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April 18, 2025

MEMORANDUM TO: Christopher Abbott
Deputy Assistant Secretary
for Policy and Negotiations,
Performing the non-exclusive functions and duties
Of the Assistance Secretary for Enforcement and Compliance

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

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

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I. SUMMARY

The U.S. Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells), from Thailand, as provided in section 705 of the Tariff Act of 1930, as amended (the Act). The mandatory respondent in this investigation is Trina Solar Science & Technology (Thailand) Ltd. (TTL). After analyzing comments submitted by interested parties following the *Preliminary Determination*[1] and Post-Preliminary Analysis,[2] we made certain changes to our subsidy rate calculations. Below is the complete list of issues in this investigation for which we received comments from interested parties.

Comment 1: Whether Commerce Should Reach an Affirmative Determination of Critical Circumstances
Comment 2: Whether Commerce Erred in Its Calculation of the "All Others" Rate

[1] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From Thailand: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, in Part, and Alignment of Final Determination with Final Antidumping Duty Determination*, 89 FR 80874 (October 4, 2024) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).
[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 Thailand," dated January 7, 2025 (Post-Preliminary Analysis).

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Comment 3: Whether Commerce Has the Legal Authority Under the World Trade Organization (WTO) Rules and U.S. Law to Investigate Transnational Subsidies
Comment 4: Policy Lending from Chinese Banks for Belt and Road Initiative (BRI) Capacity Cooperation Projects
Comment 5: Substantial Evidence for the Cross-Border Provision of Chinese Polysilicon, Silicon Wafer, Silver Paste, and Solar Glass for Less Than Adequate Remuneration (LTAR)
Comment 6: Specificity for the Cross-Border Provision of Chinese Origin Polysilicon, Silicon Wafer, Silver Paste, and Solar Glass for LTAR
Comment 7: Whether Commerce Should Use Tier Two Benchmarks to Measure the Benefit Provided by the Cross-Border Provision of Chinese Silicon Wafers
Comment 8: Whether Commerce Should Use Tier Two Benchmarks to Measure the Benefit Provided by the Cross-Border Provision of Chinese Solar Glass
Comment 9: Whether Commerce Should Use Tier Two Benchmarks to Measure the Benefit Provided by the Cross-Border Provision of Chinese Silver Paste
Comment 10: Whether Commerce Should Apply Adverse Facts Available (AFA) or Otherwise Countervail Short-Term Loans to TTL
Comment 11: Whether Commerce Should Make Downward Adjustments to TTL's Reported Purchase Prices for Silicon Wafers and Solar Glass
Comment 12: Whether Commerce's Determination That Trina Solar Co., Ltd. (TCZ) and Trina Solar (Suqian) Silicon Materials Co., Ltd. (TSM(SQ)) Are "Authorities" Is Supported by the Record Evidence
Comment 13: Whether Commerce Made an Error in Its Calculation of the Benefit Provided by the Royal Thai Government's (RTG's) Provision of Electricity for LTAR
Comment 14: Whether the Provision of Electricity for LTAR is Countervailable
Comment 15: Whether Commerce Should Have Selected an Additional Mandatory Respondent
Comment 16: Whether Commerce Should Apply AFA to Taihua New Energy (Thailand) Co. Ltd. (Taihua New Energy)
Comment 17: Whether Commerce Should Initiate an Investigation Into Whether Producers in Malaysia Benefited From the Cross-Border Provision of Silicon Wafers for LTAR

II. BACKGROUND

On October 4, 2024, Commerce published in the *Federal Register* the *Preliminary Determination* and aligned this countervailing duty (CVD) final determination with the final determination in the less-than-fair-value (LTFV) investigation of Solar Cells from Thailand, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4).[3] The final determination in this investigation and the companion LTFV investigation on solar cells from

[3] *See Preliminary Determination*, 89 FR at 80874.

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Thailand[4] was fully extended to April 18, 2025.[5] The period of investigation (POI) is January 1, 2023, through December 31, 2023.

We initiated an investigation into the Cross-Border Provision of Chinese Silicon Wafers for LTAR program on September 20, 2024.[6] On October 28, 2024, we initiated an investigation into the Cross-Border Provision of Chinese Silver Paste for LTAR and Cross-Border Provision of Chinese Solar Glass for LTAR programs.[7] On January 7, 2025, we issued a post-preliminary analysis for these three programs.[8] In January 2025, we verified the questionnaire responses of TTL, the Royal Thai Government (RTG), Runergy PV Technology (Thailand) Co. Ltd. (Runergy), and Talesun Technologies (Thailand) Co., Ltd.[9]

On August 12, 2024, the petitioner timely submitted a new subsidy allegation regarding the Export Buyer's Credit program.[10] For this program, we have not yet made a decision on whether to initiate an investigation; we are deferring this decision until the first administrative review (should this investigation result in a CVD order). Due to the novelty and complexity of this allegation, including the transnational subsidy issues raised and the time needed to investigate and consider all the information, we find that we did not have sufficient time before the final determination to review and examine this allegation. On August 27, 2024, the petitioner also timely submitted new subsidy allegations regarding two programs: (1) Cross-Border Provision of Chinese Aluminum Solar Frames for LTAR and (2) Cross-Border Provision of Chinese Photovoltaic (PV) Junction Boxes for LTAR.[11] On February 20, 2025, we initiated an investigation of these two programs, but also deferred this investigation until the first administrative review (should this investigation result in a CVD order), for similar reasons stated above.[12]

[4] *Id.*, 89 FR at 80874, 80875.
[5] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from Thailand: Preliminary Affirmative Determination of Sales at Less-Than-Fair-Value, Affirmative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures*, 89 FR 96214, 96217 (December 4, 2024).
[6] *See* Memorandum, "Decision Memorandum on New Subsidy Allegation," dated September 20, 2024.
[7] *See* Memorandum, "Decision Memorandum on New Subsidy Allegations Regarding the Provision of Solar Glass and Silver Paste for Less Than Adequate Remuneration," dated October 28, 2024.
[8] *See* Post-Preliminary Analysis.
[9] *See* Memorandum, "Verification of the Questionnaire Responses of the Royal Thai Government," dated February 4, 2025 (RTG's Verification Report); *see also* Memorandum, "Verification of the Questionnaire Responses of Trina Solar Science & Technology (Thailand) Ltd.," dated February 12, 2025 (TTL's Verification Report); Memorandum, "Verification of Runergy PV Technology (Thailand) Co. Ltd.'s Quantity and Value Response," dated February 6, 2025 (Runergy's Verification Report); and Memorandum, Verification of Talesun Technologies (Thailand) Co., Ltd.'s Quantity and Value Response," dated February 13, 2025 (Talesun's Verification Report).
[10] *See* Petitioner's Letter, "New Subsidy Allegations," dated August 12, 2024 (Petitioner's Wafers NSA). The petitioner is the American Alliance for Solar Manufacturing Trade Committee (the petitioner).
[11] *See* Petitioner's Letter, "New Subsidy Allegations," dated August 27, 2024.
[12] *See* Memorandum, "Decision Memorandum on New Subsidy Allegation," dated February 20, 2024.

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On March 12, 2025, M.L.T. Solar Energy Product Company Limited (MLT);[13] Runergy;[14] the Government of China (GOC);[15] the RTG;[16] Canadian Solar International Limited, Canadian Solar Manufacturing (Thailand) Co., Ltd., and Canadian Solar US Module Manufacturing Corporation (collectively, Canadian Solar);[17] the petitioner;[18] and TTL[19] timely submitted case briefs. On March 20, 2025, Canadian Solar,[20] TTL,[21] the RTG,[22] and the petitioner[23] timely filed rebuttal briefs.

On November 4, 2024, Canadian Solar,[24] the petitioner,[25] and the RTG[26] requested a hearing. On April 8, 2025, we held a public hearing.[27]

III. FINAL CRITICAL CIRCUMSTANCES DETERMINATION

Pursuant to section 703(e)(1) of the Act, we preliminarily determined that critical circumstances existed for Taihua New Energy, Sunshine Electrical Energy (Sunshine Electrical), and all other producers and/or exporters of solar cells from Thailand.[28] Further, we preliminarily determined that critical circumstances did not exist with respect to TTL because TTL received a *de minimis* net preliminary countervailable subsidy rate.[29] However, because TTL has not received a *de minimis* final countervailable subsidy rate, we have determined that critical circumstances do exist for TTL, for the reasons described below. Section 705(a)(2) of the Act provides that Commerce will determine that critical circumstances exist if: (1) the alleged countervailable subsidy is inconsistent with the World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures (SCM Agreement),[30] and (2) there have been massive imports of the subject merchandise over a relatively short period. A final determination with respect to critical

[13] *See* MLT's Letter, "Case Brief of M.L.T. Solar Energy Product Company Limited," dated March 12, 2025 (MLT's Case Brief).
[14] *See* Runergy's Letter, "Case Brief," dated March 12, 2025 (Runergy's Case Brief).
[15] *See* GOC's Letter, "GOC DOC Case Brief," dated March 12, 2025 (GOC's Case Brief).
[16] *See* RTG's Letter, "Case Brief of the Royal Thai Government," dated March 12, 2025 (RTG's Case Brief).
[17] *See* Canadian Solar's Letter, "Case Brief of Canadian Solar," dated March 12, 2025 (Canadian Solar's Case Brief).
[18] *See* Petitioner's Letter, "Case Brief," dated March 12, 2025 (Petitioner's Case Brief).
[19] *See* TTL's Letter, "Case Brief of Trina Solar Science & Technology (Thailand) Ltd.," dated March 12, 2025 (TTL's Case Brief).
[20] *See* Canadian Solar's Letter, "Rebuttal Brief of Canadian Solar," dated March 20, 2025 (Canadian Solar's Rebuttal Brief).
[21] *See* TTL's Letter, "Rebuttal Case Brief of Trina Solar Science & Technology (Thailand) Ltd.," dated March 20, 2025 (TTL's Rebuttal Brief).
[22] *See* RTG's Letter, "Rebuttal Brief of the Royal Thai Government," dated March 20, 2025 (RTG's Rebuttal Brief).
[23] *See* Petitioner's Letter, "Rebuttal Brief," dated March 20, 2025 (Petitioner's Rebuttal Brief).
[24] *See* Canadian Solar's Letter, "Request for Hearing," dated November 4, 2024.
[25] *See* Petitioner's Letter, "Hearing Request," dated November 4, 2024.
[26] *See* RTG's Letter, "Request for Hearing," dated November 4, 2024.
[27] *See* Hearing Transcript, "Submission of Neal R. Gross and Co., Transcript of Public Hearing," dated April 15, 2025.
[28] *See Preliminary Determination* PDM at 40-41.
[29] *Id.* at 39-40.
[30] Commerce limits its critical circumstances findings to those subsidies contingent upon export performance or use of domestic over imported goods (*i.e.*, those prohibited under Article 3 of the SCM Agreement). *See, e.g., Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire from Germany*, 67 FR 55808, 55809-10 (August 30, 2002).

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circumstances may be affirmative even if critical circumstances were found not to exist in the preliminary determination.[31] In determining whether there are "massive imports" over a "relatively short period," pursuant to section 705(a)(2)(B) of the Act and 19 CFR 351.206(h) and (i), Commerce normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the base period) to a comparable period of at least three months following the filing of the petition (*i.e.*, the comparison period).[32] However, the regulations also provide that if Commerce finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, Commerce may consider a period of not less than three months from the earlier time.[33] Imports must increase by at least 15 percent during the comparison period to be considered massive.[34]

As explained in the *Preliminary Determination*, we determined that TTL received a countervailable subsidy under the Investment Promotion Act (IPA) Section 28 Exemption from Payment of Import Duties on Machinery program that we have determined is contingent upon export performance.[35] Therefore, for this final determination, we find that there is a reasonable basis to believe or suspect that there are programs in this CVD investigation that are inconsistent with the SCM Agreement. Use of an export subsidy program is sufficient to meet the inconsistent with the SCM Agreement criterion under section 703(e)(1)(A) of the Act.[36]

On November 15, 2024, TTL submitted additional import information, allowing us to expand the base and comparison periods in our analysis.[37] For this final determination, Commerce analyzed the five-month base period of December 2023 to April 2024, compared to May 2024 through September 2024.[38] Based on this extended base and comparison period import information, we continue to find that TTL's shipments increased by more than 15 percent over a "relatively short period."[39] Therefore, we determine that the requirements of section 703(e)(1)(B) of the Act have been satisfied, and that critical circumstances exist as to TTL.

Moreover, for "all other" producers and exporters of solar cells from Thailand, we continue to use the same methodology as described in the *Preliminary Determination* to determine if critical

[31] *See* section 705(a)(2) of the Act.
[32] *See* Petitioner's Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties," dated April 24, 2024 (Petition).
[33] *See* 19 CFR 351.206(i).
[34] *See* 19 CFR 351.206(h)(2).
[35] *See Preliminary Determination* PDM at 19-20; *see also infra* at Section IX.
[36] *See, e.g., Certain Quartz Surface Products from the Republic of Turkey: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 84 FR 54841 (October 11, 2019), and accompanying PDM at 5-7, unchanged in *Certain Quartz Surface Products from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, In Part*, 85 FR 25400 (May 1, 2020), and accompanying Issues and Decision Memorandum (IDM) at 2-3.
[37] *See* TTL's Letter, "Monthly Quantity and Value Shipment Data," dated November 15, 2024 (TTL's Monthly Shipment Data).
[38] *See* Memorandum, "Final Critical Circumstances Analysis," dated concurrently with this memorandum (Final Critical Circumstances Analysis).
[39] *Id.*

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circumstances exist.[40] Accordingly, for all other producers and exporters, we analyzed the aggregated shipments of TTL for the expanded time period December 2023 through September 2024 to determine whether imports of the subject merchandise were massive. As mentioned above, we found that the volume of these imports increased by at least 15 percent from the base period to the comparison period. Accordingly, we continue to find that the imports of all other producers and exporters were massive. Therefore, based upon the criteria and findings for all other producers and exporters, we continue to determine that critical circumstances exist regarding all other producers and exporters' imports of solar cells from Thailand pursuant to section 703(e)(1) of the Act.[41]

Further, we preliminarily calculated the subsidy rate applied to all other producers and/or exporters as a simple average of the rates calculated for TTL, Sunshine Electrical, and Taihua New Energy.[42] As facts otherwise available with an adverse inference, we found that all programs preliminarily determined to be countervailable conferred a benefit to Sunshine Electrical and Taihua New Energy within the meaning of section 771(5)(E) of the Act.[43] This included countervailable subsidies that are specific pursuant to sections 771(5A)(A) and (B) of the Act because they are contingent upon export performance.[44] For this final determination, however, the subsidy rate for TTL is not zero, *de minimis*, or based entirely on facts otherwise available. Accordingly, pursuant to section 705(c)(5)(A)(i) of the Act, the all-others rate is equal to the countervailable subsidy rate established for the exporter and/or producer individually investigated: *i.e.*, TTL. On this basis, we determine that critical circumstances continue to exist with respect to all other producers and/or exporters.

With respect to Taihua New Energy and Sunshine Electrical, we continue to determine that critical circumstances exist in accordance with section 705(a)(2) of the Act. In the *Preliminary Determination*, we preliminarily determined that certain subsidy programs under investigation are specific pursuant to sections 771(5A)(A) and (B) of the Act because they are contingent upon export performance.[45] With the exception of the Cross-Border Provision of Chinese Polysilicon, Silicon Wafers, Silver Paste, and Solar Glass for LTAR programs, we continue to find that the programs referenced for the affirmative critical circumstances are specific pursuant to sections 771(5A)(A) and (B) of the Act.[46] Therefore, consistent with the *Preliminary Determination*, we determine on the basis of AFA that Taihua New Energy and Sunshine Electrical received countervailable benefits under these export-contingent programs during the POI.[47] Accordingly, we determine that the criterion under section 705(a)(2)(A) of the Act has been met with respect to Sunshine Electrical and Taihua New Energy because these subsidies are inconsistent with the SCM Agreement. Further, for purposes of the "massive imports" analysis, we determine, pursuant to section 776(b) of the Act, that Sunshine Electrical and Taihua New Energy shipped solar cells in "massive" quantities during a relatively short period, thereby fulfilling the criteria

[40] *See Preliminary Determination* PDM at 40.
[41] *See* Final Critical Circumstances Analysis.
[42] *See Preliminary Determination* PDM at 38.
[43] *Id.* at 13.
[44] *Id.* at 17-23 and 32-35.
[45] *Id.*
[46] *See* Section IX, "Programs Determined to Be Countervailable," below.
[47] *Id.*

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under section 705(a)(2)(B) of the Act. As a result, we determine that critical circumstances exist with regard to Sunshine Electrical and Taihua New Energy.

Interested parties provided comments regarding Commerce's preliminary critical circumstances determination, which we have addressed in Comment 1 below.

IV. CHANGES SINCE THE PRELIMINARY DETERMINATION

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

V. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

We made no changes to the allocation period used in the *Preliminary Determination* and Post-Preliminary Analysis.[48] Interested parties raised no issues in their case briefs with respect to the allocation period or methodology.

B. Attribution of Subsidies

We made no changes to the methodology used to attribute subsidies in the *Preliminary Determination* and Post-Preliminary Analysis.[49] In their case briefs, interested parties raised no issues with respect to the attribution methodology.

C. Denominators

In their case briefs, interested parties raised no issues with respect to the sales denominators used in the subsidy rate calculations for the *Preliminary Determination* and Post-Preliminary Analysis. However, in its minor corrections submitted during verification, TTL reported certain revisions to its pre-POI sales.[50] We incorporated these minor corrections into TTL's sales denominators used in the calculations.[51] Additionally, as addressed below in Comment 6, we determine that the Cross-Border Provision of Chinese Polysilicon, Silicon Wafers, Silver Paste, and Solar Glass for LTAR programs are specific as domestic subsidies pursuant to section 771(5A)(D) of the Act, not as subsidies contingent upon export performance pursuant to sections 771(5A)(A) and (B) of the Act. Accordingly, for this final determination, we are attributing TTL's benefits received under the Chinese Silicon Wafers, Silver Paste, and Solar Glass for LTAR programs to all products sold by TTL pursuant to 19 CFR 351.525(b)(3), not to TTL's export sales pursuant to 19 CFR 351.525(b)(2). We made no other changes to the sales denominators used in the subsidy rate calculations for the *Preliminary Determination* and Post-Preliminary Analysis.[52]

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[48] *See Preliminary Determination* PDM at 15; *see also* Post-Preliminary Analysis at 2.
[49] *See Preliminary Determination* PDM at 15-16; *see also* Post-Preliminary Analysis at 2.
[50] *See* TTL's Verification Report at 2-3.
[51] *See* Memorandum, "Final Determination Calculations for {TTL}," dated concurrently with this memorandum (TTL Final Calculation Memorandum).
[52] *See Preliminary Determination* PDM at 16; *see also* Post-Preliminary Analysis at 2.

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

A. Legal Standard

The legal standard for the use of facts available and AFA is discussed in the *Preliminary Determination* PDM.[53]

B. Application of Facts Available: Policy Lending from Chinese Banks for BRI Capacity Cooperation Projects Program; Cross-Border Provision of Chinese Polysilicon, Silicon Wafers, Silver Paste, and Solar Glass for LTAR Programs

In the *Preliminary Determination* and Post-Preliminary Analysis, we relied on "facts otherwise available" with respect to the following programs: (1) Policy Lending from Chinese Banks for BRI Capacity Cooperation Projects, (2) Cross-Border Provision of Chinese Polysilicon for LTAR, (3) Cross-Border Provision of Chinese Silicon Wafers for LTAR, (4) Cross-Border Provision of Chinese Silver Paste for LTAR, and (5) Cross-Border Provision of Chinese Solar Glass for LTAR programs.[54] In their case briefs and rebuttal briefs, interested parties submitted comments on our application of facts otherwise available. As explained below in Comment 6, we have modified the bases on which we find the four LTAR programs listed above to be specific pursuant to section 771(5A)(D) of the Act. We have made no other changes to our preliminary and post-preliminary findings regarding the use of facts otherwise available. *See* Comments 4-6 below.

C. Application of AFA: Non-Responsive Q&V Questionnaire Recipients

In the *Preliminary Determination* and Post-Preliminary Analysis, we relied on AFA with respect to Sunshine Electrical and Taihua New Energy, which did not respond to Commerce's Q&V questionnaire.[55] As facts otherwise available with an adverse inference, we found that all programs preliminarily determined to be countervailable in this investigation were used by Sunshine Electrical and Taihua New Energy and conferred a benefit on these companies within the meaning of section 771(5)(E) of the Act.[56] In their case briefs and rebuttal briefs, interested parties submitted comments on our application of AFA with respect to Sunshine Electrical and Taihua New Energy. However, for this final determination, we have made no changes to our preliminary and post-preliminary findings regarding the application of AFA. *See* Comment 17 below.

VII. BENCHMARKS FOR MEASURING THE ADEQUACY OF REMUNERATION

Interested parties submitted comments regarding the input benchmarks that Commerce used in the Post-Preliminary Analysis to calculate the benefit for the Cross-Border Provision of Chinese

[53] *See Preliminary Determination* PDM at 16.
[54] *Id.* at 7-10; *see also* Post-Preliminary Analysis at 2-4.
[55] *See Preliminary Determination* PDM at 7-13; *see also* Post-Preliminary Analysis at 16-19.
[56] *Id.*

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Silicon Wafers, Silver Paste, and Solar Glass for LTAR programs. Based on these comments, we made changes to the input benchmarks, which we explain below in Comments 7-9.

VIII. ANALYSIS OF PROGRAMS

A. Programs Determined to Be Countervailable

1. Tax Exemptions, Duty Exemptions, and Other Benefits Under the IPA

a. IPA Section 28 Exemption from Payment of Import Duties on Machinery

Interested parties raised no issues with respect to this program. For a description of this program and Commerce's analysis, *see* the *Preliminary Determination* PDM at 17-20. Consistent with the *Preliminary Determination*, we determine based on AFA that Sunshine Electrical and Taihua New Energy each received a countervailable subsidy at a rate of 0.83 percent *ad valorem* under this program during the POI.[57] Further, consistent with the *Preliminary Determination*, we determine that TTL did not receive a measurable benefit under this program during the POI.[58]

b. IPA Section 31 Income Tax Exemption on Net Profit from Promoted Activity

Interested parties raised no issues with respect to this program. For a description of this program and Commerce's analysis, *see* the *Preliminary Determination* PDM at 17-21. Consistent with the *Preliminary Determination*, we determine based on AFA that Sunshine Electrical and Taihua New Energy each received a countervailable subsidy at a rate of 20 percent *ad valorem* during the POI on a combined basis for all income tax programs under investigation.[59] Further, consistent with the *Preliminary Determination*, we determine that TTL did not use this program during the POI.[60]

c. IPA Section 35(3) Income Tax Reductions and Rate Reductions in Special Locations or Zones

Interested parties raised no issues with respect to this program. For a description of this program and Commerce's analysis, *see* the *Preliminary Determination* PDM at 17-19 and 21. Consistent with the *Preliminary Determination*, we determine based on AFA that Sunshine Electrical and Taihua New Energy each received a countervailable subsidy at a rate of 20 percent *ad valorem* during the POI on a combined basis for all income tax programs under investigation.[61] Further, consistent with the *Preliminary Determination*, we determine that TTL did not use this program during the POI.[62]

[57] *See Preliminary Determination* PDM at 19.
[58] *Id.*
[59] *Id.* at 21.
[60] *Id.*
[61] *Id.*
[62] *Id.*

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d. IPA Measures for Competitiveness Enhancement Under Board of Investment (BOI) Announcement No. 10/2565

Interested parties raised no issues with respect to this program. For a description of this program and Commerce's analysis, *see* the *Preliminary Determination* PDM at 17-19 and 22. Consistent with the *Preliminary Determination*, we determine based on AFA that Sunshine Electrical and Taihua New Energy each received a countervailable subsidy at a rate of 20 percent *ad valorem* during the POI on a combined basis for all income tax programs under investigation.[63] Further, consistent with the *Preliminary Determination*, we determine that TTL did not use this program during the POI.[64]

e. Measures to Promote Improvement of Production Efficiency under BOI Announcement No. 1.2557

Interested parties raised no issues with respect to this program. For a description of this program and Commerce's analysis, *see* the *Preliminary Determination* PDM at 17-19 and 22-23. Consistent with the *Preliminary Determination*, we determine based on AFA that Sunshine Electrical and Taihua New Energy each received a countervailable subsidy at a rate of 20 percent *ad valorem* during the POI on a combined basis for all income tax programs under investigation.[65] Further, consistent with the *Preliminary Determination*, we determine that TTL did not use this program during the POI.[66]

f. IPA Section 30 Import Duty Reduction on Raw or Essential Materials Used in Promoted Production Activity

Interested parties raised no issues with respect to this program. For a description of this program and Commerce's analysis, *see* the *Preliminary Determination* PDM at 17-19 and 23. Consistent with the *Preliminary Determination*, we determine based on AFA that Sunshine Electrical and Taihua New Energy each received a countervailable subsidy at a rate of 0.83 percent *ad valorem* under this program during the POI.[67] Further, consistent with the *Preliminary Determination*, we determine that TTL did not use this program during the POI.[68]

2. Provision of Electricity for LTAR

Interested parties submitted comments on this program, which we address below in Comments 13-14. However, we made no changes to the *Preliminary Determination* with respect to this program. For a description of this program and Commerce's analysis, *see* the *Preliminary Determination* PDM at 23-30. Consistent with the *Preliminary Determination*, we determine that TTL received a countervailable subsidy at a rate of 0.14 percent *ad valorem* under this program during the POI.[69] Further, consistent with the *Preliminary Determination*, we

[63] *Id.* at 22.
[64] *Id.*
[65] *Id.* at 23.
[66] *Id.*
[67] *Id.*
[68] *Id.*
[69] *Id.* at 30.

