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International Trade Administration
Washington, D.C. 20230

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Investigation
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April 18, 2025

MEMORANDUM TO: Christopher Abbott
Deputy Assistant Secretary
for Policy and Negotiations
performing the non-exclusive functions and duties
of the Assistant Secretary for Enforcement and Compliance

FROM: Elizabeth Eastwood
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Affirmative Determination of the Countervailing Duty Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from Cambodia

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I. SUMMARY

The U.S. Department of Commerce (Commerce) 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 Kingdom of Cambodia (Cambodia), as provided in section 705 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is January 1, 2023, through December 31, 2023. The mandatory respondents subject to this investigation are Solarspace New Energy (Cambodia) Co., Ltd. (formerly known as L-Q New Energy Co., Ltd) (Solarspace) and Jintek Photovoltaic Technology Co., Ltd (Jintek). The petitioner is the American Alliance for Solar Manufacturing Trade Committee.

We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of issues for which we received comments from interested parties:

Comment 1:	Whether Commerce has the Legal Authority under the WTO Rules and U.S. Law to Investigate Transnational Subsidies
Comment 2:	Selection of Silicon Wafer and Solar Glass Benchmarks
Comment 3:	Policy Lending from Chinese Banks for Belt and Road Initiative (BRI) Capacity Cooperation Projects
Comment 4:	Substantial Evidence for the Cross-Border Provision of Chinese Origin Polysilicon, Silicon Wafer, Silver Paste, Solar Glass for Less-Than-Adequate-Remuneration (LTAR)

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Comment 5: Specificity for the Cross-Border Provision of Chinese Polysilicon, Silicon Wafer, Silver Paste, Solar Glass for LTAR
Comment 6: Whether the Cross-Border Provision of Chinese Silicon Wafer for LTAR is Tied to Non-Subject Merchandise
Comment 7: Application of Adverse Facts Available (AFA) to the Government of Cambodia's Responses
Comment 8: AFA Rates
Comment 9: ISC Cambodia
Comment 10: Specificity of Electricity Programs
Comment 11: Benefit of Customs Duty Exemption for Raw Materials Program
Comment 12: Specificity of Business Recovery Guarantee Scheme

II. BACKGROUND

On October 4, 2024, Commerce published its *Preliminary Determination* of the countervailing duty (CVD) investigation of solar cells from Cambodia.[1] On November 4, 2024, Commerce received timely requests for a hearing from Solarspace and the petitioner, respectively.[2]

Between January 13 and 24, 2025, Commerce conducted verification of Solarspace's parent company, Solarspace Technology Co., Ltd. (Solarspace Tech), the Government of Cambodia, and Solarspace to verify the information relied upon in making this final determination, in accordance with section 782(i) of the Act.[3] On January 31, 2025, Commerce issued a post-preliminary determination memorandum.[4]

On August 12, 2024, the petitioner timely submitted a new subsidy allegation regarding the Export Buyer's Credit program (EBCP).[5] For this program, we have not yet made a decision on whether to initiate an investigation; we are deferring this decision until the first administrative review (should this investigation result in a CVD order). Due to the novelty and complexity of this allegation, including the transnational subsidy issues raised and the time needed to investigate and consider all the information, we find that we did not have sufficient time before the final determination to review and examine this allegation.

On August 27, 2024, the petitioner also timely submitted new subsidy allegations regarding two programs: (1) Cross-Border Provision of Aluminum Solar Frames from the Government of

[1] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the Kingdom of Cambodia: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 89 FR 80877 (October 4, 2024) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).
[2] *See* Solarspace's Letter, "Request for Hearing," and Petitioners' Letter, "Hearing Request," both dated November 4, 2024.
[3] *See* Memoranda, "Verification of Solarspace Technology Co., Ltd.," dated February 11, 2025 (Solarspace Tech Verification Report); "Verification of Solarspace New Energy (Cambodia) Co., Ltd.," (Solarspace Verification Report) dated February 15, 2025; and "Notification of Deadlines for the submission of Case and Rebuttal Briefs," dated February 18, 2025 at Attachment (Government of Cambodia Verification Memorandum).
[4] *See* Memorandum, "Decision Memorandum for the Post-Preliminary Determination of the Countervailing Duty Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the Kingdom of Cambodia," dated January 31, 2025 (Post-Preliminary Determination).
[5] *See* Petitioner's Letter, "New Subsidies Allegation," dated August 13, 2024 (NSA1).

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China for LTAR to Vietnamese Solar Cell Producers; (2) Cross-Border Provision of Photovoltaic (PV) Junction Boxes from the Government of China for LTAR to Vietnamese Solar Cell Producers; (3) Value Added Tax (VAT) Incentives for Zone Investors in Special Economic Zones (SEZs); and (4) VAT Exemption for Locally Made Production Inputs Under the Law on Investment.[6] On February 11, 2025, we initiated an investigation of these four programs, but also deferred this investigation until the first administrative review (should this investigation result in a CVD order), for similar reasons stated above.[7]

On March 12, 2025, the Government of the People's Republic of China (Government of China), Solarspace, the petitioner, BYD America LLC (BYD America), and the Government of the Kingdom of Cambodia (Government of Cambodia) timely submitted case briefs.[8] On March 20, 2025, the petitioner, Solarspace, and the Government of Cambodia timely submitted rebuttal briefs.[9] On April 3, 2025, Commerce held a public hearing.[10]

III. CHANGES SINCE THE *PRELIMINARY DETERMINATION*

See the "Analysis of Programs" and "Discussion of the Issues" section below for summaries of the comments and Commerce's positions on the issues raised in the case and rebuttal briefs.

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

Commerce relied on "facts otherwise available" with an adverse inference, in the *Preliminary Determination* and the Post-Preliminary Determination with respect to the following four companies: (1) ISC Cambodia; (2) Jintek Photovoltaic Technology Co., Ltd (Jintek); (3) Solar Long PV-Tech (Cambodia) Co., Ltd. (Solar Long); and (4) Hounen Solar Inc Co., Ltd. (Hounen).[11] In this final determination, Commerce made no changes to its decision to apply AFA to these companies. However, since the Post-Preliminary Determination,[12] the total AFA subsidy rate has been revised due to the inclusion of the Co-Financing Guarantee Scheme program and the recalculation of several program subsidy rates. *See* Comments 5 and 7. The final AFA countervailable subsidy rate assigned to these four companies to which we applied AFA is 3,466.40 percent. For the updated AFA rate calculation, *see* the appendix to this memorandum.

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[6] *See* Petitioner's Letter, "New Subsidy Allegations," dated August 27, 2024.
[7] *See* Memorandum, "Decision Memorandum on Additional New Subsidy Allegations," dated February 11, 2025.
[8] *See* Government of China's Letter, "GOPRC Case Brief" (Government of China Case Brief); Solarspace's Letter, "Solarspace's Case Brief" (Solarspace Case Brief); Petitioner's Letter, "Case Brief" (Petitioner Case Brief); BYD America's Letter, "Case Brief of BYD America LLC" (BYD Case Brief); and the Government of Cambodia's Letter, "Case Brief" (Government of Cambodia Case Brief); all dated March 12, 2025.
[9] *See* Petitioner's Letter, "Rebuttal Brief" (Petitioner Rebuttal Brief); Solarspace's Letter, "Solarspace's Rebuttal Brief" (Solarspace Rebuttal Brief); Government of Cambodia's Letter, "Rebuttal Brief" (Government of Cambodia Rebuttal Brief); all dated March 20, 2025.
[10] *See* Hearing Transcript, "Public Hearing in the Matter of: the Countervailing Duty Investigation on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the Kingdom of Cambodia," dated April 3, 2025.
[11] *See Preliminary Determination* PDM at 10-12 and Post Preliminary Determination at 8-14.
[12] *Id*.

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V. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

Commerce made no changes to, and interested parties raised no issues in their case briefs regarding, the allocation period used in the *Preliminary Determination*.[13]

B. Attribution of Subsidies

Commerce made no changes to, and interested parties raised no issues in their case briefs regarding, the methodologies used in the *Preliminary Determination* for attributing subsidies.[14]

C. Denominators

Based on comments submitted by interested parties, we have revised Solarspace's benefit calculation from that used in the Post-Preliminary Determination with respect to the Cross-Border Provisions of Silicon Wafers and Solar Glass from the Government of China for LTAR programs, as discussed in the "Discussion of the Issues" section, below. *See* Comment 5.

D. Discount Rates

Commerce made no changes to, and interested parties raised no issues in their case briefs regarding, the discount rates used in the *Preliminary Determination*.[15]

VI. ANALYSIS OF PROGRAMS

We made no changes to our *Preliminary Determination* and Post-Preliminary Determination with respect to the methodologies used to calculate the subsidy rates for the following programs, except as explained below. For descriptions, analyses, and calculation methodologies for these programs, *see Preliminary Determination* and Post-Preliminary Determination. The final program rates are as follows:

A. Programs Determined to Be Countervailable

1. Customs Duty Exemption and Related Incentives for Production Equipment for Export QIPs and Supporting Industry Qualified Investment Projects (QIP)

Interested parties did not submit comments in their case and rebuttal briefs regarding this program. However, we made changes to the *Preliminary Determination* regarding the calculation of the subsidy rate for this program based on Solarspace's Verification Report.[16]

Solarspace: 2.22 percent *ad valorem*

[13] *See Preliminary Determination* PDM at 19-20.
[14] *Id*. at 20-21.
[15] *See Preliminary Determination* PDM at 21.
[16] *See* Solarspace Verification Report at 2 and 9 and Solarspace Final Calculation Memorandum.

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2. Customs Duty Exemption and Related Incentives for Raw Materials for Export QIPs

Interested parties submitted comments in their case and rebuttal briefs regarding this program in Comment 11. We made changes to the *Preliminary Determination* regarding the calculation of the subsidy rate for this program based on Solarspace's Verification Report.[17]

Solarspace: 5.97 percent *ad valorem*

3. Cross-Border Provision of Silicon Wafers from the Government of China for LTAR

Interested parties submitted comments in their case and rebuttal briefs regarding this program. We made changes to the Post-Preliminary Determination regarding the calculation of the subsidy rate for this program based on the minor corrections mentioned in Solarspace's Verification Report and on the changes explained in Comment 5.[18]

Solarspace: 471.25 percent *ad valorem*

4. Cross-Border Provision of Solar Glass from the Government of the People's Republic of China for LTAR

Interested parties submitted comments in their case and rebuttal briefs regarding this program. We made changes to the Post-Preliminary Determination regarding the calculation of the subsidy rate for this program based on the changes explained in Comment 5.

Solarspace: 55.23 percent *ad valorem*

B. **Program Determined to Not Be Used by Solarspace During the POI**[19]

1. Income Tax Exemption for Qualified Investment Projects under the Law on Investment (LOI)
2. Special Depreciation for Qualified Investment Activities under the LOI
3. Tax Deduction for Certain Activities under the LOI
4. Tax Incentives for QIPs in Special Economic Zones (SEZ)
5. Property Tax Exemptions for SEZs
6. Electricity Fee Reduction[20]
7. Custom Duty Exemption for Zone Investors in SEZs
8. Rural Electrification Fund[21]

[17] *Id*.
[18] *See* Solarspace Verification Report at 2.
[19] While these programs were not used by Solarspace, Commerce continues to find that these programs constitute financial contributions and are specific for purposes of applying AFA to the AFA companies. *See Preliminary Determination* PDM and Post-Preliminary Determination for our complete analysis of these programs.
[20] Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. *See* Comment 10.
[21] *Id*.

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9. Business Recovery Guarantee Scheme[22]
10. Co-Financing Guarantee Scheme[23]
11. Policy Lending from Chinese Banks for BRI Capacity Cooperation Projects[24]
12. Cross-Border Provision of Polysilicon Inputs from the Government of China for LTAR[25]
13. Cross-Border Provision of Silver Paste from the Government of the People's Republic of China for LTAR[26]

VII. DISCUSSION OF THE ISSUES

Comment 1: Whether Commerce has the Legal Authority under the WTO Rules and U.S. Law to Investigate Transnational Subsidies

Government of China's Case Brief

The following is a verbatim summary of the argument submitted by the Government of China. For further details, *see* Government of China's Case Brief at 7-11.

> First, {the Government of China} believes that the current investigation with respect to transnational subsidies involving China has no valid legal basis and should be terminated immediately. {Commerce's} investigation on transnational subsidies involving China and DOC's decision to countervail the transnational subsidies are neither consistent with the WTO rules nor have any legal authority in the US domestic law and regulations. Under WTO rules, the application of the Agreement on Subsidies and Countervailing Measures (hereinafter "SCM Agreement") has territorial limitations, and was never intended to be applied to cross-border or transnational subsidies. Similarly, the {Act} has territorial limitations and was never intended to be applied to cross-border or transnational subsidies. Although the amendments to the U.S. antidumping and countervailing duty regulations, effective on April 24th, 2024, removed the section 19 CFR 351.527, which previously prohibited initiating transnational subsidy investigation, this amendment of the regulations did not override the fundamental territorial limitation on the application of countervailing duty investigation that still remain in the underlying statutory provisions of the Tariff Act of 1930 and are inconsistent with the {Commerce's} determinations of transnational subsidies in this investigation.

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[22] Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. *See* Comment 12.
[23] In the *Preliminary Determination*, we preliminarily determined this program to be not specific. However, as explained in the "Use Of Facts Otherwise Available And Application Of Adverse Inferences" section above and Comment 7 below, we are applying adverse facts available to the questionnaire responses of the Government of Cambodia, and therefore, determine, based on adverse facts available, that this program is specific under section 771(5A)(D)(i).
[24] Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. *See* Comment 3.
[25] Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. *See* Comments 4 and 5.
[26] *Id*.

Solarspace's Case Brief

The following is a verbatim summary of the argument submitted by Solarspace. For further details, *see* Solarspace's Case Brief at 5-20.

> Commerce erred in initiating investigations into new subsidy allegations for alleged cross-border LTAR programs, contrary to the clear language of the statute. The new subsidy allegations for cross-border LTAR programs were transnational in nature, with allegations that the Government of China provided subsidies for inputs that were exported to Cambodia for the production of subject merchandise. The statute, however, only permits transnational subsidy investigations in two limited circumstances: an international consortium and upstream subsidies when a customs union is present. Despite Petitioners failing to allege or place sufficient evidence on the record regarding either of these two circumstances, Commerce proceeded to improperly initiate investigations into these cross-border LTAR programs in contravention of the statute. In the final determination, {Commerce} should rescind the investigations into the cross-border LTAR programs or in the alternative, determine that there is no countervailable subsidy for each of these alleged transnational programs.

BYD's Case Brief

The following is a verbatim summary of the argument submitted by BYD. For further details, *see* BYD's Case Brief at 6-9.

> {Commerce} erroneously countervailed transnational subsidies related to the mandatory respondent's purchases of inputs of solar wafers and solar glass. Commerce's interpretation of the statute conflicts with the statute's plain meaning, other provisions of the statutory framework, Commerce's own prior interpretation of the statute, and more than two decades of Commerce practice.

Petitioner's Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner. For further details, *see* Petitioner Rebuttal Brief at 20-22.

> No. Such investigations are not prohibited under the World Trade Organization ("WTO") and are ultimately determined by U.S. law. The sparse information pointed to by the {Government of China} does not establish whether the…SCM Agreement… disallows the investigation of transnational subsidies. More importantly, {Commerce's} investigations are established under U.S. law. The U.S. Court of Appeals for the Federal Circuit {(Federal Circuit)} has affirmed that WTO agreements are "not binding on the United States." The statute itself makes this clear under 19 U.S.C. § 3512(a). No. Solarspace's first argument is that the Act only authorizes the investigation of transnational subsidies when international

consortia are involved. Section 701(d) of the Act provides for the aggregation of subsidies provided to members of an international consortium involved in the production of subject merchandise when subsidies are provided by the countries in which the respective members are located. Further, section 701 of the Act is concerned with the imposition of countervailing duties and not their identification. {Commerce} pointed to 701(d) of the Act to demonstrate that the Act did not prohibit the investigation of transnational subsidies by the administering authority.

