Disclosure

The Department intends to disclose the calculations performed to parties in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, the Department will instruct U.S. Customs and Border Protection (''CBP'') to continue to suspend liquidation of all appropriate entries of stilbenic OBAs from the PRC as described in the ''Scope of Investigation'' section, entered, or withdrawn from warehouse, for consumption on or after November 3, 2011, the date of publication of the *Preliminary Determination* in the **Federal Register**. The Department will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds U.S. price, as indicated above.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (''ITC'') of the final affirmative determination of sales at LTFV. As the Department's final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation, of the merchandise under consideration. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the merchandise under consideration entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to the parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of propriety information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or distruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: March 19, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I

Issues for Final Determination

Issue 1: Whether the Department Should Revise the Surrogate Value for 4,4′-Diamino-2,2′ Stilbenedisulfonic Acid
Issue 2: Whether the Department Should Revise the Calculation of the Surrogate Financial Ratios
Issue 3: Whether the Department Should Revise the Surrogate Value for Ice Blocks
Issue 4: Whether the Department Should Revise the Surrogate Value for Ocean Freight
Issue 5: Whether the Department Should Revise the Surrogate Value for Brokerage and Handling
Issue 6: Whether the Department Should Revise the Surrogate Value for Labor

[FR Doc. 2012–7215 Filed 3–23–12; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–980]

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells) from the People's Republic of China (PRC). For information on the estimated subsidy rates, *see* the ''Suspension of Liquidation'' section of this notice.

DATES: *Effective Date:* March 26, 2012.

FOR FURTHER INFORMATION CONTACT: Gene Calvert, Jun Jack Zhao, or Emily Halle, AD/CVD Operations, Office 6, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3586, (202) 482–1396, or (202) 482–0176, respectively.

SUPPLEMENTARY INFORMATION:

Case History

The Department initiated a countervailing duty (CVD) investigation of solar cells from the PRC on November 8, 2011.[1] Since the initiation, the following events have occurred. The Department released U.S. Customs and Border Protection (CBP) entry data for U.S. imports of solar cells from the PRC for the period January 1, 2010, through December 31, 2010, to be used as the basis for respondent selection. The CBP entry data covered products included in this investigation which entered under the Harmonized Tariff Schedule of the United States (HTSUS) numbers likely to include subject merchandise: 8541.40.6020 and 8541.40.6030. The entry data did not cover entries under the other HTSUS numbers included in the scope description below because those numbers represent broad basket categories. In the memorandum releasing the entry data, the Department stated that, because the subject merchandise is imported as either solar cells or solar cells assembled into modules or panels, and thus quantity is not recorded consistently in the entry data, the Department intended to select respondents based on the aggregate value (as opposed to quantity) of subject merchandise that was imported into the United States.

On November 29, 2011, the Department completed its respondent selection analysis. Given available resources, the Department determined it could examine no more than two producers/exporters and selected Changzhou Trina Solar Energy Co., Ltd. (Trina Solar) and Wuxi Suntech Power Co., Ltd. (Wuxi Suntech) as mandatory respondents.[2] These companies were the two largest producers/exporters of subject merchandise, based on aggregate value, to the United States.

On December 5, 2011, the petitioner, Solar World Industries, America, Inc. (Petitioner), submitted an additional subsidy allegation, claiming that the government of the PRC (GOC), through state-owned enterprises (SOEs),

[1] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Initiation of Countervailing Duty Investigation*, 76 FR 70966 (November 16, 2011) (*Initiation Notice*), and accompanying Initiation Checklist. Public documents and public versions of proprietary Departmental memoranda referenced in this notice are on file electronically on Import Administration's Antidumping and Countervailing Duty Centralized Electronic Services System (IA ACCESS), accessible via the Central Records Unit, Room 7046 of the main Commerce building and on the web at http://ia.ita.doc.gov/frn/.

[2] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, ''Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China, Countervailing Duty Investigation: Respondent Selection,'' November 29, 2011 (Respondent Selection Memorandum).

provides glass to Chinese producers of subject merchandise for less than adequate remuneration (LTAR). The Department issued the CVD questionnaire to the GOC on December 7, 2011. Copies of the questionnaire were also sent to the mandatory company respondents. On December 16, 2011, Petitioner submitted a request to extend the preliminary determination 30 days, from January 12 to February 13, 2012. On December 19, 2011, Petitioner submitted an allegation that Wuxi Suntech was uncreditworthy from 2005 through 2010. On December 22, 2011, Petitioner submitted an allegation that Trina Solar was uncreditworthy from 2005 through 2010. Also on December 22, 2011, the Department determined not to initiate an investigation of Petitioner's December 5, 2011, allegation that the GOC provides glass for LTAR, stating that Petitioner did not support its allegation with reasonably available information, pursuant to section 702(b)(1) of the Tariff Act of 1930, as amended (the Act). On December 29, 2011, the Department published in the **Federal Register** a 30-day postponement of the preliminary determination until February 11, 2012.[3]

On January 3, 2012, Wuxi Suntech requested an extension of the January 13 deadline for responding to the Department's December 7, 2011 questionnaire. On January 5, 2012, the GOC and Trina Solar each requested an extension of the January 13 deadline for responding to the questionnaire. The Department extended the deadline until January 23, 2012.

On January 3, 2012, the GOC requested that the Department terminate the CVD investigation, stating that, in a recent decision, the U.S. Court of Appeals for the Federal Circuit found that the Department does not have the authority to apply the CVD law to countries the Department considers non-market economies (NMEs).[4] On January 6, 2012, Trina Solar, Wuxi Suntech, and other interested parties requested that the Department terminate the CVD investigation, also citing the *GPX* ruling. On January 26, 2012, interested parties DelSolar Co., Ltd. and DelSolar (Wujiang) Ltd. also requested that the CVD investigation be terminated, citing *GPX.*

On January 9, 2012, Trina Solar and Wuxi Suntech each requested that the Department further extend the deadline for the preliminary determination by an additional 35 days, noting the Department had the authority to do so in extraordinary circumstances. In these same submissions, both Trina Solar and Wuxi Suntech also requested an additional extension of the deadline for responding to the Department's December 7, 2011 questionnaire. Also on January 9, 2012, the GOC reiterated its January 5, 2012 request for additional time to respond to the Department's December 7, 2011 questionnaire, requesting the deadline be extended to February 3, 2012. On January 19, 2012, Petitioner requested that the Department extend the deadline for submitting additional subsidy allegations. Based on this request from Petitioner, the Department extended this deadline until February 10, 2012. Also on January 19, 2012, Petitioner requested that the preliminary determination be further extended until March 2, 2012. On January 23, Petitioner re-submitted its allegation that the GOC provided solar cells producers with glass for LTAR. On January 19, 2012, the Department extended the deadline until January 31, 2012, for the GOC, Trina Solar, and Wuxi Suntech to respond to the Department's December 7, 2011 questionnaire. On January 31, 2012, the Department published in the **Federal Register** the second postponement of the preliminary determination until March 2, 2012.[5] Also on January 31, 2012, the GOC, Trina Solar, and Wuxi Suntech each submitted timely responses to the Department's December 7, 2011 questionnaire.

On February 9, 2012, Petitioner submitted a request to extend further the deadline for submitting additional subsidy allegations. Based on this request from Petitioner, the Department extended the deadline until February 14, 2012, for submitting additional subsidy allegations. Also on February 9, 2012, the Department issued supplemental questionnaires to Trina Solar and Wuxi Suntech. On February 14, 2012, Trina Solar and Wuxi Suntech each requested that the Department extend the deadline until February 29, 2012, for responding to the February 9, 2012 supplemental questionnaire. In its submission, Wuxi Suntech also reiterated its January 9, 2012 request to extend fully the deadline for the preliminary determination. The Department extended the supplemental questionnaire response deadline to February 27, 2012, for Trina Solar and Wuxi Suntech. On February 14, 2012, Petitioner submitted five additional new subsidy allegations. The Department has not yet reached a determination of whether to include these five additional allegations, or the uncreditworthiness allegations noted above, in the investigation, but intends to do so after the issuance of this preliminary determination.

On February 15, 2012, the Department issued a supplemental questionnaire to the GOC. On February 17, 2012, the GOC requested an extension until March 5, 2012, for responding to the Department's February 15, 2012 supplemental questionnaire. The Department extended the deadline until March 1, 2012. On February 22, 2012, the Department published in the **Federal Register** the third postponement of the preliminary determination in the CVD investigation, postponing the preliminary determination until March 17, 2012.[6] Between February 22 and February 24, 2012, Petitioner submitted comments on the initial questionnaire responses submitted by the GOC, Trina Solar, and Wuxi Suntech. On February 27, 2012, Trina Solar and Wuxi Suntech each submitted timely responses to the Department's February 9, 2012 supplemental questionnaire. The GOC timely submitted its response to the supplemental questionnaire on March 1, 2012. On March 7, 2012, Trina Solar submitted comments to be considered in the Department's preliminary determination, and Petitioner submitted its pre-preliminary determination comments on March 8, 2012. Also on March 8, 2012, the Department initiated the new subsidy allegation for the provision of glass at LTAR. On March 9, 2012, Petitioner submitted new factual information for the Department to consider in the preliminary determination. On March 12, 2012, the GOC submitted pre-preliminary comments, and Petitioner submitted comments in response to Trina Solar's March 7, 2012 comments. On March 13, 2012, Wuxi Suntech submitted pre-preliminary comments, as well as comments on Petitioner's December 19, 2011 and February 28, 2012 letters regarding Wuxi Suntech's creditworthiness.

[3] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation,* 76 FR 81914 (December 29, 2011).

[4] *GPX Int'l Tire Corp.* v. *United States,* 666 F.3d 732 (Fed. Cir. 2011) (*GPX*).

[5] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Second Postponement of the Preliminary Determination in the Countervailing Duty Investigation,* 77 FR 4764 (January 31, 2012).

[6] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation,* 77 FR 10478 (February 22, 2012).

Scope Comments

In accordance with the preamble to the Department's regulations, in our *Initiation Notice* we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of that notice.[7] Between November 23, 2011 and March 14, 2012, we received numerous comments concerning the scope of the investigations. Based on these comments, the Department has clarified the scope of the investigation. The revised scope is set forth in the ''Scope of Investigation'' section below. A full discussion of the Department's preliminary conclusions regarding these scope comments are set forth in a memorandum issued concurrently with this notice.[8]

Scope of the Investigation

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

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

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

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

Also excluded from the scope of this investigation are 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.

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

Merchandise covered by this investigation is currently classified in the Harmonized Tariff System of the United States (HTSUS) under subheadings 8501.61.0000, 8507.20.80, 8541.40.6020 and 8541.40.6030. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of this investigation is dispositive.

