C-557-831
Investigation
Public Document
E&C/OVI: PNC

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 in the Countervailing Duty Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from Malaysia

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 Malaysia, 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 in this investigation are Hanwha Q CELLS Malaysia Sdn. Bhd. (Hanwha Q CELLS) and Jinko Solar Technology Sdn. Bhd. (JST) and its cross-owned affiliates, Jinko Solar (Malaysia) Sdn. Bhd. (JSM) and Omega Solar Sdn. Bhd. (Omega) (collectively, Jinko Solar).[1]

After analyzing the comments submitted by interested parties, we made certain changes to the calculations from the Post-Preliminary Determination, *Amended Preliminary Determination*, and *Preliminary Determination*.[2] We updated the subsidy rate calculations for the mandatory

[1] We note that Jinko Solar Technology Sdn. Bhd. (Jinko Solar or JST) filed responses on behalf of itself and its cross-owned companies, Jinko Solar (Malaysia) Sdn. Bhd. (JSM) and Omega Solar Sdn. Bhd. (Omega). Hereafter, we refer to JST, JSM, and Omega collectively as "Jinko Solar."

[2] *See* Memorandum, "Decision Memorandum for the Post-Preliminary Analysis in the Countervailing Duty Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from Malaysia," dated March 14, 2025 (Post-Preliminary Decision Memorandum); *see also Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from Malaysia: Amended Preliminary Determination of Countervailing Duty Investigation*, 89 FR 88232 (November 7, 2024) (*Amended Preliminary Determination*), and accompanying Amended Preliminary Decision Memorandum (PDM); *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from Malaysia: Amended Preliminary Determination of Countervailing Duty Investigation; Correction*, 89 FR 92893 (November 25, 2024); and *Crystalline Silicon Photovoltaic Cells, Whether*

respondents and the non-selected companies as a result of these changes. Below is the complete list of the issues in this investigation 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: Whether Commerce's Determination on Policy Lending from Chinese Banks for BRI Capacity Cooperation Projects Is Based on Substantial Evidence and Is in Accordance with the Law
Comment 3: Whether Commerce's Decision to Countervail the Cross-Border Provision of Chinese Origin Inputs for LTAR Is Based on Substantial Evidence and in Accordance with Law
Comment 4: Whether Commerce Should Use UN Comtrade Export Data as the Benchmark for Solar Glass
Comment 5: Whether Commerce Should Use HS 7115.90 As the Benchmark for the Silver Paste for LTAR Program
Comment 6: Whether the Exemption of Import Duties and Sales Taxes for Raw Materials through Licensed Manufacturing, Warehouses (LMWs) Countervailable
Comment 7: Whether Commerce the Exemption on Import Duties and Sales Taxes for Imported Raw Materials, Spare Parts/Accessories, and Machinery Through Free Trade Zones (FTZs) Countervailable
Comment 8: Whether the Import Duty and Sales Tax Exemptions Program through Licensed Manufacturing Warehouse Should Be Considered an Export Subsidy
Comment 9: Whether the Electricity for LTAR Program is Countervailable
Comment 10: Whether Singapore's Electricity Rates Are an Appropriate Benchmark
Comment 11: Whether Commerce Should Revise Hanwha Q CELLS Benefit Calculation for Provision of Electricity for LTAR
Comment 12: Whether Commerce Should Find the Provision of Land to Hanwha Countervailable
Comment 13: Whether Commerce Should Reconsider Its Land Benchmark
Comment 14: Whether Commerce Shound Find the GOM's Loan to Hanwha Q CELLS Countervailable
Comment 15: Whether Commerce Should Remove Three Purchases of Imported Machinery from the Calculation of Hanwha's Benefits from the Import Duty and Sales Tax Exemptions for Machinery, Equipment, and Spare Parts Program
Comment 16: Whether Jinko Solar Failed to Disclose Financing from a Chinese State-Owned Bank
Comment 17: Whether Commerce Should Find Jinko Solar's Trade and Other Payables Accounts Countervailable
Comment 18: Whether Commerce Should Correct Certain Errors in Its Post-Preliminary Analysis
Comment 19: Whether Commerce Correctly Included Sales Tax in the Solar Glass Benchmark

or Not Assembled into Modules, from Malaysia: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination, 89 FR 80861 (October 4, 2024) (*Preliminary Determination*), and accompanying PDM.

Filed By: Preston Cox, Filed Date: 4/21/25 4:50 PM, Submission Status: Approved

Comment 20: Whether Commerce Incorrectly Included a Non-Existent Entity in Its List of Non-Responsive Companies

II. BACKGROUND

On October 4, 2024, Commerce published the *Preliminary Determination* in this investigation and aligned this countervailing duty (CVD) final determination with the final determination in the less-than-fair value (LTFV) investigation of solar cells from Malaysia, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4).[3] On November 7, 2024, Commerce published the *Amended Preliminary Determination* in this investigation. From December 6 through December 19, 2024, we conducted on-site verifications of the Government of Malaysia (GOM), Jinko Solar, and Hanwha Q CELLS in Kuala Lumpur and Penang, Malaysia, in accordance with section 782(i) of the Act.[4]

On March 12, 2025, we initiated and deferred new subsidy allegations by the American Alliance for Solar Manufacturing Trade Committee (the petitioner) regarding Cross Border Provision of Chinese Aluminum Solar Frames for Less Than Adequate Remuneration (LTAR) and Cross-Border Provision of Chinese Photovoltaic Junction Boxes from the Government of the People's Republic of China (GOC) for LTAR.[5] On March 14, 2025, Commerce issued the Post-Preliminary Determination.

On March 24, 2025, Sunmax Energy (M) Sdn. Bhd. (Sunmax) submitted a timely-filed case brief.[6] On March 25, 2025, we received timely-filed case briefs from the petitioner, Jinko Solar, the GOC, and Hanwha Q CELLS.[7] On April 1, 2025, we received timely-filed rebuttal briefs from the petitioner and Jinko Solar.[8]
On November 1 and November 4, 2024, we received timely-filed requests for a hearing from Hanwha Q CELLS and the petitioner, respectively.[9] On April 1, 2025, Hanwha Q CELLS and the petitioner withdrew their requests for a hearing.[10] Therefore, no hearing was held.

[3] *See Preliminary Determination*.
[4] *See* Memoranda, "Verification of the Questionnaire Responses of Jinko Solar Technology Sdn. Bhd.," dated February 20, 2025 (Jinko Verification Report); "Verification of the Questionnaire Responses of Hanwha Q CELLS Malaysia Sdn. Bhd.'s Responses," dated February 20, 2025 (Hanwha Q CELLS Verification Report); and "Verification of Questionnaire Responses of the Government of Malaysia," dated February 20, 2025 (GOM Verification Report).
[5] *See* Memorandum, "Decision Memorandum on Additional New Subsidy Allegations," dated March 12, 2025.
[6] *See* Sunmax's Letter, "Case Brief Sunmax Energy (M) Sdn. Bhd.," dated March 24, 2025 (Sunmax's Case Brief).
[7] *See* Jinko Solar's Letter, "Jinko's Administrative Case Brief," dated March 25, 2025 (Jinko Solar's Case Brief); *see also* GOC's Letter, "GOC Case Brief," dated March 25, 2025 (GOC's Case Brief); Petitioner's Letter, "Case Brief," dated March 25, 2025 (Petitioner's Case Brief); and Hanwha Q CELLS Letter, "Hanwha Q CELLS Malaysia Sdn. Bhd.'s Case Brief," dated March 25, 2025 ((Hanwha Q CELLS Case Brief).
[8] *See* Jinko Solar's Letter, "Jinko's Rebuttal Brief," dated April 1, 2025 (Jinko Solar's Rebuttal Brief); *see also* Petitioner's Letter, "Rebuttal Brief," dated April 1, 2025 (Petitioner's Rebuttal Brief).
[9] *See* Hanwha Q CELLS Letter, "Hanwha Q CELLS Malaysia Sdn. Bhd.'s Hearing Request," dated November 1, 2024; *see also* Petitioner's Letter, "Hearing Request," dated November 4, 2024.
[10] *See* Hanwha Q CELLS Letter, "Hanwha Q CELLS Malaysia Sdn. Bhd.'s Hearing Request," dated April 1, 2025; *see also* Petitioner's Letter, "Withdrawal of Request for Hearing," dated April 1, 2025.

III. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Commerce relied on "facts otherwise available" and "facts otherwise available" with an adverse inference for certain findings in the *Preliminary* Determination and in the Post-Preliminary Analysis.[11] For this final determination, we made no changes to our use of adverse facts available (AFA).

IV. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

The allocation period, or average useful life (AUL), of 10 years in this investigation is discussed in the *Preliminary Determination* PDM, and because no party disputed the allocation period, it remains unchanged from the *Preliminary Determination*.[12]

B. Attribution of Subsidies

We made no changes to, and interested parties raised no issues in their case briefs regarding, the attribution or attribution methodology used in the *Preliminary Determination*.[13]

C. Denominators

Interested parties raised no issues in their case briefs regarding the denominators used to calculate the subsidy rates in the *Preliminary Determination* and the Post-Preliminary Analysis. However, we revised our preliminary calculations to incorporate the minor corrections presented at verification into the denominators of our calculations.[14] For a description of how the sales denominators were used for the final determination, *see* the *Preliminary Determination* PDM at 21.

D. Benchmarks and Interest Rates

Interest Rates

Commerce made no changes to, and interested parties raised no issues in their case briefs regarding, the interest rates used to calculate the subsidy rates in the *Preliminary Determination* and the Post-Preliminary Analysis.[15]

Benchmarks

Interested parties submitted comments in their case and rebuttal briefs regarding the benchmarks used for evaluating the adequacy of remuneration for silver paste, solar glass, and electricity;

[11] *See Preliminary Determination* PDM at 6-14; *see also* Post-Preliminary Decision Memorandum at 3-8.
[12] *See Preliminary Determination* PDM at 18.
[13] *Id*. at 18-21.
[14] *See* Memorandum, "Final Determination Calculations for Hanwha Q CELLS Malaysia Sdn. Bhd.," dated concurrently with this memorandum (Hanwha Q CELLS Final Calculation Memorandum); *see also* Memorandum, "Final Determination Calculations for Jinko Solar Technology Sdn. Bhd.," dated concurrently with this memorandum (Jinko Solar Final Calculation Memorandum).
[15] *Id*. at 21.

Filed By: Preston Cox, Filed Date: 4/21/25 4:50 PM, Submission Status: Approved

these comments are discussed below in Comments 4, 5, 10, 13, 18, and 19. Commerce has revised its benchmark for silver paste, solar glass, and ocean freight.[16]

V. ANALYSIS OF PROGRAMS

A. Programs Determined to Be Countervailable

1. Accelerated Capital Allowance

No parties submitted comments regarding this program. Commerce made no changes to the *Amended Preliminary Determination* regarding this program.[17]

Jinko Solar: 0.01 percent *ad valorem*

2. High Impact Fund Grant

No parties submitted comments regarding this program. Commerce made no changes to the *Preliminary Determination* regarding this program.[18]

Hanwha Q CELLS: 0.08 percent *ad valorem*

3. Domestic Investment Strategic Fund

No parties submitted comments regarding this program. Commerce made no changes to the *Preliminary Determination* regarding this program.[19]

Non-Responsive Companies: 8.04 percent *ad valorem*

4. Pioneer Status Direct Tax Incentive

No parties submitted comments regarding this program. Commerce made no changes to the *Preliminary Determination* regarding this program.[20]

Non-Responsive Companies: 24.00 percent *ad valorem* in total income tax benefits

5. Investment Tax Allowance

No parties submitted comments regarding this program. Commerce made no changes to the *Preliminary Determination* regarding this program.[21]

Non-Responsive Companies: 24.00 percent *ad valorem* in total income tax benefits

[16] *Id*. at 36.
[17] *See Amended Preliminary Determination* Decision Memorandum at 6-7.
[18] *See Preliminary Determination* PDM at 24.
[19] *Id.* at 25.
[20] *See Preliminary Determination* PDM at 26.
[21] *Id.* at 27.

Filed By: Preston Cox, Filed Date: 4/21/25 4:50 PM, Submission Status: Approved

6. Special Tax Incentives for Relocation

No parties submitted comments regarding this program. Commerce made no changes to the *Preliminary Determination* regarding this program.[22]

Non-Responsive Companies: 24.00 percent *ad valorem* in total income tax benefits

7. Reinvestment Allowance

No parties submitted comments regarding this program. Commerce made no changes to the *Preliminary Determination* regarding this program.[23]

Non-Responsive Companies: 24.00 percent *ad valorem* in total income tax benefits

8. Automation Capital Allowance

No parties submitted comments regarding this program. Commerce made no changes to the *Preliminary Determination* regarding this program.[24]

Non-Responsive Companies: 24.00 percent *ad valorem* in total income tax benefits

9. Double Deduction for Promotion of Exports

No parties submitted comments regarding this program. Commerce made no changes to the *Preliminary Determination* regarding this program.[25]

Non-Responsive Companies: 24.00 percent *ad valorem* in total income tax benefits

10. Stamp Duty Exemptions and Reductions on Buildings and Land

No parties submitted comments regarding this program. Commerce made no changes to the *Preliminary Determination* regarding this program.[26]

Non-Responsive Companies: 8.04 percent *ad valorem*

11. Exemption of Import Duties and Sales Taxes for Imported Raw Materials, Machinery, Equipment, and Spare Parts/Accessories through Licensed Manufacturing Warehouse (LMW)

Interested parties submitted comments in their case and rebuttal briefs regarding this program; these comments are discussed below in Comments 6 and 8. Based on comments received, we are treating the Exemption of Import Duties and Sales Taxes for Imported Raw Materials through LMW to be contingent on exports under sections 771(5A)(A) and (B) of the Act. For

[22] *Id*. at 28.
[23] *Id*. at 29.
[24] *Id*. at 30.
[25] *Id*. at 30-31.
[26] *Id*. at 31.

Filed By: Preston Cox, Filed Date: 4/21/25 4:50 PM, Submission Status: Approved

Exemptions of Import Duties and Sales Taxes for Machinery, Equipment, and Spare Parts/Accessories through LMW, we will continue to find it specific under section 771(5A)(D)(i) of the Act, because it is expressly limited to enterprises that are engaged in the production of approved final products under the LMW. Furthermore, we used revised datasets that include minor corrections presented at verification.

Imported Raw Materials
Hanwha Q CELLS: 5.76 percent *ad valorem*
Jinko Solar: 3.20 percent *ad valorem*

Imported Machinery, Equipment, and Spare Parts/Accessories
Hanwha Q CELLS: 0.33 percent *ad valorem*
Jinko Solar: 0.03 percent *ad valorem*

12. Exemption of Import Duties and Sales Taxes for Imported Raw Materials, Machinery, Equipment, and Spare Parts/Accessories through Free Trade Zones

Interested parties submitted comments in their case and rebuttal briefs regarding this program; these comments are discussed below in Comment 7. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[27]

Jinko Solar: 3.47 percent *ad valorem*

13. Preferential Financing from the Malaysia Development Bank

No parties submitted comments regarding this program. Commerce made no changes to the *Preliminary Determination* regarding this program.[28]

Non-Responsive Companies: 8.04 percent *ad valorem*

14. Preferential Financing from the Malaysian Industrial Development Finance Berhad Group

No parties submitted comments regarding this program. Commerce made no changes to the *Preliminary Determination* regarding this program.[29]

Non-Responsive Companies: 8.04 percent *ad valorem*

15. Electricity for Less Than Adequate Remuneration (LTAR)

Interested parties submitted comments in their case and rebuttal briefs regarding this program; these comments are discussed below in Comments 9 through 11. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[30]

[27] *Id*. at 38-39.
[28] *Id*. at 39.
[29] *Id*. at 40.
[30] *Id*. at 43.

Filed By: Preston Cox, Filed Date: 4/21/25 4:50 PM, Submission Status: Approved

Hanwha Q CELLS: 5.73 percent *ad valorem*
Jinko Solar: 3.31 percent *ad valorem*

16. Provision of Land for LTAR to Hanwha Q CELLS

Interested parties submitted comments in their case and rebuttal briefs regarding this program; these comments are discussed below in Comments 12 through 13. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[31]

Hanwha Q CELLS: 0.78 percent *ad valorem*

17. The GOM Ministry of Finance's Provision of Loans to Hanwha Q CELLS

Interested parties submitted comments in their case and rebuttal briefs regarding this program; these comments are discussed below in Comment 14. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[32]

Hanwha Q CELLS: 1.96 percent *ad valorem*

18. Policy Lending from Chinese Banks for BRI Capacity Cooperation Projects

Interested parties submitted comments in their case and rebuttal briefs regarding this program; these comments are discussed below in Comments 1 through 2. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[33] However, because of our finding that Jinko Solar was uncreditworthy in 2022, in accordance with 19 CFR 351.505(a)(3)(iii), we are adding a risk premium to the loan benchmark interest rates used to calculate the benefit arising from loans granted in 2022 for the final determination.[34] This program still provides no measurable benefit to Jinko Solar.

Non-Responsive Companies: 8.04 percent *ad valorem*

19. Cross-Border Provision of Chinese-Origin Polysilicon for LTAR

Interested parties submitted comments in their case and rebuttal briefs regarding this program; these comments are discussed below in Comments 1 through 3. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.[35]

Non-Responsive Companies: 8.04 percent *ad valorem*

20. Cross-Border Provision of Chinese-Origin Silver Paste for LTAR

Interested parties submitted comments in their case and rebuttal briefs regarding this program; these comments are discussed below in Comments 1 through 4 and Comment 18. We made no

[31] *Id*. at 45.
[32] *Id*. at 45-46.
[33] *Id*. at Appendix.
[34] *See* Post-Preliminary Decision Memorandum at 14-17.
[35] *Id*.

Filed By: Preston Cox, Filed Date: 4/21/25 4:50 PM, Submission Status: Approved

changes to our methodology from the *Preliminary Determination*. However, we used revised benchmark data for silver paste prices and ocean freight. We also made revisions to account for minor corrections presented at verification.

Jinko Solar: 0.05 percent *ad valorem*

In the Post-Preliminary Analysis, we preliminarily assigned Jinko Solar's subsidy rate for this program to the non-responsive companies.[36] However, based on the hierarchy described the "Selection of the AFA Rate" section in the *Preliminary Determination* PDM, we must select the highest above-*de minimis* subsidy rate calculated for a similar or comparable program in a CVD proceeding involving Malaysia.[37] Therefore, in the final determination, we are assigning the non-selected companies a rate of 8.04.[38]

21. Cross-Border Provision of Chinese-Origin Solar Glass for LTAR

Interested parties submitted comments in their case and rebuttal briefs regarding this program; these comments are discussed below in Comments 1 through 4 and Comments 18 through 19. We made no changes to our methodology from the *Preliminary Determination*. However, we used revised benchmark data for solar glass prices and ocean freight. We also made revisions to account for minor corrections presented at verification.

