we continue to find that grants from this program provide a financial contribution pursuant to section 771(5)(D)(i) of the Act and a benefit, in the amount of the grant provided, pursuant to 19 CFR 351.504(a). We continue to find that grants from this program are specific as a matter of law to certain enterprises, namely those involved in the construction of solar-powered projects, pursuant to section 771(5A)(D)(i) of the Act.

The Department continues to treat these grants as a non-recurring subsidy and thus performed the "0.5 percent test" for the year the grant was approved,[34] 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. Because the resulting percentage was less than 0.5 percent, we have expensed the full amount of the grant in the year it was received (the POI).

[29] Trina received approval for one project in 2010. Trina received one grant pursuant to this approval during the POI and another after the POI.
[30] See Preliminary Determination, 77 FR at 17449-17450.
[31] See Trina Verification Report at 24.
[32] See GOC Verification Report at 10.
[33] See Suntech Verification Report at 15, 22 and 29.
[34] Trina received another grant under this program after the POI.

On this basis, we determine a countervailable subsidy rate of 0.09 percent ad valorem for Trina under this program.

2. Preferential Policy Lending

Article 25 of the REL specifically calls for financial institutions to offer favorable loans to the renewable energy industry. In addition, Catalogue No. 40 contains a list of encouraged projects, including solar energy, which the GOC targets through the provision of loans and other forms of assistance. Both the respondents reported having outstanding loans during the POI and, in the Preliminary Determination, we found that this program conferred a countervailable subsidy.[35] During verification of the respondents, the Department reviewed the companies' outstanding short- and long-term loans, including minor corrections to the respondents' previously reported loans.[36] We also discussed the operation of this program with central government officials.[37]

After considering arguments from the parties concerning the nature of the commercial banking industry, specificity of this program and the appropriate benchmark to use (see Comments 13 through 16), we continue to find that this program provides a financial contribution pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act, and that the loans provide a benefit equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans. We continue to determine 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.

To calculate the benefit under this program, we used the benchmarks described under "LTAR Benchmarks" above, including a risk premium for loans provided in the years in which we determined Suntech and Trina to be uncreditworthy.[38] We divided the total benefits received by each company during the POI by the combined total sales (exclusive of inter-company sales) of each company during the POI, in accordance with 19 CFR 351.525(b)(6)(ii).[39]

On this basis, we determine a countervailable subsidy rate of 1.95 percent ad valorem for Suntech and 0.89 percent ad valorem for Trina under this program.

3. Provision of Polysilicon for LTAR

Both Trina and Suntech reported purchasing polysilicon as an input to produce subject merchandise and identified several producers of this input from which they purchased polysilicon during the POI. In the Preliminary Determination, the Department found that this program conferred a countervailable subsidy.[40] During verification, both the respondents were

[35] See Preliminary Determination, 77 FR at 17450-17451.
[36] See Trina Verification Report at 16-18 and Suntech Verification Report at 9, 20, and 24.
[37] See GOC Verification Report at 11-14.
[38] See also 19 CFR 351.505(c).
[39] See Suntech Final Analysis Memorandum for the sales denominators used in all the countervailed programs for Suntech.
[40] See Preliminary Determination, 77 FR at 17451.

able to confirm information provided earlier concerning the identity of the firms that produced the polysilicon they purchased during the POI.[41]

We have considered the arguments from the parties on the nature of the polysilicon industry, including the GOC's role in the industry, as well as the specificity of this program and the appropriate benchmark to use (see Comments 6 through 9). As discussed above in "Use of Facts Otherwise Available and Adverse Inferences" section, we continue to find, as we did in the Preliminary Determination, that the domestic producers of the polysilicon inputs purchased by the respondents during the POI are authorities, relying upon AFA. As a result, we continue to determine that the polysilicon sold by these input producers constitutes a financial contribution in the form of a provision of a good under section 771(5)(D)(iii) of the Act and that, as AFA, the provision of polysilicon at LTAR is specific to solar cells producers. We also continue to find that the respondents received a benefit to the extent that the polysilicon they purchased was provided for LTAR.[42]

The Department continues to use tier two benchmarks pursuant to 19 CFR 351.511(a)(2)(ii), i.e., world market prices, to calculate a benefit for each respondent equal to the difference between the delivered benchmark prices and the delivered prices each respondent paid.[43] We divided the total benefits for each respondent by the appropriate total sales denominator.

On this basis, we determine a countervailable subsidy rate of 0.29 percent ad valorem for Suntech and 1.14 percent ad valorem for Trina under this program.

4. Provision of Land for LTAR

In the Preliminary Determination, the Department found, as AFA, that Trina received a countervailable subsidy through its purchase of land for LTAR and, in the Post-Preliminary Memorandum, we found that Suntech's purchase of land did not confer a countervailable subsidy.[44] During verification of the respondents, the Department reviewed the companies' records to determine that all of their land had been reported to the Department. The Department confirmed that the amounts reported matched the respondents' accounting system records.[45]

Trina and Petitioner had comments regarding the countervailability of Trina's land, which the Department addresses below (see Comment 11). We continue to find, as we did in the Preliminary Determination, that the provision of land by the GOC constitutes a financial contribution from an authority in the form of providing goods or services pursuant to section 771(5)(D)(iii) of the Act. Furthermore, as discussed above in the "Use of Facts Otherwise Available and Adverse Inferences" section, the Department continues to determine as AFA that the provision of land to Trina was specific. Also, as discussed above in the "Use of Facts Otherwise Available and Adverse Inferences" section, for this final determination, we now find that the GOC did not provide sufficient information regarding a number of the tracts of land held

[41] See Trina Verification Report at 2, 15-16 and Suntech Verification Report at 10 and 25.
[42] See section 771(5)(E)(iv) of the Act.
[43] See Preliminary Benchmark Memorandum at 2-4.
[44] See Preliminary Determination, 77 FR at 17451 and the Post-Preliminary Memorandum at 14.
[45] See Trina Verification Report at 20-21 and Suntech Verification Report at 11-12, 21, 23, 27-29.

by the 11 Suntech cross-owned companies that would allow the Department to perform the necessary analysis for each such tract, despite repeated attempts by the Department to ascertain such information. Therefore, we have found that all land leased by Suntech, purchased by Suntech before 2007, or purchased outside Jiangsu province is specific, relying upon AFA. This land is countervailable when the record indicates the provision of land constituted a financial contribution from an "authority" within the meaning of section 771(5)(B) of the Act. Lastly, we find that Suntech and Trina received a benefit to the extent that the land-use rights they purchased or leased were provided for LTAR.[46]

To determine the benefit from this program, we calculated the difference between the price the respondents paid for their land-use rights and a Thai land benchmark, as done in the Preliminary Determination and in past investigations.[47] For purchased land, we next conducted the "0.5 percent test" of 19 CFR 351.524(b)(2) for the year of the relevant land-use agreement by dividing the total benefit for each tract by the appropriate sales denominator. If more than one tract was provided in a single year, we combined the total 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 purchased tracts. We allocated the total benefit amounts across the terms of the land-use agreements, using the standard allocation formula of 19 CFR 351.524(d), and determined the amount attributable to the POI. We then summed all the allocated benefits attributable to the POI and divided this amount by the appropriate sales denominator. For leased land, we treated the difference between the rental rates paid by Suntech (only Suntech leased land) and the Thai land benchmarks for rented land as a recurring subsidy. We thus divided the entire difference between rental rates paid in the POI and the Thai benchmarks by the appropriate sales denominator.

On this basis, we determine a countervailable subsidy rate of 0.15 percent ad valorem for Suntech and a rate of 0.67 percent ad valorem for Trina under this program.

5. Provision of Electricity for LTAR

For the reasons explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we are basing our determination regarding the government's provision of electricity in part on AFA. The Department determined in the Post-Preliminary Memorandum that both the respondents received a countervailable subsidy through purchasing electricity for LTAR.[48] During verification of both the respondents, the Department reviewed electricity invoices and bills, with particular attention paid to the parts of the bill listing various electricity charges that the respondents reported as being adjustments to their final bills.[49]

After considering arguments from the GOC and Petitioner concerning the use of AFA in selecting a benchmark (see Comment 12), we continue to find that, in not providing the requested information, the GOC did not act to the best of its ability. Accordingly, in selecting from among the facts available, we are drawing an adverse inference with respect to the

[46] See section 771(5)(E)(iv) of the Act.
[47] See Seamless Pipe IDM, OCTG IDM and LWS IDM.
[48] See Post-Preliminary Memorandum at 7-9.
[49] See Trina Verification Report 21-24 and Suntech Verification Report at 26-27.

provision of electricity in the PRC and determine that the GOC is providing a financial contribution that is specific within the meaning of sections 771(5)(D)(iii) and 771(5A)(D) of the Act.[50] To determine the existence and the amount of any benefit under this program pursuant to section 771(5)(E)(iv) of the Act and 19 CFR 351.511, we relied on the companies' reported consumption volumes and rates paid. We compared the rates paid by the respondents to the benchmark rates, which, as discussed above, are the highest rates charged in the PRC during the POI. We made separate comparisons by price category (e.g., great industry peak, basic electricity, etc.).

To calculate the electricity benchmark, in accordance with 19 CFR 351.511(a)(2), we selected the highest rates in the PRC for the user category of the respondents (e.g., "large industrial users") for the non-seasonal general, peak, normal, and valley ranges, as provided by the GOC in the 2009 provincial electricity tariff schedules. These benchmarks reflect an adverse inference, which we have drawn as a result of the GOC's failure to act to the best of its ability in providing requested information about its provision of electricity in this investigation. As in the Post-Preliminary Memorandum, to determine whether the respondents received electricity for LTAR, we compared what the respondents paid for electricity to our benchmark prices. Based on this comparison, we determine that electricity was provided for LTAR and that a benefit exists in the total amount of the difference between each benchmark and the price paid for each type of electricity consumed at each rate level.[51] To calculate the subsidy rate pertaining to the provision of electricity for LTAR, we divided the benefit amount by the appropriate sales denominator for each respondent.

On this basis, we determine a countervailable subsidy rate of 0.52 percent ad valorem for Suntech and 0.50 percent ad valorem for Trina under this program.

6. "Two Free, Three Half" Program for Foreign-Invested Enterprises (FIEs)

Under Article 8 of the FIE Tax Law, an FIE that is "productive" and scheduled to operate for more than ten years may be exempted from income tax in the first two years of profitability and pay income taxes at half the standard rate for the next three years. According to the GOC, the "Two Free, Three Half" program was terminated effective January 1, 2008, by the Enterprise Income Tax Law, but companies already enjoying the preference were permitted to continue paying taxes at reduced rates. In the Preliminary Determination, we found that Luoyang Suntech and Zhenjiang Huantai, both cross-owned affiliated companies of Suntech, paid taxes at a reduced rate under this program during the POI.[52]

After considering arguments from parties concerning the specificity of this program (see Comment 25), we continue to find, as we did in the Preliminary Determination that the "Two Free, Three Half" income tax exemption/reduction confers a countervailable subsidy. The exemption/reduction is a financial contribution in the form of revenue foregone by the GOC and it provides a benefit to the recipient in the amount of the tax savings.[53] We also determine that

[50] See "Use of Facts Otherwise Available and Adverse Inferences" section above.
[51] See section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a).
[52] See Preliminary Determination, 77 FR at 17451-17452.
[53] See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).

the exemption/reduction afforded by the program is limited as a matter of law to certain enterprises, i.e., productive FIEs, and, hence, is specific under section 771(5A)(D)(i) of the Act.

As done in the Preliminary Determination, we treated the income savings enjoyed by Luoyang Suntech and Zhenjiang Huantai as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we compared the two companies' tax rate to the rate they would have paid in the absence of the program. We divided Luoyang Suntech's and Zhenjiang Huantai's tax savings for the return filed during the POI by the appropriate total sales denominator, in accordance with 19 CFR 351.525(b)(6)(ii) and 19 CFR 351.525(b)(6)(iv), respectively. We then summed the two companies' ad valorem rates to compute Suntech's total ad valorem rate under this program.

On this basis, we determine a countervailable subsidy rate of 0.13 percent ad valorem for Suntech under this program.

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

Article 28.2 of the Enterprise Income Tax Law of the PRC provides for the reduction of the income tax rate to 15 percent, from 25 percent, for enterprises that are recognized as HNTEs, regardless of whether the enterprise is an FIE or domestic company. 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. In the Preliminary Determination, we determined that both Suntech and Trina received a countervailable subsidy by participating in this program.[54] During verification, we met with provincial and central government officials to discuss the establishment and use of this program.[55] We also reviewed application forms and tax returns related to this program while verifying the respondents.[56]

After considering arguments from Petitioner and Trina concerning which tax return to use and specificity concerns (see Comments 25 and 26), we continue to find, as we did in our Preliminary Determination, that this program confers a countervailable subsidy. The income tax reduction is a financial contribution in the form of revenue foregone by the government, and it provides a benefit to the recipients in the amount of the tax savings, pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also continue to find that the income tax reduction afforded by this program is limited as a matter of law to certain enterprises, i.e., HNTEs and, thus, is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit from this program, we treated the income tax reductions claimed by Trina and Suntech as recurring benefits, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we compared the companies' tax rates (15 percent) applicable under this program to the rate that would have been paid by Trina and Suntech otherwise (the standard income tax rate of 25 percent). We multiplied the difference by the taxable income of each company. We then divided these amounts by the appropriate total sales denominator.

[54] See Preliminary Determination, 77 FR at 17452.
[55] See GOC Verification Report at 4-6.
[56] See Trina Verification Report at 9-10 and Suntech Verification Report at 7.

On this basis, we determine a countervailable subsidy rate of 0.28 percent ad valorem for Suntech and 1.32 percent ad valorem for Trina under this program.

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

Article 30.1 of the Enterprise Income Tax Law of the PRC created a new program regarding the deduction of research and development expenditures by companies, which allows enterprises to deduct, through tax deductions, research expenditures incurred in the development of new technologies, products, and processes. Article 95 of Regulation 512 provides that, if eligible research expenditures do not "form part of the intangible assets value," an additional 50 percent deduction from taxable income may be taken on top of the actual accrual amount. Where these expenditures form the value of certain intangible assets, the expenditures may be amortized based on 150 percent of the intangible assets costs. Trina and Suntech both reported benefitting from this program during the POI, and the Department found in the Post-Preliminary Analysis Memorandum that the benefit received by both the respondents is countervailable.[57] The Department reviewed the use of this program by both the respondents during verification, and met with provincial and central government officials to discuss the details of this program, including the application process and the use of the program by the respondents.[58]

The Department has considered the arguments from the parties regarding the specificity of this program in Comment 25. We continue to find that this program provides a countervailable subsidy. This income tax reduction is a financial contribution in the form of revenue foregone by the government, and it provides a benefit to the recipients in the amount of the tax savings, pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also 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.

To calculate the benefit from this program to Suntech and Trina, we treated the tax deduction as a recurring benefit, consistent with 19 CFR 351.524(c)(1).[59] To compute the amount of the tax savings, we calculated the amount of tax each respondent would have paid absent the tax deductions at the standard tax rate of 25 percent (i.e., 25 percent of the tax credit). We then divided the tax savings by the appropriate total sales denominator for each respondent, respectively.

On this basis, we determine a countervailable subsidy rate of 0.17 percent ad valorem for Suntech and 0.02 percent ad valorem for Trina under this program.

[57] See Post-Preliminary Analysis Memorandum at 10-11.
[58] See GOC Verification Report at 6-9, Trina Verification Report at 10-11, and Suntech Verification Report at 8.
[59] These credits can be for either expensed or capitalized R&D expenditures. If a credit is for capitalized expenditures (e.g., the expenditures were made toward developing an "intangible asset" or patent), however, the 50 percent deduction is amortized across the useful life of the developed asset. Therefore, even credits for capitalized expenditures would be allocated over tax returns filed during a number of years and would thus be recurring. See GOC's March 1, 2012 questionnaire response at 13 and GOC's May 8, 2012 questionnaire response at 2.

9. Import Tariff and Value Added Tax (VAT) Exemptions for Use of Imported Equipment

Circular 37 exempts FIEs and certain domestic enterprises from VAT and tariffs on imported equipment used in their production so long as the equipment does not fall into prescribed lists of non-eligible items, in order to encourage foreign investment and to introduce foreign advanced technology equipment and industry technology upgrades. As of January 1, 2009, the GOC discontinued VAT exemptions under this program, but companies can still receive import duty exemptions.[60] In the Preliminary Determination, the Department found that Trina, Suntech, Luoyang Suntech, Shanghai Suntech, Zhenjiang Huantai, and Suzhou Kuttler received VAT and tariff exemptions under this program as FIEs during the POI.[61] During verification, the Department received minor corrections from the respondents, and reviewed the respondents' accounts and records relating to the usage of this program.[62]

The Department has considered and addressed the parties' specificity concerns relating to this program in Comment 25. We continue to determine that VAT and tariff exemptions on imported equipment confer a countervailable subsidy. The exemptions are a financial contribution in the form of revenue foregone by the GOC and they provide a benefit to the recipient in the amount of the VAT and tariff savings.[63] We also determine that the VAT and tariff exemptions afforded by the program are specific under section 771(5A)(D)(iii)(I) of the Act because the program is limited to certain enterprises, i.e., FIEs and domestic enterprises involved in "encouraged" projects.

Since this indirect tax is provided for, or tied to, the capital structure or capital assets of a firm, as reported by both the respondents, the Department treated this tax as a non-recurring benefit and allocated the amount of the VAT and/or tariff exemptions, as applicable in the given year, over the AUL.[64] To calculate the countervailable subsidy, we used our standard methodology for non-recurring grants.[65] In the years that the benefits received by each company 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 POI. We then divided the benefit amount by the appropriate sales denominator.

On this basis, we determine a countervailable subsidy rate of 0.35 percent ad valorem for Suntech and 0.31 percent ad valorem for Trina under this program.

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

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. Trina,

[60] See GOC's January 31, 2012 questionnaire response at II-78.
[61] See Preliminary Determination, 77 FR at 17452-17453.
[62] See Trina Verification Report at 12-13 and Suntech Verification Report at 8, 19, 23, and 29.
[63] See section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1).
[64] See 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).
[65] See 19 CFR 351.524(b).

Luoyang Suntech and Zhenjiang Huantai reported using this program, and in the Preliminary Determination, we found that this program conferred a countervailable subsidy for Trina, but that since none of the rebates the companies received prior to or in the POI passed the 0.5 percent test, Suntech did not receive a benefit under this program.[66] At verification, the Department reviewed the books and records maintained for this program by Trina and confirmed the reported amounts and found that Trina received no additional rebates.[67] During verification of Suntech, we found no evidence of any unreported rebates.[68]

No parties provided any comments relating to this program. The Department continues to find that the rebates under this program are a financial contribution in the form of revenue foregone by the GOC and they provide a benefit to the recipients in the amount of the tax savings.[69] We also continue to maintain that the VAT rebates are contingent upon the use of domestic over imported equipment and, hence, specific under section 771(5A)(A) and (C) of the Act.

Since this indirect tax is provided for, or tied to, the capital structure or capital assets of a firm, as reported by both the respondents, the Department treated this tax as a non-recurring benefit and allocated the benefit to the firms over the AUL.[70] To calculate a benefit under this program, for the years in which the rebate amount was less than 0.5 percent of the relevant sales figure, we expensed the rebates in the year of receipt, consistent with 19 CFR 351.524(a). For those years in which the VAT rebates were greater than or equal to 0.5 percent, we allocated the rebate amount over the AUL. We used the discount rates described above in the "Subsidies Valuation Information" section to calculate the amount of the benefit allocable to the POI.

On this basis, we determine a countervailable subsidy rate of 0.01 percent ad valorem for Trina. We further determine that Suntech did not receive a countervailable benefit under this program during the POI.

11. Discovered Grants

During the course of this investigation, the Department discovered through examination of submitted financial statements that both respondents had received numerous grants from provincial and local governments that were not part of any of the other programs included in this investigation. Respondents also submitted lists of grants they had received that were not reported elsewhere in their questionnaire responses. The Department preliminarily determined that all these "Discovered Grants" conferred countervailable subsidies to the respondents because, pursuant to section 775 of the Act, the Department has the authority to examine subsidies discovered during the course of an investigation.[71] We continue to find that the GOC has declined to provide information necessary for our analysis of whether these Discovered Grants are specific; therefore we find that the GOC has withheld information that was requested and has impeded our investigation. Accordingly, as AFA, we are finding all grant programs for

[66] See Preliminary Determination, 77 FR at 17453.
[67] See Trina Verification Report at 14-15.
[68] See Suntech Verification Report at 22 and 29.
[69] See section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1).
[70] See 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).
[71] See Preliminary Determination, 77 FR at 17454.

these subsidies to be specific. The Department reviewed the accounting systems of both the respondents to verify that all grants were reported.[72] During verification, the Department discovered that Trina had not reported one grant, "Bonus for Employees from Government."[73] Relying upon AFA, as described above, the Department determines that this grant confers a countervailable subsidy to Trina, and included the benefit from this grant with the benefits found from the other Discovered Grants. The parties presented arguments regarding whether these Discovered Grants, especially the grant discovered during verification, should be countervailed, which the Department addresses in Comments 23 and 24. As done in the Preliminary Determination, the Department is countervailing these grants based upon AFA.

The Department is treating these Discovered Grants as non-recurring subsidies, pursuant to 19 CFR 351.524(c). As such, the Department applied the "0.5 percent test" of 19 CFR 351.524(b) to each grant, individually, to determine whether it should be allocated. None of the Discovered Grants received during the POI passed the 0.5 percent test and, therefore, all such grants were attributed to the POI. In addition, some of the Discovered Grants received prior to the POI passed the 0.5 percent test and have been allocated to the POI. We calculated the subsidy from each grant separately by dividing the entire amount of the grant by the appropriate sales figure for the POI. The respondents' program descriptions indicate certain grants were export contingent; as such, we determine, based on AFA, that such grants were export subsidies and used total export sales as the denominator. If the subsidy rate calculated for any particular grant was less than 0.005 percent ad valorem, that grant was determined to have no impact on the overall subsidy rate, and was therefore disregarded.[74] We summed all the subsidy rates arising from the remaining Discovered Grants, and rounded to the nearest one-hundredth of one percent.[75] For a complete list of each of these grants for each respondent, see the Final Analysis Memoranda.