Solarspace's argument that upstream subsidies provide the only other basis for a transnational subsidy is moot, given that there are multiple independent bases for such an investigation. Solarspace's argument as to Congressional intent and BYD's "plain meaning" argument fail for the same reasons as those discussed in regard to the {Government of China's} arguments premised on the use of "within the territory of a country." Solarspace also incorrectly argues that under *Loper Bright*, {Commerce's} current interpretation of section 701 of the Act is not the "best" interpretation. Solarspace's reading of the statute would render the changes to the definition of a subsidy meaningless and would not harmonize the use of similar phrasing in the Act. Finally, Petitioner did allege the recipients of the subsidies were members of an international consortium regarding the BRI policy loans program.

Commerce's Position: We disagree with the Government of China, Solarspace, and BYD and find that U.S. law permits Commerce to investigate and countervail transnational subsidies.

As an initial matter, we disagree with the argument that an investigation of transnational subsidies is inconsistent with the SCM Agreement. We conducted this investigation pursuant to U.S. CVD law, specifically the Act, which lawfully implements the United States' obligations under the SCM Agreement. Indeed, as we have previously explained: "{O}ur CVD laws are consistent with our WTO obligations. Moreover, it is the Act and {Commerce's} regulations that have direct legal effect under U.S. law, and not the {World Trade Organization (WTO)} Agreements or WTO reports."[27] Furthermore, irrespective of any potential WTO findings on this issue, WTO findings are not self-executing under U.S. law, and can only be implemented through the statutory procedure for such implementation.[28] Indeed, "WTO dispute settlement panels {} have no power to change U.S. law or order such a change. Only Congress and the Administration can decide whether to implement a WTO panel recommendation and, if so, how

[27] *See, e.g., Oil Country Tubular Goods from the Republic of Turkey: Final Results of Countervailing Duty Administrative Review*; 2016, 84 FR 11504 (March 27, 2019), and accompanying Issues and Decision Memorandum (IDM) at Comment 1; *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017), and accompanying IDM at Comment 1 (internal citations omitted); *see also Corus Staal BV v. Dep't of Com.,* 395 F.3d 1343, 1348 (Fed. Cir. 2005) (quoting *Timken Co. v. United States*, 354 F.3d 1334, 1344 (Fed. Cir. 2004)

[28] *See Corus Staal BV v. Dep't of Commerce*, 395 F.3d 1343, 1348 (Fed. Cir. 2005); *Dillinger France S.A. v. United States*, 350 F. Supp. 3d 1349, 1367 (CIT 2018).

to implement it."[29] Commerce is bound by U.S. law, which permits Commerce to investigate and countervail transnational subsidies.

We disagree that the Act precludes Commerce from countervailing transnational subsidies. Section 701(a) of the Act states that if Commerce "determines that the government of *a country* or any public entity within the territory of *a country* is providing, directly or indirectly, a countervailable subsidy with respect to the manufacture, production, or export of a class or kind of merchandise imported, or sold (or likely to be sold) for importation, into the United States," {*emphasis added*} Commerce shall impose a countervailing duty upon said merchandise equal to the amount of the net countervailable subsidy. Notably, section 701(a) does not specify that the "government of a country or any public entity within the territory of a country" providing a countervailable subsidy must be the same government or public entity as the government of the country within which that subsidy is received. The use of the indefinite article in "*a* country" indicates that the country of the authority providing a countervailable subsidy may be distinct and separate from the country where the countervailable subsidy is received. Section 771(5)(B) of the Act contains similar language, defining a subsidy as a case in which "*an* authority provides a financial contribution" {*emphasis added*} and defining "authority" as "*a* government of *a* country or any public entity within the territory of the country" {*emphasis added*}.

As Commerce explained in the *Federal Register* notice that proposed the removal of 19 CFR 351.527 (*RISE Proposed Rule*):

> Since {19 CFR 351.527} was adopted, Commerce has observed through its administrative experiences that instances in which a government provides a subsidy that benefits foreign production are far more prevalent. Consequently, the assumptions underlying our interpretation of section 701 of the Act have changed. We now believe that our past interpretation of section 701 of the Act was overly restrictive. A limitation on Commerce's ability to countervail subsidies only if those subsidies were provided to entities of a country solely by the government of that country, when subsidies from other foreign governments would otherwise be determined countervailable under the CVD law and could prove injurious to producers of the domestic like product, is inconsistent with the very purpose of the CVD law, and we do not believe that the language of section 701 of the Act requires such a restrictive interpretation. Accordingly, we are proposing to eliminate the current regulation preventing consideration of allegations of transnational subsidies, and instead reserve the provision for future consideration.[30]

As a result, Commerce reevaluated its approach to transnational subsidies to ensure it is fulfilling its statutory mandate to impose a countervailing duty "equal to the amount of the net countervailable subsidy" and accurately capture subsidization bestowed on the production,

[29] *See* Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. 1 (194) (SAA) at 656, 659.

[30] *See Regulations Improving and Strengthening the Enforcement of Trade Remedies Through the Administration of the Antidumping and Countervailing Duty Laws*, 88 FR 29850, 29870 (May 9, 2023) (*RISE Proposed Rule*).

manufacture, and exportation of subject merchandise.[31] Accordingly, Commerce withdrew the self-imposed restriction previously found at 19 CFR 351.527.

In the *RISE Final Rule*, Commerce stated the following:

> Section 351.527 {of Commerce's regulations} was promulgated over 25 years ago in a global trade environment much different than the current trade environment. Specifically, the subsidization landscape of 25 years ago related primarily to transnational transactions involving foreign aid. In contrast, in today's subsidization landscape, governments provide cross-border equity infusions, fundings, loans, etc., and they are no longer limited to foreign aid. Rather, they are provided to promote the grantor country as well as the recipient's country manufacturing capacities for a particular industry. We also have observed direct investments in a third country from state-owned enterprises, with backings from state-owned policy banks, promoting the specific grantor country's industry policies.[32]

Therefore, we find it necessary to investigate and countervail subsidies where a countervailable subsidy from an authority in one country is received and used by a firm within another country which is permitted under the Act.

Thus, we disagree with the argument that the removal of Commerce's regulation at 19 CFR 351.527 does not confer upon Commerce any legal authority to investigate or countervail transnational subsidies. The now-withdrawn 19 CFR 351.527 stated:

> Except as otherwise provided in section 701(d) of the Act (subsidies provided to international consortia) and section 771A of the Act (upstream subsidies), a subsidy does not exist if the Secretary determines that the funding for the subsidy is supplied in accordance with, and as part of, a program or project funded:
> (a) By a government of a country other than the country in which the recipient firm is located; or
> (b) By an international lending or development institution.

In the *RISE Final Rule* that repealed 19 CFR 351.527, Commerce stated the following:

> {…}Commerce has determined to repeal the current transnational subsidies regulation. In repealing this regulation, we clarify that when appropriate, Commerce will investigate and countervail transnational subsidies (*i.e.,* subsidies

[31] *See* section 701(a)(2) of the Act.
[32] *See Regulations Improving and Strengthening the Enforcement of Trade Remedies Through the Administration of the Antidumping and Countervailing Duty Laws,* 89 FR 20826, 20827 (March 25, 2024) *(RISE Final Rule)* (footnotes omitted).

provided by a government or public entity in one country that benefit producers or exporters in another country).

Section 701 of the Act does not impose geographic limitations on countervailing unfair foreign subsidies. As was explained in the *1998 Final Preamble*, § 351.527 was derived from now-repealed section 303(a)(1) of the Act. When § 351.527 was promulgated, Commerce's administrative experience at that time was that normally governments were subsidizing manufacturing and production activities in their own countries rather than subsidizing manufacturing and production abroad. Consistent with the experience at that time, upon promulgating § 351.527, in 1998, Commerce repeated this perspective and, accordingly, stated, "{i}n our view, neither the successorship of section 701 for Subsidies Code members nor the repeal of section 303 by the {Uruguay Round Agreements Act (URAA)}, eliminated the transnational subsidies rule, and there is no other indication that Congress intended to eliminate this rule."

Since that time, the assumptions underlying Commerce's interpretation of section 701 of the Act have changed. In the intervening two decades, Commerce has observed increasing instances in which a government subsidizes foreign production. As a result, we now believe that our past regulatory interpretation of section 701 of the Act was overly restrictive and not required by statute. Commerce's self-imposed restriction on its ability to countervail subsidies only if those subsidies were provided to entities of a country solely by the government of that country, when subsidies from other foreign governments would otherwise be determined countervailable under the CVD law and injurious to producers of the domestic like product, is inconsistent with the very purpose of the CVD law. Section 701 of the Act does not require such a restrictive interpretation.[33]

As explained above, under the Act, the government (or public entity) providing a subsidy need not necessarily be in the same country as the recipient of said subsidy. As explained in more detail in Comments 4 and 5, in calculating benefits for the transnational subsidies in this case – the provision of silicon wafer for LTAR and the provision of solar glass for LTAR – Commerce applied the same methodology, pursuant to the same statutory and regulatory provisions, as it generally does in determining whether a good was provided for LTAR. Thus, based on the facts of this investigation, the benefit calculation for these transnational subsidies largely does not differ from Commerce's LTAR benefit calculation for subsidies that are provided by the government of the country under investigation.

We disagree with Solarspace that *Loper Bright*[34] constrains Commerce's ability to interpret the statute to permit countervailing transnational subsidies outside of an international consortia or upstream subsidy determination, pursuant to sections 701(d) and 701(e) of the Act. In *Loper Bright*, the Court held that "{c}ourts must exercise their independent judgment in deciding

[33] *See Regulations Improving and Strengthening the Enforcement of Trade Remedies Through the Administration of the Antidumping and Countervailing Duty Laws,* 89 FR 20766, 20826 (March 25, 2024) *(RISE Final Rule)* (footnotes omitted).
[34] *See Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024) (*Loper Bright*).

whether an agency has acted within its statutory authority."[35] The Court also recognized there are instances in which a statute either expressly or impliedly authorizes an agency to exercise discretion and flexibility, stating that in such instances, reviewing courts "independently interpret the statute and effectuate the will of Congress subject to constitutional limits" "by recognizing constitutional delegations, fix{ing} the boundaries of {the} delegated authority, and ensuring the agency has engaged in reasonable decision-making within those boundaries."[36]

As discussed above, Section 701(a) of the Act states that if Commerce "determines that the government of a country or any public entity within the territory of a country is providing, directly or indirectly, a countervailable subsidy with respect to the manufacture, production, or export of a class or kind of merchandise imported, or sold (or likely to be sold) for importation, into the United States," Commerce shall impose a countervailing duty upon said merchandise equal to the amount of the net countervailable subsidy. Nothing in section 701(a) states that the "government of a country or any public entity within the territory of a country" providing a countervailable subsidy must be the *same* government or public entity as the government of the country within which that subsidy is received. The use of the indefinite article in "*a* country" indicates that the country of the authority providing a countervailable subsidy may be distinct and separate from the country where the countervailable subsidy is received. This interpretation is further supported by section 771(5)(B) of the Act, which defines a subsidy as a case in which "*an* authority provides a financial contribution" {*emphasis added*} and defines "authority" as "*a* government of *a* country or any public entity within the territory of the country" {*emphasis added*}. Thus, the statute clearly authorizes Commerce to investigate and countervail transnational subsidies, which Commerce recognized through notice-and-comment procedures when it repealed the self-imposed restriction formerly present in 19 CFR 351.527.

Further, we find that the two proposed Congressional bills to codify the authorization of investigating transnational subsidies to which the Government of China cited do not preclude Commerce from currently investigating transnational subsidies.[37] The Supreme Court held that "failed legislative proposals are a particularly dangerous ground on which to rest an interpretation of a prior statute" and that "Congressional inaction lacks persuasive significance because several equally tenable inferences may be drawn from such inaction, including the inference that the existing legislation already incorporated the offered change."[38] Accordingly, these proposed Congressional bills do not undermine Commerce's finding that the statute permits countervailing transnational subsidies.

Finally, contrary to Solarspace's argument, we do not find that Commerce's interpretation of the Act renders sections 701(d) and 701(e), regarding international consortia and upstream subsidies, respectively, superfluous. Sections 701(d) and 701(e) of the Act provide frameworks for the investigation of certain subsidies but does not restrict the framework by which to examine transnational subsidies, such as those at issue here. Indeed, the allegations here involve the provision of a countervailable subsidy *directly* from the Government of China to a producer in

[35] *Id.*, 144 S. Ct. at 2273.
[36] *Id.* (internal citations and quotation marks omitted).
[37] *See* Government of China's Case Brief at 10-11.
[38] *See United States v. Wise*, 370 U.S. 405, 411 (1962) (quoting *Pension Benefit Guaranty Corporation v. LTV Corp.*, 496 U.S. 633, 650 (1990)).

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Cambodia (*i.e.*, not the circumstances applicable to sections 701(d) or 701(e)). An interested party may still allege a subsidy pursuant to sections 701(d) or 701(e) of the Act if the case-specific facts are more aligned with these frameworks, but the existence of those provisions does not impinge on whether Commerce may investigate and countervail transnational subsidies under distinct fact patterns. Due to the fact-intensive nature of the examination of a transnational subsidy, we expect our methodology in investigating and countervailing any other transnational subsidy programs in subsequent cases may develop over time, depending on the case-specific circumstances before us. Commerce underscored this point in the *RISE Final Rule*, stating that "{t}he existence of a transnational subsidy would be a case-specific one, and Commerce will not speculate on what evidence is needed to allege or prove the existence of a countervailable transnational subsidy without analyzing in the first instance the record evidence presented in a particular proceeding."[39] In this investigation, Commerce analyzed the transnational subsidy allegations and record facts of this case to determine that policy lending from Chinese banks for BRI capacity cooperation projects and the provision of polysilicon, silicon wafer, silver paste, and solar glass for LTAR constitutes countervailable transnational subsidies. *See* Comments 3, 4, and 5 below. In subsequent proceedings, Commerce will continue to evaluate its approach in this area based on comments received by interested parties and Commerce's additional experience in investigating transnational subsidy allegations on a case-by-case basis.

Comment 2: Selection of Silicon Wafer and Solar Glass Benchmarks

Solarspace's Case Brief

The following is a verbatim summary of the argument submitted by Solarspace. For further details, *see* Solarspace's Case Brief at 21-27.

> Commerce should select Solarspace's benchmark information to measure the adequacy of remuneration regarding the Government of China's provision of silicon wafers. In its Post-Preliminary Determination, Commerce rejected Solarspace's silicon wafer benchmark information, which constituted sales prices in the photovoltaic industry supply chain published by a technology research and consulting firm. Instead, {Commerce} selected Petitioner's 2023 {Global Trade Information Services (GTIS)} import data under {Harmonized System (HS)} subheading 3810.00 for silicon wafers into Thailand and Indonesia as a tier-two benchmark price for silicon wafer. Commerce wrongly concluded that Solarspace's publication prices were not related to actual sales, but rather are future projections and estimates based on interviews with manufacturers. 19 CFR 351.511(a)(2)(ii) provides that tier-two benchmarks are based on a "price that would be available to purchasers in the country in question." The benchmark information provided by Solarspace are published prices consisting of the price range of ongoing and newly signed contracts from the previous week, from more
> than 100 manufacturers. These prices therefore constitute prices that "would be available to purchasers in the country in question" and Commerce wrongly rejected Solarspace's information as projections.