Injury Test

Because the PRC is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry. On December 16, 2011, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of solar cells from the PRC.[9]

Application of the Countervailing Duty Law to Imports From the PRC

On October 25, 2007, the Department published its final determination on coated free sheet paper from the PRC.[10] In *CFS from the PRC,* the Department found that

> * * *given the substantial differences between the Soviet-style economies and China's economy in recent years, the Department's previous decision not to apply the CVD law to these Soviet-style economies does not act as a bar to proceeding with a CVD investigation involving products from China.[11]

The Department has affirmed its decision to apply the CVD law to the PRC in numerous subsequent determinations.[12] Furthermore, on March 13, 2012, HR 4105 was enacted which makes clear that the Department has the authority to apply the CVD law to NMEs such as the PRC. The effective date provision of the enacted legislation makes clear that this provision applies to this proceeding.[13]

Additionally, for the reasons stated in the CWP from the PRC Decision Memorandum, we are using the date of December 11, 2001, the date on which the PRC became a member of the World Trade Organization (WTO), as the date from which the Department will identify and measure subsidies in the PRC for purposes of CVD investigations.[14]

Preliminary Determination of Critical Circumstances

On January 27, 2012, the Department determined that critical circumstances exist with respect to imports of solar cells from the PRC for Trina Solar, Wuxi Suntech, and all other PRC producers or exporters, finding that there have been massive imports of subject merchandise over a relatively short period of time by these entities.[15] Further, at this preliminary stage, the Department continues to have a reasonable basis to believe or suspect that there are countervailable subsidies inconsistent with the Subsidies and Countervailing Measures Agreement of the WTO. As a result, we will instruct CBP to suspend liquidation of all entries of the subject

[7] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997); *see also Initiation Notice,* 76 FR at 70967.

[8] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary, Antidumping and Countervailing Duty Operations, from Jeff Pedersen, Case Analyst, ''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.

[9] *See Crystalline Silicon Photovoltaic Cells from China, Investigation Nos. 701 TA–481 and 731–TA–1190, Preliminary,* 76 FR 78313 (December 16, 2011).

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

[11] *See* CFS from the PRC Decision Memorandum at Comment 6.

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

[13] *See* HR 4105, 112th Cong. § 1(b) (2012) (enacted).

[14] *See, e.g.,* CWP from the PRC Decision Memorandum at Comment 2.

[15] *See 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).

merchandise from the PRC that are entered or withdrawn from warehouse, for consumption on or after the date 90 days prior to the date of publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entities of the merchandise in the amounts indicated in the section ''Suspension of Liquidation,'' below. Parties will have the opportunity to comment on the Department's preliminary determination of critical circumstances in their case briefs for the final determination.

Voluntary Respondents

On November 17, 2011, CNPV Dongying Solar Power Company Limited requested that it be selected as a voluntary respondent, if the company was not selected as a mandatory respondent. Also on November 17, 2011, Yingli Green Energy Holding Company Limited and Yingli Green Energy Americas, Inc. requested that they be selected collectively as a voluntary respondent. On November 22, 2011, both Trina Solar and Wuxi Suntech requested that they be selected as voluntary respondents. Jiangsu Green Power PV Co., Ltd. requested that it be selected as a voluntary respondent on November 28, 2011. On December 23, 2011, Motech (Suzhou) Renewable Energy Co., Ltd. requested that it be a selected as a voluntary respondent.

In the Respondent Selection Memorandum, the Department explained that it did not have resources available to examine any of the several parties, noted above, requesting to be investigated as voluntary respondents.[16] Therefore, we continued, we would not examine any voluntary respondents unless one of the mandatory respondents failed to cooperate. In such event, we noted, any party requesting to be a voluntary respondent would have to be in compliance with four criteria, one of which was the submission of questionnaire responses in accordance with deadlines established for the mandatory respondents.[17] Subsequently, both mandatory respondents have cooperated and no voluntary respondent applicant submitted any questionnaire responses. Therefore, we are not calculating individual rates for any of the voluntary respondent applicants.

Use of Facts Otherwise Available and Adverse Inferences

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

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b) of the Act also authorizes the Department to use as adverse facts available (AFA), information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as ''{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' [18] For purposes of this preliminary determination, we find it necessary to apply AFA in the following circumstances. However, we are not relying upon ''secondary information'' in our application of AFA in the following circumstances.

Application of AFA: Polysilicon Producers Are ''Authorities''

As discussed below under the section ''Programs Preliminarily Determined to be Countervailable,'' the Department is investigating the provision of polysilicon for LTAR by the GOC. We requested information from the GOC regarding the specific companies that produced this input product that Trina Solar and Wuxi Suntech purchased during the period of investigation (POI). Specifically, we sought information from the GOC that would allow us to determine whether the producers are ''authorities'' within the meaning of section 771(5)(B) of the Act. In our original and supplemental questionnaires, we requested detailed information from the GOC that would be needed for this analysis.

For each producer in which the GOC was a majority owner, we stated that the GOC needed to provide the following information that is relevant to our analysis of whether that producer is an ''authority.''

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

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

- Translated copies of source documents that demonstrate the producer's ownership during the POI, such as capital verification reports, articles of association, share transfer agreements, or financial statements.
- Identification of the owners, members of the board of directors, or managers of the producers who were also government or Chinese Communist Party (CCP) officials or representatives during the POI.
- A statement regarding whether the producer had ever been an SOE, and, if so, whether any of the current owners, directors, or senior managers had been involved in the operations of the company prior to its privatization.
- A discussion of whether and how operational or strategic decisions made by the management or board of directors are subject to government review or approval.

Finally, for producers owned by other corporations (whether in whole or in part) or with less-than-majority state ownership during the POI, we requested information tracing the ownership of the producer back to the ultimate individual or state owners. For such producers, we requested the following information.

[16] Respondent Selection Memorandum at 5.

[17] *Id.* at 6.

[18] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong. 2d Session, at 870 (1994).

• The identification of any state ownership of the producer's shares; the names of all government entities that own shares, either directly or indirectly, in the producer; the identification of all owners considered ''SOEs'' by the GOC; and the amount of shares held by each government owner.

• For each level of ownership, identification of the owners, directors, or senior managers of the producer who were also government or CCP officials during the POI.

• A discussion of whether and how operational or strategic decisions made by the management or board of directors are subject to government review or approval.

• A statement regarding whether any of the shares held by government entities have any special rights, priorities, or privileges with regard to voting rights or other management or decision-making powers of the company; a statement regarding whether there are restrictions on conducting, or acting through, extraordinary meetings of shareholders; a statement regarding whether there are any restrictions on the shares held by private shareholders; and a discussion of the nature of the private shareholders' interests in the company (*e.g.,* operational, strategic, or investment-related).

In its questionnaire response on January 31, 2012, the GOC provided incomplete ownership information for nearly all of the companies that produced polysilicon purchased by Trina Solar and Wuxi Suntech. For the vast majority of these producers, it provided none of the information requested in the standard ''input producers'' appendix the Department issues to determine the individual owners of producers and to determine the extent of GOC control, if any, over the producers.[19] For example, for the vast majority of producers, it did not provide capital verification reports, articles of association, business registrations, or any other documents demonstrating the producers' ownership. For other producers, it provided some information, but not enough to trace ownership back to the ultimate individual owners, as the questionnaire requested. Further, it provided no information at all regarding the identification of owners, directors, or senior managers who were also GOC or CCP officials or representatives. On February 15, 2012, we issued a supplemental questionnaire to the GOC requesting that it provide the remaining ownership information for the polysilicon producers. We also requested that the GOC respond to the questions above regarding the role, if any, that GOC and CCP officials and representatives had as owners, directors, or senior managers of the producers, or explain in detail the efforts it undertook to obtain the requested information.[20]

In its March 1, 2012 response, the GOC did not provide any information regarding the role of GOC and CCP officials and representatives, nor did the GOC explain the efforts it undertook to obtain the requested information. The GOC provided further ownership information, but the information provided was still incomplete in that no ownership information was provided for some companies, and, in other instances, the ownership information provided was not sufficient to determine the ultimate individual owners.[21] In the GOC's submission, several companies' ownership is deemed ''uncertain'' by the GOC itself. The GOC informed the Department that it was still gathering the requested ownership information and that it expected to submit this information at a later date.[22]

In addition to not providing all of the requested information regarding government and CCP officials and representatives, the GOC also declined to answer questions about the CCP's structure and functions that are relevant to our determination of whether the producers of polysilicon are ''authorities'' within the meaning of section 771(5)(B) of the Act. In its initial questionnaire response, the GOC objected to our questions, stating that the CCP, along with other related organizations, is not a government organization and that the involvement of CCP officials in the management or operations of the input producers ''does not lead to interference by the Chinese government in the management and operation of the input supplier.''[23] Additionally, the GOC stated that Chinese law prohibits GOC officials from taking positions in private companies.[24] Furthermore, the GOC stated that ''there is no central informational database to search for the requested information and the industry and commerce administration does not require the companies to provide such information.''[25] As such, the GOC claimed it was unable to respond to the Department's questions.[26]

Regarding the GOC's objection to the Department's questions about the role of CCP officials in the management and operations of the polysilicon producers, we have explained our understanding of the CCP's involvement in the PRC's economic and political structure in a past proceeding.[27] Public information suggests that the CCP exerts significant control over activities in the PRC.[28] This conclusion is supported by, among other documents, a publicly available background report from the U.S. Department of State.[29] With regard to the GOC's claim that Chinese law prohibits GOC officials from taking positions in private companies, we have previously found that this particular law does not pertain to CCP officials.[30]

Because the GOC did not respond to our requests for information on this issue, we have no further basis for evaluating the GOC's claim that the role of the CCP is irrelevant. Thus, the Department finds, as it has in past investigations, that the information requested regarding the role of CCP officials in the management and operations of the polysilicon producers, and in the management and operations of the producers' owners, is necessary to our determination of whether these producers are authorities within the meaning of section 771(5)(B) of the Act. In addition, the GOC did not promptly notify the Department, in accordance with section 782(c), that it was unable to submit the information requested in the requested form and manner, nor did it suggest any alternative forms for submitting this information. Further, the GOC did not provide any information regarding the attempts it undertook to obtain this information, despite the fact that we provided the GOC with a second opportunity to provide the information

[19] *See* the GOC's January 31, 2012 questionnaire response.

[20] *See* February 15, 2012 supplemental questionnaire to the GOC.

[21] *See* Memorandum to the File from Emily Halle, ''Analysis of the GOC's Responses to the Input Producers Appendix,'' March 19, 2012.

[22] *See* the GOC's March 1, 2012 supplemental questionnaire response at 34–38.

[23] *See* the GOC's January 31, 2012 questionnaire response at II–96.

[24] *See id.* at II–98.

[25] *See id.* at II–101.

[26] *See id.*

[27] *See* Memorandum to the File from Emily Halle, ''Additional Documents for Preliminary Determination,'' March 19, 2012 (Additional Documents Memorandum) at Attachments III and IV (which include the post-preliminary analysis memorandum from certain seamless carbon and alloy steel standard, line, and pressure pipe and a State Department report, both recognizing the significant role the CCP has in the GOC).

[28] *See id.* at Attachment IV.

[29] *See id.; see also 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) (*Seamless Pipe Final Determination*), and accompanying Issues and Decision Memorandum (Seamless Pipe From the PRC Decision Memorandum) at Comment 7.