On this basis, we determine a countervailable subsidy rate of 0.40 percent ad valorem for Suntech and 0.48 percent ad valorem for Trina under this program.

12. Export Credit Subsidy Programs: Export Buyer's Credits

Through this program, the EX-IM Bank provides loans at preferential rates for the purchase of exported goods from the PRC. The Department found that this program was not used by the respondents in the Preliminary Determination.[76] However, the Department was not able to verify the reported non-use of export buyer's credits during verification.[77] As explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we are determining, relying upon AFA, that export buyer's credits confer a countervailable subsidy to both the respondents. Our determination regarding the countervailability of the program, our reliance on AFA and our selection of the appropriate rate to apply to this program are explained in further detail under Comments 18 and 19, below. On this basis, we determine a countervailable subsidy rate of

[72] See Suntech Verification Report at 12, 15, 21, and 24.
[73] See Trina Verification Report at 24-26.
[74] As noted, based on AFA, we concluded that certain grants were export subsidies. None of these grants had rates above 0.005 percent ad valorem.
[75] See Final Analysis Memoranda.
[76] See Preliminary Determination, 77 FR at 17455.
[77] See GOC Verification Report at 14-19.

10.54 percent ad valorem for Suntech and 10.54 percent ad valorem for Trina under this program.

B. Programs Determined To Be Not Used by the Respondents During the POI or To Not Provide Benefits During the POI

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

1. Export Product Research and Development Fund
2. Subsidies for Development of "Famous Brands" and "China World Top Brands"
3. Sub-Central Government Subsidies for Development of "Famous Brands" and "China World Top Brands"

   The Government of Wuxi City provides a lump sum award to enterprises that receive a "famous brands" certification. This award is operated at the local level through Opinion 106, but a GOC circular for "Top-Brand Products" requires that firms provide information in their "famous brands" applications concerning their export ratios and the extent to which the quality of their products meets international standards.[78] In the Preliminary Determination, the Department determined that Suntech received a grant through this program that confers a countervailable benefit.[79] The Department reviewed the grant Suntech received through this program during verification.[80] Trina reported that it had not received any such grants, and we confirmed this at verification.[81]

   We continue to determine that the grant Suntech received under this program constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Regarding specificity, section 771(5A)(B) of the Act states that an export subsidy is a subsidy that is, in law or in fact, contingent upon export performance, alone or as one of two or more conditions. As explained in Comment 22 below, based upon information on the record, we determine that the grant provided to Wuxi Suntech under the "famous brands" program is contingent on export performance. As such, we find that the program is specific under section 771(5A)(B) of the Act.

   Grants under this program were treated as nonrecurring subsidies under 19 CFR 351.524(c). After conducting the "0.5 percent test" of 19 CFR 351.524(b)(2), we determine that the grant should be expensed to the year of receipt (i.e., the POI). To calculate the subsidy, we divided the full amount of the grant received in the POI by the appropriate total sales denominator.

[78] See GOC's March 1, 2012 supplemental questionnaire response at Exhibit S1-1-a, Chapter 3 of the "Measures for the Administration of Chinese Top-Brand Products."
[79] See Preliminary Determination, 77 FR at 17453-17454.
[80] See Suntech Verification Report at 12-13.
[81] See Trina Verification Report at 30-31.

On this basis, we determine a countervailable subsidy rate of less than 0.005 percent ad valorem for Suntech under this program. As such, this subsidy has no impact on Suntech's overall subsidy rate.

4. Special Energy Fund (Established by Shandong Province)
5. Funds for Outward Expansion of Industries in Guangdong Province
6. Government Provision of Aluminum for LTAR
7. Income Tax Reductions for Export-Oriented FIEs
8. Income Tax Benefits for FIEs Based on Geographic Location
9. Local Income Tax Exemption and Reduction Programs for "Productive" FIEs
10. Tax Refunds for Reinvestment of FIE Profits in Export-Oriented Enterprises
11. Tax Reductions for High and New-Technology Enterprises Involved in Designated Projects
12. Preferential Income Tax Policy for Enterprises in the Northeast Region
13. Guangdong Province Tax Programs
14. VAT and Tariff Exemptions for Purchases of Fixed Assets Under the Foreign Trade and Development Fund Program
15. Tax Reductions for FIEs Purchasing Chinese-Made Equipment
16. Export Guarantees and Insurance for Green Technology

The Department found this program to be not used in the Preliminary Determination because neither respondent received payouts during the POI related to products exported to the United States. At verification we confirmed that neither respondent received payouts related to exports to the United States.

17. Export Credit Subsidy Program: Export Seller's Credits
18. Discovered Grants

As discussed above, we have countervailed grants discovered during the course of this investigation that provided a benefit during the POI. Certain grants discovered during the investigation did not pass the 0.5 percent test used to determine when non-recurring subsidies should be allocated over the AUL. When such grants were received during the POI, the full amount was expensed in the POI. When such grants were received prior to the POI, they were determined not to provide a benefit during the POI.

19. Provision of Float Glass for LTAR

In the Post-Preliminary Analysis Memorandum, we determined the benefit from this program had no effect on the respondents' subsidy rates as a result of the small amount of float glass used.[82] While Trina reported in its minor corrections at verification that it had additional purchases of float glass during the POI, we find that even after adding in these purchases, the rate for both companies is significantly less than 0.005 percent ad valorem. As such, this subsidy continues to have no impact on the overall subsidy rate.

[82] See Post-Preliminary Analysis Memorandum at 12-13.

20. The Over-Rebate of VAT Program

VII. Analysis of Comments

Comment 1: Simultaneous Application of CVD and AD NME Measures

Arguments of the GOC, Suntech, and Trina

- The Department cannot lawfully impose CVD and AD NME duties on the same imports without violating its obligations under the SCM agreement.

- Under AD NME methodology, the Department uses surrogate values from a third-country to calculate normal value. The normal value calculation does not account for possible subsidies a producer receives that reduce its production costs.

- In this investigation, application of the AD NME methodology while conducting a parallel CVD investigation unconstitutionally creates a "special rule" as a result of the effective dates in the new U.S. legislation regarding the application of CVD measures to NMEs.

Petitioner's Rebuttal Arguments

- Based on Public Law 112-99, as well as past case precedent, the Department must continue to assess both countervailing and AD duties on subject merchandise. While the new legislation does provide guidance on "double remedies," this part of the law is not relevant in this proceeding because it is only for cases initiating after March 13, 2012.

Department's Position:

We disagree with the GOC, Suntech, and Trina that the Department cannot simultaneously apply CVD measures in this final determination while at the same time treating the PRC as an NME in the concurrent AD investigation. Section 1 of Public Law 112-99 makes clear that the CVD law applies to products from NME countries, and therefore applies to this investigation. Further, section 2 of Public Law 112-99, relating to an adjustment in certain instances of simultaneous application of CVD remedies and NME AD remedies, does not apply to this investigation, because this investigation was initiated prior to the effective date of section 2. In GPX Fed. Cir., the Federal Circuit made clear that, for investigations prior to the effective date of section 2, no adjustment for overlapping remedies is required. It stated that the "clear implication of this new provision is that the pre-existing statute did not contain a prohibition against double counting."[83] The Federal Circuit concluded "that the statute prior to the enactment of the new legislation did not impose a restriction on Commerce's imposition of countervailing duties on goods imported by NME countries to account for double counting."[84]

[83] GPX Fed. Cir., 678 F.3d at 1312.
[84] Id.

Moreover, we disagree that Public Law 112-99 contains an unconstitutional "special rule." The legislative history for Public Law 112-99 makes clear that Congress had a rational basis for confirming the Department's authority to apply the CVD law to products from NME countries while ensuring that, for WTO compliance purposes, the Department could, going forward, make adjustments to AD duties to account for any overlap in AD and CVD remedies demonstrated to exist.[85]

Regarding the GOC's and Suntech's references to the WTO AB Decision, that decision involved an "as applied" challenge to the eight AD and CVD determinations at issue in that case, and the Department's recent implementation applied only to those eight AD and CVD determinations.[86] Neither the decision nor the implementation applies to this investigation.

Comment 2: Cut-Off Date for Measurement of Subsidies

GOC's Arguments

- According to Sulfanilic Acid from Hungary, the Department does not examine any benefits from subsidies prior to the date it determined to apply the CVD law in a particular country. The Department first claimed that it was possible to identify and measure PRC subsidies in the CFS investigation. In conjunction with the CFS from the PRC investigation, the Department issued the Georgetown Steel memorandum that justified the application of the CVD law to the PRC. Parties therefore only had a reasonable expectation that the CVD law would apply to them beginning January 1, 2005, the beginning of the POI in the CFS from the PRC investigation.

Petitioner's Arguments

- The GOC began introducing market mechanisms into its economy long before its proposed cut-off date of 2005. Ample evidence existed long before 2005 that the GOC would be subject to CVD measures. Therefore it is not denied due process through the application of an earlier cut-off date.

Department's Position:

Since issuing the decision in the CFS from the PRC investigation, the Department has consistently applied December 11, 2001, the date of the PRC's WTO accession, as the cut-off date for measuring subsidies in the PRC. The Department has addressed the GOC's arguments several times in the past. Most recently, in the steel wheels from the PRC investigation, we responded to these same arguments as follows:

> We have selected December 11, 2001, because of the reforms in the PRC's economy in the years leading up to that country's WTO accession and the linkage between those reforms and the PRC's WTO membership. The changes in the PRC's economy that were brought about by those reforms permit the Department to determine whether

[85] See, e.g., 158 Cong. Rec. H1167 (daily ed. March 6, 2012) (statement of Rep. Camp).
[86] See DS 379 Implementation.

countervailable subsidies were being bestowed on Chinese producers. For example, the GOC eliminated price controls on most products; since the 1990s, the GOC has allowed the development of a private industrial sector; and in 1997, the GOC abolished the mandatory credit plan. Additionally, the PRC's Accession Protocol contemplates application of the CVD law. While the Accession Protocol, in itself, would not preclude application of the CVD law prior to the date of accession, the Protocol's language in Article 15(b) regarding benchmarks for measuring subsidies and the PRC's assumption of obligations with respect to subsidies provide support for the notion that the PRC economy had reached the stage where subsidies and disciplines on subsidies (e.g., CVDs) were meaningful.

We disagree with the notion that adoption of the December 11, 2001, date is unfair because parties did not have adequate notice that the CVD law would be applied to the PRC prior to January 1, 2005 (the start of the POI in the investigation of CFS from the PRC). Initiation of CVD investigations against imports from the PRC and possible imposition of duties was not a settled matter even before the December 11, 2001, date. For example, in 1992, the Department initiated a CVD investigation on lug nuts from the PRC. See Initiation of Countervailing Duty Investigation: Chrome-Plated Lug Nuts and Wheel Locks From the People's Republic of China, 57 FR 877 (January 9, 1992). In 2000, Congress passed PNTR Legislation (as discussed in Comment 1) which authorized funding for the Department to monitor "compliance by the People's Republic of China with its commitments under the WTO, assisting United States negotiators with the ongoing negotiations in the WTO, and defending United States antidumping and countervailing duty measures with respect to products of the People's Republic of China."

Thus, the GOC and PRC importers were on notice that CVDs were possible well before January 1, 2005.

We further disagree that Sulfanilic Acid from Hungary is controlling in this case. The Department has revisited its original decision not to apply the CVD law to NMEs and has determined that it will reexamine the economic and reform situation of the NME on a case-by-case basis to determine whether the Department can identify subsidies in that country.[87]

For the same reasons expressed in our prior determinations, we continue to find that December 11, 2001, is the appropriate cut-off date for measuring subsidies in the PRC.

Comment 3: Critical Circumstances: Early Knowledge

Suntech's Arguments

- To impute knowledge of likely AD/CVD proceedings, the evidence must be "sufficient to establish" the domestic industry was planning or preparing to file "imminent" petitions.

[87] See Steel Wheels IDM at 45-46 (citations omitted).

Here, the Department did not apply the correct standard. Thus, use of a pre-petition comparison period is inappropriate.

- If the Department imputes early knowledge of the proceedings, the Department should rely on the September 28, 2011, Bloomberg article as the earliest date knowledge was imputed. Thus, September should be included in the base period.

Petitioner's Rebuttal Arguments

- The Department should continue to find that critical circumstances exist.

- The Department correctly imputed knowledge to importers, exporters, and producers during September 2011, when the Bloomberg article was published, which mentions the rough conditions facing the solar industry due to subsidized low-priced imports from the PRC, and which states that AD and CVD cases should be filed against imports of solar cells.

Department's Position:

The Department continues to find that early knowledge of impending proceedings is properly imputed to importers, exporters, and producers. Citing four cases from 1999 through 2004, Suntech correctly claims that the Department does not impute early knowledge when the evidence merely establishes the possibility of future proceedings. As required by 19 CFR 351.206(i), we look to see whether the evidence indicates that importers, exporters, or producers had reason to believe that a proceeding was "likely." While there is no exact formula for determining when the prospect of future proceedings crosses the line from "possible" to "likely" (or, to use the term preferred by Suntech, "imminent"), in our Preliminary CVD Critical Circumstances Determination we focused on when the first explicit public references (accessible to importers, exporters, or producers) to impending proceedings appeared, September 2011. By contrast, we did not consider early knowledge to be imputed by public facts that might give rise to future proceedings, such as the known provision of GOC subsidies to PRC solar cell producers and exporters or the closing of U.S. manufacturers. We believe this distinction provides a reasonable basis for determining when proceedings are likely. In this case, a September 2011 Bloomberg.com article provided by Petitioner stated that the U.S. industry, including Petitioner, was already preparing the petitions to be filed with the Department and the ITC. At the beginning of that same month, a U.S. senator known to be advocating on behalf of Petitioner, a company located within his state, had noted publicly the urgent need for these proceedings to be initiated. Thus, the Department continues to determine parties had reason to believe in September that proceedings were likely. In the Preliminary CVD Critical Circumstances Determination, we found that our determination with regard to "massive imports" would be the same regardless of whether we included September 2011 data in the base or comparison period. This fact continues to hold in our calculations of massive imports for the final determination.

Comment 4: Critical Circumstances: Other Factors Contributing to Import Surges

Arguments of Suntech and Trina

- Any increase in imports during the comparison period was in response to incentive programs in the United States, not the pending AD/CVD investigations.

Trina's Additional Arguments

- The Department should make an adjustment in its analysis for the incentive programs.

- Besides the incentive programs, seasonality played a role in the increase in shipments. The increase in Trina's imports reflects normal business patterns.

- The ITC found U.S. demand for solar cells grew at a pace consistent with increased demand for solar energy.

Petitioner's Rebuttal Arguments

- The Act and the Department's regulations do not provide for the consideration of incentive programs or U.S. demand in determining whether massive imports have taken place.

- Increased demand resulting from the expiration of incentive programs cannot be characterized as "seasonal demand."

Department's Position:

We find that the increase in imports from the base period to the comparison period is not explained by seasonal trends or other factors. Suntech and Trina argue we should look at comparable end-of-year surges in 2009 and 2010 as evidence that the 2011 surge is explained by seasonality. However, two years of data in 2009 and 2010 are not indicative of seasonality and do not indicate that a 2011 end-of-year surge was a foregone conclusion. Moreover, there appear to have been many months or periods of exceptionally high growth over the three-year period from 2009 through 2011. In fact, the variations are so great that small changes in how increases are calculated produce significantly different results. For example, for shipments by one respondent, comparing the five-month periods May through September 2009 with October 2009 through February 2010 results in a large increase, while comparing the four-month periods May through August 2009 with September through December 2009 results in a large decrease.[88]

This type of sporadic variation is not the type of predictable fluctuation associated with seasonal trends. Seasonal trends, such as those affecting shipments of agricultural products, are the result of conditions known to repeat themselves each year (e.g., a harvest at the end of each summer, or a surge in consumer shopping during the Christmas season). It is possible to subtract the effects

[88] May 2009 is the earliest month for which either respondent supplied data.

of such predictable, measurable, cyclical patterns from import surges and then determine if what remains constitutes a "massive increase." There is no convincing explanation as to what might be the theoretical condition that causes an end-of-year increase in solar cell shipments. Both of the respondents argue that incentive programs had something to do with shipment increases, but these were in place throughout the year in each year of the three-year period (i.e., winter, spring, summer, or fall). Thus, there is no reason they should have caused a seasonal surge in the fall of each year. Therefore, we see no evidence of a "solar cells season" resulting from incentive programs or other factors.

We note also the ITC's preliminary finding:

> {PRC solar cell} imports increased dramatically in the U.S. market throughout the period of investigation. The value of subject imports increased by 411.7 percent from 2008 to 2010, far outpacing the *** percent increase in apparent U.S. consumption for the same period. . . . A significant share of the increase in market penetration by subject imports from 2008 to 2010 came at the expense of the domestic industry. While subject imports' share of apparent U.S. consumption increased substantially, the domestic industry's market share *** percentage points on a value basis despite the tremendous growth in U.S. demand.[89] The domestic industry's market share was *** percentage points lower in interim 2011 than in interim 2010. Nonsubject import share of apparent U.S. consumption also *** percentage points on a value basis from 2008 to 2010 and was *** percent lower in interim 2011 than in 2010.

Because one would expect the incentive programs and increased U.S. demand to affect all producers equally, the fact that the PRC's shipments increased at a rate greater than that of U.S. producers indicates there were other reasons for the PRC's growth. Thus, the record does not support Suntech's and Trina's assertions regarding the role of the incentives in the import surges at the end of 2011. Finally, while the Department is not required to examine the intent behind a producer who contributes to an import surge,[90] we note the statement of Trina's chief commercial officer (CCO), provided by Petitioner. Made in response to a question about Trina's duty liability as an importer of record, the CCO explains that Trina had "pre-loaded" some orders in anticipation of when it expected AD and CVD "events" to occur.[91] This appears to be a clear reference to increasing shipments before duties are put in place.

Comment 5: Critical Circumstances: The Length of the Base and Comparison Periods

Suntech's Arguments

- The Department has additional shipment data available for its analysis that was unavailable during the Preliminary Critical Circumstances Determination. The

[89] ITC Preliminary Report at 25.
[90] As Petitioner notes, the regulations require the Department to consider seasonality and the share of domestic consumption accounted for by imports. Neither the Act nor the regulations appear to require that the Department dismiss every conceivable explanation for an import surge greater than 15 percent other than an attempt to avoid duties.
[91] See Petitioner's March 12, 2012 submission at Exhibit 1. The statement is made during a phone conference in February 2012 discussing recent quarterly earnings. Exhibit 1 is the transcript of the phone conference.

Department requested this additional data, which extends through May 2012. The Department must use all data available.

Petitioner's Rebuttal Arguments

- The Department's practice is to use all data available until a preliminary determination is issued. In this investigation, therefore, the Department should not use data past March 2012.

Department's Position:

Where we have made an early critical circumstances determination (see Comment 3, above), the Department has relied for both the preliminary and final determinations on data available at the time of the preliminary critical circumstances determination in concluding increases were massive.[92] No additional data was included in reaching final determinations.[93] Therefore, consistent with proceedings in which the Department has made an early critical circumstances determination, we have determined not to include data from months after the Preliminary Critical Circumstances Determination.

Comment 6: Whether Polysilicon Producers Are Authorities

GOC's Arguments

- The Department should not have applied AFA in finding that polysilicon producers were authorities. Information on the record indicates that the industry is composed of diverse enterprises and that both respondents purchased a majority of their polysilicon from private or foreign owned companies. The GOC has placed substantial evidence on the record demonstrating that polysilicon producers are not "authorities" because they do not meet any of the "five-factors" the Department relies on to determine whether producers qualify as authorities. Additionally, even though some producers may be majority owned by the GOC, the Department has not found that the producers exercise government authority, as required by the WTO.

Petitioner's Arguments

- As AFA, the Department properly determined that Chinese polysilicon producers are "government authorities." The GOC repeatedly failed to provide necessary and timely information regarding the specific companies that produced the polysilicon Suntech and Trina purchased.

[92] See, e.g., Preliminary Determinations of Critical Circumstances: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan and the Russian Federation, 63 FR 65750 (November 30, 1998).

[93] See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation, 64 FR 38626 (July 19, 1999).

Department's Position:

In a number of prior investigations the Department addressed similar arguments to those the GOC now advances. As we explained in the kitchen racks from the PRC investigation:

> Commerce does not analyze each of these "five factors" for every firm in every case, however. In most instances, majority government ownership alone indicates that a firm is an authority. Indeed, a careful examination of the five factors reveals that when a government is the majority owner of a firm, factors one through four are largely redundant. If the government owns a majority of the firm's shares, then the government would normally appoint a majority of the members of the firm's board of directors who, in turn, would select the firm's managers, giving the government control over the entity's activities.
>
> It has been argued that government-owned firms may act in a commercial manner. We do not dispute this. Indeed, the Department's own regulations recognize this in the case of government-owned banks by stating that loans from government-owned banks may serve as benchmarks in determining whether loans given under government programs confer a benefit. However, this line of argument conflates the issues of the "financial contribution" being provided by an authority and "benefit." If firms with majority government ownership provide loans or goods or services at commercial prices, i.e., act in a commercial manner, then the borrower or purchaser of the good or service receives no benefit. Nonetheless, the loan or good or service is still being provided by an authority and, thus, constitutes a financial contribution within the meaning of the Act.[94]

Instead of applying the five-factors test, our practice has been to examine the level of government ownership or control of the producers of the input at issue. Therefore, as we have done in the past several PRC investigations involving LTAR allegations, the Department issued a standard questionnaire appendix at the outset of this investigation seeking information concerning the ownership and control of the polysilicon producers.[95]

As explained in the Preliminary Determination, a significant part of the information we sought in the appendix was related to whether any individual owners, board members, or senior managers were government or CCP officials and to the role of any CCP committee within the producer. The GOC provided none of the CCP-related information we requested and only a portion of the information we requested concerning the CCP's structure and functions, as detailed in the Preliminary Determination.[96] In addition, the GOC provided the remaining information (concerning the identities of the individual owners of the producers, or of the producers' parents) for only some of the dozens of suppliers that produced the polysilicon the respondents purchased.[97]

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[94] See Kitchen Racks IDM at Comment 4; see also Certain Coated Paper PRC IDM at Comment 16.
[95] We issued the identical appendix to collect information regarding aluminum and float glass producers as well.
[96] See Preliminary Determination, 77FR at 17442.
[97] Id.