[39] *See RISE Final Rule* at 20827.

Petitioner's Case Brief

The following is a verbatim summary of the argument submitted by the petitioner. For further details, *see* Petitioner Case Brief at 6.

> Yes. {Commerce} should use the UN Comtrade world export data for silicon wafers and solar glass as the benchmarks by which to calculate the benefit provided by the Government of China's provision of silicon wafers and solar glass for LTAR.

Solarspace's Rebuttal Brief

The following is a verbatim summary of the argument submitted by Solarspace. For further details, *see* Solarspace's Rebuttal Brief at 5-8.

> No. Commerce should not use the UN Comtrade world export data that it placed on the record to calculate the benefit provided by the Government of China's alleged provision of silicon wafers at LTAR. Instead, Commerce should select Solarspace's benchmark information to measure the adequacy of remuneration regarding the Government of China's provision of silicon wafers. In its Post-Preliminary Determination, Commerce rejected Solarspace's silicon wafer benchmark information, consisting of published price ranges of ongoing and newly signed contracts in the photovoltaic industry supply chain published by a technology research and consulting firm, in favor of Petitioner's 2023 GTIS import data under {HS} subheading 3810.00 for silicon wafers into Thailand and Indonesia as a tier-two benchmark price for silicon wafer. Petitioner had also placed monthly 2023 UN Comtrade data for silicon wafers under {HS} subheading 3810.00, but Commerce rejected that data because it did not allow for the exclusion of exports into the Cambodian market. Commerce subsequently placed UN Comtrade 2023 world export data disaggregated by country for solar wafers on the record. Commerce, however, should not use this disaggregated UN Comtrade data as it suffers from the same defect as Petitioner's 2023 GTIS import data. The {HS} category 3818.00 is a basket category covering more than the silicon wafer input and is not sufficiently specific to the input at issue, *i.e.,* silicon wafer. Commerce's practice is to utilize benchmarks on the record that is most product specific, which is Solarspace's benchmark data for silicon wafers.

Petitioner's Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner. For further details, *see* Petitioner Rebuttal Brief at 24-26.

> Yes. Solarspace argues that {Commerce} should use Infolink data as the benchmark in its calculation of the benefit under the Cross-Border Provision of Silicon Wafer for LTAR program. As {Commerce} found previously, Solarspace's dataset was not an appropriate tier-two benchmark because "{t}he prices provided in this publication are not related to actual sales, but rather are future projections

> and estimates based on interviews with manufacturers rather than 'a price that would be available to purchasers in the country in question.'" {Commerce} is correct and the Infolink data is unusable as a benchmark for silicon wafers for this reason. Solarspace cites to no evidence the prices are based on actual sales or were not compiled based on interviews with manufactures, as is clearly the case. Further, the datasets may contain Chinese prices, which would completely defeat the purpose of using benchmarks to determine the benefit provided by the {Government of China's} provision of silicon wafers for LTAR.
>
> The export data from UN Comtrade placed on the record by {Commerce} is the best tier-two benchmark data available. While {Commerce} relied on…{GTIS} data instead of UN Comtrade data in the post-preliminary determination, {Commerce} has now placed disaggregated UN Comtrade data on the record, which is usable as a tier-two benchmark.
>
> Solarspace suggests that this {HS} code is not comparable to silicon wafers because it is a basket category. However, benchmark data need not be identical product against which it is being measured. Here, the {HS} 3818.00 data, while not exclusive to silicon wafers, includes silicon wafers and comparable products. {HS} 3818.00 covers "chemical elements, doped for use in electronics, in the form of discs, wafers or similar forms; chemical components doped for use in electronics," which describes the silicon wafers used by Solarspace. No parties dispute that this tariff heading contains the silicon wafers used by Solarspace in its production of subject merchandise.

Commerce's Position: For the final determination, we find that the Cambodia markets for silicon wafers and solar glass are distorted and that using a tier one benchmark under 19 CFR 351.511(a)(2)(i) for either program is not appropriate. The provisions of silicon wafers and solar glass for LTAR by the Government of China authorities confer a benefit within the meaning of section 771(5)(E)(iv) of the Act to the extent that these inputs are provided for LTAR when measured against appropriate benchmarks. Section 351.511(a)(2) of Commerce's regulations sets forth the basis for identifying benchmarks to determine whether a government provides a good or service for LTAR. These potential benchmarks are listed in hierarchical order by preference: (1) a market-determined price from actual transactions within the country under investigation (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) assessment of whether the government price is consistent with market principles (tier three). This hierarchy reflects a logical preference for achieving the objectives of the statute. In addition, as provided in 19 CFR 351.511(a)(2)(i), we take into consideration product similarity, quantity sold, imported, or auctioned, and other factors affecting comparability to identify appropriate benchmarks.

The most direct means of determining whether a government has provided a good or service for LTAR is through a comparison with private transactions for a comparable good or service in the investigated country (*i.e.*, a tier one benchmark). We base this on an observed market price for a good, in the country under investigation, from a private supplier located either within the country or outside the country (*i.e.*, imports). As provided in our regulations, the preferred benchmark in

the hierarchy is an observed market price from actual transactions within the country under investigation. This is because such prices generally would be expected to reflect more closely the commercial environment of the purchaser under investigation.[40]

Based on the hierarchy, we must first consider whether market-determined prices from actual transactions are available on the record to determine whether Government of China authorities provided silicon wafers or solar glass to Solarspace for LTAR. Notwithstanding the regulatory preference for the use of prices stemming from actual transactions in the country, where Commerce finds that a government provides the majority or, in certain circumstances, a substantial portion of the market for a good or service, it may consider prices for such goods and services in the country to be significantly distorted and not an appropriate basis of comparison to determine whether there is a benefit. When a government's role as provider of the good or service is so predominant, the government in effect determines the prices for private sellers of the same or similar goods or services. As a result, comparing the government prices to private prices would amount to comparing the financial contribution to itself.[41]

Further, section 771(5)(E)(iv) of the Act states that a determination of the adequacy of remuneration for the provision of a good or service "shall be determined in relation to prevailing market conditions for the good or service being provided or the goods being purchased in the country which is subject to the investigation or review." Here, we are examining the provision of a good from China based on the prevailing market conditions within Cambodia for this China-sourced good. Commerce's regulations state that Commerce "will normally seek to measure the adequacy of remuneration by comparing the government price to a market-determined price for the good or service resulting from actual transactions in the country in question."[42] This "tier one" benchmark price could include prices stemming from actual transactions between parties or imports. However, in this transnational LTAR subsidy analysis, the government price being analyzed by Commerce is a Chinese-authority price that is alleged to be providing a subsidy to producers of subject merchandise in Cambodia. Although the financial contribution is from a Chinese authority, and the price is set by a Chinese authority, we determine that the "country in question" for purposes of the regulations cited above is Cambodia.

The *1998 Final Preamble* states that, for tier one, Commerce normally does not intend to adjust prices within the country in question (*i.e.*, Cambodia) to account for government distortion in the market, unless the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market.[43] The statute and regulations do not restrict this analysis of the government provider in the country in question only to the government of the country subject to the investigation. Such a restriction would be inappropriate when Commerce is investigating a third country government's provision of an input product at a price that may represent less than adequate remuneration. Thus, in these circumstances we are examining whether the presence of the Chinese government, through Chinese suppliers of the input that we determine to be authorities under section 771(5)(B) of the Act, could distort the domestic market of Cambodia.

[40] *See Countervailing Duties,* 63 FR 65348, 65377 (November 25, 1998) (*1998 Final Preamble*).
[41] *Id.*
[42] *See* 19 CFR 351.511(a)(2)(i).
[43] *See 1998 Final Preamble*, 63 FR at 65377.

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To adopt a different interpretation of the statutory and regulatory language in this instance would require Commerce, essentially, to determine the adequacy of remuneration by comparing a government price to itself. With respect to our analysis of the silicon wafers market and the solar glass market in Cambodia, we found that the Government of Cambodia failed to submit a questionnaire response regarding its silicon wafer consumption and production and provided an incomplete questionnaire response regarding its solar glass consumption and production.[44] Accordingly, we found that the Government of Cambodia withheld necessary information that was requested of it, failed to provide such information by the deadline for submission of the information, and significantly impeded this proceeding and applied facts otherwise available with adverse inferences, pursuant to sections 776(a)(2)(A)-(C) and 776(b) of the Act.[45] Based on adverse facts available, we found the Cambodian silicon wafer and solar glass markets to be distorted.[46] The petitioner also provided evidence that Government of China-controlled companies account for at least 71 percent of silicon wafer and solar glass production in China and that Chinese producers of silicon wafer and solar glass account for over 90 percent of global production.[47] As such, consistent with 19 CFR 351.511, based on adverse facts available, we determine that these goods from the government provider (China) constitute a majority of the Cambodian market for the goods subject to these LTAR allegations. Consistent with the *1998 Final Preamble*, where it is reasonable to conclude that actual transaction prices, including imports, in the country in question are significantly distorted as a result of the government's involvement, we will resort to the next alternative in the benchmark hierarchy, which are "tier two" world market prices pursuant to 19 CFR 351.511(a)(2)(ii).[48]

Silicon Wafer

The petitioner and Solarspace submitted potential tier two benchmarks to measure the adequacy of remuneration from the Government of China's provision of silicon wafers during the POI pursuant to 19 CFR 351.511(a)(2)(ii). Specifically, the petitioner submitted world export prices from UN Comtrade for silicon wafers under HS code 3818.00.[49] Solarspace, meanwhile, submitted Infolink Consulting data for monocrystalline silicon wafers overseas prices in non-Chinese regions.[50]

In choosing prices for use as benchmarks, Commerce will consider product similarity and other factors affecting comparability between the benchmark and the products purchased by respondents. Further, where there is more than one commercially available world market price, Commerce will average such prices to the extent practicable. However, with respect to the Infolink Consulting data submitted by Solarspace, the description on the record indicates that the

[44] *See* Post-Preliminary Determination at 9-10.
[45] *Id*.
[46] *Id*.
[47] *See* NSA1 at 16-20 and Petitioner's Letter, "New Subsidy Allegation," dated August 26, 2024 (NSA2) at 13-18.
[48] *See 1998 Final Preamble*, 63 FR at 65377.
[49] *See* Petitioner's Letter, "Petitioner's New Factual Information Relating to Solarspace.
Cambodia's New Subsidy Allegation Questionnaire Response," dated October 23, 2024, at Exhibit 3 (Petitioner Wafer Benchmark).
[50] *See* Solarspace's Letter, "Response to Section B Question 3 of Solarspace's New Subsidy Allegation Questionnaire," dated October 11, 2024 (Solarspace Wafer Benchmark Submission), at 1 and Exhibit NE-14.

prices reported are mainly obtained through spot price interviews with industry manufacturers, and the data cannot be disaggregated by country.[51]

As discussed in the Post-Preliminary Analysis, we preliminarily determined on the basis of facts available that Government of China authorities account for at least 71 percent of silicon wafer production in China.[52] Moreover, Commerce has previously found that the Chinese market for silicon wafers is distorted based on the level of government participation in the market.[53] Because the Chinese market for silicon wafers is majority-controlled by Government of China authorities, we also determine that the silicon wafer market in China is distorted.

It is Commerce's practice to remove distorted prices from benchmarks.[54] However, there is no mechanism for Commerce to remove these Chinese prices from the Infolink Consulting data. Further, as Commerce is determining that the silicon wafer markets in Thailand, Cambodia, and Vietnam are also distorted, there is also no mechanism for Commerce to remove prices of silicon wafers from these distorted countries and sold in these markets.[55] Consequently, given these threshold investigations in which Commerce is examining the cross-border provision of an input from Chinese authorities, and based on the particular evidence of this proceeding, we determine that the Infolink Consulting data does not serve as a usable tier two benchmark source. The record evidence cited above demonstrates that these prices reflect the distortions of the Government of China's presence. Further, the nature of the Infolink Consulting data is such that we are unable to disaggregate individual prices by country of origin, and therefore, this benchmark contains prices by the distorted Chinese, Thai, Vietnamese, and Cambodian markets.[56] As Commerce has found in other proceedings, using a benchmark that is based on government prices essentially results in comparing the financial contribution to itself.[57]

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[51] *Id.*

[52] *See* Post-Preliminary Analysis at 7.

[53] *See, e.g.*, *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review, and Rescission in Part; 2021,* 88 FR 88575 (December 22, 2023) (*Solar China CVD 2021 Prelim*), and accompanying PDM at 29, unchanged in *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2021*, 89 FR 51497 (June 18, 2024) (*Solar China CVD 2021 Final*).

[54] *See*, *e.g.*, *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2016*, 84 FR 36051 (July 26, 2019) (*Rebar from Türkiye*), and accompanying IDM at Comment 1.

[55] *See* Companion Solar Cells CVD *Federal Register* notices, dated concurrently with this memorandum, and their accompanying Memoranda, "Issues and Decision Memorandum for the Final Affirmative Determination of the Countervailing Duty Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the Socialist Republic of Vietnam," and "Issues and Decision Memorandum for the Final Affirmative Determination of the Countervailing Duty Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from Thailand," dated concurrently with this memorandum (Vietnam Solar Cells IDM and Thailand Solar Cells IDM).

[56] *See* NSA1 at Exhibit NE-14.

[57] *See 1998 Final Preamble*, 63 FR at 65377; *see also, e.g., Barium Chloride from India: Final Affirmative Countervailing Duty Determination*, 88 FR 1044 (January 6, 2023) (*Barium Chloride India CVD Inv Final*), and accompanying IDM at Comment 3.

As noted above, the petitioner submitted 2023 world export prices from UN Comtrade for silicon wafers under HS code 3818.00.[58] On March 6, 2025, we placed on the record UN Comtrade 2023 world export data disaggregated by importing country for this HS code.[59] No other party submitted potential tier two benchmarks for silicon wafers. We determine that the UN Comtrade export prices for HS code 3818.00, disaggregated by country, serve as usable tier two benchmarks. No party in this proceeding has disputed that the UN Comtrade data for HS code 3818.00 includes silicon wafers. Although Solarspace argued that world exports of HS 3818.00 are not specific to "silicon wafers used in the production of solar cels," there is no statutory or regulatory requirement that benchmarks be identical.[60] Accordingly, we find that the UN Comtrade world export prices for silicon wafers under HS code 3818.00 disaggregated by country are the only usable tier two benchmarks on the record.[61]

With respect to the UN Comtrade data for HS code 3818.00, we find that many of the world exports are from countries with no solar wafer production. As support, the *Solar Photovoltaics Supply Chain Deep Dive Assessment* from the U.S. Department of Energy (USDOE Report) identifies the specific countries that produce photovoltaic (PV) silicon wafers for the production of solar cells.[62] In this instance, as noted above, based on the case-specific record evidence which allows us to reliably remove certain countries identified above, we find it appropriate to exclude those countries with no production of PV silicon wafers from the benchmarks. Accordingly, we have removed countries not identified as PV silicon wafer producers in the USDOE Report from the tier two UN Comtrade benchmarks for HS code 3818.00.[63] We have also excluded exports from China from the tier two benchmark because, as explained above, in the context of this transnational subsidy, China is the provider of the subsidy at issue. Finally, because we have determined that the silicon wafer markets of China, Thailand, Vietnam, and Cambodia are distorted, we have excluded exports to these distorted markets, which is consistent with our practice.[64] We will continue to examine cross-border subsidies on a case-by-case basis, applying our benchmarking methodology based on the facts presented in each investigation.

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[58] *See* Petitioner Wafer Benchmark.