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determine based on AFA that Sunshine Electrical and Taihua New Energy each received a countervailable subsidy at a rate of 0.77 percent *ad valorem* under this program during the POI.[70]

3. Industrial Estate Tax Act Privileges

Interested parties raised no issues with respect to this program. For a description of this program and Commerce's analysis, *see* the *Preliminary Determination* PDM at 30-31. Consistent with the *Preliminary Determination*, we determine based on AFA that Sunshine Electrical and Taihua New Energy each received a countervailable subsidy at a rate of 1.38 percent *ad valorem* under this program during the POI.[71] Further, consistent with the *Preliminary Determination*, we determine that TTL did not use this program during the POI.[72]

4. Customs Act BE 2560 (2017) Section 29 Duty Drawback (DDB) on Certain Raw Materials

Interested parties raised no issues with respect to this program. For a description of this program and Commerce's analysis, *see* the *Preliminary Determination* PDM at 31-32. Consistent with the *Preliminary Determination*, we determine based on AFA that Sunshine Electrical and Taihua New Energy each received a countervailable subsidy at a rate of 0.83 percent *ad valorem* under this program during the POI.[73] Further, consistent with the *Preliminary Determination*, we determine that TTL did not use this program during the POI.[74]

5. Tax Coupons for Exported Goods

Interested parties raised no issues with respect to this program. For a description of this program and Commerce's analysis, *see* the *Preliminary Determination* PDM at 32. Consistent with the *Preliminary Determination*, we determine based on AFA that Sunshine Electrical and Taihua New Energy each received a countervailable subsidy at a rate of 0.83 percent *ad valorem* under this program during the POI.[75] Further, consistent with the *Preliminary Determination*, we determine that TTL did not use this program during the POI.[76]

6. Export-Import Bank of Thailand (EXIM Thailand) Programs:

   a. EXIM Thailand Export Buyer's Credit
   b. EXIM Thailand Revolving Credit
   c. EXIM Thailand Supplier Credit
   d. EXIM Thailand Medium- to Long-Term Loans
   e. EXIM Thailand Trade Fair Financing

Interested parties raised no issues with respect to these five programs. For a description of these programs and Commerce's analysis, *see* the *Preliminary Determination* PDM at 32-34.

[70] *Id.*
[71] *Id.* at 31.
[72] *Id.*
[73] *Id.* at 31-32.
[74] *Id.* at 32.
[75] *Id.*
[76] *Id.*

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Consistent with the *Preliminary Determination*, we determine based on AFA that Sunshine Electrical and Taihua New Energy each received a countervailable subsidy at a rate of 1.38 percent *ad valorem* under each of these five EXIM programs during the POI.[77] Further, consistent with the *Preliminary Determination*, we determine that TTL did not use these programs during the POI.[78]

7. Policy Lending from Chinese Banks for BRI Capacity Cooperation Projects (BRI Cooperation Program)

Interested parties submitted comments on this program, which we address below in Comments 4, 10, and 11. However, we made no changes to the *Preliminary Determination* with respect to this program. For a description of this program and Commerce's analysis, *see* the *Preliminary Determination* PDM at 34-35. Consistent with the *Preliminary Determination*, we determine based on AFA that Sunshine Electrical and Taihua New Energy each received a countervailable subsidy at a rate of 1.38 percent *ad valorem* under this program during the POI.[79] Further, consistent with the *Preliminary Determination*, we determine that TTL did not use this program during the POI.[80]

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

For a description of this program and Commerce's preliminary analysis, *see* the *Preliminary Determination* PDM at 35-36. Interested parties submitted comments on this program, which we address below in Comments 3, 5, and 6. For the final determination, we determine that this program is specific as a domestic subsidy pursuant to section 771(5A)(D) of the Act, not as an export subsidy pursuant to sections 771(5A)(A) and (B) of the Act. Consistent with the *Preliminary Determination*, we determine that TTL did not use this program during the POI.[81] Further, based on Commerce's CVD AFA hierarchy described at pages 9-13 of the *Preliminary Determination* PDM, we determine that Sunshine Electrical and Taihua New Energy each received a countervailable subsidy at a rate of 251.11 percent *ad valorem* under this program during the POI. This represents the highest above-*de minimis* subsidy rate calculated for a similar or comparable program in a CVD proceeding involving Thailand, which is TTL's rate for the Cross-Border Provision of Chinese Silicon Wafers for LTAR program.[82]

9. Cross-Border Provision of Chinese Silicon Wafers for LTAR

For a description of this program and Commerce's post-preliminary analysis, *see* the Post-Preliminary Analysis at 3-13 and 15-16. Interested parties submitted comments on this program, which we address below in Comments 3-7 and 10-12. As explained in these comments, we made changes to the subsidy rate calculations for TTL. For the final determination, we determine that this program is specific as a domestic subsidy pursuant to section 771(5A)(D) of

[77] *Id.* at 34.
[78] *Id.*
[79] *Id.* at 35.
[80] *Id.*
[81] *Id.*
[82] *Id.* at 10 (citing 19 CFR 351.308(j)(1)(iii)); *see also infra* at "Cross-Border Provision of Chinese Silicon Wafers for LTAR."

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the Act, not as an export subsidy pursuant to sections 771(5A)(A) and (B) of the Act. Accordingly, we are attributing TTL's benefits received under the program to all products sold by TTL pursuant to 19 CFR 351.525(b)(3), not to TTL's export sales pursuant to 19 CFR 351.525(b)(2). Based on these changes, we determine that TTL received a countervailable subsidy at a rate of 251.11 percent *ad valorem* under this program during the POI.[83] Further, based on Commerce's CVD AFA hierarchy described at pages 9-13 of the *Preliminary Determination* PDM, we determine that Sunshine Electrical and Taihua New Energy each received a countervailable subsidy at a rate of 251.11 percent *ad valorem* under this program during the POI. This represents the highest above-*de minimis* rate calculated for a cooperating company (*i.e.*, TTL) for the identical program in this investigation.[84] Additionally, for the final determination, we now find this program is only *de facto* specific pursuant to section 771(5A)(D)(iii)(I) of the Act, because the GOC provides the input only to a limited number of industries that use silicon wafers in production.

10. Cross-Border Provision of Chinese Solar Glass for LTAR

For a description of this program and Commerce's post-preliminary analysis, *see* the Post-Preliminary Analysis at 3-10, 14, and 18-19. Interested parties submitted comments on this program, which we address below in Comments 3-6, 8, and 10-11. As explained in these comments, we made changes to the subsidy rate calculations for TTL. We determine that this program is specific as a domestic subsidy pursuant to section 771(5A)(D) of the Act, not as an export subsidy pursuant to sections 771(5A)(A) and (B) of the Act. Accordingly, we are attributing TTL's benefits received under the program to all products sold by TTL pursuant to 19 CFR 351.525(b)(3), not to TTL's export sales pursuant to 19 CFR 351.525(b)(2). Based on these changes, we determine that TTL received a countervailable subsidy at a rate of 12.47 percent *ad valorem* under this program during the POI.[85] Further, based on Commerce's CVD AFA hierarchy described at pages 9-13 of the *Preliminary Determination* PDM, we determine that Sunshine Electrical and Taihua New Energy each received a countervailable subsidy at a rate of 12.47 percent *ad valorem* under this program during the POI. This represents the highest above-*de minimis* rate calculated for a cooperating company (*i.e.*, TTL) for the identical program in this investigation.[86] Additionally, for the final determination, we now find this program is only *de facto* specific pursuant to section 771(5A)(D)(iii)(I) of the Act, because the GOC provides the input only to a limited number of industries that use solar glass in production.

11. Cross-Border Provision of Chinese Silver Paste for LTAR

For a description of this program and Commerce's post-preliminary analysis, *see* the Post-Preliminary Analysis at 16-18. Interested parties submitted comments on this program, which we address below in Comments 3-6 and 9. As explained in Comment 6, we determine that this program is specific as a domestic subsidy pursuant to section 771(5A)(D) of the Act, not as an export subsidy pursuant to sections 771(5A)(A) and (B) of the Act. For the final determination, we now find this program is only *de facto* specific pursuant to section 771(5A)(D)(iii)(I) of the Act, because the GOC provides the input only to a limited number of industries that use silver

[83] *See* TTL Final Calculation Memorandum.
[84] *See Preliminary Determination* PDM at 10 (citing 19 CFR 351.308(j)(1)(i)).
[85] *See* TTL Final Calculation Memorandum.
[86] *See Preliminary Determination* PDM at 10 (citing 19 CFR 351.308(j)(1)(i)).

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paste in production. Accordingly, we are attributing TTL's benefits received under the program to all products sold by TTL pursuant to 19 CFR 351.525(b)(3), not to TTL's export sales pursuant to 19 CFR 351.525(b)(2). We made no further changes to the Post-Preliminary Analysis with respect to this program. The revised subsidy attribution did not change TTL's subsidy rate calculated in the Post-Preliminary Analysis. On this basis, we determine that TTL received a countervailable subsidy at a rate of 0.02 percent *ad valorem* under this program during the POI.[87]

Further, based on Commerce's CVD AFA hierarchy described at pages 9-13 of the *Preliminary Determination* PDM, we determine that Sunshine Electrical and Taihua New Energy each received a countervailable subsidy at a rate of 251.11 percent *ad valorem* under this program during the POI. This represents the highest above-*de minimis* subsidy rate calculated for a similar or comparable program in a CVD proceeding involving Thailand, which is TTL's rate for the Cross-Border Provision of Chinese Silicon Wafers for LTAR program.[88]

B. Programs Determined to Be Not Countervailable

Exemption from Import Duties Under IPA Section 36(1)

In *Citric Acid from Thailand* and *Glycine from Thailand,* Commerce determined that duty exemptions on imports of raw and essential materials under Section 36 of the IPA were not countervailable pursuant to 19 CFR 351.519(a)(4), because the manner in which the RTG administered the program and the system that the RTG used to monitor and track the consumption of inputs and export of finished goods (making normal allowance for waste) were reasonable and effective.[89] In the current proceeding, we preliminarily determined that this program operates in the same manner as analyzed in *Citric Acid from Thailand* and *Glycine from Thailand*.[90] In particular, we preliminarily determined that the RTG relies on company-specific production formulas when determining the amount of the imported product that is incorporated into the exported finished product.[91] Additionally, we preliminarily determined that the RTG has a system in place that: (1) specifies the materials that may be imported under the program; (2) tracks the consumption of imported raw materials as well as the exported finished products that incorporated those imported materials; (3) verifies the accuracy of companies' stock and production formulas; and (4) requires participating companies to submit relevant import and export documentation to the BOI to verify compliance.[92] Therefore, consistent with Commerce's

[87] *See* Post-Preliminary Analysis at 17.
[88] *See Preliminary Determination* PDM at 10 (citing 19 CFR 351.308(j)(1)(iii)); *see also supra* at "Cross-Border Provision of Chinese Silicon Wafers for LTAR."
[89] *See Preliminary Negative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination and Alignment of Final Determination with Final Antidumping Duty Determination of Citric Acid and Certain Citrate Salts from Thailand*, 82 FR 51216 (November 3, 2017), and accompanying PDM at 12, unchanged in *Citric Acid and Certain Citrate Salts from Thailand: Final Negative Countervailing Duty Determination, and Final Negative Critical Circumstances Determination*, 83 FR 26004 (June 5, 2018) (*Citric Acid from Thailand*), and accompanying IDM at 12; *see also Glycine from Thailand: Final Negative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 84 FR 38007 (August 5, 2019) (*Glycine from Thailand*), and accompanying IDM at Comment 5.
[90] *See Preliminary Determination* PDM at 36-37.
[91] *Id.*
[92] *Id.*

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determinations in *Citric Acid from Thailand* and *Glycine from Thailand*, we preliminarily determined that the duty exemptions under IPA Section 36(1) program was not countervailable pursuant to 19 CFR 351.519(a)(1)(i)-(ii) and (4)(i).[93]

Interested parties raised no issues with respect to this program. In addition, source records that we reviewed during the RTG's verification were consistent with information that the RTG provided for this program in its questionnaire responses.[94] Therefore, consistent with the *Preliminary Determination*, we determine that this program is not countervailable.

C. Programs Determined to Be Terminated

Energy Service Company (ESCO) Revolving Fund for Equipment Leasing / ESCO Revolving Fund for Low-Interest Loans and Equipment

The RTG reported that the Department of Energy Development and Efficiency (DEDE) discontinued the ESCO Revolving Fund programs in 2017, and that the last date to claim benefits under the programs was September 30, 2017.[95] Based on the RTG's questionnaire response, we preliminarily determined that the ESCO Revolving Fund programs were terminated because: (1) ESCO's resolution notification demonstrates that the RTG terminated the program; (2) no evidence of residual benefits under the program is on the record; and (3) no evidence that the RTG replaced the program with a successor program is on the record.[96]

Interested parties raised no issues with respect to this program. In addition, source records that we reviewed during the RTG's verification were consistent with the RTG's responses regarding the program's termination, lack of residual benefits, and absence of a replacement program.[97] Therefore, consistent with the *Preliminary Determination*, we determine that this program has been terminated.

IX. DISCUSSION OF THE ISSUES

Comment 1: Whether Commerce Should Reach an Affirmative Determination of Critical Circumstances

Canadian Solar's Case Brief:

The following is a verbatim summary of the arguments submitted by Canadian Solar (internal citations and business proprietary information (BPI) omitted). For further details, *see* Canadian Solar's Case Brief at 5-19.

> In assessing whether critical circumstances exist in this investigation, Commerce should separately consider CSPV cells and modules because subject imports of cells enable U.S. domestic module manufacturing, which could not exist without

[93] *Id.* at 37.
[94] *See* RTG's Verification Report at 2-5.
[95] *See* RTG's Letter, "Section II Questionnaire Response," dated August 19, 2023 (RTG's IQR) at 152.
[96] *See Preliminary Determination* PDM at 36-37.
[97] *See* RTG's Verification Report at 10-11.

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imported cells. This is because when the Petition was filed, there was no U.S. cell manufacturing, meaning that U.S. module manufacturers were forced to import subject cells to sustain their operations. Imports of subject cells thus did not claim U.S. producers' share of domestic sales and are not demonstrative of critical circumstances. Commerce's regulations require an assessment of the "share of domestic consumption accounted for by the imports," 19 CFR 351.206(h)(1), and cell imports make possible the consumption of domestic modules. The regulations weight this "share of domestic consumption" prong equally alongside the volume and value of imports in the "massive" imports critical circumstances analysis. Commerce may not disregard this prong; the regulations specify "normally will examine" and record information is available for Commerce to complete this analysis here.

Furthermore, in the post-Petition period, CSPV module imports were clearly not massive by volume and did not approach the 15 percent "massive" threshold specified by the regulations. Module import volumes were not massive no matter which data set Commerce decides to employ, based on public import data, {BPI omitted}, or a combination of the two {TTL BPI}. Moreover, import trends during the post-Petition period aligned with seasonal and long-term trends that account for increased solar sales and installations during the spring and summer seasons. As such, Commerce should recognize that critical circumstances do not exist in this investigation.

MLT's Case Brief:

The following is a verbatim summary of the arguments submitted by MLT (internal citations omitted). For further details, *see* MLT's Case Brief at 6-9.

In the *Preliminary Determination*, Commerce decided that the "all other" companies were subject to an affirmative finding of critical circumstances because imports by TTL, the mandatory respondent, increased by more than 15 percent between the four-month period Jan. – Apr. 2024 and the four-month period, May – August 2024. In the Final Determination, Commerce should extend the test and comparison periods to five months each, should consider all relevant factors, and should ensure that its decision conforms to commercial reality, by basing its 15 percent decision on the value of imports (cells and modules), rather than quantity, or on the quantity of modules. These decisions would conform to the intent of U.S. law. Cells were not produced in the United States during either the base or comparison periods, and the increase in cells exported from Thailand in the comparison post-petition period enabled companies to produce modules in the United States. At the same time, module exports declined. These facts confirm that the purpose of Commerce's massive import analysis – whether potentially injurious imports increased as a result of the filing of a petition in order to beat the deadline for assessment of CVD - cannot possibly be satisfied by an affirmative determination.

Runergy's Case Brief:

The following is a verbatim summary of the arguments submitted by Runergy (internal citations omitted). For further details, *see* Runergy's Case Brief at 3-7.

> {Commerce} also erred in preliminarily finding that critical circumstances existed with respect to imports of subject merchandise from the all-others rate companies. The record demonstrates that critical circumstances do not exist with respect to these companies because there were no "massive" imports of subject merchandise.

TTL's Case Brief:

The following is a verbatim summary of the arguments submitted by TTL (internal citations omitted). For further details, *see* TTL's Case Brief at 48.

> In the final determination, Commerce cannot consider TTL's exports of solar cells that fed U.S. module manufacturing in the post-petition period to be massive. The increase in shipments following the filing of the petition was entirely attributable to TTL's exports of cells, which fueled U.S. module manufacturing. Attachment 1 includes a worksheet presenting Commerce's preliminary critical circumstances analysis which included both modules and cell exports and the same analysis including only TTL's module exports. As demonstrated in Attachment 1, when examining TTL's module exports only, TTL's shipments decreased after the filing of the petition.

Petitioner's Rebuttal Brief:

The following is a verbatim summary of the arguments submitted by the petitioner (internal citations omitted). For further details, *see* the Petitioner's Rebuttal Brief at 35-38.

> The record shows that following the filing of the petition, there were massive imports of subject merchandise. These imports exceeded the 15% threshold for finding that imports are massive. Furthermore, opposing parties provide no support for their arguments that both quantity and value of imports must increase by at least 15% for there to be "massive imports," or that {Commerce} should disaggregate cells and modules and determine if individually imports of cells and modules increased by at least 15%.

Commerce's Position: As noted above in the "Final Critical Circumstances Determination" section, for this final determination, we find that critical circumstances exist in this investigation with respect to TTL, the non-responsive companies, and all other producers and/or exporters not individually examined, in accordance with section 705(a)(2) of the Act. For purposes of the "massive imports" analysis, we preliminarily determined, pursuant to section 776(b) of the Act, that Sunshine Electrical and Taihua New Energy shipped solar cells in "massive" quantities during a relatively short period.[98] Additionally, we preliminary determined, using the aggregated

[98] *See Preliminary Determination* PDM at 40.

shipments of solar cells from TTL for the period December 2023 through September 2024, that the volume of these imports increased by at least 15 percent from the base period to the comparison period.[99] In the *Preliminary Determination*, we utilized TTL's shipment data for all other companies not individually examined.[100] We found that the petitioner's submitted import data would also include merchandise not subject to this investigation, because imports of solar cells from Thailand may be subject to the CVD order on solar cells from China as a result of the affirmative finding of circumvention.[101] Based on the record information available regarding import data, and in consideration of the fact that the Thailand import data can contain non-subject merchandise, we continue to determine that this "massive imports" analysis is appropriate, as TTL's shipment data of subject merchandise demonstrated imports increased by at least 15 percent from the base period to the comparison period.[102] Accordingly, the criterion under section 705(a)(2)(B) of the Act is fulfilled.

MLT argues that Commerce should base its critical circumstances determination on the value of the import data, rather than the volume.[103] While 19 CFR 351.206(h)(1)(i) explains that Commerce will examine the volume and value of the imports, we find that MLT does not provide sufficient reason that the quantity data provided by TTL showing the massive increase in the quantity of imports should be disregarded. MLT does not argue that the quantity data is unreliable. MLT acknowledges that the quantity of imports of subject merchandise have met Commerce's criteria for "massive imports," but also argues that the value of imports decreases because different types of subject merchandise were imported at different portions of the comparison periods.[104] The record shows that TTL's imports of subject merchandise, which, as discussed above, is the clear criterion for massive imports under the statute, increased sufficiently to meet the threshold described in 19 CFR 351.206(h)(2). As no party has disputed the accuracy of TTL's data, we continue to find that the use of TTL's imports of subject merchandise, by quantity, is appropriate for our critical circumstances analysis under section 705(a)(2)(B) of the Act.

With regard to the argument that modules and cells are separate products and should be separated for the purposes of the base and comparison period, we find that there is no ambiguity within the Act or 19 CFR 351.206 that would provide a basis for excluding certain subject merchandise within the scope of investigation for critical circumstance purposes. Under section 705(a)(2) of the Act, Commerce shall base its final determination on critical circumstances, in part, on whether "there have been massive imports of the **subject merchandise** over a relative short period" {emphasis added}. Both cells and modules are considered subject merchandise under the scope of the investigation.[105] As such, for the final determination, we continue to include both cells and modules as subject merchandise in the import data used in the critical circumstances determination.

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[99] *Id.*
[100] *Id.*
[101] *Id.*
[102] *See* Memorandum, "Critical Circumstances Analysis," dated September 30, 2024.
[103] *See* MLT's Case Brief at 7-8.
[104] *Id.*
[105] *See* the *Federal Register* notice accompanying this memorandum at Appendix I.

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Given that we do not differentiate between cells and modules, we also find that the argument for the share of domestic consumption accounted for by the imports, specifically cell imports,[106] does not sufficiently explain how imports of solar cells, including both modules and cells, were driven exclusively by lack of domestic production. There is a multitude of possible market factors and forces for increases in shipments of solar cells during the comparison period, which may or may not be a result of domestic consumption. Several parties pointed to evidence that there was a decrease in module imports and increase in cells imports, and that this is indicative of a growing U.S. solar cell industry which lacked any domestic production of cells during the comparison period.[107] However, parties have not provided evidence that U.S. domestic growth in module production exclusively accounts for the change. Without additional information about the U.S. domestic market conditions for solar cells, it is not possible to make a determination as to how to attribute domestic consumption as a portion of the "massive imports," without knowledge of the other market factors involved. As such, there is insufficient domestic industry data to conclude that there has been a difference in domestic consumption, especially with regards to domestic consumption of solar modules, in accordance with 19 CFR 351.206(h)(1)(iii).

With regard to arguments that a different comparison period should be utilized, we agree that, for the final critical circumstances determination, we utilize a longer comparison period window due to the data on the record of the investigation. Under section 705(a)(2)(B) or section 735(a)(3)(B) of the Act, Commerce normally will consider a "relatively short period" as the period beginning on the date the proceeding begins and ending at least three months later.[108] However, if Commerce finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, then Commerce may consider a period of not less than three months from that earlier time. Commerce will normally "examine the longest period for which information is available up to the date of the preliminary determination" in analyzing whether critical circumstances exist with respect to producers/exporters.[109] As mentioned in Section III above, we used aggregated shipments of solar cells from TTL in our "massive imports" analysis. TTL reported shipments of solar cells from November 2023 to October 2024.[110] As such, we used the initial period beginning on the earliest full month for which TTL reported shipments of solar cells to the *Initiation Notice*,[111] December 2023 to April 2024, and compared it to the comparison period from the initiation of the investigation to the *Preliminary Determination*, May 2024 to September 2024. With this new comparison window, we still continue to find that TTL, and thus all other companies, shipped solar cells in "massive" quantities during a relatively short period.

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[106] *See* Canadian Solar's Case Brief at 9-14; *see also* MLT's Case Brief at 8-9; Runergy's Case Brief at 6; and TTL's Case Brief at 49.
[107] *See* Canadian Solar's Case Brief at 15-16.
[108] *See* 19 CFR 351.206(i).
[109] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Orange Juice from Brazil*, 71 FR 2183 (January 13, 2006), and accompanying IDM at Comment 4; and *Mattresses from Cambodia: Final Affirmative Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 86 FR 15894 (March 25, 2021), and accompanying IDM at Comment 3.
[110] *See* TTL's Monthly Shipment Data at Attachment I.
[111] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from Cambodia, Malaysia, Thailand, and the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigations*, 89 FR 43816, 43819-43820 (May 20, 2024) (*Initiation Notice*).

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With regard to arguments that there should be a seasonality adjustment to the shipments of solar cells for the "massive imports" determination,[112] we disagree that any seasonality adjustment should be made. In order to conduct a seasonality analysis, Commerce normally relies on a minimum of three years of import data.[113] Canadian Solar provided import data on solar cells for the comparison periods for 2022, 2023, and 2024,[114] and the import data showed differences of 9.08 percent, 31.53 percent, and 21.58 percent, respectively, of solar cell imports for the same February-April and May-July comparison monthly window time period for the "massive imports" critical circumstances determination. We find that this data does not offer a clear indication of seasonal fluctuation. The import data only demonstrates that there was an increase of solar cell imports every year; it lacks substantial evidence that such an increase was exclusive to this monthly window time period. Canadian Solar even notes that "total solar deployments in the United States grew precipitously in 2024, demonstrating that these imports followed a long-term, increasing demand trend,"[115] which is further evidence that these increases are not necessarily a result of a seasonal change but rather could be general long-term increase in importation. As such, we determine that there is no clear predictable fluctuation associated with seasonal trends over the past three years.[116] As there is no consistent yearly fluctuation, we also find the argument that solar installation increases in late spring and summer due to the seasonal nature of the construction of utility-scale solar projects unconvincing.[117]

For these reasons, for the final determination, Commerce continues to find that critical circumstances exist with respect to TTL, the two non-responsive companies, and all other exporters and producers of the subject merchandise.

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[112] *See* Canadian Solar's Case Brief at 18-20.

[113] *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from Mexico*, 76 FR 67688, 67702 (November 2, 2011) (analyzing 3 years of data to find a consistent pattern of seasonality), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from Mexico*, 77 FR 17422 (March 26, 2012); and *Certain Quartz Surface Products From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances*, 84 FR 23767 (May 23, 2019), and accompanying IDM at Comment 2 (finding that data covering two years is insufficient for purposes of a critical circumstances analysis based on seasonality).

[114] *See* Canadian Solar's Case Brief at 19.

[115] *Id.*

[116] Commerce's precedent has sought "clear" "patterns" demonstrating imports are "dominated by seasonality," not simply upward trends at certain times of the year. *See Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People's Republic of China*, 70 FR 24502, 24504 (May 10, 2005); *see also Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012), and accompanying IDM at Comment 4 ("This type of sporadic variation is not the type of predictable fluctuation associated with seasonal trends. Seasonal trends, such as those affecting shipments of agricultural products, are the result of conditions known to repeat themselves each year (*e.g.*, a harvest at the end of each summer, or a surge in consumer shopping during the Christmas season). It is possible to subtract the effects of such predictable, measurable, cyclical patterns from import surges and then determine if what remains constitutes a 'massive increase.' There is no convincing explanation as to what might be the theoretical condition that causes an end-of-year increase in solar cell shipments"). Likewise, aside from lacking regularity, the increase at issue here lacks a solid theoretical basis.

[117] *See* Canadian Solar's Case Brief at 18.

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Comment 2: Whether Commerce Erred in Its Calculation of the "All Others" Rate

Canadian Solar's Case Brief:

The following is a verbatim summary of the arguments submitted by Canadian Solar (internal citations omitted). For further details, *see* Canadian Solar's Case Brief at 20-28.

> The statute requires Commerce to apply a weighted average of the rates calculated for individually investigated respondents to the "all other" companies, excluding zero, *de minimis*, and {AFA} rates. Here, following {Commerce}'s issuance of its Post-Preliminary Analysis, the sole individually investigated respondent, TTL, has a calculated rate that is not zero, *de minimis*, or based on AFA. Accordingly, Commerce must apply TTL's rate to the "all other" companies.
>
> Additionally, the *Preliminary Determination*'s use of a simple average to calculate the "all others" rate was unlawful because this calculation — (1) included the rates of entities not subject to individual examination, and (2) ignored the statute's direction to employ a "weighted" average. The final determination should correct these errors. Commerce should also recognize, consistent with Canadian Solar's ministerial error filing, that the *Preliminary Determination* was erroneous in light of these deficiencies and issue corrected cash deposit instructions effective for entries since July 6, 2024.