The Department has requested the identical CCP information from the GOC in numerous prior investigations.[98] The GOC has consistently refused to provide the information, typically stating its opinion that the information is irrelevant to the question of whether a producer is an authority or that it is unable to obtain the information because it has no control over the CCP, which it characterizes as a non-governmental entity. In response to the GOC's refusal to provide the information, the Department, in applying facts available, has on several prior occasions explained why the information is essential to the "authority" determination. We have cited a report from the U.S. Department of State supporting our understanding that the CCP exerts significant control over important government, economic and cultural activities in the PRC.[99] Based on this report, it was appropriate for the Department to seek information about the role of CCP officials in the ownership and management of the producers.

At a more fundamental level, as explained in the Preliminary Determination, it is for the Department, and not the respondents, to determine what information is considered relevant and necessary, and must be provided.[100] Thus, regardless of whether the GOC finds our explanations concerning the relevance of this information persuasive, by substantially failing to respond to our questions, the GOC withheld information requested of it. By stating that the requested information is not relevant, the GOC has placed itself in the position of the Department, and only the Department can determine what is relevant to its investigation. Furthermore, by claiming that it is unable to obtain the information requested, the GOC is effectively telling the Department that it must reach a conclusion based on the statements of the GOC alone, without any of the information that the Department considers necessary and relevant for a complete analysis. Consequently, we continue to find, as AFA, that all the producers of the polysilicon purchased by the respondents during the POI are authorities within the meaning of section 771(5)(B) of the Act.

Finally, regarding the DSB's reports in the DS 379 proceeding, we note that, while we have reached section 129 final determinations in the four investigations at issue in that dispute, the decisions of the panel and the appellate body regarding whether a producer is an authority (a "public body" within the WTO context) were limited to those four investigations.

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[98] See, e.g., Steel Cylinders IDM at Comment 5; Wire Decking IDM at Comment 2; and Steel Wire IDM at Comment 5.

[99] See, e.g., Seamless Pipe IDM at Comment 7.

[100] See Ansaldo, 628 F. Supp. at 205 (stating that "{i}t is Commerce, not the respondent, that determines what information is to be provided"). The court in Ansaldo criticized the respondent for refusing to submit information which the respondent alone had determined was not needed, for failing to submit data which the respondent decided could not be a basis for the Department's decision, and for claiming that submitting such information would be "an unreasonable and unnecessary burden on the company." Id. See also Essar, 721 F. Supp. 2d at 1298-99 (stating that "{r}egardless of whether Essar deemed the license information relevant, it nonetheless should have produced it {in} the event that Commerce reached a different conclusion" and that "Commerce, and not Essar, is charged with conducting administrative reviews and weighing all evidence in its calculation of a countervailing duty margin"); NSK, 919 F. Supp. 442 at 447 ("NSK's assertion that the information it submitted to Commerce provided a sufficient representation of NSK's cost of manufacturing misses the point that 'it is Commerce, not the respondent, that determines what information is to be provided for an administrative review.'"); Nachi, 890 F. Supp. at 1111 ("Respondents have the burden of creating an adequate record to assist Commerce's determinations.").

Comment 7: Whether Polysilicon Producers Were Entrusted or Directed to Supply Polysilicon to the Solar Cells Industry for LTAR

GOC's Arguments

- The Department did not establish that the GOC entrusted or directed polysilicon producers to supply polysilicon to the solar cells industry for LTAR; therefore, no indirect financial contribution was provided.

Department's Position:

Just as the five-factors test is irrelevant to the Department's LTAR determinations, so is "entrustment or direction." As detailed above, the Department has found the polysilicon producers to be authorities within the meaning of section 771(5)(B) of the Act. Thus, there was no need to examine whether the government "entrusts or directs a private body to carry out one or more of the type of functions . . . which would normally be vested in the government."[101] The financial contribution was bestowed directly by an "authority" through the sale of polysilicon it produced.[102]

Comment 8: Specificity of the Provision of Polysilicon for LTAR

GOC's Arguments

- In the last five years, the Department has determined that, as AFA, 13 different types of inputs are specific, without conducting the proper macro-level analysis demonstrating the inputs are limited to certain industries.

Petitioner's Arguments

- As AFA, the Department appropriately found that the provision of polysilicon by the GOC for LTAR is specific.

Department's Position:

As discussed below, the Department did not initiate an investigation of glass provided for LTAR because the allegation included no information indicating that the provision of glass was limited to an enterprise or industry, or group of enterprises or industries, within the meaning of section 771(5A) of the Act.[103] Regarding the provision of polysilicon, our initial questionnaire to the GOC requested the following information concerning polysilicon users:

- Provide a list of the industries in the PRC that purchase polysilicon directly, using a consistent level of industrial classification.

[101] See Article 1.1(a)(1)(iv) of the SCM Agreement
[102] See, e.g., OTR Tires IDM at 77.
[103] See December 22, 2011 NSA Decision Memorandum at 3.

- Provide the amounts (volume and value) purchased by the industry in which the mandatory respondent companies operate, as well as the totals purchased by every other industry.

- In identifying the industries, please use whatever resource or classification scheme your government normally relies upon to define industries and to classify companies within an industry.

  Please provide the relevant classification guidelines, and please ensure the list provided reflects consistent levels of industrial classification.

- Please clearly identify the industry in which the companies under investigation are classified.

In response, the GOC provided none of the information requested, but instead stated: "The GOC does not impose any limitations on the use of polysilicon, and producers of polysilicon are free to sell their product to any purchaser and at any price. Similarly, purchasers of polysilicon are free to source their product from any producer, domestic or foreign. Polysilicon has a wide range of uses, including but not limited to use in the solar and semiconductor industries."[104]

We reiterated the identical requests in the first supplemental questionnaire, to which the GOC provided an abbreviated version of its prior response: "As stated in the GOC's response to the original questionnaire, polysilicon has a wide range of uses, including but not limited to use in the solar and semiconductor industries."[105]

As the GOC provided none of the information requested, as AFA, we found that the provision of polysilicon for LTAR is specific in the Preliminary Determination. The GOC now complains that we did not undertake the proper "macro" level analysis in reaching our specificity determination. The GOC demands a greater level of factual analysis, while simultaneously refusing to provide any data that we could examine in such an analysis. The Department asked basic questions concerning the industrial users of polysilicon. The GOC provided nothing in response. When the Department identified the deficiency and offered the GOC a second opportunity to provide the information, the GOC again provided nothing further. It did not even attempt to provide data that might be viewed as a suitable substitute. Therefore, the Department continues to find as AFA that the provision of polysilicon for LTAR is specific.

Putting aside the GOC's unwillingness to provide any relevant data, we reject on a theoretical and legal basis the GOC's argument that we must examine LTAR specificity at a more "macro" level. By the GOC's count, the Department has found 12 different inputs to be provided for LTAR in prior PRC investigations since 2005. The GOC claims that the Department would not be able to find specificity "analyzing all of the GOC's alleged provision of inputs together as a single program."[106] These inputs are, however, unique and should not and cannot be lumped together into one giant program of "inputs" for LTAR. Each input is provided by different

[104] GOC's January 31, 2012 questionnaire response at 95.
[105] GOC's February 28, 2012 questionnaire response at 38.
[106] GOC's case brief at 26.

authorities and each provides a unique financial contribution to a separate set of enterprises or industries. By analogy, we would not lump together all tax preferences available to all enterprises and determine that, because every enterprise might be eligible for at least one tax preference, none of the tax preferences are specific. There is no indication in the Act, the legislative history, or the Department's regulations that such an analysis is intended. Moreover, the GOC made no effort to demonstrate that the various input LTAR programs it refers to are integrally linked within the context of the regulations. Instead, the GOC simply argues that there would be no specificity if they were considered to be thus linked.

Comment 9: Use of an In-Country Benchmark to Measure the Benefit from the Provision of Polysilicon for LTAR

Arguments of the GOC and Trina

- The Department must use an in-country price as a benchmark, not a world market price. The Department may not lawfully use an out-of-country benchmark unless it makes "all necessary adjustments" to account for differences between the market under review and the out-of-country market.

- An in-country benchmark is on the record of this investigation. Prices paid by Trina for imported polysilicon should be used as an internal benchmark.

Petitioner's Arguments

- The Department found that the GOC is the predominant provider of polysilicon in the PRC and a significant presence in the market, and, consistent with its regulations and practice, appropriately resorted to a tier-two benchmark, i.e., world market prices available to purchasers in the PRC.

- The record in this investigation confirms that domestic polysilicon prices cannot be considered market-determined prices and, as such, are inappropriate to use as benchmarks. The Department's use of an external benchmark is appropriate.

Department's Position:

The Department has explained in several prior investigations the appropriateness of using external benchmarks in certain situations, including certain LTAR allegations. Most recently, we stated in the steel wheels from the PRC investigation:

> The Department's long-standing practice is to utilize a benchmark outside of the country of provision when the government's sales constitute a significant portion of the sales of the good in question. Out-of-country benchmarks are required in such instances because the use of in-country private producer prices would be akin to comparing the benchmark

> to itself (i.e., such a benchmark would reflect the distortions of the government presence).[107]

Also, outside of the PRC context, we stated in the certain coated paper from Indonesia investigation:

> Distorted, artificially low prices cannot serve as accurate indicators of what a respondent would pay for a product absent the subsidies under investigation. It would, in fact, be impossible to determine the amount of benefit provided to a respondent from government sourced products and services if the benchmark price itself was reduced through the same price suppressing effects enjoyed by the respondent.[108]

We continue to determine that it is consistent with the Act to look outside the country under investigation for benchmarks under the circumstances encountered in this investigation and in the above-referenced investigations.

Additionally, the respondents argue that the particular facts of this case do not indicate GOC dominance of the polysilicon industry in the PRC. They note in particular the small number of polysilicon producers the GOC identified as being SIEs. They also argue that the level of import penetration justifies the use of an in-country benchmark.

According to the GOC's January 31, 2012 questionnaire response, imports accounted for a little more than 35 percent of domestic consumption during the POI.[109] While 35 percent is higher than some of the import penetration rates the Department has seen in other cases in which we applied an external benchmark (notably the 2002 softwood lumber and certain coated paper from Indonesia investigations), it does not in itself contradict our preliminary conclusion that the GOC is the predominant force within the internal market. Nearly two thirds of polysilicon domestic consumption is supplied through domestic production, and the Department has found the GOC to be the predominant domestic provider of polysilicon, owning or controlling 37 of the 47 producers in the PRC. Therefore, despite the 35 percent import penetration figure, we continue to find that the GOC's significant presence in the market distorts all domestic prices (including prices paid for imports).

While the respondents argue that domestic producers are a diverse set of companies including foreign owned producers and only a handful of SIEs, the GOC was given the opportunity to demonstrate the absence of its ownership or control of these producers and chose not to do so. As discussed elsewhere in this memorandum, the Department finds that the GOC was given an adequate opportunity to provide the essential information requested in this regard (e.g., the CCP information).

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[107] Steel Wheels IDM at 59 (citations omitted).

[108] Certain Coated Paper Indonesia IDM at 31. Other exemplary investigations outside the PRC include: Softwood Lumber 2002 (relying heavily on the CVD Preamble to conclude there are no first-tier, market based internal Canadian benchmarks for stumpage); PRCBs from Vietnam (concluding external benchmarks were warranted for both land and loans).

[109] See GOC's January 31, 2012 questionnaire response at 90.

Comment 10: The Department's Decisions Not to Investigate Aluminum Extrusions and Rolled Glass Provided for LTAR

Petitioner's Arguments

- The Department's rejection of Petitioner's aluminum extrusions allegation was based on an insignificant clerical error contained in Petitioner's submission.

- Petitioner's glass allegation covered both float glass and rolled glass. The Department chose to narrow the allegation to float glass as part of its initiation decision.

- Information regarding the purchases of aluminum extrusions is already on the record. The GOC has also already submitted information concerning certain producers. Any remaining time constraints were the product of the Department's own delay in evaluating the allegations.

Arguments of the GOC, Suntech, and Trina

- The Department correctly chose not to initiate an investigation of aluminum extrusions. Petitioner was granted several extensions to file its allegation but failed to submit a proper and complete allegation.

- Petitioner's glass allegation clearly covered float glass only, not rolled glass. The Department correctly chose not to expand the investigation to included rolled glass and not to allow Petitioner to submit an untimely revised allegation.

Department's Response:

The Department properly determined not to investigate aluminum extrusions or rolled glass provided by the GOC at LTAR. Petitioner submitted two allegations concerning the provision of glass for LTAR. We determined not to investigate the first allegation because it did not include adequate information regarding specificity and other elements of an LTAR allegation.[110] In initiating an investigation of the second glass allegation (a revised version of the first), the Department noted the allegation's focus on float glass and limited our investigation to float glass accordingly:

> According to Petitioner, the glass typically used in the production of solar cells is "float glass," made through the "float glass process," in which glass is formed on a bath of molten tin. Petitioner contends that because many solar cell producers in the People's Republic of China (PRC) lack the facilities to produce float glass, they must purchase this input. Therefore, Petitioner argues, it is highly likely that Chinese solar cell producers purchase float glass manufactured by SOEs… Because Petitioner has properly alleged the

[110] See December 22, 2011 NSA Memorandum at 3.

> elements of a subsidy, . . . we recommend initiating an investigation of the allegation with respect to the GOC's provision of float glass for LTAR.[111]

In determining not to investigate aluminum extrusions, the Department stated:

> While all other elements of this allegation are complete, we are unable to locate any support on the record for the world export price provided by Petitioner (or the U.S. export price Petitioner relies on as a proxy for world export price). Petitioner cites to an ITC report attached to its allegation to support its world export price, however, this report does not address aluminum, and contains no price data. We were unable to locate this price anywhere else in the submission or in previous submissions by Petitioner, and there is no other information on the record regarding possible benchmark prices for aluminum extrusions that could possibly be used to demonstrate a potential benefit… Absent some supporting documentation on the record for the alleged price differential or other information which indicates that aluminum extrusions are being sold at low prices in the PRC, we find that Petitioner's allegation that the provision of aluminum extrusions could provide a benefit is insufficient. As such, we recommend not initiating an investigation on this allegation.[112]

We explained our decisions not to reconsider these earlier determinations in the Post-Preliminary Analysis Memorandum:

> The regulatory deadline for submitting new subsidy allegations is 40 days before the signature date of the preliminary determination. The preliminary determination in this investigation was extended by 65 days, and thus the deadline for new subsidy allegations was extended 65 days as well. In addition, the Department granted Petitioner six days beyond the regulatory deadline, at its request, in order to make new subsidy allegations. Thus, Petitioner was afforded more than three months after the initiation of this investigation to submit additional subsidy allegations. While the Department has the authority to examine practices that appear to be countervailable subsidies discovered at any time during the course of an investigation, we can defer examination of any such practice if there is insufficient time remaining before the final determination.
>
> We note that LTAR investigations, which require gathering detailed information concerning the ownership and management of numerous producers supplying the input, evaluating extensive purchase information, and conducting extensive analysis of the input market and research into possible benchmarks, are particularly time consuming and would be difficult to complete at such a late stage in an investigation.[113]

Thus, there was simply not enough time to allow Petitioner to re-file its allegations and collect and analyze the information necessary.[114] This is true despite the fact that some information

[111] See Float Glass NSA Initiation at 2.
[112] See May 11, 2012 NSA Memorandum at 9 (sites omitted).
[113] Post-Preliminary Analysis Memorandum at 16.
[114] While the Act and our regulations specifically provide for the examination of subsidy practices discovered during the course of a proceeding, 19 CFR 301.311(c) provides for the deferral of their examination until a subsequent

regarding aluminum extrusion producers was already on the record. Such information typically requires, at the least, one supplemental questionnaire and amounts to several hundred pages of documents that must be analyzed once all questionnaires have been answered.

Petitioner indicates that part of the timing problem was the Department's own making; i.e., that if we had analyzed its allegations earlier, we could have provided earlier notification of the deficiencies we perceived while adequate time remained for new allegations. The Department, however, reached its decisions within the timeframe imposed by the statute and regulations. The Department has a number of other proceedings that must also be administered within such time restraints and our resources cannot be solely devoted to allegations in any one investigation or review.

We also do not find that we erred in rejecting the aluminum extrusions allegation because of a minor error. Essential to an LTAR allegation is evidence demonstrating that a good is being provided by a government authority below a "market-determined price."[115] Thus, a satisfactory allegation will normally include reasonably available evidence that at least one producer of the good in question is an "authority" and that there is a differential between market prices and the price of state-provided goods. Frequently, petitioners have provided evidence of prices inside and outside the PRC to demonstrate the existence of the differential (on the assumption that prices inside the PRC reflect prices of prevalent state-provided goods, and prices outside do not). In this case, while Petitioner claimed such a differential existed, it provided no evidence to support its statement. In a subsequent submission, filed after the deadline for NSAs had passed, it provided the missing evidence and argued the Department should have known what the evidence was and where it could be found (because the data was collected and published by a well known third-party source of such data (the ITC)). It is not the Department's obligation to perform research on behalf of Petitioner and fill in the blanks in its allegations. This was a critical element in its allegation that Petitioner had the burden to provide.

Likewise, we do not believe we erred by limiting the glass allegation to float glass. The Department evaluates all information in an allegation and bases its determination on whether the allegation meets the statutory and regulatory requirements. We consider whether we have investigated the program previously and if we have reached a finding regarding the program in a previous investigation. An allegation regarding the GOC's provision of glass for LTAR had never been alleged before. The information provided by Petitioner pertained solely to float glass, which is clearly distinct from rolled glass. Thus, in light of the evidence presented by Petitioner in support of its allegation (e.g., the evidence of state production and a price differential, discussed above), which was for float glass, there was no basis to expand the allegation to cover rolled glass.

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review, if any. Thus, the regulations contemplate that certain allegations cannot be examined with only a short period of time remaining in an investigation.

[115] 19 CFR 301.511(a)(2).

Comment 11: The Provision of Land to Trina

Trina's Arguments

- The facts on the record do not support the application of AFA with respect to Trina's land purchases.

- The Department applied AFA because it claimed that the GOC did not provide information regarding Trina's land purchases. However, the Department rejected the GOC's submission that contained this requested information.

- In its new factual information submission, Trina also attempted to submit information on its land purchases. However, this information was also rejected by the Department.

- Subsequent to the Preliminary Determination, the Department allowed Suntech to provide information concerning its land purchases, but this opportunity was not afforded to Trina.

GOC's Arguments

- The transfer of land-use rights does not fall under any of the definitions of "financial contribution," including a good or service, as land-use rights are considered realty and do not meet the definition of "goods."

- AFA is unwarranted as the GOC provided copious information regarding the bidding process for Trina's land-use rights, all of which the Department rejected.

- The benchmark for land should be established using market prices inside the PRC, which has a robust real estate market.

- Real estate prices in Thailand cannot serve as proxy prices for land inside the PRC as prices reflect the unique factors of different tracts of land.

Petitioner's Rebuttal Arguments

- The Department should continue to find that the GOC's provision of land for LTAR is countervailable. Because the GOC failed to provide information in a timely manner, the Department should continue to countervail Trina's land.

- The Department's use of an external benchmark from Thailand is appropriate. The GOC did not provide sufficient evidence to challenge the Department's conclusions regarding land in LWS. Consistent with cases determined since LWS, because Thailand is at a comparable level of economic development, the Department should continue to use a Thai benchmark.

Department's Position:

The Department continues to find, relying in part upon the facts available, with adverse inferences, that all of Trina's land was provided by the GOC for LTAR. In addition, as discussed above, we have also determined that certain tracts were provided to Suntech for LTAR. In the initial questionnaire, we asked the GOC the identical questions about land provided to both companies. We asked the GOC if the land had been provided pursuant to the "status" of the respondents (i.e., because they are solar cell producers, located in a certain region, etc.). If the answer to that question was 'no,' we asked the GOC to reconcile the prices paid by the respondents to local policies. In response, the GOC stated it "believes" the prices paid by the respondents were not contingent on status.[116] In response to the next question, however, asking for the reconciliation with local policies, it provided none of the information requested. Having reviewed the company responses, we learned that all of Trina's land had been purchased through auction from the local government. We therefore asked the GOC once again in the first supplemental to provide the reconciliation for Trina. In particular, we asked the GOC to explain how Trina's purchases were in conformity with local policies and had been made pursuant to competitive auctions. The GOC provided some sample information that fell far short of what we had requested. In particular, it provided information concerning only one tract of land out the several tracts purchased by Trina.[117] Therefore, as explained in the Preliminary Determination, we relied upon AFA for purposes of determining whether land provided to Trina was specific.