[59] *See* Memorandum, "Placing UN Comtrade Data on the Record," dated March 6, 2025 (March 6 UN Comtrade Memorandum), at Attachment I.

[60] *See* Solarspace Case Brief at 25. *See also*, *e.g.*, *Archer Daniels Midland Co. v. United States*, 968 F. Supp. 2d 1269, 1278 (CIT 2014) (*Archer Daniels Midland*) (stating that Commerce "is required only to select benchmarks that are comparable, not identical").

[61] *See* March 6 UN Comtrade Memorandum at Attachment I.

[62] *See* NSA1 at Exhibit NSA-41 at 29 and 33.

[63] *Id.* at Exhibit NSA-9, p. 33. Other than China, the countries listed in the USDOE Report as producers of PV silicon wafers are Japan, Norway, Germany, Turkey, Philippines, Malaysia, Singapore, Vietnam, and Taiwan. *Id*. However, the UN Comtrade data on the record do not include exports from Vietnam and Taiwan. *See* March 6 UN Comtrade Memorandum at Attachment I. Accordingly, we have included exports from Japan, Norway, Germany, Turkey, Philippines, Malaysia, and Singapore in the tier two benchmarks. *See* Solarspace Final Calculation Memorandum.

[64] *See* Vietnam Solar Cells IDM and Thailand Solar Cells IDM. *See also*, *e.g.*, *Granular Polytetrafluoroethylene Resin From the Russian Federation: Final Affirmative Countervailing Duty Determination*, 87 FR 3764 (January 25, 2022) (*Granular PTFE from Russia*), and accompanying IDM at Comment 2 ("We also excluded Kazakhstan's exports to China from its benchmark calculations, as Commerce has previously determined, as AFA, that China's domestic natural gas market is distorted.").

Solarspace argues that UN Comtrade 2023 export data HS category 3818.00 is too broad of a basket category that covers more than the silicon wafer input.[65] As an initial matter, the legal requirements governing Commerce's selection of benchmarks do not require perfection.[66] As we have explained in other proceedings, a benchmark, by nature, is not an exact match to the subsidy being evaluated.[67] Rather, we look to whether a benchmark is comparable based on the record and, thus, is usable.[68] However, as explained in this section, Commerce has made certain adjustments to the benchmark to account for comparability, to the extent possible in light of the record evidence before us. Therefore, for this final determination, we are selecting the disaggregated UN Comtrade data, adjusted for the listed countries in the USDOE Report, as our benchmark to calculate the benefit for the cross-border provision of silicon wafer for LTAR.

Solar Glass

As described above, consistent with 19 CFR 351.511, we determine that the solar glass from the government provider (China) constitute a majority of the Cambodian solar glass market. Consistent with the *1998 Final Preamble*, where it is reasonable to conclude that actual transaction prices, including imports, in the country in question are significantly distorted as a result of the government's involvement, we will resort to the next alternative in the benchmark hierarchy, which are "tier two" world market prices pursuant to 19 CFR 351.511(a)(2)(ii).[69]

Consistent with the *1998 Final Preamble*, because we conclude that actual transaction prices are significantly distorted in Cambodia, we will resort to the next alternative in the benchmark hierarchy, which is tier two (world market prices). The petitioner and Solarspace submitted potential tier two benchmarks to measure the adequacy of remuneration from the Government of China's provision of solar glass during the POI pursuant to 19 CFR 351.511(a)(2)(ii). Specifically, the petitioner submitted world export prices from UN Comtrade for solar glass under HS code 7007.19.[70] Solarspace, meanwhile, submitted world export and import prices from Trade Data Monitor (TDM) for solar glass under HS code 7007.19 and Infolink Consulting data for spot prices of solar glass.[71] In choosing prices for use as benchmarks, Commerce will consider product similarity and other factors affecting comparability between the benchmark and the products purchased by respondents. Further, where there is more than one commercially available world market price, Commerce will average such prices to the extent practicable. However, with respect to the Infolink Consulting data submitted by Solarspace, we are unable to disaggregate individual prices by country of origin.[72]

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[65] *See* Solarspace Case Brief at 24-27.
[66] *See*, *e.g.*, *Certain Softwood Lumber Products from Canada: Final Results of the Countervailing Duty Administrative Review, 2017–2018*, 85 FR 77163 (December 1, 2020) (*Softwood Lumber from Canada 2017-2018 AR*), and accompanying IDM at Comment 15.
[67] *Id.*
[68] *Id.*
[69] *See 1998 Final Preamble*, 63 FR at 65377.
[70] *See* Petitioner's Letter, "Petitioner's Benchmark Submission for Solar Glass and Silver Paste," dated November 26, 2024, at 2 and Exhibit NFI-1 (Petitioner Glass Benchmark).
[71] *See* Solarspace's Letters, "New Subsidy Allegation Questionnaire Response," dated November 12, 2024 at SE-11 (Solar Glass Infolink Benchmark) and "Silver Paste and Solar Glass Benchmark Data Submission," dated November 26, 2024 (TDM Solar Glass Benchmark).
[72] *See* Solar Glass Infolink Benchmark.

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As discussed in the Post-Preliminary Determination, we preliminarily determined on the basis of facts available that Government of China authorities account for at least 71 percent of solar glass production in China.[73] Moreover, Commerce has previously found that the Chinese market for solar glass is distorted based on the level of government participation in the market.[74] Because the Chinese market for solar glass is majority-controlled by Government of China authorities, we also determine that the solar glass market in China is distorted.

It is Commerce's practice to remove distorted prices from benchmarks.[75] In the context of this transnational subsidy, China is the provider of the subsidy at issue. However, with respect to the Infolink Consulting prices, we find no mechanism for Commerce to remove solar glass prices from the subsidy provider, China, or prices of solar glass in specific markets that Commerce is finding to be distorted (*i.e.*, solar glass markets in Thailand, Cambodia, Vietnam, and Malaysia).[76] Consequently, given these threshold investigations in which Commerce is examining the cross-border provision of an input from Chinese authorities, and based on the particular evidence of this proceeding (*i.e.*, evidence that the Chinese market for this good is distorted, evidence that other specific markets for this good are distorted, and the inability to remove distorted prices from the Infolink Consulting data), we determine that the Infolink Consulting source does not serve as a usable tier two benchmark. The record evidence cited above demonstrates that these prices reflect the distortions of the Government of China's presence. Further, we are unable to disaggregate individual prices by country of origin.[77] As Commerce has found in other proceedings, using a benchmark that is based on government prices essentially results in comparing the financial contribution to itself.[78]

As noted above, the petitioner submitted 2023 world export prices from UN Comtrade for solar glass under HS code 7007.19.[79] On March 6, 2025, we placed on the record UN Comtrade 2023 world export data disaggregated by importing country for this HS code.[80] Solarspace also submitted 2023 world export and import prices from TDM for solar glass under HS code 7007.19.[81] Therefore, we determine that the UN Comtrade and TDM import and export prices for HS code 7007.19, disaggregated by country, serve as usable tier two benchmarks. No party in this proceeding has disputed that HS code 7007.19 includes solar glass. In fact, Commerce has acknowledged in another proceeding that solar glass is traded under HS code 7007.19.[82]

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[73] *See* Post-Preliminary Determination at 7.
[74] *See, e.g.*, *Solar China CVD 2021 Prelim* and accompanying PDM at 28-29, unchanged in *Solar China CVD 2021 Final*.
[75] *See*, *e.g.*, *Rebar from Türkiye* IDM at Comment 1.
[76] *See* Vietnam Solar Cells IDM, Cambodia Solar Cells IDM, and Memorandum, "Issues and Decision Memorandum for the Final Affirmative Determination of the Countervailing Duty Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from Malaysia," dated concurrently with this memorandum (Malaysia Solar Cells IDM).
[77] *See* Solar Glass Infolink Benchmark.
[78] *See 1998 Final Preamble*, 63 FR at 65377; *see also, e.g., Barium Chloride India CVD Inv Final* IDM at Comment 3.
[79] *See* Petitioner Glass Benchmark.
[80] *See* March 6 UN Comtrade Memorandum at Attachment II.
[81] *See* TDM Solar Glass Benchmark.
[82] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2019*, 87 FR 40491 (July 7, 2022), and accompanying IDM at Comment 8.

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When there is more than one commercially available world market price, Commerce is directed to average such prices to the extent practicable in accordance with its practice and 19 CFR 351.511(a)(2)(ii).[83] Here, we find it inappropriate to include the TDM import data in an average with export data from UN Comtrade and TDM because we find that mixing import and export data is not an apples-to-apples comparison. In this investigation, we have sought to include as many comparable, data sources as practicable. By averaging the UN Comtrade and TDM world export prices, we find the benchmark to be robust and more reflective of the world market prices. Accordingly, we have incorporated the average of UN Comtrade and TDM world export prices for solar glass under HS code 7007.19, disaggregated by country, into our solar glass benchmark. As noted above, the petitioner provided evidence that Government of China authorities account for at least 71 percent of solar glass production.[84] As Commerce has found in other proceedings, using a benchmark that is based on government prices essentially results in comparing the financial contribution to itself.[85] Therefore, in this unique scenario whereby Commerce is examining the provision of an input from Chinese authorities, the presence of imports from China in the benchmark data, and the record evidence indicating that the majority of Chinese producers of solar glass are controlled by the Government of China, we preliminarily find it appropriate to exclude Chinese-origin imports from the tier two benchmark for solar glass.[86] In addition to excluding exports from China from the tier two benchmark, we also excluded exports from Vietnam, Cambodia, Thailand, and Malaysia because the goods from the government provider (China) constitute a majority of the Cambodian market.[87] Finally, because we have determined Vietnam's, Cambodia's, Thailand's, Malaysia's, and China's market to be distorted,[88] we have also excluded exports to the distorted markets (*i.e.,* China, Malaysia, Thailand, Cambodia, and Vietnam). Consistent with other proceedings, we are also removing unspecified categories such as "Areas, nes," "Free Zones," and "World" from the benchmarks.[89]

Comment 3: Policy Lending from Chinese Banks for BRI Capacity Cooperation Projects

Government of China's Case Brief

The following is a verbatim summary of the argument submitted by the Government of China. For further details, *see* Government of China's Case Brief at 11-17.

> Second, DOC's decision to countervail the Policy Lending from Chinese Banks for Belt and Road Initiative (BRI) Capacity Cooperation Projects is not based on the substantial evidence and is otherwise not in accordance with law.

[83] *See, e.g., High Pressure Steel Cylinders from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012) IDM at Comment 8.
[84] *See* NSA2 at 13-18.
[85] *See 1998 Final Preamble*, 63 FR at 65377; *see also Barium Chloride India CVD Inv Final* IDM at Comment 3.
[86] *See* Solarspace Final Calculation Memorandum.
[87] *See* Vietnam Solar Cells IDM, Thailand Solar Cells IDM, and Malaysia Solar Cells IDM.
[88] *Id*
[89] *See*, *e.g.*, *Common Alloy Aluminum Sheet from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2022*, 89 FR 71881 (September 4, 2024), and accompanying IDM at Comment 1.

> (1) The application of facts otherwise available on this program is not warranted because DOC disregards the existing evidence in the record and the due process rights of the parties involved.
>
> (2) The alleged financial contribution is not supported by record evidence and in accordance with law, because Chinese banks are not authorities.
>
> (3) There is no legal basis to determine that this alleged program is specific. Geographical specificity cannot apply to transnational subsidy programs which is providing to an enterprise or industry that is not "within the jurisdiction of" the authority allegedly providing the subsidy. Export subsidy is not established because this program is not contingent upon export performance.

Petitioner's Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner. For further details, *see* Petitioner Rebuttal Brief at 13-20.

> Yes. In the preliminary and post-preliminary determinations, {Commerce} countervailed the provision of various Chinese input products for…LTAR and…BRI policy lending by Chinese banks as transnational subsidies based on the application of facts otherwise available due to the failure of the {Government of China} to provide necessary information. {Commerce} should continue to do so for the final determination.

Commerce's Position: We find that the Government of China had a policy in place to encourage the development of Chinese firms that shift production overseas, in support of BRI capacity cooperation projects, through policy lending, and further, that Chinese state-owned commercial banks (SOCBs) are "authorities" within the meaning of section 771(5)(B) of the Act. When examining a policy lending program, Commerce looks to whether government plans or other policy directives lay out objectives or goals and call for lending to support such objectives or goals.[90] Once that finding is made, we rely upon the analysis undertaken in *CFS from China* to further conclude that national and local government control over the SOCBs render the loans a government financial contribution.[91] Commerce has repeatedly affirmed its finding in *CFS from China* that the Government of China's banking sector does not operate on a commercial basis and is subject to significant distortions, primarily arising out of the continued dominant role of the government in the financial system and the government's use of banks to effectuate policy objectives.[92] Because Government of China banks reflect significant government intervention,

[90] *See*, *e.g., Countervailing Duty Investigation of Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From the People's Republic of China: Final Affirmative Determination, and Final Affirmative Determination of Critical Circumstances, in Part*, 82 FR 58175 (December 11, 2017), and accompanying IDM at Comment 7.
[91] *See Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 72 FR 60645 (October 25, 2007) *(CFS from China)*, and accompanying IDM at Comment 8.
[92] *See Utility Scale Wind Towers from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012), and accompanying IDM at Comment 4 (citing *CFS from China*, IDM at Comment 10; *see also* Petitioner's Letter, "Information Related to Transnational Policy Lending," dated

they are considered to be SOCBs.[93] In *CFS from China*, Commerce explained why SOCBs are "authorities" within the meaning of section 771(5)(B) of the Act. Contrary to the Government of China's arguments made there, which are reiterated here, our findings were not, and are not, based upon government ownership alone. For example, we stated:

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

Based on facts available, record evidence indicates that financial support directed toward companies, specifically the solar industry, investing in BRI initiatives does in fact exist.[94] By the end of 2018, the China Development Bank had issued a total of 6.4 billion U.S. dollars in loans to clean energy industries in partner countries,[95] and by the end of 2022, total loans from Chinese policy banks for BRI projects amounted to 3.1 trillion yuan.[96] Further, the SOCBs act in accordance with these government policies and effectuate government interests in providing the lending, and therefore they are "authorities" within the meaning of section 771(5)(B) of the Act.[97]

As noted in the *Preliminary Determination* and Post-Preliminary Determination, Commerce found that Jintek's and the non-responsive Q/V companies,[98] did not cooperate to the best of their abilities to comply with Commerce's requests for information, and therefore there is no complete and verifiable information reported by these companies on the record, within the meaning of sections 782(e)(2) and (3) of the Act, by which Commerce can determine whether these companies received a subsidy benefit. Therefore, Commerce, in its application of facts available with an adverse inference, determines that Jintek and the non-responsive Q&V companies did use, and receive a benefit from, all countervailable subsidy programs within the meaning of section 771(5)(E) of the Act. The Government of China's argument is irrelevant because the application of a subsidy rate for this program based on AFA to Jintek, ISC Cambodia, Solar Long, and Hounen was not due to the Government of China's questionnaire responses, or lack thereof, but instead, due to the noncooperation by these four companies to Commerce's request for information.

Regarding the Government of China's assertion that we relied on an inaccurate translation of Article 34 of the Law on Commercial Banks, the translation and the quoted text is the only translation we have on record. No other translation on the administrative record indicates the

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September 6, 2024 at Exhibit China-NME Status Memoranda (discussing the status of the Chinese commercial banking sector).

[93] *Id*.

[94] *See* Petition at Exhibits VI-57, VI-69, VI-70.

[95] *Id*. at Exhibit VI-69.

[96] *Id.* at Exhibit VI-70.

[97] *See, e.g., CFS from China* IDM at Comment 1.