MLT's Case Brief:

The following is a verbatim summary of the arguments submitted by MLT (internal citations omitted). For further details, *see* MLT's Case Brief at 2-6.

> In its *Preliminary Determination*, Commerce calculated the "all others" rate by taking the simple average of two rates based on total {AFA} and the *de minimis* rate calculated for the mandatory respondent, TTL. In its final determination {Commerce} should not include any total AFA rates in its calculation of the all others rate. Such rates do not reasonably represent rates of fully co-operative all other companies, especially since the AFA rates resulted from the failure of these two companies to respond to QV questionnaires, while eight companies (including MLT) did respond.

RTG's Case Brief:

The following is a verbatim summary of the arguments submitted by RTG (internal citations omitted). For further details, *see* RTG's Case Brief at 26-31.

> Section 705(c)(5)(A)(i) of the Tariff Act stipulates that the All Others Rate must equal the weighted average countervailable subsidy rates for exporters and producers "individually investigated." The only company that was "individually investigated" was TTL, which was selected as the sole mandatory respondent.

> Neither Sunshine Electrical nor Taihua New Energy were "individually investigated"; neither was selected as a mandatory respondent and neither received a full questionnaire from Commerce. Consequently, Commerce erred in including the AFA rates assigned for those two companies in calculating the All Others rate.
>
> If the countervailable subsidy rates established for all exporters and producers individually investigated are either zero or *de minimis* or are determined entirely by total AFA, Section 705(c)(5)(A)(ii) of {the Act} provides that Commerce may use "any reasonable method" to establish the All Others rate, but the SAA[118] explains that the "expected method" will be to weight-average the zero and *de minimis* margins and margins determined on the basis of AFA, provided that volume data is available. In the *Preliminary Determination*, Commerce erred by instead taking the *de minimis* rate of TTL and the total AFA rates that it applied to Sunshine Electrical and Taihua New Energy and applying a simple average of the three to determine the All Others rate. Commerce instead should have used the volume data on the record to construct an All Others rate based on the weighted average of the individual net subsidy margins. Commerce's failure to do so not only violated the expected method articulated in the SAA, but it is also counter to Court of International Trade {(CIT)} precedent stating that the construction of the All Others rate based on simple averages is unreasonable when there is a significant disparity in the volume of imports from the sources used to construct the average.

Runergy's Case Brief:

The following is a verbatim summary of the arguments submitted by Runergy (internal citations omitted). For further details, *see* Runergy's Case Brief at 2-3.

> In its {*Preliminary Determination*}, {Commerce} took a legally wrong approach in calculating the all-others subsidy rate using a simple average of the *de minimis* rate assigned to Trina Solar Science & Technology (Thailand) Company Limited ("TTL"), the sole mandatory respondent selected for individual examination, and two companies that received an {AFA} rate for allegedly failing to respond to {Commerce}'s Q&V questionnaire. For the final determination, {Commerce} must correct the error and apply TTL's rate to companies receiving the all-others rate, particularly considering that TTL's post-preliminary subsidy rate has increased above *de minimis*.

Petitioner's Rebuttal Brief:

The following is a verbatim summary of the arguments submitted by the Petitioner (internal citations and BPI omitted). For further details, *see* the Petitioner's Rebuttal Brief at 35-38.

> {Whether Commerce correctly calculated the all others rate} Yes. If TTL, Taihua, and Sunshine Electric all have rates that are zero or *de minimis*, or determined

[118] *See* Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H. R. Doc. 103-316, vol. 1 (1994) (SAA), at 870.

> entirely on the basis of facts available, {Commerce} should use the simple average of their rates to calculate all-others rate. In such a circumstance, {Commerce} may use any reasonable method to calculate the all-others rate, and using a simple average of these rates is reasonable here. First, it is impossible to weight average the rates of Taihua and Sunshine Electric because they did not provide Q&V data. Second, it was reasonable to include Taihua and Sunshine Electric's rates in the calculation, because {Commerce} selected only one mandatory respondent, which is contrary to its normal practice, and the record shows that {BPI omitted}.

Commerce's Position: Section 705(c)(5)(A)(i) of the Act states that for companies not individually investigated, we will determine an "all-others" rate equal to the weighted average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates determined entirely under section 776 of the Act. In the *Preliminary Determination*, TTL's preliminary subsidy rate was *de minimis*, and we determined Sunshine Electrical's and Taihua New Energy's rates entirely under facts available with an adverse inference.[119] Accordingly, we calculated the *ad valorem* subsidy rate for all other companies not individually examined under section 705(c)(5)(A)(ii) of the Act and as described by the SAA, accounting for the fact that volume data of exports of subject merchandise was not available on the record for the two companies that did not reply to Commerce's Q&V questionnaire.[120] However, for this final determination, we determine that TTL received a net countervailable subsidy rate that is above *de minimis*.[121] Therefore, because TTL's subsidy rate for this final determination is no longer *de minimis*, we are applying the subsidy rate calculated for TTL as the all-others rate, in accordance with section 705(c)(5)(A)(i) of the Act. Interested parties' comments on Commerce's calculation of the all-others rate in the *Preliminary Determination* under section 705(c)(5)(A)(ii) of the Act are thus moot.

Comment 3: 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 the arguments submitted by the GOC (internal citations omitted). For further details, *see* the GOC's Case Brief at 7-11.

> First, GOC believes that the current investigation with respect to transnational subsidies involving China has no valid legal basis and should be terminated immediately. {Commerce}'s investigation on transnational subsidies involving China and {Commerce}'s decision to countervail the transnational subsidies are neither consistent with the WTO rules nor have any legal authority in the US domestic law and regulations. Under WTO rules, the application of the {SCM

[119] *See* section 776(b) of the Act.
[120] *See Preliminary Determination* PDM at 38; *see also*, *e.g.*, *Non-Oriented Electrical Steel From Taiwan: Final Affirmative Countervailing Duty Determination*, 79 FR 71602 (October 14, 2014), and accompanying IDM at Comment 11.
[121] *See* Section IX, "Programs Determined to Be Countervailable," above.

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> Agreement} has territorial limitations, and were never intended to be applied to cross-border or transnational subsidies. Similarly, {the Act} has territorial limitations and was never intended to be applied to cross-border or transnational subsidies. Although the amendments to the U.S. antidumping and countervailing duty regulations, effective on April 24th, 2024, removed the section 19 CFR 351.527, which previously prohibited initiating transnational subsidy investigation, this amendment of the regulations did not override the fundamental territorial limitation on the application of countervailing duty investigation that still remain in the underlying statutory provisions of the {the Act} and are inconsistent with {Commerce}'s determinations of transnational subsidies in this investigation.

RTG's Case Brief:

The following is a verbatim summary of the arguments submitted by RTG (internal citations omitted). For further details, *see* RTG's Case Brief at 4-18.

> Commerce does not have the legal authority to assess countervailing duties based on alleged subsidies provided by the government of a country other than the country of export of the subject merchandise. The text of Sections 701(a) and 771(5)(B) of {the Act} makes clear that its CVD investigations are limited to investigations of subsidies bestowed by a single country (with narrow exceptions provided elsewhere in the statute). An interpretation of Sections 701(a) and 771(5)(B) to allow unfettered countervailing of transnational subsidies would render superfluous Section 701(d) of {the Act}. The interpretation of {the Act} as prohibiting investigation of alleged transnational subsidies was embodied in the since-withdrawn Section 351.527 of Commerce's regulations. The fact that Congress has repeatedly considered (and is currently considering) legislation to permit investigation of transnational subsidies provides a further basis for concluding that Commerce currently has no statutory authority to investigate alleged transnational subsidies. Finally, Commerce's application of CVD duties to alleged transnational subsidies violates the {SCM Agreement}.

TTL's Case Brief:

The following is a verbatim summary of the arguments submitted by TTL (internal citations omitted). For further details, *see* TTL's Case Brief at 11-19.

> The statute, {section 701 of the Act}, denies Commerce authority to impose countervailing duties on the alleged cross-border provision of Chinese silicon wafers for LTAR, Chinese silver paste for LTAR, and Chinese solar glass for LTAR. {Section 702 of the Act} provides that Commerce may impose a countervailing duty only if it:
>
> > 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.
>
> Plainly, {section 701 of the Act} contains no explicit grant of authority for Commerce to impose countervailing duties on subsidies allegedly provided by governments of more than a single country or to entities outside the territory of the same country that bestowed the alleged countervailable subsidy except in two limited circumstances that do not exist in this case. While Commerce withdrew its transnational subsidy regulation in April 2024, which had up until that time interpreted the statute as precluding the imposition of countervailing duties upon "transnational" subsidies except upon international consortia and where it finds there is an upstream subsidy, the language of {section 701 of the Act} remained unchanged between the time Commerce promulgated that regulation and the time Commerce withdrew that regulation. {Section 701 of the Act} continues to preclude Commerce from imposing countervailing duties upon "transnational" subsidies except where it makes the requisite findings under {sections 705 and 706 of the Act}.

Petitioner's Rebuttal Brief:

The following is a verbatim summary of the arguments submitted by the Petitioner (internal citations omitted). For further details, *see* the Petitioner's Rebuttal Brief at 9-11.

> {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 {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 {Commerce} 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, the RTG, and TTL 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 WTO Agreements or WTO reports."[122] Furthermore, irrespective of any potential WTO findings on this issue, WTO findings are not self-executing under U.S. law, and can only be implemented through the statutory procedure for such implementation.[123] 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."[124] 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

[122] *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; *see also 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); and *Corus Staal BV v. Dep't of Com.,* 395 F.3d 1343, 1348 (Fed. Cir. 2005) (*Corus Staal BV*) (quoting *Timken Co. v. United States*, 354 F.3d 1334, 1344 (Fed. Cir. 2004)).

[123] *See Corus Staal BV*, 395 F.3d at 1343, 1348; *see also Dillinger France S.A. v. United States*, 350 F. Supp. 3d 1349, 1367 (CIT 2018).

[124] *See* SAA at 656, 659.

> 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.[125]

As a result, Commerce reevaluated its approach to transnational subsidies to ensure it is fulfilling its statutory mandate to impose a countervailing duty "equal to the amount of the net countervailable subsidy" and accurately capture subsidization bestowed on the production, manufacture, and exportation of subject merchandise.[126] Accordingly, Commerce withdrew the self-imposed restriction previously found at 19 CFR 351.527.

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

> Section 351.527 {of Commerce's regulations} was promulgated over 25 years ago in a global trade environment much different than the current trade environment. Specifically, the subsidization landscape of 25 years ago related primarily to transnational transactions involving foreign aid. In contrast, in today's subsidization landscape, governments provide cross-border equity infusions, fundings, loans, etc., and they are no longer limited to foreign aid. Rather, they are provided to promote the grantor country as well as the recipient's country manufacturing capacities for a particular industry. We also have observed direct investments in a third country from state-owned enterprises, with backings from state-owned policy banks, promoting the specific grantor country's industry policies.[127]

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:

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[125] *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*).
[126] *See* section 701(a)(2) of the Act.
[127] *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).

> 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*,[128] § 351.527 was derived from now-repealed section 303(a)(1) of the Act. When § 351.527 was promulgated, Commerce's administrative experience at that time was that normally governments were subsidizing manufacturing and production activities in their own countries rather than subsidizing manufacturing and production abroad. Consistent with the experience at that time, upon promulgating § 351.527, in 1998, Commerce repeated this perspective and, accordingly, stated, "{i}n our view, neither the successorship of section 701 for Subsidies Code members nor the repeal of section 303 by the {Uruguay Round Agreements Act (URAA)}, eliminated the transnational subsidies rule, and there is no other indication that Congress intended to eliminate this rule."
>
> Since that time, the assumptions underlying Commerce's interpretation of section 701 of the Act have changed. In the intervening two decades, Commerce has observed increasing instances in which a government subsidizes foreign production. As a result, we now believe that our past regulatory interpretation of section 701 of the Act was overly restrictive and not required by statute. Commerce's self-imposed restriction on its ability to countervail subsidies only if those subsidies were provided to entities of a country solely by the government of that country, when subsidies from other foreign governments would otherwise be determined countervailable under the CVD law and injurious to producers of the domestic like product, is inconsistent with the very purpose of the CVD law. Section 701 of the Act does not require such a restrictive interpretation.[129]

[128] *See Countervailing Duties; Final Rule*, 63 FR 65348 (November 25, 1998) (*1998 Final Preamble*).
[129] *See RISE Final Rule,* 89 FR at 20766, 20826 (footnotes omitted).

As explained above, under the Act, the government (or public entity) providing a subsidy need not necessarily be in the same country as the recipient of said subsidy. As explained in more detail in Comments 7 through 9, in calculating benefits for the transnational subsidies in this case – the provision of silicon wafers for LTAR, the provision of solar glass for LTAR, and the provision of silver paster for LTAR – Commerce applied the same methodology, pursuant to the same statutory and regulatory provisions, as it generally does in determining whether a good was provided for LTAR. Thus, based on the facts of this investigation, the benefit calculation for these transnational subsidies largely does not differ from Commerce's LTAR benefit calculation for subsidies that are provided by the government of the country under investigation.

We also disagree with TTL that *Loper Bright*[130] constrains Commerce's ability to interpret the statute to permit countervailing transnational subsidies outside of an international consortia or upstream subsidy determination, pursuant to sections 701(d) and 701(e) of the Act. In *Loper Bright*, the Court held that "{c}ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority."[131] The Court also recognized there are instances in which a statute either expressly or implicitly authorizes an agency to exercise discretion and flexibility, stating that in such instances, reviewing courts "independently interpret the statute and effectuate the will of Congress subject to constitutional limits" "by recognizing constitutional delegations, fix{ing} the boundaries of {the} delegated authority, and ensuring the agency has engaged in reasonable decision-making within those boundaries."[132]

As discussed above, section 701(a) of the Act states that if Commerce "determines that the government of a country or any public entity within the territory of a country is providing, directly or indirectly, a countervailable subsidy with respect to the manufacture, production, or export of a class or kind of merchandise imported, or sold (or likely to be sold) for importation, into the United States," Commerce shall impose a countervailing duty upon said merchandise equal to the amount of the net countervailable subsidy. As explained above, nothing in section 701(a) states that the "government of a country or any public entity within the territory of a country" providing a countervailable subsidy must be the *same* government or public entity as the government of the country within which that subsidy is received. Thus, the statute clearly authorizes Commerce to investigate and countervail transnational subsidies, which Commerce recognized through notice-and-comment procedures when it repealed the self-imposed restriction formerly present in 19 CFR 351.527.

Further, we find that the two proposed Congressional bills to which the GOC cited do not preclude Commerce from investigating transnational subsidies. [133] The Supreme Court held that "failed legislative proposals are a particularly dangerous ground on which to rest an interpretation of a prior statute" and that "Congressional inaction lacks persuasive significance because several equally tenable inferences may be drawn from such inaction, including the inference that the existing legislation already incorporated the offered change."[134] Accordingly,

[130] *See Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024) (*Loper Bright*).
[131] *Id.*, 144 S. Ct. at 2273.
[132] *Id.* (internal citations and quotation marks omitted).
[133] *See* GOC's Case Brief at 11-12.
[134] *See United States v. Wise*, 370 U.S. 405, 411 (1962) (quoting *Pension Benefit Guaranty Corporation v. LTV Corp.*, 496 U.S. 633, 650 (1990)).

these proposed Congressional bills do not undermine Commerce's finding that the statute permits countervailing transnational subsidies.

Finally, contrary to the RTG's and TTL's arguments, we do not find that Commerce's interpretation of the Act renders sections 701(d) and 701(e), regarding international consortia and upstream subsidies, respectively, superfluous or otherwise an indication of Congressional intent that countervailable subsidies in third countries were only possible under those specifically identified circumstances. Sections 701(d) and 701(e) of the Act provide frameworks for the investigation of certain subsidies but does not restrict the framework by which to examine transnational subsidies, such as those at issue here. Indeed, the allegations here involve the provision of a countervailable subsidy from the GOC to a producer in Thailand (*i.e.*, not the circumstances applicable to sections 701(d) or 701(e)). An interested party may still allege a subsidy pursuant to sections 701(d) or 701(e) of the Act if the case-specific facts are more aligned with these frameworks, but the existence of those provisions does not impinge on whether Commerce may investigate and countervail transnational subsidies under distinct fact patterns. Due to the fact-intensive nature of the examination of a transnational subsidy, we expect our methodology in investigating and countervailing any other transnational subsidy programs in subsequent cases may develop over time, depending on the case-specific circumstances before us. Commerce underscored this point in the *RISE Final Rule*, stating that "{t}he existence of a transnational subsidy would be a case-specific one, and Commerce will not speculate on what evidence is needed to allege or prove the existence of a countervailable transnational subsidy without analyzing in the first instance the record evidence presented in a particular proceeding."[135] In the instant investigation, Commerce analyzed the transnational subsidy allegations and record facts of this case to determine that policy lending from Chinese banks for BRI capacity cooperation projects and the provision of polysilicon, silicon wafers, silver paste, and solar glass for LTAR constitute countervailable transnational subsidies. *See* Comments 4 and 5 below. In subsequent proceedings, Commerce will continue to evaluate its approach in this area based on comments received by interested parties and Commerce's additional experience in investigating transnational subsidy allegations on a case-by-case basis.

Comment 4: Policy Lending from Chinese Banks for BRI Capacity Cooperation Projects

GOC's Case Brief:

The following is a verbatim summary of the arguments submitted by the GOC (internal citations omitted). For further details, *see* the GOC's Case Brief at 11-15.

> Second, {Commerce's} decision to countervail the Policy Lending from Chinese Banks for {BRI} Capacity Cooperation Projects is not based on the substantial evidence and is otherwise not in accordance with law.
>
> (1) The application of facts otherwise available on this program is not warranted because {Commerce} disregards the existing evidence in the record and the due process rights of the parties involved.

[135] *See RISE Final Rule*, 89 FR at 20827.

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

Petitioner's Rebuttal Brief:

The following is a verbatim summary of the arguments submitted by the Petitioner (internal citations omitted). For further details, *see* the Petitioner's Rebuttal Brief at 28-31.

> {Commerce} properly used facts available to find that the Policy Lending from Chinese Banks for BRI Capacity Cooperation Projects Program and Chinese Inputs for {LTAR} programs are specific and provide a financial contribution and should continue to do so in the final determination. The GOC failed to provide substantive responses to any questions regarding these programs and, thus, {Commerce} appropriately relied on facts available in making its determination with respect to these programs.

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.[136] Once that finding is made, we rely upon the analysis undertaken in *CFS from China* to further conclude that national and local government control over the SOCBs render the loans a government financial contribution.[137] 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.[138] Because GOC banks reflect significant government intervention, they are considered to be SOCBs.[139] In *CFS from China*, Commerce explained why SOCBs are "authorities" within the

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[136] *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.
[137] *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.
[138] *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*, and accompanying IDM at Comment 10); *see also* Petitioner's Letter, "Petitioner's Benchmark Submission Part 1 - Information Related to Transnational Policy Lending," dated September 6, 2024, (Petitioner's Transnational Lending Submission) at Exhibit China-NME Status Memoranda (discussing the status of the Chinese commercial banking sector).
[139] *Id*.

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meaning of section 771(5)(B) of the Act. Contrary to the GOC's arguments made in *CFS from China*, which are reiterated here, our findings were not, and are not, based upon government ownership alone. For example, we stated:

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

Based on facts available, record evidence indicates that financial support directed toward companies, specifically companies within the solar industry, which invest in BRI initiatives exists.[140] 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,[141] and by the end of 2022, total loans from Chinese policy banks for BRI projects amounted to 3.1 trillion yuan.[142] 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.[143]

As noted in the *Preliminary Determination* and Post-Preliminary Analysis, Commerce found that Taihua New Energy and Sunshine Electrical[144] did not cooperate to the best of their abilities to comply with Commerce's requests for information, and therefore there is no complete and verifiable information reported by these companies on the record, within the meaning of sections 782(e)(2) and (3) of the Act, by which Commerce can determine whether these companies received a subsidy benefit. Therefore, Commerce, in its application of facts available with an adverse inference, determines that Taihua New Energy and Sunshine Electrical used and received 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 these companies was not due to the GOC's questionnaire responses, or lack thereof, but instead, due to the noncooperation 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 *Aluminum Extrusions*

[140] *See* Petition Volume VIII at Exhibits VIII-59, VIII-65, VIII-66.
[141] *Id*. at Exhibit VIII-65.
[142] *Id.* at Exhibit VIII-66.
[143] *See, e.g., CFS from China* IDM at Comment 1.
[144] *See Preliminary Determination* PDM at 5-7 and Post-Preliminary Analysis at 16, 17-19.

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."[145] Further, we find that BRI constitutes a state industrial policy by which Chinese SOCBs are directed to support through their financial policies.[146] In this investigation, the Government of China did not provide any new information to warrant a reconsideration of Commerce's prior interpretation of Article 34 of the Banking Law.

The Government of China then asserts that Article 4 of the Law on Commercial Banks states that "{c}ommercial banks shall conduct their operations in accordance with laws and be free from interference by any organization or individual," and therefore, because this article is within the "General Principles" chapter, Article 34 must align with it.[147] We find this argument to be unavailing. While Article 4 may generally direct Chinese SOCBs to act independently of third-parties, Article 34 directs Chinese SOCBs to carry out their loan business according to state industrial policies. Article 4 is a general principle while Article 34 is a specific direction. The general principle of Article 4 does not expressly limit or negate the direction given in Article 34, and we continue to find that Article 34 demonstrates that Chinese SOCBs act at the direction of state industrial policies. Therefore, we do not find that Article 4 nullifies Commerce's prior interpretation of Article 34 of the Law on Commercial Banks.

For the final determination, we find, based on facts available, that the Policy Lending from Chinese Banks for BRI Capacity Cooperation Projects program is *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act. We have evidence on the record that China and Thailand have multiple joint economic zones located in Thailand, financed and encouraged investments by limited number of industries within the BRI capacity cooperation framework.[148] 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.[149] Accordingly, we find it reasonable to determine for this final determination that these programs are *de facto* specific within the meaning of section

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[145] *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; *see also 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.

[146] *See* Petition Volume VIII at Exhibits VIII-57, VIII-59, and VIII-65.

[147] *See* GOC's Case Brief at 14.

[148] *See* Petition Volume VIII at Exhibits VIII-57, VIII-63, VIII-15.

[149] *Id.* at Exhibit VIII-59. *Guiding Opinions of the State Council on Promoting International Cooperation in Production Capacity and Equipment Manufacturing* outlines how the Government of China can increase international competitiveness by "Increas{ing} financial support. Give full play to the active role of policy banks and development financial institutions, and increase financing support for international cooperation in production capacity and equipment manufacturing through syndicated loans, export credits, project financing and other means… Promote the use of RMB in the construction of the Belt and Road Initiative…" *See also* Petition Volume VIII at Exhibit VIII-65. *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…"

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. As a result of our *de facto* specificity finding, the GOC's arguments that this program is not contingent upon export performance or geographically specific are moot.

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 necessary information, we must analyze the facts available on the record, which indicates that producers 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,[150] pursuant to the State-Owned Assets Law,[151] demonstrates that outbound investment by state-invested enterprises and their subsidiaries at all levels outside China are subject to Chinese law. According to Article 5 of the Government of China's State-Owned Assets Law,[152] a "state-invested enterprise" is defined as a "wholly state-owned enterprise or company with the state being the sole investor, or a company in which the state has a stake, *whether controlling or non-controlling*" {*emphasis added*}. Therefore, as facts available, we find that certain Chinese companies or subsidiaries of Chinese companies are within the jurisdiction of the 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 5: Substantial Evidence for the Cross-Border Provision of Chinese Polysilicon, Silicon Wafer, Silver Paste, and Solar Glass for LTAR

GOC's Case Brief:

The following is a verbatim summary of the arguments submitted by the GOC (internal citations omitted). For further details, *see* the GOC's Case Brief at 16-26.

> Third, {Commerce's} decision to countervail the Cross-Border Provision of Chinese Origin Inputs (polysilicon, silicon wafer, silver paste, solar glass) for {LTAR} is not based on the substantial evidence and is otherwise not in accordance with law.
>
> (1) The application of facts available on these LTAR programs is not warranted because {Commerce} disregards the existing evidence in the record and the due process rights of the parties involved.

[150] *See* Government of China's Letter, "GOC NSA Questionnaire Response," dated November 12, 2024, at Exhibit I.2 (Provisional Measures for Supervision and Administration of Outbound Investment by Centrally Administered Enterprises) at Article 2.
[151] *Id*. at Article 1.
[152] *Id*. at Exhibit I.3 (State-Owned Assets Law) at Article 5.

> (2) The alleged financial contribution is not based on the substantial evidence and is otherwise not in accordance with law, because Chinese input producers are not authorities.

Petitioner's Rebuttal Brief:

The following is a verbatim summary of the arguments submitted by the Petitioner (internal citations omitted). For further details, *see* the Petitioner's Rebuttal Brief at 28-31.

> {Commerce} properly used facts available to find that the Policy Lending from Chinese Banks for BRI Capacity Cooperation Projects Program and Chinese Inputs for {LTAR} programs are specific and provide a financial contribution and should continue to do so in the final determination. The GOC failed to provide substantive responses to any questions regarding these programs and, thus, {Commerce} appropriately relied on facts available in making its determination with respect to these programs.

Commerce's Position: In the *Preliminary Determination* and Post-Preliminary Analysis, we found, based on facts otherwise available, that certain producers of polysilicon, silicon wafers, silver paste, and solar glass are "authorities" within the meaning of section 771(5)(B) of the Act.[153] 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, silicon wafers, 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.[154] 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

[153] *See Preliminary Determination* PDM at 7-9; *see also* Post Preliminary Analysis at 3-8.
[154] *See* GOC's Case Brief at 18.

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GOC would be futile, as the GOC itself stated it could not provide this information, and did not identify an alternative way to provide Commerce with the required information.[155] 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.[156] Therefore, we find that section 782(d) of the Act was not triggered.

As discussed in the Post-Preliminary Analysis, 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 TTL.[157] 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.[158] Moreover, we requested information concerning whether any individual owners, board members, or senior managers involved with these producers were either government or CCP officials, and the role of any CCP primary organization within the producers.[159] 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.[160] The GOC's lack of response to our requests for information is described in the *Preliminary Determination* and Post-Preliminary Analysis.[161] Thus, we find that the GOC's questionnaire responses created a gap in the record regarding TTL'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.[162] 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,

[155] *See* GOC's Letter, "GOC New Subsidy Allegation Questionnaire Response," dated October 10, 2024 (GOC's NSA QR).
[156] *Id*.
[157] *See* Commerce's Letter, "Countervailing Duty Questionnaire," dated July 3, 2024 (Initial Questionnaire), at *Input Producer Appendix*; *see also* Post-Preliminary Analysis at 3-8.
[158] *See* Initial Questionnaire at *Input Producer Appendix*.
[159] *Id*.
[160] *Id*.
[161] *See Preliminary Determination* PDM at 7-9; *see also* Post-Preliminary Analysis at 3-8.
[162] *See* Petitioner's Wafers NSA at Exhibit NSA-7 (Analysis of Public Bodies).