Regarding Suntech, however, the Department was under the misimpression that all of Suntech's land had been purchased from private parties through negotiated purchases. As there did not appear to be a financial contribution, we did not ask the GOC a second time to provide the reconciliation with local policies that we did for Trina's land. Instead, we asked the GOC to provide information confirming the private nature of the parties that had sold or leased land to Suntech. Once we clarified our misunderstanding and realized that Suntech leased or purchased several tracts of land either directly from the government or from sources owned by the government, we asked the GOC a second time to provide the reconciliation information, in a supplemental questionnaire issued after the Preliminary Determination, to demonstrate that all of Suntech's land had been purchased in accordance with local land pricing policies. In response to this questionnaire, the GOC provided the information requested for several, but not all, of the tracts belonging to Suntech and its cross-owned affiliates. (As discussed above, the Department is now countervailing those tracts provided to Suntech for which incomplete information was provided.)

Therefore, we have reached separate results for the two respondents as a result of the separate levels of cooperation provided by the GOC. While the GOC and Trina argue that the GOC eventually provided all of the information requested, this information was untimely and was therefore rejected (see the discussion in Comment 27 for details). Trina also argues we should have accepted the information it provided concerning the reconciliation with local policies. We cannot, however, accept information a company respondent provides on behalf of a government. The information requested is squarely within the domain of the GOC as it is the expert on all government laws and policies, including local laws and policies. Trina is not. It could not offer a

[116] See GOC's January 31, 2012 questionnaire response at II-143.
[117] See Preliminary Determination, 77 FR at 17444-45 for additional details.

meaningful certification of the accuracy of the information it provided (since it cannot know exactly what the requirements are of local laws and policies, how these local laws and policies mesh with central government laws and policies, and how local government authorities administer the laws and policies) and it would not be able to confirm the accuracy of such information at verification. Moreover, allowing one party to submit information requested from another party would provide a clear means of evading deadlines. A party that has missed a deadline could simply ask another party to submit the late information before the record closes.

The Department has previously addressed the GOC's arguments regarding financial contribution and the use of an external benchmark, in particular, in the laminated woven sacks (LWS) from the PRC investigation.[118] Addressing the financial contribution argument, we noted that the Department has long treated the provision of land-related rights as the provision of "goods or services." We relied on, inter alia, the CVD Preamble and the SAA. The CVD Preamble states the following in explaining 19 CFR 351.311 ("provision of goods or services"):

> Any infrastructure that does not satisfy this public welfare concept is not general infrastructure and is potentially countervailable. The provision of industrial parks and ports, special purpose roads, and railroad spur lines, to name some examples (some of which we have encountered in our cases), that do not benefit society as a whole, does not constitute general infrastructure and will be found countervailable if the infrastructure is provided to a specific enterprise or industry and confers a benefit.[119]

The SAA at 927 provides the following explanation of the concept of "financial contribution:"

> Section 771(5)(D) lists the four broad generic categories of government practice that constitute a "financial contribution." The examples of particular types of practices falling under each category are not intended to be exhaustive. The Administration believes that these generic categories are sufficiently broad so as to encompass the types of subsidy programs generally countervailed by Commerce in the past, although determinations with respect to particular programs will have to be made on a case-by-case basis.

The Department has also countervailed land outside of PRC investigations.[120] The Department sees no reason to change its long-standing practice now, and the GOC has not offered any new reasoning since its earlier arguments. Therefore, we continue to find that the provision of land and land-use rights constitutes a financial contribution.

In the LWS investigation, we also addressed the GOC's arguments regarding the use of the external Thai benchmark. As discussed elsewhere in this memorandum in the context of the provision of polysilicon for LTAR and preferential policy lending, external benchmarks are consistent with the Act and appropriate when significant government intervention has distorted internal prices in the industry or sector at issue. In the LWS investigation, we concluded intervention by the GOC in the PRC's land market distorted prices for both primary (state-to-private party) and secondary (private-to-private) real estate transactions.

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[118] See LWS IDM at 51-52.
[119] CVD Preamble, 63 FR at 65378 (citing Steel Products from Korea, 58 FR at 37338).
[120] See Steel Wire Rod from Germany, 62 FR at 54994 and Steel Wire Rod From Italy, 63 FR at 40474, 40481.

As with our examination of the banking sector in the CFS from the PRC investigation, discussed below, our examination of the land sector in the LWS investigation was an in-depth study that included verification meetings the Department held during the investigation with GOC officials who administer land law at the central and local levels of government and a review of reports issued by other organizations on the subject. Our findings were detailed in the preliminary determination in the LWS investigation and maintained and summarized in the final determination. Those findings are not case-specific, but rather apply to land in general throughout the PRC. Thus, the findings have been adopted in all PRC investigations involving allegations that land has been provided for LTAR.

Similar to its argument discussed below concerning the timeliness of our banking sector analysis, the GOC notes that our land market analysis from the LWS investigation is five years old and relies on information from the "early 2000s."[121] In order to revisit the determination in the CFS from the PRC investigation, there must be evidence warranting a reconsideration.[122] There is no such evidence in this investigation. The GOC discusses the requirement that land be transferred through bidding, auction, or quotation, and that minimum price rules must be observed. According to its January 31, 2012 questionnaire response, however, the rule it cites stems from the 1998 land administration law,[123] which was on the record of the LWS investigation and incorporated into our land analysis in that proceeding.[124] Likewise, the minimum prices the GOC discusses in its case brief were incorporated into the LWS investigation analysis.[125] Thus, the Department was fully aware of these requirements when we analyzed the land market in the LWS investigation. As we explained in detail, our primary concern was that these de jure reforms were not being followed in practice.[126] The Department cited several examples of gaps between de jure and de facto reforms in the LWS investigation, none of which are addressed by the GOC. We concluded these gaps were evidence that land prices in the PRC are not determined in accordance with market principles.[127] While the GOC provided evidence that several of the tracts purchased by Suntech were consistent with the minimum price rule, evidence that a handful of transactions complied with a single de jure requirement does not

[121] The Department notes that the analysis was based in part on verification conducted in 2008 and on several real estate reports from 2006. As explained in the Preliminary Determination, the actual values used as benchmarks in this investigation include a value from 2010 for benchmarking more recent land transactions.
[122] The Department has addressed such arguments from the GOC before. See OCTG IDM at 21 (regarding the reconsideration of the land analysis) and 97 (regarding the reconsideration of the banking analysis). In other contexts, we have also declined to revisit decisions from prior proceedings. See, e.g., Certain Coated Paper Indonesia IDM at 10 (maintaining that the provision of standing timber constitutes a financial contribution based on a determination in CFS Indonesia); Certain Coated Paper Indonesia IDM at 4 (maintaining the respondent is uncreditworthy based on a determination in CFS Indonesia); Pasta from Italy IDM at Comment 2 ("It is the Department's practice not to revisit past findings unless new factual information or evidence of changed circumstances has been placed on the record of the proceeding that would cause the Department to deviate from past practice."). The CIT has upheld this practice. See PPG Industries, 14 CIT at 539-40 (upholding the Department's determination not to reinvestigate a program absent sufficient new evidence).
[123] See GOC's January 31, 2012 questionnaire response at 143-144.
[124] See, e.g., LWS Preliminary Determination, 72 FR at 67907. In the LWS investigation analysis the Department referred to the three methods of transferring land as "auction," "tender," and "listing." In its case brief and questionnaire response, the GOC refers to "auction," "quotation/negotiation," and "bidding."
[125] Id., 72 FR at 67908.
[126] LWS IDM at 16 (finding a "wide divergence between the de jure reforms of the market for land-use rights and the de facto implementation of such reforms.").
[127] Id. at 16-17.

demonstrate the market-wide de facto changes in practice that would warrant reconsidering our conclusions.

Likewise, the GOC claims the record includes "significant" evidence of a "robust" secondary market, but the evidence it cites is the information it provided concerning land obtained by Suntech from reportedly private parties. This information simply demonstrates that there were, in fact, a handful of secondary transactions. The Department does not deny that there are, in fact, secondary transactions in the PRC, but rather we have found that prices for such transactions are also distorted. [128] Besides the fact that a small number of transactions cannot serve as evidence of market-wide changes, these transactions do not address "distortion" at all. The GOC merely demonstrated that these transactions were consistent with the minimum price rule, not that they were consistent with market principles. Therefore, the GOC has not provided any evidence that would warrant a reconsideration of the LWS investigation determination.

Finally, we determine to continue using Thailand as the source for our external benchmark. The GOC claims our decision to choose Thailand in the LWS investigation was based on only two factors: 1) Thailand and the PRC have similar national income levels, and 2) Thailand's proximity to the PRC. We think this misrepresents our decision. First of all, we also took population density into consideration, reasoning that density is a key variable in determining real estate costs. While we did take the proximity of Thailand to the PRC into consideration, it was part of a wider finding regarding the "perception that producers consider a number of markets, including Thailand, as an option for diversifying production bases in Asia beyond China."[129] The conclusion that producers consider locating in Thailand to be a reasonable alternative to locating in the PRC is reinforced by other information considered in the LWS investigation.[130]

We also considered the fact that the Thai land prices were for land in industrial parks and were for land in Bangkok or areas adjacent to Bangkok, both facts that appeared apposite to the situation of the respondent in that investigation. We note in this regard that all of Trina's facilities and most of Suntech's facilities are (with one exception) either in Shanghai or in the province adjacent to Shanghai (a densely populated urban commercial center, like Bangkok). All of Trina's facilities are also in an industrial park, as are Suntech's main facilities and those of its largest cross-owned affiliate (Shanghai Power Ltd. (i.e., Shanghai Suntech)).

Comment 12: Use of AFA to Determine an Electricity Benchmark

GOC's Arguments

- The Department should not have selected the highest electricity rates found on the record for use as benchmarks, but should have used all the information the GOC provided to make a more informed determination.

[128] See LWS IDM at 58 (concluding that "{t}his control significantly distorts the price paid for the granted land-use rights in both the primary and secondary markets," and referring back to the LWS Preliminary Determination for details).
[129] LWS IDM at 64.
[130] See LWS Preliminary Determination, 72 FR at 67809 (discussing a number of documents that indicate Thailand's suitability as an alternative commercial location to the PRC).

Petitioner's Arguments

- The Department should continue to apply AFA with respect to this program. The GOC failed to provide complete responses to the Department for this program despite the Department's repeated attempts to obtain all necessary details.

Department's Position:

The Department has addressed the GOC's arguments in the past. In the steel cylinders from the PRC investigation, for example, we stated:

> Section 776(b) of the Act clearly states that the Department "in reaching the applicable determination…may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available" and provides the basis for which an adverse inference may be made. The statute also describes the various sources upon which the Department may rely to obtain the information for making the adverse inference, including information placed on the record of the proceeding. The Department's selection of the highest non-seasonal electricity rate for each electricity category benchmark is, therefore, reasonable and permissible under section 776(b) of the Act. Additionally, the selection of the highest non-seasonal electricity rate for each electricity category benchmark is consistent with the Department's past practice regarding the provision of electricity for LTAR.[131]

As in the steel cylinders investigation, there is no evidence on the record that would allow us to construct a more "accurate" benchmark. In fact, there is no information on the record to determine the degree of inaccuracy (if any) of the benchmark we are currently using. The GOC has refused to provide information concerning the relationship (if any) between relevant provincial tariff schedules and cost. It then asks us to choose a benchmark that is a more suitable proxy for that which it has refused to explain. The Department continues to find that it has made a reasonable, adverse choice as a benchmark. The benchmark is from current information supplied by the GOC specifying standard electricity rates being paid, according to usage type, by industrial enterprises within the PRC. Thus, the information matches, with a single exception, the respondents' situation: It is for the appropriate time period and type of user. The single exception is location. The relevance of location, however, is precisely what the GOC failed to demonstrate through its lack of cooperation. It provided no information demonstrating prices in the relevant provinces must, by necessity of cost, be different than in other PRC provinces. Therefore, the Department continues to determine that the use of the highest provincial electricity rate for each category of electricity used by the respondents is appropriate as an AFA benchmark.

[131] Steel Cylinders IDM at 47 (citing Drill Pipe IDM at 10-12). See also GSW IDM at 56.

Comment 13: Whether SOCBs Are Authorities

GOC's Arguments

- The record contains no persuasive evidence that the government exercises control or influence over Chinese banks during the POI such that the banks should be treated as "authorities."

Petitioner's Arguments

- It is well established under Department precedent that PRC state-owned banks are government authorities.

Department's Position:

The Department explained in the CFS from the PRC investigation why SOCBs are "authorities" within the meaning of section 771(5)(B) of the Act. Contrary to the GOC's arguments, our findings were not, and are not, based upon government ownership alone. A brief review of Comment 8 of the CFS PRC IDM makes this clear. For example, we stated:

> . . . information on the record indicates that the PRC's banking system remains under State control and continues to suffer from the legacies associated with the longstanding pursuit of government policy objectives. These factors undermine the SOCBs ability to act on a commercial basis and allow for continued government control resulting in the allocation of credit in accordance with government policies. Therefore, treatment of SOCBs in China as commercial banks is not warranted in this case.[132]

In order to revisit the determination in the CFS from the PRC investigation, there must be evidence warranting a reconsideration. There is no such evidence warranting a reconsideration in this investigation and the GOC made no attempt to claim there was until its case brief. In its case brief, the GOC simply made the following claim, but cited no information on the record to support it: "The Chinese banking system has undertaken and completed significant reforms and improvements since the period of investigation in {the CFS from the PRC investigation} (January I-December 31, 2005), and the Department must address these developments in this proceeding."[133] While it has made similar claims in other recent investigations, it has never provided any evidence suggesting that even the most basic facts of the CFS from the PRC investigation analysis have changed. For example, in the OCTG investigation, we noted:

> {T}he GOC has failed to provide evidence that the government has divested itself of ownership in Chinese banks. The GOC has failed to address the issue of real risk assessment within the Chinese banking sector. The GOC has failed to address interest rate and deposit rate ceilings and floors set by the government. The GOC has failed to address both de jure and de facto reforms within the Chinese banking sector. The GOC has failed to address the elimination of policy-based lending within the Chinese banking

[132] CFS PRC IDM at 55.
[133] GOC's case brief at 34.

> sector. Therefore, the GOC has failed to provide the information that would warrant a reconsideration of the Department's determination in {the CFS from the PRC investigation}.[134]

Similarly, the GOC never provided a factual basis for reconsidering the CFS from the PRC investigation decision in this investigation. For these reasons, we continue to find that SOCBs are authorities capable of providing a direct financial contribution to the respondents.

Comment 14: Specificity of Preferential Policy Lending

Arguments of the GOC and Trina

- To determine that a policy lending program was specific to the solar cell industry, the Department relied on several documents, none of which require financial institutions to provide preferential policy lending to solar cell producers.

- There is no evidence on the record of this investigation that Trina's loans were received pursuant to a program of preferential policy lending to solar cell producers.

- The documents the Department cited to in the Preliminary Determination are aspirational or guidance documents and do not mandate action by financial institutions.

Petitioner's Rebuttal Arguments

- In accordance with past precedent the Department looks to whether the GOC has encouraged the development of an industry in determining whether it has been provided with preferential policy lending.

- The GOC's assertions that its development plans are merely aspirational are unsupported and contradicted by prior findings of the Department.

Department's Position:

In the Preliminary Determination, we referred to multiple laws and policy statements of the GOC indicating it had targeted the solar cells industry for development and preferential policy lending:

> The Renewable Energy Law, in Article 25, calls specifically for the use of loans in implementing the GOC's plans for renewable energy: "Financial institutions may offer favorable loans with a financial discount for renewable energy development and utilization projects that are listed in the renewable energy industry development guidance catalogue and meet credit requirements." The catalogue referenced in the Renewable Energy Law includes an entire section for solar power projects. Among those projects, most, if not all, of which would require the use of solar cells, are three projects specifically for the production of solar cells, including subject merchandise: "Single

[134] OCTG IDM at 97.

> crystal silicon solar energy cell and multi-crystal silicon solar energy cell" (project 39). As Petitioner notes, the Renewable Energy Law is noted by Trina Solar in its 2010 SEC filing (form 20-F). On page 49 of its SEC filing, Trina Solar notes that the law "provides financial incentives, such as national funding, preferential loans and tax preferences for the development of renewable energy projects."
>
> Renewable energy is also among the projects listed in the "Directory Catalogue on Readjustment of Industrial Structure" of the National Development and Reform Commission (NDRC) (Catalogue No. 40), which contains a list of encouraged projects the GOC develops through loans and other forms of assistance, and which the Department has relied upon in prior specificity determinations. Catalogue No. 40 includes an encouraged project (number IV(5)) for: "Development and utilization of wind energy power to generate electricity and such renewable resources as solar energy, geothermal energy, ocean energy, biomass energy and etc."[135]

The GOC argues that none of this amounts to evidence that the particular loans provided to the two respondents were provided in accordance with any laws or policies mandating such loans to solar cell producers. First, this argument is not entirely correct factually. The quote above includes a statement from Trina's own filing with the SEC noting the provision of such loans in accordance with the REL. This appears to be a clear acknowledgement by one of the respondents that its loans, specifically, were received pursuant to one of the laws cited by the Department in the Preliminary Determination. In addition, during the GOC verification, the Department asked MOF officials about a large long-term loan from a local SOCB that, in the Department's view, was provided because of specific R&D undertaken with the proceeds of the loan.[136] The MOF officials did not provide an explanation for the apparent link, stating they had no idea what the SOCB in question might have considered in providing the loan.

We also asked the GOC during verification about the REL discussed in the quote above. We asked about Article 25, which explicitly calls for "favorable" loans for solar cell projects. We also asked about similar language in Circular 237, the measures issued by the MOF to implement the REL. The MOF officials present at verification stated that the PBOC would be responsible for implementing these loan directives, but that they had no idea whether the PBOC had done so. Likewise, the MOF officials stated that they had no idea whether any provincial or local governments had issued their own measures for implementing provisions of the REL. The MOF officials stated they were not aware of what measures might have been issued to implement the REL and Circular 237 despite having told the Department just moments earlier that the MOF was the lead agency responsible for implementation.[137] Thus, while the GOC claims in its case brief that the REL and Circular 237 are "aspirational," the evidence on the record and the discussion at verification make clear that mandatory implementation measures are issued. Second, these laws and policies are clear evidence of the GOC's decision to target the solar cell industry for development. Such targeting was the basis of our specificity decision in the Preliminary Determination.[138] In investigating allegations of preferential policy lending, the

[135] Preliminary Determination, 77 FR at 17450-51.
[136] See GOC Verification Report at 6.
[137] See id. at 11.
[138] See Preliminary Determination, 77 FR at 17451.

Department has consistently found specificity where there is evidence that an industry has been targeted for development and where lending is contemplated as one means of such development.

For example, in the CFS from the PRC investigation we stated:

> {T}o determine whether the policy alleged by petitioner confers countervailable subsidies on the producers and exporters of the subject merchandise, the Department must first ascertain whether the GOC has a policy in place to support the development of the paper industry. Specifically, the Department must determine whether record evidence supports the conclusion that the GOC carries out industrial policies that encourage and support the growth of the paper sector through the provision of preferential loans.[139]
>
> . . . .
>
> The Department continues to find that these governmental paper policies, when viewed collectively, document and provide evidence of the GOC's specific and detailed policy to encourage the development of the domestic forestry and paper industry through preferential financing initiatives. Importantly, the cited documents contemplate affirmative State action to implement the government's policies and, in fact, mandates their implementation by various levels of government, as opposed to providing mere guidance, as claimed by respondents.[140]

More recently, in the steel wheels investigation, we phrased the policy as follows: "In general, the Department looks to whether government plans or other policy directives lay out objectives or goals for developing the industry and call for lending to support objectives or goals."[141] In that same investigation, we added: "Article 34 of Law of the People's Republic of China on Commercial Banks (Banking Law) states that banks should carry out their loan business 'under the guidance of the state industrial policies.' . . . {Therefore} the Banking Law, in some measure, stipulates that lending procedures be based on the guidance of government industrial policy."[142] Thus we found the existence of a "casual nexus" between the GOC's industrial policies and lending.

The laws and policies found to be dispositive in the CFS from the PRC investigation included Catalogue No. 40, mentioned above. The documentation reviewed in the CFS from the PRC investigation that referenced lending explicitly included language such as "financing channels are to be widened" and "to motivate the loans from the banks, . . . the national government, while strengthening its general plans, may provide appropriate financial support to the construction of forestry and papermaking integration in its early phases by way of infusing capital in cash or loans with discount." These references seem relatively oblique compared to the straightforward references in the REL and Circular 237 that call for "favorable loans with a discount" for certain renewable energy projects (including the production of subject merchandise) and "discounts of interests on loans" for the same renewable energy projects. The rest of the documentary

[139] CFS PRC IDM at 52.
[140] Id. at 57.
[141] Steel Wheels IDM at 67 (citing Drill Pipe IDM at Comment 8).
[142] Id. at 67-68 (citing OCTG IDM at Comment 21).

evidence examined in the CFS from the PRC investigation related to the extent of the GOC's concern with developing the paper and forestry industry, not to the specific means by which it planned to do so. As detailed in the Preliminary Determination and above, there is ample indication on the record of this investigation that the GOC has targeted the renewable energy industry, which includes solar energy, for development.

The Department's analysis of policy lending was also clearly set forth in the OTR tires investigation. While there was evidence in that investigation that preferential policy lending had been directed to one respondent specifically by name, the Department nonetheless addressed the GOC's argument that its laws and policies concerning industry development were merely "aspirational," the same argument the GOC makes in the current investigation.

> If {the laws and policies under examination} were simply aspirational recitations of general development goals with no meaning, there would be little reason for the provinces and municipalities to develop plans in accordance with central government plans. Nor would there be any reason for provinces and municipalities to tailor their plans to conditions and needs within their jurisdictions, and there certainly would be no reason to single out companies, industries or specific development projects (e.g., technology renovation) within those plans. The fact that companies or tires or rubber are specifically mentioned in these plans or catalogues and the fact that these plans and catalogues discuss support, including loans for "key" or promoted projects demonstrates that government policy lending in the OTR tires industry is de jure specific.[143]

For these reasons, the Department continues to find that preferential policy lending has been provided to solar cell producers and that the provision of this preferential policy lending is de jure specific to the renewable energy industry, which includes solar cell producers.