[98] *See Preliminary Determination* PDM at 10-12 and Post Preliminary Determination at 8.

translation is inaccurate or in error. Although the Government of China has asserted that the Law on Commercial Banks does not oblige banks to pursue industrial policies in their lending operations and that the Chinese version does not contain the equivalent of "shall," they rely on no authority for their argument and translations from expert, third-party sources indicate otherwise. As we explained in the *Aluminum Extrusions from China* and *Aluminum Extrusions from China AR1*, we determined that Article 34 of the Banking Law states that banks should carry out their loan business "under the guidance of the state industrial policies."[99] Further, we find that BRI constitutes a state industrial policy by which Chinese SOCBs are directed to support through their financial policies.[100] In this investigation, the Government of China did not provide any new information to warrant a reconsideration of Commerce's prior interpretation of Article 34 of the Banking Law.

The Government of China then asserts that Article 4 of the Law on Commercial Banks states that "{c}ommercial banks shall conduct their operations in accordance with laws and be free from interference by any organization or individual," and therefore, because this article is within the "General Principles" chapter, Article 34 must align with it.[101] We find this argument to be unavailing. While Article 4 may generally direct Chinese SOCBs to act independently of third-parties, Article 34 directs Chinese SOCBs to carry out their loan business according to state industrial policies. Article 4 is a general principle while Article 34 is a specific direction. The general principle of Article 4 does not expressly limit or negate the direction given in Article 34, and we continue to find that Article 34 demonstrates that Chinese SOCBs act at the direction of state industrial policies. Therefore, we do not find that Article 4 nullifies Commerce's prior interpretation of Article 34 of the Law on Commercial Banks.

For the final determination, we find, based on facts available, that the Policy Lending from Chinese Banks for BRI Capacity Cooperation Projects program is *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act. We have evidence on the record that China and Cambodia have multiple joint economic zones located in Cambodia, financed and encouraged investments by limited number of industries within the BRI capacity cooperation framework.[102] Further, we find that the Government of China has a policy to provide financial support to Chinese companies that invest in overseas BRI capacity cooperation projects, specifically the clean energy industry like solar energy production.[103] Accordingly, we find it reasonable to

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[99] *See Aluminum Extrusions from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011*, 79 FR 106 (January 2, 2014) (*Aluminum Extrusions from China AR1*), and accompanying IDM at "Policy Loans to Chinese Aluminum Extrusion Producers" and Comment 6 and *Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Aluminum Extrusions from China*), and accompanying IDM at Comment 28.

[100] *See* Petition at Exhibits VI-53, VI-57, and VI-69.

[101] *See* Government of China Case Brief at 14.

[102] *See* Petition at Exhibits VI-53, VI-58, VI-59, VI-66, VI-68.

[103] *See* Petition at Exhibit VI-57. *Guiding Opinions of the State Council on Promoting International Cooperation in Production Capacity and Equipment Manufacturing* outlines how the Government of China can increase international competitiveness by "Increas{ing} financial support. Give full play to the active role of policy banks and development financial institutions, and increase financing support for international cooperation in production capacity and equipment manufacturing through syndicated loans, export credits, project financing and other means… Promote the use of RMB in the construction of the Belt and Road Initiative…" *See also* Petition at Exhibit VI-69. *Trends and Recommendations in National BRI Renewable Energy Investment* by the Renewable Energy

determine for this final determination that these programs are *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act, based on facts otherwise available on the record, because these programs are provided to a limited number of enterprises or industries, including the solar industry.

The Government of China argues that the text of section 771(5A)(D)(iii)(I) of the Act limits findings of *de facto* specificity to subsidies provided to producers "within the jurisdiction" of the granting authority. As an initial matter, we note that neither the producers in question, nor the Government of China provided complete information in response to our questions with respect to this program. Due to this gap in information, we must analyze the facts available on the record, which indicates that producers subject to this investigation are within the "jurisdiction" of the Government of China for the purposes of analyzing specificity for this program.

Specifically, Article 2 of the Provisional Measures for Supervision and Administration of Outbound Investment by Centrally Administered Enterprises,[104] pursuant to the State-Owned Assets Law,[105] demonstrates that outbound investment by state-invested enterprises and their subsidiaries at all levels outside China are subject to Chinese law. According to Article 5 of the Government of China's State-Owned Assets Law,[106] a "state-invested enterprise" is defined as a "wholly state-owned enterprise or company with the state being the sole investor, or a company in which the state has a stake, *whether controlling or non-controlling*" {*emphasis added*}. Therefore, as facts available, we find that certain Chinese companies or subsidiaries of Chinese companies are within the jurisdiction of the Government of China. As a result, we are finding that this program is *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act and disagree with the Government of China that our analysis is inconsistent with this provision of the statute.

Comment 4: Substantial Evidence for the Cross-Border Provision of Chinese Polysilicon, Silicon Wafer, Silver Paste, Solar Glass for LTAR

Government of China's Case Brief

The following is a verbatim summary of the argument submitted by the Government of China. For further details, *see* Government of China's Case Brief at 17-24.

> {Commerce's} decision to countervail the Cross-Border Provision of Chinese Origin Inputs (polysilicon, silicon wafer, silver paste, solar glass) for…LTAR is not based on the substantial evidence and is otherwise not in accordance with law.

Subcommittee of the China Circular Economy Commission states "{t}he investment in overseas projects by Chinese energy companies is largely supported by relevant national policies and mechanisms… {I}t also includes the construction of financial mechanisms and all financial institutions carried out to cooperate with the construction of the 'One Belt, One Road' initiative… Cooperation is listed as a priority, including… actively promoting cooperation in clean and renewable energy sources such as hydropower, nuclear power, wind power, and solar energy…"

[104] *See* Government of China's Letter, "GOC NSA Questionnaire Response," dated November 13, 2024 at Exhibit I.2 (Provisional Measures for Supervision and Administration of Outbound Investment by Centrally Administered Enterprises) at Article 2.

[105] *Id*. at Article 1.

[106] *Id*. at Exhibit I.3 (State-Owned Assets Law) at Article 5.

> (1) The application of facts available on these LTAR programs is not warranted. Because {Commerce} disregards the existing evidence in the record and the due process rights of the parties involved.
>
> (2) The alleged financial contribution is not based on the substantial evidence and is otherwise not in accordance with law, because Chinese input producers are not authorities.

Petitioner's Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner. For further details, *see* Petitioner Rebuttal Brief at 13-20.

> Yes. In the preliminary and post-preliminary determinations, {Commerce} countervailed the provision of various Chinese input products for… LTAR and…BRI policy lending by Chinese banks as transnational subsidies based on the application of facts otherwise available due to the failure of the {Government of China} to provide necessary information. {Commerce} should continue to do so for the final determination.

Commerce's Position: In the Post-Preliminary Determination, we found, based on facts otherwise available, that certain producers of polysilicon, silicon wafer, silver paste, and solar glass are "authorities" within the meaning of section 771(5)(B) of the Act.[107] We made these decisions by selecting among limited record evidence, consistent with section 776(a) of the Act, in light of the absence of complete information in our questionnaire responses. Therefore, we disagree with the Government of China that Commerce wrongly applied facts otherwise available on this issue in the Post-Preliminary Determination. For the reasons detailed below, for this final determination, we continue to find that the certain producers of polysilicon, silicon wafer, silver paste, and solar glass are "authorities" within the meaning of section 771(5)(B) of the Act and, thus, that such producers provided a financial contribution in providing these goods within the meaning of section 771(5)(D)(iii) of the Act.

As noted in the *Preliminary Determination*, we are not applying an adverse inference because the requirements of section 776(b) of the Act have not been met. Nevertheless, Commerce requested myriad information that is necessary for our examination of whether the Chinese input producers are "authorities." The Government of China did not provide the requested information, and thus, while we are not applying an adverse inference in this instance, we must still rely on facts otherwise available for purposes of our determination.

We disagree with the Government of China's argument that Commerce was obligated to issue a supplemental questionnaire to the Government of China to provide it with an opportunity to cure deficiencies in its questionnaire response because the Government of China's responses to our questions on these issues were merely that it did not maintain or collect the requested information. The Government of China argues that Commerce did not inform the Government

[107] *See* Post Preliminary Determination at 3-7.

of China that its responses to our questions related to the provision of inputs for LTAR were deficient and did not provide the Government of China with respective opportunities to cure any deficiencies. However, by contending that the Government of China does not collect or maintain the requested information, we find that any further attempts to request this information from the Government of China would be futile as the Government of China itself stated it could not provide this information, nor did the Government of China provide Commerce with an alternative way to provide us with the required information.[108] Further, issuing a supplemental questionnaire asking the same question that the Government of China already identified as requiring information not available to it, would also result in an unwarranted extension of the deadline to provide this requested information.[109] Therefore, we find that section 782(d) of the Act was not triggered.

As discussed in the Post-Preliminary Determination, and noted above, to analyze whether the domestic producers and suppliers are "authorities" within the meaning of section 771(5)(B) of the Act, we sought information from the Government of China regarding the ownership of the input producers identified by Solarspace.[110] We specified that such information should include articles of incorporation, capital verification reports, articles of groupings, company by-laws, annual reports, articles of association, business group registrations, business licenses, and tax registration documents.[111] Moreover, we requested information concerning whether any individual owners, board members, or senior managers involved with these producers were either government or CCP officials, and the role of any CCP primary organization within the producers.[112] To the extent that the owners, managers, or directors of a producer are CCP officials or are otherwise influenced by certain CCP-related entities, Commerce requested information regarding the means by which the Government of China may exercise control over company operations and other CCP-related information.[113] The Government of China's lack of response to our requests for information is described in the Post-Preliminary Determination.[114] Thus, we find that the Government of China's questionnaire responses created a gap in the record regarding Solarspace's input producers. As a result, we are relying on record evidence as facts otherwise available to make a determination regarding whether input providers are "authorities" in this proceeding.

The information we requested regarding the role of CCP officials in the management and operations of these producers is necessary to our determination of whether these producers are "authorities" within the meaning of section 771(5)(B) of the Act. Commerce considers information regarding the CCP's involvement in China's economic and political structure to be relevant because record evidence suggests that the CCP exerts significant control over activities in China and is part of the governing structure in China.[115] As explained in the Public Bodies

[108] *See* Government of China's Letter, "GOPRC New Subsidy Allegation Questionnaire Response," dated October 10, 2024.
[109] *Id*.
[110] *See* Commerce's Letter, "Countervailing Duty Questionnaire," dated June 5, 2023 (Initial Questionnaire), at *Input Producer Appendix*; *see also Preliminary Results* PDM at 13-16.
[111] *See* Initial Questionnaire at *Input Producer Appendix*.
[112] *Id*.
[113] *Id*.
[114] *See* Post-Preliminary Determination at 13-16.
[115] *See* NSA1 at Exhibit NSA-13 (Analysis of Public Bodies).

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Memorandum, "available information and record evidence indicates that the CCP meets the definition of the term 'government' … for the limited purpose of applying the U.S. CVD law to China," that the CCP exerts significant control over economic activities in China, that the presence of CCP officials as owners, managers, or directors of a producer is pertinent for determining whether a producer constitutes an "authority," that publicly available information indicates that Chinese law requires the establishment of CCP organizations "in all companies, whether state, private, domestic, or foreign-invested," and that such organizations may wield a controlling influence in the company's affairs, as noted by multiple sources in the Public Bodies Memorandum.[116] Thus, the Government of China's arguments regarding the role of CCP officials in company management are unavailing due to our analysis of record evidence.

We also disagree with the Government of China's argument that companies like China National Building Material Group Co., Ltd. (CNBM) and Flat Solar should not be considered public bodies.[117] Commerce's Public Bodies Memorandum states that "enterprises in China in which the government has significant ownership that are also subject to certain government industrial plans may be found to be public bodies."[118] In addition, majority government-owned enterprises in China possess, exercise, or are vested with governmental authority, and as such, we find that the Government of China exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector. Also, Commerce may find enterprises with little or no formal government ownership to be public entities if the government exercises meaningful control over them (*e.g.,* where there is a significant Government of China presence through CCP committees).[119] Further, "{u}nder this case-by-case analysis, {Commerce} may also examine, inter alia, whether the industry producing the subject merchandise or the industry supplying inputs to the production of the subject merchandise is covered by an industrial plan or plans that indicate enterprises are being used to carry out government functions; government appointed company officials; the presence of government or CCP officials on the board or in management; and the existence and role of a Party committee."[120] Record evidence demonstrates that not only is CNBM fully owned by the State-owned Assets Supervision and Administration Commission of the State Council, but also, CNBM's chairman and director are CCP officials and CNBM's development strategy states, "CNBM actively puts the guiding principles from the 19th CPC National Congress and the Second, Third, Fourth, Fifth and Sixth Plenary Sessions of the 19th CPC Central Committee into action."[121] Similarly, record evidence demonstrates that Flat Solar's founder and chairman is a member of the CCP and a representative of the Xiuzhou District People's Congress. Flat Solar's vice president is also a CCP official, and Flat Solar was reported to be "actively respond{ing} to the central government's 'Belt and Road' initiative and accelerat{ing} its 'going out' pace."[122] Therefore, we continue to find that, based on the facts available on the record, the input producer companies like CNBM and Flat Solar are either owned or controlled by the CCP and are actively involved

[116] *See* Analysis of Public Bodies at 35-36.
[117] *See* Government of China Case Brief at 22.
[118] *See* Analysis of Public Bodies at 37-38.
[119] *Id.* at 5.
[120] *Id*.
[121] *See* NSA2 at Exhibit NSA2-26 at 6-8.
[122] *Id*. at Exhibits NSA2-28 and NSA2-29.

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in carrying out the Government of China's industrial policies, and therefore, are considered public bodies for purposes of this investigation.

With respect to the Government of China's argument that input producers are not "public bodies" within the meaning of the SCM Agreement,[123] we reiterate our stance in Comment 1 that Commerce makes its determinations in accordance with U.S. law, which is consistent with its WTO obligations.

Contrary to the Government of China's claim, Commerce did not use these Five-Year Plans (FYPs) to determine that input producers were authorities, but rather, used these FYPs, based on facts available, to determine that the Government of China has a policy to provide support to its global solar industry. While the FYP listed in the Post-Preliminary Determination does not explicitly mention the polysilicon, silicon wafer, silver paste, and solar glass industries,[124] these plans specifically mention strengthening the solar industry by coordinating "upstream manufacturing" to achieve the "core task" of "reducing costs" and encouraging "high-quality renewable energy industries" to "go global."[125] The FYPs' goals to strengthen the solar industry through coordinating upstream manufacturing to reduce costs and encourage solar companies to go abroad demonstrates not only that the Government of China has an incentive to direct state-owned and state-controlled companies to produce and sell inputs for solar cells at artificially low costs to its domestic solar industries but also to do the same for its solar industries abroad. In addition, we disagree with the Government of China's assertion that FYPs are simply economic planning documents akin to the other countries' plans and policies.[126] According to the Analysis of Public Bodies, FYPs are generally prepared by the National Development and Reform Commission, subject to the guidance from CCP Central Committee, and ratified by the National People's Congress.[127] Further, the World Bank found that "{i}f the government {were} unable to intervene in the microeconomic decision making of enterprises and consumers, the targets/tasks it set in the five year plan, no matter how intrusive, would remain no more than an expectation;" however, "evidence indicates that the {Government of China} could and did play a powerful role in resource allocation to implement the five year plan targets on industrial structure changes."[128] Therefore, we find that the Government of China's FYPs are evidence, that the Government of China directs state-owned and state-controlled companies to produce and sell inputs for solar cells at artificially low costs.