Jinko Solar: 28.30 percent *ad valorem*

B. Programs Determined to Be Not Measurable during the POI

For the final determination, we continue to find that the programs below were not measurable.[39] As described in the "Use of Facts Otherwise Available and Adverse Inferences" section of the *Preliminary Determination PDM*, we continue to find that the non-responsive companies benefited from these programs during the POI.[40]

Jinko Solar

1. Northern Corridor Economic Region Talent Enhancement Program
2. Jinko Solar's Self-Reported Grants
    i. Wage Subsidy Program
    ii. Foreign Labor Tax Reduction Program
    iii. Penang Environment and Safety Refund

[36] *See* Post-Preliminary Decision Memorandum at 19.
[37] *See Preliminary Determination* PDM at 11-13.
[38] *See Utility Scale Wind Towers from Malaysia: Final Results of Countervailing Duty Administrative Review; 2021*, 89 FR 17404 (March 11, 2024) (*Wind Towers AR 2021*), and accompanying IDM at 5 (calculated rate for "Exemption of Import Duties and Sales Taxes for Imported Raw Materials, Spare Parts/Accessories, and Machinery").
[39] *See Preliminary Determination* PDM at 47.
[40] *Id*. at 10-16.

C. Programs Determined to Be Not Used during the POI

For the final determination, we continue to find that Hanwha Q CELLS and Jinko Solar did not apply for, or receive, benefits during the POI under the programs listed below.[41] As described in the "Use of Facts Otherwise Available and Adverse Inferences" section of the *Preliminary Determination* PDM, we continue to find that the non-responsive companies benefited from these programs during the POI.[42]

1. Domestic Investment Strategic Fund
2. Pioneer Status Direct Tax Incentives
3. Investment Tax Allowance
4. Special Tax Incentives for Relocation
5. Reinvestment Allowance
6. Automation Capital Allowance
7. Double Deduction for Promotion of Exports
8. Stamp Duty Exemptions and Reductions on Buildings and Land
9. Preferential Financing from the Malaysia Development Bank
10. Preferential Financing from the Malaysian Industrial Development Finance Berhad Group
11. Land for LTAR in NCER or ECER

VI. DISCUSSION OF THE ISSUES

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

GOC's Case Brief:

The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* GOC's Case Brief at 7-8.

> First, GOC believes that the current investigation with respect to transnational subsidies involving China has no valid legal basis and should be terminated immediately. DOC'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 under the US law and regulations. Under WTO rules, the application of the Agreement on Subsidies and Countervailing Measures (hereinafter "SCM Agreement") has territorial limitations and were never intended to be applied to cross-border or transnational subsidies. Similarly, the Tariff Act of 1930 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 24, 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

[41] *Id*. at 48.
[42] *Id*. at 10-16.

> duty investigation that still remain in the underlying statutory provisions of the Tariff Act of 1930 and are inconsistent with {Commerce's} determinations of transnational subsidies in this investigation.

Petitioner's Rebuttal Brief

The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* the petitioner's Rebuttal Brief at 1-2.

> {Commerce} has the legal authority to impose countervailing duties on transnational subsidies. As an initial matter, {Commerce's} authority to investigate and impose countervailing duties is established under U.S. domestic law, and not World Trade Organization ("WTO") agreements. The U.S. Court of Appeals for the Federal Circuit ("Federal Circuit") has affirmed that WTO agreements are "not binding on the United States." Indeed, the statute itself makes clear that "{ n} o provision of any of the Uruguay Round Agreements, nor the application of any such provision to any person or circumstance, that is inconsistent with any law of the United States shall have effect."
>
> U.S. law permits {Commerce} to countervail transnational subsidies. First, nothing in the plain language of the statute indicates that the Department cannot investigate transnational subsidies or impose countervailable duties on them. Further, Congress removed the explicit requirement that a subsidy's recipient and provider be located in the same country in the Uruguay Rounds Agreement Act ("URAA"). Congress's removal of the pre-URAA language, which contained a geographical limit on the origin and recipient of the subsidy, demonstrates that Congress intended the changes to the definition of subsidy in the URAA to allow for the investigation and imposition of countervailing duties on transnational subsidies, without limits on the geographic location of the recipient. Any other reading of the removal of the previous limitation would serve no purpose and render it meaningless.

Commerce's Position: We disagree with the GOC 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."[43] 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

[43] *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 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)

through the statutory procedure for such implementation.[44] 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 to implement it."[45] 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.[46]

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

[44] *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).
[45] Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. 1 (194) (SAA) at 656, 659.
[46] *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*).

countervailable subsidy" and accurately capture subsidization bestowed on the production, manufacture, and exportation of subject merchandise.[47] 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 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.[48]

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 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

[47] *See* section 701(a)(2) of the Act.
[48] *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).

> 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.[49]

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. In calculating benefits for the transnational subsidies in this case – the provision of solar glass and silver paste 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.

Comment 2: Whether Commerce's Determination on Policy Lending from Chinese Banks for BRI Capacity Cooperation Projects Is Based on Substantial Evidence and Is in Accordance with the Law

GOC's Case Brief:

The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* GOC's Case Brief at 11-16.

> 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.

[49] *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).

> (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.

No other interested party commented on this issue.

Commerce's Position: We find that the GOC 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.[50] Once that finding is made, we rely upon the analysis undertaken in *CFS Paper* from China to further conclude that national and local government control over the SOCBs render the loans a government financial contribution.[51] Commerce has repeatedly affirmed its finding in *CFS from China* that the GOC'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.[52] Because GOC banks reflect significant government intervention, they are considered to be SOCBs.[53] In *CFS from China*, Commerce explained why SOCBs are "authorities" within the meaning of section 771(5)(B) of the Act. Contrary to the GOC'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.

---

[50] *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.
[51] *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.
[52] *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 September 6, 2024 at Exhibit China-NME Status Memoranda (discussing the status of the Chinese commercial banking sector).
[53] *Id.*

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.[54] 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,[55] and by the end of 2022, total loans from Chinese policy banks for BRI projects amounted to 3.1 trillion yuan.[56] 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.[57]

As noted in the *Preliminary Determination* and Post-Preliminary Analysis, Commerce found that the non-responsive companies did not cooperate to the best of their abilities to comply with Commerce's requests for information,[58] and therefore there is not 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 the non-responsive companies did use, and receive a benefit from, all countervailable subsidy programs within the meaning of section 771(5)(E) of the Act. The GOC's argument is irrelevant because the application of a subsidy rate for this program based on AFA to Baojia New Energy, Pax Union Resources SDN BHD, and SunMax Energy SDN BHD was not due to the GOC's questionnaire responses, or lack thereof, but instead, due to the lack of cooperation by these companies to Commerce's request for information.

Regarding the GOC'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 translation is inaccurate or in error. Although the GOC 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."[59] Further, we find that BRI constitutes a state industrial policy by which Chinese SOCBs are directed to support through their financial policies.[60] In this investigation, the GOC did not provide any new information to warrant a reconsideration of Commerce's prior interpretation of Article 34 of the Banking Law.

---

[54] *See* Petitioner's Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties," dated April 24, 2024 (the Petition), at Volumes VII, Exhibits VII-43, VII-46, VII-47, VII-48, VII-49, VII-51, and VII-52; *see also Preliminary Determination* PDM at 9.
[55] *Id*. at Exhibit VII-57.
[56] *Id.* at Exhibit VII-58.
[57] *See, e.g., CFS from China* IDM at Comment 1.
[58] *See Preliminary Determination* PDM at 10-16 and Post Preliminary Decision Memorandum at 19-21.
[59] *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.
[60] *See* Volume VII of the Petition at Exhibits VII-59, VII-91, and VII-95.

Filed By: Preston Cox, Filed Date: 4/21/25 4:50 PM, Submission Status: Approved

The GOC 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.[61] 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.

In the *Preliminary Determination*, we determined, as facts otherwise available, that the Policy Lending from Chinese Banks for BRI Capacity Cooperation Projects program was specific pursuant to section 771(5A)(D)(iv) of the Act.[62] For the reasons identified in the *Preliminary Determination*, we continue to find application of facts otherwise available is appropriate for our specificity finding.[63] However, for the final determination, we find, based on facts otherwise 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. Further, we find that the GOC 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.[64] 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 programs are provided to a limited number of enterprises or industries, including the solar industry.

The GOC 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 GOC 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

[61] *See* GOC's Case Brief at 13.
[62] *See Preliminary Determination* PDM at 9.
[63] *Id.* at 8.
[64] *Id*. at Exhibit VII-47. *Guiding Opinions of the State Council on Promoting International Cooperation in Production Capacity and Equipment Manufacturing* outlines how the GOC 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 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…"

subject to this investigation are within the "jurisdiction" of the GOC 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,[65] pursuant to the State-Owned Assets Law,[66] 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 GOC's State-Owned Assets Law,[67] 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 otherwise available, we find that certain Chinese companies or subsidiaries of Chinese companies are within the jurisdiction of the GOC. 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 GOC that our analysis is inconsistent with this provision of the statute.

Comment 3: Whether Commerce's Decision to Countervail the Cross-Border Provision of Chinese Origin Inputs for LTAR Is Based on the Substantial Evidence and in Accordance with Law

GOC's Case Brief:

The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* GOC's Case Brief at 7-8.

> Third, DOC's decision to countervail the Cross-Border Provision of Chinese Origin Inputs (polysilicon, silver paste, solar glass) for… LTAR is not based on the substantial evidence and is otherwise not in accordance with law. (1) The application of facts available on these LTAR programs 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 based on the substantial evidence and is otherwise not in accordance with law, because Chinese input producers are not authorities. (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 calculated with the appropriate denominator. The determination of export subsidy was not substantiated, thus the use of export sales as denominator for the calculation is
> wrong.

No other interested party commented on this issue.

[65] *See* GOC'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.
[66] *Id*. at Article 1.
[67] *Id*. at Exhibit I.3 (State-Owned Assets Law) at Article 5.

Commerce Position: In the *Preliminary Determination* and the Post-Preliminary Analysis, we found, based on facts otherwise available, that certain producers of polysilicon, silver paste, and solar glass are "authorities" within the meaning of section 771(5)(B) of the Act.[68] 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 GOC that Commerce wrongly applied facts otherwise available on this issue in the Post-Preliminary Analysis. For the reasons detailed below, for this final determination, we continue to find that the certain producers of polysilicon 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 GOC 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 GOC's argument that Commerce was obligated to issue a supplemental questionnaire to the GOC to provide it with an opportunity to cure deficiencies in its questionnaire response because the GOC's responses to our questions on these issues were merely that it did not maintain or collect the requested information. The GOC argues that Commerce did not inform the GOC that its responses to our questions related to the provision of inputs for LTAR were deficient and did not provide the GOC with respective opportunities to cure any deficiencies. However, by contending that the GOC does not collect or maintain the requested information, we find that any further attempts to request this information from the GOC would be futile as the GOC itself stated it could not provide this information, nor did the GOC provide Commerce with an alternative way to provide us with the required information.[69] Further, issuing a supplemental questionnaire asking the same question that the GOC already identified as requiring information not available to it, would also result in an unwarranted extension of the deadline to provide this requested information.[70] Therefore, we find that section 782(d) of the Act was not triggered.

As discussed in the Post-Preliminary Analysis and the *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 GOC regarding the ownership of the input producers identified by Jinko Solar.[71] 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.[72] Moreover, we requested information concerning

[68] *See Preliminary Determination* PDM at 47; *see also* Post Preliminary Decision Memorandum at 4-8.
[69] *See* GOC's Letter, "GOC NSA Questionnaire Response," dated November 13, 2024.
[70] *Id*.
[71] *See* Commerce's Letter, "Countervailing Duty Questionnaire," dated July 3, 2024 (Initial Questionnaire) at *Input Producer Appendix*; *see also Preliminary Results* PDM at 8-9; and the Post-Preliminary Decision Memorandum at 4-6.
[72] *See* Initial Questionnaire at *Input Producer Appendix*.

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.[73] 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 GOC may exercise control over company operations and other CCP-related information.[74] The GOC's lack of response to our requests for information is described in the Post-Preliminary Analysis and the *Preliminary Determination*.[75] Thus, we find that the GOC's questionnaire responses created a gap in the record regarding Jinko Solar'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.[76] As explained in the Public Bodies 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.[77] Thus, the GOC'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 GOC's argument that companies like China National Building Material Group Co., Ltd. (CNBM) should not be considered public bodies.[78] 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."[79] In addition, majority government-owned enterprises in China possess, exercise, or are vested with governmental authority, and as such, we find that the GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector. 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 GOC presence through CCP committees).[80] Further, "{u}nder this case-by-case

[73] *Id*.
[74] *Id*.
[75] *See Preliminary Results* PDM at 8-9; and the Post-Preliminary Decision Memorandum at 4-6.
[76] *See* Silver Paste and Solar Glass NSA at Exhibit NSA2-3 (Analysis of Public Bodies).
[77] *See* Analysis of Public Bodies at 35-36.
[78] *See* GOC's Case Brief at 20-21.
[79] *See* Analysis of Public Bodies at 37-38.
[80] *Id*. at 5.

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."[81] 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."[82]

With respect to the GOC's argument that input producers are not "public bodies" within the meaning of the SCM Agreement,[83] 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 GOC'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 GOC has a policy to provide support to its global solar industry. While the FYP listed in the Post-Preliminary Analysis does not explicitly mention the polysilicon, silver paste, and solar glass industries,[84] 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."[85] 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 GOC 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 GOC's assertion that FYPs are simply economic planning documents akin to the other countries' plans and policies.[86] 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.[87] 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 {GOC} could and did play a powerful role in resource allocation to implement the five year plan targets on industrial structure changes."[88] Therefore, we find that the GOC's FYPs are evidence, that the GOC directs state-owned and state-controlled companies to produce and sell inputs for solar cells at artificially low costs.

[81] *Id*.
[82] *See* Silver Paste and Solar Glass NSA at 13-14 and at Exhibit NSA2-30.
[83] *See* GOC's Case Brief at 20.
[84] *See* Silver Paste and Solar Glass NSA at Exhibits at NSA2-3.
[85] *See* Volume VII of the Petition at Exhibit VII-70.
[86] *See* GOC's Case Brief at 20.
[87] *See* Analysis of Public Bodies at 17-18.
[88] *Id*. at 19.

With regard to the GOC's claim that the GOC'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."[89] In a prior proceeding, Commerce found that the GOC'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 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.[90] However, it has been explained that this rule only applies to "staff of the administrative organs of the CCP and specified officials."[91] Thus, the rule only applies to a subset of party and government officials. The GOC has not defined the "specified officials" to which this rule applies, nor has it defined the officials to which this rule does not apply.[92] 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."[93]

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 GOC) itself.[94] In fact, in prior CVD proceedings involving China, we found that the GOC was able to obtain the information requested independently from the companies involved. We also found that statements from the companies, rather than from the GOC 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.[95] Further, the GOC has been able to provide requested information on CCP involvement in input producers in a prior CVD investigation.[96]

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

---

[89] *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.
[90] *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.
[91] *Id*.
[92] *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.
[93] *See* Analysis of Public Bodies at 35-36.
[94] *See Citric Acid from China* IDM at 4-6; *see also Carbon and Alloy Threaded Rod from China* IDM at 16.
[95] *See Citric Acid from China* IDM at 61 ("{w}e requested the {GOC} 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 GOC information which was verified at the GOC on the ownership of an input producer and the involvement of a shareholder in the CCP.
[96] *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.

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 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. 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.[97]

Specificity of Transnational Subsidies

For the final determination, we continue to find, based on facts available, that the cross-border provision of Chinese origin polysilicon, 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. We find Jinko Solar to be "within the jurisdiction of the {GOC}" 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,[98] pursuant to the State-Owned Assets Law,[99] 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 GOC's State-Owned Assets Law,[100] 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, business proprietary information on the record shows that Jinko Solar is within the jurisdiction of the GOC within the meaning of section 771(5A)(D) of the Act.[101] As a result, we disagree with the GOC that there is no legal basis to find the alleged programs specific.

Accordingly, we 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.[102] Therefore, because we are finding these programs 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 these programs are *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.

[97] *See* Analysis of Public Bodies Memorandum.
[98] *Id*. at Exhibit I.2 (Provisional Measures for Supervision and Administration of Outbound Investment by Centrally Administered Enterprises) at Article 2.
[99] *Id*. at Article 1.
[100] *See* GOC's Letter, "GOC NSA Questionnaire Response," dated November 13, 2024 at Exhibit I.3 (State-Owned Assets Law) at Article 5.
[101] *See* Jinko Solar Calculation Memorandum for a discussion of the business proprietary information.
[102] *See* Post-Preliminary Determination at 7-8.

Comment 4: Whether Commerce Should Use UN Comtrade Export Data as the Benchmark for Solar Glass

Petitioner's Case Brief:

The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* Petitioner's Case Brief at 3-6.

> Because the Malaysian market for solar glass is distorted and the benchmark information provided by Jinko Solar Technology Sdn Bhd ({Jinko Solar} or JST) is inadequate, {Commerce} should use Petitioner's world export data from UN Comtrade as a tier two benchmark to value the benefit conferred to {Jinko Solar} by the provision of solar glass for… LTAR. The record contains two proposed tier-two benchmarks: (1) Petitioner's monthly export data for solar glass exported under {Harmonized System (HS)} 7007.19 from UN Comtrade and (2) {Jinko Solar's} solar glass pricing from PVinsights. Petitioner's benchmark is reliable and has been used by {Commerce} in prior proceedings as a benchmark. Meanwhile, the solar glass pricing data from PVinsights is unsuitable to use as a benchmark because it is based on estimates and surveys, and includes Chinese-produced solar glass in these estimates.

Jinko Solar's Rebuttal Brief:

The following is a verbatim summary of arguments submitted by Jinko Solar. For further details, *see* Jinko Solar's Rebuttal Brief at 7-9.

> In its Post-Preliminary Analysis, {Commerce} relied on tier-two benchmark pricing pursuant to 19 CFR 351.511(a)(2)(ii) to calculate the benefit, if any, for {Jinko Solar's} imports of silver paste and solar glass from China. Consistent with past practices in other CVD proceedings involving these inputs, {Commerce} used exports from UNComtrade data under {HS} 7106.92 for silver paste and monthly prices from PV Insights for solar glass. These selections were consistent with the statute and regulations and supported by substantial evidence. {Commerce} should therefore reject Petitioner's arguments that {HS} 7115.90 should be used for silver paste and UNComtrade data for solar glass. As previous case law and record evidence demonstrate, neither of these sources are specific to the inputs Jinko purchased and indeed are wildly distortive. {Commerce} therefore properly took prevailing market conditions into account and selected the correct benchmark for these inputs.
>
> Moreover, {Commerce} was correct in reducing the benefit for each input by 70 percent and 71 percent, respectively. This reduction was consistent with past practice where, as facts available, {Commerce} used record evidence regarding the government authority makeup of the Chinese industry. Petitioner has not presented any evidence that this was unreasonable or contrary to past practice; nor have they provided any evidence that the entire industry for silver paste and solar glass are government authorities. {Commerce's} calculation should therefore be maintained for the Final Determination.