Comment 15: Use of an In-Country Benchmark to Measure the Benefit from Preferential Policy Lending

GOC's Arguments

- A domestic interest rate from the PRC should be used as the most appropriate benchmark for short-term and long-term interest rates.

Petitioner's Rebuttal Arguments

- Loans provided by PRC banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market. Therefore, an external benchmark is necessary.

[143] OTR Tires IDM at 99.

Department's Position:

The Department has explained the need for an "external" benchmark when measuring the benefit from SOCBs in the PRC in several prior investigations and reviews. We summarized our reasoning in the Preliminary Determination as follows:

> 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," indicating that a benchmark must be a market-based rate. Normally, the Department uses comparable commercial loans reported by the company for benchmarking purposes. If the firm does not receive any comparable commercial loans during the relevant periods, the Department's regulations provide that we "may use a national average interest rate for comparable commercial loans." The Department, however, has determined that 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. Therefore, the benchmarks that are described under 19 CFR 351.505(a)(3) are not appropriate options. The Department is, therefore, using an external, market-based benchmark interest rate.[144]

The practice of using an external benchmark for lending in the PRC was first established in the CFS from the PRC investigation. That decision was based on an extensive study conducted by the Department into the GOC's role in commercial bank lending in the PRC. The study included verification meetings the Department held during the investigation with GOC banking and regulatory officials and a review of reports issued by other organizations on the subject, such as the OECD. Our findings were summarized in CFS PRC IDM, at Comment 10. Those findings are not case-specific, but rather apply to lending in general from PRC SOCBs. Thus, the findings have been adopted in all investigations involving policy lending (or preferential lending) since the CFS from the PRC investigation. The GOC provided no evidence in this investigation that would lead the Department to reconsider this determination. Therefore, the Department continues to find that the use of an external benchmark is consistent with the Act in such situations and, given the significant intervention of state-owned banks in the PRC's banking sector, appropriate for this PRC investigation.

Comment 16: Flaws in the Calculation of the External Preferential Policy Lending Benchmark

GOC's Arguments

- The short-term loan benchmarks used by the Department have several flaws, namely: they rely on interest rates in other countries that have different monetary policies and economic conditions than the PRC; depending on the year of the loan, different methodologies are used to reach desired outcomes; negative interest rates are excluded without any justification; and, the benchmark for loans denominated in U.S. Dollars was based on a LIBOR rate that is currently under investigation due to possible manipulation.

[144] See Preliminary Determination, 77 FR at 17447 (citations omitted).

- The relationship between "BB" bond rates for short-term and long-term corporate bonds denominated in U.S. dollars cannot be used as a proxy relationship for RMB denominated short-term and long-term loans. Because the PRC and the United States are in a different income group, using the Department's own logic, the U.S. interest rates should not be used to compute long-term interest rate benchmarks.

Trina's Arguments

- The Department should consider Trina's full cost of borrowing in calculating the benefit it received from loans. The Department should include all fees and other expenses associated with countervailed loans.

Petitioner's Arguments

- The Department properly determined that loans provided by SOCBs reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market such that use of an external benchmark is not only justified, it is necessary.

Department's Position:

The Department has addressed several of these arguments previously. We reiterate our reasoning on an argument-by-argument basis as follows.

"The benchmarks rely on interest rates in other countries that have different monetary policies and economic conditions than the PRC."

The Department has stated consistently since the CFS from the PRC investigation that it would not be possible to control for all factors affecting interest rates in the PRC given our determination that GOC involvement in the lending sector mandates an external benchmark. For example, in the CFS from the PRC investigation, the GOC suggested we take the rate of savings into consideration. In response, we stated:

> The GOC is correct that the level of savings in an economy is a key factor in interest rate formation, as savings form a large portion of the supply of funds in the financial system in many economies. However, in the case of China, the Department has already found the financial system not to be market-based, thus necessitating a third-country benchmark. Controlling for factors specific to China that drive interest rate formation would undermine the purpose of selecting an external benchmark, which is to find a rate that it is not affected by these China-specific factors. In other words, controlling for some of these factors (e.g., savings rate) would be inserting into our external benchmark the very distortions that were the basis for using an external benchmark in the first place. In the case of savings, it is impossible to know what the savings rate would be if the

> government-imposed cap on deposit rates did not exist, for example, or if savers had access to a wider range of investment vehicles.[145]

We have, however, taken certain PRC-specific variables into consideration when doing so would not distort the benchmark. Thus, as explained in the CFS from the PRC investigation, we factored into our benchmark calculation the PRC's national income and its "governance factors," a variable reflecting the strength of the PRC's institutional infrastructure in the banking sector. Likewise, our benchmark methodology calculates a real rate and then adds to that real rate the PRC's own rate of inflation in order to derive a nominal rate. Thus a significant portion of the nominal rate – the inflation component – is entirely the product of the GOC's own monetary policy preferences.[146] Therefore, our use of an external benchmark complies with the directive of the Act to use "comparable commercial loans" to the extent doing so does not "reintroduce" the distortive effects of the GOC's involvement in the PRC banking sector.

"Negative interest rates are excluded without any justification."

The Department responded to this argument most recently in the steel wheels investigation. We stated: "{T}he Department finds that negative-adjusted rates are not common, tend to be anomalous, and, moreover, are not sustainable commercially. Therefore, we continue to exclude negative real interest rates in calculating our regression-based benchmark rates."[147]

Regarding the GOC's new arguments, we note the following.

"Depending on the year of the loan, different methodologies are used to reach desired outcomes."

Until we began to investigate loans disbursed in 2010, the Department relied on a single methodology to derive short-term lending benchmarks in all investigations and reviews involving a preferential policy lending allegation. Not only was the methodology the same, the results were the same as well, with the identical data being used in all proceedings involving lending in a particular year (i.e., all cases investigating lending provided in 2008 used the identical figures for benchmarks; likewise in 2009, etc.). The methodology for calculating the "bump up" used to derive long-term rates from short-term rates has changed slightly over the years, always in response to comments from outside parties, including respondents. For loans disbursed in 2010, however, we relied on a somewhat different methodology to derive the short-term benchmark rate. This revision affected the short-term rate only; all other aspects of the methodology remain the same as they have been since the CFS from the PRC investigation. As we explained in the Preliminary Determination, the change to the short-term rate was necessitated by the reclassification of the PRC as a "middle income country."[148] The change was made in a number of proceedings simultaneously, and we explained our decision at length in the

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[145] CFS PRC IDM at 71.

[146] See OTR Tires IDM at 109 for a detailed discussion of our consideration of governance factors and inflation in our methodology. The Department rejected the arguments of the U.S. industry in that investigation to exclude the PRC's own inflation rate from the benchmark methodology.

[147] Steel Wheels IDM at 70; see also Citric Acid from the PRC IDM at Comment 11 (stating the identical finding) and OCTG IDM at Comment 25 (stating the identical finding).

[148] See Preliminary Determination, 77 FR at 17447.

Preliminary Determination.[149] The change was not made pursuant to a results-oriented decision of the Department. Rather, as explained in the Preliminary Determination, the decision was the result of certain data (the so called "governance factors" referred to above) generating results inconsistent with theory. Thus the Department concluded the data were unreliable for this particular one-year period.[150]

"The benchmark for loans denominated in U.S. Dollars was based on a LIBOR rate that is currently under investigation due to possible manipulation."

The GOC submitted no information for the record during the course of this investigation indicating the extent to which the benchmarks we used in the Preliminary Determination might have been distorted because of manipulation. However, the GOC asks that we take such distortion into account now. To the extent such manipulation did affect the LIBOR rates used in our calculations, we presume the effects would be neutral. The significance of LIBOR is that it is used as a lending benchmark or base rate by commercial banks lending U.S. dollars (and several other currencies). Thus, a bank might stipulate the interest rate of a loan to be LIBOR plus 1.5 percent. This practice is followed by PRC SOCBs as well as by banks outside the PRC.[151] Therefore, if the alleged manipulation drove LIBOR higher, it would have increased both the benchmark and the rate actually paid by a borrower in the PRC.

"The use of BB bond rates to derive a long-term benchmark is arbitrary and does not reflect the yield curve within the PRC."

The GOC argues that the use of BB bond rates, which are yield rates paid by U.S. companies on U.S. dollar-denominated debt issued within the United States, does not reflect the term structure of interest rates (i.e., how interest rates vary depending on whether a debt is to be repaid within one year, two years, ten years, etc.) within the PRC. Thus, in the view of the GOC, the use of these rates to convert short-term benchmarks to long-term benchmarks is arbitrary. This is essentially identical to the first argument addressed above under this comment, as well as to the GOC's argument that we cannot and should not use external benchmarks. As explained above, the Department seeks to derive benchmarks for "comparable commercial loans" without reintroducing the distortive effects resulting from the GOC's significant involvement in its banking sector. It is not clear how we could impose the PRC's yield curve (i.e., interest rate term structure) on our methodology without adding these distortive effects to the long-term interest benchmarks. The GOC has not offered a suggestion nor provided any alternative data. It offers instead a one paragraph statement once again arguing that external benchmarks are inappropriate

[149] Id.

[150] While the POI in this case is 2010, we are countervailing loans going back several years earlier. The governance factors are still used for those earlier years.

[151] For example, Trina borrowed $80 million in 2009 from a PRC SOCB. According to its 2010 20-F at page 80: "The loans were denominated in Euros, U.S. dollars and Renminbi and bore annual interest rates linked to LIBOR for Euros denominated loan and U.S. dollar denominated loan and the basic one-year borrowing rate of the People's Bank of China for Renminbi denominated loan." Suntech entered into a loan facility agreement with a PRC SOCB and the China Development Bank in 2009 for nearly $200 million. In its 2010 20-F at page F-35 it states: "Such facility is restricted to the purchase of fixed assets, has a maximum borrowing amount of $198.5 million, bears interest at 6-month LIBOR plus 3.5% per annum and contains certain financial covenants."

because they do not reflect how lending actually operates within the PRC (the main reason for choosing an external benchmark).

Given our past and current responses to the arguments of the GOC, we continue to rely on the benchmark methodology used in the Preliminary Determination.

Finally, we disagree with Trina that we should take fees and other expenses into account in calculating the benefit it received from preferential policy lending. Given the specific methodology the Department uses in calculating a benchmark in PRC investigations, we have concluded in the past it is not possible to take fees and other expenses into account: "to convert a nominal (market-based) interest rate to an effective rate, the Department could take into account all relevant loan-related charges and fees. However, where no underlying market-based rate exists (as is the case in China), determining what the necessary adjustments would be in order to form a market-determined interest rate in China, absent the numerous government-imposed distortions in the system, would be highly complex, speculative and impracticable exercise."[152]

Comment 17: Creditworthiness of Suntech and Trina

Suntech's Arguments

- Suntech's current and quick ratios are near the benchmarks relied upon by the Department. Lower ratios and negative cash flow are to be expected during a company's growth phase. Suntech needed to stockpile inventory and prepare for future growth.

- The Department should reclassify certain short-term loans as long-term loans for purposes of calculating current and quick ratios. Because these loans are rolled over they do not represent a drain on Suntech's current assets.

- Suntech has never defaulted on principal or interest payments.

- Suntech had long-term commercial loans from several PRC commercial banks.

Trina's Arguments

- The Department's analysis is simple minded and places undue focus on current and quick ratios.

- The Department's regulations refer to Moody's debt ratings for calculating benchmark adjustments for uncreditworthy companies. This reference implies the analysis used by Moody's in rating companies should be in used to determine whether a respondent is creditworthy. Moody's publications describing how to perform such analysis were provided by Trina on June 18.

[152] Certain Coated Paper PRC IDM at 70.

- The Department failed to consider Trina's 2006 IPO and 2008 offering of convertible notes in its creditworthiness analysis.

Petitioner's Arguments

- Information provided by Trina after the Department's decision to investigate Trina's creditworthiness in 2005, 2006 and 2008 indicates it was also uncreditworthy in 2009 and 2010.

Trina's Rebuttal Arguments

- The Department determined not to investigate Trina's creditworthiness in 2009 and 2010. Finding it uncreditworthy in those two years without initiating an investigation or issuing a preliminary determination would deny Trina due process.

Petitioner's Rebuttal Arguments

- The Department should continue to find both Suntech and Trina uncreditworthy. Suntech's current and quick ratios indicate it could not cover its liabilities. These ratios are traditionally part of the Department's analysis. The Department should reject Trina's arguments regarding Moody's rating calculations as untimely.

Department's Position:

The Department's creditworthiness analysis is conducted pursuant to 19 CFR 351.505(a)(4). The Department considers a firm to be uncreditworthy if "based on information available at the time of the government-provided loan, the firm could not have obtained long-term loans from conventional commercial sources."[153] Our analysis is guided by four regulatory factors: (1) the receipt by the firm of comparable commercial long-term loans; (2) the present and past financial health of the firm, as reflected in various financial indicators calculated from the firm's financial statements and accounts; (3) the firm's recent past and present ability to meet its costs and fixed financial obligations with its cash flow; and (4) evidence of the firm's future financial position, such as market studies, country and industry economic forecasts, and project and loan appraisals prepared prior to the agreement between the lender and the firm on the terms of the loan.[154]

We continue to find that Suntech was uncreditworthy in 2010 and that Trina was uncreditworthy in 2005 and 2007. In a change from our preliminary analysis, we now determine that the convertible notes issued by Trina in 2008 are dispositive evidence of its creditworthiness, within the meaning of 19 CFR 351.505(a)(4)(ii), in that year. We reached the same conclusion in the Post-Preliminary Analysis Memorandum regarding the convertible notes issued by Suntech in the same year. Both companies issued the notes to large institutional investors in the United States, and the notes were registered as long-term debt in both companies' financial statements. Thus the notes essentially functioned as long-term commercial loans issued to private, market economy lenders.

[153] 19 CFR 351.505(a)(4)(i).
[154] 19 CFR 351.505(a)(4)(i)(A)-(D).

In reaching our conclusions regarding Suntech in 2010 and Trina in 2005 and 2007, we note that neither company received commercial long-term loans during these years within the meaning of 19 CFR 351.505(a)(4)(i)(A).[155] Further, although we requested both respondents to provide relevant studies or other analyses concerning their financial health that would have been available to lenders in the years in question, within the meaning of 19 CFR 351.505(a)(4)(i)(D), neither respondent provided any. Accordingly, we continue to emphasize the importance of the respondents' poor current and quick ratios. These ratios are highly relevant under 19 CFR 351.505(a)(4)(i)(B)-(C) because they are indicators of a firm's financial health and its ability to meet its costs and fixed financial obligations with cash flow. Unlike some of the other information we have been asked to consider for this analysis, the meaning of these ratios is clear: either the respondents have liquid funds available to cover upcoming obligations, or they do not. If they do not, they have no choice but to accumulate new debt in order to cover existing debt. Such concerns with a company's ability to self-finance, and not to accumulate ever increasing levels of debt, are evident not just in the Department's past practice,[156] but also in the Moody's analysis Trina placed on the record. For example, five of the Moody's criteria compare measures of liquidity to financial obligations: debt to earnings, earnings to interest expense, "funds from operations" to gross debt, funds from operations less dividends to net debt, and "free cash flow" to debt. With two exceptions, the remaining Moody's criteria, while not explicitly linking liquidity and debt, in one form or another all consider debt levels and what funds the company has coming in to handle those debt levels.

The Moody's analysis was submitted by Trina in its June 18, 2012 submission of new factual information. It appears that all of the data Trina relies on in performing the Moody's analysis in its case brief comes from its 2010 form 20-F filed with the SEC and submitted in its February 28, 2012 questionnaire response, although it is not clear how exactly Trina uses that information to perform its calculations. In performing this analysis, Trina rates its own debt as 'Ba.' Petitioner calculates a score of 'B.' The Department, in applying the analysis to 2005 and 2007 (since we have already determined Trina was creditworthy in 2008) calculates a score close to 'B.'[157] According to the very same Moody's document, "Obligations rated B are considered speculative and are subject to high credit risk." This definition indicates that Trina "could not have obtained long-term loans from conventional commercial sources," in the words of 19 CFR 351.505(a)(4). Moreover, the data in the 20-Fs is for the consolidated offshore holding company. The use of such data overstates the financial health of the respondent because it assumes that a lender would consider all offshore funds available for repayment of a loan. However, it is far from certain that a hypothetical lender in the PRC would consider all funds from equity raised in the United States and held by a company registered in the Cayman Islands to be at the PRC respondent's

[155] Neither respondent had long-term loans in the years in question from banks other than SOCBs, and loans from SOCBs are not commercial loans – in fact, they are the very financial contributions at issue here.

[156] For example, in the past, the Department has stated that low current and quick ratios reveal a "lack of creditor protection that would likely cause doubts about {a company's} ability to meet its debt obligations." Steel Products From Brazil, 64 FR at 8319 (unchanged in final).

[157] Specifically, we calculated a score of 14.3. A 'Ba' is equal to a score of 12, and a 'B' is equal to a score of 15. There is some room for interpretation in applying the analysis. For example, the first criteria provides for 0.1 to 2.1 points depending on product diversity. If a company has "1 core segment," it receives between 1.8 and 2.1 points. Assuming Trina would be considered a company with "1 core segment" under this analysis (since the vast majority of its revenue stems from solar modules), we added 1.95 points to its score for this criteria (the midpoint between 1.8 and 2.1). Our complete calculations are attached to the Trina Final Analysis Memorandum.

disposal.[158] While the Moody's analysis could have been performed on the PRC companies themselves, Trina did not attempt this analysis and it is unclear to the Department how to do so, given the financial statements provided.

We also do not consider Trina's IPO to be dispositive. An IPO is a form of equity. On the issue of whether purchases of equity in a company by commercial parties should be considered evidence of creditworthiness, the CVD Preamble states:

> By its very terms, equity differs from loans and, hence, the presence of equity investments (even if made by private investors) is not necessarily indicative of whether the firm could obtain loans from commercial sources. As an extreme example, private owners may inject equity into their company because the debt-to-equity ratio is so high that it has become virtually impossible for the company to borrow funds. Clearly, in this situation, the presence of equity purchases by the owners would not be indicative of the firm's access to commercial loans.[159]

Therefore, we do not find that Trina's IPO outweighs the other evidence on the record, such as its current and quick ratios, which indicate that it was uncreditworthy in the years cited above. As noted in the Post-Preliminary Analysis Memorandum, these ratios indicate that both companies had insufficient liquid assets available to cover their impending obligations.

Both respondents had significant amounts of "advances to suppliers" booked into current assets as well as amounts for "restricted cash."[160] When current assets are committed to existing obligations they cannot service current obligations. Thus it is appropriate to remove these amounts from current assets for the purpose of calculating the quick ratios.[161] While the figures for the PRC companies are not public, information provided in the respondents' 20-Fs provides an indication of the lack of liquidity that is consistent with the problems experienced by the PRC companies.[162] In 2010, Suntech's consolidated quick ratio (adjusted for "advances to suppliers" and "restricted cash" was 0.69, meaning it had only 69 percent of the funds it needed to cover upcoming obligations). Its quick ratios in the preceding two years were better, but still low (0.99 in 2008 and 1.12 in 2009).[163] Moreover, Suntech was having troubling collecting its accounts.

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[158] Trina states that "{t}he majority of the IPO proceeds at year end 2006 (right after IPO) were held in an offshore company and yet to be injected into the operating subsidiary." Trina case brief at 7. Trina believes this weighs in favor of examining the consolidated books for this analysis; however, the Department believes the opposite. We are concerned with what a commercial lender in the PRC would be assuming.

[159] CVD Preamble, 63 FR at 65367.

[160] The fact that both Suntech and Trina pay their polysilicon suppliers in advance is discussed publicly in their 20-Fs. The 20-Fs also state the amounts that are considered to be current. However, the percentage of total current assets of the PRC companies is BPI. These details are provided in the Final Analysis Memoranda.

[161] Current ratios are typically bottom line current assets compared to bottom line current liabilities, without adjustments. Quick ratios compare the liquid portion of current assets to current liabilities. Typically, inventory is removed from current assets in calculating quick ratios, and we have done so here. As noted, we have also removed "advances to suppliers" and "restricted cash."

[162] The Department discusses the BPI ratios for the PRC producers in the Final Analysis Memoranda. In addition, attached to the Final Analysis Memoranda are the current ratios, quick ratios, adjusted quick ratios, days in receivable ratios, days in inventory ratios (sales divided by inventory), cash flow from operations figures, and debt-to-equity ratios for the PRC producers and the consolidated offshore companies.

[163] Its consolidated current ratio was 1.163, below the benchmark of 2.0 relied upon in the preliminary analysis. The

"Days in receivables," a ratio comparing sales revenue to accounts receivable, increased from 30.63 days in 2006 to 56.62 days in 2010. Difficulty in collecting accounts indicates the liquidity problem is even worse than indicated by the current and quick ratios, since both of these ratios include significant amounts for accounts receivable (accounts receivable were 21 percent of Suntech's consolidated current assets in 2010). Suntech also experienced negative cash flow from operations in four of the five years 2006 through 2010, reaching a high of negative 171,300,000 dollars in 2008.

Trina's adjusted, consolidated quick ratios were 0.70 in 2005 and 0.62 in 2007, below the benchmark of 1.0. Its current ratios were 1.62 and 1.55 in those two years, below the benchmark of 2.0. While information is not available before 2005, Trina's days in receivables increased from 65.90 in 2005 to 87.46 in 2007, reaching a high of 93.57 in 2006 for the period 2005 through 2007.