With regard to the Government of China's claim that the Government of China's Company Law prohibits CCP officials from taking positions in private companies, Commerce has previously found that CCP officials "can, in fact, serve as owners, members of the board of directors, or senior managers of companies."[129] In a prior proceeding, Commerce found that the Government of China's basis for this assertion rests on the Executive Opinion of the Central Organization Department of Central Committee of CPC on Modeling and Trial Implementation of the

[123] *See* Government of China Case Brief at 20.
[124] *See* NSA1 at Exhibits NSA-6, NSA-35, and NSA-38.
[125] *See* NSA1 at Exhibits NSA-6 at 4, NSA-35 at 11, and NSA-38 at 38.
[126] *See* Government of China Case Brief at 21-22.
[127] *See* Analysis of Public Bodies at 17-18.
[128] *Id*. at 19.
[129] *See, e.g., Countervailing Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Final Affirmative Determination*; 83 FR 9275 (March 5, 2018) IDM at 53.

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Provisional Regulations of State Civil Servants on CCP Organs (Zhong Fa (1993) No. 8) which reflects the CCP's intent to model its personnel management system after the Civil Servant Law, including restrictions on enterprise employment.[130] However, it has been explained that this rule only applies to "staff of the administrative organs of the CCP and specified officials."[131] Thus, the rule only applies to a subset of party and government officials. The Government of China has not defined the "specified officials" to which this rule applies, nor has it defined the officials to which this rule does not apply.[132] This finding illustrates that CCP officials are able to serve as owners, members of the board of directors, or manager of input producers. With respect to this finding, we also note that the Public Bodies Memorandum plainly states that the CCP "may exert varying degrees of control {in private companies} in different circumstances."[133]

We have found in prior cases that, when examining whether CCP officials are among a company's owners, senior managers, or directors, or if a CCP primary organization such as a party committee is embedded in the company's structure, the entity possessing direct knowledge of these facts is the CCP (or the Government of China) itself.[134] In fact, in prior CVD proceedings involving China, we found that the Government of China was able to obtain the information requested independently from the companies involved. We also found that statements from the companies, rather than from the Government of China or from members of the CCP themselves, were not sufficient as a basis for determining whether CCP officials were embedded in a company's structure as owners, senior managers, or directors.[135] Further, the Government of China has been able to provide requested information on CCP involvement in input producers in a prior CVD investigation.[136]

As a result of the absence of necessary information regarding the ownership of the input producers as well as the role of CCP officials in the input producers, we are relying on the best available information (explained above), as facts available, in determining whether these input producers were authorities. In analyzing facts available, we continue to find that CCP officials are present in each of the input producers identified in the new subsidy allegations as individual

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[130] *See Certain Oil Country Tubular Goods from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 52301 (September 3, 2014) (*OCTG from China*) IDM at Comment 7.
[131] *Id*.
[132] *Id*.; *see also Carbon and Alloy Steel Threaded Rod from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 85 FR 8833 (February 18, 2020) (*Carbon and Alloy Threaded Rod from China*) IDM at 13.
[133] *See* Analysis of Public Bodies at 35-36.
[134] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 78799 (December 31, 2014) (*Citric Acid from China*), and accompanying IDM at 4-6; *see also Carbon and Alloy Threaded Rod from China* IDM at 16.
[135] *See Citric Acid from China* IDM at 61 ("{w}e requested the {Government of China} to respond to the Input Producer Appendix because it is the party to the investigation which has in its possession verifiable information about the CCP's structure and functions that are relevant to {Commerce's} determination of whether producers of inputs are 'authorities' within the meaning of section 771(5)(B) of the Act."). *See also Pre-Stressed Concrete Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010) (*PC Strand from China*), and accompanying IDM at Comment 8, where it is discussed that {Commerce} requested and obtained from the Government of China information which was verified at the Government of China on the ownership of an input producer and the involvement of a shareholder in the CCP.
[136] *See High Pressure Steel Cylinders from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012) (*High Pressure Steel Cylinders from China*), and accompanying IDM at 13.

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owners, managers, and members of the boards of directors, and that this gives the CCP, as the government, meaningful control over the companies and their resources.[137] As explained in the Public Bodies Memorandum, an entity with significant CCP presence on its board or in management or in party committees may be controlled, such that it possesses, exercises, or is vested with governmental authority.[138] Consistent with this determination, the record also shows that Government of China authorities account for at least 71 percent of silicon wafer and solar glass production in China.[139] On this basis, for any purchases by Solarspace of silicon wafers and solar glass from unknown producers in China, we find that 71 percent (for silicon wafers and solar glass) of the purchases by quantity were produced and supplied by Government of China "authorities." This method is consistent with Commerce's past practice in certain other instances for the provision of inputs for LTAR in China by producers for which no record information was available.[140] Therefore, as facts available, we continue to find that certain producers of polysilicon, silicon wafer, silver paste, and solar glass are "authorities" within the meaning of section 771(5)(B) of the Act.

Comment 5: Specificity for the Cross-Border Provision of Chinese Origin Polysilicon, Silicon Wafer, Silver Paste, Solar Glass for LTAR

Government of China's Case Brief

The following is a verbatim summary of the argument submitted by the Government of China. For further details, *see* Government of China's Case Brief at 24-27.

> (3) There is no legal basis to determine that this alleged program is specific. *De facto* specificity cannot apply to transnational subsidy programs that are provided to an enterprise or industry that is not "within the jurisdiction of" the authority allegedly providing the subsidy. Export subsidy is not established because this program is not contingent upon export performance.
>
> (4) The subsidy rate is not calculate with an{sic} the appropriate denominator. The determination of export subsidy was not substantiated, thus the use of export sales as denominator for the calculation is wrong.

[137] *See* NSA1 and NSA2.
[138] *See* Analysis of Public Bodies.
[139] *See* NSA1 and NSA2.
[140] *See, e.g., Drawn Stainless Steel Sings from the People's Republic of China: Final Results of Countervailing Duty Administrative Review and Rescission in Part; 2021-2013*, 80 FR 69638 (November 10, 2015), and accompanying IDM at 10; *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008), and accompanying IDM at 11; *Light-walled Rectangular Pipe and Tube from the People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination*, 73 FR 35642 (June 24, 2008), and accompanying IDM at 8.

Petitioner's Case Brief

The following is a verbatim summary of the argument submitted by the petitioner. For further details, *see* Petitioner Case Brief at 2-5.

> No. While Petitioner agrees with {Commerce} that the Cross-Border Provision of Polysilicon Inputs from the Government of China for LTAR is *de facto* specific pursuant to section 771(5A)(D)(iii) of the {Act…the p}etitioner does not agree that the program is contingent on export performance within the meaning of sections 771(5A)(A) and (B) of the Act based on the record of this investigation.
>
> No. While Petitioner agrees with {Commerce} that the Cross-Border Provision of Polysilicon Inputs from the Government of China for LTAR is *de facto* specific pursuant to section 771(5A)(D)(iii)(I) of the Act, {the p}etitioner does not agree that the program is contingent on export performance within the meaning of sections 771(5A)(A) and (B) of the Act based on the record of this investigation.

Commerce's Position: For the final determination, we continue to find, based on facts available, that the cross-border provision of Chinese origin polysilicon, silicon wafer, silver paste, and solar glass for LTAR programs are *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act. The Government of China argues that the text of 771(5A)(D)(iii)(I) limits findings of *de facto* specificity to subsidies provided to producers "within the jurisdiction" of the granting authority. As explained in Comment 3, we find Solarspace to be "within the jurisdiction of the {Government of China}" for the purposes of our specificity analysis in this investigation. Article 2 of the Provisional Measures for Supervision and Administration of Outbound Investment by Centrally Administered Enterprises,[141] pursuant to the State-Owned Assets Law,[142] demonstrates that outbound investment by state-invested enterprises and their subsidiaries at all levels outside China are subject to Chinese law. According to Article 5 of the Government of China's State-Owned Assets Law,[143] a "state-invested enterprise" is defined as a "wholly state-owned enterprise or company with the state being the sole investor, or a *company in which the state has a stake, whether controlling or non-controlling*" {*emphasis added*}.

In this investigation, record evidence shows that Solarspace Tech, the Chinese parent company and majority shareholder to Solarspace, has several state-owned and state-controlled investors, and therefore, under the Government of China's State-Owned Assets Law, is considered a "state-invested enterprise."[144] As a subsidiary to Solarspace Tech, Solarspace, is thus within the jurisdiction of the Government of China within the meaning of section 771(5A)(D) of the Act.

[141] *See* Government of China's Letter, "GOC NSA Questionnaire Response," dated November 13, 2024 at Exhibit I.2 (Provisional Measures for Supervision and Administration of Outbound Investment by Centrally Administered Enterprises) at Article 2.
[142] *Id*. at Article 1.
[143] *Id.* at Exhibit I.3 (State-Owned Assets Law) at Article 5.
[144] *See* Solarspace's Letter, "Section III Affiliated Companies Questionnaire Response," dated July 23, 2024 at Exhibit 1. *See also* Petitioner's Letter, "Comments on Solarspace Cambodia's Section III Affiliation Questionnaire Response," dated August 5, 2024 at Exhibit 1 pages 1-1-62 and 1-1-63.

As a result, we disagree with the Government of China that there is no legal basis to find the alleged programs specific.

Accordingly, we find it reasonable to determine for this final determination that these programs are *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act, based on facts otherwise available on the record, because these inputs are provided to a limited number of industries, including the solar cells industry.[145] Therefore, because we are finding this program to be *de facto* specific for this final determination, we will use total sales as the denominator for calculating benefits for these programs. Furthermore, because the program is *de facto* specific, we do not reach the decision on whether it is also export specific in this final determination. While we are finding these programs to be *de facto* specific pursuant to section 771(5A)(iii)(I) of the Act in this investigation, Commerce will continue to make such determinations on a case-by-case basis, based on the record evidence of that particular proceeding.

Comment 6: Whether the Cross-Border Provision of Chinese Silicon Wafer for LTAR is Tied to Non-Subject Merchandise

Solarspace's Case Brief

The following is a verbatim summary of the argument submitted by Solarspace. For further details, *see* Solarspace's Case Brief at 28-32.

> Commerce wrongfully countervailed purchases of Chinese-produced silicon wafers for…LTAR, calculating a duty of 110.13 {percent} for Solarspace, and using this calculated rate to apply to other respondents as the AFA rate. The scope of this investigation, however, defines any solar cells produced from such silicon wafers from China as non-subject merchandise. Accordingly, Commerce should remove calculated duties for silicon wafers for LTAR under its attribution rules.

Petitioner's Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner. For further details, *see* Petitioner Rebuttal Brief at 23-24.

> No. Solarspace argues that solar cells produced from Chinese silicon wafers are outside the scope of the investigation, and that the provision of Chinese wafers for LTAR should be removed from Solarspace's estimated subsidy rate pursuant to 19 {CFR} 351.525(b)(5). This argument demonstrates a misunderstanding regarding {Commerce's} "tying" practice. {Commerce} has stated that it will not trace how subsidies are used by companies, but rather analyze the purpose of the subsidy based on information available at the time of bestowal. Solarspace has presented no evidence as to the intent of the {Government of China} at the time of the bestowal of the subsidy in this case. In fact, the record is clear that silicon wafers from China can be used to produce subject and non-subject merchandise. {Commerce} should reject its "tying" argument.

[145] *See* Post-Preliminary Determination at 7-8.

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Commerce's Position: At issue is the analysis that Commerce uses to determine whether benefits received under a subsidy program are tied to a particular product or market under 19 CFR 351.525(b). Generally, we consider subsidies to be untied, as most subsidies benefit the entire production of a company;[146] however, we have "implemented tying regulations to attribute subsidies rather than tracing subsidies through {a} compan{y's}" production process.[147]

We disagree with Solarspace that the cross-border provision of Chinese origin silicon wafer for LTAR program should not be countervailed because it is tied to non-subject merchandise. Section 351.525(b)(5)(i) of Commerce's regulations states that, generally, "{i}f a subsidy is tied to the production or sale of a particular product, {Commerce} will attribute the subsidy only to that product."[148] When determining whether a subsidy is tied to particular product or market under 19 CFR 351.525(b), Commerce's practice is to examine the contingencies the administering authority imposes upon the recipient firm, at the time of the bestowal of the benefit.[149] As the *Preamble* to Commerce's regulations makes clear, our analysis of whether a subsidy is tied to particular products focuses on the "stated purpose of the subsidy or the purpose we evince from the record evidence at the time of bestowal."[150] Furthermore, under this approach, Commerce does not further examine how the recipient firm uses the subsidy for purposes of the tying analysis.[151] A subsidy is tied to a particular product when the intended use is known to the provider of the subsidy and so acknowledged prior to, or concurrent with, the bestowal of the subsidy.[152] For example, in determining whether a loan is tied to a particular product, Commerce examines the loan approval documents; to determine whether a grant is tied to a particular product, Commerce examines the grant approval documents.

In conducting this tying analysis, Commerce will look to whether, at the time of the bestowal of the subsidy, there was a stated purpose of the subsidy that is supported by record evidence. [153] While Commerce does not tie or trace usage of subsidies received, we note the *Solar Cells Circumvention Determination*,[154] solar modules produced in Cambodia using "wafers produced

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[146] *See 1998 Final Preamble*, 63 FR at 65400.
[147] *See Light-Walled Rectangular Pipe and Tube from People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination,* 73 FR 35642 (June 24, 2008) (*Rectangular Pipe and Tube*), and accompanying IDM at 37-38 (citing *CFS from China* IDM at Comment 18).
[148] *Id.* (citing *CFS from China* IDM at Comment 18).
[149] *See Circular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Results of Countervailing Duty Administrative Review and Rescission of Countervailing Duty Administrative Review, in Part; Calendar Year 2017,* 84 FR 56173 (October 21, 2019) (*Pipes and Tubes from Türkiye*), and accompanying IDM at 21 (citing *Certain Softwood Lumber Products from Canada: Final Affirmative Countervailing Duty Determination, and Final Negative Determination of Critical Circumstance*, 82 FR 51814 (November. 8, 2017) (*Softwood Lumber from Canada Investigation*), and accompanying IDM at Comment 53).
[150] *See 1998 Final Preamble*, 63 FR at 65403.
[151] *See Pipes and Tubes from Türkiye* IDM at 21 (citing *Softwood Lumber from Canada Investigation* IDM at Comment 53).
[152] *See Pipes and Tubes from Türkiye* IDM at 21 (citing *Softwood Lumber from Canada Investigation* IDM at Comment 53).
[153] *See Certain Kitchen Appliance Shelving and Racks Final Results of the Countervailing Duty Administrative Review,* 77 FR 21744 (April 11, 2012) (*Kitchen Appliance Shelving*) IDM at 30-31 (citing *e.g., Industrial Phosphoric Acid from Israel: Final Countervailing Duty Determination*, 63 FR 13626, 13628-13629 (March 20, 1998); and *CFS from China* IDM at Comment 18).
[154] *Id*.

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in China and where more than two of the following components in the module/laminate/panel were produced in China: (1) silver paste; (2) aluminum frames; (3) glass; (4) backsheets; (5) ethylene vinyl acetate sheets; and (6) junction boxes" are subject to the scope of the *Solar Cells from China Order*.[155] Accordingly, solar modules produced in Cambodia containing wafers produced in China but using two or less of the above-mentioned China-produced components would be considered subject to the scope of this investigation. Moreover, and importantly, there is no record evidence that demonstrates that, at the time of bestowal, there was a stated purpose that this subsidy was only provided for the production of non-subject merchandise. The purpose of this subsidy is to provide silicon wafer to producers at artificially low prices, whether the solar cell producer will produce subject or non-subject merchandise.[156] Therefore, we determine that the cross-border provision of silicon wafer for LTAR is not tied to the production of non-subject merchandise, and, consequently, we find that all silicon wafers purchased by Solarspace are included within the program.