Filed By: Preston Cox, Filed Date: 4/21/25 4:50 PM, Submission Status: Approved

Commerce's Position: For the final determination, we continue to find that the Malaysian market for solar glass is distorted and that using a tier one benchmark under 19 CFR 351.511(a)(2)(i) is not appropriate. Commerce will select as a solar glass benchmark the United Nations Comtrade (UN Comtrade) data for HS 7007.19 that we placed on the record at the post-preliminary phase of the investigation.

Consistent with the *CVD Preamble*, because we conclude that actual transaction prices are significantly distorted in Malaysia, we will resort to the next alternative in the benchmark hierarchy, which is tier two (world market prices). The petitioner and Jinko Solar submitted potential tier two benchmarks to measure the adequacy of remuneration from the GOC'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 and Global Trade Atlas (GTA) for solar glass under HS code 7007.19.[103] Jinko Solar, meanwhile, submitted 2023 monthly solar glass pricing data from PV Insights.[104] 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 PV Insights data submitted by Jinko Solar and the UN Comtrade and GTA data submitted by the petitioner, we are unable to disaggregate individual prices by country of origin.[105] With respect to the PV Insights data submitted by Jinko Solar, we can only distinguish between China and non-China prices.[106]

As discussed in the Post-Preliminary Analysis, we preliminarily determined on the basis of facts available that GOC authorities account for at least 71 percent of solar glass production in China.[107] Moreover, Commerce has previously found that the Chinese market for solar glass is distorted based on the level of government participation in the market.[108] Because the Chinese market for solar glass is majority-controlled by GOC authorities, we also determine that the solar glass market in China is distorted.

It is Commerce's practice to remove distorted prices from benchmarks.[109] In the context of this transnational subsidy, China is the provider of the subsidy at issue. However, with respect to the PV Insights prices and the petitioner's UN Comtrade and GTA data, 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,

[103] *See* Petitioner's Letter, "Petitioner's Benchmark Submission for Solar Glass and Silver Paste," dated November 22, 2024 (Petitioner's Glass/Paste Benchmark Submission) 2 and Exhibits NFI-1 and NFI-3 (world export prices from UN Comtrade for solar glass under HS code 7007.19 and import data for solar glass from Global Trade Atlas under HS code 7007.19).
[104] *See* Jinko Solar's Letter, "Jinko NSA Response," dated November 12, 2024 (Jinko Solar Glass/Paste QR) at NSA-5-1 (2023 monthly solar glass pricing data from PV Insights).
[105] *See* Petitioner's Glass/Paste Benchmark Submission at Exhibits NFI-1 and NFI-3.
[106] *See* Jinko Solar Glass/Paste QR at NSA-5-1.
[107] *See* Post-Preliminary Decision Memorandum at 7-8.
[108] *Id*. at 11.
[109] *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), and accompanying IDM at Comment 1.

Cambodia, Vietnam, and Malaysia).[110] 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 PV Insights data and the petitioner's UN Comtrade and GTA data), we determine that all three datasets do not serve as a usable tier two benchmark in this investigation. The record evidence cited above demonstrates that these prices reflect the distortions of the GOC's presence. Further, we are unable to disaggregate individual prices by country of origin.[111] 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.[112]

In our Post-Preliminary Analysis, we used the PV Insights data as the benchmark because this dataset was more specific to solar glass than others on the record and because the datasets submitted by the petitioner could not be disaggregated to confirm that the petitioner had indeed excluded Chinese and Malaysian prices.[113] Furthermore, we have found that PV Insights data had been used as a suitable benchmark for solar glass for LTAR calculations in previous cases.[114]

The petitioner takes issue with the PV Insights data because it claims that this dataset is not based on actual sales and relies on estimates based on "primary and secondary data" collected through surveys, interviews, and financial statements. However, the CIT has supported our use of PV Insights data in the past.[115] The issue here is whether this data can be disaggregated further to exclude the other distorted markets (Malaysia, Cambodia, and Vietnam).

As noted above, the petitioner submitted 2023 world export prices from UN Comtrade for solar glass under HS code 7007.19.[116] On March 4, 2025, we placed on the record UN Comtrade 2023 world export data disaggregated by importing country for this HS code.[117] We determine that the UN Comtrade export prices for HS code 7007.19, disaggregated by country, serve as usable tier

---

[110] *See* 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 Vietnam" (Solar Cells from Vietnam IDM); "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" (Solar Cells from Thailand IDM); 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 Cambodia," (Solar Cells from Cambodia IDM) dated concurrently with this memorandum.

[111] *See* Jinko Solar Glass/Paste QR at NSA-5-1; *see also* Petitioner's Glass/Paste Benchmark Submission at Exhibits NFI-1 and NFI-3.

[112] *See CVD Preamble*, 63 FR at 65377; *see also, e.g., Barium Chloride India CVD Inv Final* and accompanying IDM at Comment 3.

[113] *See* Post-Preliminary Decision Memorandum at 13-14.

[114] *See Changzhou Trina Solar Energy Co. v. United States*, 352 F. Supp.3d 1316,1334 (CIT 2018) (*Changzhou Trina Solar v. United States*); *see also Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Preliminary Results of Countervailing Duty Adminsitatrive Review, and Rescission in Part; 2021*, 88 FR 88575 (December 22, 2023) and accompanying PDM, 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).

[115] *See Changzhou Trina Solar v. United States*.

[116] *See* Petitioner's Glass/Paste Benchmark Submission at Exhibits NFI-1.

[117] *See* Memorandum, "Placing UN Comtrade Data on the Record," dated March 14, 2025 (UN Comtrade Memorandum) at Attachment 1.

two benchmarks. No party in this proceeding has disputed that the UN Comtrade data for 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.[118]

Jinko Solar notes that in our Post-Preliminary Analysis, Commerce explained that the PV Insights prices are more specific to solar glass and that UN Comtrade prices on the record are prices for a mix of products.[119] While this continues to be true, there is no statutory or regulatory requirement that benchmarks be identical.[120] Accordingly, for the reasons stated above, we find that the UN Comtrade world export prices for solar glass under HS code 7007.19 disaggregated by country are the best tier two benchmarks on the record. We have 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. In addition, because we have determined that the solar glass markets of China, Thailand, Vietnam, and Cambodia are distorted, we have excluded exports to these distorted markets, which is consistent with our practice.[121] Consistent with other proceedings, we are also removing unspecified categories such as "Areas, nes," "Free Zones," and "World" from the benchmarks.[122] Finally, because Jinko Solar reported its purchases in kilograms, we have removed countries that did not report their purchases in kilograms from the UN Comtrade benchmarks.

In its rebuttal brief, Jinko Solar raises additional arguments regarding the comparability of the UN Comtrade export data in HS code 7007.19 to prices for solar glass. For example, Jinko Solar argues that HS code 7007.19 "covers a basket category for tempered glass titled "Other."[123] However, the legal requirements governing Commerce's selection of benchmarks do not require perfection.[124] As we have explained in other proceedings, a benchmark, by nature, is not an exact match to the subsidy being evaluated.[125] Further, Jinko Solar did not cite any record evidence that would allow us to adjust the benchmark prices based on its claims of differences between the prices in HS code 7007.19 and prices specific to solar glass. In *Drawn Stainless Steel Sinks from China*, Commerce adjusted benchmark prices based on record evidence of specific differences between two grades of stainless steel and the magnitude of the price differential that resulted from these differences.[126] In this instance, however, Jinko Solar cited no specific evidence or methodology that would allow us to adjust the PV Insights benchmark prices based on its arguments regarding the comparability of the benchmarks to Jinko Solar's

[118] *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.
[119] *See* Jinko Solar's Rebuttal Brief at 8 (citing Post-Preliminary Decision Memorandum at 13-14).
[120] *See, e.g.*, *Archer Daniels Midland*, 968 F. Supp. 2d at 1278 (stating that Commerce "is required only to select benchmarks that are comparable, not identical").
[121] *See, e.g.*, *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.").
[122] *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.
[123] *See* Jinko Solar's Rebuttal Brief at 8.
[124] *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), and accompanying IDM at Comment 15.
[125] *Id*.
[126] *See Drawn Stainless Steel Sinks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 13017 (February 26, 2013) and accompanying IDM at Comment 12.

reported purchase prices for solar glass. Commerce must select an appropriate tier two benchmark based on information available on the record.

Commerce's practice is to rely on all usable data provided to construct the most robust benchmark possible. During all months of the POI, the UN Comtrade dataset for HS code 7007.19 includes export prices in kilograms for at least 17 countries, with certain months including prices for 22 countries.[127] Using monthly export prices for 17-22 countries with export data in kilograms allows us to construct the most robust benchmark possible, based on available record information.

Comment 5: Whether Commerce Should Use HS 7115.90 As the Benchmark for the Silver Paste for LTAR Program

Petitioner's Case Brief:

The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* Petitioner's Case Brief at 6-8.

> In the final determination, {Commerce} should use world export data for {HS} 7115.90, submitted by Petitioner. Record information supports use of these data, including a ruling from U.S. Customs and Border Protection confirming that {HS} 7115.90 was the appropriate classification for silver paste. Respondents provide no information to show that {HS} 7106.92 was the appropriate classification for silver paste in the context of world market prices. Moreover, the use of {HS} 7106.92 as a surrogate value in an antidumping proceeding has no application to benchmarks used for measuring the adequacy of remuneration in {CVD} proceedings. Such cases involve different regulations with different standards. {Commerce's} regulations at 19 CFR 351.511(a)(2) confirm that {HS} 7115.90 constitute the best data for the benchmark.

Jinko Solar's Rebuttal Brief:

The following is a verbatim summary of arguments submitted by Jinko Solar. For further details, *see* Jinko Solar's Rebuttal Brief at 9-11.

> In its Post-Preliminary Analysis, {Commerce} relied on tier-two benchmark pricing pursuant to 19 CFR 351.511(a)(2)(ii) to calculate the benefit, if any, for {Jinko Solar's} imports of silver paste and solar glass from China. Consistent with past practices in other CVD proceedings involving these inputs, {Commerce} used exports from UNComtrade data under {HS} 7106.92 for silver paste and monthly prices from PV Insights for solar glass. These selections were consistent with the statute and regulations and supported by substantial evidence. {Commerce} should therefore reject Petitioner's arguments that {HS} 7115.90 should be used for silver paste and UNComtrade data for solar glass. As previous case law and record evidence demonstrate, neither of these sources are specific to the inputs Jinko purchased and indeed are wildly distortive. {Commerce} therefore properly took

[127] UN Comtrade Memorandum at Attachment 1

> prevailing market conditions into account and selected the correct benchmark for these inputs.
>
> Moreover, {Commerce} was correct in reducing the benefit for each input by 70 percent and 71 percent, respectively. This reduction was consistent with past practice where, as facts available, {Commerce} used record evidence regarding the government authority makeup of the Chinese industry. Petitioner has not presented any evidence that this was unreasonable or contrary to past practice; nor have they provided any evidence that the entire industry for silver paste and solar glass are government authorities. {Commerce's} calculation should therefore be maintained for the final determination.

Commerce's Position: For the final determination, Commerce will continue to use the UN Comtrade export data for silver paste under HS code 7106.92 that Jinko Solar submitted on the record.

Similar to our rationale in the selection of the solar glass benchmark, Commerce used Jinko Solar's silver paste benchmark data because the HS 7106.92 code was more specific to silver paste and because the data could be disaggregated to exclude distorted markets.[128] The UN Comtrade data submitted by Jinko Solar included the disaggregated raw data of general export prices (*i.e.*, to the "World"), the monthly export totals for value and quantity, and the total monthly average price of silver paste.[129] The HS subheading 7106.92 covers "Silver (including silver plate with gold or platinum), unwrought or in semi manufactured forms, or in powder form."[130] However, the petitioner provided GTA and UN Comtrade data for HS code 7115.90, which is a category that includes much higher-value products such as articles of silver and gold.[131] The HS subheading 7115.90 covers "Other articles of precious metal or of metal clad with precious metal; Other,"[132] and HS chapter 71 covers more broadly "precious metals (*i.e.*, silver, gold and platinum) and articles thereof{.}"[133] Furthermore, we could not disaggregate the petitioner's data to confirm that the petitioner had indeed excluded prices from distorted markets. Therefore, in our Post-Preliminary Decision, we determined that the UN Comtrade data submitted by Jinko Solar under HS code 7106.92 is the most appropriate HS subheading to value silver paste and derive the tier-two benchmark pursuant to 19 CFR 351.511(a)(2)(ii).[134]

As explained in our Post-Preliminary Analysis, we did not select the UN Comtrade data with HS subheading 7115.90 as this HS chapter 71 covers "Other articles of precious metal or of metal clad with precious metal; Other."[135] The petitioner provided a ruling from CBP showing that HS subheading 7115.90 was the appropriate classification for silver paste with 78 percent silver

---

[128] *See* Post-Preliminary Decision Memorandum at 11-12.
[129] *Id*. at 12; *see also See* Jinko Solar Glass/Paste QR at 2-3 and Exhibits NSA-1-2.
[130] *See* Post-Preliminary Decision Memorandum at 11-12.
[131] *See* Post-Preliminary Decision Memorandum at 12; *see also* Petitioner's Letter, "Petitioner's Benchmark Submission for Solar Glass and Silver Paste," dated November 22, 2024 (Petitioner's Glass/Paste Benchmark Submission), at 2 and Exhibits NFI-1 and NFI-3 (world export prices from Global Trade Atlas (GTA) and UN Comtrade for silver paste under HS code 711590.
[132] *See* Post-Preliminary Decision Memorandum at 12.
[133] *Id*. at
[134] *Id*. at 12
[135] *See* Post-Preliminary Memorandum at 12.

concentration that is mixed with "various chemical compounds."[136] Nonetheless, we do not solely rely on the CBP rulings to determine if we should rely on one HS subheading over the other.

We continue to find that the HS subheading 7115.90 description "silver concentration that is mixed with 'various chemical compounds'" still indicates that these imports under HS 7115.90 includes imports not similar to silver paste (*e.g.*, gold and articles of precious metals). Thus, HS subheading 7115.90 is not the best benchmark for silver paste on our record. In contrast, the description of HS subheading 7106.92 covers semi-manufactured silver powders, which we find is a better match for silver paste for purposes of identifying the most appropriate benchmark data because silver paste is itself a manufactured silver product and would therefore fall under this HS subheading. Thus, we continue to find that the most appropriate HS subheading to value silver paste is 7106.92, which covers semi- manufactured silver powders.

The petitioner argued that we relied on an antidumping duty (AD) proceeding to make our determination that HS subheading 7106.92 is more specific to the product for which we are seeking a benchmark.[137] The petitioner also argues that cases involving the selection of factors of production address different concerns, which have no application relevant to involving CVD benchmarks.[138] Commerce selected HS subheading 7106.92 as the more appropriate benchmark because it better represents the silver paste at issue in this investigation than HS subheading 7115.90. In the *China Solar Cells AD AR 2019-2020*, Commerce continued to use HS subheading 7106.92 as it is within Commerce's practice is to select surrogate value (SVs) based on a number of criteria (*i.e.*, public availability, contemporaneity, broad-market average, tax and duty-exclusive, and specificity)[139] of which specificity is particularly important.[140] In CVD proceedings, Commerce normally looks for product comparability between the benchmark and the products purchased by the mandatory respondents and relies on data that reflect the narrowest category of products encompassing the input products. The assessment of input benchmarks and surrogate values are similar, because both evaluate the data to ensure comparability. However, we did not rely solely on the AD proceeding to determine the HS subheading to use, as we determine which benchmark data is the most usable and reasonable on a case-by-case basis.

Concurrently with this investigation, we are conducting CVD investigations of solar cells from Cambodia, Vietnam, and Thailand. Similar to our treatment of the solar glass benchmark, we are removing silver paste prices from the subsidy provider, China, and the prices of silver paste in specific markets that Commerce is finding to be distorted (*i.e.*, silver paste markets in Cambodia and Vietnam).[141] We are also removing unspecified categories such as "Areas, nes," "Free

[136] *See* Petitioner's Case Brief at 8 (citing Petitioner Glass/Paste Benchmark Submission at Exhibit NFI-2).
[137] *Id*. at 5-6; *see also Crystalline Silicon Photovoltaic Cells Whether or Not Assembled into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2019-2020*, 87 FR 38379 (June 28, 2022) (*China Solar Cells AD AR 2019-2020*), and accompanying IDM at 30-31.
[138] *See* Petitioner's Case Brief at 5-6.
[139] *See China Solar Cells AD AR 2019-2020* IDM at 30-31.
[140] *See China Solar Cells AD AR 2019-2020*; *see also Taian Ziyang v. United States*, 783 F. Supp. 2d 1292, 1330 (holding that "in sum, 'product specificity' logically must be the primary consideration in determining 'best available information.' If a set of data is not sufficiently 'product specific,' it is of no relevance whether or not the data satisfy the other criteria set forth in Policy Bulletin 04.1.").
[141] *See* Solar Cells from Vietnam IDM; *see also* Solar Cells from Cambodia IDM dated concurrently with this memorandum.

Zones," and "World" from the benchmarks.[142] Finally, because Jinko Solar reported its purchases in kilograms, we have removed countries that did not report their purchases in kilograms from the UN Comtrade benchmarks.

Furthermore, we are weight-averaging the prices in the UN Comtrade data provided by Jinko Solar with the UN Comtrade data that Commerce submitted to the record.[143]

Comment 6: Whether the Exemption of Import Duties and Sales Taxes for Raw Materials through Licensed Manufacturing, Warehouses (LMWs) are Countervailable

Hanwha Q CELLS's Case Brief:

The following is a verbatim summary of arguments submitted by Hanwha Q CELLS. For further details, *see* Hanwha Q CELLS Case Brief at 36-38.

> Commerce improperly calculated a subsidy rate for {Hanwha Q CELLS} relating to import duty and sales tax exemptions for imported raw materials through {Hanwha Q CELLS} licensed manufacturing warehouse. Such exemptions are generally not countervailable if the exemption extends only to inputs consumed in the production of the exported product, making normal allowances for waste. {Hanwha Q CELLS} met the requirements of the program. {Hanwha Q CELLS} exported greater than the 80 percent threshold of the total value of finished goods as required by the LMW license. Goods sold into the domestic market that are imported under LMW status are subject to import duties and sales tax. {Hanwha Q CELLS} compliance was verified by the GOM.

Petitioner's Rebuttal Brief:

The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* Petitioner's Rebuttal Brief at 20-23.

> {Commerce} should continue to find that respondents received a countervailable benefit through the Licensed Manufacture Warehouse Program (LMW). {Commerce} correctly found that the program is countervailable in the preliminary determination. Specifically, given that the GOM does not maintain an adequate input system as required by 19 CFR 351.519(a)(4)(i)-(ii), the entire amount of any exemption, deferral, or remission of drawback is countervailable. Accordingly, {Commerce} should continue to find this program countervailable consistent with its *Preliminary Determination* and past practice.

Commerce's Position: We continue to find that import duty and sales tax exemptions for imported raw materials through LMWs are countervailable.