Both companies also reached high debt-to-equity levels, another ratio the Department has considered significant in the past. Suntech's ratios were above 1.0 in four of the five years 2006 through 2010, reaching a high of 1.77 in 2010 (meaning two thirds of its consolidated balance sheet was financed through debt). Likewise, Trina's ratio was 1.25 in 2005 before coming down to 0.63 in 2007. While both respondents argue that such financing was both wise and necessary given their intentions to exploit rapidly expanding aspects of the solar market, the fact remains that the risk of being repaid increases with these expanding debt levels and lenders would accordingly demand a premium for lending. Eventually such premiums must match those for "junk" bonds or the "speculative," "high credit risk" debt associated with the 'B' rating discussed above.

Suntech argues the Department should remove certain short-term loans from the total of its current liabilities because the loans are rolled over. The Department, however, has never treated rolled over short-term loans from PRC SOCBs as long-term loans. Doing so would defeat one purpose of the creditworthiness analysis, which is to determine whether a company can service its current obligations without having to resort to additional lending. Clearly a company that rolls over its short-terms loans as a matter of course is simply using new debt to pay for old debt, instead of relying on earnings for that purpose. Thus, if anything, these routinely rolled-over short-term loans are further evidence of Suntech's inability to finance its current obligations with funds from its operations.

Finally, in the NSA Decision Memorandum, we found that there was not sufficient evidence to initiate an investigation of Trina's creditworthiness in 2009 and 2010. As such, there is no basis for considering whether Trina was uncreditworthy in 2009 and 2010, and we have limited our analysis of Trina's creditworthiness to 2005, 2007, and 2008.

Comment 18: Export Buyer's Credits

Petitioner's Arguments

Department relied upon a benchmark of 1.0 in the preliminary analysis for quick ratios. See also Uncreditworthiness Initiation Memorandum at 5 for a discussion of these benchmarks.

- The GOC failed to cooperate to the best of its ability.
- As AFA, the Department should find that Suntech and Trina benefitted from this program to the fullest extent possible.

Rebuttal Arguments of the GOC, Suntech, and Trina

- The Department should not have initiated an investigation of this program as Petitioner did not provide sufficient evidence of the program's use by the respondents or their customers.

- All parties to this investigation agree that seller's credits were not used by any of the respondents. The record also indicates that no U.S. customers of the respondents used or benefited from this program.

- Non-use of buyer's credits should have been verified with the companies. Nevertheless, the GOC and representatives of the Ex-Im Bank cooperated with the Department.

Department's Response:

The Department finds that it properly initiated an investigation of this program. Petitioner noted in the Petition that, according to the 2010 annual report of the GOC's Ex-Im Bank, the credits provided under this program are "medium- and long-term loans, and have preferential, low interest rates. Included among the projects that are eligible for such preferential financing are energy projects."[164] In the Department's Initiation Checklist, we noted that "Petitioner states that {the Ex-Im Banks} loans to new and high-tech products accounted for about 30 percent of all of its loans to exporters in 2009 and 2010. . . . Petitioner states that eligibility for the buyer's credit requires that the Chinese content of exported goods used in the project comprise no less than 50 percent of the contract's value. Petitioner contends that the loans making up these buyer's credits have preferential rates and, that energy projects are eligible this financing. As such, Petitioner concludes that Chinese solar cell producers have benefitted from this program." The GOC claims that Petitioner did not provide sufficient support for this allegation, but the GOC provides no details regarding why the support Petitioner did provide, such as the annual report, was insufficient. Therefore, the Department continues to find that Petitioner provided sufficient support to warrant initiating an investigation of this program.

The Department agrees with Petitioner that the application of AFA is warranted in determining that this program is countervailable. In our first questionnaire, we asked the GOC to complete the "standard questions" appendix regarding the "export credit subsidy programs," which included both export seller's credits and export buyer's credits.[165] The standard questions appendix is attached to each initial questionnaire issued in an investigation. This appendix requests, among other information, a description of the program and its purpose, a description of the types of relevant records the government maintains, the identification of the relevant laws and regulations, and a description of the application process (along with sample application

[164] See Petition Volume 3 at 87.
[165] Note that there is one "standard questions" appendix for governments and one for company respondents. The government appendix is at issue here.

documents). In response, the GOC simply stated: "None of the respondents or their reported cross-owned companies applied for, used, or benefited from the alleged programs during the POI." The GOC provided none of the information requested in the standard questions appendix.

While the Department may not always require that the standard questions appendix be fully answered when both the government and company respondents claim a program has not been used, it was unclear from our analysis of the initial questionnaire responses whether the company respondents knew whether their buyers had received export buyer's credits from the Ex-Im Bank. Therefore, the Department decided that such fundamental information was necessary in this investigation in order to assess fully whether the program had or had not been used. Therefore, in a supplemental questionnaire, we stated: "The GOC has stated that none of the respondents or their customers received credits under this program. In order to verify this statement, the Department requests that you provide the following information."[166] What followed this statement were six basic questions concerning the operation of the program, including abbreviated versions of questions contained in the standard questions appendix (e.g., requests for a description of the application process and eligibility criteria, sample application forms, and regulations and manuals governing the application process). In response to the first five of these six questions, the GOC provided no information, noting once again that none of the respondent companies or their customers had used the program (despite the Department's explicit explanation that this information was needed to verify the GOC's claim of "non-use").

The GOC's response to our sixth question was similarly unhelpful. This sixth question was particularly important for determining how the Department should verify claims of non-use of export buyer's credits. The Department asked:

> Are exporters involved in the application process for buyer's credits or is the application process solely between the buyer and the Ex-Im Bank of China? If exporters are involved, please describe what information they provide to the Ex-Im Bank of China as part of the application process. If exporters are not involved, please explain how they might otherwise have knowledge of whether their buyers applied for or received credits.

In response, the GOC stated: "The GOC understands that this program, including the buyer's credit, cannot be implemented without knowledge of the exporters because the program has a substantial impact on the exporter's financial and foreign exchange business matters."[167] The GOC provided no additional information concerning how exactly an exporter's financial and foreign exchange matters would be affected. Certainly anytime a company makes a sale to a foreign market, its finances are affected, and, whenever the sale is in a foreign currency, its foreign exchange accounts would be affected as well. This is true regardless of whether an export buyer's credit is associated with the sale or not. The GOC provided no details concerning what exactly we should be looking for in terms of "financial" or "foreign exchange" activity in searching for export buyer's credits in an exporter's books and records.

Given the lack of information provided by the GOC in response to this supplemental questionnaire, the Department still had no basis for assessing how to verify claims that the

[166] April 6, 2012 questionnaire to the GOC at question 5.
[167] GOC's May 3, 2012 questionnaire response at 12.

respondents' customers had not used these export credits. We therefore gave the GOC another opportunity to remedy this deficiency. Once again, we prefaced our questions by explaining why the information was necessary: "In order for the Department to be able to verify that the respondents' customers have not received these credits . . ., you must answer {the following questions}. If you do not provide the information requested, the Department may consider the 'non-use' claims of the GOC and the company respondents to be non-verifiable and may be forced to apply facts available in reaching a final determination regarding this program."[168]

The GOC once again refused to provide the sample application documents or any regulations or manuals governing the approval process, providing instead its statement that none of the respondent companies or their foreign buyers had used the export seller's or buyer's credits from the Ex-Im Bank. It also provided a very brief description of the application process for export seller's credits and noted that the application process for export buyer's credits was "similar."[169] The GOC's short description of the application process provided no indication of how an exporter might be involved in the provision of export buyer's credits, how it might have knowledge of such export credits, or how such export credits might be reflected in a company's books and records. In fact, the description indicates the provision of export credits is a matter between the Ex-Im Bank and the borrower only.[170] In both of our supplemental questionnaires, the Department made it abundantly clear that we understood that the only way to establish non-use of this program was through the GOC and not through the company respondents. If the GOC thought the non-use of this program could be verified at the companies, it was incumbent upon the GOC to provide the Department with an explanation and a path to do so. Only the GOC was in possession of the information regarding how this program works and only the GOC could have provided this information.

Because of the lack of information from the GOC, the Department concluded it could not verify non-use of export buyer's credits during the verification of the questionnaire responses of the company respondents. What little information the GOC provided indicated an interaction between the Ex-Im Bank and the borrowers only, with no involvement of third parties such as exporters. This conclusion seemed to be supported by statements of Wuxi Suntech in one of its supplemental questionnaire responses. In that response, Suntech stated: "Wuxi Suntech was not involved in any way in the application or approval process for the buyer to obtain a credit and was not notified that a buyer has received such a credit."[171]

Furthermore, even if the company might have been involved in, or might have received some notification of, its customer's application for receiving such export credits, such information is not the type of information that the Department needs to examine in order to verify that the information is complete and accurate. For verification purposes, the Department must be able to test books and records in order to assess whether the questionnaire responses are complete and accurate, which means that we need to tie information to audited financial statements, as well as to review supporting documentation for individual loans, grants, rebates, etc. If all a company

[168] May 25, 2012 questionnaire to the GOC at question 6.
[169] GOC's June 8, 2012 questionnaire response at 23.
[170] See GOC's June 8, 2012 questionnaire response at 22 for the entire two-paragraph discussion of the application process, which mentions only the Ex-Im Bank and borrowers.
[171] See Suntech's May 3, 2012 questionnaire response at 23.

received was a notification that its buyers received the export credits, or if it received copies of completed forms and approval letters, we have no way of establishing the completeness of the record because the information cannot be tied to the financial statements. Likewise, if an exporter informs the Department that it has no binder (because its customers have never applied for export buyer's credits), there is no way of confirming that statement unless the facts are reflected in the books and records of the respondent exporter.

Therefore, the Department decided that the only entity that possessed the supporting records needed to verify the accuracy of the reported non-use of the export buyer's credit program was the Ex-Im Bank, which, because it was the lender, would have complete records of all recipients of export buyer's credits. Such records could be tested by the Department to check whether the U.S. customers of the company respondents had received export buyer's credits, and such records could then be tied to the Ex-Im Bank's financial statements. In notifying the GOC that we intended to verify non-use at the Ex-Im Bank, our verification outline stated that we would need to review application and approval documents, among other records, and that we would need to query relevant electronic databases if relevant records were maintained electronically. We clearly stated the purpose of such procedures was to ensure that none of the respondents' customers had received export buyer's credits.

The GOC did not indicate prior to or at the outset of verification that it had any concerns with the clear requests in the verification outline. It did not express any objection to these requests until the moment the Department sat down with Ex-Im Bank officials to begin this portion of the verification agenda. As detailed in the verification report, the GOC then objected that the decision to verify non-use with the Ex-Im Bank was based, in the GOC's view, on a false presumption: that verification of non-use of export buyer's credits could not be performed at the companies themselves.[172] The officials insisted they had previously explained that possibility to the Department, referring to the language discussed above by which they had informed the Department that export buyer's credits would affect the respondents' "financial and foreign exchange business matters." In response, the Department stated that this single statement did not provide an adequate basis for determining how non-use could be established at the companies. The GOC refused to allow the Department to query the databases and records of the Ex-Im Bank to establish the accuracy of the non-use claim.[173] The GOC then offered to provide additional details regarding how the Department might verify non-use at the companies. The Department stated it was too late in the proceeding to accept new information (the first company verification had already been completed at that point in time). We noted we had already provided the GOC with multiple opportunities to provide such information.

In its case brief, the GOC continues to argue that the Department could have verified non-use of export buyer's credits at the companies. As discussed above, there was never any serious attempt by the GOC to provide the details needed to verify non-use of export buyer's credits at the companies. The GOC provided no information whatsoever regarding an exporter's involvement in the application process for buyers beyond the statement that such credits would affect the exporter's "financial and foreign exchange business matters." Had the Department attempted to verify non-use at the respondents' facilities with only this statement as guidance, we

[172] See GOC Verification Report at 14.
[173] See GOC Verification Report at 16-17.

could have done no more than speculate how to confirm non-use; any procedures we might have undertaken at the companies simply would have been guess work based on assumptions concerning the operations of the program. Even in hindsight, the Department does not understand how it could have discerned financial and foreign exchange activity related to buyer's credits from financial and foreign exchange activity resulting from any other source (e.g., a straightforward sale in U.S. dollars unrelated to export credits of any type).

Assuming arguendo that there were means of verifying non-use at the companies, there is still no reason the Department should not expect the GOC to permit verification of its own questionnaire responses. The GOC stated clearly in its questionnaire responses on several occasions that the Ex-Im Bank had not provided export buyer's credits to the respondents' U.S. customers. It did not indicate that it had received this information second hand or from the companies, or that it was simply reporting what it understood to the best of its knowledge. Indeed, the GOC's questionnaire responses cite over and over again its certainty regarding non-use as the reason why it did not need to respond to the remainder of the Department's questions; e.g., when the Department asked that the GOC provide any regulations or manuals governing the application process, the GOC responded: "Not applicable. None of the respondents or their reported cross-owned affiliates applied for, used, or benefited from the alleged programs during the POI."[174] That the Department has developed a convention of verifying non-use with company respondents does not mean that verifying non-use with the relevant government agencies is now impermissible. There will still be certain occasions, such as with export buyer's credits, when the Department finds, based on the information provided by the respondents, that the only way to verify whether the program has been used is to examine the government's books and records because it is only the government that is in possession of the information and documentation.

We do not agree with the GOC and the company respondents that we cannot apply AFA for this program given no indication on the record that the program was used by the respondents' customers. We were prevented by the GOC from examining the only source documentation (the Ex-Im Bank's books and records) that would have been probative in this respect. The GOC and the respondents cannot now insist that we should make our decision based on evidence compiled from second best sources, such as the respondents' books and records. Finally, in regard to the respondents' arguments that they themselves could not even have theoretically benefited from this program given that it was directed at their customers, we note where we have had such allegations and where we have found that such export buyer's credits have been used, we have consistently found such financing to be countervailable as a subsidy benefitting the exporter.[175] Therefore, as stated above in the section "Application of Facts Available and Adverse Inferences," the Department determines that AFA is warranted in determining a subsidy rate for export buyer's credits.

[174] GOC's May 3, 2012 questionnaire response at 11.

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

Comment 19: Selection of AFA Rate for Export Buyer's Credits

Petitioner's Arguments

- As AFA, the Department should find that Suntech and Trina benefitted from this program to the fullest extent possible. The Department should assume that all of the respondents' customers received export buyer's credits amounting to two-year uncreditworthy loans in amounts equal to the total value of their purchases. Alternatively, the Department should rely on the highest rate calculated for a similar program in a previous proceeding.

Trina's Rebuttal Arguments

- Petitioner's argument for an AFA rate based on the premise that the respondents' total sales were financed through export buyer's credits provided to uncreditworthy customers relies on a convoluted, "Rube Goldberg" like chain of ludicrous assumptions.

Department's Position:

The Department has an established practice for selecting AFA rates for programs for which no verified usage information was provided.[176] According to that practice,[177] for programs other than those involving income tax exemptions and reductions, we will apply the highest calculated rate for the identical program in the same proceeding if another responding company used the identical program. If no other company used the identical program within the proceeding, we will use the rate from the identical program in another CVD proceeding involving the country under investigation, unless the rate is de minimis. If there is no identical program match in any CVD proceeding involving the country under investigation, we will use the highest rate calculated for a similar program in another CVD proceeding involving the same country. Given this practice, we have chosen the rate of 10.54 percent, calculated for preferential policy lending in the final results of the certain coated paper from the PRC investigation.[178]

Comment 20: Treatment of the AFA Rate for Export Buyer's Credits in the AD Investigation

Petitioner's Arguments

- The Department should not offset the cash deposit rate in the companion AD investigation. An offset would result in no negative consequences from the GOC's lack of cooperation.

[176] When the AFA determination applies solely to the financial contribution and specificity prongs of the countervailability determination, the Department may still calculate a rate using information supplied by the company respondents.
[177] See, e.g., GSW IDM at 5;
[178] See Certain Coated Paper PRC Amended Final.

Suntech's Rebuttal Arguments

- Not offsetting the AD cash deposit rate by the amount of any export subsidy is inconsistent with the Department's practice.

Department's Position:

Comments regarding adjustments to the AD rate are properly addressed on the record of the AD investigation. Parties should refer to the final determination in the AD investigation for further information on the treatment in AD cash deposits of the AFA rate for export buyer's credits.

Comment 21: Trina's Benefit from the Golden Sun Demonstration Program

Arguments of the GOC and Trina

- Trina received the grant as part of a power generation project. Thus, it did not subsidize Trina's production of solar cells.

Department's Position:

We continue to find that funds received by Trina under the Golden Sun program constitute a countervailable grant. In the Preliminary Determination, we determined that Trina benefitted directly from the program as the recipient of the grant.[179] For this final determination, we continue to find that Trina benefitted directly from the program as the recipient of the grant, as the funds were provided for the construction of a PV power generation project at Trina's own facilities.[180] The GOC and Trina argue that the grant was provided for power generation, and therefore did not benefit the production of subject merchandise. However, the project was installed at Trina's own facilities, thus producing power for its own use, including for the production of subject merchandise. Therefore, we continue to countervail this grant to Trina.

Comment 22: Whether a Local "Famous Brands" Program Constitutes an Export Subsidy

Arguments of the GOC and Suntech

- The Department incorrectly relied upon the national level documents as the basis for finding this program specific. Suntech applied for this program through the local government.

Petitioner's Rebuttal Arguments

- Finding the program to be an export subsidy is consistent with past precedent.

[179] See Preliminary Determination, 77 FR at 17450.

[180] While some of the details are BPI, the public list of approved projects submitted by the GOC lists Trina as both the project's installer and as the project itself. See GOC's January 31, 2012 questionnaire response at Exhibit O-II-A-6-f.

Department's Position:

The Department has found this program to be an export subsidy in prior determinations, at both the central and "sub-central" levels of government.[181] In the aluminum extrusions investigation, we explained: "Though operated at the local level, the GOC issued 'Measures for the Administration of Chinese Top-Brand Products,' which state that the requirements for application require that firms provide information concerning their export ratio as well as the extent to which their product quality meets international standards."[182] Therefore, while the GOC and Suntech are correct that the grant was provided by the local Wuxi city government pursuant to its own measures, such local measures must conform with the central government measures, which call for the examination of an applicant's export performance. Thus, consistent with our prior determinations, we continue to find the provision of this grant specific as an export subsidy.

Comment 23: "Discovered Grants"

Arguments of the GOC and Trina

- None of the grants "discovered" during the course of this proceeding were countervailed pursuant to a properly initiated investigation.

GOC's Arguments

- The Department should not have used AFA to determine that these grants were specific. Given the time constraints and the number of grants involved, the GOC acted to the best of its abilities.

Petitioner's Rebuttal Arguments

- The Department acted within its authority in investigating apparent subsidies discovered during the course of this proceeding.

- The application of AFA is appropriate for the discovered grants given the GOC's lack of cooperation. The GOC only now claims to have had insufficient time to provide the information requested.

Department's Position:

In our initial questionnaire, the Department included the following question, which is part of the "standard" questionnaire issued at the outset of every CVD investigation and review:

> Does the GOC (or entities owned directly, in whole or in part, by the GOC or any provincial or local government) provide, directly or indirectly, any other forms of assistance to producers or exporters of solar cells? If so, please describe such assistance

[181] See Aluminum Extrusions IDM at 18 and Steel Wire Strand IDM at 28.
[182] Aluminum Extrusions IDM at 18 (emphasis added).

in detail, including the amounts, date of receipt, purpose and terms, and answer all questions in the Standard Questions Appendix, as well as other appropriate appendices attached to this questionnaire.

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

After reviewing the questionnaire responses submitted by the company respondents, the Department noticed numerous grants were indicated in the respondents' financial statements and in the annual SEC filings (20-Fs). We provided the GOC with an opportunity to respond to the standard questionnaire appendix regarding these grants and the GOC did not provide the requested information. Consequently, we determined that all of these grants were countervailable and calculated subsidy rates for these grants in the Preliminary Determination under the heading "Discovered Grants." The information provided in the financial statements and 20-Fs clearly indicated the grants were disbursements from the GOC. For example, pages F-3, F-7, F-41, and F-43 of Suntech's 2010 20-F include positive balances for accounts entitled "Government Grants." Likewise, its audited 2010 balance sheet includes a balance for "Government Grants." Moreover, a number of the grants at issue were booked into accounts traditionally used to account for GOC subsidies under the PRC GAAP, such as "other" or "special" payables, "government subsidies," and "subsidy income."[183]

We thus asked both companies to identify the programs under which they had received these disbursements in a supplemental questionnaire in which we pinpointed item-by-item all language and numbers in their own documents that appeared to indicate the receipt of government grants. We also asked them to identify the specific amounts received during the POI and in prior years. Simultaneously, we asked the GOC to provide details concerning the operation of the programs the company respondents were to identify. Both companies complied with our requests and provided the names of the programs, the amounts received, and brief explanations of their understanding of the purpose of the programs. The GOC, on the other hand, provided only confirmation that the amounts reported by one of the companies were correct. It provided no information concerning the operation of the programs. It stated: "The GOC objects to inquiries concerning purported subsidies as to which no timely allegations have been filed, and as to which the Department has not initiated any investigation." It now claims our requests were inconsistent with the Act and our own regulations.

It is important to note that the GOC made no attempt to provide the information requested. It also gave no indication that it needed more time to provide the information requested, despite having done so in responding to questions on other topics.[184] To the contrary, the GOC stated unequivocally its objection to the questions and provided no indication it intended to respond to the questions in the future. Instead, it provided only an argument as to why the information was

[183] See Trina Verification Report at 25.

[184] For example, in responding to questions concerning polysilicon producers, the GOC stated time had been a factor: "The degree of documentation and information requested by the Department for each of these producers is burdensome and is difficult or impossible to obtain within the time periods specified by the Department." See GOC's February 28, 2012 questionnaire response at 34.

inconsistent with the Act and the Department's regulations. While the Department is required by section 782(d) of the Act to identify deficiencies in questionnaire responses and to provide additional time to a respondent to correct such deficiencies, this was not a "deficient" response. It was simply an argument submitted in lieu of a response.