Comment 7: Application of AFA to the Government of Cambodia's Responses

Government of Cambodia's Case Brief

The following is a verbatim summary of the argument submitted by the Government of Cambodia. For further details, *see* Government of Cambodia Case Brief at 7-12.

> Commerce should not find the {Government of Cambodia's} submissions unverified or otherwise apply adverse facts available (AFA) based upon verification exhibits not having been submitted via ACCESS.
>
> First, Commerce should have granted the out-of-time request for extension of time on the basis of the extraordinary circumstances of the {Government of Cambodia's} first participation in a countervailing duty investigation, that it was unrepresented, and that – despite written language in the verification outline – Commerce's verbal instructions and actions at verification caused confusion such that the {Government of Cambodia} did not know what was expected. Further, when Commerce sent an email reminder on the fifth day after verification to remind the {Government of Cambodia} to submit verification exhibits, it was already too late – not only because the Embassy of the {Government of Cambodia} in Washington DC could not reach anyone in Cambodia where it was after 9 p.m., but the Embassy in Washington DC also could not obtain necessary authority to make any submission. Commerce should grant the {Government of Cambodia} time to submit the exhibits, or simply place on the record of the investigation copies of the exhibits that Commerce took with it.
>
> Second, Commerce also cannot apply AFA to the {Government of Cambodia} based on the verification exhibits not having been formally submitted by the {Government of Cambodia} because Commerce obtained copies of all the

[155] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Countervailing Duty Order,* 77 FR 73017 (December 7, 2012) (*Solar Cells from China Order*).
[156] *See* NSA1 at 12-16.

verification exhibits and thus had an independent obligation to place them on the record of the review.

Petitioner's Case Brief

The following is a verbatim summary of the argument submitted by the petitioner. For further details, *see* Petitioner Case Brief at 5-6.

> Yes. {Commerce} should apply AFA to determine both financial contribution and specificity for all Cambodian subsidy programs due to the failure of the {Government of Cambodia} to provide a verifiable response given its failure to file verification exhibits. Further, for indirect tax programs, {Commerce} should determine benefit by the application of AFA because the documents used to determine benefit are under the control of the {Government of Cambodia} and were created by the {Government of Cambodia}.

Government of Cambodia's Rebuttal Brief

The following is a verbatim summary of the argument submitted by the Government of Cambodia. For further details, *see* Government of Cambodia Rebuttal Brief at 1-3.

> Contrary to the {p}etitioner's argument, Commerce cannot apply adverse facts available based upon its improper decision that the {Government of Cambodia's} submissions were not verifiable because the {Government of Cambodia} did not submit the verification exhibits on the record of the investigation after Commerce verifying officials took copies of all verification exhibits, confusing the inexperienced {Government of Cambodia}. The {Government of Cambodia's} responses were verifiable and, in fact verified. That the {Government of Cambodia} did not upload verification exhibit on ACCESS that Commerce already had obtained and had a obligation to place on the record does not convert the {Government of Cambodia's} responses from verified to unverifiable.

Petitioner's Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner. For further details, *see* Petitioner Rebuttal Brief at 7-12.

> No. The {Government of Cambodia} made its request more than three weeks after the deadline had passed. Further, the {Government of Cambodia} made no showing of extraordinary circumstances as required by {Commerce's} regulations and discussed in the Preamble to those regulations. {Commerce} reasonably determined that the {Government of Cambodia's} asserted grounds were insufficient, consistent with its regulations and practice. {Commerce's} written instructions were clear. Further, the {Government of Cambodia} is not a "person"

> within the meaning of the Due Process Clause, and the courts have determined foreign states and their instrumentalities are not entitled to its protections.
>
> No. {Commerce's} verification exhibits are work product protected by privilege and not a substitute for the submission of verification exhibits by the {Government of Cambodia}. Further, it would be a manifest injustice for {Commerce} to use information for its determination that other interested parties were not allowed to comment on or inspect.

Commerce's Position: We disagree with the Government of Cambodia's argument that Commerce should not apply adverse facts available based upon the Government of Cambodia's failure to provide verification exhibits. The Government of Cambodia cites its inexperience with United States countervailing duty investigations as its "extraordinary circumstance" to warrant an extension request submitted over three weeks after the applicable deadline.[157] As explained in our denial of extension letter:

> untimely filed extension requests are subject to a higher standard – extraordinary circumstances… Further, under 19 CFR 351.302(c) '{a}n untimely filed extension request will not be considered unless the party demonstrates that an extraordinary circumstance exists.' An extraordinary circumstance is defined in 19 CFR 351.302(c)(2) as an unexpected event that (1) 'could not have been prevented if reasonable measures had been taken,' and (2) 'precludes the party or its representative from timely filing an extension through all reasonable means.'… Examples of extraordinary circumstances include a natural disaster, riot, war, force majeure, or medical emergency. Examples that are unlikely to be considered extraordinary circumstances include insufficient resources, inattentiveness, or the inability of a party's representative to access the Internet on the day on which the submission was due.[158]

Again, there was no extraordinary circumstance like a natural disaster, riot, war, force majeure, or medical emergency preventing the Government of Cambodia from timely filing their verification exhibits. The Government of Cambodia's claimed misunderstanding of Commerce's verification outline instructions and its own delay in internal government procedures are more akin to the examples of situations that would not be considered an extraordinary circumstance. This circumstance was both preventable and did not preclude the Government of Cambodia from timely filing its verification through reasonable means. While the Government of Cambodia stated that its own internal procedures prevented it from requesting an extension of time on the day of the submission deadline, the Government of Cambodia still did not file any extension of time until over three weeks after the deadline for the verification exhibits.[159] Throughout this investigation, the Government of Cambodia demonstrated that it can timely file extension

[157] *See* Government of Cambodia's Letter, "Out-of-Time Request for Extension of Time to Submit Verification Exhibits," dated February 19, 2025 (Government of Cambodia Out of Time Extension Request). The applicable deadline to submit verification exhibits was January 27, 2025.
[158] *See* Commerce's Letter, "Denial of Untimely Request for Extension to Submit Verification Exhibits," dated February 27, 2025 (Denial of Extension Letter) (citing *Extension of Time Limits*, 78 FR 57790, 57793 (September 20, 2013)).
[159] *See* Government of Cambodia Out of Time Extension Request.

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requests and Commerce has repeatedly granted these requests.[160] We continue to find the Government of Cambodia's reasoning for its inability to file its verification exhibits to not constitute an extraordinary circumstance warranting an extension of time.

The Government of Cambodia also argues that the verification outline is confusing for non-native English language users because it states, "we *request* that you file and serve verification exhibits no later than the end of the fifth business day after each verification is completed." {*emphasis added*}[161] The Government of Cambodia argues that the verification outline was unclear for non-native English language speakers who are not familiar with Commerce's procedures due to the confusion between the wording of "request" versus "must," but we find this argument to be unavailing. In addition to the sentence above, the Government of Cambodia Verification Outline states another two times that verification exhibits must be submitted on the record no later than the end of the fifth business day that the verification is completed:

> {A}ll business proprietary exhibits *must* be filed with Commerce as business proprietary documents and served on all parties on the APO service list in accordance with 19 CFR 351.303(b) and 351.303(f) *no later than the end of the fifth business day after each verification is completed*… An electronically filed document *must* be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00p.m. Eastern Time, unless otherwise specified by Commerce, *on the fifth business day after verification is completed*." {*emphasis added*}[162]

Also, contrary to the Government of Cambodia's characterizations, Commerce did repeatedly inform the Government of Cambodia during the course of verification of their reporting obligations under the verification outline. As a courtesy, considering that the Government of Cambodia was a *pro se* party at the time, Commerce reached out via email and phone call to, again, remind the Government of Cambodia of its reporting obligations.[163] As discussed above, it is interested parties, not Commerce, that are responsible to timely file their responses.[164] Moreover, Commerce provided additional assistance to the Government of Cambodia and other *pro se* interested parties through guidance with filing documents on ACCESS, answering administrative questions, and giving verbal reminders of procedures.[165] If the Government of Cambodia was confused about the wording of the verification outline or by the fact that Commerce officials took their own copies of verification exhibits, the Government of Cambodia had the ability to clarify this confusion by reaching out to Commerce officials. In fact,

[160] *See* Commerce's Letters, "Extension of Deadline for Initial Questionnaire Response," dated August 7, 2024; "Second Extension of Deadline for Initial Questionnaire Response," dated August 15, 2024; "Extension of Deadline for Supplemental Questionnaire Response," dated September 13, 2024; and "Second Extension of Deadline for Supplemental Questionnaire Response," dated September 18, 2024

[161] *See* Commerce's Letter, "Verification of the Government of Cambodia's Questionnaire Responses," dated January 7, 2025 (Government of Cambodia Verification Outline) at 2.

[162] *Id*. at 2-3.

[163] *See* Denial of Extension Letter at 2.

[164] *See* Commerce's Letter, "Verification of the Government of Cambodia's Questionnaire Responses," dated January 7, 2025 (Government of Cambodia Verification Outline) at 2-3.

[165] *See* Denial of Extension Letter at 2.

Commerce provides contact information for the analysts involved in a proceeding at the end of every letter issued to any interested party:

> If you have any questions regarding this verification, please contact Dusten Hom at (202) 482-5075 or Garry Kasparov at (202) 482-1397. If, upon receipt of this outline, you feel any of the verification procedures cannot be performed, please contact us immediately.[166]

Finally, we disagree with the Government of Cambodia's argument that if Commerce does not provide an extension of time to the Government of Cambodia to upload its verification exhibits, Commerce must upload the exhibits it took from the Government of Cambodia during verification. The purpose of Commerce taking a copy of verification exhibits is to ensure that the proper verification exhibits are filed onto the record.[167] Where there are inconsistencies between what was filed by an interested party and what Commerce took as verification exhibits, Commerce may use its copy of the verification exhibits to address these inconsistencies.[168] Therefore, it is the Government of Cambodia's responsibility to timely file its verification exhibits so that Commerce may use its own copies of the exhibits to ensure that there are no inconsistencies.[169] In addition, it is the Government of Cambodia's responsibility to file its own verification exhibits because it must certify the accuracy of its submission.[170] If Commerce were to place its own verification exhibits on the record, Commerce cannot certify the accuracy of this information on behalf of the Government of Cambodia. Further, Commerce has discretion to enforce its deadlines and to determine how to implement its administrative procedures.[171] Here, we determine that the Government of Cambodia failed to timely file its verification exhibits and that Commerce is not required to place its own copies, used for addressing inconsistencies in already filed exhibits, on the record of this investigation.

Therefore, in this final determination, we continue to find that the Government of Cambodia's questionnaire responses remain unverified. By not submitting its verification exhibits on the record of this investigation, we find that the Government of Cambodia withheld information that was requested by Commerce, failed to provide information by the deadline for submission, significantly impeded this proceeding, and provided information that could not be verified. Thus, Commerce will rely on facts otherwise available in making our final determination with respect to the Government of Cambodia, pursuant to sections 776(a)(2)(A)-(D) of the Act. Moreover, we determine that an adverse inference is warranted, pursuant to section 776(b) of the Act, because, by not timely submitting its verification exhibits, the Government of Cambodia did

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[166] *See* Government of Cambodia Verification Outline at 3.
[167] *Id*. "If, upon review, Commerce finds that any of the exhibits filed do not match the exhibits that Commerce decided to take during verification, Commerce will notify the submitter and other parties, and will take appropriate steps to address any inconsistencies."
[168] *Id*.
[169] *See, e.g., QVD Food Co., Ltd. v. United States*, 658 F. 3d. 1318, 1324 (Fed. Cir. 2011) ("'the burden of creating an adequate record lies with {interested parties} and not with Commerce'" (quoting *Tianjin Machinery Import & Export Corp. v. United States*, 806 F. Supp. 1008, 1015 (CIT 1992)).
[170] *See* Government of Cambodia Verification Outline at 2-3. "Your submission of the exhibits must be accompanied by the certificate of service required by 19 CFR 351.303(f)(2) indicating service on the parties on the APO service list, as well as the certificates of factual accuracy included with the initial questionnaire issued to you by Commerce."
[171] *See, e.g., SeAH Steel Corp. v. United States*, 659 F. Supp. 3d 1318, 1327 (CIT 2023).

not cooperate to the best of its ability to comply with the requests for information in this investigation. Furthermore, the information that was provided cannot be verified as provided in section 782(i) of the Act. As facts otherwise available with an adverse inference, we determine that each domestic subsidy program constituted a financial contribution, pursuant to section 771(5)(D) of the Act, and is specific pursuant to section 771(5A) of the Act. Therefore, we now find that the Co-Financing Guarantee Scheme, which we preliminarily determined to be specific to the tourism industry,[172] to be specific pursuant to section 771(5)(D) of the Act and will include this program in the AFA subsidy rate.

Comment 8: AFA Rates

BYD's Case Brief

The following is a verbatim summary of the argument submitted by BYD. For further details, *see* BYD's Case Brief at 2-5 and 9-11.

> {Commerce's} preliminary determination to apply a 729.86-percent adverse facts available rate to Solar Long PV-Tech (Cambodia) Co., Ltd. and Hounen Solar Inc Co., Ltd. is unlawful because it is punitively high, is untethered to commercial reality, and is far beyond anything appropriate to induce cooperation. Under the statute and applicable case law, Commerce should apply an accurate rate that better reflects commercial reality.
>
> {Commerce} impermissibly included transnational subsidies in the AFA rate calculation. Commerce's selection of a rate related to the provision of goods by the Government of China as the AFA rate applied for loan and tax programs administered by the Government of Cambodia is plainly punitive and has little probative value, and thus violates the statute and court precedents.

Government of Cambodia's Case Brief

The following is a verbatim summary of the argument submitted by the Government of Cambodia. For further details, *see* Government of Cambodia Case Brief at 18-19.

> The AFA rates assigned to the allegedly non-cooperating parties is entirely disconnected from any reality and must change. Commerce's calculation of the 110.13 {percent} rate is not sustainable as it pertains to an unlawful cross-border subsidy finding and in any event should be attributed only to non-subject merchandise. Thus, the 110.13 {percent} rate cannot be used for AFA purposes and Commerce must redetermine an appropriate AFA rate.

Commerce's Position: We disagree with BYD that it is impermissible to include transnational subsidies as part of the AFA rate calculation and disagree that the AFA rate applied is punitive. We further disagree with the Government of Cambodia's argument that the AFA rate is inappropriate or unreasonably high. As explained in our *Preliminary Determination* and Post-

[172] *See Preliminary Determination* PDM at 32-33.

Preliminary Determination we determined the AFA rate in accordance with sections 776(d)(1)(A) of the Act and 19 CFR 351.308(j) of Commerce's regulations.[173] We applied a four-tier sequential analysis, or the "AFA hierarchy" in determining the appropriate AFA rate.

Pursuant to the first step of Commerce's investigation hierarchy, under 19 CFR 351.308(j)(1)(i), we apply the highest above-*de minimis* rate calculated for a cooperating company for the identical program in the investigation.[174] We calculated rates for Solarspace, the only cooperating mandatory respondent, for four different programs;

1. Customs Duty Exemption and Related Incentives for Raw Materials for Export Qualified Investment Projects
2. Customs Duty Exemption and Related Incentives for Production Equipment for Export Qualified Investment Projects and Supporting Industry Qualified Investment Projects
3. Cross-Border Provision of Silicon Wafers from the Government of the People's Republic of China for LTAR
4. Cross-Border Provision of Solar Glass from the Government of the People's Republic of China for LTAR.