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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.[163] Thus, the GOC's arguments regarding the role of CCP officials in company management are unavailing due to our analysis of record evidence.[164]

We also disagree with the GOC's argument that input producers should not be considered public bodies.[165] 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."[166] 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).[167] Further, "{u}nder this case-by-case analysis, {Commerce} may also examine, *inter alia*, whether the industry producing the subject merchandise or the industry supplying inputs to the production of the subject merchandise is covered by an industrial plan or plans that indicate enterprises are being used to carry out government functions; government appointed company officials; the presence of government or CCP officials on the board or in management; and the existence and role of a Party committee."[168] Therefore, we continue to find that, based on the facts available on the record, the input producer companies are either owned or controlled by the CCP and are actively involved in carrying out the GOC's industrial policies, and therefore, are considered public bodies for purposes of this investigation.

With respect to the GOC's argument that input producers are not "public bodies" within the meaning of the SCM Agreement,[169] we reiterate our stance in Comment 3 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 plans discussed in the Post-Preliminary Analysis do not explicitly mention the polysilicon, silicon wafer, silver paste, and solar glass industries,[170] 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."[171] The FYPs' goals, to strengthen the solar industry through coordinating upstream

[163] *Id.* at 35-36.
[164] *See* GOC's Case Brief at 20-21.
[165] *Id.* at 20-24; *see also* Comment 12, *infra*, for a discussion of whether TTL's Chinese affiliates TCZ and TSM(SQ) are government authorities.
[166] *See* Petitioner's Wafers NSA at Exhibit NSA-7 (Analysis of Public Bodies) at 37-38.
[167] *Id.* at 5.
[168] *Id*.
[169] *See* GOC's Case Brief at 19.
[170] *See* Post-Preliminary Analysis at 7; *see also* Petitioner's Wafers NSA at Exhibits NSA-2, NSA-3, and NSA-6.
[171] *See* Petitioner's Wafers NSA at Exhibits NSA-2 at 4, NSA-3 at 11, and NSA-6 at 38.

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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.[172] 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.[173] 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."[174] 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.

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."[175] 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.[176] However, it has been explained that this rule only applies to "staff of the administrative organs of the CCP and specified officials."[177] 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.[178] 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."[179]

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

[172] *See* GOC's Case Brief at 22-23.
[173] *See* Petitioner's Wafers NSA at Exhibit NSA-7 (Analysis of Public Bodies) at 17-18.
[174] *Id*. at 19.
[175] *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) and accompanying IDM at 53.
[176] *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*) and accompanying IDM at Comment 7.
[177] *Id*.
[178] *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*) and accompanying IDM at 13.
[179] *See* Petitioner's Wafers NSA at Exhibit NSA-7 (Analysis of Public Bodies) at 35-36.

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party committee is embedded in the company's structure, the entity possessing direct knowledge of these facts is the CCP (or the GOC) itself.[180] 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.[181] 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.[182] Further, the GOC has been able to provide requested information on CCP involvement in input producers in a prior CVD investigation.[183]

As a result of the absence of necessary information regarding the ownership of the input producers as well as the role of CCP officials in the input producers, we are relying on the best available information (explained above), as facts available, in determining whether these input producers were authorities. In analyzing facts available, we continue to find that CCP officials are present in each of the input producers identified in the new subsidy allegations as individual 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.[184] 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.[185] Consistent with this determination, the record also shows that the GOC authorities account for at least 71 percent of silicon wafer and solar glass production in China and 70 percent of silver paste production in China.[186] On this basis, for any purchases by TTL of silicon wafers and solar glass from unknown producers in China, we find that 71 percent (for silicon wafers and solar glass) and 70 percent (for silver paste) of the purchases by quantity were produced and supplied by Government of China "authorities."[187] This method is consistent with Commerce's past practice in certain other instances for the provision of inputs for LTAR in China by producers for which no record information was available.[188] Therefore, as facts available, we continue to find that certain producers of

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[180] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 78799 (December 31, 2014) (*Citric Acid from China*) and accompanying IDM at 4-6; *see also Carbon and Alloy Threaded Rod from China* IDM at 16.

[181] *See Citric Acid from China* IDM at Comment 5.b.

[182] *Id.* 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) 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.

[183] *See High Pressure Steel Cylinders from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012) and accompanying IDM at 13.

[184] *See* Petitioner's Wafers NSA; *see also* Petitioner's Letter, "New Subsidy Allegations," dated August 26, 2024 (Petitioner's Glass/Paste NSA).

[185] *See* Petitioner's Wafers NSA at Exhibit NSA-7 (Analysis of Public Bodies Memorandum).

[186] *See* Post-Preliminary Analysis at 8 (citing Petitioner's Wafers NSA, at 6-12 and exhibits cited therein; and Petitioner's Glass/Paste NSA, at 5-10, 13-19, and exhibits cited therein).

[187] *Id*.

[188] *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; 2021-2013*, 80 FR 69638 (November 10, 2015), and accompanying

polysilicon, silicon wafer, silver paste, and solar glass are "authorities" within the meaning of section 771(5)(B) of the Act.

Comment 6: Specificity for the Cross-Border Provision of Chinese Origin Polysilicon, Silicon Wafer, Silver Paste, and Solar Glass for LTAR

Petitioner's Case Brief:

The following is a verbatim summary of the arguments submitted by the Petitioner (internal citations omitted). For further details, *see* the Petitioner's Case Brief at 32-33.

> Petitioner agrees with {Commerce} that the Cross-Border Provision of Polysilicon Inputs from the {GOC} for LTAR is *de facto* specific pursuant to section 771(5A)(D)(iii)(I) of {the Act}. The record of this investigation does not demonstrate that the program is contingent on export performance within the meaning of sections 771(5A)(A) and (B) of the Act{.}

TTL's Case Brief:

The following is a verbatim summary of the arguments submitted by TTL (internal citations omitted). For further details, *see* TTL's Case Brief at 19-25.

> In the *Preliminary Determination*, Commerce determined that the same basis for specificity existed for the Cross-Border Provision for LTAR of polysilicon, wafer, solar glass, silver paste, junction box, and aluminum frame. For each, Commerce offered two possible bases for specificity. The Petitioner alleged that these programs are specific as domestic subsidies and Commerce suggested that they may be specific as export subsidies. The statute does not permit Commerce to consider these programs to be domestic subsidies and substantial record evidence indicates that these alleged programs are not contingent upon export and thus not export subsidies.
>
> The statute at {section 771(5A)(D) of the Act} provides that a domestic subsidy is specific in law or in fact, "to an enterprise or industry within the jurisdiction of the authority providing the subsidy." TTL is not within the jurisdiction of China and thus the alleged program cannot in law or fact be specific.
>
> Commerce cited one exhibit to support the possibility that these programs are contingent upon export performance. However, this article does not in any way support the notion that the LTAR provision of wafers by Chinese producers, for example, is contingent upon export. Moreover, Petitioner asserts that Commerce

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IDM at 10; *see also 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) (*CWP from China*), and accompanying IDM at 11; and *Light-walled Rectangular Pipe and Tube from the People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination*, 73 FR 35642 (June 24, 2008), and accompanying IDM at 8.

> previously found these programs to be domestic subsidies, not export subsidies. There is simply no evidence whatsoever that the provision of wafer, glass, silver paste, junction box, or aluminum frames is contingent upon export and there is affirmative evidence that it is not. Every prior determination regarding provision of materials for LTAR we found to be *de facto* specific as domestic subsidy. Accordingly, Commerce cannot countervail any of the alleged programs of Cross-Border provision of materials because there is no legal basis to find them specific to TTL as domestic subsidies and substantial evidence demonstrates that they are not contingent upon export.

GOC's Case Brief:

The following is a verbatim summary of the arguments submitted by the GOC (internal citations omitted). For further details, *see* the GOC's Case Brief at 16-26.

> Third, {Commerce's} decision to countervail the Cross-Border Provision of Chinese Origin Inputs (polysilicon, silicon wafer, silver paste, solar glass) for {LTAR} is not based on the substantial evidence and is otherwise not in accordance with law.
>
> (3) There is no legal basis to determine that this alleged program is specific. *De facto* specificity cannot apply to transnational subsidy programs that are provided to an enterprise or industry that is not "within the jurisdiction of" the authority allegedly providing the subsidy. Export subsidy is not established because this program is not contingent upon export performance.
> (4) The subsidy rate is not calculate {sic} 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.

Canadian Solar's Rebuttal Brief:

The following is a verbatim summary of the arguments submitted by Canadian Solar (internal citations omitted). For further details, *see* Canadian Solar's Rebuttal Brief at 3-7.

> Commerce preliminarily found that the cross-border provision of materials for {LTAR} constitutes domestic specific subsidies. Notwithstanding, the governing statute expressly defines domestic specific subsidies to be conferred "within the jurisdiction of the authority providing the subsidy." TTL builds the CSPV products subject to this investigation in Thailand, not China. TTL does not operate "within the jurisdiction of the authority providing the {alleged} subsidy." The Final Determination should thus recognize that the cross-border provision of these materials is neither a *de jure* nor a *de facto* domestic specific subsidy.

Petitioner's Rebuttal Brief:

The following is a verbatim summary of the arguments submitted by the petitioner (internal citations omitted). For further details, *see* the Petitioner's Rebuttal Brief at 11-17

> There is no merit to the claim that transnational subsidies cannot be "specific" pursuant to {section 771(5A)(D) of the Act}. Nothing in the language of this provision requires that the authority providing a subsidy and the recipient of that subsidy be located in the same country. The purpose of the specificity test is only to "winnow out" broadly available subsidies, and focuses on the authority providing the subsidy, not the recipient. The language in {section 771(5A)(D) of the Act} illustrates how to determine specificity, whether that subsidy is by an authority to a recipient in the same country or if it is provided to a recipient in a different country. The introductory clause in {section 771(5)(D) of the Act} provides basic guidelines for determining when a non-explicitly listed subsidy, *i.e*., a subsidy that is neither an export subsidy or import substitution subsidy, is specific. The following clauses of {section 771(5)(D) of the Act} then provide the specific circumstances under which specificity may be found. The language "within the jurisdiction of the authority providing the subsidy" thus informs the guidelines for determining how to analyze specificity in one context, and does not serve to limit specificity to only those provided within a single country. And, if a subsidy is specific within the jurisdiction of the authority, it can be imputed that the provision of that subsidy is also specific when provided to that industry in a different country.
>
> Furthermore, TTL is within the jurisdiction of the authority providing the countervailable subsidies. First, Chinese laws relating to state-invested companies are extraterritorial and apply to GOC-invested companies such as TTL that are located in foreign countries. Second, TTL is located within a China Overseas Economic & Trade Cooperation Zone (OETCZ), the Thai-Chinese Rayong Industrial Zone. OETCZ's are zones that are developed by Chinese enterprises under the {BRI} and are endorsed by the Ministry of Commerce of the People's Republic of China. As an area of joint cooperation between Thailand and the GOC, companies operating in such a zone are in the GOC's jurisdiction.

Commerce's Position: For the final determination, we find, based on facts available, that the cross-border provision of Chinese-origin polysilicon, silicon wafers, silver paste, and solar glass for LTAR programs are *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act. The 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.[189] As explained in Comment 4 above, we find TTL 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,[190] pursuant to the State-Owned Assets Law,[191] demonstrates that

[189] *See* GOC's Case Brief at 12.
[190] *See* GOC's Letter, "GOC Transnational Subsidies Questionnaire Response," dated August 16, 2024, at Exhibit II.A.2 (Provisional Measures for Supervision and Administration of Outbound Investment by Centrally Administered Enterprises, at Article 2).
[191] *Id*. at Article 1.

outbound investment by state-invested enterprises and their subsidiaries at all levels outside China are subject to Chinese law. According to Article 5 of the Government of China's State-Owned Assets Law,[192] 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, TTL reported that it is ultimately a subsidiary of TCZ, which is registered in China.[193] As explained below in detail in Comment 13, record evidence shows that TCZ, TTL's ultimate parent company, has several state-owned and state-controlled investors, and therefore, under the Government of China's State-Owned Assets Law, is considered a "state-invested enterprise."[194] As a subsidiary of TCZ, TTL is thus within the jurisdiction of the GOC within the meaning of section 771(5A)(D) of the Act. As a result, we disagree with the GOC that there is no legal basis to find the alleged programs specific.

Accordingly, we find it reasonable to determine for this final determination that these programs are *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act, based on facts otherwise available on the record, because these inputs are provided to a limited number of industries, including the solar cells industry.[195] 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 the programs are *de facto* specific, we do not reach the decision on whether they are also export-contingent in this final determination. While we are finding these programs to be *de facto* specific pursuant to section 771(5A)(D)(iii)(I) of the Act in this investigation, Commerce will continue to make such determinations on a case-by-case basis, based on the record evidence of that particular proceeding.

Comment 7: Whether Commerce Should Use Tier Two Benchmarks to Measure the Benefit Provided by the Cross-Border Provision of Chinese Silicon Wafers

Petitioner's Case Brief:

The following is a verbatim summary of the arguments submitted by the petitioner (internal citations omitted). For further details, *see* the Petitioner's Case Brief at 11-15.

> Because the Thai market for silicon wafers is distorted, {Commerce} should use Petitioner's world export data from {United Nations Comtrade} UN Comtrade as a tier two benchmark to value the benefit conferred to TTL by the provision of silicon wafers for LTAR. The record demonstrates that imports of silicon wafers from China accounts for up to 98% percent of imports into Thailand by volume. Furthermore, record information demonstrates that silicon wafers produced by Chinese government authorities {are} being imported into Thailand. As with silver

[192] *See* GOC's NSA QR at Exhibit I.3(State-Owned Assets Law at Article 5).
[193] *See* TTL's Letter, "Affiliation Questionnaire Response," dated July 22, 2024 (TTL's AQR), at AFF-4.
[194] *See* Petitioner's Letter, "Petitioner's Comments on TTL's Affiliation Questionnaire Response," dated October 7, 2024 (Petitioner's Affiliation Comments), at 6-13 and exhibits cited therein.
[195] *See* Post-Preliminary Analysis at 9 and 15-18.

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paste and solar glass, the domination of the Thai market by imports of Chinese silicon wafers make tier one prices in the Thai market, whether from China or third countries, unsuitable for use as a benchmark. Because a tier-one benchmark is unsuitable to use here, {Commerce} must resort to tier-two benchmark data. The record contains two tier-two benchmarks: (1) Petitioner's monthly export data for silicon wafers exported under HS 3818.00 from UN Comtrade and (2) TTL's silicon wafer pricing from {Bloomberg New Energy Finance} BloombergNEF. However, the silicon wafer pricing data from BloombergNEF is unsuitable to use as a benchmark because it is based on estimates and surveys, and includes Chinese-produced silicon wafers in these estimates.

TTL's Case Brief:

The following is a verbatim summary of the arguments submitted by TTL (internal citations omitted). For further details, *see* TTL's Case Brief at 37-48.

In the {Post Preliminary Analysis}, Commerce preliminarily found that Thai import prices serve as a viable tier one benchmark for Cross-Border Provision of wafer for LTAR pursuant to 19 CFR 351.511(a)(2)(i). If Commerce continues to determine that the provision of Chinese solar wafer inputs to TTL is a countervailable subsidy—which it should not—Commerce should revise its benchmark.

Thai imports under {Harmonized System (HS)} 3818.00 cover a broad basket category that contain highly dissimilar products not comparable to the input product, silicon wafers, including products with no silicon content. Moreover, Thai import data includes imports from countries with no solar wafer production. Commerce's practice is normally to rely on data reflecting the narrowest category of products encompassing the input products. The tier two benchmark for {BloombergNEF} solar wafer prices are the only benchmark specific to solar wafers. {BloombergNEF} has been used by Commerce to value solar wafers in past solar proceedings whereas other benchmark data encompasses broad basket categories that are not representative of solar wafers.

Should Commerce continue to use a tier one benchmark, then it must: 1) remove imports from countries with no solar wafer production from Thai import statistics; and 2) weight average the Thai import statistics with the Thailand Office of Industrial Economics (OIE) data regarding the Thai semiconductor and integrated circuit industry, which includes monthly production, sales quantity, and sales value for the entire POI. While OIE Semiconductor Data prices include domestic sales and exports from Thailand, the monthly Thai domestic sales quantity exceeds several monthly quantities in Thai import data. Thus, this data is equally representative of prices within Thailand and is equivalent in terms of "product similarity" and "quantities sold" under 19 CFR 351.511(a)(2).

Should Commerce consider world exports of {HS} 3818.00 under tier two benchmarks, despite other more representative and superior tier one and two

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benchmarks on the record, only monthly export data from Norway is viable and representative of solar wafers. Norway is a solar wafer producer, its exports are primarily to countries with solar cell production, and its monthly export prices do not show significant monthly variance.

{HS} 3818.00 is a broad basket category that includes non-solar wafer products and products with no silicon content. Most exporting countries of {HS} 3818.00 do not even produce solar wafers. The export data is missing information from the second and third largest solar wafer producers, who represent 70 percent of non-China solar wafer production. The United States is the third largest importer of {HS} 3818.00, and did not even produce solar cells during the POI further demonstrating this data does not contain solar wafers. World exports of {HS} 3818.00 are not a viable tier two benchmark for silicon wafers.

Canadian Solar's Rebuttal Brief:

The following is a verbatim summary of the arguments submitted by Canadian Solar (internal citations omitted). For further details, *see* Canadian Solar's Rebuttal Brief at 7-10.

Petitioner has requested that Commerce employ certain world export data from UN Comtrade as a "tier two" benchmark to value (purportedly) the benefit conferred on TTL by the provision of silicon wafers for LTAR. Commerce should reject this request because the UN Comtrade data is not reliable enough to serve as an accurate benchmark for the alleged LTAR subsidies, including specifically the allegedly subsidized provision of solar wafers. The UN Comtrade wafer data on the record is not an appropriate benchmark because they (A) include categories of merchandise that are entirely distinct from solar wafers used in the production of CSPV cells, and (B) fail to account for transactions from major producers of solar wafers.

Petitioner's Rebuttal Brief:

The following is a verbatim summary of the arguments submitted by the petitioner (internal citations omitted). For further details, *see* the Petitioner's Rebuttal Brief at 21-28.

First, {Commerce} should not use the BloombergNEF Data to calculate the benchmark because it is not possible to exclude Chinese and Thai data, and BloombergNEF's collection methods are unreliable as they do not rely on actual sales data. Second, {Commerce} should not revise Thai import statistics to (1) remove imports from countries alleged to not have solar wafer production; or (2) average those prices with trade data statistics from the RTG's {OIE} regarding prices of semiconductor and integrated circuits. TTL has failed to show that the Thai data are incorrect, and has failed to show that semiconductors and integrated circuits are comparable to silicon wafers. Third, {Commerce} should not use the Norway {HS} 3818.00 export data as the benchmark. TTL's suggestion amounts to cherry-picking of data, and it has not provided any valid reasons to limit the dataset to only data from Norway.

TTL's Rebuttal Brief:

The following is a verbatim summary of the arguments submitted by TTL (internal citations omitted). For further details, *see* TTL's Rebuttal Brief at 33-49.

> Commerce preliminarily determined that silicon wafer market in Thailand was not distorted and should continue to do so for the Final Determination. The Petitioner argues that the Thai silicon wafer market is distorted, because Chinese imports are 98 percent of Thai imports. Petitioner's wafer LTAR allegations have been levied in all CVD investigations, except Malaysia. Nearly identical facts exist for Malaysia as Thailand, where 93 percent of exports to Malaysia are from China and thus Petitioner's assertion that high share of Chinese imports equates to distortion must be true in Malaysia. However, the mere presence of high import share does not compel this conclusion without other evidence of distortion. Petitioner's analysis conflates two required elements for Commerce to disregard tier one benchmarks – government provider presence in the market and evidence of "significant distortion." Petitioner's contention is majority government provider presence in the market is *per se* distortion. That interpretation is not supported in Commerce's promulgation of the rule nor judicial precedent.
>
> The {*1998 Final Preamble*}, explains that Commerce normally does "not intend to adjust" tier one benchmarks and "government involvement in a market may have some impact on the price of the good or service" but such distortion will be "minimal unless the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market." Additionally, "{w}here it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative in the hierarchy." Commerce only disregards tier one benchmarks if one can reasonably conclude they are "significantly distorted." Where tier one benchmarks have been disregarded, the circumstances were such that the government imposed export restrictions and taxes or attempted to impose import prices, and relied on evidence of such distortion. Commerce cannot, apply "what amount{s} to a per se rule of market distortion" after finding government "controlled a substantial portion of the market.
>
> The Petitioner's argument rests solely on import quantity, with no analysis on purported distortion. Thai imports of {HS} 3818.00 from other countries are 90 percent higher than import price from China, which indicates the **absence of distortion**. The presence of a government material provided is expected to lower import prices into that market.
>
> Thai imports reflect **market-based prices**, which is also evidenced by Thai import price being higher than other reliable world benchmarks including {BloombergNEF} and Norway export prices. Commerce correctly determined the silicon wafer market in Thailand is not distorted.

If Commerce continues to determine that the provision of Chinese solar wafer is a countervailable subsidy than Commerce should revise its benchmark in the benefit calculation to use tier-one Thai import statistics from solar wafer producing countries; or in the alternative, use tier two {BloombergNEF} prices and Norway export prices. The Petitioner alleges that world exports of {HS} 3818.00 is suitable as a tier-two benchmark. When selecting tier two benchmarks, Commerce's practice is to rely on data reflecting the narrowest category of products encompassing the input product. World exports of {HS} 3818.00 contain dissimilar products, is missing from key solar wafer producers, and is otherwise unreliable with sizeable exports to countries with no solar cell production.

Only a few countries produce solar wafers, including China, Japan, Malaysia, Germany, South Korea, Singapore, Norway, Hong Kong, Türkiye, Indonesia, India, and the Philippines. Much of the world exports of {HS} 3818.00 are from non-solar wafer producing countries, indicating these are non-solar wafer products. The United States, the third largest exporter had "zero wafer capacity." Further constraining world wafer trade is "27% of cell manufacturing capacity was collocated with wafer capacity." Solar cell production is similarly concentrated in a few countries outside China.

Exports from solar wafer producing countries would at least potentially contain solar wafers, however, there are additional notable issues. The U.S. has "no active U.S. production of c-Si PVcells" during the POI and thus no need for solar wafers. Exports to the U.S. comprised 12 to 20 percent of exports from Japan, Malaysia, Germany, Korea, and India. World exports of {HS} 3818.00 are missing data from Taiwan and Vietnam, who represent 70 percent of non-China global wafer capacity.

The Petitioner argues that {BloombergNEF} prices are not based on actual sales, suggests data is skewed and unusable because it includes Chinese-produced wafers. The Petitioner's claims are baseless, as tier two benchmarks do not need to be based on actual sales, and often are not, and provides no other evidence the data is skewed. The {CIT} has reaffirmed that product-specific industry publications possess better comparability than {UN Comtrade} data that encompasses a broader range of productions which may not be specific enough to serve as an accurate benchmark. The {CIT} has repeatedly struck down reliance on basket-category UN Comtrade data because such data may be "vastly overinclusive." {BloombergNEF} prices are "specific to silicon wafers," representing the best information available to estimate silicon wafer world market prices. Alternatively, monthly export data from Norway is viable and representative of solar wafers as tier two benchmark. Norway is a solar wafer producer, does not have solar cell production, exports are primarily to countries with solar cell production, and are of sufficient quantities.

Commerce's Position: For the final determination, we find that the Thailand market for silicon wafers is distorted and that using a tier one benchmark under 19 CFR 351.511(a)(2)(i) is not appropriate. The provision of silicon wafers for LTAR by GOC authorities confers a benefit

within the meaning of section 771(5)(E)(iv) of the Act to the extent these inputs are provided for LTAR when measured against appropriate benchmarks. Section 351.511(a)(2) of Commerce's regulations sets forth the basis for identifying benchmarks to determine whether a government provides a good or service for LTAR. These potential benchmarks are listed in hierarchical order by preference: (1) a market-determined price from actual transactions within the country under investigation (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) assessment of whether the government price is consistent with market principles (tier three). This hierarchy reflects a logical preference for achieving the objectives of the statute. In addition, as provided in 19 CFR 351.511(a)(2)(i), we take into consideration product similarity, quantity sold, imported, or auctioned, and other factors affecting comparability to identify appropriate benchmarks.

The most direct means of determining whether a government has provided a good or service for LTAR is through a comparison with private transactions for a comparable good or service in the investigated country (*i.e.*, a tier one benchmark). We base this on an observed market price for a good, in the country under investigation, from a private supplier located either within the country or outside the country (*i.e.*, imports). As provided in our regulations, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation. This is because such prices generally would be expected to reflect more closely the commercial environment of the purchaser under investigation.[196]

Based on the hierarchy, we must first consider whether market-determined prices from actual transactions are available on the record to determine whether GOC authorities provided silicon wafers to TTL for LTAR. Notwithstanding the regulatory preference for the use of prices stemming from actual transactions in the country, where Commerce finds that a government provides the majority or, in certain circumstances, a substantial portion of the market for a good or service, it may consider prices for such goods and services in the country to be significantly distorted and not an appropriate basis of comparison to determine whether there is a benefit. When a government's role as provider of the good or service is so predominant, the government in effect determines the prices for private sellers of the same or similar goods or services. As a result, comparing the government prices to private prices would amount to comparing the financial contribution to itself.[197]

Further, section 771(5)(E)(iv) of the Act states that a determination of the adequacy of remuneration for the provision of a good or service "shall be determined in relation to prevailing market conditions for the good or service being provided or the goods being purchased in the country which is subject to the investigation or review." Here, we are examining the provision of a good from China based on the prevailing market conditions within Thailand for this China-sourced good. Commerce's regulations state that Commerce "will normally seek to measure the adequacy of remuneration by comparing the government price to a market-determined price for the good or service resulting from actual transactions in the country in question."[198] This "tier one" benchmark price could include prices stemming from actual transactions between parties or imports. However, in this transnational LTAR subsidy analysis, the government price being

[196] *See 1998 Final Preamble*, 63 FR at 65348, 65377.
[197] *Id.*
[198] *See* 19 CFR 351.511(a)(2)(i).

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analyzed by Commerce is a Chinese-authority price that is alleged to be providing a subsidy to producers of subject merchandise in Thailand. Although the financial contribution is from a Chinese authority, and the price is set by a Chinese authority, we determine that the "country in question" for purposes of the regulations cited above is Thailand.