[30] *See* Seamless Pipe from the PRC Decision Memorandum at 16.

and significant extensions for responding to both the original and supplemental questionnaires. Therefore, we have no basis to accept the GOC's claim that it is unable to provide this information. This is particularly appropriate given that the GOC has informed the Department that such information regarding the CCP is irrelevant, when the Department has made it abundantly clear on the record of this investigation and previous investigations that such information is relevant to our analysis of whether input producers are ''authorities'' under the statute.

Therefore, we preliminarily determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on ''facts otherwise available'' in making our preliminary determination.[31] Moreover, we preliminarily determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information. 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.[32] Furthermore, stating that it is unable to obtain the information because the CCP is not the government is effectively telling the Department it must reach the conclusion based on the statements of the GOC without any of the information that the Department considers necessary and relevant to evaluating fully the role of the CCP in the government and in input producers. Consequently, we determine that the GOC has withheld information and impeded the investigation, and that an adverse inference is warranted in the application of facts available.[33] As AFA, we are finding that all of the producers of polysilicon purchased by the respondents during the POI are ''authorities'' within the meaning of section 771(5)(B) of the Act.

Application of AFA: The Provision of Polysilicon is Specific to Solar Cells Producers

The Department asked the GOC to provide a list of industries in the PRC that purchase polysilicon directly and to provide the amounts (volume and value) purchased by each of the industries, including the solar cells industry.[34] The GOC did not respond as requested, but instead simply stated that it did ''not impose any limitations on the use of polysilicon'' and that ''polysilicon has a wide range of uses, including but not limited to use in the solar and semiconductor industries.'' [35] The Department asked this question again in its supplemental to the GOC, and again the GOC did not provide the requested information, but simply stated once more that ''polysilicon has a wide range of uses, including but not limited to use in the solar and semiconductor industries.'' [36]

Therefore, we preliminarily determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on ''facts available'' in making our preliminary determination.[37] Moreover, we preliminarily determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available.[38] In drawing an adverse inference, we find that the GOC's provision of polysilicon to solar cells producers is specific within the meaning of section 771(5A) of the Act. For details regarding the remaining elements of our analysis, *see* the ''Provision of Polysilicon for LTAR'' section below.

Application of AFA: Land Provided to Trina Solar Is Specific to the Solar Cells Industry

In the initial questionnaire, the Department stated that if the GOC claimed that the provision of land or land-use rights to the respondents was not contingent upon any particular status or activity (*e.g.,* being a solar cells producer or residing in an industrial park), the GOC must provide a discussion of how the prices paid by the respondents were determined. The Department requested that the GOC provide information on the policies of the relevant local governments that had jurisdiction over the land and land-use rights. The GOC responded that it ''does not direct the price of land or land-use rights, which were established between the mandatory respondents and local governments.''[39] In its questionnaire response, Trina Solar explained that its land-use rights had been purchased through a public bidding process and that all of its land was located in an industrial park. Therefore, in our supplemental questionnaire to the GOC, we asked the GOC to provide information regarding the public bidding process, demonstrating, among other things, the floor prices of these auctions, the public notices inviting bids, and the number of bidders for all of Trina Solar's land-use rights purchases. The GOC provided the requested information for only one of the tracts of land provided by the local land bureau to Trina Solar. In providing this information, the GOC stated: ''The GOC has obtained and provides information relating to the fifth piece of Trina's land, but does not warrant that the information provided below regarding the fifth piece of land is representative for the other pieces of land for Trina.''[40]

Because the GOC did not provide complete responses to either the Department's initial or supplemental questions regarding the derivation of the prices paid by Trina Solar for land-use rights, the Department is unable to determine whether or not the provision of these land use rights was specific. Therefore, we preliminarily determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on facts available in making our preliminary determination for all of Trina Solar's tracts. Moreover, we preliminarily determine that the GOC has failed to cooperate by not acting to

[31] *See* sections 776(a)(1) and (a)(2)(A) of the Act.

[32] *See Ansaldo Componenti, S.p.A.* v. *United States,* 628 F. Supp. 198, 205 (CIT 1986) (stating that ''{i}t is Commerce, not the respondent, that determines what information is to be provided''). The Court in *Ansaldo* criticized the respondent for refusing to submit information which the respondent alone had determined was not needed, for failing to submit data which the respondent decided could not be a basis for the Department's decision, and for claiming that submitting such information would be ''an unreasonable and unnecessary burden on the company.'' *Id. See also Essar Steel Ltd.* v. *United States,* 721 F. Supp. 2d 1285, 1298–99 (CIT 2010) (stating that ''{r}egardless of whether Essar deemed the license information relevant, it nonetheless should have produced it {in} the event that Commerce reached a different conclusion'' and that ''Commerce, and not Essar, is charged with conducting administrative reviews and weighing all evidence in its calculation of a countervailing duty margin''); *NSK, Ltd.* v. *United States,* 919 F. Supp. 442, 447 (CIT 1996) (''NSK's assertion that the information it submitted to Commerce provided a sufficient representation of NSK's cost of manufacturing misses the point that 'it is Commerce, not the respondent, that determines what information is to be provided for an administrative review.'''); *Nachi-Fujikoshi Corp.* v. *United States,* 890 F. Supp. 1106, 1111 (CIT 1995) (''Respondents have the burden of creating an adequate record to assist Commerce's determinations.'').

[33] *See* section 776(b) of the Act.

[34] *See* December 7, 2011 questionnaire to the GOC at II–10.

[35] *See* the GOC's January 31, 2012 questionnaire response at II–95.

[36] *See* the GOC's March 1, 2012 supplemental questionnaire response at 38.

[37] *See* sections 776(a)(1)–(a)(2)(A) of the Act.

[38] *See* section 776(b) of the Act.

[39] *See* the GOC's January 31, 2012 questionnaire response at II–143.

[40] *See* the GOC's March 1, 2012 supplemental questionnaire response at 42.

the best of its ability to comply with our request for information. The GOC refused to provide necessary information regarding prices paid by Trina Solar. In its first response, quoted above, the GOC appears to be suggesting it cannot obtain information from local governments regarding land transactions. However, such information has been provided in other proceedings,[41] and some information from the local government was, in fact, provided in this investigation; *e.g.,* information concerning one tract of land auctioned to Trina Solar by the Changzhou government, and the GOC's confirmation that all tracts sold to the respondents have been reported. In its second response, the GOC candidly admits the inadequacy of its response when it advises the Department that it ''does not warrant that the information provided below regarding the fifth piece of land is representative for the other pieces of land for Trina.'' Consequently, the GOC has not cooperated to the best of its ability and an adverse inference is warranted in the application of facts available.[42] In drawing an adverse inference, we find that the GOC's provision of land to Trina Solar is specific within the meaning of section 771(5A) of the Act. For details regarding the remainder of our analysis for this program, *see* the ''Provision of Land for LTAR'' section below.

Application of AFA: ''Subsidies Discovered During the Investigation''

In supplemental questionnaires to the respondents and the GOC, we identified a number of grants that the companies appeared to have received based on information from the financial statements and filings with the U.S. Securities and Exchange Commission (SEC) that parties had placed on the record. Respondents had not reported these grants nor did they complete appropriate appendices, despite the Department's request in its initial questionnaire that the respondents should report all subsidies used during the POI, not merely those related to allegations under investigation. In the supplemental questionnaire, we requested that Trina Solar and Wuxi Suntech provide more information about these grants and that the GOC coordinate with the companies to provide information concerning the programs under which these grants were provided, including complete responses to the questions on specificity in our ''standard appendix.'' While both companies provided a listing of their grants and the names of the projects or programs under which they themselves classified these grants, the GOC only confirmed the amounts of the grants reported by one respondent. The GOC did not provide any other information but instead noted: ''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.'' [43]

The Department, however, has the authority pursuant to section 775 of the Act to examine subsidies discovered during the course of an investigation. Because the GOC has declined to provide information necessary for our analysis of whether these grants are specific, we find that the GOC has withheld information that was requested and has impeded our investigation. Further, the GOC has not cooperated to the best of its ability in responding to our request for information and therefore, we find the use of AFA is warranted in determining the specificity of the grants the respondents reported. Accordingly, as AFA, we are finding all grant programs for these subsidies to be specific (hereinafter, referred to as the ''Discovered Grants'' to distinguish them from other grants provided under programs named in the petition). A list of all Discovered Grants identified publicly by the respondents and found to be used in the POI is included below in the section ''Programs Preliminarily Determined to be Countervailable.'' Most grants provided prior to the POI did not pass the ''0.5 percent test'' provided for in 19 CFR 351.524(b)(2) (discussed below) and, thus, no benefit is allocable to the POI from these grants. A list of the grants provided prior to the POI that can be identified publicly is included below in the section ''Programs Preliminarily Determined to be Not Used By Respondents.'' Because the names of some of the grants were bracketed by the respondents, a full list of the Discovered Grants can only be found in the business-proprietary Preliminary Calculations Memoranda.[44]

Subsidies Valuation Information

Period of Investigation

The POI for which we are measuring subsidies is January 1, 2010, through December 31, 2010.[45]

Allocation Period

The Department normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise. The Department finds the AUL in this proceeding to be 10 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.[46] The Department notified the respondents of the 10-year AUL in the initial questionnaire and requested data accordingly.[47] No party in this proceeding has disputed this allocation period.

Furthermore, for non-recurring subsidies, we have applied the ''0.5 percent test,'' as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the relevant sales value (*e.g.,* total sales or export sales) for the same year. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, then the benefits are allocated to the year of receipt rather than across the AUL.

Attribution of Subsidies

In accordance with 19 CFR 351.525(b)(6)(i), the Department normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates

[41] *See, e.g.,* Additional Documents Memorandum at Attachment V (includes a public version of a memorandum describing a discussion with county officials of respondent's land transaction as well as the transactions of several other nearby companies that were not even respondents in the proceeding; *e.g.,* ''We asked for and were provided * * * land contracts as well as the accompanying agreements for several companies located in the New Century Industrial Park.'').

[42] *See* section 776(b) of the Act.

[43] *See* GOC's March 1, 2012 supplemental questionnaire response at 55.

[44] Memorandum to Mark Hoadley, Program Manager, ''Preliminary Affirmative Countervailing Duty Determination: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China; Preliminary Determination Calculations for Wuxi Suntech Power Co., Ltd.,'' March 19, 2012, and Memorandum to Mark Hoadley, Program Manager, ''Preliminary Affirmative Countervailing Duty Determination: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China; Preliminary Determination Calculations for Changzhou Trina Solar Energy Co., Ltd.,'' March 19, 2012 (collectively, Preliminary Calculations Memoranda).

[45] *See* 19 CFR 351.204(b)(2).

[46] *See* U.S. Internal Revenue Service Publication 946 (2008), ''How to Depreciate Property,'' at Table B–2: Table of Class Lives and Recovery Periods.