Accordingly, we used the calculated rates for these four programs in the AFA rate calculation.[175]

The second step is, if no rate exists pursuant to 19 CFR 351.308(j)(1)(ii), that we will determine if an identical program was used in another countervailing duty proceeding involving the same country and apply the highest calculated above-*de minimis* rate for the identical program.[176] As this is the first countervailing duty investigation for Cambodia there are no identical programs that have been used in the same country for another countervailing duty proceeding.

The third step, is if no rate exists pursuant to 19 CFR 351.308(j)(1)(iii), we will determine if there is a similar or comparable program in any countervailing duty proceeding involving the same country and apply the highest calculated above-*de minimis* rate.[177] For the following tax

[173] *See* Post-Preliminary Determination at 10-13.
[174] *See* 19 CFR 351.308(j)(1)(i).
[175] *See* Appendix
[176] *See* 19 CR 351.308(j)(1)(ii).
[177] *See* 19 CFR 351.308(j)(1)(iii).

programs, because there are no calculated identical rates for these programs, we look to find a similar or comparable program from within the investigation:

1. Income Tax Exemption for QIP under the Law on Investment
2. Special Depreciation for Qualified Investment Activites under the Law on Investment
3. Tax Deduction for Certain Activites under the Law on Investment
4. Tax Incentives for QIPs in SEZs
5. Custom Duty Exemption for Zone Investors in SEZs
6. Property Tax Exemption for SEZs

Based on record information, we find Solarspace's two measurable tax programs to be similar, and we selected, as AFA, the higher of the two tax subsidy rates calculated for Solarspace.[178]

For the following LTAR programs, because there are no calculated rates for these programs, we look to find a similar or comparable program from within the investigation:

1. Cross-Border Provision of Polysilicon Inputs from the Government of the People's Republic of China for LTAR
2. Cross-Border Provision of Silver Paste from the Government of the People's Republic of China for LTAR

Based on record information, we find Solarspace's two measurable LTAR programs to be similar and we selected, as AFA, the higher of the two LTAR programs rates calculated for Solarspace.

Finally, if no such rate exists, pursuant to 19 CFR 351.308(j)(1)(iv), we apply the highest above *de-minimis* rate calculated from any non-company-specific program in any countervailing duty

[178] Commerce selects the highest above-*de minimis* rate for similar or comparable programs, but not necessarily "most" similar programs. *See 2024 Final Rule* at 20783 ("The TPEA added section 776(d)(3)(A) to the Act which states that Commerce 'is not required' for 'any purpose' to 'estimate what the countervailable subsidy rate; would have been if the part 'had cooperated'… The proposed and final rule reflect Commerce's practice which has been upheld as in accordance with law by the CIT.") (citing *Changzhou Trina Solar Energy Co. v. United States*, 352 F. Supp. 3 1316, 13299 ("Under Commerce's established {hierarchy} methodology consistent with the plain text of the statute, Commerce selects a *similar* program, not necessarily the *most similar* program.")).

proceeding involving the same country that the industry subject to the investigation could have possibly used.[179] For the following loan programs there are no rates available:

1. Rural Electrification Fund
2. Business Recovery Guarantee Scheme
3. Policy Lending from Chinese Banks for Belt and Road Initiative Capacity Cooperation Projects

Based on record information, we selected, as AFA, the highest of Solarspace's four measurable programs.

The purpose of the AFA hierarchy is to ensure that the AFA rate applied is not punitive and represents a subsidy rate based on programs available to respondents. We applied the AFA hierarchy pursuant to section 776(d)(1)(A) of the Act and 19 CFR 351.308(j). There is no evidence on the record indicating that any of the subsidies under review were not available to the solar industry in Cambodia. Further, there is no evidence that the rate for any subsidy program is based on aberrational data or is otherwise unsupported.

For these reasons, we find the Government of Cambodia's and BYD's arguments regarding the allegedly unlawful and punitive nature of the total AFA rate unpersuasive. Accordingly, we continue to apply the total AFA rate based on the methodology outlined in the *Preliminary Determination* and Post-Preliminary Determination for the final results of review. We note that due to changes to certain programs based on comments above, the total AFA rate has changed.[180]

Comment 9: ISC Cambodia

Government of Cambodia's Case Brief

The following is a verbatim summary of the argument submitted by the Government of Cambodia. For further details, *see* Government of Cambodia Case Brief at 14-15.

> Commerce included ISC Cambodia as a producer and/or exporter of solar cells from Cambodia even though Commerce knows, as evidenced by information on its own website, that ISC Cambodia is not a producer or exporter of solar cells, but is a standards body in the Cambodian government. Even though Commerce rejected some information about ISC Cambodia based upon an incorrect submission method, it cannot turn a blind eye to public information Commerce itself issued.

[179] *See Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Shrimp from China 2013*), and accompanying IDM at 13; *see also Essar Steel Ltd. v. United States*, 753 F.3d 1368, 1373-74 (fed. Cir. 2014) (upholding "hierarchical methodology for selecting an AFA rate.").
[180] *See* Appendix.

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Petitioner's Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner. For further details, *see* Petitioner Rebuttal Brief at 12-13.

> The {Government of Cambodia's} argument that ISC Cambodia is not a producer or seller of solar panels relies on facts in a document rejected from the record of this investigation.

Commerce's Position: Discussion of whether ISC Cambodia is a producer and/or exporter of solar cells from Cambodia is based on information that is not on the record of this investigation. In the *Preliminary Determination,*[181] we found that ISC Cambodia accepted the FedEx delivery of our quantity and value questionnaire but failed to provide information within the deadlines established. For this reason, we preliminarily applied AFA to ISC Cambodia, pursuant to sections 776(a)(2)(A)-(C) and 776(b) of the Act, because ISC Cambodia did not act to the best of its ability to comply with requests for information in this investigation.[182] After the *Preliminary Determination*, the Government of Cambodia improperly submitted untimely new factual information to Commerce, and pursuant to 19 CFR 351.104(a)(1)-(2) Commerce placed the email exchange on the record and notified the Government of Cambodia that this information was untimely submitted and would not be accepted at this time.[183] In its case brief, the Government of Cambodia references information that was not accepted on the record of this investigation to argue that ISC Cambodia is not a producer or exporter of solar cells. Commerce must base its determination on the record and therefore, information that is not on the record cannot be used as evidence. Thus, the Government of Cambodia's argument fails because it does not substantiate its claim with any record evidence. In this final determination, we continue to apply AFA to ISC Cambodia and will continue to consider that this company used and benefitted from all programs at issue in this proceeding.

Comment 10: Specificity of Electricity Programs

Government of Cambodia's Case Brief

The following is a verbatim summary of the argument submitted by the Government of Cambodia. For further details, *see* Government of Cambodia Case Brief at 12-14.

> Commerce cannot countervail the electricity programs. First, the Electricity Fee Reduction Program is not specific and was not used during the POI. Second, the Rural Electrification Fund Cannot Be Used By The Solar Cell Industry.

[181] *See Preliminary Determination* PDM at 12.
[182] *Id*.
[183] *See* Memorandum, "Email Correspondence" dated February 4, 2025.

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Petitioner's Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner. For further details, see Petitioner Rebuttal Brief at 12-13.

> Yes. The {Government of Cambodia} makes specificity arguments regarding Cambodia's electricity programs, and the Business Recovery Guarantee Scheme. Given that specificity is determined by the application of…AFA in this instance due to the failure of the {Government of Cambodia} to timely file its verification exhibits, these arguments are moot. Similarly, the {Government of Cambodia's} assertion that the Rural Electrification Fund cannot be used by the solar cell industry relies on facts that were not capable of verification. The {Government of Cambodia's} argument asserting that {Commerce} must attempt to verify a program before applying AFA is incorrect because the agency has the power to determine what it verifies in a given case.

Commerce's Position: We agree with the petitioner that discussion of whether these programs are specific is moot. We are applying facts otherwise available with adverse inferences, pursuant to sections 776(a)(2)(A)-(D) and 776(b) of the Act, because the Government of Cambodia did not act to the best of its ability to timely submit its verification exhibits. *See* Comment 7. We thus continue to find, as AFA, with respect to Electricity Fee Reduction program and the Rural Electrification Fund, that the Government of Cambodia provided a financial contribution pursuant to section 771(5)(D) of the Act and that these programs are specific within the meaning of section 771(5A) of the Act. To that end, none of the Government of Cambodia's arguments, as put forth by its case brief, can be considered relevant to this finding as the AFA decision renders them moot.

We disagree with the Government of Cambodia's argument that Commerce did not seek to verify these programs, and therefore, these programs should be exempt from Commerce's AFA finding. The application of AFA is based on the determination that the Government of Cambodia withheld information requested of it, failed to provide information by the deadlines, impeded the proceeding, and provided information but the information cannot be verified. Thus, the application of AFA is not dependent on whether Commerce attempted to verify specific information. Verification is a "spot check and is not intended to be an exhaustive examination" and Commerce has "considerable latitude in picking and choosing which items it will examine in detail."[184] While Commerce did not explicitly seek to verify these programs in the Government of Cambodia Verification Outline,[185] the Government of Cambodia's failure to timely submit any of its verification exhibits is a demonstration that if Commerce had also sought to verify these programs, the Government of Cambodia would have also failed to timely submit the verification exhibits regarding these programs as well.[186] Therefore, we continue to find the

[184] *See Monsanto Co. v. United States*, 698 F.Supp. 275, 281 (CIT October 14, 1988).
[185] *See* Government of Cambodia Verification Outline.
[186] *See Fujian Machinery and Equipment Import & Export Corp. v. U.S.*, 276 F.Supp.2d 1371 (CIT 2003) (finding "Commerce is likewise entitled to infer from {company's} failure to provide the requested documentation {} that {company's} related data for the remaining period of review would be similarly unreliable.")

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Electricity Fee Reduction program and the Rural Electrification Fund program to be specific based on section 771(5A) of the Act.

Comment 11: Benefit of Customs Duty Exemption for Raw Materials Program

Government of Cambodia's Case Brief

The following is a verbatim summary of the argument submitted by the Government of Cambodia. For further details, *see* Government of Cambodia Case Brief at 15-17.

> Commerce ignored record evidence of post-entry audits conducted by the General Department of Customs and Excise (GDCE) to examine whether raw materials imported exempt of customs duties were actually consumed in the process of making exported final products. Commerce's regulations preclude the imposition of countervailing duties when "the government in question has carried out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, and in what amounts." See 19 CFR 351.518(a)(4); 19 CFR 351.519(a)(4). Without such audits, no member of the solar industry could import raw materials import-duty free. Evidence of GDCE post-entry audits was submitted on the record by Solarspace, and is uncontroverted. Thus all exempted import duties on raw materials are not subject to countervailing duties.

Petitioner's Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner. For further details, *see* Petitioner Rebuttal Brief at 12-13.

> The {Government of Cambodia's} argument that the record contains sufficient evidence of post-entry audits and that the customs duty exemptions for imported raw materials are not countervailable is incorrect given that {Commerce} properly applied AFA to determine this in the preliminary determination. Further, the exhibit cited to by the {Government of Cambodia} relates to {*business proprietary information*}.

Commerce's Position: We disagree with the Government of Cambodia's argument claiming that the record contains information that a post-entry audit was conducted for Solarspace by the GDCE. While Solarspace's submitted evidence is related to a post-entry audit,[187] Solarspace's submitted evidence does not demonstrate that an actual examination took place, nor does it indicate the thoroughness of the examination. Moreover, as noted above, the government provided information was not verified and therefore cannot be relied upon. Thus, Commerce determines that 19 CFR 351.519(a)(4)(ii) does not apply. Moreover, 19 CFR 351.519(a)(4)(i) does not apply either, as Commerce continues to find, absent new information and based on AFA, that the Government of Cambodia does not have in place nor applies a system that is reasonable and effective for confirming which inputs and in what amounts are consumed in the

[187] *See* Solarspace's Letter, "Section III Questionnaire Response," dated August 19, 2024 at Exhibit 15 at 41-47.

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production of the exported products, making normal allowance for waste.[188] Therefore, in this final determination, we continue to find that the full value of the Customs Duty Exemption and Related Incentives for Raw Materials for Export Qualified Investment Projects program provides a benefit.

Comment 12: Specificity of Business Recovery Guarantee Scheme

Government of Cambodia's Case Brief

The following is a verbatim summary of the argument submitted by the Government of Cambodia. For further details, *see* Government of Cambodia Case Brief at 17-18.

> The Business Recovery Guarantee Scheme is available to all businesses in Cambodia, and thus is not specific and thus cannot be countervailed.

Petitioner's Rebuttal Brief

The following is a verbatim summary of the argument submitted by the petitioner. For further details, *see* Petitioner Rebuttal Brief at 12-13.

> Yes. The {Government of Cambodia} makes specificity arguments regarding Cambodia's electricity programs, and the Business Recovery Guarantee Scheme. Given that specificity is determined by the application of… AFA in this instance due to the failure of the {Government of Cambodia} to timely file its verification exhibits, these arguments are moot.

Commerce's Position: We agree with the petitioner that discussion of whether this program is specific is moot. We are applying AFA pursuant to sections 776(a)(2)(A)(D) and 776(b) of the Act, because the Government of Cambodia did not act to the best of its ability to timely submit its verification exhibits. *See* Comment 7. We thus continue to find, with respect to the Business Recovery Guarantee Scheme program, that the Government of Cambodia provided a financial contribution pursuant to section 771(5)(D) of the Act and that the program is specific within the meaning of section 771(5A) of the Act. To that end, none of the Government of Cambodia's arguments, as put forth by its case brief, are relevant to this finding as the application of AFA renders them moot.

[188] *See Preliminary Determination* PDM at 13-14.

VIII. RECOMMENDATION

We recommend that you approve the above positions. If this recommendation is accepted, we will publish the final determination in the *Federal Register* and will notify the U.S. International Trade Commission of our determination.

☒	☐
Agree	Disagree

X

Signed by: CHRISTOPHER ABBOTT
Christopher Abbott
Deputy Assistant Secretary
for Policy and Negotiations
performing the non-exclusive functions and duties
of the Assistant Secretary for Enforcement and Compliance

Appendix

AFA Rate Calculation

Programs	AFA Rate[189] (percent)
Tax Programs	
Income Tax Exemption for Qualified Investment Projects under the Law on Investment	5.97
Special Depreciation for Qualified Investment Activities under the Law on Investment	5.97
Tax Deduction for Certain Activities under the Law on Investment	5.97
Tax Incentives for QIPs in Special Economic Zones (SEZ)	5.97
Property Tax Exemptions for SEZs	5.97
Electricity Fee Reduction	5.97
Customs Duty Exemption and Related Incentives for Production Equipment for Export QIPs and Supporting Industry QIPs	2.22
Customs Duty Exemption and Related Incentives for Raw Materials for Export Qualified Investment Projects	5.97
Custom Duty Exemption for Zone Investors in SEZs	5.97
Loan Programs	
Rural Electrification Fund	471.25
Business Recovery Guarantee Scheme	471.25
Co-Financing Guarantee Scheme	471.25
Policy Lending from Chinese Banks for Belt and Road Initiative (BRI) Capacity Cooperation Projects	471.25
Provision of Inputs for LTAR Programs	
Cross-Border Provision of Polysilicon Inputs from the Government of the People's Republic of China for LTAR	471.25
Cross-Border Provision of Silicon Wafers from the Government of the People's Republic of China for LTAR	471.25
Cross-Border Provision of Solar Glass from the Government of the People's Republic of China for LTAR	55.23
Cross-Border Provision of Silver Paste from the Government of the People's Republic of China for LTAR	471.25
Total	3,403.96

[189] All rates listed in this column are based on subsidies received by Solarspace. *See* Solarspace Final Calculation Memorandum.

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