The *1998 Final Preamble* states that, for tier one, Commerce normally does not intend to adjust prices within the country in question (*i.e.*, Thailand) to account for government distortion in the market, unless the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market.[199] The statute and regulations do not restrict this analysis of the government provider in the country in question only to the government of the country subject to the investigation. Such a restriction would be inappropriate when Commerce is investigating a third country government's provision of an input product at a price that may represent less than adequate remuneration. Thus, in these circumstances we are examining whether the presence of the Chinese government, through Chinese suppliers of the input that we determine to be authorities under section 771(5)(B) of the Act, could distort the domestic market of Thailand.

To adopt a different interpretation of the statutory and regulatory language in this instance would require Commerce, essentially, to determine the adequacy of remuneration by comparing a government price to itself. With respect to our analysis of the silicon wafers market in Thailand, the RTG reported that Thailand has no domestic production of silicon wafers.[200] Accordingly, imports accounted for 100 percent of Thailand's domestic market for the input during the POI. Further, data submitted by the petitioner and RTG show that Thailand's imports from China accounted for over 98 percent of Thailand's silicon wafer imports by quantity during the POI.[201] The petitioner also provided evidence that GOC-controlled companies account for more than 71 percent of silicon wafer production in China.[202] As such, consistent with 19 CFR 351.511, we determine that the goods from the government provider (China) constitute a majority of the Thai market for the good subject to this LTAR allegation. Consistent with the *1998 Final Preamble*, where it is reasonable to conclude that actual transaction prices, including imports, in the country in question are significantly distorted as a result of the government's involvement, we will resort to the next alternative in the benchmark hierarchy, which are "tier two" world market prices pursuant to 19 CFR 351.511(a)(2)(ii).[203]

Consistent with the *1998 Final Preamble*, because we conclude that actual transaction prices are significantly distorted in Thailand, we will resort to the next alternative in the benchmark hierarchy, which is tier two (world market prices). The petitioner and TTL submitted potential tier two benchmarks to measure the adequacy of remuneration from the GOC's provision of

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[199] *See 1998 Final Preamble*, 63 FR at 65377.

[200] *See* RTG's Letter, "Response of the Royal Thai Government to the New Subsidy Allegation Supplemental Questionnaire," dated October 8, 2024 (RTG's Wafers QR) at 1.

[201] *See* Petitioner's Letter, "Petitioner's Comments on TTL's New Subsidy Allegation Questionnaire Response," dated October 23, 2024 (Petitioner's Wafer Benchmark Submission), at Exhibit 10; *see also* RTG's Wafers QR at Exhibit RTG NSA-1.

[202] *See* Petitioner's Wafers NSA at 6-12 and Exhibits NSA-7 - NSA-19. The 71 percent figure does not include production of silicon wafers by Trina Solar Co., Ltd. and Trina Solar (Suqian) Silicon Materials Co., Ltd., which Commerce finds to be "authorities" within the meaning of section 771(5)(B) of the Act. *See* Comment 13 below. This indicates that the actual share of production of silicon wafers in China by GOC-controlled producers is higher than 71 percent.

[203] *See 1998 Final Preamble*, 63 FR at 65377.

silicon wafers during the POI pursuant to 19 CFR 351.511(a)(2)(ii). Specifically, the petitioner submitted world export prices from UN Comtrade for silicon wafers under HS code 3818.00.[204] TTL, meanwhile, submitted BloombergNEF's Solar Spot Price Index for monocrystalline silicon wafers sold on the global market.[205]

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 BloombergNEF data submitted by TTL, the description of the BloombergNEF Solar Spot Price Index on the record indicates that the prices include Chinese-origin silicon wafers, including prices of silicon wafers in China.[206] Specifically, the BloombergNEF description states:

> Prices collected in Chinese yuan are converted to US dollars with 13% Chinese value-added tax (VAT) deducted, and then included in the 'average all', 'highest quote' and 'lowest quote' results. The reason for subtracting the Chinese VAT is that this is refunded when Chinese products are exported and it is also likely to be deducted by Chinese project developers when a project is built in China.[207]

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 silicon wafer production in China.[208] Moreover, Commerce has previously found that the Chinese market for silicon wafers is distorted based on the level of government participation in the market.[209] Because the Chinese market for silicon wafers is majority-controlled by GOC authorities, we also determine that the silicon wafer market in China is distorted.

It is Commerce's practice to remove distorted prices from benchmarks.[210] However, there is no mechanism for Commerce to remove these Chinese prices from the BloombergNEF data. Further, as Commerce is determining that the silicon wafer markets in Thailand, Cambodia, and Vietnam are also distorted, there is also no mechanism for Commerce to remove prices of silicon wafers originating in countries other than China and sold in these markets.[211] Consequently,

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[204] *See* Petitioner's Wafer Benchmark Submission at 6 and Exhibit 9.
[205] *See* TTL's Letter, "Question 3 of New Subsidy Allegation Questionnaire," dated October 11, 2024 (TTL's Wafer Benchmark Submission), at 1-2 and Exhibit 2.
[206] *See* TTL's Wafer Benchmark Submission at Exhibit 2.
[207] *Id.*
[208] *See* Post-Preliminary Analysis at 8 (citing Petitioner's Wafers NSA at 6-12 and exhibits cited therein).
[209] *See, e.g.*, *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review, and Rescission in Part; 2021,* 88 FR 88575 (December 22, 2023) (*Solar China CVD 2021 Prelim*), and accompanying PDM at 29, unchanged at *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2021*, 89 FR 51497 (June 18, 2024) (*Solar China CVD 2021 Final*).
[210] *See*, *e.g.*, *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2016*, 84 FR 36051 (July 26, 2019) (*Rebar from Türkiye*), and accompanying IDM at Comment 1.
[211] *See* Memoranda, "Issues and Decision Memorandum for the Final Affirmative Determination of the

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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 of Chinese-origin silicon wafer prices in the BloombergNEF data, and evidence that the Chinese market for this good is distorted), we determine that the BloombergNEF Solar Spot Price Index does not serve as a usable tier two benchmark source. The record evidence cited above demonstrates that these prices reflect the distortions of the GOC's presence. Further, the nature of the BloombergNEF data is such that we are unable to disaggregate individual prices by country of origin.[212] 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.[213]

As noted above, the petitioner submitted 2023 world export prices from UN Comtrade for silicon wafers under HS code 3818.00.[214] On March 6, 2025, we placed on the record UN Comtrade 2023 world export data disaggregated by importing country for this HS code.[215] No other party submitted potential tier two benchmarks for silicon wafers. We determine that the UN Comtrade export prices for HS code 3818.00, disaggregated by country, serve as usable tier two benchmarks. No party in this proceeding has disputed that the UN Comtrade data for HS code 3818.00 includes silicon wafers. For example, in response to our request for the total volume and value of Thailand's imports of silicon wafers, the RTG reported data for HS code 3818.00.[216] Although TTL and Canadian Solar argue that world exports of {HS} 3818.00 are not specific to "solar wafers," there is no statutory or regulatory requirement that benchmarks be identical.[217] Accordingly, we find that the UN Comtrade world export prices for silicon wafers under HS code 3818.00 disaggregated by country are the only usable tier two benchmarks on the record.[218]

With respect to the UN Comtrade data for HS code 3818.00, TTL argues that "many of the world exports are from countries with no solar wafer production."[219] As support, TTL cites the *Solar Photovoltaics Supply Chain Deep Dive Assessment* from the U.S. Department of Energy (USDOE Report) submitted by the petitioner.[220] The USDOE Report identifies the specific countries that produce photovoltaic (PV) silicon wafers for the production of solar cells.[221] In this instance, as noted above, based on the case-specific record evidence which allows us to

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Countervailing Duty Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the Socialist Republic of Vietnam," and "Issues and Decision Memorandum for the Final Affirmative Determination of the Countervailing Duty Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the Kingdom of Cambodia," dated concurrently with this memorandum (Vietnam Solar Cells IDM and Cambodia Solar Cells IDM).

[212] *See* TTL's Wafer Benchmark Submission at Exhibit 2.

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

[214] *See* Petitioner's Wafer Benchmark Submission at 6 and Exhibit 9.

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

[216] *See* RTG's Wafers QR at 1 and Exhibit RTG NSA-1.

[217] *See* TTL's Case Brief at 48 and Canadian Solar's Rebuttal Brief at 10. *See also*, *e.g.*, *Archer Daniels Midland Co. v. United States*, 968 F. Supp. 2d 1269, 1278 (CIT 2014) (*Archer Daniels Midland*) (stating that Commerce "is required only to select benchmarks that are comparable, not identical").

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

[219] *See* TTL's Case Brief at 46.

[220] *Id.* (citing Petitioner's Wafers NSA at Exhibit 9).

[221] *See* Petitioner's Wafers NSA at Exhibit 9, pp. 29 and 33.

reliably remove certain countries identified above, we agree with TTL and find it appropriate to exclude those countries with no production of PV silicon wafers from the benchmarks. Accordingly, we have removed countries not identified as PV silicon wafer producers in the USDOE Report from the tier two UN Comtrade benchmarks for HS code 3818.00.[222] We have also excluded exports from China from the tier two benchmark because, as explained above, in the context of this transnational subsidy, China is the provider of the subsidy at issue. We have excluded exports to these distorted markets, which is consistent with our practice.[223] We will continue to examine cross-border subsidies on a case-by-case basis, applying our benchmarking methodology based on the facts presented in each investigation. Finally, consistent with other proceedings, we are also removing unspecified categories such as "Areas, nes," "Free Zones," and "World" from the benchmarks.[224]

In their briefs, TTL and Canadian Solar raise additional arguments regarding the comparability of the UN Comtrade export data in HS code 3818.00 to prices for "solar wafers." For example, TTL argues that "{HS} 3818.00 is a broad basket category that includes non-solar wafer products and products with no silicon content."[225] Canadian Solar argues that the UN Comtrade data "include categories of merchandise that are entirely distinct from the solar wafers used in the production of {solar cells}."[226] As an initial matter, the legal requirements governing Commerce's selection of benchmarks do not require perfection.[227] As we have explained in other proceedings, a benchmark, by nature, is not an exact match to the subsidy being evaluated.[228] Rather, we look to whether a benchmark is comparable based on the record and, thus, is usable.[229] However, as explained in this section, Commerce has made certain adjustments to the benchmark to account for comparability, to the extent possible in light of the record evidence before us.

Further, TTL and Canadian Solar did not cite any record evidence that would allow us to adjust the benchmark prices based on their claims of differences between the prices in HS code 3818.00 and prices specific to PV silicon wafers for the production of solar cells. By contrast, in *Drawn Stainless Steel Sinks from China INV*, Commerce adjusted benchmark prices for stainless steel

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

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

[224] *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.

[225] See TTL's Case Brief at 10.

[226] *See* Canadian Solar's Rebuttal Brief at 7-8.

[227] *See*, *e.g.*, *Certain Softwood Lumber Products From Canada: Final Results of the Countervailing Duty Administrative Review, 2017–2018*, 85 FR 77163 (December 1, 2020) (*Softwood Lumber From Canada 2017-2018 AR*), and accompanying IDM at Comment 15.

[228] *Id.*

[229] *Id.*

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coils to account for differences between two specific grades of stainless steel in the benchmarks.[230] Commerce determined that an adjustment was appropriate based on record evidence of specific differences between the chemical and physical properties of the two grades of stainless steel, as well as record evidence of the magnitude of the price differential that resulted from these differences between the grades.[231] On this basis, Commerce adjusted downward the benchmark prices for one of the grades of stainless steel to account for "factors affecting comparability" between the respondent's purchases and the benchmarks.[232] Similarly, in this case, we have accounted for factors affecting comparability by removing countries that have no production of PV silicon wafers. In this instance, however, TTL and Canadian Solar cited no specific evidence or methodology that would allow us to adjust the benchmark prices based on their arguments regarding the comparability of the benchmarks to TTL's reported purchase prices for silicon wafers. Accordingly, we have no basis to adjust the benchmark prices based on TTL's and Canadian Solar's arguments.

Additionally, TTL and Canadian Solar argue that the UN Comtrade data are missing exports from certain countries that produce PV silicon wafers for solar cell production.[233] As explained above, we have removed countries not identified as PV silicon wafer producers from the tier two UN Comtrade benchmarks for HS code 3818.00. However, we disagree with TTL's and Canadian Solar's arguments that the absence of any specific countries from the UN Comtrade prices renders the entire source unusable as a benchmark. Commerce must select an appropriate tier two benchmark based on information available on the record. As we have acknowledged, if a dataset is otherwise usable as a benchmark, a lack of specific data points is not sufficient grounds to exclude the entire dataset as a benchmark source.[234]

Further, TTL argues that if Commerce uses world exports under HS code 3818.00 as tier two benchmarks, then it should only use export data from Norway.[235] Specifically, TTL argues that "Norway is a solar wafer producer, its exports are primarily to countries with solar cell production, and its monthly export prices do not show significant monthly variance."[236] According to 19 CFR 351.511(a)(2)(ii), Commerce seeks "to measure the adequacy of remuneration by comparing the government price to a world market price where it is reasonable to conclude that such price would be available to purchasers in the country in question." The regulation outlines that where there is more than one commercially available world market price, Commerce will average the prices to the extent practicable.[237] Commerce's practice is therefore to rely on all usable data provided to construct the most robust benchmark possible. Here, we find that TTL has not provided an adequate basis to remove all other countries that produce PV

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[230] *See Drawn Stainless Steel Sinks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 13017 (February 26, 2013) (*Drawn Stainless Steel Sinks from China INV*), and accompanying IDM at Comment 12.
[231] *Id.*
[232] *Id.* (citing 19 CFR 351.511(a)(2)(ii)).
[233] *See* TTL's Case Brief at 10; *see also* Canadian Solar's Rebuttal Brief at 7-8.
[234] *See*, *e.g.*, *Multilayered Wood Flooring From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2020*, 88 FR 34828 (May 31, 2023) (*Multilayered Wood Flooring from China*), and accompanying IDM at Comment 6.
[235] *See* TTL's Case Brief at 10 and 43-44.
[236] *Id.* at 10.
[237] *See* 19 CFR 351.511(a)(2)(ii).

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silicon wafers for solar cell production from the UN Comtrade benchmarks and rely solely on Norway. First, citing the March 6 UN Comtrade Memorandum and the USDOE Report, TTL argues that "Norway's exports of {HS} 3818.00 are primarily to countries with solar cell production including its top three non-China trade partners, Germany, Malaysia, and Philippines."[238] However, TTL did not cite evidence that this information distinguishes Norway from all other producers of PV silicon wafers identified in the USDOE Report or supports the removal of all other countries that produce PV silicon wafers from the tier two benchmark. Further, our practice is to derive a tier two benchmark that includes as many data points as possible based on available record information which is more reflective of a world market price.[239] TTL's argument that Commerce should only include Norway because "its prices do not show significant monthly variance" runs counter to this practice. We average reliable benchmarks to arrive at a world market price, which is the focus of 19 CFR 351.511(a)(2)(ii).[240] If we limited our selection of a benchmark only to a country with prices that "do not show significant monthly variance," we would arbitrarily exclude other reliable data on the record.[241] Accordingly, we find no basis to exclude all countries that produce PV silicon wafers from the UN Comtrade benchmarks except Norway, as TTL proposed.

Under 19 CFR 351.511(a)(2)(iv), when calculating a tier-two world market price, "Commerce will adjust the comparison price to reflect the price that a firm actually paid or would pay if it imported the product. This adjustment will include delivery charges and import duties." Thus, we have added ocean freight to the monthly weighted-average benchmark prices for silicon wafers. TTL submitted monthly 2023 ocean freight rates on a per-kilogram basis for shipments from various world ports to Laem Chabang Port in Thailand, sourced from Xeneta.[242] Although the petitioner submitted ocean freight rates from Descartes, these rates are from 2020 (inflated to 2023), and they are on a per-nautical mile basis, not a per-kilogram basis.[243] No other party submitted potential ocean freight benchmarks for consideration. Accordingly, because the rates submitted by TTL are on a per-kilogram basis and contemporaneous with the POI, we have added these rates to the benchmark. The RTG reported that Thailand's import duty on silicon wafers during the POI was zero; therefore, we have made no adjustment to the benchmark price for import duties.[244] However, we have added value-added taxes (VAT) at the rate of seven percent (as reported by the RTG) and monthly inland freight expenses reported by TTL to the benchmark prices.[245] The VAT and inland freight represent expenses that an importer in

[238] *Id.* at 43 (citing March 6 UN Comtrade Memorandum and Petitioner's Wafers NSA at Exhibit 9).
[239] *See*, *e.g.*, *Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 80 FR 51775 (August 26, 2015), and accompanying IDM at Comment 7 ("To derive the most robust … benchmark possible, we have sought to include as many data points as possible.").
[240] The CIT has recognized that "when using a tier two benchmark, Commerce must average all commercially available world market prices to arrive at the benchmark figure." *See Essar Steel Ltd. v. United States*, 721 F. Supp. 2d 1285, 1293 (CIT 2010).
[241] *See*, *e.g.*, *Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2011*, 79 FR 108 (January 2, 2014), and accompanying IDM at Comment 13.E.
[242] *See* TTL's Wafer Benchmark Submission at Exhibit 3(a).
[243] *See* Petitioner's Letter, "Benchmark Submission Part 2," dated September 6, 2024, at Exhibit 13(a).
[244] *See* RTG's Wafers QR at 3.
[245] *Id.* at 3; *see also* TTL's Letter, "New Subsidy Allegation Questionnaire on Solar Glass and Silver Paste," dated November 8, 2024, at NSA3-7 and Exhibit WQR-3-rev.

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Thailand would pay if it imported silicon wafers.[246] *See* the TTL Final Calculation Memorandum for the benefit calculation for this program.

Comment 8: Whether Commerce Should Use Tier Two Benchmarks to Measure the Benefit Provided by the Cross-Border Provision of Chinese Solar Glass

Petitioner's Case Brief:

The following is a verbatim summary of the arguments submitted by the Petitioner (internal citations omitted). For further details, *see* the Petitioner's Case Brief at 9-11.

> Yes. Because the Thai market for solar glass is distorted, {Commerce} should use Petitioner's world export data from UN Comtrade as a tier two benchmark to value the benefit conferred to TTL by the provision of solar glass for LTAR. The record demonstrates that imports of solar glass from China accounts for between 80% to 100% percent of imports into Thailand by volume. Furthermore, record information demonstrates that solar glass produced by Chinese government authorities is being imported into Thailand. As with silver paste, the domination of the Thai market by imports of Chinese solar glass make tier one prices in the Thai market, whether from China or third countries, unsuitable for use as a benchmark. Because a tier one benchmark is unsuitable to use here, {Commerce} must resort to tier two benchmark data. The record contains two tier-two benchmarks: (1) Petitioner's monthly export data for solar glass exported under HS 7007.19 from UN Comtrade and (2) TTL's solar glass pricing from PVinsights. Petitioners' benchmark is reliable and has been used by {Commerce} in prior reviews 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.

TTL's Rebuttal Brief:

The following is a verbatim summary of the arguments submitted by TTL (internal citations omitted). For further details, *see* TTL's Rebuttal Brief at 21-33.

> Commerce preliminarily determined that certain of TTL's purchases of imported solar glass serve as the tier-one benchmarks pursuant to 19 CFR 351.511(a)(2)(i). TTL's purchases continue to serve as the most comparable tier-one benchmark available. The Petitioner alleges that the Thai solar glass market was distorted by Chinese imports. As explained in the legal framework section for the wafer comment, Commerce has no reason to disregard these tier one benchmarks. Petitioner's argument relies solely on Thai imports of {HS} 7007.19, an overly broad basket category that includes safety and tempered glass. Commerce correctly determined the solar glass market in Thailand was not distorted. Commerce's determination is consistent with past solar proceedings where Commerce rejected

[246] *See* 19 CFR 351.511(a)(2)(iv); *see also*, *e.g.*, *Beijing Tianhai Indus. Co. v. United States* (*Beijing Tianhai*), 52 F. Supp. 3d 1351, 1373-75 (CIT 2015).

{HS} 7007.19 for valuing solar glass as too broad, noting, "{HS} 7007.19 is s a basket category for tempered glass," and "includes prices for **a broader array of tempered products**." TTL provided extensive evidence that {HS} 7007.19 contains non-similar products including glass for stoves, refrigerators, construction equipment and iPADs and is not an accurate representation of Thai solar glass market.

Petitioner's suggested resort tier-two world exports of {HS} 7007.19 ignores comparability concerns as this category is overly broad and includes safety and tempered glass for washing machines, refrigerators, construction equipment, cell phone screens, etc. Moreover, 65 percent of quantities are estimated, including 100 percent of exports for top exporters like Malaysia, with no explanation of methodology. UN Comtrade export data is incomplete, missing exports from Vietnam, Taiwan, and others, representing over 12 percent of non-China exports. The near universal prevalence of missing quantity or data primarily reported in square meters with no conversion to kilograms, renders the export data unreliable and useless.

Petitioner argues that tier-two PV Insights prices cannot be used because they include Chinese-made solar glass and does not use actual purchase prices. These claims are unsupported. PV Insights prices are similar to prices for non-Chinese solar glass from TTL's unaffiliated suppliers. The Court has reaffirmed that product-specific industry publications possess better comparability than Comtrade data that encompasses a broader range of products. In the case cited by Petitioner, which the Court overturned, Commerce ultimately relied on PV Insights, concluding that "PV Insights data is superior to the Comtrade data because it is specific to the solar glass." Commerce relied on PV Insights over trade data in several past solar proceedings and affirmed by the {CIT}. These same facts exist here and Commerce has no reason to rely on broad trade data when there is reliable tier one benchmarks of TTL's own purchases as well as tier two PV Insights prices specific to solar glass.

Commerce's Position: For the final determination, we find that the Thailand market for solar glass is distorted and that using a tier one benchmark under 19 CFR 351.511(a)(2)(i) is not appropriate. In paragraphs 1-4 of Comment 8 above, we describe the statutory and regulatory framework for our determination that the GOC's cross-border provision of Chinese silicon wafers for LTAR conferred a countervailable benefit to TTL. The statutory and regulatory framework for our analysis of the GOC's cross-border provision of Chinese solar glass for LTAR is the same. Accordingly, in the sections below, we address the facts on the record for solar glass and our analysis under this statutory and regulatory framework. For additional details, *see* Comment 8 above.

With respect to our analysis of the solar glass market in Thailand, the RTG reported that Thailand has no domestic production of solar glass.[247] Accordingly, imports accounted for 100

[247] *See* RTG's Letter, "Response of the Royal Thai Government to the New Subsidy Allegation Supplemental

percent of Thailand's domestic market for the input during the POI. Further, import data submitted by the petitioner show that Thailand's imports from China accounted for approximately 79.9 percent of Thailand's solar glass imports by quantity during the POI.[248] The petitioner also provided evidence that GOC-controlled companies account for at least 71 percent of solar glass production in China.[249] As such, consistent with 19 CFR 351.511, we determine that the goods from the government provider (China) constitute a majority (*i.e.*, at least 56.7 percent) of the Thai market for the good subject to this LTAR allegation. Consistent with the *1998 Final Preamble*, where it is reasonable to conclude that actual transaction prices, including imports, in the country in question are significantly distorted as a result of the government's involvement, we will resort to the next alternative in the benchmark hierarchy, which are "tier two" world market prices pursuant to 19 CFR 351.511(a)(2)(ii).[250]

Consistent with the *1998 Final Preamble*, because we conclude that actual transaction prices are significantly distorted in Thailand, we will resort to the next alternative in the benchmark hierarchy, which is tier two (world market prices). The petitioner and TTL 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 for solar glass under HS code 7007.19.[251] TTL, meanwhile, submitted 2023 monthly solar glass pricing data from PV Insights.[252]

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 TTL, we are unable to disaggregate individual prices by country of origin.[253]

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.[254] Moreover, Commerce has previously found that the Chinese market for solar glass is

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Questionnaire Regarding Silver Paste and Solar Glass for Less Than Adequate Remuneration," dated November 8, 2024 (RTG's Glass/Paste QR), at 4.

[248] *See* Petitioner's Glass/Paste NSA at Exhibit NSA2-24 (Thai import data for HS code 7007.19 from Global Trade Atlas). As explained below, we determine that UN Comtrade world export prices under this HS code serve as reliable tier two benchmarks to measure the benefit from TTL's purchases of solar glass from GOC authorities. The RTG also submitted Thai import data for HS code 7005.1090, which covers float glass and other products. *See* RTG's Glass/Paste QR at 1 and Exhibit RTG NSA-Silver-Paste/Solar-Glass-1. However, because we have not used UN Comtrade world export prices for this HS code as tier two benchmarks, we have used the petitioner's data for HS code 7007.19 in our analysis of the GOC's share of Thailand's solar glass imports.

[249] *See* Petitioner's Glass/Paste NSA at 13-19 and exhibits cited therein.

[250] *See 1998 Final Preamble*, 63 FR at 65377.

[251] *See* 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 Exhibit NFI-3.

[252] *See* TTL's Letter, "New Subsidy Allegation Questionnaire on Solar Glass and Silver Paste," dated November 8, 2024 (TTL's Glass/Paste QR), at NSA3-6 – NSA3-7 and Exhibit NSA3-3.2.

[253] *Id.* The details of this price source are business proprietary information. We have addressed these details in the TTL Final Calculation Memorandum.

[254] *See* Post-Preliminary Analysis at 8 (citing Petitioner's Glass/Paste NSA at 13-19 and exhibits cited therein).

distorted based on the level of government participation in the market.[255] 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.[256] In the context of this transnational subsidy, China is the provider of the subsidy at issue. However, with respect to the PV Insights prices, we find no mechanism for Commerce to remove solar glass prices from the subsidy provider, China, or prices of solar glass in specific markets that Commerce is finding to be distorted (*i.e.*, solar glass markets in Thailand, Cambodia, Vietnam, and Malaysia).[257] 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), we determine that the PV Insights source does not serve as a usable tier two benchmark. 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.[258] 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.[259] As noted above, the petitioner submitted 2023 world export prices from UN Comtrade for solar glass under HS code 7007.19.[260] On March 6, 2025, we placed on the record UN Comtrade 2023 world export data disaggregated by importing country for this HS code.[261] No other party submitted other potential tier two benchmarks for solar glass. We determine that the UN Comtrade export prices for HS code 7007.19, disaggregated by country, serve as usable tier 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.[262] Although TTL argues that HS 7007.19 "contains non-similar products and is not an accurate representation of the Thai solar glass market," there is no statutory or regulatory requirement that benchmarks be identical.[263] Accordingly, we find that the UN Comtrade world export prices for solar glass under HS code 7007.19 disaggregated by country are the only usable tier two benchmarks on the record.[264] We have excluded exports

[255] *See, e.g.*, *Solar China CVD 2021 Prelim* and accompanying PDM at 28-29, unchanged in *Solar China CVD 2021 Final*.
[256] *See*, *e.g.*, *Rebar from Türkiye* IDM at Comment 1.
[257] *See* Vietnam Solar Cells IDM, Cambodia Solar Cells IDM, and Memorandum, "Issues and Decision Memorandum for the Final Affirmative Determination of the Countervailing Duty Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from Malaysia," dated concurrently with this memorandum (Malaysia Solar Cells IDM).
[258] *See* TTL's Glass/Paste QR at NSA3-6 – NSA3-7 and Exhibit NSA3-3.2.
[259] *See 1998 Final Preamble*, 63 FR at 65377; *see also, e.g., Barium Chloride India CVD Inv Final* and accompanying IDM at Comment 3.
[260] *See* Petitioner's Glass/Paste Benchmark Submission at 2 and Exhibit NFI-3.
[261] *See* March 6 UN Comtrade Memorandum at Attachment II.
[262] *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.
[263] *See* TTL's Rebuttal Brief at 23. *See also*, *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").
[264] *See* March 6 UN Comtrade Memorandum at Attachment II.