The descriptions of the programs suggest some of these grants were provided under programs about which the Department inquired separately. For example, the Department asked the GOC in the first supplemental questionnaire whether the "discounts of interest on loans" provided for in Article 17(2) of the REL were used by respondents during the POI. The answer to this question would appear to be 'yes,' given Suntech's description of one of the programs under which it received funds: "The purpose of this program is to support the technological research of solar power cells with high efficiency and low cost. And the income is used to cover the interest of Bank loans."[185] It is the Department's understanding that Article 17(2) of the REL is the basis for such interest offsets. However, in response to our question about Article 17(2) benefits, the GOC again provided nothing but argument: "Sufficient evidence with regard to the existence, amount and nature of a subsidy must be presented for the Department to initiate the investigation of another program, consistent with Article 11.2 (iii). The GOC believes, therefore, that an answer to this question is unnecessary absent a more direct inquiry supported by evidence."[186] This response reflects the GOC's unwillingness to respond to questions concerning evidence of subsidy practices discovered during the course of the investigation, not a concern with time.

Putting aside the GOC's claims that it was given insufficient time to provide the information requested, the Department also rejects the respondents' claims that we should never have investigated these grants in the first place. Section 775 of the Act and 19 CFR 351.311(b) direct the Department to examine apparent subsidy practices discovered during the course of a proceeding and not alleged in the petition (if the Department "concludes that sufficient time remains"). As noted, the financial statements and 20-Fs of the company respondents made numerous references to the receipt of various "subsidies" and "government grants;" many of these items were booked into accounts used for recording subsidies under the PRC GAAP. Thus, the companies' own documents indicated practices that appeared to provide countervailable subsidies, and the Department properly examined these programs under section 775 of the Act and 19 CFR 351.311(b).[187]

Comment 24: "Bonus for Employees from Government" Program

Trina's Arguments

- Trina did not fail to demonstrate the amount at issue in its "special payables" account was not a grant. The amount is extremely small relative to Trina's sales.

[185] Suntech's February 28, 2012 questionnaire response at 25-26 (emphasis added).
[186] GOC's March 1, 2012 questionnaire response at 9 (emphasis added).
[187] The Department has addressed these same arguments within the context of nearly identical fact patterns before. See, e.g., Steel Wheels IDM at 45-46 and Citric Acid IDM at Comment 30.

Department's Position:

The PRC GAAP (at least in the past) required that cash grants received by an enterprise be accounted for by the company through an adjustment to "special payables." This offsetting entry brings liabilities into balance with the increased assets value attributable to the receipt of the cash grant. Therefore, the Department reviews "special payables" to confirm that all grants have been reported. During the Trina verification, we required Trina to explain all entries in its 2008 special payables account. The company was able to demonstrate that all entries were for grants already reported to the Department or were not grants at all, with one exception. The exception involved an entry for "Bonus for Employees from Government." As discussed above under "Facts Available and Adverse Inferences," given the company's inability to explain this entry, as AFA, we find the amount of the entry to be a countervailable grant disbursed in 2008.

Comment 25: De Jure Specificity of Four Tax Programs; Whether Four Tax Programs Are Limited to Certain Enterprises or Groups of Enterprises

Arguments of the GOC and Suntech

- Import duty and VAT exemptions for imported equipment are not specific to certain industries as both FIEs and domestic enterprises are eligible for such exemptions. The catalogue associated with the program limits the type of equipment eligible, not the scope of the enterprises eligible.

- "Two Free, Three Half" are available to any enterprise that has productive foreign investment; it is not limited as a matter of law to certain enterprises.

- To receive deductions under the R&D tax program, a company must be engaged in R&D in one of the fields provided for in two associated lists. Far from limiting the program to only certain enterprises, these two catalogues encompass a wide scope of industries.

Arguments of the GOC, Suntech, and Trina

- One of the requirements to receive the preferential tax rate for HNTEs is that a company must be involved in one of the industries provided for in an associated list. The scope of this list covers more than 130 diverse high technology fields in a wide variety of industries, and is not limited to certain enterprises.

Petitioner's Rebuttal Arguments

- These programs are limited as a matter of law to certain enterprises. The fact that numerous industries are eligible for benefits under these programs is irrelevant.

Department's Position:

The Department has addressed the interpretation of section 771(5A)(D) of the Act in several prior investigations within the context of certain FIE income tax programs, including the two at

issue. We continue to find that these FIE tax programs are de jure specific pursuant to section 771(5A)(D) of the Act for the reasons given in those prior investigations, which emphasize that the FIE tax benefits are, by definition, limited to the group of enterprises with foreign investment.[188] Likewise, the Department recently addressed the same argument within the context of the HNTE income tax program. In the steel wheels investigation, we found the program specific, despite the GOC's arguments, because section 771(5A)(D) of the Act "anticipates groupings of enterprises that may otherwise belong to different industries."[189]

While the list of eligible "industries" associated with the preferential HNTE tax rate is lengthy, the items included within the list are very specific. In fact, whether the correct term for these items is "industries" seems disputable. For example, the items referencing solar cells are as follows:

- "pulling technology for large diameter (8 feet) mono-crystal silicon used in solar cells;"
- "new cost-efficiency solar water heater technology;"
- "efficiency-cost crystalline silicon solar photovoltaic technology (with a sheet of cell and a high efficient cell with efficiency 3 16% below 250 micrometers) . . . . Excluding encapsulation of simple solar cell modular and low-level repeated production;"
- "Solar thermal power generation technology, product and engineering development at high temperature (300-150'C), including tower thermal power generation, disk thermal power generation and Fresnel-lenses solar thermal power generation with light concentrated;" and,
- "high temperature heat pumps with energy sources such as geothermal energy, water, air and hybrid solar energy."

Similarly, the R&D tax program provides tax offsets only for enterprises engaged in very specific sets of projects. The enterprise must either be conducting research into one of the same projects included in the HNTE list or one of the projects provided for in a second list (Circular No. 6). Thus, as with the HNTE program, only certain enterprises can qualify for these deductions. Therefore, the Department continues to find both the HNTE tax program and the R&D tax program de jure specific in accordance within the meaning of section 771(5A)(D) of the Act.

[188] See, e.g., CFS PRC IDM at 91.
[189] Steel Wheels IDM at 72.

Comment 26: Whether the Department Should Use the Tax Return Covering POI Sales in Calculating Trina's Benefit from the HNTE Income Tax Program

Trina's Arguments

- If the Department continues to find the HNTE program countervailable, it should use the 2010 income tax return as the basis for the benefit calculation. The 2010 income tax return reflects 2010 sales, which the Department uses as the denominator in its subsidy rate calculation.

Petitioner's Rebuttal Arguments

- Consistent with long-standing practice and its regulations, the Department should continue to use Trina's 2009 income tax return when calculating the benefit for the HNTE program.

Department's Position:

For this final determination, we have continued to use the 2009 tax return (filed in 2010) to measure the benefit from this program. We have also continued to use 2010 sales as the denominator in calculating the subsidy rate from this benefit. Our regulations state:

> In the case of a full or partial exemption or remission of a direct tax, the Secretary normally will consider the benefit as having been received on the date on which the recipient firm would otherwise have had to pay the taxes associated with the exemption or remission. Normally, this date will be the date on which the firm filed its tax return.[190]

We addressed a similar argument in the lawn groomer's investigation and found:

> The Department . . . is maintaining its practice of calculating benefits for the POI using the tax return filed in the POI. See 19 CFR 351.509(b)(1). According to the GOC, "income taxes are paid in quarterly installments," but "{w}ithin four months of the end of the year, an annual tax return form and final accounting statements must be submitted and tax accounts are finally settled within five months of the end of the year." . . . Thus, while benefits reflected on {the respondent's} 2007 tax return are attributable to activity in 2006, these benefits do not become final until 2007 (the POI). Likewise, as discussed below, rebates received by {the respondent}, which are not reflected in any of its tax returns, while attributable to activity before 2007, were applied for, approved, and paid in 2007.[191]

There is no indication in the record that an exception to the rule should apply for Trina. In this case, while the application for the HNTE certificate was filed and approved before the POI, the

[190] 19 CFR 301.509(b)(1).

[191] See Lawn Groomers Preliminary Determination, 73 FR at 70977 (the respondent did not reiterate its argument after the preliminary determination and the issue was not addressed by the Department in the final determination).

final tax return was not filed and approved until the POI. Finally, we note that this has been the Department's consistent practice, going back at least to 1989.[192]

Comment 27: Rejection of the GOC's Factual Information from the Record

Background

In the Preliminary Determination, the Department found, using the facts available with an adverse inference, that all producers of polysilicon purchased by respondents were "authorities" within the meaning of section 771(5)(B) of the Act. As discussed above, this determination was based on the GOC's failure to provide complete responses to questions regarding ownership of the polysilicon producers and CCP membership. We also preliminarily determined that land provided to Trina was specific because the GOC failed to provide information concerning how land prices paid by Trina were consistent with local land policies. Before issuing the Preliminary Determination, we had provided the GOC two opportunities to provide the information requested. On May 3, 2012, nearly six weeks after the Preliminary Determination, the GOC attempted to provide some of the missing information. We subsequently rejected the information from the record.

GOC's Arguments

- By rejecting relevant, timely documents that were in response to the Department's own requests for information, the Department violated the GOC's right to due process. The GOC had informed the Department that it was continuing to research polysilicon producer ownership and Trina's land-use rights and that it would provide any additional information it found at a later time, which it did.

- Part of the rejected information included a chart correcting certain preliminary findings regarding which polysilicon producers are authorities. Such corrections could not possibly have been made until the Preliminary Determination was issued.

Department's Position:

The Department disagrees with the GOC's characterization of its May 3 information as "timely." The GOC argues that the deadline for submission of new factual information was seven days prior to the start of verification, pursuant to 19 CFR 351.301(b)(1). However, the GOC fails to recognize that this deadline does not apply to information requested in questionnaires.[193] The Department first asked for this information in a questionnaire issued December 7, 2011. A response was due January 31, 2012. We then asked again on February 15, 2012. The response to this second request was due February 28, 2012. Combined, the GOC had nearly three months to submit the information. While the GOC began advising the Department in its January 31, 2012 questionnaire response that it was still collecting the information requested, the Department has consistently warned the GOC that such statements are not acceptable. The following statement was included in both the December 7 and February 15 questionnaires:

[192] See CVD Preamble, 63 FR at 65376.
[193] See 19 CFR 351.301(b)(1); 19 CFR 351.301(c)(2).

> If you are unable to respond completely to every question in the attached questionnaire by the established deadline, or are unable to provide all requested supporting documentation by the same date, you must notify the officials in charge and submit a written request for an extension of the deadline for all or part of the questionnaire response. If you require an extension for only part of your response, such a request should be submitted separately from the portion of your response filed under the current deadline. Statements included within a questionnaire response regarding a respondent's ongoing efforts to collect part of the requested information, and promises to supply such missing information when available in the future, do not substitute for a written extension request.[194]

When the GOC did submit the information, it did so on May 3, 2012, six weeks after the Preliminary Determination, and several months after the information was first requested. This was well after the deadlines set, pursuant to 19 CFR 351.301(c)(2), for the submission of this information. Further, as discussed above, the Department rejected late allegations regarding rolled glass and aluminum extrusions submitted by Petitioner on May 2 and May 11, respectively. We rejected Petitioner's allegations because, not only had the deadline for new subsidy allegations passed, but because it was simply too late in the proceeding to accept such allegations. We rejected Petitioner's information despite the fact that some of the information needed to investigate the allegations was already on the record. Thus even if we were to ignore the fact the GOC's submission was two months late (May 3 is two months past the February 28 deadline for the supplemental questionnaire), the proceeding had already advanced past the point where we could consider such information. In this regard it is worth noting that the GOC attempted to submit 1,335 pages of information concerning polysilicon producers and 360 pages concerning Trina's land in its May 3 submission. It is also worth noting that even according to the GOC's own narrative description attached to the untimely information concerning polysilicon producers it was still incomplete. The submission purported to provide missing information concerning the ownership of producers, but still did not provide any of the requested CCP membership information (discussed above).

The GOC also claims we unlawfully rejected a chart it submitted to correct certain findings the Department reached regarding which polysilicon producers are authorities. If the chart was purely argumentative, disputing the Department's interpretation of various business registration forms and articles of association that had been submitted before the Preliminary Determination, the GOC was free to resubmit it as part of its case brief (which it did not do). If the chart contained new information, it was untimely new information that was properly rejected.

Comment 28: Trina's Sales Denominator

Trina's Arguments

- The sales figures used as the denominator in the Preliminary Determination were not exclusive of intercompany sales.

[194] December 7, 2011 questionnaire at I-9 (emphasis added).

- For the final determination, the Department should use the sales values that it examined at verification.

Petitioner's Rebuttal Arguments

- The Department should not attribute Trina's subsidies to its parent company's consolidated sales.

Department's Response:

We agree with Trina that we should be using the sales values examined at verification, which were provided exclusive of intercompany sales. These are not the sales figures of all consolidated companies, but are simply the combined sales figures of the two cross-owned affiliates (collectively referred to as Trina) minus the sales between the two companies.

Comment 29: Suntech's Minor Corrections

Suntech's Arguments

- The Department should accept all minor corrections presented by Suntech at verification.

Department's Position:

The Department has accepted all of Suntech's minor corrections. Suntech submitted one set of minor corrections on June 18, 2012, and another set on the first day of verification. The Department believes we correctly accepted these submissions as "minor corrections" discovered by Suntech during the course of preparing for verification.

Comment 30: Negative Determinations

GOC's Arguments

- The Department should continue to find that the programs listed in Section II of the Preliminary Determination were not used by respondents during the POI, and that the program listed in Sections V and VI of the Post-Preliminary Determination did not confer a benefit or were not countervailable.

Department's Position:

The Department's final determinations regarding all of the alleged programs under investigation are explained in Section VI above.

Comment 31: Allegations of Fraud Regarding Suntech

Petitioner's Arguments

- Publicly available information demonstrates that Suntech fraudulently inflated the value of its sales to a European affiliate majority-owned by Suntech and that the same affiliate fraudulently used worthless or non-existent bonds to obtain loans from the GOC.

- These fraud allegations call into question Suntech's sales figures used as the denominator in calculating countervailable subsidy rates, Suntech's creditworthiness, and the overall integrity of its financial statements.

Suntech's Rebuttal Arguments

- There is no evidence that the sales values reported to the Department were inconsistent with rules for pricing affiliated transactions.

- The bonds in question were used by the European affiliate to obtain Suntech's guarantee of the loans obtained from the GOC. Thus, Suntech was the victim of the fraudulent bonds, not the perpetrator of the fraud.

- Suntech disclosed the fraudulent bonds itself during a due diligence review of the European affiliate

- All information submitted by Petitioner either refers to preliminary allegations or stems from less than authoritative sources (e.g., bloggers). Much of this information was available in early August and should have been submitted by Petitioner earlier.

- Petitioner included new information in its September 18, 2012 submission. The Department clearly limited submissions due on September 18 to arguments regarding this issue.

Department's Position:

The Department takes all allegations of fraud very seriously. As such, upon receipt of Petitioner's allegations, we took the extraordinary step of reopening the record less than 30 days prior to our final determination of this investigation in order to evaluate those allegations. We provided all parties the opportunity to submit information regarding this issue, and three days thereafter to submit rebuttal comments. The information submitted by Petitioner involves preliminary proceedings underway in civil court among private parties, as well as an ongoing investigation by a European authority. Suntech has publicly denied these allegations, and in the various articles submitted, which are independent of this CVD investigation, Suntech officials state that they are the "victim" of the fraud. The aforementioned court cases and investigations have not yet resulted in conclusions that would warrant invalidating the findings reached throughout this investigation. If this investigation results in an order, Petitioner may request an administrative review or a changed circumstances review in which the Department may further

examine any alleged fraud, assuming sufficient evidence is presented. Finally, we do not find that Petitioner included new information in its September 18, 2012 submission. In the Department's view, Petitioner's submission was limited to arguments regarding its original fraud allegations and there is no need to reject the submission.

Comment 32: Scope of the Investigation

Petitioner's Arguments

- All modules assembled in the PRC, regardless of the country in which the solar cell was manufactured, should be included in the scope of the investigation because, inter alia: (1) the Department is legally required to give effect to the intent of the petition which was to cover modules from the PRC; (2) doing so will facilitate effective enforcement by CBP and prevent circumvention; (3) all PRC modules, regardless of the origin of the cells, are dumped into the United States; (4) the PRC module industry benefits from subsidies; (5) circumvention will be prevented and; (6) competition, and, consequently, price setting, occurs primarily in the module distribution channel.

- The Department's preliminary substantial transformation analysis is flawed. First, it was based on a two-stage production process (cell and module production) when there are actually three production stages (wafer, cell, and module production). When wafer production is viewed as a separate process from cell production, cell production becomes the least costly of the three stages. Second, the Department considered the cell as the essential active component of the module but both cells and modules are essential active components of the finished product. Third, the Department should not conduct a linear substantial transformation analysis but refine its substantial transformation test by focusing on the country where the aggregate of production occurs.

Alternatively, the Department should clarify the scope to cover PRC modules containing wafers that were converted into solar cells in third countries in order to prevent PRC exporters from avoiding dumping duties by producing wafers in the PRC, sending them to a third country to be processed into solar cells, and assembling those solar cells into modules in the PRC before exporting them to the United States. Adoption of the proposed alternative scope clarification is consistent with a substantial transformation test that focuses on the country in which the aggregate of production occurs, would not violate the due process rights of those affected by the clarification, and is warranted in light of evidence that suggests that PRC producers have changed or may change their production practices to avoid duties. Further, the CIT's reference to the Department's examination of "processes" and "operations" in cases involving the Department's country-of-origin test supports a substantial transformation test that considers more than a single production stage.

Arguments of the GOC, SunPower Corporation, Suntech, Trina, TenKsolar (Shanghai) Co. Ltd.

- The Department should maintain the scope of the investigation as defined in the Preliminary Determination by continuing to exclude modules, laminates, and panels produced in the PRC from solar cells produced in a third country because: (1) the

substantial transformation analysis used to clarify the scope is accurate, and properly avoids creating conflicting country of origin findings for a single product; (2) Petitioner's proposed alternative substantial transformation test is not supported by law or precedent; (3) the Department is not legally required to accept Petitioner's scope revision when there is an overarching reason to modify it; (4) circumvention concerns were addressed in the Department's scope clarification and the clarified scope can be administered effectively; and (5) at this late stage of the proceeding, the Department is not permitted to expand the scope to cover PRC modules containing wafers that were converted into solar cells in third countries.

Small Steps Solar's Arguments

- The scope should exclude "cells, not exceeding 4,000 mm^2 in surface area per cell, that are permanently integrated into or with a consumer good whose function is other than power generation and that consumes the electricity generated by the integrated crystalline silicon photovoltaic cells." The small products covered by the proposed exclusion are different than domestic like product described in the petition because they can be distinguished by their physical characteristics and channels of distribution. The Department's failure to issue a quantity and value questionnaire to Small Steps Solar's PRC supplier demonstrates that the small consumer products were not the focus of this investigation.

Department's Position:

We continue to find that modules assembled in the PRC from solar cells produced in third countries are not covered by the scope of this investigation. Although generally the Department will exercise its authority to define or clarify the scope of an investigation in a manner that reflects the intent of the petition and provides the relief requested by the petitioning industry, it cannot merely accept a scope proposed by the industry when the agency's ability to administer any resulting order requires that it modify the proposed scope, which is the case here.[195] The scope of an AD or CVD order is limited to merchandise that is produced in the country covered by the order.[196] Thus, Petitioner's proposal that modules assembled in the PRC using solar cells produced in third countries be covered by the scope could only be accepted to the extent that it covers products determined to be of PRC origin. In determining the country-of-origin of a product, the Department's practice has been to conduct a substantial transformation analysis.[197] The CIT has upheld the Department's "substantial transformation" test as a means to carry out its country-of-origin analysis.[198] Hence, this is the analysis that was conducted early in the investigation which we affirm in this final determination. In its substantial transformation analysis, the Department found that solar cells are the "essential active component" that define the module/panel and that stringing third-country solar cells together and assembling them with other components into a module in the PRC does not constitute substantial transformation such

[195] See Ribbons from Taiwan Preliminary Determination, 75 FR at 7247 (unchanged in Ribbons from Taiwan Final Determination); see also Lumber from Canada IDM at section entitled, "Scope Issues," which follows Comment 49.
[196] See Plate from Belgium IDM at Comment 4.
[197] See, e.g., Glycine from India IDM at Comment 5; see also SSPC from Belgium IDM at Comment 4.
[198] See E.I. DuPont De Nemours, 8 F. Supp. 2d at 858.

that the assembled module could be considered a product of the PRC. Contrary to Petitioner's claim, for the reasons explained below, the substantial transformation analysis performed by the Department was not flawed.

First, record evidence supports the Department's finding that the solar cell is the essential active component of the solar module. Petitioner argues, inter alia, that certain physical qualities of the solar cell are changed when it is incorporated into a module, and, consequently, "wafer, cell, and components of the assembled module are essential active components of the finished module."[199] In support of this argument, Petitioner states, inter alia, that an individual solar cell cannot generate a commercially significant amount of electricity until it is joined together with other cells during the module assembly process. Petitioner further states that the processes of soldering individual solar cells together and laminating them, which occur during module assembly, changes the physical characteristics of the solar cell. Petitioner, however, apparently misinterprets the essential component criterion of the Department's substantial transformation analysis. Under this criterion, the Department considers whether processing in the exporting country changes the important qualities or use of the component.[200] Thus, the Department's essential component analysis focused on the third-country solar cells shipped into, and processed in, the exporting country (the PRC) and the significance of the changes in physical qualities or use of the component that occurred as a result of the processing. Evidence of a change or changes to the physical qualities of a component as a result of further processing does not inevitably lead to the conclusion that further processing substantially transformed the component. In the instant investigation, the Department found that the essential component of solar modules/panels is the solar cell since the purpose of solar modules/panels is to convert sunlight into electricity and this process occurs in the solar cells.[201] Accordingly, the Department considered whether the processing of solar cells into solar modules changes the nature or use of the solar cells.[202] As stated in the Scope Clarification Memorandum, the Department found that a number of the significant physical characteristics of the solar cell were not changed during the module assembly process.[203] As the ITC stated, "the physical characteristics and functions of cells and solar modules essentially are the same."[204] Moreover, the Department noted that its finding that solar module assembly connects cells into their final end-use form but does not change the "essential active component," the solar cell, which defines the module/panel, is consistent with the Department's precedent.[205] Accordingly, based on a consideration of record

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[199] See Petitioner's Case Brief at 9.