As explained in the *Preliminary Determination*, we found import duty and sales tax exemptions for imported raw materials through LMWs to be countervailable because the GOM did not

[142] *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.
[143] *See* UN Comtrade Memorandum at Attachment 2.

demonstrate that it had in place, and applied, a system that is reasonable and effective for tracking which inputs, and in what amounts, are consumed in the production of an exported product, making normal allowance for waste.[144] Moreover, we stated that the GOM has discretion in applying the law for this program and, therefore, has the ability to exempt companies from duty payment requirements.[145]

The GOM has not provided any argument or pointed to any information on the record of this investigation that would warrant revisiting our preliminary finding with respect to this program. Hanwha Q CELLS argues that it met the requirements of the program (*i.e.*, Hanwha Q CELLS exported greater than the 80 percent threshold of the total value of finished goods as required by the LMW license), and, therefore, import duty and sales tax exemptions for imported raw materials through LMWs are not countervailable.[146] Additionally, Hanwha Q CELLS references discussion from the GOM Verification Report indicating that the GOM will conduct a company visit and conducts audits to ensure that companies are complying with the requirements of the LMW license.[147] Specifically, Hanwha Q CELLS cites the following from the GOM Verification Report:

> the RMCD also conducts audits to ensure that companies are complying with the requirements of the LMW license. RMCD {Royal Malaysian Customs Department} officials inspect company sales to confirm that at least 80 percent of the value of sales are export sales. Furthermore, officials explained that companies must routinely submit documents to the RMCD for program compliance, including reporting monthly on raw materials used and finished goods produced in addition to any changes to the LMW.[148]

We verified that Hanwha Q CELLS and Jinko Solar exported greater than the 80 percent threshold of the total value of finished goods to be eligible for an LMW license.[149] Additionally, we observed the monthly records and annual reports that are required to be submitted to the GOM.[150] However, we find that the GOM's requirement that companies submit documents monthly showing raw materials used and finished goods produced does not constitute a system that is reasonable and effective for the purposes intended to track which inputs, and in what amounts, are consumed in the production of exported product, making normal allowance for waste. As discussed in the PDM, when asked, the GOM was not able to provide any supporting information regarding any *actual* monitoring, inspections, or verification that it performs regarding information submitted by companies regarding which imported inputs and in what amounts were consumed in the production of exports .[151] Additionally, at verification, the GOM

[144] *See Preliminary Determination* PDM at 33-35 (citing 19 CFR 351.519(a) and *Utility Scale Wind Towers from Malaysia: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review, 2021*, 88 FR 61516 (September 7, 2023), and accompanying PDM at 12-15, unchanged in *Utility Scale Wind Towers from Malaysia: Final Results of Countervailing Duty Administrative Review; 2021*, 89 FR 17404 (March 11, 2024) (*Wind Towers from Malaysia 2021*), and accompanying IDM at 31-36).
[145] *See Preliminary Determination* PDM at 34-35.
[146] *See* Hanwha Q CELLS Case Brief at 37-38.
[147] *Id* at 37 (citing GOM's Verification Report at 5-6).
[148] *Id*.
[149] *See* Hanwha Q CELLS Verification Report at 10; *see also* Jinko Solar's Verification Report at 12.
[150] *See* Hanwha Q CELLS Verification Report at 10 and Verification Exhibit (VE)-6; *see also* Jinko Solar's Verification Report and GOM's Verification Report at VE-1.
[151] *See Preliminary Determination* PDM at 34.

explained that it "conducts audits to ensure that companies are complying with the requirements of the LMW license," and that GOM officials "inspect company sales to confirm that at least 80 percent of the value of sales are export sales," but it did not assert or demonstrate that these actions are part of an input tracking system to confirm which inputs and in what amounts are consumed in the production of the exported product.[152] Further, even if the GOM verified or inspected the contents of the monthly records and annual reports submitted by LMWs, we continue to find that the law governing this program provides for discretionary exemptions from the duty and sales tax payment requirement.[153] Under similar circumstances, *i.e.*, where a duty exemption program has carve-outs or exemptions from the exportation requirement, we have found the program to be countervailable.[154]

Based on the above, we continue to find for the final determination that the GOM has not demonstrated that it has in place, and applies, a system that is reasonable and effective for the purposes of confirming which inputs, and in what amounts, are consumed in the production of exported product, making normal allowance for waste, pursuant to 19 CFR 351.519(a)(4)(i)-(ii). Accordingly, the entire amount of the import duty and sales tax exemptions for raw materials provided to Hanwha Q CELLS and Jinko Solar under the Licensed Manufacturing Warehouse program constitutes a benefit under section 771(5)(E) of the Act, as well as 19 CFR 351.517(a) and 19 CFR 351.519(a)(4). This analysis is consistent with other proceedings.[155]

Comment 7: Whether the Exemption on Import Duties and Sales Taxes for Imported Raw Materials, Spare Parts/Accessories, and Machinery Through Free Trade Zones (FTZs) are Countervailable

Jinko Solar's Case Brief:

The following is a verbatim summary of arguments submitted by Jinko Solar. For further details, *see* Jinko Solar's Case Brief at 4-8.

> {Commerce} in its *Preliminary Determination* erroneously countervailed Jinko's import duty and sales tax exemptions for imports into Foreign Trade Zones (FTZs). The FTZ scheme is distinct from the Licensed Manufacturing Warehouse scheme and should be analyzed differently under 19 CFR 351.519. Record evidence demonstrates that FTZs in Malaysia are outside of the customs territory of Malaysia. These FTZs are subject to rigorous customs enforcement and all goods leaving the zone into Malaysia are subject to import duties and sales taxes, based on their entire value, just as if entering Malaysia for the first time. Thus, the requirements under section 351.519 requiring {Commerce} to ensure that the local

[152] *See* GOM's Verification Report at 5-6.
[153] *See Preliminary Determination* PDM at 34.
[154] *See, e.g., Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 73 FR 7708 (February 11, 2008), and accompanying IDM at Comment 3 (stating that Commerce's decision was based on "the GOI's lack of a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts that is reasonable and effective for the purposes intended" and noting a "lack of evidence regarding the implementation of penalties for companies not meeting the export requirements" and an exemption that permitted "benefits for a broad category of 'deemed' exports").
[155] *See Wind Towers from Malaysia 2021* at 31-36; *see also Ferrosilicon from Malaysia: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, in Part, 90 FR 14075 (March 28, 2025) (*Ferrosilicon from Malaysia*), and accompanying IDM at Comment 3.

> authorities have a system in place to track inputs and waste is not necessary. All that is required to show that FTZs are not countervailable is to show that the local law considers them outside of the customs territory of the country and that they are subject to rigorous customs enforcement. Both Jinko and the Government of Malaysia (GOM) demonstrated this clearly. Companies within the zones are subject to monthly inventory reports, yearly auditing and strict control at the entry and exit of the zones. All goods entering and exiting the zones must present proper paperwork, be it import declarations or export declarations, and are subject to inspection. There is no evidence on the record that companies within the FTZs are subject to lax enforcement or evidence of instances where companies are permitted to sell goods domestically without paying import duties. Absent evidence to the contrary, the only conclusion that can be made is that FTZs in Malaysia are subject to rigorous customs enforcement and, thus, import exemptions are not countervailable under 19 CFR 351.519. {Commerce} should revise its determination accordingly for the final determination and not calculate a rate for this program.

Petitioner's Rebuttal Brief:

The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* Petitioner's Rebuttal Brief at 11-19.

> In the *Preliminary Determination*, {Commerce} correctly countervailed the Import Duty and Sales Tax Exemptions for Imported Raw Materials through respondents' FTZs. Specifically, despite arguments to the contrary, the record of this investigation does not support a finding that the GOM maintains an adequate input system as required by 19 CFR 351.519(a)(4)(i). Accordingly, the entire amount of any exemption, deferral, or remission of drawback is countervailable. Consistent with the record of this investigation and {Commerce's} past practice, {Commerce} should continue to countervail this program in the final determination.

Commerce's Position: We continue to find that exemptions on import duties and sales taxes for imported raw materials, spare parts/accessories, and machinery through FTZs are countervailable.

As an initial matter, Jinko Solar argues that import duty and tax exemptions in FTZs are not countervailable because the FTZ is considered to be outside the customs territory of Malaysia.[156] Jinko Solar relies on *CWP from the UAE* to support its argument:[157]

> As we explain in the concurrent final CVD determination with respect to circular welded pipe from Vietnam, we have determined that companies located outside of the customs territory of a country are not liable for duties and, consequently, that a

[156] *See* Jinko Solar's Case Brief at 4-5.
[157] *See Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Final Affirmative Countervailing Duty Determination*, 77 FR 64465 (October 22, 2012) (*CWP from the UAE*), and accompanying IDM at Comment 6.

> government does not {forgo} revenue when those companies import items free of duty. Thus, there is no financial contribution and no subsidy is conferred.[158]

However, as we elaborated in *CWP from the UAE*:

> {I}t is not enough merely to designate a company or label an area as a FTZ in order for {Commerce} to treat that area as being outside the customs territory of the designating country. Instead, the respondents must demonstrate that the FTZ is subject to rigorous customs enforcement measures that ensure goods entering the free trade area are accounted for through exportation or entry into the country's customs territory and, in the latter case, appropriate duties are collected.[159]

We acknowledge that in past cases we determined that an import duty exemption program did not provide countervailable benefits when a company was located in a "non-tariff" zone.[160] However, notwithstanding the fact that those cases were neither Malaysian cases or about FTZs in Malaysia, in each case Commerce found that the countries referenced maintained reasonable and effective systems such that the zones were outside of the customs territory of the country under investigation. However, as we stated in *CWP from Vietnam*:

> {o}ur decision should not be read to mean that a government can simply hand a company a certificate declaring the company to be outside the country's customs territory and {Commerce} will find no subsidy. Instead, such companies in free trade areas must be subject to rigorous customs enforcement measures that ensure goods entering the free trade area are accounted for through exportation or entry into the country's customs territory and, in the latter case, appropriate duties are collected.[161]

Although Jinko Solar argues that import duty and tax exemptions to companies located in FTZs are not countervailable, Jinko Solar concedes that Commerce must examine whether companies located FTZs are subject to rigorous enforcement in an analysis of the program's countervailability.[162] However, neither the GOM nor Jinko Solar have provided evidence to demonstrate that the GOM has rigorous customs enforcement measures that ensure goods entering the FTZ are accounted for through exportation or entry into Malaysia's customs territory and, in the latter case, appropriate duties are collected. Jinko Solar states, "Companies within the zones are subject to monthly inventory reports, yearly auditing and strict control at the entry and exit of the zones. All goods entering and exiting the zones must present proper paperwork, be it import declarations or export declarations, and are subject to inspection."[163] However, Jinko Solar does not reference with specificity any record evidence to support its claims.

---

[158] *Id.*
[159] *Id.*
[160] *See, e.g., Circular Welded Carbon-Quality Steel Pipe from the Socialist Republic of Vietnam: Final Negative Countervailing Duty Determination*, 77 FR 64471 (October 22, 2012) (*CWP from Vietnam*), and accompanying IDM at Comment 3 and *Certain Uncoated Paper from Indonesia: Final Affirmative Countervailing Duty Determination*, 81 FR 3104 (January 20, 2016), and accompanying IDM at 22-23.
[161] *See CWP from Vietnam* IDM at Comment 3.
[162] *See* Jinko Solar's Case Brief at 8.
[163] *Id*.

Simple assertions that companies are subject to reporting requirements, and subject to inspection, do not meet the standard of rigorous customs enforcement measures pursuant to 19 CFR 351.519(a). We have previously stated that a company's business records do not demonstrate that a government applies an effective tracking system.[164] In *Wind Towers from Malaysia 2021*, we stated that "a company's self-reporting or its own business documents are insufficient to demonstrate that an administering government applies an effective tracking system under 19 CFR 351.519, because we must analyze whether *the government* has an independent mechanism in place to confirm the quantity of raw material inputs and the eventual outputs."[165] Similar to *Wind Towers from Malaysia 2021*, there is no evidence on the record that the GOM reviewed and approved Jinko Solar's inventory reports or conducted an inspection of Jinko Solar's facilities. Additionally, in its questionnaire responses and at verification, the GOM did not provide any documentation that demonstrates that a GOM official approves or enforces monthly inventory reports or conducts yearly audits. Further, as mentioned above, Jinko Solar has not indicated the presence of such evidence on the record.

Therefore, based on the record and consistent with the *Preliminary Determination*, we continue to determine that exemptions on import duties and sales taxes for imported raw materials, spare parts/accessories, and machinery through FTZs are countervailable.

Comment 8: Whether the Import Duty and Sales Tax Exemptions Program through Licensed Manufacturing Warehouse Should Be Considered an Export Subsidy

Hanwha Q CELLS Case Brief:

The following is a verbatim summary of arguments submitted by Hanwha Q CELLS. For further details, *see* Hanwha Q CELLS Case Brief at 38-40.

> Should Commerce continue to find the import duty and sales tax exemptions program countervailable for Hanwha Q CELLS, the program should be considered an export subsidy because receipt of the duty and sales tax exemptions are contingent upon exportation. Contrary to Commerce's position in the Preliminary Decision Memo, these exemptions are not indirect taxes or import duties. Commerce reviewed the exact program in a Sep. 10, 2024 preliminary determination on Ferrosilicon from Malaysia, and said:
>
> we preliminarily find that the import duty exemptions for raw materials under this program constitutes a remission or drawback of import charges properly analyzed under 19 CFR 351.519. We also preliminarily find that this program provides a financial contribution in the form of revenue forgone within the meaning of section 771(5)(D)(ii) of the Act. In addition, we preliminarily find that the program is specific within the meaning of sections 771(5A)(A) and (B) of the Act because receipt of the duty exemption is contingent upon exportation. These findings are consistent with those in Wind Towers from Malaysia Investigation. *See* Utility Scale Wind Towers from Malaysia: Preliminary Affirmative Countervailing Duty

[164] *See Wind Towers from Malaysia 2021* at 35.
[165] *Id.*

> Determination, 86 FR 15887 (March 25, 2021), and accompanying PDM at 11-12, unchanged in Utility Scale Wind Towers from Malaysia: Final Affirmative Countervailing Duty Determination, 86 FR 30593 (June 9, 2021) and accompanying IDM at 5-12 (Wind Towers from Malaysia Investigation).
>
> Commerce treated this program as an export subsidy for the other mandatory respondent, Jinko Solar, in relation to Jinko Solar's foreign trade zone facilities. As the evidence shows, the vast majority of sales through the LMW are also export sales. Therefore, treating this program as an export subsidy is consistent with how Commerce has treated this program in other countervailing duty proceedings relating to Malaysia, and in this proceeding as to Jinko Solar's foreign trade zone facilities.
>
> Finally, any benefit calculated from this program should be adjusted to reflect the percentage of sales that were exported in compliance with the program.

No other interested parties submitted comments on this issue.

Commerce's Position: We agree, in part, with Hanwha Q CELLS regarding our treatment of the raw materials component of this program. As noted above, to comply with program requirements for import duty and sales tax exemptions on raw materials, a company must export at least 80 percent of the total value of finished goods to be eligible for an LMW license. At the verifications of both Hanwha Q CELLS and Jinko Solar, we noted that both companies exported greater than the 80 percent threshold of the total value of finished goods.[166] Therefore, we find that the raw materials component of this program should be considered an export subsidy because receipt of the duty and sales tax exemptions is contingent upon exportation. This is consistent with our treatment of the program in previous proceedings related to Malaysia.[167] Therefore, with respect to the import duty and sales tax exemptions on raw materials through LMW, for the final determination, we find that it is specific within the meaning of sections 771(5A)(A) and (B) of the Act because receipt of the duty and sales tax exemptions are contingent upon exportation. Regarding exemptions for Machinery, Equipment, and Spare parts/Accessories through LMW, we continue to find such exemptions are specific under section 771(5A)(D)(i) of the Act, because they are expressly limited to enterprises that are engaged in the production of approved final products under the LMW.

Comment 9: Whether the Electricity for LTAR Program is Countervailable

Hanwha Q CELLS Case Brief:

The following is a verbatim summary of arguments submitted by Hanwha Q CELLS. For further details, *see* Hanwha Q CELLS Case Brief at 6-15.

> Commerce improperly concluded that {Hanwha Q CELLS} receives a countervailable benefit as a result of the rates it pays for electricity. First, {Hanwha Q CELLS} rates are not countervailable because they are not specific. They are

[166] *See* Hanwha Q CELLS Verification Report at VEs-6A, 6B, and 6C; *see also* Jinko Solar's Verification Report.
[167] *See, e.g., Ferrosilicon from Malaysia*.

> not geographically specific because they reflect the baseline, economy-wide rates. They are not industry-specific because they are not limited to "an enterprise or industry." Second, the rates {Hanwha Q CELLS} pays are market-principled because the framework for setting TNB's rates is de jure market principled and that de facto TNB recovers costs and makes a fair rate of return.

No other interested parties submitted comments on this issue.

Commerce's Position: We continue to find that the electricity for LTAR program is countervailable. Hanwha Q CELLS argues that the electricity prices of the GOM's electricity supplier to both Hanwha Q CELLS and Jinko Solar (*i.e.*, Tenaga Nasional Berhad (TNB)) are not geographically specific, and therefore are not countervailable. Within Malaysia, the electricity regulation system comprises three areas: Peninsular Malaysia, the State of Sabah, and the State of Sarawak.[168] Hanwha Q CELLS and Jinko Solar are located in Peninsular Malaysia, and electricity provider TNB supplied their electricity during the POI.[169] Hanwha Q CELLS argues that record information shows that "TNB's rates, applicable to Peninsular Malaysia, account for 80% of the population, over 85% of economic output, nearly 90% of electricity consumers, and nearly 80% of electricity consumption."[170] Hanwha Q CELLS further states that "TNB's rates are therefore the general, economy-wide rates."[171] However, the size of the region or percentage of the population included by the regional price does not negate the fact that the price is specific to a certain location. Consistent with prior findings on regional specificity, it is not relevant to Commerce's specificity determination that a subsidy is available to a large portion of the country, which may represent a large number of companies or a large portion of the economic output as long as the government designates a geographical region, and the companies located in that region, as being eligible for access to the subsidy.[172] The Court has upheld Commerce's decisions in this regard, stating that under the statute "…there are no limitations on the size or administration of the designated area" when making a regional specificity determination.[173]

Additionally, Hanwha Q CELLS suggests that the size of the area should be instructive when assessing whether a provided subsidy is specific, in addition to whether "many" enterprises or industries receive the subsidy. However, as identified by Hanwha Q CELLS, pursuant to section 771(5A)(D)(iv) of the Act, our analysis focuses on whether "a subsidy is limited to an enterprise or industry located within a designated geographic region within the jurisdiction of the authority providing the subsidy."[174] In the *Preliminary Determination*, we stated that "the GOM implemented the Power Supply Act of 1990 and designated the Energy Commission as the regulatory agency for electricity tariffs. The Energy Commission enacted the {Incentive Based Regulation} and its pricing methodology exclusively to the area of Peninsular Malaysia."[175] Therefore, we determined that the provision of electricity is specific, pursuant to section

---

[168] *See Preliminary Determination* PDM at 40.
[169] *Id.* at 41.
[170] *See* Hanwha Q CELLS Case Brief at 9-10 and 12.
[171] *Id.* at 10.
[172] *See, e.g., Large Residential Washers from the Republic of Korea: Final Countervailing Duty Determination*, 77 FR 75975 (December 26, 2012), and accompanying IDM at Comment 9.
[173] *See Samsung Electronics Co., Ltd. V. U.S.*, 973 F.Supp.2d 1321, 1328(CIT 2014) (*Samsung Electronics*).
[174] *See* Hanwha Q CELLS Case Brief at 10.
[175] *See Preliminary Determination* PDM at 41-42.