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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 and from these distorted markets, which is consistent with our practice.[265] Consistent with other proceedings, we are also removing unspecified categories such as "Areas, nes," "Free Zones," and "World" from the benchmarks.[266] Finally, because TTL reported its purchases in kilograms, we have removed countries that did not report their purchases in kilograms from the UN Comtrade benchmarks.[267]

In its rebuttal brief, TTL raises additional arguments regarding the comparability of the UN Comtrade export data in HS code 7007.19 to prices for solar glass. For example, TTL argues that HS code 7007.19 is "an overly broad basket category that includes safety and tempered glass."[268] However, as explained above in Comment 8, the legal requirements governing Commerce's selection of benchmarks do not require perfection.[269] As we have explained in other proceedings, a benchmark, by nature, is not an exact match to the subsidy being evaluated.[270] Further, TTL 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. As explained above in Comment 8, in *Drawn Stainless Steel Sinks from China INV*, 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.[271] In this instance, however, TTL cited no specific evidence or methodology that would allow us to adjust the benchmark prices based on its arguments regarding the comparability of the benchmarks to TTL's reported purchase prices for solar glass. Further, TTL argues that the UN Comtrade data are missing exports from certain countries that produce solar glass.[272] However, we disagree with TTL's argument that the absence of any specific countries from the UN Comtrade prices renders the entire source unusable as a benchmark. Commerce must select an appropriate tier two benchmark based on information available on the record. As we have acknowledged, if a dataset is otherwise usable as a benchmark, a lack of specific data points is not sufficient grounds to exclude the entire dataset as a benchmark source.[273]
Finally, TTL states:

> the near universal prevalence of data missing quantity or with quantities primarily reported in square meters renders the export data unreliable and useless. These

[265] *See* Vietnam Solar Cells IDM and Cambodia Solar Cells IDM. *See also*, *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.").
[266] *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.
[267] *See* TTL's Rebuttal Brief at 27. TTL reported the quantity of its purchases of solar glass in kilograms. *See* TTL's Glass/Paste QR (public version) at Exhibit NSA3-3.1 ("Net Weight (KG)" field).
[268] *See* TTL's Rebuttal Brief at 24.
[269] *See*, *e.g.*, *Softwood Lumber From Canada 2017-2018 AR* IDM at Comment 15.
[270] *Id.*
[271] *See Drawn Stainless Steel Sinks from China INV* IDM at Comment 12.
[272] *See* TTL's Rebuttal Brief at 27.
[273] *See*, *e.g.*, *Multilayered Wood Flooring from China* IDM at Comment 6.

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> export data lack information regarding the thickness of the glass and thus there is no way to convert from meters squared to kilograms.[274]

We acknowledge that data for certain countries in the UN Comtrade data are reported in square meters, which does not allow for a conversion to kilograms.[275] However, as explained above in Comment 8, 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.[276] Therefore, we find that TTL has not provided a basis to find the entire UN Comtrade dataset for HS code 7007.19 unusable. 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.

Under 19 CFR 351.511(a)(2)(iv), when calculating a tier-two world market price, "Commerce will adjust the comparison price to reflect the price that a firm actually paid or would pay if it imported the product. This adjustment will include delivery charges and import duties." Thus, we have added ocean freight to the monthly weighted-average benchmark prices for solar glass. Parties did not submit separate ocean freight benchmarks for silicon wafers and solar glass. Accordingly, for the reasons explained above in Comment 8, we have used the monthly 2023 ocean freight rates from Xeneta submitted by TTL as benchmarks.[277] The RTG reported that Thailand's import duty on solar glass during the POI was zero; therefore, we have made no adjustment to the benchmark price for import duties.[278] However, we have added VAT at the rate of seven percent (as reported by the RTG) and monthly inland freight expenses reported by TTL to the benchmark prices.[279] The VAT and inland freight represent expenses that an importer in Thailand would pay if it imported solar glass.[280] *See* the TTL Final Calculation Memorandum for the benefit calculation for this program.

Comment 9: Whether Commerce Should Use Tier Two Benchmarks to Measure the Benefit Provided by the Cross-Border Provision of Chinese Silver Paste

Petitioner's Case Brief:

The following is a verbatim summary of the arguments submitted by the Petitioner (internal citations omitted). For further details, *see* the Petitioner's Case Brief at 6-9.

> Yes. {Commerce} should use "tier two" benchmark prices using world export data from United Nations Comtrade (UN Comtrade) submitted by Petitioner to measure the benefit conferred to {TTL} by the {GOC's} provision of silver paste for {LTAR}. {Commerce} should not use tier one benchmarks because the Thai silver

[274] *See* TTL's Rebuttal Brief at 27. TTL reported the quantity of its purchases of solar glass in kilograms. *See* TTL's Glass/Paste QR (public version) at Exhibit NSA3-3.1 ("Net Weight (KG)" field).
[275] *See* March 6 UN Comtrade Memorandum at Attachment II.
[276] *Id.*
[277] *See* TTL's Wafer Benchmark Submission at Exhibit 3(a).
[278] *See* RTG's Glass/Paste QR at 7.
[279] *Id.*; *see also* TTL's Glass/Paste QR at Exhibit NSA3-4.
[280] *See* 19 CFR 351.511(a)(2)(iv); *see also*, *e.g.*, *Beijing Tianhai*, 52 F. Supp. 3d at 1373-75 (CIT 2015).

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paste market is distorted by Chinese imports. More specifically, the record indicates that over 98% of imports of silver paste into Thailand come from China. Further, {Commerce} has determined that Chinese silver paste producers are state-owned or controlled, and are providing the Thai market with silver paste provided at {LTAR}. This domination of the Thai market by Chinese producers has created a distortion and renders the prices in this market, whether they come from China or third countries, unsuitable as a benchmark.

TTL's Rebuttal Brief:

The following is a verbatim summary of the arguments submitted by the Petitioner (internal citations omitted). For further details, *see* TTL's Rebuttal Brief at 15-21.

Commerce preliminarily determined that certain of TTL's purchases of imported silver paste serve as the most comparable tier-one benchmarks available on the record pursuant to 19 CFR 351.511(a)(2)(i). TTL's purchases of imported silver paste are in sufficient monthly quantities and continue to serve as the most comparable and viable tier-one benchmark and should be used in the Final Determination. The Petitioner alleges that the Thai silver paste market was distorted. As explained in the legal framework section for the wafer comment, Commerce has no reason to disregard these tier one benchmarks. However, the Petitioner's argument relies on Thai imports of {HS} 7115.90. Commerce has correctly determined this category is not representative of silver paste, noting it "includes "Other articles of precious metal or of metal clad with precious metal: other." Commerce's determination is consistent the recent administrative reviews of solar cells from China where it similarly rejected {HS} 7115.90 for valuing silver paste because it "is a broad {HS} category that covers gold which is approximately 80 times more expensive than silver."

TTL has provided extensive evidence that {HS} 7115.90 contains non-similar products and is not an accurate representation of the Thai silver paste market. {HS} 7115.90 category falls under the sub-chapter of jewelry, goldsmiths' and silversmiths' wares and other articles. Bill of lading data and customs rulings show that {HS} 7115.90 contains dissimilar products including laboratory equipment parts, platinum plate, platinum crucible, gold ear studs, gold rivet, and products of other precious metals including rhodium, palladium, iridium, and osmium. TTL's own purchases of silver paste also disprove Petitioner's unsupported claim that the Thai market is distorted.

The Petitioner has provided no other evidence that the Thai silver paste market is distorted, because it is not. Commerce has no reason to resort to tier two benchmarks. Even so, {HS} 7115.90 contains highly dissimilar products including products that have platinum, gold, and other precious metals. When selecting tier two benchmarks, Commerce's practice is to rely on data reflecting the narrowest category of products encompassing the input product. {HS} 7115.90 is not a narrow category, but rather broad and entirely dissimilar category, containing

articles made of gold and platinum. Gold and platinum as up to 100 times the price of silver; these higher prices would be reflected in products that include significant gold and platinum content. World exports of {HS} 7115.90 contain anomalies where Pakistan reported $17.9 million in value but only 0.7 kilograms and export prices ranging from $140 to $22,600 per kilogram.

Alternatively, the Petitioner argues that Commerce should average Thai imports of {HS} 7115.90 with TTL's silver paste imports. This is wholly inaccurate since {HS} 7115.90 contains highly dissimilar products, as Commerce correctly determined.

Commerce's Position: Consistent with the Post-Preliminary Analysis,[281] we find that TTL's purchases of imported silver paste serve as usable "tier one" benchmarks to measure the adequacy of remuneration for the GOC's provision of silver paste during the POI. Specifically, for the reasons explained below, we determine that the silver paste market in Thailand was not distorted by the GOC's involvement during the POI. On this basis, we determine that Thai domestic prices on the record, specifically the prices for TTL's imported silver paste, are usable benchmarks pursuant to 19 CFR 351.511(a)(2)(i).

Section 351.511(a)(2) of Commerce's regulations sets forth the basis for identifying benchmarks to determine whether a government provides a good or service for LTAR. These potential benchmarks are listed in hierarchical order by preference: (1) a market-determined price from actual transactions within the country under investigation (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) assessment of whether the government price is consistent with market principles (tier three). Based on the hierarchy, we must first consider whether market-determined prices from actual transactions within the country under investigation are available on the record to determine whether the GOC provided silver paste for LTAR. Notwithstanding the regulatory preference for the use of prices stemming from actual transactions in the country, where Commerce finds that the government provider constitutes the majority or, in certain circumstances, a substantial portion of the market for a good or service, it may consider prices for such goods and services in the country to be significantly distorted and not an appropriate basis of comparison to determine whether there is a benefit.[282] When the government's role as provider of the good or service is so predominant, the government in effect determines the prices for private sellers of the same or similar goods or services. As a result, comparing the government prices to private prices would amount to comparing the financial contribution to itself.[283]

The *1998 Final Preamble* states that Commerce will not use tier one benchmark prices, such as prices from private parties, in instances where it is reasonable to conclude that these prices are significantly distorted as a result of the government's involvement in the market. However, the *1998 Final Preamble* states that we will normally find government distortion to be minimal

[281] *See* Post-Preliminary Analysis at 9-10.
[282] *See 1998 Final Preamble*, 63 FR at 65377; *see also*, *e.g.*, *Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 37012 (July 27, 2009) (*Kitchen Shelving and Racks from China Investigation*), and accompanying IDM at Comment 8.
[283] *See 1998 Final Preamble*, 63 FR at 65377.

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"unless the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market."[284] The *1998 Final Preamble* does not identify a specific market share threshold for the government provider that Commerce will consider to be "substantial" or the "certain circumstances" in which distortion may be found when the government accounts for less than a majority of the market.[285] Additionally, the *1998 Final Preamble* does not identify specific parameters that Commerce will use to determine the "market" for the good or service and a government provider's share of that market.[286] Accordingly, an analysis of whether a government provider accounts for "a substantial portion of the market" pursuant to the *1998 Final Preamble* depends on the specific facts on the record of an individual proceeding.

With respect to distortion of the silver paste market in Thailand, as discussed in the Post-Preliminary Analysis, we preliminarily determined that the Thai market for silver paste is not distorted by the RTG.[287] The RTG reported that Thailand had no domestic production of silver paste during the POI.[288] Given that imports accounted for 100 percent of the Thai market, we have examined the proportion of goods accounted for by a government provider (*i.e.*, China).)

As explained above, the *1998 Final Preamble* does not identify a specific market share threshold for the government provider that Commerce will consider to be "substantial." In *Softwood Lumber from Canada*, Commerce determined that a province's market for standing timber was not distorted based on "data indicating that private-origin standing timber accounts for the majority of the softwood standing timber harvest volume and that {government-provided} standing timber accounts for approximately a quarter of the softwood harvest volume."[289] Evidence on the record provided by the RTG shows that imports of Chinese silver paste accounted for 18.62 percent of Thailand's imports of the good during the POI.[290] In addition, in the Post-Preliminary Analysis, we preliminarily found based on facts available that 70 percent of purchases of silver paste from unknown producers in China by quantity were produced and supplied by GOC "authorities."[291] Multiplying this 70 percent figure by the 18.62 percent of Thailand's imports of silver paste from China during the POI, we determine, based on facts available, that 13.03 percent of the silver paste market in Thailand is accounted for by GOC authorities. As such, we determine that the GOC's share of the Thai silver paste market in this instance does not support a finding of distortion. As a result, we find that the facts of this case,

[284] *Id.*
[285] *Id.*
[286] *Id.*
[287] *See* Post-Preliminary Analysis at 10.
[288] *See* RTG's Glass/Paste QR at 1 and 4.
[289] *See Certain Softwood Lumber Products from Canada: Preliminary Results, Partial Rescission, and Preliminary Intent To Rescind, in Part, the Countervailing Duty Administrative Review, 2020*, 87 FR 6500 (February 4, 2022), and accompanying PDM at 25, unchanged in *Certain Softwood Lumber Products fFrom Canada: Final Results and Final Rescission, in Part, of the Countervailing Duty Administrative Review, 2020*, 87 FR 48455 (August 9, 2022), and accompanying IDM; *see also Certain Softwood Lumber Products from Canada: Preliminary Results, Partial Rescission, and Preliminary Intent To Rescind, in Part, the Countervailing Duty Administrative Review, 2021*, 88 FR 5302 (January 27, 2023), and accompanying PDM at 21, unchanged in *Certain Softwood Lumber Products From Canada: Final Results and Final Rescission, in Part, of the Countervailing Duty Administrative Review; 2021*, 88 FR 50103 (August 1, 2023), and accompanying IDM (collectively, *Softwood Lumber from Canada*).
[290] *See* RTG's Glass/Paste QR at Exhibit RTG NSA-Silver-Paste/Solar-Glass-1.
[291] *See* Post-Preliminary Analysis at 8.

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on the whole, do not align with the *1998 Final Preamble's* examples of where distortion might be present in a market.[292]

Further, we disagree with the petitioner that 98 percent of imports into Thailand are from China. The petitioner's argument rests on data from HS code 7115.90. However, as Commerce has noted in the past, and in the concurrent solar cell investigations in Cambodia, Malaysia, and Vietnam, the 7115.90 HS code contains numerous products other than silver paste.[293] As we noted in the Post-Preliminary Analysis, HS 7115.90 contains "Other articles of precious metal or of metal clad with precious metal: other."[294] Evidence on the record shows that this is a broad HS category that also covers metals such as gold and platinum, which are a multitude of times more expensive than silver.[295] As a result, consistent with the concurrent solar cell investigations in Cambodia, Malaysia, and Vietnam, Commerce finds it appropriate to rely on RTG import data for HS code 7106.92, which demonstrates the share of Chinese imports is much lower than that argued by the petitioner.[296]

Although we do not find that the GOC provider's share of the silver paste market is indicative of distortion in this instance, we emphasize that a distortion analysis pursuant to the *1998 Final Preamble* depends on the facts on the record of each individual proceeding and product market in question.

Given our finding that the Thai market has not been distorted by Chinese imports of silver paste, we continue to find that Thai domestic prices on the record are usable benchmarks pursuant to 19 CFR 351.511(a)(2)(i). We also continue to find, as per the reasons described in the Post-Preliminary Analysis, that TTL's purchases of imported silver paste still serve as the most comparable tier-one benchmarks available on the record pursuant to 19 CFR 351.511(a)(2)(i).[297]

Comment 10: Whether Commerce Should Apply AFA or Otherwise Countervail Short-Term Loans to TTL[298]

Petitioner's Case Brief:

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[292] *See 1998 Final Preamble*, 63 FR at 65377; *see also*, *e.g.*, *Kitchen Shelving and Racks from China Investigation* IDM at 14-15 and Comment 8. In the *Kitchen Shelving and Racks from China Investigation*, Commerce determined that the government held a "substantial" share of the wire rod market based the government's direct ownership or control of at least 47.97 percent of domestic wire rod production. In addition to finding that the government accounted for a substantial share of the market, Commerce cited additional indicators of the government's role in the market, such as a ten percent export tariff, export licensing requirement, and a low share of imports relative to domestic production. Based on the government's "substantial" market share and consideration of these additional factors, Commerce found the domestic market to be distorted and used tier two benchmark prices pursuant to 19 CFR 351.511(a)(2)(ii).

[293] *See* Vietnam Solar Cells IDM; Cambodia Solar Cells IDM; and Malaysia Solar Cells IDM.

[294] *See* Post-Preliminary Analysis at 13.

[295] *See* TTL's Letter, "Rebuttal Benchmark Information for Solar Glass and Silver Paste," dated November 27, 2024, at 11 and Exhibit SILVER-3.

[296] *See* RTG's Glass/Paste QR at Exhibit RTG NSA-Silver-Paste/Solar-Glass-1.

[297] *See* Post-Preliminary Analysis at 13-14.

[298] The petitioner designated portions of the title of this argument as business proprietary information. *See* Petitioner's Case Brief at Table of Contents and 15 for the full title.

The following is a verbatim summary of the arguments submitted by the petitioner (internal citations omitted). For further details, *see* the Petitioner's Case Brief at 15-27.

> {Commerce} should determine that TTL received financing that operates like loans during the {POI}. On multiple occasions, TTL has asserted that it received no financing of any kind, from any sources during the POI. However, the record, including documentation collected at verification, makes clear that TTL received what are effectively interest-free long-term and short-term loans during the POI through its use of supply chain financing. Due to TTL's failure to report these supply chain financing arrangements, the record contains insufficient information for {Commerce} to calculate an accurate benefit rate. {Commerce} should therefore apply an {AFA} policy lending benefit rate in the final determination. In the alternative, {Commerce} should apply facts available and treat these transactions as interest-free short-term loans.

TTL's Rebuttal Brief:

The following is a verbatim summary of the arguments submitted by TTL (internal citations omitted). For further details, *see* TTL's Rebuttal Brief at 49-54.

> Despite the record confirming the absence of any financing alleged to be relate{d} to {BRI} or capacity cooperation projects, the Petitioner posits a theory of countervailability that lacks any foundation in the record, the statute, Commerce's regulation, or Commerce's practice. TTL established and Commerce confirmed that it cannot have received any countervailable benefit attributable to the POI because it had no lending from any source outstanding during the POI. At verification, Commerce confirmed that TTL "had no financing outstanding at any point during the POI." Recognizing the absence of TTL's participation in the program alleged by the Petitioner, Petitioner pivoted to its untimely allegation that TTL received a different form of financing that Commerce should investigate to determine whether there is any countervailable benefit received. TTL demonstrated that the conditions Petitioner described are normal and does not indicate that TTL received any financing benefits.
>
> Nonethless, Commerce thoroughly examined TTL's alternative financing argument at verification. Commerce concluded noting, "we found no evidence" that the entries in TTL's accounting system related to financing to TTL."
>
> Petitioner ignored all of Commerce's observations from its thorough verification on this issue and confuse and misconstrue the information. For example, Petitioner's main argument that TTL benefited from abnormal payment terms was drawn from limited excerpts from transactions representing a miniscule share of TTL's purchases. Similarly, Petitioner ignores and misconstrues information about a supply chain platform, Trina Rongtong, that relates to Trina's operations in China and is not available to Trina's overseas affiliates. At verification, Commerce observed, "we found no evidence that TTL or any of TTL's affiliated companies located outside of

> China were eligible for the financing platform." Petitioner's speculation cannot constitute evidence that TTL did benefit from this platform. The verified evidence and responses provided by TTL demonstrate that it did not. Thus, Petitioner's request that Commerce invoke use of facts otherwise available under {section 776(e)(a) of the Act} lacks any support in the record. TTL provided all information requested in the time and manner requested. TTL did not impede the investigation. Finally, all the information provided was verified. Moreover, the record is not lacking necessary information. Commerce thoroughly verified TTL's responses on this issue. The Petitioner has not cited a single case where Commerce has ever even imposed a countervailing duty in the manner framed by Petitioner. Commerce must reject Petitioner's request.

Commerce's Position: For the final determination, we continue to find that TTL did not benefit from the Policy Lending to BRI Capacity Cooperation Projects program during the POI.[299] We initiated an investigation into this lending program, in which "Chinese banks provide policy lending at below-market rates to solar cell producers in Thailand in support of BRI capacity cooperation projects."[300] TTL reported that it had no loan, loan guarantee, or any other form of financing outstanding during the POI.[301] On this basis, we preliminarily determined that TTL did not use this program.[302] At verification, we found no evidence that TTL had any financing outstanding during the POI.[303] In its argument, the petitioner cited no evidence that "Chinese banks provide{d} policy lending at below-market rates to {TTL} in support of BRI capacity cooperation projects."[304] Accordingly, we continue to find that TTL did not use the Policy Lending to BRI Capacity Cooperation Projects program on which we initiated an investigation during the POI.

Further, we find no evidence that TTL benefited from a countervailable subsidy program discovered during the course of the investigation. As explained above, we have no evidence that TTL used the program under investigation. Rather, the petitioner argues that TTL received a subsidy through "a Chinese government policy to encourage the use of 'supply chain financing' tools, in which larger, 'core enterprises' use their superior access to capital to support the financing activities of smaller companies throughout their supply chains."[305] With respect to TTL, the petitioner states, "{d}uring the POI, TTL's parent company itself launched what it described as 'China's first photovoltaic industry supply chain finance platform,' Trina Rongtong, as 'a unified financing portal for core enterprises, suppliers, and financial institutions' that 'connects to various bank products.'" [306] Citing business proprietary information, the petitioner argues that "the benefits of such financing accrued to TTL."[307]

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[299] *See Preliminary Determination* PDM at 34-35.
[300] *See* Initiation Checklist at 15-16.
[301] *See Preliminary Determination* PDM at 35 (citing TTL's Letter, "Section III Questionnaire Response," dated August 19, 2024 (TTL's IQR), at 25).
[302] *Id.*
[303] *See* TTL's Verification Report at 14-16.
[304] *See* Petitioner's Case Brief at 15-27; *see also* Initiation Checklist at 15-16.
[305] *See* Petitioner's Case Brief at 17.
[306] *Id.* at 18 (citing Petitioner's Affiliation Comments at Exhibit 10).
[307] *Id.* at 22-26.

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Pursuant to 19 CFR 351.311(b), Commerce will examine a practice, subsidy, or subsidy program:

> if during a countervailing duty investigation …{Commerce} discovers a practice that appears to provide a countervailable subsidy with respect to the subject merchandise and the practice was not alleged or examined in the proceeding …{and} will examine that practice, subsidy, or subsidy program if the Secretary concludes that sufficient time remains before the scheduled date for the final determination or final results of review.

With respect to the "supply chain financing platform," we do not find evidence that TTL received a countervailable subsidy. Regarding the recipients of financing under this platform, the petitioner argues,

> To the extent that TTL's Chinese parents or suppliers accessed financing from Chinese financial institutions to support TTL's acquisition of materials or equipment…any such financing should be treated as a countervailable subsidy that was transferred to TTL from its affiliated suppliers. This is true whether or not TTL itself directly accessed the Trina Rongtong platform or other supply chain financing from Chinese financial institutions.[308]

Trina Solar Co., Ltd. (TCZ) (the parent company of the Trina group of companies) and Trina Solar (Suqian) Silicon Materials Co., Ltd. (TSM(SQ)) (a Trina company under TCZ, the ultimate parent) were producers of silicon wafers and suppliers to TTL during the POI.[309] In the Post-Preliminary Analysis, we preliminarily determined, based on facts available, that TCZ and Trina(SQ) are "authorities" that provided a financial contribution to TTL in the form of the provision of goods.[310] As explained below in Comment 13, we continue to find TCZ and Trina(SQ) to be "authorities" that have provided a financial contribution to TTL. The petitioner's argument, as cited above, pertains to "TTL's Chinese parents or suppliers {that} accessed financing from Chinese financial institutions…"[311] That is to say, for the purposes of this investigation we are treating TCZ as an "authority" providing subsidies to TTL (in the form of the provision of goods), not as a cross-owned company under 19 CFR 351.525. Therefore, we disagree with the petitioner's argument that "any such financing should be treated as a countervailable subsidy that was transferred to TTL from its affiliated suppliers."[312]

In addition, the petitioner did not timely allege the elements of a countervailable subsidy with regard to the supply chain financing platform. First, the petitioner did not cite evidence that TTL received a financial contribution pursuant to section 771(5)(D)(i) of the Act (*i.e.*, a direct transfer of funds or potential direct transfer of funds) through a countervailable loan subsidy program. The petitioner argues that financing to TTL's "Chinese parents or suppliers…should be treated as a countervailable subsidy that was transferred to TTL."[313] The petitioner did not, however,

[308] *Id.* at 19-20.
[309] *See* Post-Preliminary Analysis at 6 (citing TTL's AQR at AFF-3 – AFF-4, and RTG's Wafers QR at 4).
[310] *Id.* at 6-7; *see also* sections 771(5)(B) and 771(5)(D)(iii) of the Act, respectively.
[311] *See* Petitioner's Case Brief at 19-20.
[312] *Id*.
[313] *Id*.

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cite evidence of any funds "transferred to TTL." Rather, the financial contribution that we are examining is the provision of a good pursuant to section 771(5)(D)(iii) of the Act, as TTL and Trina (SQ) provided silicon wafers to TTL.[314] The petitioner identified no other financial contribution pursuant to section 771(5)(D) of the Act in relation to TTL's affiliated companies in China. Additionally, we found no evidence at verification that TTL had any outstanding financing during the POI, which further demonstrates that TTL did not receive a financial contribution through a direct transfer of funds from a government authority.[315] Finally, the petitioner cited no evidence with respect to specificity pursuant to section 771(5A) of the Act or a benefit pursuant to section 771(5)(E)(ii) of the Act in relation to the supply chain financing platform. Therefore, we have no basis to determine that TTL received a countervailable subsidy through this supply chain financing platform, either through the discovery of "a practice that appears to provide a countervailable subsidy" under section 775 of the Act and 19 CFR 351.311, or through a timely-filed subsidy allegation on behalf of the petitioner.