[47] As discussed above and in accordance with the Department's practice, regardless of the AUL chosen, we will not countervail subsidies conferred before December 11, 2011, the date of the PRC's accession to the WTO. *See, e.g., Certain Magnesia Carbon Bricks From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 75 FR 45472 (August 2, 2010), and accompanying Issues and Decision Memorandum at ''Subsidies Valuation Information.''

are covered in these additional attribution rules: (ii) Producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the subject merchandise; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent.

Cross-Ownership

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of another corporation in essentially the same ways it can use its own assets. This standard will normally be met where there is a majority voting interest between two corporations, or through common ownership of two (or more) corporations. The Court of International Trade (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 ways it could use its own subsidy benefits.[48]

Based on information on the record, we preliminarily determine that cross-ownership exists, in accordance with 19 CFR 351.525(b)(6)(vi), among the following companies.

1. The Trina Solar Companies

As discussed above, we selected Changzhou Trina Solar Energy Co., Ltd. (*i.e.,* Trina Solar) as a mandatory respondent. Trina Solar reported that it is affiliated with Trina Solar (Changzhou) Science and Technology Co., Ltd. (TST), which is a producer of subject merchandise located in the PRC. Since both companies produce subject merchandise, Trina Solar and TST responded collectively to the Department's questionnaires. In the questionnaire responses, these companies stated that they have the same board of directors and chairman. Both Trina Solar and TST are ultimately owned by Trina Solar Limited (TSL), a company located in the Cayman Islands that is publicly traded on the New York Stock Exchange.[49] Trina Solar and TST have reported that the CEO of TSL is also their shared board chairman. Therefore, pursuant to 19 CFR 351.525(b)(6)(vi), we preliminarily determine that Trina Solar and TST are cross-owned.[50] Trina Solar has reported that both it and TST are affiliated with numerous companies.[51] While Trina Solar has stated that, for various reasons, none of these affiliates are required to provide questionnaire responses under the Department's attribution and cross-ownership regulations, we will be seeking further information and will be examining the relationship between and among Trina Solar, TST, and its affiliated companies during the course of this investigation. Because both Trina Solar and TST are producers of subject merchandise, we are attributing any subsidy received by either company to the combined sales of both companies, excluding intercompany sales. Hereinafter, we refer to Trina Solar and TST collectively as Trina Solar, unless otherwise indicated.

2. The Wuxi Suntech Companies

Wuxi Suntech has responded to the Department's original and supplemental questionnaires on behalf of itself and five cross-owned affiliates: Luoyang Suntech Power Co., Ltd. (Luoyang Suntech), Suntech Power Co., Ltd. (Shanghai Suntech), Yangzhou Rietech Renewal Energy Co., Ltd. (Yangzhou Rietech), Zhenjiang Huantai Silicon Science & Technology Co., Ltd. (Zhenjiang Huantai), and Kuttler Automation Systems (Suzhou) Co., Ltd. (Suzhou Kuttler). In its annual Form 20–F SEC filing for the year ending December 31, 2010,[52] Suntech Power Holdings Co., Ltd. (Suntech Holdings), the holding company registered in the Cayman Islands and listed on the New York Stock Exchange, reported that it owns the majority (*i.e.,* wholly owns or owns more than 50 percent) of the shares of Wuxi Suntech, Luoyang Suntech, Shanghai Suntech, Yangzhou Rietech, Zhenjiang Huantai and Suzhou Kuttler. As all these companies have common ownership through Suntech Holdings, we preliminarily determine that Wuxi Suntech, Luoyang Suntech, Shanghai Suntech, Yangzhou Rietech, Zhenjiang Huantai and Suzhou Kuttler are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi). Wuxi Suntech has reported that it is affiliated with numerous companies. While Wuxi Suntech has stated that, for various reasons, none of these affiliates are required to provide questionnaire responses under the Department's attribution and cross-ownership regulations, we will be seeking further information and will be examining the relationship between and among these various affiliated companies during the course of this investigation.[53]

Wuxi Suntech, Luoyang Suntech, and Shanghai Suntech are producers of subject merchandise. Accordingly, we are attributing subsidies received by Wuxi Suntech, Luoyang Suntech, and Shanghai Suntech to the combined sales of the three companies, excluding inter-company sales, in accordance with 19 CFR 351.525(b)(6)(ii). Yangzhou Rietech, Zhenjiang Huantai and Suzhou Kuttler provide either inputs or equipment for the production of subject merchandise. With regard to the inputs, we preliminarily determine that these inputs are primarily dedicated to the production of solar cells in accordance with 19 CFR 351.524(b)(6)(iv).[54] Therefore, we are attributing subsidies received by each of these three companies to the combined sales of the company itself and the three producers of subject merchandise discussed above, excluding inter-company sales, in accordance with 19 CFR 351.525(b)(6)(iv).

Hereinafter, we refer to Wuxi Suntech, Luoyang Suntech, Shanghai Suntech, Yangzhou Rietech, Zhenjiang Huantai, and Suzhou Kuttler collectively as Wuxi Suntech, unless otherwise indicated.

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 in the ''Programs Preliminarily Determined to be Countervailable'' section, 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 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 cross-owned affiliates, as described above). For a further discussion of the denominators used,

[48] *See Fabrique de Fer de Charleroi* v. *United States,* 166 F. Supp 2d 593, 600–604 (CIT 2001).

[49] *See* Trina Solar's January 31, 2012 questionnaire response at III–2.

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

[51] *See, e.g.,* Trina Solar's January 31, 2012 questionnaire response at Exhibits 1 and 2.

[52] *See* Wuxi Suntech's January 31, 2012 questionnaire response at Exhibit 10.

[53] *See* ''Programs for Which Additional Information is Required,'' below.

[54] *See* Preliminary Calculations Memoranda.

see the Preliminary Calculations Memoranda.

Discount Rates for Allocating Non-Recurring Subsidies

Consistent with 19 CFR 351.524(d)(3)(i)(C) and the Department's practice over multiple PRC CVD investigations, we have used as our discount rates the long-term interest rate benchmarks calculated according to the methodology described below for the years in which the government provided non-recurring subsidies.

Interest Rate Benchmarks

1. Short-Term Interest Rate Benchmark

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.[55] 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.''[56] 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.[57] 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.

In past proceedings involving imports from the PRC, we calculated the external benchmark using the methodology first developed in *CFS from the PRC*[58] and more recently updated in *LWTP from the PRC.*[59] Under that methodology, we first determine which countries are similar to the PRC in terms of gross national income (GNI), based on the World Bank's classification of countries as: Low income; lower-middle income; upper-middle income; and high income. As explained in *CFS from the PRC,* this pool of countries captures the broad inverse relationship between income and interest rates. For 2001 through 2009, the PRC fell in the lower-middle income category.[60] Beginning in 2010, however, the PRC is in the upper-middle income category. Accordingly, as explained further below, we are using the interest rates of upper-middle income countries to construct the 2010 benchmark.

After identifying the appropriate interest rates, the next step in constructing the benchmark has been to incorporate an important factor in interest rate formation, the strength of governance. These indicators measure the quality of the countries' institutions and they have been built into the analysis by using a regression analysis that relates the interest rates to the governance indicators. In each of the years from 2001–2009, the results of the regression analysis reflected the intended, common sense result: stronger institutions meant relatively lower interest rates, while weaker institutions meant relatively higher interest rates. For 2010, however, the regression does not yield that outcome for the PRC's income group.

This contrary result for a single year in ten does not lead us to reject the strength of governance as a determinant of interest rates. As confirmed by the Federal Reserve, ''there is a significant negative correlation between institutional quality and the real interest rate, such that higher quality institutions are associated with lower real interest rates.'' [61] However, for 2010, incorporating the governance indicators in our analysis does not make for a better benchmark. Therefore, while we have continued to rely on the regression-based analysis used since *CFS from the PRC* to compute the benchmarks for loans taken out prior to the POI, for the 2010 benchmark we are using an average of the interest rates of the upper-middle income countries. Based on our experience for the 2001–2009 period, in which the average interest rate of the lower-middle income group did not differ significantly from the benchmark rate resulting from the regression for that group, use of the average interest rate for 2010 does not introduce a distortion into our calculations.

With the following exceptions, we have used the interest and inflation rates reported in the International Financial Statistics (IFS), collected by the International Monetary Fund, for the countries identified as ''upper middle income'' by the World Bank for 2010 and ''lower-middle income'' for 2001–2009.[62] First, we did not include those economies that the Department considered to be NMEs for antidumping purposes during any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report lending and inflation rates to the IFS for those years. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments. For example, if a country reports a deposit rate, not a lending rate, or reports dollar-denominated rates, not rates in its local currency, the rate for such a country has been excluded. Finally, for each year for which the Department calculated a benchmark rate, we have also excluded any countries with aberrational or negative real interest rates for the year in question.[63] Because the resulting interest rate benchmarks are net of inflation, we adjusted the benchmarks to include an inflation component.

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

[55] 19 CFR 351.505(a)(3)(i).

[56] 19 CFR 351.505(a)(3)(ii).

[57] *See* CFS from the PRC Decision Memorandum at Comment 10.

[58] *Id.*

[59] *See Lightweight Thermal Paper From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 73 FR 57323 (October 2, 2008) (*LWTP from the PRC*), and accompanying Issues and Decision Memorandum (LWTP from the PRC Decision Memorandum) at 8–10.

[60] *See* The World Bank Country Classification, http://econ.worldbank.org/.

[61] *See* Additional Documents Memorandum at Attachment I (a Department memorandum entitled ''Consultations with Government Agencies'').

[62] As discussed below, short-term loan benchmarks are the basis for long-term loan benchmarks. Therefore, we calculated short-term loan benchmarks for several years other than those in which short-terms loans were provided that were outstanding in the POI.

[63] Because we are countervailing loans provided in a number of years, for the exact details regarding the countries excluded in each year, *see* Memorandum regarding ''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 Benchmark Memorandum).

2. Long-Term Interest Rate

The lending rates reported in the IFS represent short-term and medium-term lending, and there are not sufficient, publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, the Department previously developed an adjustment to the short-term rates described above to convert them to long-term rates using BB-rated corporate bond rates.[64] In subsequent CVD investigations, this long-term conversion markup was revised to equal the difference between the two-year BB bond rate and the n-year BB bond rate, where ''n'' equals or approximates the number of years of the term of the loan in question.[65] The resulting inflation-adjusted lending rates, which we are also using as discount rates, are provided in the Preliminary Benchmark Memorandum.[66] We continue to use the same methodology for this case.