771(5A)(D)(iv) of the Act, as it is limited to enterprises and industries located in Peninsular Malaysia.

Although we requested information about the pricing structure the GOM uses to determine the pricing for each geographical area, the GOM did not fully respond to our questions, as explained in the *Preliminary Determination*.[176] The pricing structure is determined by the GOM, and the method applied is unknown, and the electricity tariffs differ by geographical region.

Because the record shows that the GOM determines the electricity tariff rates and that the rates differ based on region, we continue to find that the provision of electricity is specific because it is limited to an enterprise or industry located within a designated geographical region within the jurisdiction of the authority providing a subsidy, pursuant to section 771(5A)(D)(iv) of the Act, as it is limited to enterprises and industries located in Peninsular Malaysia region.

Hanwha Q CELLS also argues that TNB's electricity prices are set in accordance with market principles. Hanwha Q CELLS contends that this is shown through (1) the legal and regulatory framework for Malaysia's electricity market and (2) the fact that TNB's rates cover costs of production and provide a reasonable rate of return. As noted above, we requested a variety of information and data regarding the operations of TNB. In particular, we requested that the GOM provide data to permit an analysis of whether TNB recovers its costs related to electricity distribution.[177] In its initial questionnaire response, the GOM repeatedly stated that Hanwha Q CELLS and Jinko Solar did not receive a financial contribution (*i.e.*, a preferential electricity rate) with respect to each company's electricity usage. However, the GOM declined to respond to many of Commerce's questions regarding the provision of electricity. With respect to questions regarding TNB's operating costs and its return on capital for the tariff classes, the GOM stated that "TNB is unable to provide the information in view of TNB's Confidentiality Policy."[178] In response to questions regarding TNB's earned revenue for the electricity tariff classes and whether TNB's earned revenue was sufficient to cover the costs and expenses, the GOM repeated that, due to TNB's Confidentiality Policy, it was unable to provide to responses to our questions.[179] In a supplemental questionnaire, we renewed our request for information regarding the operation of the Malaysian electricity system, particularly the number and type of industries receiving assistance, in a supplemental questionnaire. Although the GOM provided a variety of electricity laws in response to our questions, it responded "not applicable" to our questions regarding recipient companies and industries.[180]

The requested information, especially the underlying data, is essential to Commerce's analysis of whether TNB's pricing reflects market principles. In particular, there are no data on the record demonstrating that the rates determined pursuant to the GOM's pricing methodology result in TNB recovering costs and realizing a reasonable rate of return in relation to its industrial electricity tariffs, as envisioned in 19 CFR 351.511(a)(2)(iii). Therefore, in the absence of specific and verifiable cost information as it pertains to setting the tariff rates, we continue to find that the record is incomplete because we are missing information from the record that would permit us to conduct a full a market principles analysis to determine whether the electricity

[176] *Id.* at 16-17.
[177] *Id*.
[178] *Id.* at 17.
[179] *Id*.
[180] *Id*.

prices charged to the respondent companies were consistent with market principles pursuant to 19 CFR 351.111(a)(2)(iii). Therefore, we continue to find, pursuant to section 776(a)(1) and sections 776(a)(2)(A), (C), and (D) of the Act, that information is missing from the record, and application of facts available is necessary.

Further, as discussed above, because we find that information is missing from the record to establish that TNB's pricing reflects market principles, TNB's electricity prices on the record are not usable for Commerce to establish that these prices are determined consistent with market principles under 19 CFR 351.511(a)(2)(iii). Therefore, Hanwha Q CELLS argument with we calculate a benefit using TNB's highest tariff rates as a benchmark is not applicable.

Comment 10: Whether Singapore's Electricity Rates Are an Appropriate Benchmark

Hanwha Q CELLS Case Brief:

The following is a verbatim summary of arguments submitted by Hanwha Q CELLS. For further details, *see* Hanwha Q CELLS Case Brief at 15-32.

> In any event, Commerce improperly applied Singapore electricity rates as a benchmark. Singapore is not a valid comparator because of: massive, general, economy-wide differences; electricity-specific differences inapplicable to Malaysia; 2023 was uniquely inappropriate; and Commerce's limited reasonings for adopting Singapore is flawed. Commerce should have relied on electricity rates from the Philippines, or alternatively, any other rates on the record. The Philippines, and the other countries on the record, are vastly more comparable in terms of their economies and energy markets. If Commerce uses Singapore as a benchmark, Commerce must use record PLI Conversion Factor data to render the prices more comparable in real terms.

Jinko Solar's Case Brief:

The following is a verbatim summary of arguments submitted by Jinko Solar. For further details, *see* Jinko Solar's Case Brief at 8-16.

> In its *Preliminary Determination*, {Commerce} used electricity prices from Singapore as the tier three benchmark for electricity for less than adequate remuneration (LTAR). {Commerce} failed to take prevailing market conditions into account, including prices in economically comparable countries. Instead, {Commerce} erroneously focused solely on the interconnectedness of the grids despite the fact that Singapore has a significantly higher GNI than Malaysia and no imports or exports of electricity between Singapore and Malaysia. Moreover, evidence demonstrates that the electricity framework in Singapore is significantly different than Malaysia and Vietnam. Singapore has to charge higher prices because it imports raw materials to generate electricity instead of relying on renewable energy sources. Around 95 percent of Singapore's electricity is generated using imported natural gas because Singapore is a country with no natural resources. Furthermore, electricity prices in Singapore increased twice due to higher energy costs on the global market during the POI. In contrast, Malaysia and Vietnam rely

> significantly on both natural resources and renewable energy as a source of fuel for electricity. In sum, the differences of GNI between the Singapore and Malaysia are significant, and the fact that electricity in Singapore is about three times more expensive than in Malaysia's capital city, Kuala Lumpur, can be attributed to differences in their electricity frameworks. Therefore, for the Final Determination, {Commerce} should modify its tier three benchmark by selecting the electricity prices from Vietnam as the tier-three electricity benchmark.

No other interested parties submitted comments on this issue.

Commerce's Position: For the reasons stated below, we disagree with the arguments made by Hanwha Q CELLS and Jinko Solar. In constructing our final benchmark, we are continuing to use the electricity tariff rates from Singapore.

Commerce identifies appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services, in accordance with 19 CFR 351.511(a)(2). This section of Commerce's regulations specifies potential benchmarks in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports, or competitively-run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); and (3) an assessment of whether the government price is consistent with market principles (tier three). As stated in the *Preliminary Determination*, we determined that there were no usable Malaysian electricity prices on the record (*i.e.*, prices that were not from a state-owned electricity provider) for a tier-one benchmark, and there were no world market prices available to end users in Malaysia for a tier-two benchmark; thus, Commerce relied on a tier-three benchmark.[181]

When selecting benchmarks, as provided in 19 CFR 351.511(a)(2)(iii), if there is no world market price available to purchasers in the country in question under 19 CFR 351.511(a)(2)(ii), we will normally measure the adequacy of remuneration by assessing whether the government price is consistent with market principles. However, as stated in the *Preliminary Determination*, the GOM did not provide the required information regarding TNB's operating costs and its return on capital for the tariff classes for Commerce to analyze whether TNB's pricing reflects market principles.[182] Because information on the record was missing, Commerce relied on a tier-three benchmark, as facts available, and based our analysis of the adequacy of remuneration on electricity rates from Singapore. This approach is consistent with *Wind Towers from Malaysia 2021*.

Here, we found that it was appropriate to use Singaporean electricity tariffs because the Malaysia and Singapore electricity grids are interconnected, the data represent comparable class/type of electricity consumer, and the record indicates that the Singapore rates are market-based.[183] Hanwha Q CELLS argues that Commerce's use of Singaporean electricity tariffs is inappropriate due to a number of non-subsidy factors that increase the cost of electricity in Singapore and which are not applicable to Malaysia, including: (1) the service-based nature of the economic activities for which electricity is consumed in Singapore generates inefficiencies that increase

[181] *Id.* at 16-18.
[182] *Id.* at 16-17.
[183] *Id.* at 23.

electricity costs; (2) almost half of Malaysian electricity is produced using coal, a relatively cheap fuel, while Singapore's electricity mostly comes from imported natural gas; (3) Singapore's "energy insecurity" creates upward pricing on fuel costs not faced by "energy-secure" countries like Malaysia; the high "non-fuel input costs" (*i.e.*, labor, land, and capital inputs) in Singapore; and particularly high natural gas prices experienced in 2023 which further elevated Singapore's electricity prices during the POI.[184] Similarly, Jinko Solar argues that electricity prices are higher in Singapore compared to Malaysia due to the cost of Singapore's imported natural gas, Singapore's lack of natural resources, and Singapore's relative lack of renewable energy usage.[185] Essentially, both Hanwha Q CELLS and Jinko argue that the record does not support the notion that Singaporean fuel-related costs and other costs of electricity generation are comparable with electricity costs in Malaysia. However, we emphasize that the reason why Commerce is relying on Singaporean prices as a tier-three benchmark in the first place is because the GOM failed to provide information regarding TNB's costs. Thus, the arguments by Hanwha Q CELLS and Jinko Solar imply that we must conduct a cost comparison based on information that the GOM did not provide. Therefore, we continue to find that the record is incomplete and that such cost comparisons are not possible.

We also disagree with Hanwha Q CELLS's and Jinko Solar's arguments that electricity prices from a different country (*e.g.*, Vietnam, the Philippines, Thailand, *etc.*) on the record of the investigation are more appropriate solely on the basis that these countries are at more comparable levels of economic development with Malaysia than Singapore. Although Jinko Solar points to Commerce's consideration of the level of economic development in other cases concerning the selection of a tier-three benchmark for the price of logs and land, Jinko Solar provided insufficient evidence demonstrating why the level of economic development would be a similarly relevant consideration when examining the price for the provision of a utility, such as electricity.[186] Additionally, the CIT has found that Commerce is expressly required by 19 CFR 351.511 only to consider price comparability when conducting a tier-one or tier-two analysis.[187] Therefore, the comparability of pricing, itself, is not the sole focus of Commerce's analysis in this (tier three) context. Accordingly, Hanwha Q CELLS and Jinko Solar's arguments regarding price comparability are not, by themselves, dispositive. Therefore, we find arguments regarding averaging electricity rates on the record to use as the electricity benchmark, or adopting a price level index conversion factor to account for price comparability, to be unpersuasive.

Rather, when undertaking a tier three analysis, Commerce assesses how the government sets its prices and whether the mechanism by which it determines its prices is consistent with market principles. Hanwha Q CELLS argues that Commerce has not fully supported its assertion that Singapore electricity rates are market-based. However, Commerce has determined that Singapore's electricity rates are market-based in previous proceedings,[188] and nothing on the record of this investigation, nor any arguments raised by Hanwha Q CELLS or Jinko Solar, casts doubt on this determination. Indeed, neither respondent contends that Singapore's market and/or

[184] *See* Hanwha Q CELLS Case Brief at 17 and 22-26.
[185] *See* Jinko Solar's Case Brief at 13-15.
[186] *Id.* at 10-11.
[187] *See Habas Sinai ve Tibbi Gazlar Istihsal Endüstrisi A.S. v. United States*, 536 F. Supp. 3d 1333, 1344 (CIT 2021).
[188] *See, e.g., Wind Towers from Malaysia 2021*; *see also Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 81 FR 49935 (July 29, 2016) (*Cold-Rolled Steel from Russia*), and accompanying IDM.

pricing mechanisms are not market based. Thus, we find no reason to determine that Singaporean electricity tariffs are not market based and thus find that they are suitable benchmarks for measuring the adequacy of remuneration under a tier three analysis.

Both Hanwha Q CELLS and Jinko Solar question the relevance of the interconnectedness of the Malaysia and Singapore electricity grids as a reason for our adoption of Singapore rates for the electricity benchmark.[189] However, Commerce has previously considered whether the country in question and country or region for which the surrogate prices are derived are "interconnected."[190] In *ArcelorMittal*, the CIT noted that in the underlying proceeding Commerce used regional European gas prices as the Tier three benchmark because "Russia is part of the European gas market, the two markets are interconnected, and 'regional European prices are market-determined in the regional market to which Russia belongs.'"[191] In addition, Malaysia also has electricity connections to Thailand. Commerce has found that this regional arrangement includes the "interconnection of the Tenaga Nasional Berhad (TNB) grid to the Singapore grid through SP PowerGrid Ltd (SPPG), as well as the TNB grid to the Thailand grid through the Electricity Generating Authority of Thailand (EGAT)."[192] This interconnection and geographic proximity similarly suggests there is some level of regional availability of electricity between Malaysia and neighboring countries. The relationship between the Malaysian electricity market and that of other countries in the region, including Singapore, stands in sharp contrast to the geographically-separated Vietnam and Philippines electricity markets. Although Jinko Solar and Hanwha Q Cells provided a general explanation of electricity tariff rates in other countries, along with the rate schedules, the explanation provided little information to allow us to analyze the nature of the market and/or the pricing mechanism and government involvement. Therefore, we continue to find that the considerations described in the *Preliminary Determination* remain appropriate here in selecting a tier-three benchmark for a utility that is transmitted and consumed on a grid.

Consistent with the *Preliminary Determination*, based on the interconnectedness of the Malaysia and Singapore electricity grids, the price data on the record indicates that the electricity rates in Singapore represent a comparable class/type of electricity consumer suitable for purposes of measuring the adequacy of remuneration. On this basis, we continue to find it reasonable to rely on Singaporean prices as a tier-three benchmark for the electricity for LTAR program, as facts available, for the final determination.

Comment 11: Whether Commerce Should Revise Hanwha Q CELLS Benefit Calculation for Provision of Electricity for LTAR

Hanwha Q CELLS Case Brief:

The following is a verbatim summary of arguments submitted by Hanwha Q CELLS. For further details, *see* Hanwha Q CELLS Case Brief at 32-36.

> If Commerce uses Singapore as a benchmark, Commerce should not use Singapore's Uncontracted Capacity Charge (UCC) which does not equate to any

[189] *See* Hanwha Q CELLS Case Brief at 26-27; *see* also Jinko Solar's Case Brief at 13.
[190] *See ArcelorMittal USA LLC v. United States*, 337 F. Supp. 3d 1285 (CIT 2018) (*ArcelorMittal*) and *Cold-Rolled Steel from Russia* IDM at Comment 1; *see also Wind Towers from Malaysia 2021* IDM at 40.
[191] *See ArcelorMittal*, 337 F. Supp. 3d at 1296.
[192] *See Wind Towers from Malaysia 2021* at 41.

> charge paid by {Hanwha Q CELLS} for electricity during the POI. But if Commerce does calculate a benefit based the UCC, it should correct the unit price to reflect the amount in cell 'B267' of the benchmark tab of the Preliminary Calculation spreadsheet instead of 'B26.'
>
> Finally, regardless of the benchmark rate used, Commerce must correct its calculations to include the full amounts paid by {Hanwha Q CELLS} for its electricity, including the Imbalance Cost Pass-Through charge, connected load charge, and renewable energy fund charge.

No other interested parties submitted comments on this issue.

Commerce's Position: We have not modified Hanwha Q CELLS benefit calculation for the provision of electricity for LTAR for the final determination. Hanwha Q CELLS states that Commerce improperly included the "uncontracted capacity charge" in its benefit calculation for this program.[193] Specifically, it states that it is "inappropriate for Commerce to include this charge in its calculations, especially if Commerce continues to disregard charges like the Connected Load charge and Renewable Energy Fund charge paid by HQCMY on the basis that there is no corollary charge on the Singapore tariff sheet."[194] However, this charge was not included in Commerce's benefit calculations for Hanwha Q CELLS and Jinko Solar. Although the "uncontracted capacity charge" line was highlighted on the "Electricity Benchmark" worksheet tab in Hanwha Q CELLS calculations, this charge is not included in the "Electricity for LTAR" worksheet tab within which Hanwha Q CELLS rate is calculated.[195] Commerce's point is substantiated by Hanwha Q CELLS subsequent argument. Hanwha Q CELLS next argues that, if we calculate a benefit for the "uncontracted capacity charge," as it appears that we intended to do, we should correct a ministerial error and use the "uncontracted capacity charge," not the rate for "High Tension Large Supplies – Peak," which is currently included in the calculations.[196]

Regarding the "uncontracted capacity charge," we agree with Hanwha Q CELLS that we should not include this charge in the benefit calculation. As mentioned above, we did not include this charge in Hanwha Q CELLS benefit calculation for the *Preliminary Determination*, and Hanwha Q CELLS does not specify where in the calculation this charge is allegedly included. Although we stated in the *Preliminary Determination* that we "relied on the base uncontracted capacity…charges for high tension, large supplies in 2023 as a tier-three benchmark," this was a misstatement, as we intended to use Singapore's "High Tension Large Supplies – Peak" tariff rate as the benchmark for both respondents' "Maximum Demand" electricity rate, which is reflected in our calculations for both respondents.[197] For the final determination, we continue to use Singapore's "High Tension Large Supplies – Peak" tariff rate as the benchmark for both respondents' "Maximum Demand" electricity charges because a peak demand rate is a better approximation of maximum demand charges than an uncontracted capacity charge.

[193] *See* Hanwha Q CELLS Case Brief at 32.
[194] *Id.*
[195] *See* Hanwha Q CELLS Final Calculation Memorandum at Attachment 2.
[196] *See* Hanwha Q CELLS Case Brief at 33.
[197] *See* Hanwha Q CELLS Final Calculation Memorandum at Attachment 2; *see also* Jinko Solar Final Calculation Memorandum at Attachment 2.

Hanwha Q CELLS also asserts that we should incorporate three charges (*i.e.*, Imbalance Cost Pass-Through (ICPT), Connect Load Charge, and Renewable Energy Fund Charge) into our electricity benefit calculations.[198] We disagree, because there is no record evidence indicating that the Singapore benchmark prices incorporate those same fees, and Hanwha Q CELLS does not point to any evidence on the record. Hanwha Q CELLS contemplated this in its argument above, where it notes that Commerce may "{continue} to disregard charges like the Connected Load charge and Renewable Energy Fund charge paid by HQCMY on the basis that there is no corollary charge on the Singapore tariff sheet."[199] In selecting a benchmark, Commerce's methodology accounts for "factors affecting comparability," and ensures that benchmark prices and a respondent's purchase price are on the same basis.[200] Accordingly, we have not included the ICPT, Connected Load charge, or Renewable Energy Fund charge in our electricity for LTAR benefit calculations.