Finally, the petitioner argues that Commerce should either apply an AFA policy lending subsidy rate in the final determination or apply facts available and treat the supply chain financing as interest-free short-term loans.[316] However, we find no basis to apply facts available or AFA pursuant to sections 776(a) and (b) of the Act. First, we find no evidence that information on TTL's financing is missing from the record. We also find no evidence that TTL withheld information on its financing, failed to provide information on its financing by our deadlines for submission, impeded the proceeding with respect to its financing, or provided unverifiable information on its financing. Rather, TTL provided information that we requested by the specified deadlines, and this information was verifiable. Finally, we find no evidence that TTL failed to cooperate to the best of its ability to provide requested information. TTL reported that it had no outstanding financing during the POI, and we found no evidence at verification that TTL failed to report any financing in accordance with our requests for information.[317] Accordingly, we find no basis to apply facts otherwise available pursuant to section 776(a) of the Act or AFA pursuant to section 776(b) of the Act.

Comment 11: Whether Commerce Should Make Downward Adjustments to TTL's Reported Purchase Prices for Silicon Wafers and Solar Glass

Petitioner's Case Brief:

The following is a verbatim summary of the arguments submitted by the Petitioner (internal citations omitted). For further details, *see* the Petitioner's Case Brief at 27-31.

> For purposes of calculating the benefit conferred to TTL for certain of its purchases of solar wafers and solar glass, {Commerce} should make adjustments to the prices TTL reported purchasing these inputs for. Because of the way in which TTL obtains these inputs, the reported price paid by TTL does not provide an accurate representation of the price that it obtains these inputs for from the input producer.

[314] *See* TTL's AQR at AFF-3 – AFF-4; *see also* RTG's Wafers QR at 4.
[315] *See* TTL's Verification Report at 14-16.
[316] *See* Petitioner's Case Brief at 4.
[317] *See* TTL's IQR at 25; *see also* TTL's Verification Report at 14-16.

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TTL's Rebuttal Brief:

The following is a verbatim summary of the arguments submitted by TTL (internal citations omitted). For further details, *see* TTL's Rebuttal Brief at 54.

> Petitioner's request that Commerce adjust downwards the prices paid by TTL for certain purchases of solar glass and solar wafers has no support in the record, Commerce practice, regulation, or statute. The Petitioner did not cite a single precedent supporting this novel, but still illogical, request. Petitioner's request contradicts Commerce's specific instructions on how TTL was to report its purchases. Moreover, Petitioner's argument is incoherent in that the reason they offer as justifying the requested adjustment demonstrates in itself that any alleged benefit could not be transferred or attributed to TTL. Commerce correctly requested that TTL report its purchase prices. Petitioner's request to adjust downward TTL's purchase prices is irrational and lacks any support in Commerce practice or any other source of law and Petitioner has cited none.

Commerce's Position: We disagree with the petitioner's argument that a downward adjustment to TTL's reported silicon wafer and solar glass purchase prices is appropriate. First, the petitioner argues that these adjustments are necessary to account for the issues discussed above in Comment 12.[318] As explained above in Comment 12, however, we determine that: (1) TTL did not use the Policy Lending to BRI Capacity Cooperation Projects program during the POI; (2) record evidence does not show that TTL benefited from a countervailable subsidy program discovered during the course of the investigation; and (3) the record does not support the application of facts available or AFA pursuant to sections 776(a) and (b) of the Act. Therefore, we find no basis to adjust TTL's silicon wafer and solar glass purchase prices based on the issues addressed in Comment 12.

In addition, the petitioner argues that "necessary information for accurately determining the benefit conferred by the provision of solar wafers and solar glass is absent from the record, and {Commerce} must use facts available in order to determine the price at which these material inputs were purchased."[319] Although much of the information cited by the petitioner to support this argument is business proprietary, the petitioner cites TTL's explanation that its "reported prices represented the prices that TTL paid to the companies identified as the 'supplier' and not the prices suppliers paid to purchase the inputs from input producers."[320] However, we do not find that TTL's reporting of its silicon wafer and solar glass purchases supports the application of facts available. With respect to TTL's reported prices paid to companies identified as "suppliers" (*i.e.*, non-producing intermediaries such as trading companies), Commerce's longstanding practice is that when a government's financial contribution (the provision of a good) is made through non-responding trading company suppliers that purchase the input, we attribute all of the benefit to the respondents that purchase the input from the trading company

[318] *See* Petitioner's Case Brief at 27-28.
[319] *Id.* at 31.
[320] *Id.* at 30.

suppliers in order to capture the full subsidy.[321] The CIT has affirmed this practice.[322] In such instances, when the price paid by the producer of subject merchandise is less than the benchmark price, the producer receives a benefit when it purchases these government-provided goods and, accordingly, receives the input for LTAR.[323] TTL reported its purchases from non-responding trading company suppliers in accordance with the Input Purchases Template in Section III of the initial questionnaire, and we relied on this information to calculate the benefit that TTL received under these LTAR programs pursuant to section 771(5)(E)(iv) of the Act.[324] Accordingly, we do not find that necessary information is missing from the record that would support the use of facts otherwise available, as requested by the petitioner.[325]

Comment 12: Whether Commerce's Determination That TCZ And TSM(SQ) Are "Authorities" Is Supported by the Record Evidence

TTL's Case Brief:

The following is a verbatim summary of the arguments submitted by TTL (internal citations omitted). For further details, *see* TTL's Case Brief at 27-37.

> Commerce's determination that TCZ and TSM(SQ) are controlled by the GOC and Chinese Communist Party (CCP) is not supported by the record. Commerce ignored detracting evidence and Commerce also failed to analyze additional indicia of government control, including the absence evidence of government-appointed company officials, the absence of government or CCP officials on the board or in management, and the absence of evidence that a CCP committee had a role in the management of TCZ.
>
> Commerce will not conclude that an enterprise in which the GOC has even "a significant ownership interest" is a public entity unless additional factors indicate that an enterprise is "being used to carry out government functions." Those factors include: (1) the presence of government appointed company officials; (2) the presence of government or CCP officials on the board or in management; and (3) the existence and role of a CCP committee. Commerce failed to consider these factors.

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[321] *See*, *e.g.*, *Countervailing Duty Investigation of 1,1,1,2 Tetrafluoroethane from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 62594 (October 20, 2014) (*Tetrafluoroethane from China*), and accompanying IDM at Comment 10; *see also Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review; 2012*, 78 FR 78799 (December 31, 2014), and accompanying IDM at Comment 3; and *CWP from China* IDM at 11.

[322] *See Guangdong Wireking Housewares & Hardware Co. v. United States*, 900 F. Supp. 2d 1362, 1380 (CIT 2013).

[323] *See*, *e.g.*, *Tetrafluoroethane from China* IDM at Comment 3.

[324] *See* Initial Questionnaire, at Section III, Input Purchases Template; *see also* TTL's Letter, "New Subsidy Allegation Questionnaire," dated October 8, 2024, at Exhibit WQR-1.2; TTL's Letter, Response to Solar Glass and Silver Paste Supplemental Questionnaire, dated November 21, 2024, at Exhibit NSA4-1; and TTL Final Calculation Memorandum.

[325] *See* section 776(a)(1) of the Act.

> Commerce ignored record evidence that shows that TCZ's CEO, Mr. Gao Jifan, is not a CCP official or party member and the absence of any record evidence that any CCP official has any other role and function within TCZ. Unrefuted record evidence shows that National People's Congress (NPC) membership is not equivalent to CCP membership or control because these positions are ceremonial rather a substantive position. Moreover, members that are not members of the Standing Committee of NPC are not involved in exercising the functions of the NPC. Only the members of the Standing Committee of the NPC have the authority to engage in legislative action such as blocking or supporting legislation, expressing disapproval of candidates for leadership positions within the GOC, and establishing an overall policy direction. Non-Standing Committee delegates to the NPC are not professional politicians, but rather prominent members of the business community, the arts, and sports figures. These delegates are not paid and attend a meeting once per year for a week or two.
>
> In sum, the record shows that TCZ is not controlled by the GOC or CCP and that TCZ does not have government-appointed officials. At best, public statements made by Trina reflect alignment of GOC priorities and those of TCZ. The weak coincidence of Trina's plans with national objectives do not reflect that TCZ is being used to carry out functions of the GOC and/or CCP. Therefore, Commerce should conclude in the forthcoming final determination that the evidence does not support a finding that TCZ is an authority within the meaning of {section 771(5)(B) of the Act}.

GOC's Case Brief:

The following is a verbatim summary of the arguments submitted by the GOC. For further details, *see* GOC's Case Brief at 23-26.

> The alleged financial contribution is not based on the substantial evidence and is otherwise not in accordance with law, because Chinese input producers are not authorities.

Petitioner's Rebuttal Brief:

The following is a verbatim summary of the arguments submitted by the petitioner (internal citations omitted). For further details, *see* the Petitioner's Rebuttal Brief at 17-21.

> Both {TCZ} and {TSM(SQ)} are authorities. The record demonstrates that TCZ's largest shareholder and Chief Executive Officer, Mr. Gao Jifan serves as a deputy in the GOC's National People's Congress, was the first chairman of the China Photovoltaic Industry Association, and holds other positions within organizations connected to the GOC and {CCP}. Mr. Gao and his wife control a commanding portion of the company's total equity—nearly 44%. Many of TCZ's other board members are also connected to the GOC and CCP, and the company has fully aligned itself with the policies of the GOC. Further, at least three of the top ten

> shareholders of TCZ are related to the government or a State-Owned Assets Supervision and Administration Commission of the State Council of China (SASAC): Trina Xinyuan Investment Development Co., Ltd. (2.08%), Xingyin Growth Capital Management Co., Ltd. (10.70%), and Hong Kong Securities Clearing Company Limited (2.19%). Furthermore, the full extent of the ultimate ownership of TCZ by the GOC cannot be confirmed because the GOC failed to provide complete capital verification reports of TCZ as requested by {Commerce}.

Commerce's Position: Based on facts available on the record, for the purposes of this investigation, we continue to find that TCZ and TSM(SQ) (a Trina company under TCZ, the ultimate parent) are "authorities" that have provided a financial contribution to TTL *via* the provision of goods.[326] The totality of the record evidence demonstrates that the GOC has meaningful control of TCZ / TSM(SQ) and pursues government policy objectives through their business and operations. Accordingly, the record demonstrates that TCZ and TSM(SQ) possess, exercise, and are vested with, governmental authority.

Commerce's Public Bodies Memorandum on the record of this investigation states that 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).[327] The Public Bodies Memorandum also 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."[328] Further, the memorandum states that "{u}nder this case-by-case analysis, {Commerce} may also examine, *inter alia*, whether the industry producing the subject merchandise or the industry supplying inputs to the production of the subject merchandise is covered by an industrial plan or plans that indicate enterprises are being used to carry out government functions; government appointed company officials; the presence of government or CCP officials on the board or in management; and the existence and role of a Party committee."[329]

The petitioner submitted factual information to demonstrate that TCZ, the parent company of the Trina group of companies, [330] is an "authority" within the meaning of section 771(5)(B) of the Act, and TTL submitted rebuttal factual information to support its argument that TCZ is not an "authority."[331] In the Post-Preliminary Analysis, we preliminarily found, based on facts available on the record in this investigation, that TCZ is an "authority" pursuant to section 771(5)(B) of the Act.[332] This record information, *inter alia*, is:

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[326] *See* sections 771(5)(B) and 771(5)(D)(iii) of the Act, respectively. *See also* Post-Preliminary Analysis at 3-7.
[327] *See* Petitioner's Transnational Lending Submission at Exhibit 2 (with attached Memorandum, "Section 129 Determination of the Countervailing Duty Investigation of Circular Welded Carbon Quality Steel Pipe; Light-Walled Rectangular Pipe and Tube; Laminated Woven Sacks; and Off-the-Road Tires from the People's Republic of China: An Analysis of Public Bodies in the People's Republic of China in Accordance with the WTO Appellate Body's Findings in WTO DS 379," dated May 18, 2012 (Public Bodies Memorandum), at, *e.g.*, 5).
[328] *See* Public Bodies Memorandum at 37-38.
[329] *Id.* at 38.
[330] *See* TTL's AQR at AFF-3 – AFF-4.
[331] *See* Petitioner's Affiliation Comments at 6-13 and exhibits cited therein; *see also* TTL's Letter, "Rebuttal Comments on Petitioner's Comments on TTL's Supplemental Affiliation Questionnaire Response," dated October 24, 2024, at 4-24 and exhibits cited therein.
[332] *See* Post-Preliminary Analysis at 6-7.

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- TCZ's largest shareholder and chief executive officer (CEO), Mr. Gao Jifan, serves as a Deputy in the NPC.[333]
- Mr. Gao also served as first chairman of the China Photovoltaic Industry Association (CPIA), and he continues to serve as honorary chairman of the CPIA. The CPIA is a national association approved by the Ministry of Civil Affairs of China, which is under the control of the GOC and CCP. The CPIA coordinates with the CCP and GOC "to guarantee alignment with the official vision for industrial policy and {} the role of industry associations in promulgating guidance to firms."[334]
- TCZ stated publicly that it "is deeply studying the spirit of the Third Plenary Session of the 20th {CCP} Central Committee, actively implementing the important instructions of General Secretary Xi Jinping on the construction of Trina Solar's National Key Laboratory of Photovoltaic Science and Technology and industrial layout during this year's National Two Sessions."[335]
- Although TCZ is nominally a publicly traded company, Mr. Gao (*i.e.*, a Deputy to the NPC and CPIA Chair) and his wife control nearly 44 percent of TCZ's equity.[336]
- State-backed and state-owned entities have invested in TCZ, including Dangtu Reliance Emerging Industry Fund and Shanghai Xingjing Investment Management Co., Ltd. [337]
- Record evidence shows that TCZ actively promotes the GOC's BRI policies. For example, at the time TCZ established TTL, Mr. Gao commented that "{TCZ's} Thailand factory and other projects in Asia-Pacific are in line with the 'Belt and Road' policy advocated by the Chinese government, connecting the Asian economy and achieving mutual benefit."[338]
- TCZ works with Chinese state-owned enterprises, such as the State Grid Corporation of China, in constructing its manufacturing facilities in BRI countries.[339]

Record evidence cited above on the GOC's / CCP's control of TCZ is consistent with the indicators of GOC / CCP control identified in the Public Bodies Memorandum. For instance, TCZ stated that it is "actively implementing" the GOC's instructions regarding TCZ's industrial layout, which evinces control by the GOC and provides evidence that TCZ is carrying out governmental functions. Further, as cited above, record information shows a significant state and CCP presence in TCZ's ownership and management. Additionally, record information shows that the Chinese solar products industry is a focus of GOC industrial plans through policy initiatives such as the 12th and 13th Five-Year Plans for Development of the Solar Industry and 14th Five-Year Plan for Development of Renewable Energy Industries.[340] In analyzing whether an entity is an "authority," Commerce may examine 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.[341] Therefore, we continue to find, based on facts

[333] *See* Petitioner's Affiliation Comments at 8-9 and exhibits cited therein.
[334] *Id.* at 9-10 and exhibits cited therein.
[335] *Id.* at 10-11 and Exhibit 20.
[336] *Id.* at 11 and Exhibit 21.
[337] *Id.* at 11 and Exhibit 13.
[338] *Id.* at 12 and Exhibit 30.
[339] *Id.* at 12 and Exhibit 27.
[340] *See* Petitioner's Wafers NSA at 4 and Exhibits NSA-2 through NSA-6.
[341] *See* Public Bodies Memorandum at 38.

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available, that TCZ and TSM(SQ) (a Trina company under TCZ, the ultimate parent) are "authorities" that have provided a financial contribution to TTL.[342]

TTL argues in its case brief that TCZ is not under government influence.[343] For example, TTL argues that the role of TCZ's CEO in the NPC is "not equivalent to CCP membership or control because these positions are ceremonial rather a substantive position."[344] Further, TTL argues that the CEO's role as first president and honorary chairman of the CPIA does not demonstrate that TCZ is controlled by a CCP official or any official under the CCP's control.[345] As an initial matter, we must rely on "facts otherwise available" because the GOC failed to provide requested information for producers of the inputs supplied to TTL, including TCZ and TSM(SQ).[346] The GOC withheld information requested by Commerce and significantly impeded this proceeding.[347] As a result, we are missing information necessary for our determination of whether these companies are "authorities" within the meaning of section 771(5)(B) of the Act.[348] As cited above, for example, TTL argues that membership in the NPC is "not equivalent to CCP membership."[349] However, because of the GOC's refusal to respond to Commerce's requests for information, we were unable to examine and verify any such claims the regarding the absence of GOC / CCP control of the input producers in question, including TCZ and TTL. For example, with respect to the NPC, record evidence states,

> Article 57 of the Constitution of the People's Republic of China (as amended, 2004) states that the National People's Congresses is the "highest organ of state power" and Article 62 lays out its responsibilities, which include approving the national economic plan, the state budget, deciding on matters of "war and peace," and exercising "such other functions and powers as the highest organ of state power should exercise.[350]

This evidence appears to contradict TTL's claims that the NPC is merely "ceremonial," and thus Commerce cannot rely on TTL's arguments regarding the absence of GOC control of TCZ and TSM(SQ). Rather, we must determine whether these companies are government "authorities" based on the totality of record evidence available. Based on the totality of the evidence cited above, we determine that the GOC has meaningful control of TCZ and TSM(SQ).

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[342] *See* sections 771(5)(B) and 771(5)(D)(iii) of the Act, respectively. With respect to TSM(SQ), TTL identified TSM(SQ) as a Chinese company under the ultimate parent, TCZ. *See* TTL's AQR at AFF-4. Given this evidence that TSM(SQ) is under the control of TCZ, we preliminarily treated TSM(SQ) as an "authority" pursuant to section 771(5)(B) of the Act. *See* Post-Preliminary Analysis at 6-7. No parties raised arguments specific to TSM(SQ). Accordingly, we are continuing to treat TCZ and TSM(SQ) as authorities for this final determination.
[343] *See* TTL's Case Brief at 27-37.
[344] *Id.* at 32.
[345] *Id.* at 33.
[346] *See* Post-Preliminary Analysis at 3-7.
[347] *Id.* at 3-7.
[348] *Id.*; *see also* sections 771(5)(B) and 771(5)(D)(iii) of the Act, respectively.
[349] *See* TTL's Case Brief at 32.
[350] *See* Petitioner's Transnational Lending Submission at Exhibit 2 (with attached Memorandum, "The relevance of the Chinese Communist Party for the limited purpose of determining whether particular enterprises should be considered to be 'public bodies' within the context of a countervailing duty investigation," dated May 18, 2012, at, 9).

Finally, with respect to TCZ's statements that it is implementing and promoting GOC policies, TTL argues that "{g}overnment objectives and industry interests frequently align and the two support each other in furtherance of those objectives."[351] Similarly, the GOC argues that "{t}he execution or implementation of a government's instructions by normal companies only reflects the company's active compliance of administrative regulation and does not necessarily reflect the carrying out of official government functions."[352] However, we continue to find these statements to be evidence that the GOC meaningfully controls TCZ and TSM(SQ). Commerce has found statements that companies are operating in accordance with government instructions to be relevant to a determination of whether an entity is an "authority." For example, in *OCTG from Türkiye*, Commerce found the connection between a company's support for its customers' export-oriented production and the government's policy to improve its balance of payments to be evidence that the company was a government authority.[353] Similarly, in *Fabricated Structural Steel from Canada*, Commerce cited a company's statements regarding its implementation of government policies to be evidence that the company was a government authority.[354] The record demonstrates that TCZ promotes the GOC's BRI policies.[355] Further, TCZ stated publicly that it is actively implementing the instructions of General Secretary Xi Jinping with respect to TCZ's industrial layout.[356] Accordingly, we find these statements to be relevant evidence that TCZ is under the GOC's control and carrying out government functions.

Comment 13: Whether Commerce Made an Error in Its Calculation of the Benefit Provided by the RTG's Provision of Electricity for LTAR

Petitioner's Case Brief:

The following is a verbatim summary of the arguments submitted by the petitioner (internal citations omitted). For further details, *see* the Petitioner's Case Brief at 33-34.

> {Commerce} made a ministerial error correction to its calculation of the Electricity for LTAR program in the preliminary determination, as it appears that {Commerce} did not correctly transcribe certain figures that the {RTG} reported in its initial questionnaire.

RTG's Rebuttal Brief:

The following is a verbatim summary of the arguments submitted by RTG (internal citations omitted). For further details, *see* RTG's Rebuttal Brief at 1-3.

[351] *See* TTL's Case Brief at 35.
[352] *See* GOC's Case Brief at 24.
[353] *See*, *e.g.*, *Certain Oil Country Tubular Goods from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 41964 (July 18, 2014) (*OCTG from Türkiye*), and accompanying IDM at 21 and Comment 1.
[354] *See Certain Fabricated Structural Steel From Canada: Final Negative Countervailing Duty Determination*, 85 FR 5387 (January 30, 2020) (*Fabricated Structural Steel from Canada*), and accompanying IDM at Comment 13.
[355] *See* Petitioner's Affiliation Comments at 12 and Exhibit 30.
[356] *Id.* at 10-11 and Exhibit 20.

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> The petitioner is wrong in claiming that Commerce made a ministerial error in the benefit regarding the provision of electricity for {LTAR}. Contrary to petitioner's claim, Commerce correctly transcribed the relevant figures from the RTG's questionnaire response that are relevant to Commerce's LTAR calculation.

TTL's Rebuttal Brief:

The following is a verbatim summary of the arguments submitted by TTL (internal citations omitted). For further details, *see* TTL's Rebuttal Brief at 55.

> Petitioner alleges that there is a miscalculation of the regard to electricity for LTAR and asks Commerce to use an amount stated in a narrative section to the response by the {RTG}. However, the figures Commerce used in the calculation for are identical to the figures in PEA's audited financial statements submitted as Exhibit PEA-2 of the RTG's initial questionnaire response. Additionally, the Petitioner does not provide support for its assertion. Evenso, if Commerce instead relied only on the RTG's narrative initial questionnaire response, as the Petitioner suggests, the subsidy rate determined would not change from the *Preliminary Determination*.

Commerce's Position: We disagree with the petitioner's argument that Commerce made an error in the *Preliminary Determination* in the calculation of the benefit for the Electricity for LTAR program. In the benefit calculations for this program, we cited relevant sections from the RTG's initial questionnaire response, including the Provincial Electrical Authority's (PEA) audited POI financial statements.[357] We calculated the electricity for LTAR benefit in line with the steps as described in the Preliminary Calculation Memorandum, identified the sources of the numbers used in the calculations, and did not inadvertently leave out any part of the calculation formula.[358] The petitioner did not identify any specific discrepancies between the cited sources and the figures used in calculations, and it did not identify any errors in the formulas used in the benefit calculations. Further, the benefit calculation formula and methodology are consistent with other countervailing duty proceedings involving the Electricity for LTAR program in Thailand.[359] Accordingly, we have made no changes to the benefit calculations for this program based on the petitioner's argument.

Comment 14: Whether the Provision of Electricity for LTAR is Countervailable

RTG's Case Brief:

The following is a verbatim summary of the arguments submitted by RTG (internal citations omitted). For further details, *see* RTG's Case Brief at 31-46.

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[357] *See* Memorandum, "Preliminary Determination Calculations for Trina Solar Science & Technology (Thailand), Ltd.," dated September 30, 2024 (Preliminary Calculation Memorandum) at 3 and Attachment 2; *see also* RTG's Letter, "Section II Questionnaire Response," dated August 19, 2024, at 182-183 and Exhibit RTG PEA-2.
[358] *See* Preliminary Calculation Memorandum at 2-3 and Attachment 2.
[359] *See Glycine from Thailand* IDM at Comments 3 and 4; s*ee also Certain Steel Nails From Thailand: Final Negative Countervailing Duty Determination*, 87 FR 51343 (August 22, 2022) (*Steel Nails from Thailand*), and accompanying IDM at Comment 2.

> Commerce's evaluation of whether the transfer of funds from the PEA to the {Metropolitan Electricity Authority (MEA)} amounts to provision of electricity for LTAR and constitutes a "regional subsidy" must be evaluated on the basis of its "market principles" test. The RTG—through the {Energy Regulatory Commission (ERC)}—sets uniform retail electricity tariffs for all end users within the same usage category. Commerce's analysis should focus only on whether the ERC's tariffs are non-discriminatory and permit recovery of the costs of generating and distributing electricity, and should not turn on whether funds were shuffled between the MEA and PEA. Here, the ERC's price-setting philosophy is in accordance with market principles, insofar as it based on recovery of costs and a return on invested capital. In practice, the ERC set electricity tariffs in a manner that permitted the MEA, PEA, and {Electricity Generating Authority of Thailand (EGAT)} all to recover all costs and earn a rate of return on invested capital. Commerce's approach to the "market principles" test makes it impossible for the RTG to set electricity tariffs in a manner that is not countervailable, effectively establishing a system of electricity price discrimination in Thailand among users in the same usage category. Finally, the differences between PEA and MEA costs do not make the provision of electricity within Thailand to be a "regionally specific" benefit.

Petitioner's Rebuttal Brief:

The following is a verbatim summary of the arguments submitted by the Petitioner (internal citations omitted). For further details, *see* the Petitioner's Rebuttal Brief at 31-35.

> {Commerce} correctly determined that the RTG's provision of electricity for LTAR is a regional subsidy. First, {Commerce} correctly concluded that users of electricity supplied by the {PEA} are subsidized because they paid the same price as users supplied by the {MEA} despite the PEA's costs of supplying electricity being higher. Second, there is no merit to the RTG's hypothetical claim that {Commerce}'s market principles analysis makes it impossible for the RTG to set electricity prices in a manner that {Commerce} would not find countervailable. Third, consistent with {CIT} precedent and {Commerce} past determinations, the RTG's provision of electricity through the MEA and PEA is regionally specific.