Land Benchmark

Section 351.511(a)(2) of the Department's regulations sets forth the basis for identifying comparative benchmarks for determining whether a government good or service is provided for LTAR. These potential benchmarks are listed in hierarchical order by preference: (1) Market prices from actual transactions within the country under investigation; (2) world market prices that would be available to purchasers in the country under investigation; or (3) an assessment of whether the government price is consistent with market principles. As explained in detail in previous investigations, the Department cannot rely on the use of so called ''first-tier'' and ''second-tier'' benchmarks to assess the benefits from the provision of land for LTAR in the PRC.[67]

Consistent with the prior determinations, we have preliminarily determined that measuring the extent by which land is provided for LTAR is best achieved by comparing prices for land-use rights in the PRC with comparable market-based prices in a country at a comparable level of economic development that is within the geographic vicinity of the PRC. In previous PRC investigations,[68] we concluded that the most appropriate benchmark for the respondents' land-use rights were sales of certain industrial land plots in industrial estates, parks, and zones in Thailand. We relied on prices from a real estate market report on Asian industrial property that was prepared outside the context of any Department proceeding by an independent and internationally recognized real estate agency with a long-established presence in Asia. In relying on a land benchmark from Thailand, we noted that the PRC and Thailand had similar levels of per capita GNI and that population density in the PRC and Thailand are roughly comparable. Additionally, we noted that producers consider a number of markets, including Thailand, as options for diversifying production bases in Asia beyond the PRC. Therefore, we concluded, the same producers may compare prices across borders when deciding what land to buy. We cited to a number of sources which named Thailand as an alternative production base to the PRC.[69]

For this investigation, we have obtained updated data from the same independent and internationally recognized real estate agency for all four quarters of 2010. These are updated versions of the same reports, relied on in the prior determinations, which include industrial land values for plots in industrial estates, parks, and zones in Thailand, the Philippines, and other Asian countries. We are placing all four of the *Asian Marketview* reports, which are publicly available on the Internet, on the record of this investigation.[70] In evaluating which of these locations is most appropriate to use as the source of the benchmark, we have focused on Thailand, consistent with the prior determinations.

Based on our analysis, we preliminarily determine that a simple average of all land values for industrial property in Thailand provides the closest match, among options on the record, to the PRC in terms of per capita GNI and population density. The per capita GNI of Thailand is $3,760, compared to $3,590 for the PRC, while the per capita GNI for the Philippines is $2,840.[71] (*Asian Marketview* includes data for other Asian nations, but all have either higher incomes or are considered NMEs by the Department; *e.g.,* Singapore and Vietnam.) For 2010, Thailand is also a closer match in terms of population density with 135 people per square kilometer (psk) compared to the PRC's 140 people psk (the Philippines has a population density of 311 psk).[72] The calculated average of the rates for Thailand is $8.21 per square foot.[73] As explained in the Preliminary Benchmark Memorandum, the Department is deflating this value to calculate the benchmark for any land that may have been purchased in 2008 and 2009.

We are continuing to use the 2007 benchmark calculated in the investigations of laminated woven sacks and new pneumatic off-the-road tires cited above as the land benchmark for any land that may have been purchased in 2007 or earlier years. As mentioned, this benchmark was calculated using the same source, *Asian Marketview,*[74] discussed above, and also is a simple average of industrial land values reported in *Asian Marketview* for Thailand. The analysis relied upon in determining that this figure was the most appropriate benchmark for PRC land-use rights in 2007 can be found in those prior determinations.[75]

Polysilicon Benchmark

We have selected the benchmark for measuring the adequacy of the remuneration for polysilicon in accordance with 19 CFR 351.511(a)(2). In its supplemental questionnaire response, the GOC confirmed that there were 47 producers in the PRC of polysilicon during the POI, but the GOC did not provide the production volume

[64] *See, e.g., Light-Walled Rectangular Pipe and Tube From the People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination,* 73 FR 35642 (June 24, 2008) and accompanying Issues and Decision Memorandum at 8.

[65] *See Citric Acid and Certain Citrate Sales From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 74 FR 16836 (April 13, 2009) and accompanying Issues and Decision Memorandum at Comment 14.

[66] *See* Preliminary Benchmark Memorandum at Attachment 12.

[67] *See, e.g., Laminated Woven Sacks From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination; Preliminary Affirmative Determination of Critical Circumstances, In Part; and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination,* 72 FR 67893, 67906–08 (December 3, 2007) (*LWS Preliminary Determination*), unchanged in *Laminated Woven Sacks From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances,* 73 FR 35639 (June 24, 2008).

[68] *See LWS Preliminary Determination,* 72 FR at 67909.

[69] *See Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination,* 72 FR 71360, 71368 (December 17, 2007).

[70] *See* Preliminary Benchmark Memorandum at Attachment 5.

[71] All GNI figures are from the World Development Report 2011, published by the World Bank.

[72] *See* Additional Documents Memorandum at Attachment II (which includes relevant sections of the United Nation's *World Population Prospects: The 2010 Revision*).

[73] *See* Preliminary Benchmark Memorandum at Attachment 7.

[74] The report, published by CB Richard Ellis, is currently entitled *Asian Marketview,* but older versions were entitled *Asian Marketwatch.*

[75] *See, e.g., LWS Preliminary Determination,* 72 FR at 67909.

for any of these polysilicon producers, claiming it was prohibited from providing such information.[76] The GOC provided the names of nine polysilicon producers in which it maintains an ownership or management interest according to the National Bureau of Statistics of the GOC.[77] The mandatory respondents purchased polysilicon from 30 polysilicon producers during the POI, two of which were included in the list of producers in which the GOC maintains an ownership or management interest.[78]

As explained in the ''Application of AFA: Polysilicon Producers are 'Authorities''' section above, the Department has preliminarily determined that all the producers of polysilicon purchased by the respondents during the POI are ''authorities'' within the meaning of section 771(5)(B) of the Act. Because the GOC did not provide the production volumes for any of the polysilicon producers in the PRC, the Department cannot determine, on the basis of production volumes, what percentage of total domestic production or total domestic consumption is accounted for by the producers determined to be ''authorities.''[79] Therefore, we have determined whether polysilicon consumption in the PRC is dominated by the GOC based on the number of producers that are ''authorities.'' In addition to the 30 producers determined to be ''authorities,'' the GOC reports it maintains an ownership or management interest in another seven,[80] bringing to 37 the number of producers through which the GOC influences and distorts the domestic market for polysilicon, out of a total universe of 47 producers in the PRC.

Therefore, we determine that the GOC is the predominant provider of polysilicon in the PRC and that its significant presence in the market distorts all transaction prices. As such, 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. Turning to tier-two benchmarks, *i.e.,* world market prices available to purchasers in the PRC, pursuant to 19 CFR 351.511(a)(2)(ii), Petitioner submitted monthly world market prices for polysilicon.[81] Based on our review of the data, we are preliminarily relying on these world market prices, from Photon Consulting ''Silicon Price Index,'' as a benchmark price for polysilicon.

We note that Petitioner submitted alternative polysilicon benchmark data in its pre-preliminary determination comments. It argued that these data were more appropriate because they represent values for long-term contracts in 2008, which might cover shipments in 2010, according to the SEC filings of Trina Solar. Trina Solar's SEC filings, however, state that it purchased polysilicon in 2007 and 2008 ''through a combination of multi-year supply agreements, short-term supply arrangements and spot market purchases.''[82] In addition, the Web site for Photon Consulting states that its ''Silicon Price Index'' is a ''weighted index in which silicon prices reported by each survey participant are weighted to reflect the nuances found in the length of reported silicon contracts, prepayments and price digression.''[83] Therefore, it appears that the Photon Consulting price index is the most appropriate match to Trina Solar's purchases.[84] We intend, however, to gather information concerning the exact structure of the respondents' purchases of polysilicon to evaluate whether their purchase terms indicate that the use of a different benchmark is more appropriate.

Terminated Programs

The GOC reported that six programs used by the respondents have been terminated. However, the GOC did not request a program wide change adjustment to the cash deposit rate under 19 CFR 351.526(a), nor did it provide all of the documentation necessary to conduct such an evaluation. In addition, several of the programs the GOC claims were terminated have residual benefits in the POI. For example, certain parties continue to enjoy benefits from the ''Two Free, Three Half'' income tax program for Foreign Invested Enterprises (FIEs). Therefore, we are not making any adjustments to the cash deposit rates in this preliminary determination for terminated programs.

Analysis of Programs

Based upon our analysis of the petition, the responses to our questionnaires, and other information on the record, we preliminarily determine the following.

I. *Programs Preliminarily Determined To Be Countervailable*

A. Golden Sun Demonstration Program

The Golden Sun Demonstration Program (Golden Sun program) is a combination of financial assistance, technological support, and market approaches developed to accelerate the industrialization and development of the PRC's domestic photovoltaic power industry and to promote the progress of photovoltaic power generation. According to the GOC, the central government has allocated renewable energy funds to support the implementation of the Golden Sun program under Article 20 of the GOC's ''Renewable Energy Law.'' As detailed in the ''Notice concerning the Implementation of the Golden Sun Demonstration Project,'' (CaiJian {2009} No. 397), the program was established in 2009, and was designed to provide one-time assistance to recipients over the course of its two-year term.

The GOC states that the Golden Sun program was created to assist constructive investment in photovoltaic electricity-generation projects, with the goal of narrowing the gap between the costs of photovoltaic electricity generation and the costs of fossil fuel electricity generation. Financial assistance through this program includes support for, *inter alia,* the following: (1) The use of large-scale mining, commercial enterprises, and public welfare institutions to construct the user's side of the electrical grid for photovoltaic power generation demonstration projects; (2) increasing the power supply capacity in remote locations; and (3) construction of large-scale grid-connected photovoltaic power generation demonstration projects in solar energy rich regions.

To be eligible for financial support for this program, the GOC states that projects must: (1) Be included in the Golden Sun program within the local geographic region; (2) have an installed capacity of not less than 300 kWh; (3) have a construction period of not more than one year, and an operation period

[76] *See* the GOC's March 1, 2012 supplemental questionnaire response at 36.

[77] *See* the GOC's January 31, 2012 questionnaire response at II–91.

[78] *See* Trina Solar's January 31, 2012 questionnaire response at Exhibit 27; Wuxi Suntech's January 31, 2012 questionnaire response at Exhibit S–17; Zhenjiang Huantai's February 27, 2012 questionnaire response at Exhibit S–19; and Yangzhou Rietech's January 31, 2012 questionnaire response at Exhibit 5.

[79] *See* section 776(b) of the Act.

[80] The GOC reported that it maintains an ownership or management interest in nine producers. However, two of these companies were among the 30 already analyzed above.

[81] *See* October 19, 2011 CVD Petition at 40, Exhibit 154.

[82] *See* Trina Solar's February 27, 2012 supplemental questionnaire response at Exhibit 16–18.

[83] *See* Preliminary Benchmark Memorandum at Attachment 2.

[84] There appears to be no information on the record indicating whether Suntech purchases polysilicon through short-term or long-term contracts, the spot market, or a mixture of one or more of these.

of not less than 20 years; (4) the total assets of the owner hosting the project must not be less than 100 million Yuan, and its capital must not be less than 30 percent of the total investment; and (5) the photovoltaic project must be technologically advanced, and the project's host must be able to operate and protect the project. Project applications are then reviewed by the GOC's Ministry of Finance, Ministry of Science, and the National Energy Board. According to the GOC, grid-connected photovoltaic power generation projects can receive up to 50 percent of their total investment from the GOC. For independent photovoltaic power generation systems located in distant areas without an established electrical grid, project operators can receive up to 70 percent of their total investment from the GOC.