Comment 12: Whether Commerce Should Find the Provision of Land to Hanwha Countervailable

Hanwha Q CELLS Case Brief:

The following is a verbatim summary of arguments submitted by Hanwha Q CELLS. For further details, *see* Hanwha Q CELLS Case Brief at 40-45.

> Commerce improperly determined that {Hanwha Q CELLS} received a countervailable subsidy as a result of the land it received from the GOM in 2008. The land was a gift from the GOM in 2008, prior to the AUL, and it is therefore not countervailable. The "lease agreement" was a formality. A Malaysian state entity owned the land, the GOM offered it to {Hanwha Q CELLS} predecessor company, that company took possession and – in reliance on the GOM's grant – invested heavily to build a factory, and then began producing cells there, all prior to {Hanwha Q CELLS} taking ownership or the signature of the lease.

No other interested parties submitted comments on this issue.

Commerce's Position: We continue to find countervailable the GOM's provision of land to Hanwha Q CELLS. Hanwha Q CELLS argues that record evidence shows that the GOM granted its predecessor (*i.e.*, Q-Cells Malaysia) land in 2008, *i.e.*, prior to the AUL and prior to Hanwha Q CELLS acquisition of Q-Cells Malaysia.[201] In particular, Hanwha Q CELLS argues that "{t}he mere fact that a formal lease agreement was signed and {terms of payment were} deferred until 2017 does not alter the fact that the land was granted to and put to use by Q-Cells Malaysia in 2008."[202] Therefore, Hanwha Q CELLS contends that its benefit from the GOM's grant of land started in 2008, prior to the AUL period, and therefore outside the timeframe of the investigation.[203]

---

[198] *See* Hanwha Q CELLS Case Brief at 33-36.
[199] *Id.* at 32.
[200] *See* 19 CFR 351.511(a)(2)(i). Similarly, we omitted the ICPT fee from the calculations to ensure comparability with the Singapore electricity benchmark rates.
[201] *See* Hanwha Q CELLS Case Brief at 42.
[202] *Id.*
[203] *Id.*

In the *Preliminary Determination*, we provided the following background regarding the GOM's provision of land to Hanwha Q CELLS:

> The GOM in its 2008 Incentives Letter offered the predecessor of Hanwha Q Cells a plot of land with the requirement that the company and the GOM sign a lease agreement for the use of the land. In 2016, consistent with the terms of the 2008 Incentives Letter and 2014 Updated Incentives Letter, Hanwha Q Cells entered into a long-term lease with the GOM for the land, and the agreement was signed in 2017. Given the long-term nature of the lease and the negotiated terms of payment for the land, consistent with Commerce's practice, we are treating the lease agreement between the GOM and Hanwha Q-Cells as a land purchase.[204]

Here, Hanwha Q CELLS argues that Commerce should consider, as the effective date for a lease agreement, a date other than the effective date identified in the lease agreement. We disagree. In the registered lease agreement between Hanwha Q CELLS and the GOM, signed in 2017, under the "Agreement to Lease" heading, the document shows that the GOM's offer of a long-term lease of the land, and Hanwha Q CELLS acceptance of that offer, was agreed to be effective in 2016.[205] Although the GOM and Hanwha Q CELLS could have negotiated and included an effective date prior to 2016, the parties did not do so. Additionally, Hanwha Q CELLS provided only "consideration" (*i.e.*, the exchange of something of value between parties to a contract, making it legally binding) to the GOM according to the terms of the formal land agreement signed in 2017, retroactive to 2016. The fact that Hanwha Q CELLS signed a land agreement that included terms of payment with the GOM is inconsistent with Hanwha Q CELLS argument that the land provided by the GOM was "free" or a "gift."[206] Regardless, the formal lease agreement must be relied upon at the time the land was provided (*i.e.*, 2017, retroactive to 2016). Although Hanwha Q CELLS contends that letters from the government support its claim that the GOM gifted to Hanwha Q CELLS the land in 2008, the language in the letters proves otherwise. For example, in a 2009 letter, the GOM, in discussing the ongoing land title transfer between GOM agencies, stated that such a transfer is "still in process," and said that "{o}nce the process is completed, the {Federal Land Commissioner} will then sign a tenancy agreement with Q-Cells Malaysia."[207] Additionally, three years later, in 2012, the GOM provided an update that "the relevant parties involved in the process…are working closely so that {the process} could be settled as soon as possible."[208] Therefore, although Hanwha Q CELLS argues that the GOM granted the land in 2008, its argument is inconsistent with substantial record evidence indicating that the GOM provided the land in 2017, retroactive to 2016. Therefore, we continue to find countervailable the GOM's provision of land to Hanwha Q CELLS.

Hanwha Q CELLS also argues that there is no legal basis for Commerce to find countervailable the GOM's provision of land because the petitioner's allegation was based on land located in the NCER or ECER areas.[209] This argument is similar to Hanwha Q CELLS argument discussed

---

[204] *See Preliminary Determination* PDM at 44.
[205] *See* Hanwha Q CELLS Letter, "Hanwha Q CELLS Malaysia Sdn. Bhd.'s Section III Questionnaire Response," dated August 19, 2024 (Hanwha Q CELLS IQR) at Exhibit LAND-01.
[206] *See* Hanwha Q CELLS Case Brief at 42-43.
[207] *See* Hanwha Q CELLS Verification Report at VE-9 (page 9).
[208] *Id.* at VE-9 (page 11).
[209] *See* Hanwha Q CELLS Case Brief at 40-41.

below that there is no legal basis for Commerce to find countervailable the GOM's loan to Hanwha Q CELLS. However, as discussed below, Commerce pursues information regarding "other assistance" expressly to satisfy the intent of the CVD law, to investigate and catalogue all potentially countervailable subsidies, and to consolidate all relevant subsidies into a single investigation. *See* Comment 14 below for Commerce's more detailed response to Hanwha Q CELLS argument that Commerce is unable to find countervailable subsidies not specifically alleged by the petitioner.

Comment 13: Whether Commerce Should Reconsider Its Land Benchmark

Hanwha Q CELLS Case Brief:

The following is a verbatim summary of arguments submitted by Hanwha Q CELLS. For further details, *see* Hanwha Q CELLS Case Brief at 45-48.

> If Commerce continues to find {Hanwha Q CELLS} land to be countervailable, it should adopt a 2008 agricultural land benchmark. This is necessary to properly calculate the actual benefit received and to avoid penalizing {Hanwha Q CELLS} for its own investments in developing and improving the land. Commerce's decision to use a 2016 industrial land benchmark was not reflective of the actual benefit received. At minimum, if Commerce uses 2016 land values, it should use agricultural land values on the record to avoid impermissibly calculating a benefit on the portion of the land value that resulted from {Hanwha Q CELLS} and its predecessor's own investments.

No other interested parties submitted comments on this issue.

Commerce's Position: We continue to find that a 2016 industrial land benchmark is appropriate as the benchmark for Hanwha Q CELLS land transaction.

As an initial matter, Hanwha Q CELLS argues that the land benchmark should rely on 2008 land values as a benchmark because, it contends, Q-Cells Malaysia received the land from the GOM in 2008.[210] However, as discussed in detail in Comment 12 above, we find that 2016 is appropriate to consider as the year the GOM provided land to Hanwha Q CELLS. Accordingly, we continue to use 2016 land values for the land benchmark in the final determination.

Hanwha Q CELLS next argues that Commerce should adjust the land benchmark to reflect agricultural, rather than industrial, land values. Hanwha Q CELLS contends that "the land was undeveloped in an area of palm oil plantations when first acquired."[211] However, notwithstanding the fact that Hanwha Q CELLS land was industrial land when the GOM formally provided the land (*i.e.*, effective 2016), Commerce examines the usage for which the land was being offered for future use.[212] In the 2008 special incentives package offer from the GOM accepted by Q-CELLS Malaysia, the GOM clearly states that the offer (which includes the

[210] *Id.* at 45-46.
[211] *Id.* at 47.
[212] *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 81 FR 47349 (July 21, 2016) (*HWR from Türkiye*), and accompanying IDM at Comment 2.

provision of land) is to design, develop, and manufacture solar cells in Malaysia.[213] The GOM was offering the parcel of land as an incentive for industrial development, and the land was therefore intended for industrial, not agricultural, purposes. Regardless of the investment made by Q-Cells Malaysia and Hanwha Q CELLS to the land provided by the GOM, the land was intended as "investment land for industrial facilities" and should properly be valued as industrial land.[214] Therefore, because the land was provided by the GOM for industrial purposes, we continue to find that it is appropriate to rely on industrial land prices as a benchmark for evaluating the adequacy of remuneration.

Comment 14: Whether Commerce Shound Find the GOM's Loan to Hanwha Q CELLS Countervailable

Hanwha Q CELLS Case Brief:

The following is a verbatim summary of arguments submitted by Hanwha Q CELLS. For further details, *see* Hanwha Q CELLS Case Brief at 48-49.

> Petitioner did not allege any potential countervailable subsidy relating to {Hanwha Q CELLS} loan from the Ministry of Finance (MOF), and there is therefore no legal basis for Commerce to countervail it. The assumption of the loan was, in effect, a distressed debt transaction that conferred a benefit on the GOM. Commerce should therefore revise its determination to find no countervailable benefit.

No other interested parties submitted comments on this issue.

Commerce's Position: Hanwha Q CELLS argues that because the petitioner did not allege a potential countervailable subsidy from this MOF loan to Hanwha Q CELLS, Commerce does not have a legal basis to find it countervailable. We disagree. Commerce has repeatedly found that it is appropriate to investigate self-reported programs within the underlying investigation and subsequent reviews of an order.[215] Commerce has also addressed these and similar arguments many times in other proceedings.[216] Commerce initiates an investigation into potentially

[213] *See Preliminary Determination* PDM at 43-44; *see also* Hanwha Q CELLS IQR at Exhibit GEN-20.
[214] *See HWR from Türkiye* IDMat Comment 2; *see also Polyester Textured Yarn from India: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination*, 84 FR 19036 (May 3, 2019), and accompanying PDM at 9, unchanged in *Polyester Textured Yarn from India: Final Affirmative Countervailing Duty Determination*, 84 FR 63848 (November 19, 2019).
[215] *See, e.g.*, *Countervailing Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Final Affirmative Determination*, 83 FR 9274 (March 5, 2018), and accompanying IDM at Comment 13; and *Certain Aluminum Foil from the People's Republic of China: Final Results of the Countervailing Duty Administrative Review; 2017-2018*, 86 FR 12171 (March 2, 2021), and accompanying IDM at Comment 15.
[216] *See, e.g.*, *Countervailing Duty Investigation of Stainless Steel Sheet and Strip from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 9714 (February 8, 2017), and accompanying IDM at 16-21; *Countervailing Duty Order on Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2017*, 85 FR 22718 (April 23, 2020), and accompanying IDM at Comment 8; *Certain Collated Steel Staples from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 85 FR 33626 (June 2, 2020), and accompanying IDM at Comment 2; and *Forged Steel Fittings from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2020*, 88 FR 21182 (April 10, 2023), and accompanying IDM at Comment 2.

countervailable subsidies in one of two ways. First, Commerce can self-initiate an investigation.[217] Second, when a domestic interested party files a petition for the imposition of countervailing duties on behalf of an industry, and the petition: (1) alleges the elements necessary for the imposition of a countervailing duty pursuant to section 701(a) of the Act; and (2) "is accompanied by information reasonably available to the petitioners supporting those allegations{,}" Commerce will initiate an investigation into whether countervailing duties should be imposed.[218]

After Commerce has initiated an investigation through one of the above mechanisms, section 775 of the Act mandates that Commerce examine practices or programs discovered during the course of the investigation, and any subsequent review, if they appear to provide a countervailable subsidy.[219] Indeed, if, after the commencement of an investigation, Commerce "discovers a practice which appears to be a countervailable subsidy" that was not included in the petition, Commerce "shall include the practice, subsidy, or subsidy program in the proceeding{.}"[220] Thus, pursuant to section 775 of the Act, Commerce has an affirmative obligation to seek information on, and include in a proceeding, all subsidy practices that might benefit the subject merchandise.[221]

Commerce has broad discretion to determine which information is relevant to its determinations and to request that information.[222] Commerce pursues information regarding "other assistance" expressly to satisfy the intent of the CVD law, to investigate and catalogue all potentially countervailable subsidies, and to consolidate all relevant subsidies into a single investigation.[223] Consistent with U.S. law, Commerce is not precluded from inquiring about other assistance to make determinations.[224] Commerce "has independent investigative authority" to ask questions about other governmental assistance, beyond the subsidies alleged by the petitioner.[225] Additionally, Commerce, not a company or foreign government respondent, determines what information is necessary for a CVD proceeding.[226]

---

[217] *See* section 702(a) of the Act.
[218] *See* section 702(b) of the Act.
[219] *See* section 775 of the Act; *see also* 19 CFR 351.511(b) (providing that if Commerce discovers a practice that appears to provide a countervailable subsidy that was not alleged or examined in the proceeding, Commerce will examine the practice or subsidy program if sufficient time remains before the scheduled date for the final determination or results).
[220] *Id*.
[221] *See Changzhou Trina Solar Energy Co. v. United States*, 195 F. Supp. 3d at 1334, 1341 (CIT 2016) (*Trina Solar I*) (holding that Commerce has "independent authority, pursuant to {section 775 of the Act}, to examine additional subsidization in the production of subject merchandise," and that this "broad investigative discretion" permits Commerce to require respondents to report additional forms of governmental assistance); *see also Allegheny Ludlum Corp. v. United States*, 112 F.Supp.2d 1141, 1150, n. 12 (CIT 2000); and section 775 of the Act.
[222] *See, e.g., Acciai Speciali Termi S.p.A. v. United States*, 26 CIT 148, 167 (CIT 2002) (sustaining Commerce's application of adverse inferences when a respondent engaged in "willful non-compliance" with requests for information); *see also PAM, S.p.A. v. United States*, 495 F. Supp. 2d 1360, 1369 (CIT 2007) (sustaining Commerce's application of adverse inferences when a respondent decided on its own that certain sales were not reportable despite Commerce's request for such information).
[223] *See Trina Solar I*, 195 F. Supp. 3d at 1342-43.
[224] *Id.* at 1345-46.
[225] *Id.* at 1346.
[226] *See Essar Steel Ltd. v. United States*, 721 F. Supp. 2d 1285, 1298-99 (CIT 2010) ("Commerce, and not Essar, is charged with conducting administrative reviews and weighing all evidence in its calculation of a countervailing duty margin"); *see also Ansaldo Componenti, S.p.A. v. United States*, 628 F. Supp. 198, 205 (CIT 1986) ("It is Commerce, not the respondent, that determines what information is to be provided for an administrative review").

Additionally, Hanwha Q CELLS argues that it did not receive a benefit from the loan it received from the GOM after it renegotiated the loan terms with the MOF. Hanwha Q CELLS contends that the "renegotiation of the loan was, in effect, a distressed debt transaction through which the GOM benefited greatly by receiving fresh guarantees that ensured complete repayment of the principal plus significant interest on a bad debt that the GOM could have had to write off entirely."[227] Therefore, Hanwha Q CELLS argues that the GOM was effectively paying to reduce the risk on the distressed loan assumed by Hanwha Q CELLS and that the company should not be penalized for entering into a transaction that is common in the private sector and which conferred a benefit on the GOM.[228]

However, whether the GOM received a benefit is not relevant to our analysis of the loan Hanwha Q CELLS received from the GOM. Section 771(5)(E) of the Act states that "a benefit shall normally be treated as conferred where there is a *benefit to the recipient*," and under 19 CFR 351.505(a), Commerce does not contemplate any advantages the government might receive by administering the government-provided loan. As Commerce explained in the *CVD Preamble*, "{t}he determination of whether a benefit is conferred is completely separate and distinct from an examination of the 'effect' of a subsidy."[229] Commerce does not consider "the effect of the government action" on a respondent's performance, or whether the respondent altered its behavior for government policy objectives.[230] Any advantages to the government as a result of the MOF's loan are not relevant to our examination of whether Hanwha Q CELLS received a benefit from the loan. Within a CVD proceeding, Commerce is charged with administering and enforcing the CVD law to all subsidies under examination equally, notwithstanding the purpose or secondary effects of a subsidy program.

Regardless of whether the MOF's renegotiated loan with Hanwha Q CELLS resulted in a positive outcome for the GOM, Commerce's analysis focuses on whether there was a benefit *to the recipient* (*i.e.*, Hanwha Q CELLS) as a result of the loan. For a subsidy granted in the form of a loan, "a benefit exists to the extent that the amount that a firm pays on a government-provided loan is less than the amount that the firm would pay on a comparable commercial loan(s) that it could actually obtain on the market…[231] For this final determination, we therefore continued to examine whether the loan Hanwha Q CELLS received from the MOF is a countervailable subsidy, and we continue to determine that a benefit exists under section 771(5)(E)(ii) of the Act and 19 CFR 351.505(a)(1) equal to the difference between the amounts paid by the company for the loan during the POI and the amounts the company would have paid on a comparable commercial loan.

[227] *See* Hanwha Q CELLS Case Brief at 48.
[228] *Id*, at 48-49.
[229] *See Countervailing Duties*, 63 FR 65348, 65361 (*CVD Preamble*).
[230] *See* 19 CFR 351.503(c).
[231] *See* 19 CFR 351.505(a)(1).

Comment 15: Whether Commerce Should Remove Three Purchases of Imported Machinery from the Calculation of Hanwha's Benefits from the Import Duty and Sales Tax Exemptions for Machinery, Equipment, and Spare Parts Program

Hanwha Q CELLS Case Brief:

Hanwha Q Cells did not provide an executive summary in its case brief. For further details regarding its arguments, *see* Hanwha Q CELLS Case Brief at 38.

No other interested parties submitted comments on this issue.

Commerce's Position: At verification, Hanwha Q CELLS presented Commerce with several minor corrections of the company's reporting of its sales, exemptions of import duties and sales tax for machinery, and loans.[232] We accepted all corrections because we found them to be minor corrections to the response.

In its case brief, Hanwha notes that one of these corrections involved three 2023 purchases of machinery that were cancelled due to a project delay but were mistakenly reported in Exhibit EXEM-01 of its initial questionnaire response.[233] Hanwha insists that Commerce should delete these three rows from any calculation of the subsidy rate for the Import Duty and Sales Tax Exemptions for Machinery, Equipment, and Spare Parts through LMW program.[234]

For the final determination, we incorporated all minor corrections presented at verification, including the removal of the three canceled machinery purchases from the calculation of the Import Duty and Sales Tax Exemptions for Machinery, Equipment, and Spare Parts through LMW program. We recognize that because the purchases were cancelled, the related import duty exemptions were not realized, and we have not included them in the benefit calculation.

Comment 16: Whether Jinko Solar Failed to Disclose Financing from a Chinese State-Owned Bank

Petitioner's Case Brief:

The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* Petitioner's Case Brief at 14-16.