Commerce's Position:

We continue to find the provision of electricity for LTAR in Thailand to be regionally specific. When examining the provision of a good for LTAR using a tier three benchmark, Commerce conducts a market principles analysis which considers the following factors: price setting philosophy, costs (including rates of return sufficient to ensure future operations), and possible price discrimination.[360] When conducting a market principles analysis for a provision of electricity for LTAR program where the rates are charged according to a standard pricing mechanism, Commerce examines how the government establishes its electricity rates (*i.e.*, a

[360] *See 1998 Final Preamble*, 63 FR at 65378.

market principles analysis).[361] Whether we call it a "price-setting philosophy" or "standard pricing mechanism," this factor weighs against finding that Thai electricity prices are set according to market principles. The Thai electricity price-setting philosophy (*i.e.*, standard pricing mechanism) is not consistent with market principles, as we have thoroughly analyzed in our *Preliminary Determination* and accompanying analysis memorandum.[362]

The RTG argues that Commerce has not treated electricity programs in Korea and Thailand consistently, but this comparison is misplaced. The RTG argues that, in *POSCO v. United States*, Commerce investigated the Korea Electric Power Corporation's standard pricing mechanism, but not the possible price setting entity, Korean Power Exchange (KPX), with respect to electricity for LTAR, and that the CIT upheld that Commerce was not obligated to investigate KPX's underlying generation costs beyond its analysis that KPX's unit prices for generation of electricity more than covered its full costs.[363] The RTG further notes that the CIT in its opinion affirmed that adequate remuneration is tied to fair value, as are 'market principles of cost or pricing structures,' and that the PEA's price-setting is in accordance with market principles, as PEA covered all of its costs and earned a return during the POI.[364] As an initial matter, Commerce addressed the differences between Korean and Thai electricity provision in *Corrosion-Resistant Steel from Korea*.[365] In that case, Commerce determined that the Korean electricity standard pricing mechanism *was* consistent with market principles.[366] However, in *Corrosion-Resistant Steel from Korea*, Commerce specifically stated that for Thailand, "there was no standard pricing mechanism in setting electricity tariffs because distribution expenses were accounted for in two different methods for electricity provided through the MEA and electricity provided through the PEA."[367] The evidence on the record of this investigation demonstrates that the RTG continues to determine distribution expenses for PEA and MEA using different methodologies, resulting in higher distribution costs for PEA.[368] This is further demonstrated by evidence that the ERC ordered the financial transfer of 12 billion baht in revenue from MEA to PEA to ensure that PEA's financial status met the ERC's criteria.[369] Additionally, consistent with *Hot-Rolled Steel from Thailand* and *Steel Nails from Thailand*,[370] the higher distribution costs incurred by PEA were not reflected in the RTG's uniform national tariff policy, in which consumers in the same customer category pay the same rate regardless of

[361] *See Maverick Tube Corp. v. United States*, 273 F. Supp. 3d at 1300 ("{Commerce} first examines how the government-owned utility company sets its rates and then determines whether a respondent receives a price that is better than that afforded other companies or industries purchasing comparable amounts of electricity." (citing *Magnesium from Canada*, 57 FR at 30949)).
[362] *See Preliminary Determination* PDM at 23-30; *see* also Memorandum, "Preliminary Determination Calculations for Trina Solar Science & Technology (Thailand) Ltd," dated September 30, 2024.
[363] *See* RTG's Case Brief at 34-35 (citing *POSCO v. United States*, 556 F. Supp. 3d 1364, 1366, 1369 (CIT 2022)).
[364] *See* RTG's Case Brief at 41-42.
[365] *See Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35310 (June 2, 2016) (*Corrosion-Resistant Steel from Korea*), and accompanying IDM, at Comment 2.
[366] *Id*.
[367] *Id*.
[368] *See Preliminary Determination* PDM at 29; *see also* RTG's IQR at 178-179.
[369] *See* RTG's IQR at 180.
[370] *See Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand*, 66 FR 50410 (October 3, 2001) (*Hot-Rolled Steel from Thailand*), and accompanying IDM at "Provision of Electricity for LTAR"; *see also Steel Nails from Thailand* IDM at Comment 2.

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geographic location.[371] Therefore, the fact that TTL may have paid the same general tariff rate as other consumers within the same usage category, including both the MEA and PEA service areas, is irrelevant.

The RTG provides further arguments that do not demonstrate that the provision of electricity in Thailand was set in accordance with market principles under a tier three benchmark analysis. First, the question of whether a single entity provides and distributes electricity throughout Thailand is not relevant to our analysis. Rather, it is the issue of the substantive nature of the cost differentials, specifically accounting for difference in the cost of distribution between supplying electricity to metropolitan and provincial areas. As such, we see no reason to consolidate the ERC, PEA, and MEA into one entity and use an antidumping methodology to examine financial transactions, as the RTG argues.[372] Second, although the ERC considered costs of all utilities in setting the electricity tariffs, in setting the uniform tariffs, it disregarded the fact that electricity distribution costs to the PEA customers were higher than those of the MEA customers. Moreover, ERC's actions were consistent with the overarching RTG policy of decentralizing development to provincial areas through electricity pricing, as the financial transfer from MEA to PEA was pursuant to Section 97(1) of Energy Industry Act (2007), which permits use of funds to "compensate and subsidize electricity industry licensees who have provided services for underprivileged power consumers or to enhance extensive electrification or to support the policy on the development of decentralization to provincial areas."[373]

Third, the methodology to calculate the benefit under this program is not overstated or double-counted, as the RTG argues.[374] In the *Preliminary Determination*, to determine the benefit conferred to TTL, we calculated a per-kilowatt hour discount that PEA was able to provide to its customers as a result of the financial assistance from the MEA *and* cost savings that PEA received from the RTG's uniform tariff-setting policies.[375] The RTG argues that "{i}t is primarily the difference in the power loss factor that results in PEA unable to earn the same ROIC {return on invested capital} as MEA without the 12 billion THB {Thai Baht} funds transfer."[376] However, the RTG cited no evidence to support this claim. Moreover, the RTG provided no explanation of how this claim results in double-counting in the benefit calculation, given that the calculation measures the discount PEA was able to provide to its customers as a result of both the MEA's financial assistance and cost savings that PEA received from the RTG's uniform tariff-setting policies.[377] Fourth, it is possible to set Thai electricity rates in a manner that is not countervailable. Setting different prices for different types of customers alone may not necessarily make the provision of electricity countervailable. If price differences were, for example, due to cost differences, such differences in and of themselves would not necessarily indicate a benefit has been conferred.

Finally, our regional specificity finding does not lead to illogical results. Even in the RTG's hypothetical scenario, where the higher-paying customer base was located within one block in

[371] *See Preliminary Determination* PDM at 24 (citing RTG's IQR at 177 and Exhibit RTG PEA-6).
[372] *See* RTG's Case Brief at 36-37.
[373] *See* RTG's IQR at 160-161, 180 and Exhibit RTG PEA-5 (EIA 2007, Section 97(1)).
[374] *See* RTG's Case Brief at 42-43.
[375] *See Preliminary Determination* PDM at 29.
[376] *See* RTG's Case Brief at 43.
[377] *See Preliminary Determination* PDM at 29.

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Bangkok, if such a small number of customers paid more for electricity so as to subsidize the cost of electricity for the rest of the country, and the subsidization resulted in a measurable benefit to the respondent, then finding such a program to be countervailable would be logical. For example, in *Samsung Elecs. Co.*, the CIT upheld Commerce's determination that "the area outside of the Seoul Metropolitan Area" constituted a designated geographical region under section 771(5A)(D)(iv) of the Act.[378] Commerce does not see any legitimate reason for overturning its regional specificity finding in *Hot-Rolled Steel from Thailand* which was upheld by the CIT.[379] Therefore, we continue to find that the RTG provided electricity to TTL at LTAR and that the RTG's provision of electricity is regionally specific to the provincial areas.

Comment 15: Whether Commerce Should Have Selected an Additional Mandatory Respondent

Petitioner's Case Brief:

The following is a verbatim summary of the arguments submitted by the Petitioner (internal citations omitted). For further details, *see* the Petitioner's Case Brief at 31-32.

> {Commerce} should have selected an additional mandatory respondent in this investigation. Both the statute and binding court precedent require that {Commerce} select at a minimum two respondents where there are more than one foreign producer or exporter of subject merchandise.

No other interested party commented on this issue.

Commerce's Position:

We disagree with the petitioner that Commerce should have selected an additional mandatory respondent in this investigation. Section 777A(e)(1) of the Act directs Commerce to determine individual countervailable subsidy rates for each known producer and/or exporter of the subject merchandise. However, when it is not practicable to determine individual countervailable subsidy rates for each exporter or producer because of the large number of exporters or producers involved in the investigation, section 777A(e)(2)(A) of the Act gives Commerce the discretion to limit its examination to a reasonable number of companies by either sampling or selecting the largest respondents by volume that can reasonably be examined. Due to the large number of exporters/producers involved in the investigation, Commerce found that it was necessary to limit its examination to a reasonable number of exporters or producers.

Commerce based its respondent selection process on quantity and value (Q&V) questionnaire responses submitted by eight producers and/or exporters of subject merchandise.[380] According to the Q&V questionnaire data, a single exporter/producer, TTL, accounted for the overwhelming majority of imports of subject merchandise from the companies that responded to

[378] *See Samsung Elecs. Co. v. United States*, 973 F. Supp. 2d 1321, 1328-29 (CIT 2014).
[379] *See Royal Thai Gov't v. United States*, 441 F. Supp. 2d 1350 (CIT 2006).
[380] *See* Memorandum "Respondent Selection," dated June 17, 2024 (Respondent Selection Memorandum), at Attachment.

the Q&V questionnaire. While the petitioner notes that the Federal Circuit has held that the statute generally requires that the reasonable number of respondents Commerce individually examines be greater than one,[381] we found that, in this particular instance, individual examination of a sole mandatory respondent in this investigation was appropriate considering that one exporter/producer, TTL, accounted for the overwhelming majority of imports from the companies responding to the Q&V questionnaire.[382] By examining this mandatory respondent, Commerce has captured the largest volume of the subject merchandise from the exporting country that can be reasonably examined in light of resource constraints and statutory requirements.[383] As explained in the Respondent Selection Memorandum, based on an assessment of Commerce's resources and the complexity of the investigation, Commerce selected for individual examination the largest exporter/producer by volume of subject merchandise, consistent with section 777A(e)(2)(A)(ii) of the Act. [384]

Comment 16: Whether Commerce Should Apply AFA to Taihua New Energy

RTG's Case Brief:

The following is a verbatim summary of the arguments submitted by RTG (internal citations omitted). For further details, *see* RTG's Case Brief at 18-26.

> Commerce erred as a matter of law in apply {AFA} and a high subsidy margin on Taihua New Energy. Contrary to Commerce's claim, Taihua New Energy did respond timely to Commerce's Q&V questionnaire, did not withhold any factual information, and was cooperative with Commerce. Commerce rejected its questionnaire response in a manner that emphasized form over substance, and its decision amounts to an abuse of discretion.

Petitioner's Rebuttal Brief:

The following is a verbatim summary of the arguments submitted by the Petitioner (internal citations omitted). For further details, *see* the Petitioner's Rebuttal Brief at

> {Commerce} should continue to apply total {AFA} to Taihua New Energy (Taihua) as the company failed to timely respond to the {Commerce}'s quantity and value (Q&V) questionnaire. Taihua's responses to the Q&V questionnaire were both untimely and neither contained a certification as required by {Commerce}'s regulations. {Commerce}properly rejected Taihua's first response because it was filed late, contained no certification and was not filed on ACCESS. Further, {Commerce} did not abuse its discretion in rejecting Taihua's second filing because it was not timely, contained no certification, and failed to demonstrate that an extraordinary circumstance led to its untimely filing as required by {Commerce's} regulations.

[381] *See* Petitioner's Case Brief at 31-32.
[382] *See* Respondent Selection Memorandum at 5.
[383] *Id.*
[384] *Id.*

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Commerce's Position: We disagree with the RTG's argument that we improperly applied AFA to Taihua New Energy in the *Preliminary Determination*. For this final determination, we continue to find that the application of AFA to Taihua New Energy is appropriate.

Sections 776(a)(2)(A)-(C) of the Act provide that, if an interested party or any other person withholds necessary information that was requested, fails to provide information within the deadlines established, or significantly impedes a proceeding, Commerce shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 776(b) of the Act provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In its case brief, the RTG argues that Commerce "incorrectly concluded that Taihua New Energy was non-responsive to the Q&V questionnaire and/or uncooperative."[385] We disagree. First, in the *Initiation Notice*, we notified interested parties of the impeding release of Q&V questionnaires, as well as the initial deadline of May 28, 2024.[386] On May 15, 2024, we issued the Q&V questionnaire to Taihua New Energy.[387] The Q&V questionnaire instructed the company as follows:

- All submissions must be made electronically using Commerce's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) at https://access.trade.gov, unless an exception applies.[388]

- All submissions to Commerce must be accompanied by a Certificate of Accuracy from company officials and, if represented by legal counsel or other firm, a Certificate of Accuracy from the representative. The Q&V questionnaire stated explicitly that "Commerce cannot accept questionnaire responses that do not contain the certification statements."[389]

- Any submission for which a party is having difficulties filing on ACCESS should not be emailed to the case analyst or the official in charge.[390]

- The Q&V questionnaire stated that "{y}ou are required to state in the upper right-hand corner of your cover letter the following information in the following format…" with respect to the case number, segment of the proceeding, and designation of whether the document contained business proprietary information.[391]

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[385] *See* RTG's Case Brief at 23.
[386] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules From Cambodia, Malaysia, Thailand, and the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigations*, 89 FR 43816, 43819-43820 (May 20, 2024) (*Initiation Notice*).
[387] *See* Commerce's Letter to Taihua New Energy, "Countervailing Duty Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from Thailand," dated May 15, 2024 (Taihua New Energy Q&V Questionnaire). Commerce also sent a hard copy of this questionnaire to Taihua New Energy via FedEx. *See* Memorandum, "Confirmation of Delivery of Quantity and Value Questionnaires," dated June 10, 2024.
[388] *See* Taihua New Energy Q&V Questionnaire at Attachment III.
[389] *Id.*
[390] *Id.* at cover letter, p. 2.
[391] *Id.* at Attachment III.

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These instructions are consistent with the filing requirements described in Commerce's regulations.[392] Further, the questionnaire informed parties that:

> {i}f you fail to respond or fail to provide the requested quantity and value information, please be aware that Commerce may find that you failed to cooperate by not acting to the best of your ability to comply with the request for information, and may use an inference that is adverse to your interests in selecting from the facts otherwise available, in accordance with section 776(b) of the Act.[393]

As cited by the RTG, Taihua New Energy first attempted to respond to the Q&V questionnaire through an email message.[394] We responded to Taihua New Energy as follows:

> Written communication with Commerce concerning this investigation must be filed using Commerce's electronic filing system, which is called ACCESS. Only those documents appearing in the ACCESS filing system will be on the record of this investigation. Your email communication, which was not filed via ACCESS, is not on the administrative record and accordingly will not be considered by Commerce.[395]

Therefore, the record contradicts the RTG's claim that Taihua New Energy's email was "not only a response to Commerce's Q&V questionnaire, but also a timely response."[396] Taihua New Energy did not: (1) file its response on ACCESS, (2) submit a required certification of accuracy, (3) follow Commerce's instructions with respect to the format of the response, or (4) follow the questionnaire's instructions not to submit a response via email.[397]

Our response to Taihua New Energy provided another opportunity for the company to file its questionnaire response and instructions on how to file its response properly.[398] However, despite having this second opportunity, Taihua New Energy again failed to cooperate to the best of its ability with respect to the Q&V questionnaire's instructions. The RTG cites attachments to its ministerial error allegation showing that Commerce's Central Records Unit (CRU) rejected a submission by Taihua New Energy on May 28, 2024.[399] Contrary to the RTG's argument that "Commerce incorrectly concluded that Taihua New Energy was non-responsive to the Q&V questionnaire and/or uncooperative,"[400] the record document cited by the RTG shows that Taihua New Energy again failed to cooperate to the best of its ability. The attachment to the RTG's Ministerial Error Allegation shows that Taihua New Energy again failed to follow the Q&V

[392] *See* 19 CFR 351.303(b)(2)(i), 351.303(d)(2), and 351.303(g).
[393] *See* Taihua New Energy Q&V Questionnaire at cover letter, p. 3.
[394] *See* RTG's Case Brief at 21; *see also* Memorandum, "Email Correspondence," dated May 22, 2024 (Taihua Correspondence Memorandum).
[395] *See* Taihua Correspondence Memorandum.
[396] *See* RTG's Case Brief at 22.
[397] *See* Taihua Correspondence Memorandum; *see also* Taihua New Energy Q&V Questionnaire.
[398] *See* Taihua Correspondence Memorandum.
[399] *See* RTG's Case Brief at 22-23 (citing RTG's Letter, "Significant Ministerial Error Comments By the Royal Thai Government," dated October 7, 2024 (RTG's Ministerial Error Allegation), at Exhibits 3 and 4).
[400] *See* RTG's Case Brief at 23.

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questionnaire's clear formatting requirements described above.[401] Additionally, the RTG's Ministerial Error Allegation shows no evidence that Taihua New Energy submitted the required certification of accuracy.[402] For these reasons, Commerce properly rejected Taihua New Energy's submission. Therefore, the RTG's argument that Taihua New Energy provided a proper response to Commerce's Q&V questionnaire is incorrect.[403] Instead, the record evidence cited above demonstrates that Taihua New Energy withheld necessary information that was requested, failed to provide information within the established deadline, and significantly impeded this proceeding. Moreover, the record shows that Taihua New Energy did not cooperate to the best of its ability to comply with Commerce's requests for information. Despite having two opportunities, Taihua New Energy failed to follow Commerce's clear instructions for properly filing a Q&V questionnaire response.[404]

Further, we note that a ministerial error allegation is not the appropriate means by which a party should file factual information for the first time in an investigation. A ministerial error is, by definition, "an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial."[405] As we found in our *Ministerial Error Rejection Memo*, the error alleged by the RTG was plainly not ministerial.[406] Therefore, we declined to consider the information included as an attachment to the ministerial error memo. Doing so would have inappropriately permitted the RTG to circumvent our filing deadlines.

With respect to Commerce's application of AFA, the RTG argues that "the consequences may appear to be minor for Taihua New Energy itself, since it does not manufacture or sell subject merchandise."[407] However, no record information supports the RTG's claim that Taihua New Energy "does not manufacture or sell subject merchandise."[408] Because of Taihua New Energy's failure to submit a questionnaire response in accordance with the filing requirements in Commerce's regulations and Q&V questionnaire instructions, we have no basis on the record to conclude that we would not have selected Taihua New Energy as a mandatory respondent if it had properly submitted a Q&V questionnaire response on the record of this investigation.[409] Further, in explaining Commerce's practice for filling gaps on the record due to a respondent's

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[401] *See* RTG's Ministerial Error Allegation at Exhibit 4 (showing that Commerce's CRU rejected Taihua New Energy's submission because it "does not have case cluster information in upper right hand corner of the document, Case Number Segment of Review Security Classification # of Pages.").
[402] *Id.* at Exhibits 2-3.
[403] *See* RTG's Case Brief at 22.
[404] We note that eight other parties – including two companies not represented by counsel – filed timely responses on ACCESS in accordance with the Q&V questionnaire's instructions. *See*, *e.g.*, Letter from Ocean Energy Co., Ltd., "Quantity and Value Questionnaire Response," dated June 4, 2024; and Letter from T.S. Solar Energy Co., Ltd., "Quantity and Value Questionnaire," dated June 4, 2024.
[405] *See* 19 CFR 351.224(f).
[406] *See* Memorandum, "Analysis of Ministerial Error Allegations in the Preliminary Determination," dated October 31, 2024 (Ministerial Error Rejection Memo).
[407] *Id.* at 23.
[408] *Id*.
[409] Information in Q&V responses was necessary for Commerce's selection of mandatory respondents in this investigation. In fact, Commerce verified the Q&V responses of two companies that properly filed Q&V questionnaire responses but were not selected as mandatory respondents. *See* Talesun's Verification Report and Runergy's Verification Report.

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failure to provide requested information, the Federal Circuit stated in *Nippon Steel* that "{t}he reason for the respondent's failure is of no moment. The mere failure of a respondent to furnish requested information—for any reason—requires Commerce to resort to other sources of information to complete the factual record on which it makes its determination."[410] Thus, Commerce must fill in record gaps where it finds that information is missing. Accordingly, Commerce's use of facts otherwise available with respect to Taihua New Energy, pursuant to section 776(a) of the Act, is consistent with the Federal Circuit's ruling in *Nippon Steel*.
The intent of AFA is to provide respondents with an incentive to cooperate. Commerce has recognized that it has a "duty to both ensure that uncooperative parties do not benefit from their lack of cooperation and to encourage their future compliance."[411] Commerce's authority to apply AFA to uncooperative parties is necessary to induce cooperation in its proceedings. Moreover, the application of AFA to uncooperative respondents, including those that fail to respond in a timely manner to Commerce's Q&V questionnaires, is required by the Act and Commerce's regulations, is well established in Commerce's practice, and has been found to be appropriate by the CIT.[412] Further, Commerce has applied adverse inferences to companies that have failed to cooperate with respect to requests for quantity and value information in other proceedings.[413]

Section 776(b) of the Act instructs Commerce to apply adverse inferences when a company has failed to act to the best of its ability. The Federal Circuit clarified the "best of its ability" standard, stating:

> {c}ompliance with the "best of its ability" standard is determined by assessing whether respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation. While the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.[414]

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[410] *See Nippon Steel Corp. v. United States,* 337 F.3d 1373, 1381 (Fed. Cir. 2003) (*Nippon Steel*).
[411] *See Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Final Results of Antidumping Duty Administrative Review*, 76 FR 36086 (June 21, 2011), and accompanying IDM at Comment 4.
[412] *See F.lli De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1034 (Fed. Cir. 2000); *see also Lifestyle Enter., Inc. v. United States*, 865 F.Supp.2d 1284, 1292 (CIT 2012); *Ferrostaal Metals GmbH et al. v. United States*, 518 F.Supp.3d 1357, 1378-79 (CIT 2021); *Hyosung Corp. v. United States*, 35 CIT 343, 347 (CIT March 31, 2011) (stating that "Commerce rejects untimely information because, as Commerce explained, '{a}llowing parties to submit responses to {Commerce's} requests for information at whatever time is most convenient for {respondents} would amount to relinquishing {Commerce's} authority to establish due dates for submissions and it would thus impair {Commerce's} ability to satisfy the statutory timeframe in which to complete an administrative review.'"); sections 776(a)(l), (a)(2)(A)-(C), and (b) of the Act; 19 CFR 351.308(a); and SSAA at 870.
[413] *See*, *e.g.*, *Certain Paper Plates from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, in Part*, 90 FR 8259 (January 28, 2025), and accompanying IDM at 2-3; and *Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 86 FR 41013 (July 30, 2021), and accompanying PDM at 13-14, unchanged *in Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 86 FR 57809 (October 19, 2021), and accompanying IDM.
[414] *See Nippon Steel*, 337 F.3d at 1382.

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Thus, as explained in *Nippon Steel*, Taihua New Energy was responsible for submitting a Q&V response in accordance with Commerce's questionnaire instructions and regulations. This was merely a requirement for Taihua New Energy to follow the instructions in the questionnaire, as opposed to applying a much higher standard of perfection to Taihua New Energy.

For the foregoing reasons, we disagree with the RTG that Commerce's preliminary application of AFA to Taihua New Energy was unwarranted. Sections 776(a) and (b) of the Act require that Commerce fill gaps of information on the record when a respondent has failed to provide information, and these sections permit Commerce to use adverse inferences when that respondent has failed to cooperate by not acting to the best of its ability in responding to requests for information. Commerce's application of AFA to Taihua New Energy is in accordance with the law and consistent with Commerce's practice. Accordingly, we are continuing to apply AFA to Taihua New Energy.

Comment 17: Whether Commerce Should Initiate An Investigation Whether Producers In Malaysia Benefited From Cross-Border Provision Of Wafer For LTAR

TTL's Case Brief:

The following is a verbatim summary of the arguments submitted by TTL (internal citations omitted). For further details, *see* TTL's Case Brief at 25-27.

> Commerce should initiate an investigation into whether exporters of solar cells and solar modules in Malaysia benefited from the Cross-Border Provision of Wafer from the GOC for LTAR. All of the factors that predicated initiation of the investigation into the Cross-Border Provision of Wafer for LTAR in Thailand exist for Malaysia.
>
> Petitioner contended that TTL's wafer suppliers are government authorities. The record indicates that Hanwha Qcells Malaysia affiliate sources from similar suppliers. Furthermore, and as explained, Petitioner's wafer LTAR allegations have been levied in all of the {CVD} investigations, except the one proceeding pertaining to Malaysia, in which Petitioner Hanwha Qcells' foreign affiliate is a mandatory respondent. In addition, Hanwha's subsequent and recent request for a changed circumstance review to add additional Chinese wafer suppliers to Hanwha's Appendix V certification confirms that Hanwha continues to rely on Chinese wafers. Therein, Commerce summarized, "Hanwha is requesting two new input suppliers be added to Hanwha's Appendix V certification that were not previously examined in the circumvention inquiry. As noted by Hanwha in its CCR request, these new input suppliers are unaffiliated suppliers providing Chinese-origin wafers produced by themselves or other wafer producers unaffiliated with Hanwha for Hanwha's production in Malaysia."
>
> Commerce's regulation instructs that if Commerce "discovers a practice that appears to provide a countervailable subsidy with respect to the subject merchandise and the practice was not alleged or examined in the proceeding . . . the Secretary will examine the practice, subsidy, or subsidy program." 19 CFR

351.311(b). If the conditions exist for Commerce to impose countervailing duties on TTL for less than adequate remuneration of wafer from China, then Commerce must likewise initiate for the same program in Malaysia when the facts indicate that the same conditions exist there. Even if Commerce defers those investigations until administrative reviews, it cannot ignore its regulation, and it should initiate and defer an investigation into whether Malaysian producers benefit from the Cross-Border Provision of Wafer for LTAR.

Commerce's Position: The record of Commerce's proceedings are distinct, and determinations in a proceeding depend on facts specific to the record of that proceeding.[415] Regardless of the validity of the arguments provided by TTL regarding evidence of a countervailable subsidy for producers and/or exporters of solar cells in Malaysia, an allegation of a countervailable subsidy provided to producers and/or exporters in Malaysia cannot be examined within this proceeding, which only examines countervailable subsidies provided to producers and/or exporters of solar cells from Thailand. Accordingly, TTL's argument that Commerce should initiate an investigation into the provision of silicon wafers for LTAR in the ongoing countervailing duty investigation involving solar cells from Malaysia has no bearing on the instant proceeding.[416]

X. RECOMMENDATION

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

☒	☐
Agree	Disagree

X

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

[415] *See* 19 CFR 351.104; *see also*, *e.g.*, *Certain Softwood Lumber Products from Canada: Final Affirmative Countervailing Duty Determination, and Final Negative Determination of Critical Circumstances*, 82 FR 51814 (November 8, 2017), and accompanying IDM at Comment 61 ("Moreover, all decisions in an investigation must be based upon the information on the record of that investigation.").
[416] *See* TTL's Case Brief at 26-27.