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

Wuxi Suntech reported that it did not participate in this program in 2009 (the year this program was established) or during the POI. Trina Solar, however, reported that it received a grant during the POI from the Jiangsu Reform and Development Committee for installing a photovoltaic energy-generating project.[85] We preliminarily determine that the grant received by Trina Solar through the Golden Sun program confers a countervailable subsidy. The grant is a financial contribution pursuant to section 771(5)(D)(i) of the Act and provides a benefit in the amount of the grant provided, pursuant to 19 CFR 351.504(a). We find that grants from this program are specific as a matter of law to certain enterprises, namely those involved in the construction of solar-powered projects, pursuant to section 771(5A)(D)(i) of the Act. In its March 1, 2012 supplemental questionnaire, the GOC contends that the Golden Sun program is similar to several programs alleged in the CVD petition for wind towers from the PRC that the Department determined not to investigate. According to the GOC, the Department determined the benefit element of a subsidy had not been demonstrated, despite the petition's allegation that wind tower producers benefitted through an increase in demand caused by the GOC's financial assistance to the operators of wind tower projects.[86] Thus, the GOC contends that the Department should discontinue its investigation of the Golden Sun program because it does not benefit Chinese producers of solar cells, only those involved in the construction of solar power projects.[87] However, in the instant investigation, it is not necessary to address this argument as Trina Solar benefitted directly from the program as the recipient of the grant.

In accordance with 19 CFR 351.504(c)(1) and 19 CFR 351.524(b)(2), we have treated the grant as a non-recurring subsidy and performed the ''0.5 percent test'' for the year the grant was provided to Trina Solar. Specifically, we divided the total amount of the grant by the appropriate total sales denominator, as discussed in the ''Subsidies Valuation Information'' section above, and in the Preliminary Calculations Memoranda. Because the resulting percentage was less than 0.5 percent, we have expensed the full amount of the grant in the POI. To determine Trina Solar's subsidy rate from the grant, we divided the benefit expensed in the POI by the appropriate total sales denominator, as discussed in the ''Subsidies Valuation Information'' section above, and in the Preliminary Calculations Memoranda. On this basis, we preliminarily determine a countervailable subsidy rate of 0.09 percent *ad valorem* for Trina Solar.

B. Preferential Policy Lending

Petitioner alleged that the GOC subsidizes solar cells producers through the provision of policy loans. According to Petitioner, the GOC provides for preferential policy lending to solar cells producers through the Renewable Energy Law, the Medium- and Long-Term Development Plan for Renewable Energy in China, the ''Interim Measures for the Administration of Financial Subsidy Fund for Renewable and Energy Saving-Building Materials,'' and a ''multitude of other Chinese central government programs and measures, notably including the PRC's Twelfth Five-Year Plan.''

Both respondents reported having loans outstanding during the POI. The Department finds that the loans to both respondents are countervailable. The information on the record indicates the GOC has placed great emphasis on targeting the renewable energy industry, including solar cells producers, for development in recent years.[88] 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 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,[89] and which the Department has relied upon in prior specificity determinations. Catalogue

[85] Besides this single grant, other grants have been approved for respondents but none resulted in disbursements during the POI.

[86] *See Utility Scale Wind Towers From the People's Republic of China: Initiation of Countervailing Duty Investigation,* 77 FR 3447 (January 24, 2012), and accompanying Initiation Checklist at 38–39; *see also* the GOC's March 1, 2012 supplemental questionnaire response at 3.

[87] *See* the GOC's March 1, 2012 supplemental questionnaire response at 4.

[88] In addition to the documents noted by Petitioner, referred to above, concern with the solar cells industry is demonstrated in the National Medium- and Long-Term Program for Science and Technology Development (the GOC's January 31, 2012 questionnaire response at Exhibit O–II–A–6–b) and the Interim Measures for Special Fund Management for the Development of Renewable Energies (the GOC's January 31, 2012 questionnaire response at Exhibit O–II–A–6–d), and specific projects undertaken pursuant to these plans, laws, and measures, such as the Golden Sun program (O–II–A–6–h). This concern has culminated in the recently issued five-year plan for the Solar Cells Industry (for the 12th planning period, beginning after the end of the POI), the first five-year plan issued for this industry.

[89] *See, e.g., Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances,* 73 FR 40480 (July 15, 2008) (*Tires Final Determination*) and accompanying Issues and Decision Memorandum at ''Government Policy Lending'' section.

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.'' [90]

Therefore, given the evidence demonstrating the GOC's objective of developing the renewable energy sector, and solar cells producers in particular, through loans and other financial incentives, we preliminarily determine there is a program of preferential policy lending specific to solar cells producers, within the meaning of section 771(5A)(D)(i) of the Act. We also preliminarily find that loans from state owned commercial banks (SOCBs) under this program constitute financial contributions, pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act, because SOCBs are ''authorities.'' [91] 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.[92] To calculate the benefit from this program, we have used the benchmarks discussed above under the ''Subsidy Valuation Information'' section.[93] On this basis, we preliminarily determine a subsidy rate of 0.84 percent *ad valorem* for Trina Solar and 1.23 percent *ad valorem* for Wuxi Suntech.

C. Provision of Polysilicon for LTAR

Petitioners have alleged that the respondents received countervailable subsidies in the form of the provision of polysilicon for LTAR. For the reasons explained in the ''Use of Facts Otherwise Available and Adverse Inferences'' section above, we are basing our determination regarding the government's provision of polysilicon, in part, on AFA. Specifically, we have determined as AFA that the producers of the polysilicon purchased by both respondents are ''authorities'' within the meaning of section 771(5)(B) of the Act and, as such, the provision of polysilicon constitutes a financial contribution under section 771(5)(D)(iii) of the Act. Further, we have determined as AFA that the provision of polysilicon at LTAR is specific to solar cells producers. Lastly, a benefit is being conferred because the polysilicon is being provided for LTAR, as explained below.

As discussed above under the ''Subsidies Valuation Information'' section, the Department is selecting for polysilicon benchmarks contemporaneous monthly world market prices from Photon Consulting's ''Silicon Price Index.'' This information was placed on the record of this investigation in the petition. The Department has adjusted the benchmark price to include delivery charges, import duties, and value added tax (VAT) pursuant to 19 CFR 351(a)(2)(iv).[94] Regarding delivery charges, we have included ocean freight and the inland freight charges that would be incurred to deliver polysilicon to respondents' production facilities. We have added import duties as reported by the GOC, and the VAT applicable to imports of polysilicon into the PRC, also as reported by the GOC.[95] In calculating VAT, we applied the applicable VAT rate to the benchmark after first adding amounts for ocean freight and import duties. We have compared these monthly benchmark prices to the respondents' reported purchase prices for individual transactions, including VAT and delivery charges.

Based on this comparison, we preliminarily determine that polysilicon was provided for LTAR and that a benefit exists for each respondent in the amount of difference between the benchmark prices and the prices each respondent paid.[96] We divided the total benefits for each respondent by the appropriate total sales denominator, as discussed in the ''Subsidies Valuation Information'' section above, and in the Preliminary Calculations Memoranda. On this basis, we preliminarily determine a countervailable subsidy rate of 1.07 percent *ad valorem* for Trina Solar and 0.35 percent *ad valorem* for Wuxi Suntech.

D. Provision of Land for LTAR

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

In order to calculate the benefit, we first multiplied the Thailand industrial land benchmarks discussed above under the ''Land Benchmark'' section, by the total area of Trina Solar's countervailed tracts. As noted above, we have benchmarks for 2007 and 2010. For other years in which land was provided, we deflated either the 2007 or 2010 figure, depending on which was closer in time to the year of the relevant land-use agreement. We then subtracted the price actually paid for each tract to derive the total unallocated benefit. We next conducted the ''0.5 percent test'' of 19 CFR 351.524(b)(2) for the year of the relevant land-use agreement by dividing the total unallocated benefit for each tract by the appropriate sales denominator. If more than one tract was provided in a single year, we combined the total unallocated benefits from the tracts before conducting the ''0.5 percent test.'' As a result, we found that the benefits were greater than 0.5 percent of relevant sales and that allocation was appropriate for all tracts. We allocated the total unallocated benefit amounts across the terms of the land-use agreements, using the standard allocation formula of 19 CFR 351.524(d), and determined the amount attributable to the POI. We then summed all of the benefits attributable to the POI and divided this amount by the appropriate total sales denominator, as discussed in the ''Subsidies Valuation Information'' section above, and in the Preliminary Calculations Memoranda, to derive a subsidy rate of 0.63 percent *ad valorem* for Trina Solar.

As discussed below under the section ''Programs for Which Additional Information is Required,'' we will be requesting additional information regarding land-use rights provided to Wuxi Suntech.

E. ''Two Free, Three Half'' Program for Foreign-Invested Enterprises

Under Article 8 of the ''Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises,'' 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 program was terminated effective January 1, 2008, by the Enterprise Income Tax Law, but

[90] Additional Documents Memorandum (which includes the Directory Catalogue on Readjustment of Industrial Structure (2005 version)) at Attachment VI.

[91] *See, e.g., Tires Final Determination,* and accompanying Issues and Decision Memorandum at Comment E2.

[92] *See* section 771(5)(E)(ii) of the Act.

[93] *See also* 19 CFR 351.505(c).

[94] The Department has concluded that these data do not already include delivery charges. *See* Preliminary Benchmark Memorandum.

[95] *See* Preliminary Benchmark Memorandum for a full explanation of how the benchmarks were adjusted.

[96] *See* 19 CFR 351.511(a).

companies already enjoying the preference were permitted to continue paying taxes at reduced rates. Trina Solar did not claim these tax exemptions during the POI. However, two of Wuxi Suntech's cross-owned affiliated companies, Luoyang Suntech and Zhenjiang Huantai, paid taxes at a reduced rate under this program during the POI.

The Department has previously found the ''Two Free, Three Half'' program to confer a countervailable subsidy.[97] Consistent with the earlier cases, we preliminarily determine 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 forgone by the GOC and it provides a benefit to the recipient in the amount of the tax savings.[98] We also determine that the exemption/reduction afforded by the program is limited as a matter of law to certain enterprises, *i.e.,* productive FIEs, and, hence, is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit, we treated the income savings 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 rates to the rates they would have paid in the absence of the program. We divided Luoyang Suntech's and Zhenjiang Huantai's tax savings for their returns filed during the POI by the appropriate total sales denominator, as discussed in the ''Subsidies Valuation Information'' section above, and in the Preliminary Calculations Memoranda, 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 preliminarily determine a countervailable subsidy rate for Wuxi Suntech of 0.13 percent *ad valorem* for this program.