> {Commerce} should find certain Chinese policy lending to {Jinko Solar} countervailable. The record supports countervailing certain unreported Chinese policy lending and other Chinese lending in the final determination. Accordingly, in the final determination, {Commerce} should use record information on other lending instruments as facts available when measuring the benefit of these countervailable Chinese loans.

[232] *See* Hanwha Q CELLS Verification Report at 2-4.
[233] *See* Hanwha Q CELLS Case Brief at 38; *see also* Hanwha Q CELLS' Letter, "Hanwha Q CELLS Malaysia Sdn. Bhd.'s Section III Questionnaire Response," dated August 19, 2024.
[234] *Id*.

Jinko Solar's Rebuttal Brief:

The following is a verbatim summary of arguments submitted by Jinko Solar. For further details, *see* Jinko Solar's Rebuttal Brief at 14-19.

> Petitioner argues that {Jinko Solar} had a certain large unreported loan and that certain accounts should be countervailed in their entirety since they likely contain "loans in disguise." These claims are baseless and have no support in the record. JST reported all of its outstanding financing during the POI, which was verified with no discrepancies found. JST also reported all of its intercompany loans and the financing of its parent company demonstrating that the alleged unreported loan does not exist or at least was not reportable (*i.e.*, outstanding) during the POI or provided to JST. Moreover, record evidence demonstrates that other specific accounts do not contain unreported financing. These accounts were reviewed at verification and clearly contain purchases of raw materials from affiliates. All other claims are highly speculative and without a factual basis. {Commerce} should reject all of Petitioner's arguments that {Jinko Solar} had unreported loans.

Commerce's Position: Jinko Solar reported that it received loans from Company A in its initial questionnaire response as "Loans from Chinese Entities," which purportedly included all the outstanding loans for JST, JSM and Omega.[235] The exhibit showed that JST received loans from Company A.[236] Commerce subsequently determined that, during the POI, there were no outstanding loans received from Company A pursuant to the alleged policy lending.[237] We then asked Jinko Solar to confirm that certain financing identified in its 2023 financial statements was reported in the company's loan exhibit. In its supplemental questionnaire responses, Jinko Solar confirmed that it included all financial transactions made during the POI in the provided 1) loan exhibit, corresponding 2) invoices of interest and principal payments, 3) a list of all the related companies with which it had outstanding financing during the POI, 4) the consolidated and unconsolidated audited financial statements for Jinko Solar's parent company, and 5) financing that was to related parties that was outstanding during the POI.[238]

In its September 25, 2024, rebuttal comments on Jinko Solar's supplemental questionnaire response, the petitioner raised questions about a 1.8GW solar module project in Malaysia that was reportedly supported by a $120 million loan from the Shangrao City branch of the Bank of China to Company A in November 2021.[239] In that submission, the petitioner also noted the

[235] *See* Jinko Solar's Letter, "Jinko Initial CVD Questionnaire Response in the Countervailing Duty Investigation of Crystaline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from Malaysia (C-557-831)," at Exhibit III.B.1.
[236] *Id*.
[237] *See Preliminary Determination* PDM.
[238] *See* Jinko Solar's Letter, "Jinko Second Supplemental Response, in the Countervailing Duty Investigation of Crystaline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from Malaysia (C-557-831)," dated November 25, 2025, at 7-10 and at Exhibits S2-10 and S2-14 ; *see also* Jinko Solar's Letter, "Jinko Second Supplemental Response – Q12 in the Countervailing Duty Investigation of Crystaline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from Malaysia (C-557-831)," dated November 29, 2024 at 1 and at Exhibit S2-12.
[239] *See* Petitioner's Letter, "Comments on Jinko's Supplemental Questionnaire Responses," dated September 25, 2024, at 4

lending from Company A that Jinko Solar reported in its loan exhibit in the same amount.[240] Also, the petitioner noted that in JST's 2023 financial statements there is a line item for financing that was outstanding during the POI, which may be associated with the lending from Company A.[241] The petitioner requested that Commerce confirm whether this financing in the 2023 financial statements tied to the outstanding principal and interest reported in Jinko Solar's loan exhibit.[242] In its pre-verification comments, the petitioner urged Commerce to verify that the loans from Company A were not outstanding during the POI.[243]

We verified Jinko Solar's reported loans, and we the loan balances and interest payments reported by Jinko Solar during the POI to the company's audited financial statements and accounting system.[244] We thoroughly examined Jinko Solar's loan accounts and did not find unreported outstanding financing from its parent company. To the extent that this loan was placed in an account unrelated to loans, as part of our completeness tests to identify potential unreported subsidies, we reviewed Jinko Solar's chart of accounts and selected multiple other accounts for further examination.[245] We did not find evidence of an unreported loan as a result of our completeness tests.[246]

We do not believe that an application of facts available, pursuant to sections 776(a)(1), (a)(2)(A), and (a)(2)(C) of the Act, is warranted here because Jinko Solar did not withhold necessary information requested by Commerce, fail to provide such information by the deadlines for submission of the information or in the form and manner requested, significantly impede the proceeding, or provide information that cannot be verified with regard to financing to and from JST, its cross-owned affiliates, or its related parties. As noted above, Commerce verified that all outstanding lending to JST, JSM, and Omega had been reported, including from Chinese entities, and found no discrepancies. Therefore, there is no indication that necessary information is not available on the record to JST and its cross-owned affiliates that are subject to this investigation, and we do not find that Jinko Solar failed to disclose financing from a Chinese bank.

Comment 17: Whether Commerce Should Find Jinko Solar's Trade and Other Payables Accounts Countervailable

Petitioner's Case Brief:

The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* Petitioner's Case Brief at 16-21.

> {Commerce} should find certain Chinese policy lending to {Jinko Solar} countervailable. The record supports countervailing certain unreported Chinese policy lending and other Chinese lending in the final determination. Accordingly, in the final determination, {Commerce} should use record information on other

[240] *Id*.
[241] *Id*. at 5-6.
[242] *Id*.
[243] *See* Petitioner's Letter, "Petitioner's Pre-Verification Comments," dated December 13, 2024, at 2-4.
[244] *See* Commerce's Letter, "Verification of the Questionnaire Responses of Jinko Solar Technology Sdn. Bhd.," dated February 20, 2025, at 26-27.
[245] *Id*. at 34
[246] *Id*.

> lending instruments as facts available when measuring the benefit of these countervailable Chinese loans.

Jinko Solar's Rebuttal Brief:

The following is a verbatim summary of arguments submitted by Jinko Solar. For further details, *see* Jinko Solar's Rebuttal Brief at 19-22.

> Petitioner argues that {Jinko Solar} had a certain large unreported loan and that certain accounts should be countervailed in their entirety since they likely contain "loans in disguise." These claims are baseless and have no support in the record. JST reported all of its outstanding financing during the POI, which was verified with no discrepancies found. JST also reported all of its intercompany loans and the financing of its parent company demonstrating that the alleged unreported loan does not exist or at least was not reportable (*i.e.*, outstanding) during the POI or provided to JST. Moreover, record evidence demonstrates that other specific accounts do not contain unreported financing. These accounts were reviewed at verification and clearly contain purchases of raw materials from affiliates. All other claims are highly speculative and without a factual basis. {Commerce} should reject all of Petitioner's arguments that {Jinko Solar} had unreported loans.

Commerce's Position: We do not find it appropriate to determine that amounts recorded in Jinko Solar's trade payables account represent countervailable subsidies in the form of interest-free financing. Moreover, the petitioner has not provided evidence that these amounts represent unreported financing, and the petitioner's argument does not appear to be a new subsidy allegation, that if timely, we may have considered; nor does a company recording amounts in a "trade payables" account constitute a "practice which appears to be a countervailable subsidy" that would warrant inclusion in an ongoing investigation, pursuant to section 775 of the Act. As such we do not find that the application of facts available is warranted.

The petitioner argues that Commerce should apply facts available to treat trade and other payables recorded in Jinko Solar's financial statements as short-term, interest-free loans. The petitioner contends that these accounts are "bank loans in disguise" and cites as evidence an increase in Jinko Solar's trade payables to related parties during the POI to demonstrate that it engaged in "supply chain financing." The petitioner also seeks to connect Jinko Solar's increase in its trade and other payable accounts with purported "supply chain financing" arrangements that Jinko Solar or its parent company "likely" have with Chinese-SOE subsidiaries.

We do not find that the increase in Jinko Solar's trade and other payables serves as evidence that Jinko Solar received a countervailable subsidy, as the petitioner contends. At verification, we reviewed the trade payables accounts in detail when reconciling the reported import duty and sales tax exemptions for raw material purchases.[247] We also reviewed the company's document flow showing how input purchases are recorded in the company's accounting system from purchase order to payment.[248] We selected multiple input purchases and requested and reviewed supporting documentation, including the payment terms reflected on purchase orders and

[247] *See* Jinko Solar's Verification Report at 13-14.
[248] *Id.* at 13-14.

invoices.[249] Additionally, we reviewed supporting documentation for Jinko's Solar's purchases of solar glass and silver, which we traced from purchase order to payment.[250] While performing these and other exercises at verification, we did not find any unreported financing in these accounts. Rather, we observed entries that correspond to purchases from suppliers. Additionally, as discussed above, we verified Jinko Solar's reported loans, and we tied Jinko Solar's loan balances and interest payments during the POI to its audited financial statements and accounting system. We thoroughly examined Jinko Solar's loan accounts and did not find unreported outstanding financing from its parent company or suppliers.

Although there was an increase in trade payables during the POI, there is no evidence that this was due to a financing arrangement other than the company's normal business operations. Additionally, Jinko Solar provided all information that we requested on its input purchases, and we find no evidence of direct or indirect financing through its input purchases. We also disagree that it is appropriate to apply facts available to Jinko Solar's trade and other payables based on speculation about unsubstantiated financing arrangements. Therefore, we have no basis to find countervailable Jinko Solar's trade and other payables accounts given the record information.

Comment 18: Whether Commerce Should Correct Certain Errors in Its Post-Preliminary Analysis

Petitioner's Case Brief:

The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* Petitioner's Case Brief at 8-14.

> {Commerce} made certain errors when calculating the subsidy rates in the post-preliminary determination. Specifically, {Commerce} should recalculate the benefits provided from the provision of silver paste and solar glass for LTAR, it should revise the ocean freight to be reported on a per kilogram basis or it should include the nautical miles to reach Malaysia in the benchmarks for silver paste and solar glass, and {Commerce} should recalculate the inland freight rate for silver paste to apply to each kilogram of silver paste included in the benchmark rather than just a single kilogram.

Jinko Solar's Rebuttal Brief:

The following is a verbatim summary of arguments submitted by Jinko Solar. For further details, *see* Jinko Solar's Rebuttal Brief at 11-13.

Silver Paste and Solar Glass Benefits

> In its Post-Preliminary Analysis, {Commerce} relied on tier-two benchmark pricing pursuant to 19 CFR 351.511(a)(2)(ii) to calculate the benefit, if any, for {Jinko Solar's} imports of silver paste and solar glass from China. Consistent with past practices in other CVD proceedings involving these inputs, {Commerce} used

[249] *Id.* at 16-23.
[250] *Id.* at 29-33.

exports from UNComtrade data under {HS} 7106.92 for silver paste and monthly prices from PV Insights for solar glass. These selections were consistent with the statute and regulations and supported by substantial evidence. {Commerce} should therefore reject Petitioner's arguments that {HS} 7115.90 should be used for silver paste and UNComtrade data for solar glass. As previous case law and record evidence demonstrate, neither of these sources are specific to the inputs Jinko purchased and indeed are wildly distortive. {Commerce} therefore properly took prevailing market conditions into account and selected the correct benchmark for these inputs.

Moreover, {Commerce} was correct in reducing the benefit for each input by 70 percent and 71 percent, respectively. This reduction was consistent with past practice where, as facts available, {Commerce} used record evidence regarding the government authority makeup of the Chinese industry. Petitioner has not presented any evidence that this was unreasonable or contrary to past practice; nor have they provided any evidence that the entire industry for silver paste and solar glass are government authorities. {Commerce's} calculation should therefore be maintained for the Final Determination.

Ocean Freight Benchmark

Petitioner argues that {Commerce} should not have adjusted the ocean freight figure applied to the benchmark by nautical mile. Petitioner is wrong. Since {Jinko Solar} pays ocean freight on its imports from China, the ocean freight component to the benchmark in the cross-border analysis is similar to the inland freight component. That is, {Commerce} should be adding what the respondent would pay based on the companies' experience, like with inland freight. This ensures an apples-to-apples comparison. Thus, it was appropriate to limit the ocean freight expense to a per nautical mile expense to ensure that the rate is not distorted by longer routes. In the alternative, {Commerce} should reject the Descartes data altogether and simply use the reported ocean freight {Jinko Solar} paid for its FOB purchases. These are reported in {Jinko Solar's} purchase tables.

Commerce's Position:

Silver Paste Benefit

For the final determination we are not making any adjustments to the benefit calculation of silver paste, as the petitioner recommends above.

In its case brief, the petitioner notes that Commerce included only 70 percent of the transaction-specific benefits for a certain supplier of silver paste in calculating Jinko Solar's total benefit for the Cross-Border Provision of Chinese Silver Paste for LTAR.[251] The petitioner also points out that for the same supplier in China, Commerce included the full transaction-specific benefits.[252]

[251] *See* Petitioner's Case Brief at 8-9.
[252] *Id*.

The petitioner characterizes this reduction to 70 percent as arbitrary and alleges that there is no explanation in the calculation memorandum or on this record.[253]

In the Post-Preliminary Decision Memorandum, we stated the following:

> On this basis, for any purchases by Jinko Solar of solar glass and silver paste from unknown producers in China, we preliminarily find that 71 percent (for solar glass) and 70 percent (for silver paste) of the purchases by quantity were produced and supplied by GOC "authorities."[254]

Consistent with this rationale, for all transactions where the input producer (*i.e.*, manufacturer) of Jinko Solar's silver paste purchases were Chinese producers for which no record information is available regarding whether the GOC is involved in the company operations through ownership interests or other representations in company management, we attributed 70 percent of the transaction-specific benefit to Jinko Solar's total benefit for this program. In certain instances, a supplier may source the silver paste from different manufacturers, some of which were unknown Chinese producers and some of which were Chinese producers for which we had facts available on the record. This is why, as the petitioner noted, the benefit may be reduced for only some transactions of a given supplier who was not determined to be an authority.[255] Commerce did not make a ministerial error in this regard and explained its rationale in the Post-Preliminary Decision Memorandum.[256] Specifically, we reviewed information that the petitioner submitted to the record demonstrating that the GOC authorities account for at least 70 percent of silver paste production in China.[257] Based on this information, for any input producers for which no record information is available, we preliminarily relied on "facts available" to determine the share of the remaining input purchases made by Jinko Solar that came from GOC authorities, in accordance with section 776(a) of the Act.[258] We did not apply an adverse inference to our determination of whether Chinese input producers were authorities because we found that the requirements of section 776(b) of the Act have not been met.[259] Furthermore, this calculation methodology is consistent with the application of facts available that was also explained in our post-preliminary analysis.[260]

The petitioner argues that Commerce has previously decided in *China Millwork Products AR 2022* that even when a Chinese supplier of an input has taken possession of the input, any modifications or transfer of the input to an end-user is subject to the same Chinese price controls.[261] However, the issue addressed in that case was whether the respondent's purchases from unaffiliated input suppliers could be used as a tier-one benchmark, even though the GOC

---

[253] *Id*.
[254] *See* Post-Preliminary Decision Memorandum at 8.
[255] *See* Jinko Solar Final Calculation Memorandum for a list of input producers who were determined to be authorities and for which we had no information on the record.
[256] *Id*. at 4-7.
[257] *Id*. at 8 (citing Petitioner's Letters "Petitioner's Letters, "New Subsidy Allegations," dated August 26, 2024 (Silver Paste and Solar Glass NSA) at 8-9 and 12-13 and exhibits cited therein.
[258] *Id*. at 7-8.
[259] *Id*. at 6.
[260] *Id*. at 4-8.
[261] *See* Petitioner's Case Brief at 10 (citing *Wood Mouldings and Millwork Products from the People's Republic of China: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review; 2022*, 89 FR 15816 (*China Millwork Products AR 2022*), and accompanying PDM at 51).

claimed that these were privately-owned producers. Commerce determined that the domestic prices in China cannot serve as viable tier-one benchmark prices; and to determine whether the provision of cut timber, sawn wood, plywood, adhesives, UF resins, and primer conferred a benefit, Commerce applied a tier-two benchmark (*i.e.*, world market prices available to purchasers in China).[262] In making this determination, we relied on application of facts otherwise available and adverse inference due to the GOC's lack of cooperation in providing certain information on the input suppliers at issue. We did not make any statements about whether input prices are affected by the modification or transfer of the input from the supplier after taking possession from the input producer.

In the current investigation, we have similarly determined, based on record information, that the actual transaction prices, including imports, in Malaysia are significantly distorted as a result of the government's involvement and relied on tier-two benchmarks to determine whether the provision of silver paste conferred a benefit to Jinko Solar.[263] We also determined that, because the Chinese market for silver paste is majority controlled by GOC authorities, the silver paste market is distorted in China.[264]

However, these determinations, in both *China Millwork Products AR 2022* and our Post-Preliminary Analysis, applied only to our selection of an appropriate benchmark, not the treatment of transaction-specific benefits on purchases from input producers for which we have no facts available on the record. The petitioner confuses our determinations that a market is distorted for the purposes of selecting a tier-one benchmark and the determination of whether an input producer is an authority.

When determining whether a respondent's purchase of an input confers a benefit, we only analyze the purchases from producers that we have determined to be authorities. In this investigation, there were several producers for which we had no information on the record to determine whether these producers were an authority. For those transactions, we relied on "facts available" to determine the share of the input purchases made by Jinko Solar that came from GOC authorities, in accordance with section 776(a) of the Act.[265]

The petitioner argues that this facts available adjustment itself is inappropriate, insisting that a finding that at least 70 percent of the Chinese industry is state-owned provides no grounds for reducing the benefit for any transaction by 70 percent.[266] The petitioner also states that Commerce failed to acknowledge that our finding suggests that more than 70 percent of the silver paste industry in China may be state-owned and that there is nothing to support that any particular transaction for which the benefit has been reduced is from a non-state owned enterprise.

[262] *See China Millwork Products AR 2022* at 50-51.
[263] *See* Post-Preliminary Decision Memorandum at 9-10.
[264] *Id*. at 11.
[265] *Id*. at 7-8.
[266] *See* Petitioner's Case Brief at 10.

However, as noted in the Post-Preliminary Decision Memorandum, this methodology is consistent with our past practice in certain other instances for the provision of inputs for LTAR in China by producers for which no record information was available.[267]

For example, in *China Sinks AR 2012-2013,* Commerce stated the following:

> As such, we have no information that would enable us to determine that these producers are not "authorities" within the meaning of 771(5)(B) of the Act. Therefore, pursuant to section 776(a)(1) of the Act, as {facts availabe} in this review, we find that the stainless steel coil supplied to Dongyuan by trading companies produced by unidentified suppliers is produced by "authorities" at the same ratio as cold-rolled sheet and strip was produced by state-owned enterprises (SOEs) during the POR.