[200] See also EPROMs, 51 FR at 39691-39692 (emphasis added).

[201] See Scope Clarification Memorandum at 6 (citing the Petition at Exhibit II-19 at 3).

[202] See Preliminary Scope Clarification Memorandum at 6.

[203] See Preliminary Scope Clarification Memorandum at 6-7 which states, inter alia, the following:
"Module/panel assembly does not change the important qualities, i.e., the physical or chemical characteristics, of the solar cell itself. As stated in the original petition, solar cells are made from crystalline silicon wafers. A dopant, which is a trace impurity element diffused into a thin layer of the wafers' surface to impart an opposite electrical orientation to the cell surface, creates the positive/negative junction that is needed for the conversion of sunlight into electricity, which is the purpose of solar cells. Solar cells are normally coated with silicon nitride to increase light absorption (this results in a blue-purple color) and undergo a screening process where conductive metal is printed into the cell. Metal conduits or busbars channel electricity generated by the cell into electricity collection points." (citations omitted).

[204] See Preliminary Scope Clarification Memorandum at 6 (citing ITC Preliminary Report at 10).

[205] See Preliminary Scope Clarification Memorandum at 6 (citing EPROMs).

evidence and Department's precedent, the Department continues to find that the solar cell is the essential active component of the module.

Second, we disagree with Petitioner's contention that the extent of processing criterion does not support the Department's substantial transformation finding. Petitioner believes the Department erred because it assumed modules are produced in two steps (cell production and module assembly) rather than three (wafer production, cell production, and module assembly) and alleges that out of these three steps, cell production is the least cost-intensive step.[206] However, when considering the "extent of processing" criterion used in the substantial transformation analysis, the Department only needed to examine whether the assembly of solar cells into modules was substantial and/or significant.[207] The Department did not need to identify each step undertaken in producing and assembling module components and then determine where the aggregate of production occurred to determine the country of origin of the module. Petitioner's contention does not reject how the Department applies the substantial transformation test.[208] The Department has explicitly acknowledged that solar module producers have identified more than two production stages.[209]

However, identifying the number of production stages and determining where most of these stages occur was not the issue in the Department's "extent of processing" analysis. Rather, the Department examined the extent of processing at the module assembly stage in relation to the prior production stages and the nature of the processing at the module assembly stage to determine whether module assembly substantially transformed the solar cells such that the final product could be considered a product of the PRC.[210] The Department concluded that the module assembly stage of production is principally an assembly process, which consists of stringing together solar cells, laminating them, and fitting them in a glass-covered aluminum frame for protection.[211] For the reasons explained in the Scope Clarification Memorandum, the Department continues to find that the module assembly stage of production is a comparatively less sophisticated process than cell conversion or the production stages that precede it, and thus it does not substantially transform the solar cell. We note that none of the evidence cited by Petitioner contradicts this finding.[212] Additionally, because the Department finds that the application of its substantial transformation test is an appropriate means to resolve country-of-origin issues like the one presented in the instant investigation, the Department has not adopted Petitioner's suggestion to modify the test.

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[206] See Petitioner's Case Brief at 11.

[207] See Preliminary Scope Clarification Memorandum at 7 (citing Ribbons from Korea, 69 FR at 17647).

[208] See, e.g., EPROMs.

[209] Scope Clarification Memorandum at 7-8, states the following: "Numerous interested parties, aside from Petitioner, argued that solar module/panel assembly is relatively insubstantial in terms of number of steps, inputs, research and development required, and time. Consistent with these arguments, Trina Solar identified six stages of production when manufacturing solar modules/panels, five of which were dedicated to solar cell production and only one pertained to solar module/panel assembly." (emphasis added) (citations omitted).

[210] See Scope Clarification Memorandum at 7-8.

[211] See Preliminary Scope Clarification Memorandum at 7.

[212] See Petitioner's Case Brief at 11.

Furthermore, Petitioner's other arguments for why modules that are assembled in the PRC using third-country solar cells should be covered by the scope are not persuasive. The Department agrees with Petitioner that the scope of the investigation always included modules from the PRC; however, as noted above, using a substantial transformation analysis the Department has determined that modules from the PRC are those that have been assembled in the PRC using solar cells produced in the PRC. Additionally, the Department has determined that modules assembled in third countries using solar cells produced in the PRC are also PRC products covered by the scope. While the Department will exercise its authority to define or clarify the scope of an investigation in a manner which reflects the intent of the petition and provides the relief requested by the petitioning industry, it may not accept a proposed scope that covers merchandise that originates from a third country not covered by the investigation. As noted above, the scope of an AD or CVD order is limited to subject merchandise that originates in the country covered by the investigation.[213] Petitioner argues that all modules assembled in the PRC must be covered by the scope, regardless of the origin of the solar cells, because they are benefitting from subsidies and being dumped in the United States and competition occurs in the module channel of distribution, but these concerns do not address the main issue. The main issue is that an investigation covering modules from the PRC cannot at the same time cover modules whose country of origin is not the PRC. Determining that all modules assembled in the PRC are covered by the scope of the investigation, no matter where the solar cells in the module were produced, would either necessitate making inconsistent country-of-origin determinations for a single product,[214] or require ignoring the country-of-origin when considering whether merchandise entering the United States is covered by the scope of the investigation. Petitioner has not explained how its proposed scope could be adopted without such a result. Moreover, even if the substantial transformation test focused on the country where the aggregate of production occurs, as suggested by Petitioner, Petitioner has not explained how such an analysis would support its request that the scope cover all modules assembled in the PRC, even when all of the other production steps occurred in a third country. Lastly, Petitioner has the option of bringing additional petitions to address any dumping concerns it has regarding solar modules/panels assembled from solar cells produced in a third country.

With respect to Petitioner's contention that all modules assembled in the PRC must be included in the scope of the investigation in order for CBP to effectively enforce any order imposed and to prevent widespread circumvention, we note that the Department, working in conjunction with CBP, has taken additional measures to ensure that the scope of any order imposed as a result of the investigation will be enforced. Specifically, the Department has informed CBP that importers claiming that the solar panels/modules they import do not contain solar cells that were produced in the PRC are required to maintain importer certifications and documentation to that effect. Additionally, the Department has notified CBP that both the importer and exporter are required to maintain exporter certifications if the exporter of the panels/modules which the importer claims contain no PRC-produced solar cells is located in the PRC. These certifications and documents must be presented to CBP officials on request. As noted in the Preliminary

[213] See Plate from Belgium IDM at Comment 4.

[214] Namely, finding that module assembly in the PRC using solar cells produced in a third-country constitutes substantial transformation and thus the country of origin of the module is the PRC while also finding that module assembly outside the PRC using PRC produced solar cells does not constitute substantial transformation and thus the country of origin of the module is the country where the solar cells were produced, the PRC.

Determination, if the certification or documentation is not provided, the Department has instructed CBP to suspend all unliquidated entries for which the certification or documentation were not provided and require the posting of a cash deposit or bond on those entries equal to the PRC-wide rate in effect at the time of the entry.[215] If a solar panel/module contains some solar cells produced in the PRC, but the importer is unable or unwilling to identify the total value of the panel/module that is subject merchandise, the Department has instructed CBP to require the posting of a cash deposit or bond on the total entered value of the panel/module equal to the PRC-wide rate in effect at the time of the entry. Thus, the Department has taken additional steps to ensure that efforts to evade enforcement of any order imposed as a result of this investigation will be identified and thwarted. If an importer is declaring the wrong country-of-origin for imported merchandise, this is a matter appropriately dealt with by CBP, and thus the Department will work closely with CBP in this regard.

Furthermore, the Department does not agree with Petitioner's alternative request to clarify the scope of this investigation to include modules/panels produced in the PRC from solar cells produced in a third country when the wafer production process has occurred in the PRC. In the context of this investigation the Department is not deciding whether wafers produced in the PRC and converted into cells in a third country are a product of the third country. The Department also notes that unlike solar cells, the wafers are not identified in the scope of this investigation. Moreover, the Department disagrees with Petitioner's assertion that the CIT's use of the terms "processes"[216] and "operations"[217] in cases involving the Department's country-of-origin analysis supports an approach that considers multiple production events. Only one of the cases cited by Petitioner involves a scope determination made by the Department and, in that case, there is no indication that the Department's substantial transformation analysis considered multiple, non-sequential production stages in the manner proposed by Petitioner.

With respect to Small Steps Solar's request to exclude certain smaller consumer products from the scope, we find that such an exclusion is not warranted. The current scope of the investigation specifically excludes smaller solar cells integrated into consumer goods if and only if those cells meet the following description:

> crystalline silicon photovoltaic cells, not exceeding 10,000mm^2 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.

We have not granted Small Steps Solar's request to exclude cells, not exceeding 4,000 mm^2 in surface area per cell, which are integrated into small solar products because it is inconsistent with the intent of the petition. Small Steps Solar's request would exclude from the scope merchandise

[215] For a full discussion of the Department's certification requirements, see the AD Preliminary Determination.
[216] See E.I. DuPont De Nemours, 8 F. Supp. at 858.
[217] See Ferostaal Metals Corp., 664 F. Supp at 537.

that is expressly covered by the current scope (i.e., solar products with a total combined solar cell surface area that exceeds 10,000mm^2). As noted above, with certain limited exceptions, the Department exercises its authority to define or clarify the scope in a manner which reflects the intent of the petition. Moreover, we do not find that there is an overarching reason to modify Petitioner's scope exclusion.

Also, we disagree with Small Steps Solar that the small products covered by the proposed exclusion are different than the domestic like product described in the petition based on their physical characteristics and channels of distribution. Small Steps Solar asserts that the small solar products it wishes to exclude have a smaller peak power output than those described in the petition. We note, however, that the scope of the investigation does not exclude solar products on the basis of peak power output. Further, the scope of the investigation includes both cells and modules of PRC origin, meaning that a single cell with a lower peak power wattage output than the solar products that Small Steps Solar wishes to exclude is explicitly covered by the scope. Accordingly, we disagree with Small Steps Solar's assertion that the products it wishes to exclude can be distinguished on the basis of their physical characteristics. Additionally, we disagree with Small Step Solar's contention that the products it seeks to exclude from the scope can be distinguished from subject merchandise because they have different channels of distribution. The record lacks evidence that would enable the Department to compare the channels of distribution for the small products that Small Steps Solar seeks to exclude from the scope. Therefore, we find no reason to conclude that that products covered by Small Steps Solar's requested exclusion are distinguishable from subject merchandise.

Additionally, we disagree with Small Steps Solar's contention that the fact that the Department did not issue a quantity and value questionnaire to its PRC producer of solar products indicates that the investigation does not cover small consumer products.[218] In the AD investigation, the Department requested quantity and information from 75 companies that Petitioner identified as potential exporters of solar cells from the PRC. In the AD Initiation Notice, the Department publically invited parties that did not receive a quantity and value questionnaire from the Department to file a response to the questionnaire, which was published and made publically available on the Department's website. The Department's issuance of quantity and value questionnaires does not define the universe of producers or products subject to the investigation. In fact, the Department's invitation for the submission of additional quantity and value questionnaires clearly indicates the Department's provided all exporters of subject merchandise an opportunity to provide a quantity and value questionnaire.

For the foregoing reasons, the Department has made no revisions to the scope of the investigation to implement Petitioner's proposals nor has it granted the exclusion requested by Small Steps Solar.

[218] Small Steps Solar's argument regarding the issuance of quantity and value questionnaires pertains to the companion AD investigation of solar cells from the PRC.

VIII. Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting all related countervailable subsidy rates accordingly. If these Department positions are accepted, we will publish the final determination in the Federal Register.

✓
Agree

Disagree

Paul Piquado
Assistant Secretary
for Import Administration

9 OCTOBER 2012
Date

Table of Acronyms and Abbreviations

Acronym	Complete Phrase or Title
AD	Antidumping
AFA	Adverse Facts Available
AUL	Average Useful Life
BPI	Business Proprietary Information
CBP	Customs and Border Protection
CFS	Coated Free Sheet Paper
CCP	Chinese Communist Party
CVD	Countervailing Duty
CWP	Circular Welded Pipe
Department	Department of Commerce
DSB	Dispute Settlement Body of the WTO
Ex-Im Bank	Export-Import Bank of China
FIE	Foreign Invested Enterprise
GAAP	Generally Accepted Accounting Principles
GOC	Government of the PRC
HNTE	High and New Technology Enterprise
IDM	Issues and Decision Memorandum
ITC	the U.S. International Trade Commission
LIBOR	London Interbank Offered Rate
LTAR	Less Than Adequate Remuneration
Luoyang Suntech	Luoyang Suntech Power Co., Ltd.
MOF	Ministry of Finance of the GOC
NME	Non-Market Economy
NSA	New Subsidy Allegation
OCTG	Oil Country Tubular Goods
OECD	Organization for Economic Cooperation and Development
OTR tires	Off-the-Road Tires
PBOC	People's Bank of China
Petitioner	SolarWorld Industries America, Inc.
POI	Period of Investigation
PRC	People's Republic of China
PV	Photovoltaic
R&D	Research and Development
REL	Renewable Energy Law
RMB	Renminbi
SCM agreement	Subsidies and Countervailing Measures Agreement of the WTO
SEC	U.S. Securities and Exchange Commission
Shanghai Suntech	Suntech Power Co., Ltd.

SIE	State Invested Enterprise
Small Steps Solar	Small Steps Solar, Ltd.
SOCB	State-Owned Commercial Bank
Suntech	Wuxi Suntech Power Co., Ltd and its cross-owned companies
Suzhou Kuttler	Kuttler Automation Systems (Suzhou) Co., Ltd.
Trina	Changzhou Trina Solar Energy Co., Ltd and its cross-owned company
WTO	World Trade Organization
Zhenjiang Huantai	Zhenjiang Huantai Silicon Science & Technology Co., Ltd.

Table of Administrative Determinations and Memoranda

Short Cite	Full Cite
AD Initiation Notice	Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Initiation of Antidumping Duty Investigation, 76 FR 70960 (November 16, 2011)
AD Preliminary Determination	Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Affirmative Preliminary Determination of Critical Circumstances, 77 FR 31309 (May 25, 2012)
Aluminum Extrusions IDM	IDM accompanying Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 76 FR 18521 (April 4, 2011)
CFS Indonesia IDM	IDM accompanying Coated Free Sheet Paper from Indonesia: Final Affirmative Countervailing Duty Determination, 72 FR 60642 (October 25, 2007)
CFS PRC IDM	IDM accompanying Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 72 FR 60645 (October 25, 2007)
Certain Coated Paper Indonesia IDM	IDM accompanying Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Final Affirmative Countervailing Duty Determination, 75 FR 59209 (September 27, 2010)

Certain Coated Paper PRC IDM	Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 75 FR 59212 (September 27, 2010)
CCP Amended Final	Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order, 75 FR 70201 (November 17, 2010)
Citric Acid IDM	IDM accompanying Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Results of Countervailing Duty Administrative Review, 76 FR 77206 (December 12, 2011)
CVD Preamble	Countervailing Duties; Final Rule, 63 FR 65348 (November 25, 1998)
CWP IDM	IDM accompanying 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)
December 22, 2011 NSA Memorandum	Memorandum to Barbara E. Tillman, Director, AD/CVD Operations, Office 6, "Countervailing Duty Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Initiation Analysis of December 5, 2011 New Subsidy Allegation," December 22, 2011
Drill Pipe IDM	IDM accompanying 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)
DS 379 Implementation	Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act: Certain New Pneumatic Off-the-Road Tires; Circular Welded Carbon Quality Steel Pipe; Laminated Woven Sacks; and Light-Walled Rectangular Pipe and Tube From the People's Republic of China, 77 FR 52683 (August 30, 2012)

EPROMS	Erasable Programmable Read Only Memories (EPROMs) From Japan; Final Determination of Sales at Less than Fair Value, 51 FR 39680 (October 30, 1986)
Ferostaal Metals Corp.	Ferostaal Metals Corp. v. United States, 664 F. Supp 535 (CIT 1987)
Final Analysis Memoranda	Memoranda to Mark Hoadley, Program Manager, AD/CVD Operations, Office 6, "Final Determination Analysis Regarding the Countervailing Duty Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Calculations for Wuxi Suntech Power Co., Ltd.," October 9, 2012, and "Final Analysis Regarding the Countervailing Duty Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China; Calculations for Changzhou Trina Solar Energy Co., Ltd.," October 9, 2012.
Float Glass NSA Initiation	Memorandum to Barbara E. Tillman, Director, AD/CVD Operations, Office 6, "Countervailing Duty Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Initiation of New Subsidy Allegation on the Provision of Glass for Less Than Adequate Remuneration," March 8, 2012
Georgetown Steel Memorandum	Memorandum, "Countervailing Duty Investigation of Coated Free Sheet Paper from the People's Republic of China - Whether the Analytical Elements of the Georgetown Steel Opinion Are Applicable to China's Present-Day Economy," March 29, 2007
Glycine from India IDM	IDM accompanying Notice of Final Determination of Sales at Less Than Fair Value: Glycine from India, 73 FR 16640 (March 28, 2008)
GOC Verification Report	Memorandum to Barbara E. Tillman, Director, AD/CVD Operations, Office 6, "Countervailing Duty Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China; Verification of the Questionnaire Responses Submitted by the Government of China," August 15, 2012

GSW IDM	IDM accompanying Galvanized Steel Wire From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 77 FR 17418 (March 26, 2012)
Initiation Checklist	Countervailing Duty Investigation Initiation Checklist; Certain Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China, November 8, 2011
Kitchen Racks IDM	IDM accompanying Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 37012 (July 27, 2009)
Lawn Groomers Preliminary Determination	Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination, 73 FR 70971 (November 24, 2008)
Lumber from Canada IDM	IDM accompanying Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada, 67 FR 15539 (April 2, 2002)
LWS IDM	IDM accompanying Laminated Woven Sacks From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances, 73 FR 35639 (June 24, 2008)
LWS Preliminary Determination	Laminated Woven Sacks From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination; Preliminary Affirmative Determination of Critical Circumstances, In Part; and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination, 72 FR 67893 (December 3, 2007)
May 11, 2012 NSA Memorandum	Memorandum to Barbara E. Tillman, Director, AD/CVD Operations, Office 6, "Countervailing Duty Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Analysis of February

	14, 2012 New Subsidy Allegations," May 11, 2012
OCTG IDM	IDM accompanying Oil Country Tubular Goods From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination, 74 FR 64045 (December 7, 2009)
OTR Tires IDM	IDM accompanying 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)
Pasta from Italy IDM	IDM accompanying Certain Pasta from Italy: Final Results of the Seventh Countervailing Duty Administrative Review, 69 FR 70657 (December 7 2004)
Petition	Petition for the Imposition of Antidumping and Countervailing Duties Pursuant to Section 701 and 731 of the Tariff Act of 1930, as Amended, October 19, 2011
Plate from Belgium IDM	IDM accompanying Stainless Steel Plate in Coils from Belgium: Final Results of Countervailing Duty Administrative Review, 73 FR 75673 (December 12, 2008)
Platform Jackets and Piles from Korea	Preliminary Affirmative Countervailing Duty Determination; Offshore Platform Jackets and Piles From Korea, 50 FR 29461 (July 19, 1985)
Post-Preliminary Analysis Memorandum	Memorandum to Barbara E. Tillman, Director, AD/CVD Operations, Office 6, "Countervailing Duty Investigation of Crystalline Silicon Photovoltaic Cells, Whether Or Not Assembled Into Modules from the People's Republic Of China: Post-Preliminary Analysis," June 22, 2012
PRCBs from Vietnam	Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination, 75 FR 16428 (April 1, 2010)
Preliminary Benchmark Memorandum	Memorandum to the File, "Preliminary Affirmative Countervailing Duty Determination: Crystalline Silicon

	Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China – Preliminary Benchmark Memorandum," March 19, 2012
Preliminary Determination	Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, 77 FR 17439 (March 26, 2012)
Preliminary CVD Critical Circumstances Determination	Countervailing Duty Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Determination of Critical Circumstances, 77 FR 5487 (February 3, 2012)
Preliminary Scope Clarification Memorandum	Memorandum to Gary Taverman, Acting Deputy Assistant Secretary, AD/CVD Operations, "Scope Clarification: Antidumping and Countervailing Duty Investigations of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China," March 19, 2012
Ribbons from Korea	Notice of Final Determination of Sales at Not Less Than Fair Value: Wax and Wax/Resin Thermal Transfer Ribbon from the Republic of Korea, 69 FR 17645 (April 5, 2004)
Ribbons from Taiwan Preliminary Determination	Narrow Woven Ribbons with Woven Selvedge from Taiwan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 75 FR 7236 (February 18, 2010)
Ribbons from Taiwan Final Determinaton	Notice of Final Determination of Sales at Less Than Fair Value: Narrow Woven Ribbons with Woven Selvedge from Taiwan, 75 FR 41804, (July 19, 2010)
Seamless Pipe IDM	IDM accompanying 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)
Scope Clarification Memorandum	Memorandum to Christian Marsh, Deputy Assistant Secretary, AD/CVD Operations, "Scope Clarification:

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