F. Preferential Tax Programs for High or New Technology Enterprises [99]

According to the GOC, this program became effective in January 2008 as part of the Enterprise Income Tax Law of the PRC (Decree 63 of the PRC, 2007). 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 high or new technology enterprises (HNTEs), regardless of whether the enterprise is an FIE or domestic company. The ''Circular of the Ministry of Science and Technology, the Ministry of Finance and the State Administration of Taxation on Printing and Distributing the Administrative Measures for Certification of New and High Technology Enterprises'' (Guo Ke Fa Huo {2008} No. 172), of April 14, 2008, identifies HNTEs as enterprises that have been registered for more than one year within the PRC and that have been engaged in continuous research and development and in the transformation of their scientific and technological achievements. This circular also specifically identifies the HNTEs that qualify for key state support, which includes renewable, clean energy technologies such as solar photovoltaic technologies.[100]

To apply as an HNTE, Chinese companies must complete a self-assessment process regarding whether they can meet the criteria for an HNTE, and they must submit the requisite application form, business license and tax registration forms, and documents that establish that the company has been conducting high technological or innovative activities. Enterprises that meet the eligibility criteria will be certified as HNTEs by the approving GOC authority, and this designation remains effective for three years. Both Trina Solar and Wuxi Suntech were recognized as HNTEs by the GOC during the POI, and their income tax rates were therefore reduced from 25 percent to 15 percent for tax returns filed during the POI as a result.

We preliminarily determine that the reduction in income tax paid by HNTEs under this program confers a countervailable subsidy. The income tax reduction is a financial contribution in the form of revenue forgone by the government, and it provides a benefit to the recipients in the amount of the tax savings, pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also preliminarily determine that the income tax reduction afforded by this program is limited as a matter of law to certain enterprises, *i.e.,* HNTEs, and, thus, is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit from this program to Trina Solar and Wuxi Suntech, we treated the income tax reductions claimed by Trina Solar and Wuxi Suntech as recurring benefits, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we compared their tax rates (15 percent) to the rate that would have been paid by Trina Solar and Wuxi 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, as discussed in the ''Subsidies Valuation Information'' section above, and in the Preliminary Calculations Memoranda. On this basis, we preliminarily determine a countervailable subsidy rate of 1.25 percent *ad valorem* for Trina Solar and 0.28 percent *ad valorem* for Wuxi Suntech.

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

Enacted in 1997, the ''Circular of the State Council on Adjusting Tax Policies on Imported Equipment'' (GUOFA No. 37), exempts both FIEs and certain domestic enterprises from VAT and tariffs on imported equipment used in projects identified in related catalogues. The NDRC, or its provincial branch, provides a certificate to enterprises that receive the exemption. The objective of the program is to encourage foreign investment and to introduce foreign advanced technology equipment and industry technology upgrades. Trina Solar, Wuxi Suntech, Luoyang Suntech, Shanghai Suntech, Zhenjiang Huantai, and Suzhou Kuttler received VAT and tariff exemptions under this program as FIEs. The Department has previously found VAT and tariff exemptions under this program to confer countervailable subsidies.[101]

Consistent with the earlier cases, we preliminarily determine that VAT and tariff exemptions on imported equipment confer a countervailable subsidy. The exemptions are a financial contribution in the form of revenue forgone by the GOC and they provide a benefit to the recipient in the amount of VAT and tariff savings.[102] We also

[97] *See CFS from the PRC* and CFS from the PRC Decision Memorandum at 11–12; *see also Seamless Pipe Final Determination,* and Seamless Pipe from the PRC Decision Memorandum at 25.

[98] *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).

[99] The Department notes we initiated an investigation of a program entitled, ''Preferential Tax Programs for FIEs Recognized as High or New Technology Enterprises.'' *See Initiation Notice* and accompanying Initiation Checklist at 20. The GOC states that this income tax reduction program for FIEs was terminated, but that a replacement program was created in 2008 by the Enterprise Income Tax Law of the PRC. *See* the GOC's January 31, 2012 questionnaire response at II–65.

[100] This program was described in detail in the GOC's March 1, 2012 supplemental questionnaire response at 23–24.

[101] *See* CFS from the PRC Decision Memorandum at 13–14; *see also Seamless Pipe Final Determination,* and Seamless Pipe from the PRC Decision Memorandum at 23–25.

[102] *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1).

preliminarily 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.[103]

Normally, we treat exemptions from indirect taxes and import charges, such as VAT and tariff exemptions, as recurring benefits, consistent with 19 CFR 351.524(c)(1), and allocate the benefits to the year in which they were received. However, when an indirect tax or import charge exemption is provided for, or tied to, the capital structure or capital assets of a firm, the Department normally treats it as a non-recurring benefit and allocates the benefit to the firm over the AUL.[104] In the instant investigation, Trina Solar, Wuxi Suntech, Luoyang Suntech, Shanghai Suntech, Zhenjiang Huantai, and Suzhou Kuttler have provided a list of VAT and tariff exemptions that they received for capital equipment imported after December 11, 2001. Based on this submitted information, we preliminarily determine that the VAT and tariff exemptions are tied to the capital structure or capital assets of these companies, and, as such, should be allocated over time.

To calculate the countervailable subsidy, we used our standard methodology for non-recurring grants.[105] In the years that the benefits received by each company under this program exceeded 0.5 percent of relevant sales for that year, we allocated the benefits over the AUL of 10 years, pursuant to 19 CFR 351.524(b)(1); 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 to 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 denominators as discussed in the ''Subsidies Valuation Information'' section above. On this basis, we preliminarily determine that Trina Solar received a countervailable benefit of 0.45 percent *ad valorem* and Wuxi Suntech received a countervailable benefit of 0.55 percent *ad valorem* for this program.

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

As outlined in GUOSHUIFA (1999) No. 171, ''Trial Administrative Measures on Purchase of Domestically Produced Equipment by FIEs,'' the GOC refunds the VAT on purchases of certain Chinese produced equipment to FIEs if the equipment is used for certain encouraged projects identified in related catalogues.[106] The Department has previously found this program to be countervailable.[107]

Trina Solar reported using this program from 2005 through 2009; Louyang Suntech reported using this program in 2008; and Zhenjiang Huantai reported using this program from 2004 through 2008. We preliminarily determine that the rebate of the VAT paid on purchases of Chinese-made equipment by FIEs confers a countervailable subsidy. The rebates are a financial contribution in the form of revenue forgone by the GOC and they provide a benefit to the recipients in the amount of the tax savings.[108] We further preliminarily determine that the VAT rebates are contingent upon the use of domestic over imported equipment and, hence, specific under section 771(5A)(A) and (C) of the Act.

Normally, we treat rebates from indirect taxes and import charges, such as VAT rebates, as recurring benefits, consistent with 19 CFR 351.524(c)(1), and expense these benefits in the year they were received. However, when an indirect tax or import charge exemption is provided for, or tied to, the capital structure or capital assets of a firm, the Department normally treats it as a non-recurring benefit and allocates the benefit to the firm over the AUL.[109] Because the rebates under this program were tied to purchased equipment, we preliminarily determine that the benefits under this program are tied to the capital structure or capital assets of the companies and that they should be allocated over time.

For those companies that received benefits under this program, we applied the ''0.5 percent test,'' pursuant to 19 CFR 351.524, for each of the years in which rebates were received. For the years in which the rebate amount was less than 0.5 percent of the relevant sales figure, we expensed the rebates in the year of receipt, consistent with 19 CFR 351.524(a). For those years in which the VAT rebates were greater than or equal to 0.5 percent, we allocated the rebate amount over the AUL. We used the discount rates described above in the ''Subsidies Valuation Information'' section to calculate the amount of the benefit allocable to the POI. On this basis, we preliminarily determine that Trina Solar received a countervailable subsidy rate of 0.01 percent *ad valorem* under this program. As Luoyang Suntech and Zhenjiang Huantai did not receive rebates during the POI and, as none of the rebates they received prior to the POI passed the 0.5 percent test, no benefits for either company were allocated to the POI. Therefore, we preliminarily determine that Wuxi Suntech did not receive a benefit under this program during the POI.

I. Sub-Central Government Subsidies for Development of ''Famous Brands'' and ''China World Top Brands''

According to the ''Implementation Opinion on Further Promoting the Development of Brand Economy'' (XIZHENGFA {2006} No. l06), the government of Wuxi City provides a lump sum award to enterprises that receive a ''famous brands'' certificate. The award is jointly provided by the city, county, and district finance bureaus. Though this program is operated at the local level, the GOC issued the circular titled ''Measures for the Administration of Chinese Top-Brand Products,'' which requires that firms provide information in their ''famous brands'' applications concerning their export ratios as well as the extent to which their product quality meets international standards.[110] During the POI, Wuxi Suntech reported receiving a famous brands grant under this program from the local government.

We preliminarily determine that the grant that Wuxi 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. Consistent with prior determinations regarding grants under

[103] *See* CFS from the PRC Decision Memorandum at Comment 16.

[104] *See* 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).

[105] *See* 19 CFR 351.524(b).

[106] *See* the GOC's January 31, 2012 questionnaire response at II–79, and at Exhibit O–II–D–2–a.

[107] *See* Citric Acid from the PRC Decision Memorandum at 20; *see also* CFS from the PRC Decision Memorandum at 13–14.

[108] *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1).

[109] *See* 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).

[110] *See* the 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.''

the famous brands program,[111] we determine that the grant provided to Wuxi Suntech under the ''famous brands'' program is contingent on export activity. As noted above, ''Measures for the Administration of Chinese Top-Brand Products'' of the central government makes clear that one criterion under this program is a company's export activity. As such, therefore, we find that the program is specific under section 771(5A)(B) of the Act. Grants are normally treated as non-recurring 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, as discussed in the ''Subsidies Valuation Information'' section above, and in the Preliminary Calculations Memoranda, to determine a subsidy rate less than 0.005 percent *ad valorem.* As such, this subsidy has no impact on the overall subsidy rate.