Similarly, in this investigation, we have no information that would enable us to determine that certain producers are not "authorities," and we have used available facts suggesting that 70 percent of the Chinese silver paste market is controlled by SOEs to find that the purchases from these producers were produced by authorities at the same ratio.

Finally, the petitioner argues that if Commerce continues to reduce certain transaction-specific benefits based on the volume of purchases, it must also reduce the actual price paid by the same ratio, given that a reduction in volume would necessarily require a reduction in the overall price paid.[268] We believe the petitioner confuses our wording in the Post-Preliminary Memorandum, which states that "we preliminarily find that 71 percent (for solar glass) and 70 percent (for silver paste) of the purchases *by quantity* were produced and supplied by GOC 'authorities.'"[269] This statement was not meant to indicate that we made any adjustments to the actual volume of Jinko Solar's silver paste purchases. Again, our application of facts available applies only to whether certain producers are authorities, and we reduced only the benefit calculated for each transaction by 29 or 30 percent. We did not reduce the volume of any transaction; therefore, there is no mathematical need to reduce the price that Jinko Solar paid on any transaction. To reduce the price that Jinko Solar paid for its silver paste, even though Commerce found no inconsistencies in this information at verification, would be arbitrary and unnecessary.

For the reasons stated above, Commerce will continue to incorporate 70 percent of the transaction-specific benefits from purchases of silver paste for which we have no record information on the input producer.

---

[267] *See*, e.g., *Drawn Stainless Steel Sinks from the People's Republic of China: Final Results of Countervailing Duty Administrative Review and Rescission in Part; 2012–2013*, 80 FR 69638 (November 10, 2015) (*China Sinks AR 2012-2013*), 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 People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination*, 73 FR 35642 (June 24, 2008), and accompanying IDM at 8.

[268] *See* Petitioner's Case Brief at 10-11.

[269] *See* Post-Preliminary Decision Memorandum at 8.

Solar Glass Benefit

As with the silver paste benefit calculation, the petitioner argues that Commerce arbitrarily includes only 71 percent of the transaction-specific benefit for certain purchases in Jinko Solar's total benefit from the Cross-Border Provision of Chinese Solar Glass for LTAR. For the reasons stated above, Commerce continued to incorporate 71 percent of the transaction-specific benefits from purchases of solar glass for which we have no record information on the input producer.

Ocean Freight Benchmark

Commerce agrees with petitioner that we should not calculate the benchmark ocean freight on a per-nautical-mile basis.

In order to construct a benchmark for ocean freight, Commerce used the *Descartes* data provided by the petitioner.[270] This data was presented on a U.S. dollar (USD) per kilogram per nautical mile basis, and we used this average cost in our calculations of both the silver paste and solar glass benchmarks.[271]

Jinko Solar also reported its freight costs on a Malaysian ringgot (MYR) per kilogram basis per nautical mile.[272] In order for Commerce to make a proper comparison between the price that Jinko Solar paid for its silver paste and solar glass and the benchmark price, the benchmark price needs to be on the basis of the same unit of measure as the price that Jinko Solar paid. Therefore, it would be inappropriate to calculate the benchmark ocean freight on a per-nautical-mile basis if we are not considering nautical miles in Jinko Solar's reported ocean freight costs.

Jinko Solar argues that Commerce should base the ocean freight benchmark on the respondent's own experience.[273] However, a tier-two benchmark is based on world prices available to purchasers in the country in question. It does not need to be based on the exact experience of the respondent. The *Descartes* ocean freight data is based on shipments in 40-foot containers from Long Beach, California, and New York City, New York, to Kelang, Malaysia.[274] These are ocean freight prices available to purchasers in Malaysia and are appropriate to use in constructing a tier-two benchmark price.

For the final determination, Commerce has multiplied the average ocean freight cost in the *Descartes* data by the average nautical miles between the two U.S. ports and Kelang, Malaysia.

[270] *See* Petitioner's Letter, "Submission of Benchmark Information Part 2," dated September 6, 2024 (Petitioner's September 6 Benchmark Submission) at Exhibit 7-A-A.
[271] *Id*.
[272] *See* Jinko Solar's Letter, "Jinko NSA Response in the Countervailing Duty Investigation of Crystaline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from Malaysia (C- 557-831)," (Jinko Solar's NSA Response) dated November 12, 2024, at Exhibits NSA-1-1 and and NSA-5-1.
[273] *See* Jinko Solar's Rebuttal Brief at 13.
[274] *See* Petitioner's September 6 Benchmark Submission at Exhibit 7-A-A.

Filed By: Preston Cox, Filed Date: 4/21/25 4:50 PM, Submission Status: Approved

Inland Freight Benchmark

Commerce correctly calculated inland freight on a per-kilogram basis, as full benchmark prices for silver paste and solar glass are on a USD per kilogram basis.

When calculating the benchmark for silver paste and solar glass, we used Jinko Solar's reported inland freight costs to calculate delivery charges.[275] The petitioner suggests that Commerce should multiply the inland freight rate by the volume reported in the benchmark to find the appropriate delivered cost.[276] However, after constructing the tier-two benchmark, inclusive of taxes, duties, and delivery charges, Commerce multiplies the unit price by the volume of each transaction to calculate a transaction-specific benchmark price. If Commerce followed the petitioner's suggestion, we would inadvertently incorporate the volume of each transaction twice in calculating the benchmark inland freight cost.

For the final determination, we continue to calculate benchmark inland freight costs on a per-kilogram basis.

Comment 19: Whether Commerce Correctly Included Sales Tax in the Solar Glass Benchmark

Jinko Solar's Case Brief:

The following is a verbatim summary of arguments submitted by Jinko Solar. For further details, *see* Jinko Solar's Case Brief at 16-19.

> In its Post-Preliminary Analysis Calculations for Jinko Solar Technology Sdn. Bhd., {Commerce} added a 10% sales tax to the Solar Glass benchmark. This resulted in an uneven comparison of a sales tax inclusive benchmark price to an import price that {Jinko Solar} paid that did not contain sales tax. As {Commerce's} precedent demonstrates, this non-equal comparison is not permitted in {Commerce's} LTAR analysis. Therefore, for the Final Determination, {Commerce} should not include sales tax in any benchmark applied to Jinko's purchases as doing so would create a distortive comparison between a sales tax inclusive price and a sales tax exclusive price.

Petitioner's Rebuttal Brief:

The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* Petitioner's Rebuttal Brief at 23-25.

> When comparing government prices to a tier two benchmark pursuant to 19 CFR 351.511(a)(2)(ii), {Commerce} will seek a world market price where it is reasonable to conclude that such price would be available to purchasers in the country in question. Further, the courts have distinguished the prices used in 19 CFR 351.511(a)(2)(iv) between 19 CFR 351.511(a)(2)(i) (*i.e.*, tier one) and (ii) (*i.e.*,

[275] *See* Jinko Solar's NSA Response at Exhibits NSA-1-1 and and NSA-5-1.
[276] *See* Petitioner's Case Brief at 14.

> tier two) and found that a respondent's experience is irrelevant when developing a tier two benchmark. Therefore, because the Government of Malaysia (GOM) reported that a sales tax would be applicable to solar glass, {Commerce} should continue to include the sales tax in the solar glass benchmark.

Commerce's Position: Commerce correctly included sales tax in calculating the solar glass benchmark.

Jinko Solar argues that, because it does not pay sales tax on its imports, adding sales tax to the benchmarks is inappropriate.[277] Jinko Solar acknowledges that the construction of a tier-two benchmark is governed by 19 CFR 351.511(a)(2)(iv), which requires Commerce to "adjust the comparison price to reflect the price that a firm actually paid or would pay if it imported the product" and to "include delivery charges and import duties."[278] However, Jinko Solar points to certain cases where Commerce did not include certain delivery charges or import duties.[279] Each of these cases involved tier-one benchmarks and are not relevant to the construction of a tier-two benchmark.

For instance, in *Türkiye HWR Pipes and Tubes AR 2017*, Commerce removed VAT from both the benchmark and authority purchase prices in our final calculations "to create an equitable basis upon which to calculate the benefit {the respondent} received from the Provision of HRS for LTAR program."[280] However, the facts in that case differed from this case in the following ways: 1) Commerce was considering the proper way to treat tier-one benchmark prices, where the benchmark consisted of the respondent's own purchases of the input from privately-owned providers; 2) the VAT was excluded from the certain purchases from both the privately-owned providers and the authorities due to an exemption that Commerce determined was not countervailable; 3) Commerce had preliminarily added VAT to the VAT-exempted benchmark purchases without doing the same to the VAT-exempted purchases from the authority.[281] We decided that, because both sides of the comparison were based on the respondent's actual transactions, it was distortive to add VAT only to the benchmark prices and not also to the authority purchase prices in which the VAT was waived due to the non-countervailable VAT exemption program.[282]

None of these facts apply to our construction of the benchmark price for Jinko Solar's imports of silver paste and solar glass. Because we are using a tier-two benchmark price, we are required to construct a world price that would be available to a company in Malaysia, pursuant to 19 CFR 351.511(a)(2)(ii). As such, the benchmark does not have to be consistent with the specific experience of Jinko Solar. If companies in Malaysia incur a sales tax, then sales tax can be

---

[277] *See* Jinko Solar's Case Brief at 16.
[278] *Id*.
[279] *Id*. at 17-19 (citing *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Results of Countervailing Duty Administrative Review; 2017*, 84 FR 70495 (December 23, 2019) (*TürkiyeHWR Pipes and Tubes AR 2017*) and accompanying IDM at Comment 1; *Aluminum Extrusions from Indonesia: Final Affirmative Countervailing Duty Determination*, 89 FR 80536 (October 3, 2024) (*Indonesia Aluminum Extrusions*); and *Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin from the People's Republic of China: Final Affirmative Determination*, 81 FR 13337 (March 14, 2016), and accompanying IDM at Comment 14.
[280] *See Türkiye HWR Pipes and Tubes AR 2017* IDM at Comment 1.
[281] *Id*.
[282] *Id*.

included in the tier-two benchmark price, as this represents the price that a firm actually paid or would pay if it imported the product into Malaysia. In contrast, when selecting tier-one benchmark prices, Commerce will use prices stemming from actual transactions between private parties or actual imports, with consideration of factors affecting comparability, pursuant to 19 CFR 351.511(a)(2)(i). This is the reason why in *Türkiye HWR Pipes and Tubes AR 2017* Commerce adjusted the benchmark to make sure that both the authority and the private transactions were comparable with one another. There is no such requirement under 19 CFR 351.511(a)(2)(ii).

Jinko Solar also cited *Indonesia Aluminum Extrusions* as an example of when Commerce excluded delivery charges from the benchmark. However, the situation in that case was the inverse of the present case. In *Indonesia Aluminum Extrusions*, Commerce rejected the petitioners' proposal to include VAT because we did not use a tier-two benchmark for unwrought aluminum.[283] We acknowledged that it was appropriate to include VAT in tier-two benchmarks, even in cases where the respondent does not pay VAT on its actual transactions.[284] However, we ultimately adhered to our practice and past CIT decisions by not adding import duties and VAT to the tier-one benchmark price and instead using the actual experience of the respondents.[285] In the present case, we are adding delivery charges, including sales tax, to the tier-two benchmark price, even though Jinko Solar does not pay sales taxes on its actual transactions.

As the petitioner notes, in *Beijing Tianhai Industry*, the CIT that:

> {W}hen constructing a tier-two benchmark, the reference to 'a firm' {in the context of 19 CFR 351.511(a)(2)(iv)} does not mean the respondent. Rather, it refers to a hypothetical firm located in the {country in question} purchasing {the input} during the POI.[286]

This holding confirms that Commerce's tier-two benchmark prices do not have to reflect the actual delivery charges that the respondent may or may not pay, as long as a firm within the country in question would be subject to these charges if the firm imported the input. The petitioner also notes the CIT decided that the respondent's location in a free-trade zone or claimed tax exemptions due to the intent to export a finished good are irrelevant given that a firm in the country in question that imported the input would ordinarily have paid the associated duties.[287] Therefore, Jinko Solar's LMW status or location in an FTZ does not preclude Commerce from incorporating sales tax into its tier-two benchmark.

For the reasons stated above, Commerce will continue to include sales tax in the solar glass benchmark for the final determination.

[283] *See* Indonesia Aluminum Extrusions at Comment 6.
[284] *Id*.
[285] *Id*.
[286] *See* Petitioner's Rebuttal Brief at 25 (citing *Beijing Tianhai Indus. Co. v. United States*, 52 F. Supp. 3d 1351, 1372-75 (CIT 2015) (*Beijing Tianhai Indus. Co.*)).
[287] *Id*.

Comment 20: Whether Commerce Incorrectly Included a Non-Existent Entity in Its List of Non-Responsive Companies

Sunmax's Case Brief:

The following is a verbatim summary of arguments submitted by Sunmax. For further details, *see* Sunmax's Case Brief at 3-7.

> On June 10, 2024, Commerce issued the Q&V questionnaire to both the incorrect name, "SunMax Energy SDN BHD," and the correct name, "Sunmax Energy (M) Sdn. Bhd." *See* Memorandum to The File, entitled "Quantity and Value Questionnaire Delivery Confirmation," dated June 10, 2024. Only Sunmax Energy (M) Sdn. Bhd. timely filed its Q&V response on June 6, 2024. *See* Letter from Trade Pacific PLLC, entitled "Sunmax Energy (M) Sdn. Bhd. Q&V Questionnaire Response," dated June 6, 2024. However, in the preliminary determination, Commerce classified the non-existent "SunMax Energy SDN BHD" as a non-responsive entity and applied an AFA rate of 124.78%. Sunmax provided evidence to support that there is no company named "SunMax Energy SDN BHD" in Malaysia. *See* Letter from Trade Pacific PLLC, entitled "Sunmax's Ministerial Error Allegation," dated October 8, 2024. The record of this investigation indicates that "Sunmax Energy SDN BHD" does not exist. Thus, its continued inclusion among the companies assigned total AFA is not supported by substantial evidence.
>
> In the final determination, Commerce should remove the non-existent entity "SunMax Energy SDN BHD" from its findings and confirming that Sunmax Energy (M) Sdn. Bhd. (Sunmax) qualifies for the "all others" rate. Alternatively, should Commerce retain the erroneous listing of "SunMax Energy SDN BHD" in its determination, we request that Commerce explicitly state that Sunmax Energy (M) Sdn. Bhd. is not subject to the AFA rate of 124.78% and confirm that the "all others" rate of 12.32% applies to Sunmax Energy (M) Sdn. Bhd.

No other interested parties submitted comments on this issue.

Commerce's Position: Commerce will not remove SunMax Energy SDN BHD from our final determination or from the list of non-responsive entities.

As an initial matter, Commerce sent its quantity and value (Q&V) questionnaire to SunMax Energy SDN BHD because data from U.S. Customs and Border Protection (CBP) suggested that two entites, SunMax Energy SDN BHD and Sunmax Energy (M) Sdn. Bhd., exported subject merchandise to the United Stated during the POI.[288] Though Sunmax Energy (M) Sdn. Bhd. submitted information regarding a search it made in the official corporate records database of Suruhanjaya Syarikat Malaysia (SSM), the Malaysia government's company registry database, where the search for "Sunmax Energy" did not return results for SunMax Energy SDN BHD,[289] Commerce cannot ignore information from CBP suggesting that this entity does exist.

[288] *See* Memorandum, "Release of U.S. Customs and Border Protection Entry Data," dated May 13, 2024, at Attachment.
[289] *See* Sunmax's Letter, "Sunmax's Ministerial Error Allegation," dated October 8, 2024, at Exhibit 1.

For the final determination, the entity Sunmax Energy (M) Sdn. Bhd. will continue to be subject to the all-others rate, while the entity SunMax Energy SDN BHD will continue to be subject to the AFA rate.

VII. RECOMMENDATION

We recommend that you approve all the above positions. If this recommendation is accepted, Commerce will publish the final determination in the *Federal Register* and 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

Filed By: Preston Cox, Filed Date: 4/21/25 4:50 PM, Submission Status: Approved

Appendix

AFA Rate Calculation

Program	AFA Rate (percent)
Grant Programs	
High Impact Fund Grant	8.04[290]
Domestic Investment Strategic Fund	8.04[291]
Northern Corridor Economic Region Talent Enhancement Program	8.04[292]
Penang Environment and Safety Refund	8.04[293]
Wage Subsidy Program	8.04[294]
Income Tax Programs	
Pioneer Status Direct Tax Incentives	24.00[295]
Investment Tax Allowance	
Special Tax Incentives for Relocation	
Reinvestment Allowance	
Accelerated Capital Allowance	
Automation Capital Allowance	
Double Deduction for Promotion of Exports	
Other Tax Programs	
Stamp Duty Exemptions and Reductions on Buildings and Land	8.04[296]
Exemption on Import Duties and Sales Taxes for Imported Raw Materials, Spare Parts/Accessories, and Machinery through LMWs	6.09[297]
Exemption on Import Duties and Sales Taxes for Imported Raw Materials, Spare Parts/Accessories, and Machinery through FTZs	3.47[298]
Foreign Labor Tax Reduction Program	8.04[299]
Lending Programs	
Preferential Financing from the Malaysia Development Bank	8.04[300]
Preferential Financing from the Malaysian Industrial Development Finance Berhad Group	8.04[301]
Policy Lending from Chinese Banks for the BRI Capacity Cooperation Projects	8.04[302]

[290] *See* Memorandum, "AFA Calculation Memorandum for Final Determination," dated concurrently with this memorandum (Final AFA Calculation Memo) at Attachment 1; *see also Preliminary Determination* PDM at Appendix.
[291] *See* Final AFA Calculation Memo at Attachment 1.
[292] *Id*.
[293] *Id*.
[294] *Id*.
[295] *Id*.
[296] *Id*.
[297] *Id*.
[298] *Id*.
[299] *Id*.
[300] *Id*.
[301] *Id*.
[302] *Id*.

Filed By: Preston Cox, Filed Date: 4/21/25 4:50 PM, Submission Status: Approved

The GOM Ministry of Finance's Provision of Loan to Hanwha Q CELLS	1.96[303]
Government Provision of Goods or Services for LTAR	
Land for LTAR	1.99[304]
Electricity for LTAR	5.73[305]
Provision of Land for LTAR to Hanwha Q CELLS	0.78[306]
Cross-Border Provision of Chinese-Origin Polysilicon for LTAR	8.04[307]
Provision of Chinese Origin Silver Paste for LTAR	8.04[308]
Provision of Chinese Origin Solar Glass for LTAR	28.30[309]
Total	**168.80**

[303] *Id.*
[304] *Id.*
[305] *Id.*
[306] *Id.*
[307] *Id.*
[308] *Id.*
[309] *See* Jinko Solar Final Calculation Memorandum at Attachments 1 and 2.