J. Discovered Grants

As explained above, the Department has determined that numerous grants provided to respondents are countervailable based upon AFA. Pursuant to 19 CFR 351.524(c) the Department normally treats grants as non-recurring subsidies. As such, the Department applied the ''0.5 percent test'' of 19 CFR 351.524(b) to each grant, individually, to determine whether it should be allocated. 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. Respondents' program descriptions indicate certain grants were export contingent. We determined 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. After summing all the subsidy rates arising from the remaining Discovered Grants, rounded to the nearest one-hundredth of one percent, we calculated a combined subsidy rate of 0.39 percent *ad valorem* for Trina Solar and 0.36 percent *ad valorem* for Wuxi Suntech. The grants found to be used during the POI that are publicly identified by respondents are listed below. Those grants that were bracketed by the respondents, along with the individual subsidy rates for all grants, are listed in the business-proprietary Preliminary Calculations Memoranda.[112]

1. Wuxi Airport 800KW program
2. PV Technology Research Institute of Jiangsu (Suntech)
3. Fund for Solar Optoelectronic Application Demonstration by Management Committee of the New District
4. Self-Research on Core Equipment of Solar PV and Semiconductor Lighting Industry—Self Research on New On-Line Direct Method PEVCD
5. Demonstration Project of 300KW Roof Solar PV Grid Power Generation System
6. Industrialization and Research of New Solar Cells
7. Research and Industrialization of Thin Film Cells
8. Research on Highly Efficient and Low-Cost Thin Film Cells
9. Technology and Application Research on Glass-Base Suede Gazno Transparent and Electrically Conductive Film Manufacture
10. Demonstration Program of 300KV Roof Solar PV Grid Power Generation System
11. Renewable Energy of Finance of Bureau, Wuxi City
12. Research on New-Style High-Transmission Solar Cell Reducing the Refection Film with Nano Structure
13. Fund for Construction of Suntech's Energy Institution by the Management Committee of New District
14. Public Welfare Project Funding From Supervision and Examination Station of Product Quality, Wuxi City
15. Provincial Export Credit Insurance Supporting Development Fund Allocation by Management Committee of New District from December 2008 to June 2009
16. Patent Fund from Management Committee of New District, Wuxi Government
17. Special Reward for ''333'' Program by Municipal Organization Department
18. Science and Research Budget Allocation for Renewable-Energy Construction Application Technology Project of Wuxi Suntech's R&D Building by Construction Bureau of Wuxi
19. Photovoltaic Technology Research Expenses by Personnel Bureau
20. Social Insurance Fund for Employers from Sichuan Earthquake Stricken Area
21. Import Discount by Jiangsu Provincial Government
22. Employment Expansion Planning Reward by Management Committee of New District
23. Fund for Demonstration Company of 2009 Provincial Intelligence Introduction Program
24. The First Group of Patent Fund in 2010 Provided by the Wuxi Government
25. Research, Development and Industrialization of Technology and Key Equipment for P–Type Solar Power Cells with High Efficiency and Low Cost
26. Award for Luoyang City Outstanding Private Enterprise for 2009
27. Plan for Thousand Talents

II. Programs Preliminarily Determined To Be Not Used by Respondents in the POI

We preliminarily determine that Trina Solar and Wuxi Suntech did not apply for or receive benefits during the POI under the programs listed below. Because of the complicated cross-ownership issues in this investigation, we are continuing to gather information concerning the reported non-use of these programs by all companies that may be cross-owned within each company's corporate structure.

[111] *See, e.g., Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 76 FR 18521 (April 4, 2011), and accompanying Issues and Decision Memorandum at the section ''GOC and Sub-Central Government Grants, Loans, and Other Incentives for Development of Famous Brands and China World Top Brands,'' and *Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 75 FR 28557 (May 21, 2010) (*PC Strand from the PRC*), and accompanying Issues and Decision Memorandum (PC Strand from the PRC Decision Memorandum) at the section ''Subsidies for Development of Famous Export Brands and China World Top Brands at Central and Sub-Central Level.''

[112] The Department intends to seek clarification from the respondents regarding why most program names are business proprietary.

A. Export Product Research and Development Fund

B. Subsidies for Development of ''Famous Brands'' and ''China World Top Brands''

C. Special Energy Fund (Established by Shandong Province

D. Funds for Outward Expansion of Industries in Guangdong Province

E. Government Provision of Aluminum for LTAR

Petitioner's allegation focused on primary aluminum.[113] Both respondents reported that they did not purchase primary aluminum, only aluminum extrusions, a downstream product produced from primary aluminum. Therefore, we are preliminarily finding this program to be not used by the respondents.

F. Income Tax Reductions for Export-Oriented FIEs

G. Income Tax Benefits for FIEs Based on Geographic Location

H. Local Income Tax Exemption and Reduction Programs for ''Productive'' FIEs

I. Tax Refunds for Reinvestment of FIE Profits in Export-Oriented Enterprises

J. Tax Reductions for High and New-Technology Enterprises Involved in Designated Projects

K. Preferential Income Tax Policy for Enterprises in the Northeast Region

L. Guangdong Province Tax Programs

M. VAT and Tariff Exemptions for Purchases of Fixed Assets Under the Foreign Trade and Development Fund Program

N. Tax Reductions for FIEs Purchasing Chinese-Made Equipment

Certain cross-owned affiliates of the respondents reported receiving tax reductions under this program prior to the POI. Because the Department has treated this program as a recurring subsidy program in prior investigations, we preliminarily determine the reductions to be recurring in this investigation as well. Therefore, no benefits were received during the POI by the respondents.

O. Export Credit Subsidy Programs

P. Export Guarantees and Insurance for Green Technology

After analyzing the responses of Trina Solar and Wuxi Suntech, the Department preliminarily determines that neither of the respondents received benefits under this program during the POI.[114]

Q. Discovered Grants

As explained above, the Department has determined, as AFA, that numerous grants provided to the respondents are countervailable. Pursuant to 19 CFR 351.524(c) the Department normally treats grants as non-recurring subsidies. As such, the Department applied the ''0.5 percent test'' of 19 CFR 351.524(b) to each grant, individually, to determine whether it should be allocated. Most of the Discovered Grants received prior to the POI failed the 0.5 percent test and were therefore expensed prior to the POI. Thus, all such grants are preliminarily found to have been not used during the POI by the respondents. None of these grants were publicly identified by the respondents. Therefore, these ''non-used'' grants are all listed in the business-proprietary Preliminary Calculations Memoranda.

III. Programs for Which Additional Information Is Required

The Department finds that additional information is needed in order to determine whether the following programs are countervailable. After gathering and analyzing the additional information, the Department intends to issue a post-preliminary analysis regarding whether these programs are countervailable.

A. The Provision of Land for LTAR to Wuxi Suntech

As discussed above, the GOC did not provide all of the information requested regarding how prices paid by respondents for land-use rights were determined and the information provided requires further clarification.[115] The Department intends to request further information for land provided to Wuxi Suntech. The Department also intends to request additional information from the GOC regarding the reported private nature of some of the parties from which Wuxi Suntech purchased land-use rights.

B. Provision of Electricity for LTAR

The questionnaire responses were not complete regarding the alleged provision of electricity for LTAR. These questions requested information needed by the Department to determine whether such a provision was specific with the meaning of section 771(5A) of the Act, and whether a benefit within the meaning of section 771(5)(E) of the Act was provided. The Department intends to request further information from the GOC after the issuance of this preliminary determination.

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

According to the GOC, Article 30.1 of the Enterprise Income Tax Law of the PRC created a new program regarding the deduction of research and development expenditures for all enterprises.[116] This provision allows enterprises to deduct, through tax credits, research expenditures incurred in the development of new technologies, products, and processes. Article 95 of ''The Release of Regulations on the Implementation of Enterprise Income Tax Law of the People's Republic of China by the State Council, [2007] No. 512,'' December 6, 2007, provides that if eligible research expenditures do not ''form part of the intangible assets value,'' an additional 50 percent deduction from taxable income may be taken on top of the actual accrual amount. 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 Solar and Wuxi Suntech both reported benefitting from this program during the POI. The Department intends to request additional information regarding the specificity of the program.

Verification

In accordance with section 782(i)(1) of the Act, the Department will verify the information submitted by the GOC, Trina Solar, and Wuxi Suntech, prior to making our final determination.

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we have calculated an individual countervailable subsidy rate for each respondent. Section 705(c)(5)(A)(i) of the Act states that for companies not individually investigated, we will determine an all others rate equal to the weighted average of the countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any

[113] *See* Initiation Checklist at 12.

[114] *See* Preliminary Calculations Memoranda for an analysis of the respondents' business proprietary information.

[115] The Department did not ask exactly the same questions of the GOC regarding land provided to both respondents. The Department had additional questions regarding auction sales to Trina Solar that were not relevant to Suntech.

[116] The GOC notes that the provision providing this income tax reduction to FIEs was terminated in 2008 by the Enterprise Income Tax Law of the PRC. *See* the GOC's January 31, 2012 submission at II–62.

rates based entirely on AFA under section 776 of the Act.

Notwithstanding the language of section 705(c)(5)(A)(i) of the Act, we have not calculated the ''all others'' rate by weight averaging the rates of Trina Solar and Wuxi Suntech, because doing so risks disclosure of proprietary information. Therefore, we have calculated an average rate using other information on the record.[117] Since both Trina Solar and Wuxi Suntech received countervailable export subsidies and the ''all others'' rate is an average based on the individually investigated exporters and producers, the ''all others'' rate includes export subsidies.

We preliminarily determine the total countervailable subsidy rates to be as follows.

Company	Subsidy rate
Changzhou Trina Solar Energy Co., Ltd.	4.73 percent *ad valorem*.
Trina Solar (Changzhou) Science and Technology Co., Ltd (collectively, Trina Solar)	
Wuxi Suntech Power Co., Ltd	2.90 percent *ad valorem*.
Luoyang Suntech Power Co., Ltd	
Suntech Power Co., Ltd	
Yangzhou Rietech Renewal Energy Co., Ltd	
Zhenjiang Huantai Silicon Science & Technology Co., Ltd	
Kuttler Automation Systems (Suzhou) Co., Ltd (collectively, Wuxi Suntech)	
All Others Rate	3.61 percent *ad valorem*.

In accordance with sections 703(d)(1)(B) and (2), and 703(e)(2)(A) of the Act, in light of our preliminary affirmative determination of critical circumstances, we are directing CBP to suspend liquidation of all entries of the subject merchandise from the PRC that are entered or withdrawn from warehouse, for consumption on or after the date 90 days prior to the date of publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entities of the merchandise in the amounts indicated above.

ITC Notification

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

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

Disclosure and Public Comment

In accordance with 19 CFR 351.224(b), we will disclose to the parties the calculations for this preliminary determination within five days of its announcement. We will notify parties of the schedule for submitting case briefs and rebuttal briefs, in accordance with 19 CFR 351.309(c) and 19 CFR 351.309(d)(1), respectively. A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice, pursuant to 19 CFR 351.310(c). Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made in this investigation, we intend to hold the hearing two days after the deadline for submission of the rebuttal briefs, pursuant to 19 CFR 351.310(d). Any such hearing will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Parties should confirm by telephone, the date, time, and place of the hearing 48 hours before the scheduled time.

This determination is issued and published pursuant to sections 703(f) and 771(i) of the Act.

Dated: March 19, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–7273 Filed 3–23–12; 8:45 am]

BILLING CODE 3510–DS–P

[117] *See* Memorandum to the File from Emily Halle, ''Calculation of the All-Others Rate,'' March 19, 2012, providing the precise calculation and demonstrating the proximity of the resulting figure to the figure derived using the business-proprietary data.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket Number: 120216139–2138–01]

Buy American Exception Under the American Recovery and Reinvestment Act of 2009

AGENCY: National Institute of Standards and Technology, U.S. Department of Commerce.

SUMMARY: The Department of Commerce, National Institute of Standards and Technology is providing notice of a determination of an exception to the Buy American Provisions of the American Recovery and Reinvestment Act of 2009 (ARRA or Recovery Act), for inverters necessary for the construction of a solar array system at NIST's WWVH radio station in Kauai, HI.

FOR FURTHER INFORMATION CONTACT: Jason Gerloff, Contracting Officer, Acquisition Management Division, 303–497–6320, National Institute of Standards and Technology, 325 Broadway, Boulder, CO 80305.

SUPPLEMENTARY INFORMATION: Section 1605 of the Recovery Act (Pub. L. 111–5) prohibits use of recovery funds ''for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods