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April 18, 2025

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

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

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

I. SUMMARY

The U.S. Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells) from the Socialist Republic of Vietnam (Vietnam), as provided in section 705 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is January 1, 2023, through December 31, 2023. The mandatory respondents in this investigation are Boviet Solar Technology Co., Ltd. (Boviet Solar) and JA Solar Vietnam Company Limited (JAVN).

After analyzing the comments submitted by interested parties, we made certain changes to the subsidy calculations from the *Preliminary Determination* and Post-Preliminary Determination for Boviet Solar and JAVN.[1] We also updated the data supporting our critical circumstances analysis. Below is the complete list of the issues in this investigation for which we received comments from interested parties:

[1] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, In Part, and Alignment of Final Determination with Final Antidumping Duty Determination*, 89 FR 80866 (October 4, 2024) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM); *see also* Memorandum, "Post-Preliminary Decision Memorandum," dated March 13, 2025 (Post-Preliminary Determination).

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Comment 1: Whether Commerce has the Legal Authority under the World Trade Organization {WTO} Rules and U.S. Law to Investigation Transnational Subsidies
Comment 2: Policy Lending from Chinese Banks for Belt and Road Initiative (BRI) Capacity Cooperation Projects
Comment 3: Substantial Evidence for the Cross-Border Provisions of Chinese Polysilicon, Silicon Wafer, Silver Paste, and Solar Glass for Less Than Adequate Remuneration (LTAR)
Comment 4: Specificity for the Cross-Border Provision of Chinese Origin Polysilicon, Silicon Wafer, Silver Paste, Solar Glass for LTAR
Comment 5: Whether Commerce was Arbitrary and Capricious
Comment 6: Whether JAVN's Loans Are Associated with the BRI Capacity Cooperation Projects
Comment 7: Whether Commerce Should Revise Its Benchmark for the Cross-Border Provision of Chinese Silicon Wafers for LTAR
Comment 8: Whether JAVN's Purchases of Silicon Wafers Can Be Tied to Non-Subject Merchandise
Comment 9: Whether Commerce Should Revise Its Benchmark for the Cross-Border Provision of Chinese Silver Paste for LTAR
Comment 10: Whether Commerce Should Revise Its Benchmark for the Cross-Border Provision of Chinese Solar Glass for LTAR
Comment 11: Whether Commerce Should Exclude Value Added Tax (VAT) and Import Duties from the Benchmark Calculations
Comment 12: Whether Commerce Should Revise Its Inland Freight Benchmark
Comment 13: Whether Import Duty Exemptions on Imported Raw Materials for Export Processing Enterprises (EPE or EPEs) and Export Processing Zones is Countervailable
Comment 14: Whether Total Adverse Facts Available (AFA) Should Be Applied to JAVN
Comment 15: Whether AFA Should Be Applied to JAVN in Respect to Import Duty Exemptions on Imported Equipment during the Average Useful Life (AUL) Period
Comment 16: Whether AFA Should Be Applied to JAVN and Boviet Solar in respect to Import Duty Exemptions on Imported Raw Materials for EPEs and Export Processing Zones
Comment 17: Critical Circumstances
Comment 18: Whether JAVN was Uncreditworthy
Comment 19: Ministerial Error
Comment 20: Whether to Amend the AFA Calculation

II. BACKGROUND

On October 4, 2024, Commerce published the *Preliminary Determination* and aligned this countervailing duty (CVD) final determination with the final determination in the less-than-fair value investigation of solar cells from Vietnam, in accordance with section 705(a)(1) of the Act

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and 19 CFR 351.210(b)(4).[2] Between September 24 and December 5, 2024, we sent initial and supplemental questionnaires to the Government of the Socialist Republic of Vietnam (GOV), Government of the People's Republic of China (GOC), Boviet Solar, and JAVN, on the Cross-Border Provision of Chinese Silicon Wafers for LTAR, Cross-Border Provision of Chinese Silver Paste, Cross-Border Provision of Chinese Solar Glass for LTAR programs, and the uncreditworthiness allegation.[3] We received timely submissions from the interested parties.[4]

On November 4, 2024, JAVN, Boviet Solar, the GOV, and the American Alliance for Solar Manufacturing Trade Committee (the petitioner) submitted a hearing request.[5]

From December 3 through 20, 2024, we conducted an in-person verification of the GOV, Boviet Solar, and JAVN (and its cross-owned affiliates, JA Solar PV Vietnam Company Limited (JAPV) and JA Solar NE Company Limited (JANE)) in Hanoi and Bac Giang, Vietnam.[6]

On March 13, 2025, we issued a post-preliminary decision memorandum.[7] On March 24, 2025, we received timely case briefs from the following interested parties: (1) the petitioner; (2) Boviet Solar; (3) JAVN; (4) GOC; (5) GOV; (6) Vietnam Sunergy Joint Stock Company (VSUN); (7) Trina Solar Energy Development Company Ltd (Trina Solar); and (8) Jinko Solar (Vietnam) Industries Company Limited, JinkoSolar (U.S.) Inc., and Jinko Solar (U.S.) Industries Inc. (collectively, Jinko Solar).[8] On April 1, 2025, we received timely rebuttal briefs from the

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[2] *Id.*

[3] *See* Commerce's Letters, "New Subsidy Allegation Questionnaire," dated September 24,2024 (Wafer Questionnaire); "New Subsidy Allegation Questionnaire," dated October 29, 2024 (SP SG Questionnaire); and "Uncreditworthiness Allegation Questionnaire," dated November 15, 2024 (Uncreditworthiness Questionnaire).

[4] *See* Boviet Solar's Letters, "Boviet NSA Questionnaire," dated October 8, 2024 (Boviet Solar Wafer QR); "Boviet NSA Questionnaire – Question 3 Benchmarks," dated October 11, 2024 (Boviet Solar Wafer Benchmark Submission); "Boviet NSA Questionnaire," dated November 8, 2024 (Boviet Solar SP SG QR); "Boviet NSA Questionnaire – Part II," dated November 12, 2024 (Boviet Solar Benchmark SP SG QR); "Boviet Benchmark Supplemental Questionnaire," dated December 5, 2024 (Boviet Solar Benchmark SQR); "Boviet Uncreditworthy Questionnaire Response," dated November 29, 2024; *see also* JAVN's Letters, "New Subsidy Allegation Questionnaire Response of JA Solar Vietnam Company Limited and Affiliates," dated October 8, 2024 (JAVN Wafer QR); "New Subsidy Allegation Question 3 Benchmark Submission," dated October 11, 2024 (JAVN Wafer Benchmark); "New Subsidy Allegation Questionnaire Response on Silver Paste and Solar Glass of JA Solar Vietnam Company Limited and Affiliates," dated November 12, 2024 (JAVN SP SG QR); "Uncreditworthiness Questionnaire Response," dated November 29, 2024; GOC's Letters, "GOC New Subsidy Allegation Questionnaire Response," dated October 10, 2024 (GOC Wafer QR); "GOC NSA Questionnaire Response," dated November 13, 2024 (GOC SP SG QR); and GOV's Letter, "NSA Questionnaire Response," dated October 8, 2024 (GOV Wafer QR); "NSA Questionnaire Response," dated November 12, 2024 (GOV SP SG QR).

[5] *See* JAVN's Letter, "JA Solar Request for Hearing," dated November 4, 2024; *see also* Boviet Solar's Letter, "Hearing Request," dated November 4, 2024; GOV's Letter, "Hearing Request," dated November 4, 2024; and Petitioner's Letter, "Hearing Request," dated November 4, 2024.

[6] *See* Memoranda, "Verification of the Government of Socialist Republic of Vietnam," dated February 20, 2025 (GOV Verification Report); "Report on Verification of Boviet Solar Technology Co., Ltd."dated February 20, 2025 (Boviet Solar Verification Report); and "Report on Verification of JA Solar Vietnam Company Limited and Its Affiliates,"dated February 20, 2025 (JAVN Verification Report).

[7] *See* Post-Preliminary Decision Memorandum.

[8] *See* VSUN's Letter, "VSUN Case Brief," dated March 24, 2025 (VSUN's Case Brief); *see also* Trina Solar's Letter, "Letter in Lieu of Case Brief," dated March 24, 2025 (Trina Solar's Case Brief); GOC's Letter, "GOC Case Brief," dated March 24, 2025 (GOC's Case Brief); Jinko Solar's Letter, "Jinko's Case Brief," dated March 24, 2025

following interested parties: (1) the petitioner; (2) GOV; (3) Boviet Solar; (4) JAVN; and (5) Jinko Solar.[9] On April 9, 2025, Commerce held a public hearing.[10]

On August 12, 2024, the petitioner timely submitted a new subsidy allegation regarding the Export Buyer's Credit program (EBCP).[11] For this program, we have not yet made a decision on whether to initiate an investigation; we are deferring this decision until the first administrative review (should this investigation result in a CVD order). Due to the novelty and complexity of this allegation, including the transnational subsidy issues raised and the time needed to investigate and consider all the information, we find that we did not have sufficient time before the final determination to review and examine this allegation.

On August 27, 2024, the petitioner also timely submitted new subsidy allegations regarding two programs: (1) Cross-Border Provision of Aluminum Solar Frames from the GOC for LTAR to Vietnamese Solar Cell Producers; and (2) Cross-Border Provision of Photovoltaic (PV) Junction Boxes from the GOC for LTAR to Vietnamese Solar Cell Producers.[12] On February 19, 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.[13]

III. DETERMINATION OF CRITICAL CIRCUMSTANCES

Section 703(e)(1) of the Act provides that, upon receipt of a timely allegation of critical circumstances, Commerce will determine whether there is a reasonable basis to believe or suspect that: (A) "the alleged countervailable subsidy" is inconsistent with the SCM Agreement; (B) there have been massive imports of the subject merchandise over a relatively short period.[14]

(Jinko Solar's Case Brief); JAVN's Letter, "Case Brief," dated March 24, 2025 (JAVN's Case Brief); GOV's Letter, "Case Briefs," dated March 24, 2025; Boviet Solar's Letter, "Case Brief," dated March 24, 2025 (Boviet Solar's Case Brief); and Petitioner's Letter, "Case Brief," dated March 24, 2025 (Petitioner's Case Brief).

[9] *See* Jinko Solar's Letter, "Jinko's Rebuttal Brief," dated April 1, 2025 (Jinko Solar's Rebuttal Brief); *see also* Boviet Solar's Letter, "Rebuttal Brief," dated April 1, 2025 (Boviet Solar's Rebuttal Brief); GOV's Letter, "Letter in Lieu of Rebuttal Brief," dated April 1, 2025 (GOV's Rebuttal Brief); JAVN's Letter, "Rebuttal Case Brief" dated April 1, 2025 (JAVN's Rebuttal Brief); and Petitioner's Letter, "Rebuttal Brief," dated April 1, 2025 (Petitioner's Rebuttal Brief).

[10] *See* Hearing Transcript, "The Countervailing Duty Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the Socialist Republic of Vietnam," dated April 9, 2025.

[11] *See* Petitioner's Letter, "New Subsidy Allegations," dated August 12, 2024 (Petitioner First NSA); *see also Preliminary Determination* PDM at 4.

[12] *See* Petitioner's Letter, "New Subsidy Allegations," dated August 27, 2024 (Petitioner Third NSA).

[13] *See* Memorandum, "Decision Memorandum on Additional New Subsidy Allegations," dated February 19, 2025.

[14] 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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Boviet Solar

Pursuant to section 703(e)(1) of the Act, in the *Preliminary Determination*, we found that critical circumstances did not exist with respect to Boviet Solar because it received a preliminary *de minimis* net countervailable subsidy rate.[15]

For this final determination, we determine that Boviet Solar used the Import Duty Exemptions on Imported Raw Materials for Export Processing Enterprises and Export Processing Zones, which is contingent upon export performance, which is sufficient to meet the criterion of being inconsistent with the World Trade Organization Agreement on Subsidies and Countervailing Measures (SCM Agreement). Thus, we find that there are programs in this investigation that are inconsistent with SCM Agreement, thereby fulfilling the criterion under section 705(a)(2)(A).[16] Next, we compared Boviet Solar's volume of imports during the five-month comparison period (*i.e.*, May through September 2024) and the five-month base period (*i.e.*, December 2023 through April 2024). We find that the volume of imports during the comparison period increased more than 15 percent over the base period for Boviet Solar. Therefore, we find that Boviet Solar shipped solar cells in massive quantities during a relatively short period, thereby fulfilling the criterion under section 705(a)(2)(B) of the Act. As such, we find that critical circumstances exist for Boviet Solar. For further details, *see* the Final Critical Circumstances Memorandum.

JAVN

Pursuant to section 703(e)(1) of the Act, in the *Preliminary Determination*, we found that critical circumstances did not exist with respect to JAVN.[17] We made no changes to our determination that JAVN used the Import Duty Exemptions on Imported Raw Materials for Export Processing Enterprises and Export Processing Zones program, which is contingent upon export performance, and that use of an export subsidy program is sufficient to meet the criterion of being inconsistent with the SCM Agreement under 703(e)(1)(A) of the Act. For this final determination, we revised our comparison of JAVN's volume of imports to use data from the five-month comparison period (*i.e.*, May through September 2024) and the five-month base period (*i.e.*, December 2023 through April 2024). We continue to find that JAVN did not have massive imports over a relatively short period.[18] Therefore, for this final determination, we continue to find that critical circumstances do not exist for JAVN, pursuant to section 705(a)(2) of the Act.[19] For further details, *see* the Final Critical Circumstances Memorandum.

Non-Responsive Companies

Pursuant to section 703(e)(1) of the Act, in the *Preliminary Determination*, we found that critical circumstances existed for the non-responsive companies.[20] We made no changes to our

[15] *See Preliminary Determination* PDM at 6-7.
[16] *Id.* at 7; *see also* Memorandum, "Final Analysis of Critical Circumstances," dated concurrently with this memorandum (Final Critical Circumstances Memorandum) and Attachment.
[17] *See Preliminary Determination* PDM at 7.
[18] *See* Final Critical Circumstances Memorandum at Attachment.
[19] *See* Final Critical Circumstances Memorandum.
[20] *See Preliminary Determination* PDM at 8.

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application of facts available with an adverse inference for the four non-responsive companies.[21] Therefore, we continue to find that certain subsidy programs comprising the AFA rate assigned to these companies are prohibited under the SCM Agreement, thus, we find that the criterion under section 705(a)(2)(A) of the Act has been met. In addition, for the purposes of the "massive imports" analysis, pursuant to sections 776(a) and (b) of the Act, we determine, as AFA, that the four non-responsive companies shipped solar cells in massive quantities during a relatively short period, thereby fulfilling the criterion under section 705(a)(2)(B) of the Act. For further details, *see* the Final Critical Circumstances Memorandum.

All Other Exporters/Producers

Pursuant to section 703(e)(1) of the Act, in the *Preliminary Determination*, we found that critical circumstances existed with respect to all other producers and/or exporters.[22] We continue to use the aggregated shipments of Boviet Solar and JAVN to determine whether imports of the subject merchandise were massive for all other producers and/or exporters. For this final determination, we continue to find critical circumstances exist for all other producers and/or exporters, in accordance with section 705(a)(2) of the Act. For further details, *see* the Final Critical Circumstances Memorandum and Comment 17, below.

IV. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

In the *Preliminary Determination*, Commerce relied on "facts otherwise available" and "facts otherwise available with an adverse inference" for certain findings.[23] For this final determination, we made a change to one of the program rates used to determine the AFA countervailable subsidy rate for the non-responsive companies, and further, we are extending the application of AFA on JAVN and Boviet Solar on certain programs, as discussed below.

A. Legal Standard

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

Where Commerce determines that a response to a request for information does not comply with the request, section 782(d) of the Act, provides that Commerce will inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, Commerce may disregard all or part of the original and subsequent responses, as appropriate.

[21] *Id*.
[22] *Id.* at 8-9.
[23] *See Preliminary Determination* PDM at 11-18.

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Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from 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 doing so, Commerce is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.[24] Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the CVD investigation, a previous administrative review, or other information placed on the record.[25] When selecting an AFA rate from among the possible sources of information, Commerce's practice is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide Commerce with complete and accurate information in a timely manner."[26] Commerce's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[27]

In *Nippon Steel*, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) held that, while the statute does not provide an express definition of the "failure to act to the best of its ability" standard, the ordinary meaning of "best" is "one's maximum effort."[28] Thus, according to the Federal Circuit, the statutory mandate that a respondent act to the "best of its ability" requires the respondent to do the maximum it is able to do. The Federal Circuit indicated that inadequate responses to an agency's inquiries would suffice to find that a respondent did not act to the best of its ability. While the Federal Circuit noted that the "best of its ability" standard does not require perfection, it does not condone inattentiveness, carelessness, or inadequate record keeping.[29] The "best of its ability" standard requires a respondent to, among other things, "have familiarity with all of the records it maintains," and "conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of its ability to do so."[30] Moreover, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.[31]

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.[32] Secondary information is defined as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or

[24] *See* section 776(b)(1)(B) of the Act.
[25] *See* 19 CFR 351.308(c).
[26] *See, e.g.*, *Drill Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination,* 76 FR 1971 (January 11, 2011); *see also Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan,* 63 FR 8909, 8932 (February 23, 1998).
[27] *See* Statement of Administrative Action Accompanying the Urugay Round Agreements Act, H.R. Doc. 103-316, Vol. 1 (1994) (SAA), at 870.
[28] *See Nippon Steel Corp. v. United States,* 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*).
[29] *Id.* at 1382.
[30] *Id.*
[31] *Id.* at 1382-1383.
[32] *See* 19 CFR 351.308(d).

any previous review under section 751 {of the Act} concerning the subject merchandise."[33] It is Commerce's practice to consider information to be corroborated if it has probative value.[34] In analyzing whether information has probative value, it is Commerce's practice to examine the reliability and relevance of the information to be used.[35] However, the SAA emphasized that Commerce need not provide that the selected facts available are the best alternative information.[36] Furthermore, Commerce is not required to corroborate any countervailable subsidy rate applied in a separate segment of the same proceeding.[37]

Finally, under section 776(d) of the Act, when using an adverse inference when selecting from the facts otherwise available Commerce may use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that Commerce considers reasonable to use.[38] When selecting an AFA rate, Commerce is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.[39]

B. Application of AFA to JAVN: Import Duty Exemptions on Imported Equipment

In the Initial Questionnaire, Commerce requested respondents to provide information on other subsidies if the GOV (or entities owned directly, in whole or in part, by the GOV or any provincial or local government) provide, directly or indirectly, any other forms of assistance to the company between January 1, 2014, and the end of the POI.[40] Therefore, it was the respondents' responsibility to coordinate with the GOV on reporting any other usage of any other subsidies not listed in the Initial Questionnaire. As explained in the "Background" section, we conducted an in-person verification of JAVN and its affiliates (*i.e.*, JAPV and JANE) and the GOV.[41] At the GOV's verification, we examined the program reported by Boviet Solar, "Import Duty Exemptions on Imported Equipment in Industries Entitled to Import Duty Preferences."[42] We reviewed the program records to ensure that the GOV reported all assistance provided to the mandatory respondents under this program. While reviewing the source records, we requested GOV officials to review any fixed assets imported to JAVN during the AUL period.[43] We found entries under JAVN's tax identification code that showed that JAVN imported fixed assets during the AUL.[44] As an Export Processing Enterprises, such imports were exempt from import duties.[45]

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[33] *See* SAA at 870.
[34] *Id.*
[35] *Id.* at 869.
[36] *Id.* at 869-70.
[37] *See* section 776(c)(2) of the Act
[38] *See* section 776(d)(1) of the Act
[39] *See* section 776(d)(3) of the Act.
[40] *See* Commerce's Letter, "Countervailing Duty Questionnaire," dated July 3, 2024 (Initial Questionnaire).
[41] *See supra*, "Background."
[42] *See* GOV Verification Report at 12-15.
[43] *Id.*
[44] *Id.* at 15.
[45] *Id.*

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At verification of JAVN, we reviewed the program, "Import Duty Exemptions on Imported Raw Materials for Export Processing Enterprises and Export Processing Zones," for JAVN and its affiliates.[46] While examining this program, we asked company officials if JAVN and its affiliates imported machinery (*e.g.*, equipment) during the AUL.[47] JAVN officials confirmed that all three companies (*i.e.*, JAVN, JAPV, and JANE) imported machinery during the AUL. We reviewed Customs declarations and found that JAVN and JAPV imported equipment during the AUL. These Customs declarations confirmed their imports were duty-free during the AUL. This was inconsistent with JAVN's and its affiliates' reporting in its questionnaire responses, as JAVN and its affiliates did not report receiving import duty exemptions on imported machinery during the AUL.[48]

JAVN and its affiliates have an obligation to respond completely to Commerce's questionnaire, and information about receiving import duty exemptions on imported equipment is responsive to Commerce's request for information about "other assistance." To conduct a full analysis of the benefits JAVN and its affiliates received from Import Duty Exemptions on Imported Equipment we require reports of all imported equipment exempt from import duties under this program, over the AUL period.[49] This information is necessary to calculate the benefit received in the form of import duty exemptions on imported equipment. We explained in the verification agenda that "verification is not intended to be an opportunity for submission of new factual information."[50] Because adequate documentation is missing from the record, JAVN withheld information that had been requested, and JAVN's and its affiliates' benefit information could not be verified, we find that application of facts available is warranted pursuant to section 776(a) of the Act. Because JAVN did not report usage of a subsidy program that it benefitted from during the AUL, we also find that JAVN and its affiliates, failed to cooperate by not acting to the best of their ability to comply with a request for information, and that application of an adverse inference in selecting from the facts available is warranted pursuant to section 776(b) of the Act.

As AFA, we find that JAVN used and benefited from this program in this proceeding,[51] and that this program confers a benefit within a meaning of sections 771(5)(B) and (E) of the Act. We selected an AFA rate for this program based on the statutory hierarchy provided in section 776(d) of the Act and in accordance with Commerce's practice.

C. Application of AFA to JAVN and Boviet Solar: Exemptions of Antidumping Duties

In the Initial Questionnaire, under the program, "Import Duty Exemptions on Imported Raw Materials for Export Processing Enterprises and Export Processing Zones," Commerce requested

[46] *See* JAVN Verification Report at 11-13.
[47] *Id.*
[48] *See* JAVN's Letters, "Section III Questionnaire Response of JA Solar Vietnam Company Limited and Affiliates," dated August 19, 2024 at 29-35 and 56-57 (JAVN IQR); *see also* "Section III Questionnaire Response Volume II JA Solar PV Vietnam Company Limited," dated August 19, 2024 at 24-30 and 51-52 (JAPV IQR); and "Section III Questionnaire Response Volume III JA Solar NE Vietnam Company Limited, dated August 19, 2024 at 23-29 and 51 (JANE IQR).
[49] This program was determined to be a non-recurring subsidy. *See Preliminary Determination* PDM at 43.
[50] *See* Commerce's Letter, "Verification Agenda," dated December 9, 2024 (JAVN Verification Agenda).
[51] *See* Memorandum, "Final Determination Calculations for JA Solar Vietnam Company Limited," dated concurrently with this memorandum (JAVN Final Calculation Memorandum).

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mandatory respondents to "{i}ndicate each of the raw materials for which your company received import duty exemptions during the POR. In addition, indicate the duties and other import fees that would have been charged on these items absent the import duty exemption."[52] In response, Boviet Solar and JAVN reported their VAT and import tariff exemptions template.[53] Specifically, Boviet Solar reported the Original/Standard Import Duty Rate, the Most Favored Nation (MFN) rate, the ASEAN-China Free Trade Agreement (ACFTA) duty rates, and the ASEAN Trade in Gods Agreement (ATIGA) duty rates.[54] JA Solar clarified that "under the ACTA and other free trade agreements applicable to Vietnam, most of the raw materials imported by JAVN are not subject to import duties." To assist in reviewing the import tariff exemptions, both Boviet Solar and JAVN provided the tariff schedule of Vietnam.[55]

At the *Preliminary Determination*, for Boviet Solar, we found that the subsidy received during the POI did not exceed 0.005 percent, *i.e.*, the benefit was non-measurable, and we did not include it in the countervailable subsidy rate for Boviet Solar; for JAVN, we calculated a measurable benefit. In response to JAVN's ministerial error allegation, we determined we would revise the benefit calculation for the final determination, which would lead to a non-measurable benefit for JAVN under this program.[56]

We conducted in-person verification of Boviet Solar and JAVN. While reviewing both mandatory respondents' usage of the "Import Duty Exemptions on Imported Raw Materials for Export Processing Enterprises and Export Processing Zones" program, we examined customs declarations to ensure all exemptions under this program were reported. At verification of Boviet Solar verification, we found that for a certain product, Boviet Solar was exempted from paying an antidumping tax (AD duties).[57] We asked Boviet Solar officials about this exemption from AD duties. In response, Boviet Solar officials explained that the GOV had placed AD duties on imports of a certain product from China.[58] Boviet Solar officials provided supporting documentation.[59] Boviet Solar emphasized that because it is an EPE, it is not required to pay AD duties.[60] At verification of JAVN, we also found in its Customs declarations that it was exempted from AD duties.[61] JAVN officials stated if AD duties were applied to a certain product, a company designated as an EPE would not be subject to those AD duties.[62] JAVN officials stated that EPEs would not be subject to AD *and* normal import duties.[63] Prior to verification, both Boviet Solar and JAVN and its affiliates had not provided information

[52] *See* Initial Questionnaire at III-13.
[53] *See* Boviet Solar's Letter, "Boviet Section III," dated August 19, 2024 (Boviet Solar IQR) at Exhibit 10-2.; *see also* JAVN IQR at Exhibit I-16.
[54] *See* Boviet Solar IQR at 20-22.
[55] *See* Boviet Solar IQR at Exhibit 10.3; *see also* JAVN IQR at Exhibit I-17.
[56] *See* Memorandum, "Ministerial Error Allegations in the Preliminary Determination," dated October 30, 2024 (Ministerial Error Allegation Memorandum).
[57] *See* Boviet Solar Verification Report at 9-10.
[58] *Id.*
[59] *Id.*
[60] *Id.*
[61] *See* JAVN Verification Report at 12-13.
[62] *Id.*
[63] *Id.*

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regarding AD duties that would have been charged absent the import duty exemption available to EPEs.[64]

Boviet Solar, JAVN and JAVN's affiliates, have an obligation to respond completely to Commerce's questionnaire, and information about receiving exemptions of AD duties applicable on imports of a certain product is responsive to Commerce's request for information about "other assistance." To conduct a full analysis of the benefits JAVN and Boviet Solar received in the Import Duty Exemptions on Imported Raw Materials for Export Processing Enterprises and Export Processing Zones, we require reports of all import duty exemptions (*i.e.*, duties and other import fees) under this program. We explained in the verification agenda that "verification is not intended to be an opportunity for submission of new factual information."[65] Because JAVN and Boviet Solar withheld information regarding the exemption from paying AD duties and not all exemptions under this program could be verified, we find that application of facts available is warranted pursuant to section 776(a) of the Act. Because Boviet Solar, JAVN and its affiliates did not report all the exemptions under this program, we also find that JAVN, its affiliates, and Boviet Solar failed to cooperate by not acting to the best of their ability to comply with a request for information, and that application of an adverse inference in selecting from the facts available is warranted pursuant to section 776(b) of the Act.

As AFA, we find that JAVN and Boviet Solar used and benefited from this program in this proceeding,[66] and that this program confers a benefit within a meaning of sections 771(5)(B) and (E) of the Act. We selected an AFA rate for this program based on the statutory hierarchy provided in section 776(d) of the Act and in accordance with Commerce's practice.

The CVD AFA Hierarchy

In accordance with section 776(d)(1)(A) of the Act and 19 CFR 351.308(j), when Commerce determines an AFA rate in CVD investigations for non-cooperating companies it applies a four-tier sequential analysis, or the "AFA hierarchy."

Section 776(d)(1)(A) of the Act states that, when applying an adverse inference in selecting from the facts otherwise available, we may: (i) "use a countervailable subsidy rate applied for the same or similar program in a {CVD} proceeding involving the same country, or (ii) if there is no same or similar program, use a countervailable subsidy for a subsidy rate from a proceeding that {we} consider {} reasonable to use." Thus, section 776(d)(1)(A) of the Act expressly allows for the use of an AFA hierarchy in selecting a rate "among the facts otherwise available" in CVD proceedings, should the facts warrant such a selection.

Section 776(d)(2) of the Act authorizes Commerce to rely on the highest prior rate under certain circumstances. In deriving an AFA rate under section 776(d)(1)(A) of the Act described above,

[64] *See* Boviet Solar IQR at Exhibits 10-2 and 10-3; *see also* JAVN IQR at 29-35; JAPV IQR at 24-30; and JANE IQR at 23-29.
[65] *See* JAVN Verification Agenda.
[66] *See* JAVN Final Calculation Memorandum; *see also* Memorandum, "Final Determination Calculations for Boviet Solar Technology, Co., Ltd.," dated concurrently with this memorandum (Boviet Solar Final Calculation Memorandum).

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the provision states that we "may apply any of the countervailable subsidy rates or dumping margins specified under that paragraph, including the highest such rates or margins, based on the evaluation by the administering authority of the situation that resulted in the administering authority using an adverse inference in selecting among the facts otherwise available."[67]

Accordingly, the Act anticipates that two different guiding principles apply to Commerce in determining an appropriate AFA rate in CVD cases. Under the first principle, Commerce may apply its hierarchy methodology in selecting a rate. Under the second principle, Commerce may apply the highest rate derived from this hierarchy to a respondent, should it choose to apply that hierarchy in the first place.[68]

Those guiding principles were recently codified in Commerce's regulations. Under Commerce's CVD AFA hierarchy, as set forth in 19 CFR 351.308(j), Commerce will normally select the highest (above-*de minimis*) program rate available in accordance with the hierarchical sequence unless Commerce determines that such a rate is otherwise inappropriate.[69] Specifically, for CVD investigations, under the first step of Commerce's investigation hierarchy, pursuant to 19 CFR 351.308(j)(1)(i), we apply the highest above-*de minimis* rate calculated for a cooperating company for the identical program in the investigation. However, if there is no identical program match within the investigation, or if the rate is *de minimis*, then under the second step of the investigation hierarchy, under 19 CFR 351.308(j)(1)(ii), we will apply the highest above-*de minimis* rate calculated in another CVD proceeding involving the same country for the identical program.

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[67] *See* section 776(d)(2) of the Act.

[68] When selecting the rate from among possible sources, we seek to use a rate that is sufficiently adverse to effectuate the statutory purpose of section 776(b) of the Act to induce respondents to provide Commerce with complete and accurate information in a timely manner. This ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See* SAA at 870*; see also Essar Steel Ltd. v. United States*, 678 F.3d 1268, 1270-80 (Fed. Cir. 2012) (citing *F. Lit DeCecco Di Filippo Fara S. Martino S.p.A v. United States,* 216 F. 3d. 1027, 1032 (Fed. Cir. 2000) (*De Cecco*) (finding that "the purpose of the adverse facts statute is 'to provide respondents with an incentive to cooperate' with Commerce's investigation, not to impose punitive damages.")). "In the case of an uncooperative respondent, Commerce is in the best position, based on its expert knowledge of the market and the individual respondent, to select adverse facts that will create the proper deterrent to non-cooperation with its investigations and assure a reasonable margin." *See De Cecco,* 216 F.3d at 1032. In applying its AFA hierarchy in CVD investigations, Commerce's goal is as follows: in the absence of necessary information from cooperative respondents, we are seeking to find a rate that is a relevant indicator of how much the government of the country under investigation is likely to subsidize the industry at issue, through the program at issue, while inducing cooperation. Accordingly, in sum, the three factors that we take into account in selecting a rate are: (1) the need to induce cooperation; (2) the relevance of a rate to the industry in the country under investigation (*i.e.,* can the industry use the program from which the rate is derived?); and (3) the relevance of a rate to a particular program, though not necessarily in that order of importance.

[69] *See* 19 CFR 351.308(j)(3)(iii). As noted, the regulation codified Commerce's existing practice. *See, e.g.*, *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination,* 82 FR 29479 (June 29, 2017), and accompanying Issues and Decision Memorandum (IDM) at 28-31 (applying the AFA hierarchical methodology within the context of a CVD investigation); *see also Crystalline Silicon Photovoltaic Cells Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 41003 (July 14, 2015), and accompanying IDM at 11-15 (applying the AFA hierarchical methodology within the context of a CVD administrative review). *See Certain Uncoated Paper from Indonesia: Final Affirmative Countervailing Duty Determination,* 81 FR 3104 (January 20, 2016), and accompanying IDM at 7-8 (when Commerce determined applying the AFA rate of the CVD hierarchy was not appropriate and instead applied the highest combined standard income tax rate for corporations in Indonesia).

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Furthermore, under the third step of the hierarchy, in accordance with 19 CFR 351.308(j)(1)(iii), if an identical program rate is not available, then Commerce will select an AFA rate based on a comparable or similar program in any countervailing duty proceeding involving the same country and apply the highest calculated above-*de minimis* rate for the same or similar program.

Finally, if no such rate exists, under the fourth step of Commerce's CVD investigation hierarchy, found at 19 CFR 351.308(j)(1)(iv), we apply the highest above-*de minimis* rate calculated from any non-company-specific program from any countervailing duty proceeding involving the same country that the industry subject to the investigation could have possibly used.[70]

Accordingly, if certain respondents are cooperating in a particular segment, as there were in this investigation, Commerce may first determine if there is an identical program in this investigation and use the highest calculated above-*de minimis* rate[71] for the identical program.[72] If there is no identical program for which we calculated an above-*de minimis* subsidy rate for a cooperating respondent in the investigation, then Commerce may determine if the identical program was used in another CVD proceeding involving the same country, and apply the highest calculated above-*de minimis* rate for the identical program.[73] If no such rate exists, then Commerce may determine whether there is a similar/comparable program[74] in any CVD proceeding involving the same country and may apply the highest calculated above-*de minimis* rate for the similar/comparable program.[75] Finally, where no such rate is available, Commerce may apply the highest calculated above-*de minimis* rate from any non-company-specific program in a CVD case involving the same country that the company's industry could possibly use.[76]

Selection of the AFA Rate

There are no facts on this record that suggest that a rate other than the highest above-*de minimis* rate envisioned under the appropriate step of the hierarchy applied in accordance with section 776(d)(1) of the Act and 19 CFR 351.308(j) should be applied as AFA to the non-responsive companies. As explained above, we are applying AFA because these companies failed to respond to Commerce's questionnaires to the best of their ability. Furthermore, there is no additional record evidence that would suggest that the use of the AFA rate derived from the CVD hierarchy is inappropriate. Accordingly, we find that the record does not support the application of an alternative rate, pursuant to section 776(d)(2) of the Act.

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

[71] For purposes of selecting AFA program rates, we will treat rates less than 0.5 percent as *de minimis*. *See* 19 CFR 351.308(j)(3)(i); *see also*, *e.g.*, *Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010), and accompanying IDM at 12-13.

[72] *See* 19 CFR 351.308(j)(1)(i).

[73] *See* 19 CFR 351.308(j)(1)(ii).

[74] Commerce will normally determine a program to be a similar or comparable program based on Commerce's treatment of the benefit. *See* 19 CFR 351.308(j)(3)(ii).

[75] *See* 19 CFR 351.308(j)(1)(iii).

[76] *See* 19 CFR 351.308(j)(1)(iv); *see also Shrimp from China 2013* IDM at 13-14.

For the programs below, we are applying the highest above-*de minimis* subsidy rate calculated for the same or comparable programs in a CVD proceeding involving Vietnam. For this final determination, for the following programs we can match to the same or comparable programs from other CVD proceedings involving Vietnam based on program names, descriptions, and treatment of the benefit:[77]

Other Tax Programs

1. Import Duty Exemptions on Imported Equipment
2. Import Duty Exemptions on Imported Raw Materials for Export Processing Enterprises and Export Processing Zones

Based on the methodology described above, we determine the AFA net countervailable rate for JAVN and its affiliates, to be 5.53 percent *ad valorem* for each program identified above; and for Boviet Solar to be 5.53 percent *ad valorem* for the "Import Duty Exemptions on Imported Raw Materials for Export Processing Enterprises and Export Processing Zones." *See* JAVN Final Calculation Memorandum and Boviet Solar Final Calculation Memorandum. [78]

Corroboration of AFA Rate

Section 776(c)(1) of the Act provides that, in general, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 {of the Act} concerning the subject merchandise."[79] The SAA provides that to "corroborate" secondary information, Commerce will satisfy itself that the secondary information to be used has probative value.[80]

Commerce will, to the extent practicable, examine the reliability and relevance of information to be used. The SAA emphasizes, however, that Commerce need not provide that the selected facts available are the best alternative information.[81] Furthermore, Commerce is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated, or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.[82]

Regarding the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of corroboration,

[77] *See 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 8258 (January 28, 2025) (*Paper Plates from Vietnam Final*), and accompanying IDM.
[78] *See* JAVN Final Calculation Memorandum; *see also* Boviet Solar Final Calculation Memorandum.
[79] *See* SAA at 870.
[80] *Id.*
[81] *Id.* at 869-870.
[82] *See* section 776(d)(3) of the Act.

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Commerce will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Commerce will not use information where circumstances indicate that the information is not appropriate as AFA.[83]

In the absence of record evidence concerning Boviet Solar's and JAVN's exemption of AD Duties and JAVN's unreported usage of the program, "Import Duty Exemptions on Imported Equipment," due to their decision to withhold information, we have reviewed the information concerning Vietnamese subsidy programs in other cases. Where we have a program-type match, we find that, because these are the same or similar programs, they are relevant to the programs in this investigation. The relevance of these rates is that they are actual calculated subsidy rates for Vietnamese programs, from which Boviet Solar and JAVN could receive a benefit. Due to the mandatory respondents withholding information, and the resulting lack of record information concerning these programs, we have corroborated the rates we selected to use as AFA to the extent practicable pursuant to section 776(c)(1) for this final determination.

V. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

We made no changes to the allocation period and the allocation methodology used in the *Preliminary Determination* and the Post-Preliminary Decision Memorandum. Interested parties did not raise any issues that would lead us to reconsider our preliminary findings. For a description of the allocation period and the methodology used for the final determination of this investigation, *see Preliminary Determination* PDM at 10 and Post-Preliminary Determination at 3.

B. Attribution of Subsidies

We made no changes to our attribution methodology used in the *Preliminary Determination* and the Post-Preliminary Decision Memorandum. Interested parties did not raise any issues that would lead us to reconsider our preliminary findings. For a description of the attribution of subsidies and the methodology used for the final determination of this investigation, *see Preliminary Determination* PDM at 10-12 and Post-Preliminary Determination at 3.

C. Denominators

We made no changes to our methodology for selecting the appropriate denominator, total sales value or export sales value, to calculate the *ad valorem* subsidy rates for Boviet Solar and JAVN. Interested parties raised an issue that led us to reconsider our post-preliminary findings. Therefore, we revised the denominator used for the transnational subsidies (*i.e.,* Cross-Border Provision for Chinese Silicon Wafers, Cross-Border Provision for Chinese Silver Paste, Cross-Border Provision for Chinese Solar Glass, and Policy Lending from Chinese Banks for BRI Capacity Cooperation Projects). For a discussion of the modification of the denominator used for the transnational subsidies, *see* Comment 4.

[83] *See, e.g.*, *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

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D. Benchmarks and Interest Rates

We made certain changes to the benchmarks (*e.g.*, loan interest rates, inputs for LTAR) used in the *Preliminary Determination* and the Post-Preliminary Decision Memorandum. In particular, in the Post-Preliminary Decision Memorandum, we determined that JAVN was uncreditworthy at the time it received a loan.[84] For purposes of this final determination, we have included a risk premium in the loan interest rate benchmark. For an explanation of the changes made to the benchmarks, *see* the "Discussion of the Issues" section at Comment 7,9, and 10, below. For a description of the other benchmarks used for the final determination of this investigation, s*ee Preliminary Determination* PDM at 21-26 and Post-Preliminary Determination at 8-17.

VI. ANALYSIS OF PROGRAMS

A. Programs Determined to Be Countervailable

1. Income Tax Programs

a. Income Tax Preferences for New Investment[85]

Commerce made no changes to, and parties submitted no comments regarding, our methodology for calculating the *ad valorem* subsidy rate for this program. The final *ad valorem* subsidy rate for this program is as follows:

JAVN: 1.59 percent

b. Income Tax Preferences for Enterprises in Special Zones

Commerce made no changes to, and parties submitted no comments regarding, our methodology for calculating the *ad valorem* subsidy rate for this program. The final *ad valorem* subsidy rate for this program is as follows:

JAVN: 1.15 percent

c. Corporate Income Tax for Hi-Tech Companies[86]

Commerce made no changes to, and parties submitted no comments regarding, our methodology for calculating the *ad valorem* subsidy rate for this program. The final *ad valorem* subsidy rate for this program is as follows:

Boviet Solar: 0.81 percent

[84] *See* Post-Preliminary Determination.
[85] This program is also known as the "Tax Benefits for New Investments" program. *See* GOV's Letters, "Supplemental Questionnaire Response," dated September 23, 2024 (GOV 1SQR) at 8; *see also* "Section II Questionnaire Response," dated August 19, 2024 (GOV IQR) at 11; and JAVN IQR at 20.
[86] Corporate Income Tax for Hi-Tech Companies is the same as Preferential Income Tax Treatment for High-Tech Companies that Boviet Solar reported in the Boviet Solar IQR.

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2. Other Tax Programs

a. Import Duty Exemptions on Imported Raw Materials for Export Processing Enterprises and Export Processing Zones

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed in Comment 16. Based on Comment 16, we determined to revise the calculation regarding this Import Duty Exemption program. The final *ad valorem* subsidy rate for this program is as follows:

Boviet Solar:	5.53 percent
JAVN:	5.53 percent

b. Import Duty Exemptions on Imported Equipment in Industries Entitled to Import Duty Preferences

Commerce made no changes to, and parties submitted no comments regarding, our methodology for calculating the *ad valorem* subsidy rate for this program. The final *ad valorem* subsidy rate for this program is as follows:

Boviet Solar:	No Benefit

c. Import Duty Exemptions on Imported Equipment

Based on Comment 15, we determined on the basis of AFA, that JAVN used this program. . The final *ad valorem* subsidy rate for this program is as follows:

JAVN:	5.53 percent

3. Land Programs

a. Exemption or Reduction from Land and Water Rents for Encouraged Industries or Selected Areas

Commerce made no changes to, and parties submitted no comments regarding, our methodology for calculating the *ad valorem* subsidy rate for this program. The final *ad valorem* subsidy rate for this program is as follows:

Boviet Solar:	Non-Measurable Benefit

b. Exemption of Land-Use Taxes and Levies for Encouraged Industries or Industrial Zones

Commerce made no changes to, and parties submitted no comments regarding, our methodology for calculating the *ad valorem* subsidy rate for this program. The final *ad valorem* subsidy rate for this program is as follows:

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Boviet Solar: Non-Measurable Benefit

4. Transnational Subsidy Programs

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

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed in Comment 7. Based on Comment 7, we determined to revise the calculation regarding this program. The final *ad valorem* subsidy rate for this program is as follows:

Boviet Solar:	187.62 percent
JAVN:	30.51 percent

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

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed in Comment 9. Based on Comment 9, we determined to revise the calculation regarding this program. The final *ad valorem* subsidy rate for this program is as follows:

Boviet Solar:	No Benefit
JAVN:	0.01 percent

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

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed in Comment 10. Based on Comment 10, we determined to revise the calculation regarding this program. The final *ad valorem* subsidy rate for this program is as follows:

Boviet Solar:	36.70 percent
JAVN:	23.81 percent

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

For the *Preliminary Determination*, we found that the loan outstanding to JAVN provided benefits that were not measurable.[87] For this final determination, because we found JAVN to be uncreditworthy at the time it received the loan under investigation, we have determined the a loan benchmark interest rate inclusive of a risk premium, in accordance with 19 CFR 351.505 (a)(3)(iii). Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed in Comments 6 and 18. Based on Comments 6 and18, we determined to revise the calculation regarding this program. The final *ad valorem* subsidy rate for this program is as follows:

[87] *See Preliminary Determination* PDM at 44-46; *see also* Memorandum, "Preliminary Determination Calculations for Boviet Solar Technology Co., Ltd.," dated September 30, 2024.

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JAVN: 0.02 percent

B. Programs Determined to Be Not Used by Boviet Solar and/or JAVN During the POI

1. Preferential Lending to Exporters by State-Owned Commercial Banks (SOCBs)
2. Export Factoring by SOCBs
3. Guarantees for Export Activities from SOCBs
4. Investment Credits from the Vietnam Development Bank (VDB)
5. Interest Rate Support Program from the State Bank of Vietnam (SBV)
6. Export Credits from the VDB
7. Green Credit Preferential Lending from SOCBs
8. Income Tax Preferences Under Decree 164/2003
9. Income Tax Preferences Under Decree 24/2007
10. Accelerated Depreciation and Increases of Deductible Expenses
11. Tax Benefits Under Decree 60/2012
12. Import Duty Exemptions for Imports Used to Produced Exported Goods
13. Refund for Import Duties on Raw Materials Used to Produce Exports
14. Exemptions of Import Duties for Imports into Industrial Zones
15. Exemptions of Import Duties for Foreign-Invested Enterprises
16. Land Rent Exemptions and Reductions for Enterprises Located in Special Zones
17. Exemptions or Reductions of Rent for Foreign-Invested Enterprises
18. Exemptions or Reductions of Rent Under Decision No. 189/2000
19. Export Promotion Grants
20. Investment Support Grants
21. Provision of Utilities for LTAR
22. Provision of Chinese-Origin Polysilicon for LTAR

VII. DISCUSSION OF THE ISSUES

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

GOC's Case Brief:

The following is a verbatim summary of arguments submitted by the GOC. For further details, *see* GOC's Case Brief at 7-10.

> 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 Agreement on Subsidies and Countervailing Measures (hereinafter "SCM Agreement") has territorial limitations, and were never intended to be applied to cross-border or transnational subsidies. Similarly, the Tariff Act of 1930 has territorial limitations

> and was never intended to be applied to cross-border or transnational subsidies. Although the amendments to the U.S. antidumping and countervailing duty regulations, effective on April 24th, 2024, removed the section 19 CFR 351.527, which previously prohibited initiating transnational subsidy investigation, this amendment of the regulations did not override the fundamental territorial limitation on the application of countervailing duty investigation that still remain in the underlying statutory provisions of the Tariff Act of 1930 and are inconsistent with {Commerce's} determinations of transnational subsidies in this investigation.

JAVN's Case Brief

The following is a verbatim summary of arguments submitted by JAVN. For further details, *see* JAVN's Case Brief at 13-20.

> Commerce is prohibited by statute from assessing countervailing duties on subsidies provided by third countries, and accordingly must reverse its decision to countervail provision of silicon wafers, solar glass and silver paste, as well as policy lending by China in the Final Determination. Transnational subsidy investigations are prohibited according to the plain terms of 19 U.S.C. §§ 1671 & 1677, and any alternate reading of the statute would be contrary to controlling law and accepted principles of statutory construction. Commerce's repeal of 19 C.F.R. § 351.527, which prohibited transnational subsidy investigations, cannot expand Commerce's authority to conduct such investigations which are still prohibited by statute. Even if Commerce does not agree that transnational subsidy investigations are prohibited, it should nevertheless defer reaching any determination on these alleged programs until the first administrative review because parties have had insufficient opportunity to comment on these novel programs.

GOV's Case Brief

The following is a verbatim summary of arguments submitted by the GOV. For further details, *see* JAVN's Case Brief at 13-20.

> The investigation of such transnational subsidies is new following Commerce's revoking of 19 C.F.R. § 351.527 which had specifically not allowed for such investigation. This revocation and Commerce's new understanding of its transnational investigation authority is contrary to law. 19 U.S.C. § 1671(a) does not authorize Commerce to find that a transnational subsidy is countervailable. The singular language in the statute (the government of a country) "indicates that the general rule is that Commerce's CVD analysis is focused on a particular (*i.e.*, 'the') government of a country," not the governments of third countries. If Congress had intended for a countervailing duty investigation to cover multiple countries, such as through the inclusion of a transnational subsidy, it would have made this clear in the statute. Commerce's decision to countervail a transnational subsidy is manifestly contrary to 19 U.S.C. 1671(a) because the statute only gives Commerce the authority to impose a countervailing duty on merchandise from a single country.

Thus, its investigation of transnational subsidies in this investigation is not allowed under 19 U.S.C. § 1671(a) because it expands the scope of Commerce's fact-finding to cover multiple countries in a single investigation.

Boviet Solar's Case Brief:

The following is a verbatim summary of arguments submitted by Boviet Solar. For further details, *see* Boviet Solar's Case Brief at 4-18.

Commerce's decision to countervail alleged subsidies from China in this investigation is inconsistent with the Tariff Act, arbitrary and capricious, and contrary to law. First, Section 1671's singular language indicates that Commerce must address subsidies from "the government of a country," not the governments of third countries. 19 U.S.C. § 1671(a)(1) (emphasis added). Second, the Act specifies two limited circumstances under which subsidies from third countries can be countervailed, id. §§ 1671(d), 1677-1(a), which would be superfluous if transnational subsidies are generally countervailable. Third, the Act does not give third-country subsidizers the rights and duties of "interested parties"—a telling omission that their subsidies are not subject to countervailing duties. Id. § 1677(9). Fourth, the Tariff Act's rules for what constitutes a "specific" subsidy are inapplicable in the cross-border context. Id. § 1677(5A). Additionally, Commerce's reliance on § 1677(5A)(B) (export subsidy) and (D) (domestic subsidy) was flawed because these do not apply to transnational subsidies. In addition, Commerce made no finding that Chinese input suppliers conditioned their sales to Boviet {Solar} on Boviet {Solar's} export performance

Fifth, a subsidy must "confer[]" a "benefit," id. § 1677(5)(B), but that concept is inapplicable in the cross-border context. Additionally, Commerce's finding that a benefit was conferred here was flawed, because Commerce improperly assumed that any difference between what Boviet {Solar} paid and the benchmarks Commerce used represented a benefit from a government, and because Commerce failed to identify the relevant market in assessing adequacy of remuneration. Sixth, the Act's rules for nonmarket economy countries, id. § 1671(f)(1), differential treatment of Subsidies Agreement and non-Subsidies Agreement countries, id. §§ 1671(a)(2), 1671(c), and third-country dumping rules, id. §§ 1677k, 1677(7)(F)(iii)(I), all underscore the absence of authority to countervail transnational subsidies. Seventh, the statutory history culminating in the current definition of "subsidy" conclusively shows that transnational subsidies have never been countervailable. Eighth, the major questions doctrine confirms that, given the absence of clear congressional authorization, transnational subsidies are not countervailable.

Apart from these flaws, Commerce's rescission of its regulation prohibiting transnational subsidies was arbitrary and capricious. First, Commerce misunderstood the statutory history, even though commenters raised these arguments squarely. Second, Commerce largely invoked policy rationales to justify

its rescission rather than the traditional tools of statutory interpretation, which is indefensible after the demise of *Chevron* deference.

Petitioner's Rebuttal Brief:

The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* Petitioner's Rebuttal Brief at 9-12.

> The sparse information pointed to by the respondents and foreign governments fails to show that the SCM Agreement disallows the investigation of transnational subsidies and imposition of countervailing duties. Further, {Commerce's} investigations are established under U.S. domestic law. The U.S. Court of Appeals for the 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."
>
> Section 701(d) of the Act provides for the aggregation of subsidies provided to members of an international consortium involved in the production of subject merchandise when subsidies are provided by the countries in which the respective members are located. Section 701 of the Act is concerned with the aggregation of countervailing duties provided in different countries in the context of international consortia and not the identification of subsidies. Indeed, {Commerce} pointed to 701(d) of the Act to demonstrate that the Act did not prohibit the investigation of transnational subsidies by the administering authority. For the same reasons, the plain language of section 701(d) of the Act does not prohibit the investigation of transnational subsidies.
>
> Additionally, the argument that upstream subsidies provide the only other basis for a transnational subsidy is likewise incorrect. Under *Loper Bright*, {Commerce's} current interpretation of section 701 of the Act is the "best" interpretation. The respondents' and the GOV's reading of the statute would render the changes to the definition of a subsidy meaningless and would not harmonize the use of similar phrasing across the provisions of the Act. Boviet {Solar's} argument that the definition of "interested party" at 19 U.S.C. § 1677(9) demonstrates that Congress did not intend to allow investigation of transnational subsidies is meritless. There are a host of parties impacted directly by the Act that are not granted interested party status, including input providers and tollers. Finally, Petitioner did allege the recipients of the subsidies were members of an international consortium regarding the Policy Lending from Chinese Banks for BRI Capacity Cooperation Projects Program, though Petitioner noted that such a finding was not necessary.
>
> Finally, {JAVN's} arguments that its loans cannot be countervailed are all without merit. These arguments are premised on the incorrect theory that, to be countervailable, a program must meet the description in the Petition and the

> Initiation Checklist. The Department not only has the power, but is required by the Act, to investigate subsidies discovered in the course of an investigation.

Boviet Solar's Rebuttal Brief:

The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* Boviet Solar's Rebuttal Brief at 13-15.

> Boviet {Solar} maintains, as argued in its opening brief, that there is no basis to countervail the transnational LTAR programs.[88]

Commerce's Position: We disagree with the GOC, the GOV, Boviet Solar, and JAVN 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."[89] 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.[90] 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."[91] 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

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[88] This language was an excerpt of the executive summary from another issue presented in this Issues and Decision Memorandum. *See* Boviet Solar's Rebuttal Brief at 2 and 13-15.

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

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

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

countervailable subsidy must be the same government or public entity as the government of the country within which that subsidy is received. The use of the indefinite article in "*a* country" indicates that the country of the authority providing a countervailable subsidy may be distinct and separate from the country where the countervailable subsidy is received. Section 771(5)(B) of the Act contains similar language, defining a subsidy as a case in which "*an* authority provides a financial contribution" {*emphasis added*} and defining "authority" as "*a* government of *a* country or any public entity within the territory of the country" {*emphasis added*}.

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

> Since {19 CFR 351.527} was adopted, Commerce has observed through its administrative experiences that instances in which a government provides a subsidy that benefits foreign production are far more prevalent. Consequently, the assumptions underlying our interpretation of section 701 of the Act have changed. We now believe that our past interpretation of section 701 of the Act was overly restrictive. A limitation on Commerce's ability to countervail subsidies only if those subsidies were provided to entities of a country solely by the government of that country, when subsidies from other foreign governments would otherwise be determined countervailable under the CVD law and could prove injurious to producers of the domestic like product, is inconsistent with the very purpose of the CVD law, and we do not believe that the language of section 701 of the Act requires such a restrictive interpretation. Accordingly, we are proposing to eliminate the current regulation preventing consideration of allegations of transnational subsidies, and instead reserve the provision for future consideration.[92]

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.[93] Accordingly, Commerce withdrew the self-imposed restriction previously found at 19 CFR 351.527.

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

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

[92] *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*).
[93] *See* section 701(a)(2) of the Act.

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> with backings from state-owned policy banks, promoting the specific grantor country's industry policies.[94]

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

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

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

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

> {…}Commerce has determined to repeal the current transnational subsidies regulation. In repealing this regulation, we clarify that when appropriate, Commerce will investigate and countervail transnational subsidies (*i.e.,* subsidies provided by a government or public entity in one country that benefit producers or exporters in another country).
>
> Section 701 of the Act does not impose geographic limitations on countervailing unfair foreign subsidies. As was explained in the *1998 Final Preamble*, § 351.527 was derived from now-repealed section 303(a)(1) of the Act. When § 351.527 was 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

[94] *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).

> 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.[95]

As explained above, under the Act, the government (or public entity) providing a subsidy need not necessarily be in the same country as the recipient of said subsidy. As explained in more detail in Comments 4,7,9,10, in calculating benefits for the transnational subsidies in this case – the provision of silicon wafers for LTAR, the provision of silver paste for LTAR and the provision of solar glass for LTAR – Commerce applied the same methodology, pursuant to the same statutory and regulatory provisions, as it generally does in determining whether a good was provided for LTAR. Thus, based on the facts of this investigation, the benefit calculation for these transnational subsidies largely does not differ from Commerce's LTAR benefit calculation for subsidies that are provided by the government of the country under investigation.

We disagree with Boviet Solar, JAVN, and the GOV that *Loper Bright*[96] 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."[97] 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."[98]

As discussed above, section 701(a) of the Act states that if Commerce "determines that the government of a country or any public entity within the territory of a country is providing, directly or indirectly, a countervailable subsidy with respect to the manufacture, production, or export of a class or kind of merchandise imported, or sold (or likely to be sold) for importation, into the United States," Commerce shall impose a countervailing duty upon said merchandise equal to the amount of the net countervailable subsidy. Nothing in section 701(a) states that the "government of a country or any public entity within the territory of a country" providing a countervailable subsidy must be the *same* government or public entity as the government of the

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[95] *See Regulations Improving and Strengthening the Enforcement of Trade Remedies Through the Administration of the Antidumping and Countervailing Duty Laws,* 89 FR 20766, 20826 (March 25, 2024) (*RISE Final Rule*) (footnotes omitted).
[96] *See Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024) (*Loper Bright*).
[97] *See Loper Bright*, 144 S. Ct. at 2273.
[98] *Id.* (internal citations and quotation marks omitted).

country within which that subsidy is received. The use of the indefinite article in "*a* country" indicates that the country of the authority providing a countervailable subsidy may be distinct and separate from the country where the countervailable subsidy is received. This interpretation is further supported by section 771(5)(B) of the Act, which defines a subsidy as a case in which "*an* authority provides a financial contribution" {*emphasis added*} and defines "authority" as "*a* government of *a* country or any public entity within the territory of the country" {*emphasis added*}. Thus, the statute clearly authorizes Commerce to investigate and countervail transnational subsidies, which Commerce recognized through notice-and-comment procedures when it repealed the self-imposed restriction formerly present in 19 CFR 351.527.

Further, we find that the two proposed Congressional bills to codify the authorization to investigate transnational subsidies to which the GOC and Boviet Solar cited do not preclude Commerce from currently investigating transnational subsidies.[99] 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."[100] Accordingly, these proposed Congressional bills do not undermine Commerce's finding that the statute permits countervailing transnational subsidies.

Finally, contrary to Boviet Solar's, JAVN's and the GOV's argument, we do not find that Commerce's interpretation of the Act renders sections 701(d) and 701(e), regarding international consortia and upstream subsidies, respectively, superfluous. Sections 701(d) and 701(e) of the Act provide frameworks for the investigation of certain subsidies but does not restrict the framework by which to examine transnational subsidies, such as those at issue here. Indeed, the allegations here involve the provision of a countervailable subsidy from the GOC to a producer in Vietnam (*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."[101] 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 wafer, silver paste, and solar glass for LTAR constitutes countervailable transnational subsidies. *See* Comments 6, 7, 9, 10, and 18 below. In subsequent proceedings, Commerce will continue to

[99] *See* GOC's Case Brief at 10-11.
[100] *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)).
[101] *See RISE Final Rule* at 20827.

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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.

Boviet Solar argues several points to emphasize that the Act does not authorize countervailing transnational subsidies.[102] For example: (1) The benefit conferred; (2) Nonmarket Economy Country Rules; (3) Subsidies Agreement Country; and (4) Third-Country Dumping Rules.[103] However, as indicated above, the Act does not affect Commerce's ability under the Act to investigate and countervail transnational subsidies.

Comment 2: Policy Lending from Chinese Banks for BRI Capacity Cooperation Projects

GOC's Case Brief:

The following is a verbatim summary of arguments submitted by the GOC. For further details, *see* GOC's Case Brief at 10-16.

> Second, {Commerce's} decision to countervail the Policy Lending from Chinese Banks for Belt and Road Initiative (BRI) Capacity Cooperation Projects is not based on the substantial evidence and is otherwise not in accordance with law. (1) The application of facts otherwise available on this program is not warranted because DOC disregards the existing evidence in the record and the due process rights of the parties involved. (2) The alleged financial contribution is not supported by record evidence and in accordance with law, because Chinese banks are not authorities. (3) There is no legal basis to determine that this alleged program is specific. Geographical specificity cannot apply to transnational subsidy programs which is providing to an enterprise or industry that is not "within the jurisdiction of" the authority allegedly providing the subsidy. Export subsidy is not established because this program is not contingent upon export performance.

Boviet Solar's Case Brief:

The following is a verbatim summary of arguments submitted by Boviet Solar. For further details, *see* Boviet Solar's Case Brief at 4-18.

> Commerce's decision to countervail alleged subsidies from China in this investigation is inconsistent with the Tariff Act, arbitrary and capricious, and contrary to law. First, Section 1671's singular language indicates that Commerce must address subsidies from "the government of a country," not the governments of third countries. 19 U.S.C. § 1671(a)(1) (emphasis added). Second, the Act specifies two limited circumstances under which subsidies from third countries can be countervailed, id. §§ 1671(d), 1677-1(a), which would be superfluous if transnational subsidies are generally countervailable. Third, the Act does not give third-country subsidizers the rights and duties of "interested parties"—a telling

[102] *See* Boviet Solar's Case Brief at 12-16.
[103] *Id.*

omission that their subsidies are not subject to countervailing duties. Id. § 1677(9). Fourth, the Tariff Act's rules for what constitutes a "specific" subsidy are inapplicable in the cross-border context. Id. § 1677(5A). Additionally, Commerce's reliance on § 1677(5A)(B) (export subsidy) and (D) (domestic subsidy) was flawed because these do not apply to transnational subsidies. In addition, Commerce made no finding that Chinese input suppliers conditioned their sales to Boviet {Solar} on Boviet {Solar's} export performance

Fifth, a subsidy must "confer[]" a "benefit," id. § 1677(5)(B), but that concept is inapplicable in the cross-border context. Additionally, Commerce's finding that a benefit was conferred here was flawed, because Commerce improperly assumed that any difference between what Boviet {Solar} paid and the benchmarks Commerce used represented a benefit from a government, and because Commerce failed to identify the relevant market in assessing adequacy of remuneration. Sixth, the Act's rules for nonmarket economy countries, id. § 1671(f)(1), differential treatment of Subsidies Agreement and non-Subsidies Agreement countries, id. §§ 1671(a)(2), 1671(c), and third-country dumping rules, id. §§ 1677k, 1677(7)(F)(iii)(I), all underscore the absence of authority to countervail transnational subsidies. Seventh, the statutory history culminating in the current definition of "subsidy" conclusively shows that transnational subsidies have never been countervailable. Eighth, the major questions doctrine confirms that, given the absence of clear congressional authorization, transnational subsidies are not countervailable.

Apart from these flaws, Commerce's rescission of its regulation prohibiting transnational subsidies was arbitrary and capricious. First, Commerce misunderstood the statutory history, even though commenters raised these arguments squarely. Second, Commerce largely invoked policy rationales to justify its rescission rather than the traditional tools of statutory interpretation, which is indefensible after the demise of *Chevron* deference.

JAVN's Case Brief

The following is a verbatim summary of arguments submitted by JAVN. For further details, *see* JAVN's Case Brief at 13-20.

Commerce is prohibited by statute from assessing countervailing duties on subsidies provided by third countries, and accordingly must reverse its decision to countervail provision of silicon wafers, solar glass and silver paste, as well as policy lending by China in the Final Determination. Transnational subsidy investigations are prohibited according to the plain terms of 19 U.S.C. §§ 1671 & 1677, and any alternate reading of the statute would be contrary to controlling law and accepted principles of statutory construction. Commerce's repeal of 19 C.F.R. § 351.527, which prohibited transnational subsidy investigations, cannot expand Commerce's authority to conduct such investigations which are still prohibited by statute. Even if Commerce does not agree that transnational subsidy investigations are

prohibited, it should nevertheless defer reaching any determination on these alleged programs until the first administrative review because parties have had insufficient opportunity to comment on these novel programs.

Petitioner's Rebuttal Brief:

The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* Petitioner's Rebuttal Brief at 12-21.

> The GOC withheld information requested by the Department and, as a result, the agency properly relied on facts otherwise available in its analysis of the Chinese banks and Chinese input producers as to both financial contribution and specificity. The GOC argues that the application of facts otherwise available was not warranted, and that Chinese commercial institutions, such as Chinese banks, and input producers are not "public bodies." However, the GOC withheld information requested by the Department, and the Department properly resorted to the use of facts otherwise available pursuant to section 776(a)(1) of the Act. The Department correctly determined that Chinese banks and Chinese input suppliers are government authorities within the meaning of section 771(5)(B) of the Act that provided a financial contribution and should continue to do so for the final determination. However, the Department was incorrect to limit the finding to 71 percent of the respondents suppliers of silicon wafer and solar glass providers and 70 percent of silver paste providers for which there was no other information on the record, because the 70 and 71 percent figures refer to direct government ownership, and the Department made the determination that both majority and non-majority government-owned entities were "authorities" within the meaning of section 771(5)(B) of the Act. For the final determination, the Department should find that all of the respondents' providers of silicon wafers, solar glass, and silver paste were authorities within the meaning of section 771(5)(B) of the Act, due to the lack of information on the record, including the GOC's failure to provide information on union activities and other information for even those companies for which there is some limited information on the record of this investigation as to ownership.

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 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.[104] 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.[105]

[104] *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.
[105] *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.

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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.[106] Because GOC banks reflect significant government intervention, they are considered to be SOCBs.[107] In *CFS from China*, Commerce explained why SOCBs are "authorities" within the meaning of section 771(5)(B) of the Act. Contrary to the GOC's arguments made there, which are reiterated here, our findings were not, and are not, based upon government ownership alone. For example, we stated:

> ... information on the record indicates that the {Chinese} banking system remains under State control and continues to suffer from the legacies associated with the longstanding pursuit of government policy objectives. These factors undermine the SOCBs ability to act on a commercial basis and allow for continued government control resulting in the allocation of credit in accordance with government policies. Therefore, treatment of SOCBs in China as commercial banks is not warranted in this case.[108]

Based on facts available, record evidence indicates that financial support directed toward companies, specifically the solar industry, investing in BRI initiatives does in fact exist.[109] 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,[110] and by the end of 2022, total loans from Chinese policy banks for BRI projects amounted to 3.1 trillion yuan.[111] 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.[112]

As noted in the *Preliminary Determination* and the Post-Preliminary Determination, Commerce found that the non-responsive companies[113] 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

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[106] *See Utility Scale Wind Towers from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012), and accompanying IDM at Comment 4 (citing *CFS from China*, IDM at Comment 10); *see also* Petitioner's Letter, "Information Related to Transnational Policy Lending," dated September 6, 2024 at Exhibit China-NME Status Memoranda (discussing the status of the Chinese commercial banking sector).
[107] *Id*.
[108] *See CFS from China* IDM at Comment 8.
[109] *See* Petitioner's Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties," dated April 24, 2024 (Petition), at Exhibits IX-71, IX-93, and IX-94.
[110] *Id*. at Exhibit IX-93.
[111] *Id.* at Exhibit IX-94.
[112] *See, e.g.*, *CFS from China* IDM at Comment 1.
[113] Commerce did not receive responses from: 1) GEP New Energy Viet Nam Company Limited; 2) HT Solar Vietnam Limited Company; 3) Shengtian New Energy Vina Co., Ltd.; 4) and Vietnam Green Energy Commercial Services Company LTD (collectively, non-responsive companies). *See Preliminary Determination* PDM at 11-18 and 49-50; *see also* Post Preliminary Determination at 18-23.

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adverse inference, determines that the non-responsive companies did use, and receive a benefit from, all countervailable subsidy programs within the meaning of section 771(5)(E) of the Act. The GOC's argument is irrelevant because the application of a subsidy rate for this program based on AFA to non-responsive companies was not due to the GOC's questionnaire responses, or lack thereof, but instead, due to the noncooperation by these four companies to Commerce's request for information.

Regarding the GOC's assertion that we relied on an inaccurate translation of Article 34 of the Law on Commercial Banks, the translation and the quoted text is the only translation we have on record. No other translation on the administrative record indicates the translation is inaccurate or in error. Although the GOC has asserted that the Law on Commercial Banks does not oblige banks to pursue industrial policies in their lending operations and that the Chinese version does not contain the equivalent of "shall," they rely on no authority for their argument and translations from expert, third-party sources indicate otherwise. As we explained in the *Aluminum Extrusions from China* and *Aluminum Extrusions from China AR1*, we determined that Article 34 of the Banking Law states that banks should carry out their loan business "under the guidance of the state industrial policies."[114] Further, we find that BRI constitutes a state industrial policy by which Chinese SOCBs are directed to support through their financial policies.[115] 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 GOC then asserts that Article 4 of the Law on Commercial Banks states that "{c}ommercial banks shall conduct their operations in accordance with laws and be free from interference by any organization or individual," and therefore, because this article is within the "General Principles" chapter, Article 34 must align with it.[116] 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 Vietnam have multiple joint economic zones located in Vietnam, financed and encouraged by investments for limited number of industries within the BRI capacity cooperation framework.[117] Further, we find that the GOC has a policy to provide financial support to

[114] *See Aluminum Extrusions from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011*, 79 FR 106 (January 2, 2014) (*Aluminum Extrusions from China AR1*), and accompanying IDM at "Policy Loans to Chinese Aluminum Extrusion Producers" and Comment 6 and *Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Aluminum Extrusions from China*), and accompanying IDM at Comment 28.
[115] *See* Petition at Exhibits IX-67, IX-71, and IX-93.
[116] *See* GOC Case Brief at 14.
[117] *See* Petition at Exhibits IX-67, IX-72, IX-73, IX-74, IX-75, IX-77, IX-80, IX-83, IX-84, IX-85, and IX-89.

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Chinese companies that invest in overseas BRI capacity cooperation projects, specifically the clean energy industry like solar energy production.[118] Accordingly, we find it reasonable to determine for this final determination that these programs are *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act, based on facts otherwise available on the record, because these programs are provided to a limited number of enterprises or industries, including the solar industry.

The GOC argues that the text of section 771(5A)(D)(iii)(I) of the Act limits findings of *de facto* specificity to subsidies provided to producers "within the jurisdiction" of the granting authority. As an initial matter, we note that neither the producers in question, nor the GOC provided complete information in response to our questions with respect to this program. Due to this gap in information, we must analyze the facts available on the record, which indicates that producers 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,[119] pursuant to the State-Owned Assets Law,[120] 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,[121] a "state-invested enterprise" is defined as a "wholly state-owned enterprise or company with the state being the sole investor, or a company in which the state has a stake, *whether controlling or non-controlling*" {*emphasis added*}. Therefore, as facts available, we find that certain Chinese companies or subsidiaries of Chinese companies are within the jurisdiction of the Government of China. As a result, we are finding that this program is *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act, and disagree with the GOC that our analysis is inconsistent with this provision of the statute.

Comment 3: Substantial Evidence for the Cross-Border Provisions of Chinese Polysilicon, Silicon Wafer, Silver Paste, and Solar Glass for LTAR

GOC's Case Brief:

[118] *See* Petition at Exhibit IX-71. *Guiding Opinions of the State Council on Promoting International Cooperation in Production Capacity and Equipment Manufacturing* outlines how the Government of China can increase international competitiveness by "Increas{ing} financial support. Give full play to the active role of policy banks and development financial institutions, and increase financing support for international cooperation in production capacity and equipment manufacturing through syndicated loans, export credits, project financing and other means… Promote the use of RMB in the construction of the Belt and Road Initiative…" *See also* Petition at Exhibit IX-93. *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…"

[119] *See* GOC SP SG QR at Exhibit I.2 (Provisional Measures for Supervision and Administration of Outbound Investment by Centrally Administered Enterprises) at Article 2.

[120] *Id*. at Article 1.

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

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The following is a verbatim summary of arguments submitted by the GOC. For further details, *see* GOC's Case Brief at 16-25.

> Third, {Commerce's} decision to countervail the Cross-Border Provision of Chinese Origin Inputs (polysilicon, silicon wafer, silver paste, solar glass) for less-than-adequate remuneration ("LTAR") is not based on the substantial evidence and is otherwise not in accordance with law. (1) The application of facts available on these LTAR programs is not warranted, because DOC disregards the existing evidence in the record and the due process rights of the parties involved. (2) The alleged financial contribution is not based on the substantial evidence and is otherwise not in accordance with law, because Chinese input producers are not authorities. (3) There is no legal basis to determine that this alleged program is specific. De facto specificity cannot apply to transnational subsidy programs that are provided to an enterprise or industry that is not "within the jurisdiction of" the authority allegedly providing the subsidy. An export subsidy has not been established because this program is not contingent upon export performance. (4) The subsidy rate is not calculated with the appropriate denominator. The determination of export subsidy was not substantiated, thus the use of export sales as denominator for the calculation is wrong

Boviet Solar's Case Brief:

The following is a verbatim summary of arguments submitted by Boviet Solar. For further details, *see* Boviet Solar's Case Brief at 4-18.

> Commerce's decision to countervail alleged subsidies from China in this investigation is inconsistent with the Tariff Act, arbitrary and capricious, and contrary to law. First, Section 1671's singular language indicates that Commerce must address subsidies from "the government of a country," not the governments of third countries. 19 U.S.C. § 1671(a)(1) (emphasis added). Second, the Act specifies two limited circumstances under which subsidies from third countries can be countervailed, id. §§ 1671(d), 1677-1(a), which would be superfluous if transnational subsidies are generally countervailable. Third, the Act does not give third-country subsidizers the rights and duties of "interested parties"—a telling omission that their subsidies are not subject to countervailing duties. Id. § 1677(9). Fourth, the Tariff Act's rules for what constitutes a "specific" subsidy are inapplicable in the cross-border context. Id. § 1677(5A). Additionally, Commerce's reliance on § 1677(5A)(B) (export subsidy) and (D) (domestic subsidy) was flawed because these do not apply to transnational subsidies. In addition, Commerce made no finding that Chinese input suppliers conditioned their sales to Boviet {Solar} on Boviet {Solar's} export performance
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> Fifth, a subsidy must "confer[]" a "benefit," id. § 1677(5)(B), but that concept is inapplicable in the cross-border context. Additionally, Commerce's finding that a benefit was conferred here was flawed, because Commerce improperly assumed that any difference between what Boviet {Solar} paid and the benchmarks

> Commerce used represented a benefit from a government, and because Commerce failed to identify the relevant market in assessing adequacy of remuneration. Sixth, the Act's rules for nonmarket economy countries, id. § 1671(f)(1), differential treatment of Subsidies Agreement and non-Subsidies Agreement countries, id. §§ 1671(a)(2), 1671(c), and third-country dumping rules, id. §§ 1677k, 1677(7)(F)(iii)(I), all underscore the absence of authority to countervail transnational subsidies. Seventh, the statutory history culminating in the current definition of "subsidy" conclusively shows that transnational subsidies have never been countervailable. Eighth, the major questions doctrine confirms that, given the absence of clear congressional authorization, transnational subsidies are not countervailable.
>
> Apart from these flaws, Commerce's rescission of its regulation prohibiting transnational subsidies was arbitrary and capricious. First, Commerce misunderstood the statutory history, even though commenters raised these arguments squarely. Second, Commerce largely invoked policy rationales to justify its rescission rather than the traditional tools of statutory interpretation, which is indefensible after the demise of *Chevron* deference.

JAVN's Case Brief:

The following is a verbatim summary of arguments submitted by JAVN. For further details, see JAVN's Case Brief at 43-48 and 50-54.

> Commerce's application of AFA to GOC is unlawful because Commerce failed to meet its obligations under 19 U.S.C. § 1677m(d) to inform the GOC of the alleged deficiencies in its responses to Commerce's transnational subsidy questionnaire. Contrary to Commerce's Post-Preliminary Determination finding, the record shows that the GOC did respond to Commerce's questionnaire and did not withhold information. Subsequently, Commerce's determination based on AFA that JA Solar's input suppliers are GOC authorities who conferred a financial contribution is unlawful. Further, Commerce's determination based on AFA that the alleged silver paste for LTAR program is specific is also not supported by substantial evidence on the record and is unlawful. Subsequently, Commerce's determination based on AFA that the alleged solar glass for LTAR program is specific is unlawful and also not supported by substantial evidence on the record.[122]

Petitioner's Rebuttal Brief:

The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* Petitioner's Rebuttal Brief at 12-21.

> The GOC withheld information requested by the Department and, as a result, the agency properly relied on facts otherwise available in its analysis of the Chinese

[122] This language is combined with two other executive summaries that relate to the issues under this comment. *See* JAVN's Case Brief at 10.

banks and Chinese input producers as to both financial contribution and specificity. The GOC argues that the application of facts otherwise available was not warranted, and that Chinese commercial institutions, such as Chinese banks, and input producers are not "public bodies." However, the GOC withheld information requested by the Department, and the Department properly resorted to the use of facts otherwise available pursuant to section 776(a)(1) of the Act. The Department correctly determined that Chinese banks and Chinese input suppliers are government authorities within the meaning of section 771(5)(B) of the Act that provided a financial contribution and should continue to do so for the final determination. However, the Department was incorrect to limit the finding to 71 percent of the respondents suppliers of silicon wafer and solar glass providers and 70 percent of silver paste providers for which there was no other information on the record, because the 70 and 71 percent figures refer to direct government ownership, and the Department made the determination that both majority and non-majority government-owned entities were "authorities" within the meaning of section 771(5)(B) of the Act. For the final determination, the Department should find that all of the respondents' providers of silicon wafers, solar glass, and silver paste were authorities within the meaning of section 771(5)(B) of the Act, due to the lack of information on the record, including the GOC's failure to provide information on union activities and other information for even those companies for which there is some limited information on the record of this investigation as to ownership.

Commerce's Position: In the *Preliminary Determination* and Post-Preliminary Determination, we found, based on facts otherwise available, that certain producers of polysilicon, silicon wafer, silver paste, and solar glass are "authorities" within the meaning of section 771(5)(B) of the Act.[123] 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 *Preliminary Determination* and Post-Preliminary Determination. 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

[123] *See Preliminary Determination* PDM at 50-51; *see also* Post Preliminary Determination at 4-8.

merely that it did not maintain or collect the requested information. The GOC argues that Commerce did not inform the GOC that its responses to our questions related to the provision of inputs for LTAR were deficient and did not provide the GOC with respective opportunities to cure any deficiencies. However, by contending that the GOC does not collect or maintain the requested information, we find that any further attempts to request this information from the GOC would be futile as the GOC itself stated it could not provide this information, nor did the GOC provide Commerce with an alternative way to provide us with the required information.[124] 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.[125] Therefore, we find that section 782(d) of the Act was not triggered.

As discussed in the *Preliminary Determination* and Post-Preliminary Determination, and noted above, to analyze whether the domestic producers and suppliers are "authorities" within the meaning of section 771(5)(B) of the Act, we sought information from the GOC regarding the ownership of the input producers identified by Boviet Solar, JAVN and its affiliates.[126] 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.[127] 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.[128] 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.[129] The GOC's lack of response to our requests for information is described in the *Preliminary Determination* and Post-Preliminary Determination.[130] Thus, we find that the GOC's questionnaire responses created a gap in the record regarding Boviet Solar's and JAVN's (and its affiliates) 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.[131] As explained in the Public Bodies Memorandum, "available information and record evidence indicates that the CCP meets the

[124] *See* GOC Wafer QR; GOC SP SG QR; and GOC's Letter, "GOC Transnational Subsidies Questionnaire Response," dated August 16, 2024 (TN Subsidies QR).
[125] *Id*.
[126] *See* Initial Questionnaire at *Input Producer Appendix*; *see also* Post-Preliminary Determination.
[127] *Id.*
[128] *Id*.
[129] *Id*.
[130] *See* Post-Preliminary Determination at 4-8
[131] *Se* Petitioner First NSA at Exhibits NSA-7 and NSA-8.

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definition of the term 'government' … for the limited purpose of applying the U.S. CVD law to China," that the CCP exerts significant control over economic activities in China, that the presence of CCP officials as owners, managers, or directors of a producer is pertinent for determining whether a producer constitutes an "authority," that publicly available information indicates that Chinese law requires the establishment of CCP organizations "in all companies, whether state, private, domestic, or foreign-invested," and that such organizations may wield a controlling influence in the company's affairs, as noted by multiple sources in the Public Bodies Memorandum.[132] Thus, the GOC's arguments regarding the role of CCP officials in company management are unavailing due to our analysis of record evidence.

We also disagree with the GOC's argument that companies like China National Building Material Group Co., Ltd. (CNBM) and Flat Solar should not be considered public bodies.[133] 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."[134] 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).[135] 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."[136] Record evidence demonstrates that not only is CNBM fully owned by the State-owned Assets Supervision and Administration Commission of the State Council, but also, CNBM's chairman and director are CCP officials and CNBM's development strategy states, "CNBM actively puts the guiding principles from the 19th CPC National Congress and the Second, Third, Fourth, Fifth and Sixth Plenary Sessions of the 19th CPC Central Committee into action."[137] Similarly, record evidence demonstrates that Flat Solar's founder and chairman is a member of the CCP and a representative of the Xiuzhou District People's Congress.[138] Flat Solar's vice president is also a CCP official, and Flat Solar was reported to be "actively respond{ing} to the central government's 'Belt and Road' initiative and accelerat{ing} its 'going out' pace."[139] Therefore, we continue to find that, based on the facts available on the record, the input producer companies like CNBM and Flat Solar are either owned or controlled by the CCP and are actively involved in carrying out the Government of

[132] *Id.*
[133] *See* GOC's Case Brief at 22.
[134] *See* Petitioner First NSA at Exhibits NSA-7 and NSA-8.
[135] *Id.* at 5.
[136] *Id*.
[137] *See* Petitioner's Letter, "New Subsidy Allegations," dated August 26 (Petitioner Second NSA), at Exhibit NSA2-27 at 6-8.
[138] *Id.* at Exhibit NSA2-29.
[139] *Id*. at Exhibits NSA2-29 and NSA2-30.

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China'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,[140] we reiterate our stance in Comment 1 that Commerce makes its determinations in accordance with U.S. law, which is consistent with its WTO obligations.

Contrary to the Government of China's claim, Commerce did not use these Five-Year Plans (FYPs) to determine that input producers were authorities, but rather, used these FYPs, based on facts available, to determine that the GOC has a policy to provide support to its global solar industry. While the FYP listed in the Post-Preliminary Determination does not explicitly mention the polysilicon, silicon wafer, silver paste, and solar glass industries,[141] 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."[142] The FYPs' goals to strengthen the solar industry through coordinating upstream manufacturing to reduce costs and encourage solar companies to go abroad demonstrates not only that the GOC has an incentive to direct state-owned and state-controlled companies to produce and sell inputs for solar cells at artificially low costs to its domestic solar industries but also to do the same for its solar industries abroad. In addition, we disagree with the Government of China's assertion that FYPs are simply economic planning documents akin to the other countries' plans and policies.[143] 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.[144] Further, the World Bank found that "{i}f the government {were} unable to intervene in the microeconomic decision making of enterprises and consumers, the targets/tasks it set in the five year plan, no matter how intrusive, would remain no more than an expectation;" however, "evidence indicates that the {Government of China} could and did play a powerful role in resource allocation to implement the five year plan targets on industrial structure changes."[145] 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 Government of China's Company Law prohibits CCP officials from taking positions in private companies, Commerce has previously found that CCP officials "can, in fact, serve as owners, members of the board of directors, or senior managers of companies."[146] 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

[140] *See* GOC's Case Brief at 20.
[141] *See* Petitioner First NSA at Exhibits NSA-2, NSA-3, and NSA-6.
[142] *See* Petitioner First NSA at Exhibits NSA-2 at 4, NSA-3 at 11, and NSA-6 at 38.
[143] *See* GOC's Case Brief at 21-22.
[144] *See* Petitioner First NSA at Exhibits NSA-7 and NSA-8.
[145] *Id*. at 19.
[146] *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.

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employment.[147] However, it has been explained that this rule only applies to "staff of the administrative organs of the CCP and specified officials."[148] 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.[149] 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."[150]

We have found in prior cases that, when examining whether CCP officials are among a company's owners, senior managers, or directors, or if a CCP primary organization such as a party committee is embedded in the company's structure, the entity possessing direct knowledge of these facts is the CCP (or the GOC) itself.[151] In fact, in prior CVD proceedings involving China, we found that the GOC was able to obtain the information requested independently from the companies involved. We also found that statements from the companies, rather than from the GOC or from members of the CCP themselves, were not sufficient as a basis for determining whether CCP officials were embedded in a company's structure as owners, senior managers, or directors.[152] Further, the GOC has been able to provide requested information on CCP involvement in input producers in a prior CVD investigation.[153]

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.[154] As explained in the Public Bodies Memorandum, an entity with significant CCP presence on its board or in

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[147] *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.
[148] *Id*.
[149] *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.
[150] *See* Petitioner First NSA at Exhibits NSA-7 and NSA-8.
[151] *See Citric Acid from China* IDM at 4-6; *see also Carbon and Alloy Threaded Rod from China* IDM at 16.
[152] *See Citric Acid from China* IDM at 61 ("{w}e requested the {Government of China} to respond to the Input Producer Appendix because it is the party to the investigation which has in its possession verifiable information about the CCP's structure and functions that are relevant to {Commerce's} determination of whether producers of inputs are 'authorities' within the meaning of section 771(5)(B) of the Act."). *See also Pre-Stressed Concrete Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010) (*PC Strand from China*) IDM at Comment 8, where it is discussed that {Commerce} requested and obtained from the Government of China information which was verified at the Government of China on the ownership of an input producer and the involvement of a shareholder in the CCP.
[153] *See High Pressure Steel Cylinders from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012) (*High Pressure Steel Cylinders from China*), and accompanying IDM at 13.
[154] *See* Post-Preliminary Determination.

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management or in party committees may be controlled, such that it possesses, exercises, or is vested with governmental authority.[155] Consistent with this determination, the record also shows that 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.[156] On this basis, for any purchases by Boviet Solar and JAVN 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 GOC "authorities." This method is consistent with Commerce's past practice in certain other instances for the provision of inputs for LTAR in China by producers for which no record information was available.[157] Therefore, as facts available, we continue to find that certain producers of polysilicon, silicon wafer, silver paste, and solar glass are "authorities" within the meaning of section 771(5)(B) of the Act.

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

GOC's Case Brief:

The following is a verbatim summary of arguments submitted by the GOC. For further details, *see* GOC's Case Brief at 16-25.

> Third, {Commerce's} decision to countervail the Cross-Border Provision of Chinese Origin Inputs (polysilicon, silicon wafer, silver paste, solar glass) for less-than-adequate remuneration ("LTAR") is not based on the substantial evidence and is otherwise not in accordance with law. (1) The application of facts available on these LTAR programs is not warranted, because DOC disregards the existing evidence in the record and the due process rights of the parties involved. (2) The alleged financial contribution is not based on the substantial evidence and is otherwise not in accordance with law, because Chinese input producers are not authorities. (3) There is no legal basis to determine that this alleged program is specific. De facto specificity cannot apply to transnational subsidy programs that are provided to an enterprise or industry that is not "within the jurisdiction of" the authority allegedly providing the subsidy. An export subsidy has not been established because this program is not contingent upon export performance. (4) The subsidy rate is not calculated with the appropriate denominator. The determination of export subsidy was not substantiated, thus the use of export sales as denominator for the calculation is wrong

Boviet Solar's Case Brief:

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[155] *See* Petitioner First NSA at Exhibits NSA-7 and NSA-8.
[156] *See* Post-Preliminary Determination.
[157] *See, e.g.*, *Drawn Stainless Steel Sings from the People's Republic of China: Final Results of Countervailing Duty Administrative Review and Rescission in Part; 2021-2013*, 80 FR 69638 (November 10, 2015), and accompanying IDM at 10; *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008), and accompanying IDM at 11; *Light-walled Rectangular Pipe and Tube from the People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination*, 73 FR 35642 (June 24, 2008), and accompanying IDM at 8.

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The following is a verbatim summary of arguments submitted by Boviet Solar. For further details, *see* Boviet Solar's Case Brief at 4-18.

> Commerce's decision to countervail alleged subsidies from China in this investigation is inconsistent with the Tariff Act, arbitrary and capricious, and contrary to law. First, Section 1671's singular language indicates that Commerce must address subsidies from "the government of a country," not the governments of third countries. 19 U.S.C. § 1671(a)(1) (emphasis added). Second, the Act specifies two limited circumstances under which subsidies from third countries can be countervailed, id. §§ 1671(d), 1677-1(a), which would be superfluous if transnational subsidies are generally countervailable. Third, the Act does not give third-country subsidizers the rights and duties of "interested parties"—a telling omission that their subsidies are not subject to countervailing duties. Id. § 1677(9). Fourth, the Tariff Act's rules for what constitutes a "specific" subsidy are inapplicable in the cross-border context. Id. § 1677(5A). Additionally, Commerce's reliance on § 1677(5A)(B) (export subsidy) and (D) (domestic subsidy) was flawed because these do not apply to transnational subsidies. In addition, Commerce made no finding that Chinese input suppliers conditioned their sales to Boviet {Solar} on Boviet {Solar's} export performance
> Fifth, a subsidy must "confer[]" a "benefit," id. § 1677(5)(B), but that concept is inapplicable in the cross-border context. Additionally, Commerce's finding that a benefit was conferred here was flawed, because Commerce improperly assumed that any difference between what Boviet {Solar} paid and the benchmarks Commerce used represented a benefit from a government, and because Commerce failed to identify the relevant market in assessing adequacy of remuneration. Sixth, the Act's rules for nonmarket economy countries, id. § 1671(f)(1), differential treatment of Subsidies Agreement and non-Subsidies Agreement countries, id. §§ 1671(a)(2), 1671(c), and third-country dumping rules, id. §§ 1677k, 1677(7)(F)(iii)(I), all underscore the absence of authority to countervail transnational subsidies. Seventh, the statutory history culminating in the current definition of "subsidy" conclusively shows that transnational subsidies have never been countervailable. Eighth, the major questions doctrine confirms that, given the absence of clear congressional authorization, transnational subsidies are not countervailable.
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> Apart from these flaws, Commerce's rescission of its regulation prohibiting transnational subsidies was arbitrary and capricious. First, Commerce misunderstood the statutory history, even though commenters raised these arguments squarely. Second, Commerce largely invoked policy rationales to justify its rescission rather than the traditional tools of statutory interpretation, which is indefensible after the demise of *Chevron* deference.

JAVN's Case Brief:

The following is a verbatim summary of arguments submitted by JAVN. For further details, see JAVN's Case Brief at 43-48 and 50-54.

> Commerce's application of AFA to GOC is unlawful because Commerce failed to meet its obligations under 19 U.S.C. § 1677m(d) to inform the GOC of the alleged deficiencies in its responses to Commerce's transnational subsidy questionnaire. Contrary to Commerce's Post-Preliminary Determination finding, the record shows that the GOC did respond to Commerce's questionnaire and did not withhold information. Subsequently, Commerce's determination based on AFA that JA Solar's input suppliers are GOC authorities who conferred a financial contribution is unlawful. Further, Commerce's determination based on AFA that the alleged silver paste for LTAR program is specific is also not supported by substantial evidence on the record and is unlawful. Subsequently, Commerce's determination based on AFA that the alleged solar glass for LTAR program is specific is unlawful and also not supported by substantial evidence on the record.[158]

Petitioner's Rebuttal Brief:

The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* Petitioner's Rebuttal Brief at 12-21. The petitioner exceeded its 450-word count within the executive summary. To review the entire executive summary provided by the petitioner, *see* Petitioner's Case Brief at 4-6.

> {Commerce's} findings relied on the Initiation Checklist and the information provided in Petitioner's new subsidy allegations as facts otherwise available due to the failure of the GOC to provide information requested by the agency. The GOC first argues, regarding the BRI policy loan program, that geographical specificity under section 771(5A)(D)(iv) of the Act cannot apply because the enterprise or industry is not "within the jurisdiction of" the authority providing the subsidy. This language does not prevent the Department from finding that transnational subsidies are specific under this provision of the Act. In determining that the subsidy is "specific"{Commerce} looks to see if, whether by law or fact, an authority limits its provision of the subsidy to certain enterprises or industries. Indeed, nowhere does section 771(5A)(D) limit the recipient of the subsidy. As the SAA states, the specificity test is only meant to "winnow out" broadly available subsidies. Section 261(a) of the SAA repealed the previous provision of the Act that focused on the Department's analysis of subsidization for "article{s} or merchandise manufactured or produced in {the} country {of bestowal}." The new definition of subsidy in section 771(5) that replaced the previous definition places no such geographical limitation on the Department's authority. Section 771(5)(B) uses "within the territory of the country" to define the public entities of a country. The phrase is used in this manner two other times in the Act in addition to section 771(5)(B). The phrase "within the territory" when used repeatedly in this manner always limits "public bodies." It does not relate to the recipient of the subsidy.

[158] This language is combined with two other executive summaries that relate to the issues under this comment. See JAVN's Case Brief at 10.

Commerce's Position: For the final determination, we continue to find, based on facts available, that the cross-border provision of Chinese origin polysilicon, silicon 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 GOV, Boviet Solar, and JAVN argue that the text of 771(5A)(D)(iii)(I) limits findings of *de facto* specificity to subsidies provided to producers "within the jurisdiction" of the granting authority. As explained in Comment 2, we find Boviet Solar and JAVN 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,[159] pursuant to the State-Owned Assets Law,[160] demonstrates that outbound investment by state-invested enterprises and their subsidiaries at all levels outside China are subject to Chinese law. According to Article 5 of the GOC's State-Owned Assets Law,[161] 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*}. Because a company with state-owned or state-controlled investors may therefore be subject to Chinese law despite being physically located in a different country, then those companies (and companies controlled by those companies) can be within the jurisdiction of the Government of China. As a result, we disagree with the Government of China that there is no legal basis to find the alleged programs specific.[162]

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.[163] Therefore, because we are finding this program to be *de facto* specific for this final determination, we will use total sales as the denominator for calculating benefits for these programs. Furthermore, because the program is *de facto* specific, we do not reach the decision on whether it is also export specific in this final determination. While we are finding these programs to be *de facto* specific pursuant to section 771(5A)(iii)(I) of the Act in this investigation, Commerce will continue to make such determinations on a case-by-case basis, based on the record evidence of that particular proceeding.

Comment 5: Whether Commerce Was Arbitrary and Capricious

Boviet Solar's Case Brief:

The following is a verbatim summary of arguments submitted by Boviet Solar. For further details, *see* Boviet Solar's Case Brief at 21-23.

[159] *See* GOC SP SG QR at Exhibit I.2 (Provisional Measures for Supervision and Administration of Outbound Investment by Centrally Administered Enterprises) at Article 2.
[160] *Id*. at Article 1.
[161] *See* GOC SP SG QR at Exhibit I.3 (State-Owned Assets Law) at Article 5.
[162] *See* JAVN Final Calculation Memorandum; *see also* Boviet Solar Final Calculation Memorandum.
[163] *See* Post-Preliminary Determination at 7-8.

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> Apart from these flaws, Commerce's rescission of its regulation prohibiting transnational subsidies was arbitrary and capricious. First, Commerce misunderstood the statutory history, even though commenters raised these arguments squarely. Second, Commerce largely invoked policy rationales to justify its rescission rather than the traditional tools of statutory interpretation, which is indefensible after the demise of Chevron deference.

VSUN, Trina Solar, and Jinko Solar submitted letters in which they adopted by reference the arguments made by Boviet Solar.[164]

Commerce's Position: We do not agree that Commerce's withdrawal of 19 CFR 351.527 was arbitrary and capricious.

An agency action is "arbitrary and capricious" under the Administrative Procedure Act only when the agency has not "offered a satisfactory explanation for its action," or identified "a rational connection between the facts found and the choice made."[165] A court may not "substitute its judgement for that of the agency" in deciding if an agency action falls within the "narrow" standard of arbitrary and capricious action, but rather must identify only if there was a "clear error of judgement."[166] Indeed, courts must give agencies "ample latitude to adapt their rules and policies to the demands of changing circumstances,"[167] and the "same standard of review applies to the amendment of a regulation as applies to a regulation's adoption."[168] The Supreme Court has further described that an agency regulation, or the recission of an agency regulation, is not arbitrary and capricious if it relies on factors that Congress intended it to consider, if it considers all aspects of the issue faced, or if it provides a rational, evidence-based explanation for its decision.[169]

In rescinding the prohibition on transnational subsidies at former 19 CFR 351.527, Commerce considered all of the arguments and evidence submitted during the notice-and-comment period and provided an explanation for the decision to withdraw the regulation that was grounded in an understanding of the Act. That explanation exhibited a "rational connection between the facts found and the choices made."[170] Thus, we disagree with the argument that the removal of Commerce's regulation at 19 CFR 351.527 was arbitrary and capricious. The now-withdrawn 19 CFR 351.527 stated:

> Except as otherwise provided in section 701(d) of the Act (subsidies provided to international consortia) and section 771A of the Act (upstream subsidies), a subsidy does not exist if the Secretary determines that the funding for the subsidy is supplied in accordance with, and as part of, a program or project funded:

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[164] *See* VSUN's Case Brief; Trina Solar's Case Brief; and Jinko Solar's Case Brief.
[165] *See Ohio v. Environmental Protection Agency,* 603 U.S. 279, 292 (2024).
[166] *See Motor Vehicle Manufacturers Association of the United States, Inc. v. State Farm Mutual Auto Insurance Company*, 463 U.S. 29, 43 (1983) (*Motor Vehicle Manufacturers Association v. State Farm*).
[167] *Id*.
[168] *See National Organization of Veterans' Advocates, Inc. v. Secretary of Veterans Affairs*, 927 F. 3d 1263, 1267 (Fed. Cir. 2019).
[169] *See Motor Vehicle Manufacturers Association v. State Farm*, 463 U.S. at 43.
[170] *Id*.

1. By a government of a country other than the country in which the recipient firm is located; or

2. By an international lending or development institution.

In the *Federal Register* notice that proposed the removal of 19 CFR 351.527 (*RISE Proposed Rule*), Commerce stated the following:

> Since {19 CFR 351.527} was adopted, Commerce has observed through its administrative experiences that instances in which a government provides a subsidy that benefits foreign production are far more prevalent. Consequently, the assumptions underlying our interpretation of section 701 of the Act have changed. We now believe that our past interpretation of section 701 of the Act was overly restrictive. A limitation on Commerce's ability to countervail subsidies only if those subsidies were provided to entities of a country solely by the government of that country, when subsidies from other foreign governments would otherwise be determined countervailable under the CVD law and could prove injurious to producers of the domestic like product, is inconsistent with the very purpose of the CVD law, and we do not believe that the language of section 701 of the Act requires such a restrictive interpretation. Accordingly, we are proposing to eliminate the current regulation preventing consideration of allegations of transnational subsidies, and instead reserve the provision for future consideration.[171]

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).[172]

Commerce followed this statement with summaries of and responses to the commenters arguing both in favor and against repealing this provision. Contrary to Boviet Solar's argument that we failed to respond to significant points and failed to consider all relevant factors raised by public comments, Commerce specifically responded to comments about the interrelationship between the definition of a subsidy in Section 701 of the Act and the definition of a 'bounty or grant' in the repealed Section 303(a)(1):

> As some commenters acknowledged, the text of section 701 of the Act does not prohibit Commerce from finding that a transnational subsidy is countervailable and further, section 701 of the Act allows Commerce to countervail a subsidy from

[171] *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*).
[172] *See Regulations Improving and Strengthening the Enforcement of Trade Remedies Through the Administration of the Antidumping and Countervailing Duty Laws*, 89 FR 20766, 20826 (March 25, 2024) (*RISE Final Rule*).

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> multiple countries if those countries are part of an international consortia. Another commenter relied on repealed section 303(a)(1) of the Act and the 1993 General Issues Appendix, which provided guidance on pre-URAA determinations, arguing that Congress intended section 701(a) of the Act to have to the same meaning and application as the language in repealed section 303(a)(1) of the Act. We find this comment also to be unpersuasive. As explained above, the language in section 303 of the Act was repealed in its entirety, and the language that existed in section 303(a)(1) was revised and is different from that found in the language codified, pursuant to the URAA, in section 701(a) of the Act.[173]

Section 701 of the Act does not impose geographic limitations on examining and finding countervailable unfair foreign subsidies. As explained above in Comment 1, nowhere does the Act prohibit finding a transnational subsidy countervailable. Instead, Commerce, in 1998, elected to prohibit finding that a transnational subsidy was countervailable. As was explained in the *1998 Final Preamble*, section 351.527 was derived from now-repealed section 303(a)(1) of the Act. When section 351.527 was promulgated, Commerce's administrative experience at that time was that normally governments were providing subsidies to manufacturing and production activities in their own countries rather than to manufacturing and production activities abroad. Consistent with the experience at that time, upon promulgating section 351.527, in 1998, Commerce repeated this perspective.

However, as Commerce described in its Final Rule, there have been "increasing instances in which a government subsidizes foreign production" and therefore the idea that injurious subsidies can come solely from one government is "inconsistent with the very purpose of the CVD law."[174] Commerce is acting rationally by reviewing the facts it finds in its area of expertise and "adapt{ing} {its} rules and policies to the demands of changing circumstances."[175] In doing so, Commerce followed the strict procedures for rule-making agency actions as defined by the Administrative Procedure Act.[176] Commerce reviewed and responded to each of the comments it received and published "a concise general statement" considering the parties' comments and incorporating elements into the final rule.[177] Interested parties had an opportunity to object to the rescission of this rule at the time of its proposal, and did so, and Commerce reviewed and considered their objections at the time the rule was finally rescinded. Parties cannot now use a different agency action as a vehicle to challenge that rulemaking process.

Comment 6: Whether JAVN's Loans Are Associated with the BRI Capacity Cooperation Projects

JAVN's Case Brief:

[173] *See RISE Final Rule*, 89 FR at 20827.
[174] *Id*. at 20826.
[175] *See Motor Vehicle Manufacturers Association v. State Farm*, 463 U.S. at 43.
[176] *See* 5 U.S.C. § 553 (generally, requiring a notice and comment period for interested parties to participate in agency rulemaking)
[177] *See* 5 U.S.C. § 553(c).

The following is a verbatim summary of arguments submitted by JAVN. For further details, *see* JAVN's Case Brief at 66-70.

> {JAVN} loans are not countervailable because they (1) are not related to GOC policy-based funding based on BRI projects; (2) are not conditional on {JAVN's} investment in "BRI industrial zones" or having its physical location in a GOC-controlled area or special economic zones. {JAVN's} loans, therefore, do not meet the description of the alleged program in the Petition and the Initiation Checklist.

Petitioner's Comments

The petitioner did not submit an executive summary directly to this comment above. The petitioner did address this comment in another issue, *see* Petitioner's Rebuttal Brief at 3-6 and 12.

VSUN, Trina Solar, and Jinko Solar submitted letters in which they adopted by reference the arguments made by Boviet Solar and JAVN.[178]

Commerce's Position: For this final determination, on the basis of facts available, we determine that JAVN's loans are associated with BRI Capacity Cooperation Projects.

At the *Preliminary Determination*, we explained that Commerce initiated an investigation of allegations that exporters/producers of solar cells in Vietnam benefited from subsidies granted by the GOV either directly or in the context of the cooperation between the GOC and GOV (*i.e.*, Policy Lending from Chinese Banks for BRI Capacity Cooperation Projects).[179] On July 3, 2024, Commerce issued a transnational subsidy questionnaire to the GOC.[180] On August 16, 2024, the GOC submitted a timely response to the transnational subsidy questionnaire.[181] As stated in the *Preliminary Determination*, the GOC did not provide any information on the alleged transnational subsidies, which was necessary in order to analyze the alleged transnational subsidies.[182] Thus, we relied on facts otherwise available pursuant to section 776(a)(1) of Act to analyze the financial contribution and specificity of the alleged transnational subsidy.[183]

JAVN argues that its loans are not associated with BRI projects and thus do not meet the description of the alleged program.[184] In addition, JAVN argues that Commerce verified that JAVN's loans are not associated with any BRI projects and should reverse its findings that were made at the *Preliminary Determination* and find that its loans are not countervailable transnational subsidies.[185] We disagree with JAVN.

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[178] *See* VSUN's Case Brief; Trina Solar's Case Brief; Jinko Solar's Case Brief.
[179] *See Preliminary Determination* PDM at 11.
[180] *Id.*; *see also* Commerce's Letter, "Transnational Countervailing Duty Questionnaire," dated July 3, 2024 (Transnational Subsidies Questionnaire).
[181] *See Preliminary Determination* PDM at 11; *see also* GOC's Letter, "GOC Transnational Subsidies Questionnaire Response," dated August 16, 2024 (TN Subsidies QR).
[182] *See Preliminary Determination* PDM at 11.
[183] *Id.* at 11 and 49-50.
[184] *See* JAVN's Case Brief at 66.
[185] *Id.* at 69.

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Because the GOC did not provide sufficient information to analyze the financial contribution and specificity of this program, for the *Preliminary Determination*, we relied on facts otherwise available and found that the provision of policy lending from Chinese banks in support of BRI capacity cooperation projects in Vietnam was: (1) a financial contribution in the form of a direct transfer of funds from Chinese authorities within the meaning of sections 771(5)(B) and 771(5)(D)(i) of the Act and (2) specific pursuant to section 771(5A)(D)(iv) of the Act because the loans are limited to firms investing in BRI industrial zones and based on sections 771(5A)(A) and (B) of the Act because the program is contingent upon export performance.[186] As noted under Comment 4, for this final determination we determine that the transnational subsidies under investigation in this proceeding are *de facto* specific pursuant to section 771(5A)(D)(iii)(I) of the Act, rather than specific pursuant to section 771(5A)(A) and (B) of the Act.[187] Without a full response from the GOC, we cannot determine if any loans received by JAVN are related to the BRI Capacity Cooperation Projects. It was the GOC's responsibility to provide sufficient responses to properly analyze this alleged transnational subsidy program.

In China CVD proceedings, when we examine a policy lending program, we investigate whether there are any government plans or other policy directives that identify objectives or goals for developing the industry and call for lending to support such objectives or loans.[188] Further, we analyze whether the national and local government control over the SOCBs render the loans a government financial contribution. In previous proceedings, we have found that lending from Chinese banks constitutes financial contributions pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act, because SOCBs are "authorities."[189] Therefore, we have reason to believe that JAVN's loans were provided by Chinese "authorities." At verification, Commerce did review and confirm JAVN's reporting of loans with respect to this program.[190] Since the GOC did not provide sufficient information to indicate whether or not, these loans were provided pursuant to the BRI Capacity Cooperation Projects, we did not have adequate information to conduct an analysis of whether this program is countervailable. Accordingly, we find that the record does not support JAVN's argument that its loans are not associated with BRI projects or that the loans are not contingent upon the company's investment in a "BRI Industrial zone" or physical location in specific areas "such as industrial parks, special economic zones, other areas designed by the government and/or designated in cooperation with the GOC or the GOC-owned entities."[191] For this final determination, based on facts available, we continue to find that

[186] *See Preliminary Determination* PDM at 49.
[187] *See supra*, Comment 4.
[188] *See e.g., Common Alloy Aluminum Sheet from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Alignment of Final CVD Determination with Final Antidumping Duty Determination, and Preliminary CVD Determination of Critical Circumstances*, 83 FR 17651 (April 23, 2018), and accompanying PDM at 40-42; *see also Certain Paper Plates from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, in Part,* 90 FR 8281 (January 28, 2025) (*Paper Plates from China Final*), and accompanying IDM at Comment 1; and *Coat Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 72 FR 60645 (October 25, 2007), and accompanying IDM at Comment 8.
[189] *See Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China: Final Affirmative Determination*, 83 FR 57427 (November 15, 2018).
[190] *See* JAVN Verification Report at 13-17.
[191] *See* JAVN's Case Brief at 69-70.

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JAVN's loans are associated with the BRI Capacity Cooperation Projects, and determine the program is countervailable.

Comment 7: Whether Commerce Should Revise Its Benchmark for the Cross-Border Provision of Chinese Silicon Wafers for LTAR

GOV's Case Brief:

The following is a verbatim summary of arguments submitted by the GOV. For further details, *see* GOV's Case Brief at 6-15.

> In the Post-Preliminary Determination, Commerce relied upon world export data under HTS 3818{.00} as a benchmark for wafers. Commerce's decision to rely on this HTS instead of Bloomberg data is contrary to Commerce's decision in all prior solar wafer benchmark determinations, and contrary to Commerce's general understanding and use of Bloomberg data, and similar data, in the past 13 years in both the antidumping and countervailing *Solar Cells from China* Orders. Accordingly, Commerce's decision in this review is arbitrary. In the long history in both antidumping and countervailing reviews of relying on Bloomberg, Commerce never found it needed further information on Bloomberg's internal calculations in order to rely upon Bloomberg. Further, in all of these reviews, Commerce found that the specificity of the Bloomberg data, despite being an international benchmark, was the most important factor. Commerce has specifically found repeatedly that HTS 3818{.00} is not specific to silicon wafers or the solar industry, and is not a reliable source when Bloomberg is specific to the precise input at issue. Following this significant and long-standing precedent, Commerce must rely on Bloomberg.

Boviet Solar's Case Brief:

The following is a verbatim summary of arguments submitted by Boviet Solar. For further details, *see* Boviet Solar's Case Brief at 23-40.

> In the Post-Preliminary Determination, Commerce relied upon world export data under HTS 3818 as a benchmark for wafers. Commerce claimed it could not rely upon Bloomberg because it was uncertain of the data calculations internally performed by Bloomberg and because it was unclear whether the data included prices from China or Vietnam. However, this Bloomberg data, which is a world benchmark including China or Vietnam, and the information on the Bloomberg data calculations, is the same data Commerce has relied upon consistently for years, finding no reliability or calculation concerns. Commerce's decision not to rely upon the Bloomberg data is contrary to Commerce's decision in all prior solar wafer benchmark determinations, and contrary to Commerce's general understanding and use of Bloomberg data, and similar data, in the past 13 years in both the antidumping and countervailing *Solar Cells from China* Orders. Accordingly, Commerce's decision in this review is arbitrary.

Commerce's long-standing practice of preferring Bloomberg data to HTS 3818{.00} is rooted in the specificity of the Bloomberg data. Bloomberg data is specific to the solar industry and tracks pricing on silicon solar wafers that are precisely the same as Boviet purchases. In contrast, HTS 3818{.00} is a basket category of "Chemical elements doped for use in electronics." The record demonstrates that this includes very different products with very different AUVs than solar silicon wafer, such as LED chips and semiconductor wafers. Relying on this HTS as a benchmark is contrary to the statute and regulation that direct Commerce in the specificity and comparability of the benchmarks. In the post-preliminary decision, Commerce has relied upon a benchmark that does not fulfill the statutory and regulatory requirements or well-established practice in the solar cases. In the final determination, Commerce must rely upon the Bloomberg data.

JAVN's Case Brief:

The following is a verbatim summary of arguments submitted by JAVN. For further details, *see* JAVN's Case Brief at 20-40.

In the Final Determination, Commerce cannot countervail the alleged cross border provision of silicon wafers for {LTAR} by the{GOC} program ("silicon wafers program") with respect to {JAVN} for three reasons: (1) Commerce's standard practice is to not countervail a LTAR subsidy program where the input product can be tied to the production of nonsubject merchandise and the record demonstrates that {JAVN} intended for its purchases silicon wafers to be used in non-subject merchandise and said silicon wafers were indeed used in non-subject merchandise; (2) The record did not support Commerce's application of adverse facts available ("AFA") against the GOC as Commerce failed to meet its statutory obligations under 19 U.S.C § 1677m(d) and regardless other information on the record demonstrates that JAPV's suppliers were not government authorities based on Commerce granting separate rate status to other {JAVN} affiliates with the same ownership structure as {JAVN's} wafer suppliers; (3) Commerce unlawfully relied on AFA to find that the silicon wafer program is specific because it failed to identify any deficiencies in the GOC's responses on this issue.

If Commerce wrongly continues to countervail {JAVN's} purchases of silicon wafers it must make two changes to its benchmark calculation: Commerce must use the Bloomberg data submitted by {Boviet Solar} as opposed to the U.N. Comtrade data submitted by Petitioner because the former is product specific to silicon wafers. The {UN} Comtrade data are overly expansive by including data for wafers made with chemicals other than polysilicon, wafers intended for different end uses than solar cells and modules and merchandise other than wafers. If Commerce continues to use the Comtrade data as its benchmark to value silicon wafers, Commerce must not remove Chinese and Vietnamese origin prices from these data. Removing these prices conflicts with either Commerce's past practice or Commerce failed to provide a reasonable explanation for treating these prices differently than the data from other countries.

VSUN, Trina Solar, and Jinko Solar submitted letters in which they adopted by reference the arguments made by Boviet Solar and JAVN.[192]

Petitioner's Rebuttal Brief:

The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* Petitioner's Rebuttal Brief at 21-23.

> {Commerce} properly rejected the Bloomberg data because they "do not clearly indicate the markets incorporated within the dataset and do not specify how the price data were calculated for the various datasets listed." {Commerce} was also unable to determine if the prices included data from the distorted markets (*i.e.*, China and Vietnam). {Commerce} should continue to reject the Bloomberg data for these reasons and because they are made up of survey data and not actual prices.
>
> {Commerce} recognized that the Bloomberg data was more specific. However, specificity is only a consideration after {Commerce} has found the data to meet certain criteria that it found the Bloomberg data did not possess. Whether {Commerce} has previously relied on Bloomberg data is immaterial, as the agency has examined the Bloomberg data here based this record and found that they are not usable as a benchmark. Further, changes in the Bloomberg data in 2020 rendered them unusable for benchmarking purposes because they are made up of survey data based on interviews and not on actual prices.

Boviet Solar's Rebuttal Brief:

The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* Boviet Solar's Rebuttal Brief at 13-15.[193]

> Nonetheless, as stated in Boviet {Solar's} opening brief, Boviet {Solar} also supports the arguments made by {JAVN}, such that these LTAR programs cannot be countervailed because the suppliers are not government authorities and because the programs are not specific. The Government of China's information on these programs and the arguments made by {JAVN} regard the programs overall and suppliers to both respondents. Thus, any finding that Commerce makes with respect to these arguments must equally apply to {JAVN} and Boviet {Solar}.

Commerce's Position: We continue to rely on UN Comtrade data with HS subheading 3818.00, as filed by Commerce, as the tier two benchmark for silicon wafers because these data represent the best information on the record for determining a tier two benchmark for evaluating whether silicon wafers were provided for less than adequate remuneration.

[192] *See* VSUN's Case Brief; Trina Solar's Case Brief; Jinko Solar's Case Brief.
[193] This language was an excerpt of the executive summary from another issue presented in this Issues and Decision Memorandum. *See* Boviet Solar's Rebuttal Brief at 2 and 13-15.

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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. Consistent with the *CVD Preamble*, because we conclude that actual transaction prices are significantly distorted in Vietnam, we resorted to the next alternative in the benchmark hierarchy, which is tier two (world market prices).[194]

The petitioner and Boviet Solar provided several potential tier two benchmarks for silicon wafers. The petitioner submitted two options: (1) United Nations (UN) Comtrade data for world-wide exports for 2023; and (2) Global Trade Atlas (GTIS) data for Indonesia and Thailand world-wide imports for 2023.[195] In both the UN Comtrade data and GTIS data, exports and imports of silicon wafers were classified under Harmonized System (HS) subheading of 3818.00, which the petitioner stated included silicon wafers.[196] HS subheading 3818.00 covers "Chemical elements doped for use in electronics, in the forms, of discs, wafers or similar forms; chemical compounds doped for use in electronics."[197] Boviet Solar submitted benchmark data from Bloomberg for silicon wafers during the POI.[198] We requested additional information from Boviet Solar to clarify certain areas in the benchmark data.[199]

In the Post-Preliminary Determination, we found the GTIS data submitted by the petitioner was not appropriate to use as a benchmark because it only covered imports into Indonesia and Thailand.[200] This led us to consider Bloomberg submitted by Boviet Solar and the UN Comtrade data submitted by the petitioner.

In the Post-Preliminary Determination, we determined the Bloomberg data did not clearly identify the markets included in the dataset and did not specify how the price data were calculated for the various datasets listed.[201] We continue to determine the Bloomberg data does not present the best benchmark information for silicon wafers on the record of this investigation because we cannot remove from the dataset data for the markets we determine are distorted, per our methodology.[202] With respect to the Bloomberg data submitted by Boviet Solar, the description of the Bloomberg data on the record indicates that the prices include Chinese-origin silicon wafers, including prices of silicon wafers in China.[203] Specifically, the Bloomberg 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

[194] *See* Post-Preliminary Determination at 11.
[195] *Id.*
[196] *Id.*
[197] *Id.*
[198] *Id.* at 11.
[199] *See* Commerce's Letter, "Benchmark Supplemental Questionnaire," dated November 27, 2024 (Benchmark SQ).
[200] *Id.* at 12.
[201] *See* Post-Preliminary Determination at 12.
[202] *See* Post-Preliminary Determination at 13.
[203] *See* Boviet Solar Benchmark SQR at Exhibit NSAW2-3.

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> 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.[204]

In addition, the Bloomberg data listed the average prices for the following markets: (1) Shipped-to-EU average; (2) Shipped-to-India average; (3) Shipped-to-non-China markets average; (4) Shipped-to-non-China-markets average silicon for mono-wafer production; (5) Shipped-to-non-China-markets average silicon for multi-wafer production; and (6) Shipped-to-U.S. average.[205] In Boviet Solar's benchmark supplemental questionnaire response, Boviet Solar provided supporting documentation from Bloomberg's official website (*i.e*, screenshots of Bloomberg's website) to help identify the markets listed through definitions and how Bloomberg collects its data.[206] However, it is still unclear from the information on the record whether wafers from distorted markets are included within these average prices. The dataset is not disaggregated to reveal all markets incorporated within these average prices. As such, removal of specific markets could not be performed within this dataset.

As discussed in the Post-Preliminary Determination, we preliminarily determined on the basis of facts available that GOC authorities account for at least 71 percent of silicon wafer production in China.[207] Moreover, Commerce has previously found that the Chinese market for silicon wafers is distorted based on the level of government participation in the market.[208] Because the Chinese market for silicon wafers is majority-controlled by GOC authorities, we determined that the silicon wafer market in China was distorted.[209]

It is Commerce's practice to remove distorted prices from benchmarks.[210] As stated above, there is no mechanism for Commerce to remove these Chinese prices from the Bloomberg 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, 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 Bloomberg data, and evidence that

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[204] *Id.*

[205] *See* Boviet Solar Wafer Benchmark Submission.

[206] *See* Boviet Solar Benchmark SQR at Exhibits Exhibit NSAW2-2 and NSAW2-3.

[207] *See* Post-Preliminary Determination.

[208] *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*).

[209] *See* Post-Preliminary Determination at 13.

[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 Countervailing Duty Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from Thailand," 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 (Thailand Solar Cells IDM and Cambodia Solar Cells IDM).

the Chinese market for this good is distorted), we determine that the Bloomberg data do 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 Bloomberg 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]

We acknowledge the argument made by Boviet Solar, JAVN, and the GOV that Commerce has used Bloomberg data as a silicon wafer benchmark in other Solar Cell CVD proceedings.[214] In the Solar Cell CVD proceedings, Commerce selected the Bloomberg data as the silicon wafer benchmark to be consistent with seeking to maintain product comparability between the benchmark prices and the products purchased by respondents, and relying on data that reflects the narrowest category of products encompassing the input products.[215] Commerce *also* reviews benchmark submissions and determines which are reasonable and usable for the input(s) under examination on a case-by-case basis. Although Commerce has relied on Bloomberg data in past cases involving solar cells,[216] in this investigation, we gathered additional information on Bloomberg data to conduct our analysis to determine the best benchmark for silicon wafers. Due to our findings discussed above, we determine to continue using the UN Comtrade data with HS subheading 3818.00 filed by Commerce for the benchmark on silicon wafers as it represents the best information available in this proceeding. The UN Comtrade displays disaggregated data and allows for the exclusion of distorted markets, and it represents world export prices for silicon wafers.

JAVN submitted information clarifying and rebutting Commerce's placement of UN Comtrade data on the record.[217] Both in JAVN's Case Brief and its rebuttal comments, JAVN argued that the UN Comtrade data for all three inputs (*i.e.*, silicon wafers, silver paste, and solar glass) were substantially different from the existing information that was on the record, and constituted new factual information.[218] JAVN provided supporting data and argues that: (1) the quantity and value for certain countries differ when comparing Commerce's UN Comtrade data against the petitioner's data for several countries, which demonstrates the disparities between the two datasets;[219] and (2) imports by certain countries (*e.g.,* South Korea and India), specifically within Commerce's UN Comtrade data of silicon wafers, cover products dissimilar from silicon wafers

[212] *See* Boviet Solar Wafer Benchmark Submission at Exhibit NSAW-1.
[213] *See Countervailing Duties, Final Rule*, 63 FR 65348, 65377 (November 25, 1998) (*CVD Preamble*); *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, e.g.*, *Solar Cells China 2021*; *see also Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review, Rescission and Intent to Rescind, in Part; 2020*, 88 FR 1355 (January 10, 2023), and accompanying PDM; unchanged in *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2020*, 88 FR 44108 (July 11, 2023), and accompanying IDM (collectively, *Solar Cells China 2020*).
[215] *See Solar Cells China 2020; see also Solar Cells China 2021*.
[216] *See Solar Cells China 2020*; *see also Solar Cells China 2021*.
[217] *See* JAVN's Letter, "Rebuttal Comments to Commerce's March 13, 2025, Memorandum "Placing UN Comtrade Data on the Record," dated March 20, 2025 (Rebuttal Comments).
[218] *Id.* at 2-6; *see also* JAVN's Case Brief at 37-38.
[219] *See* Rebuttal Comments at Exhibits 1-4.

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used in solar cells.[220] After reviewing the rebuttal comments, Commerce determines to continue to use the UN Comtrade data that it placed on the record, as it is the best information available in this proceeding. As we explained above, Commerce's UN Comtrade data is disaggregated and allows for the exclusion of distorted markets (*i.e.*, China, Vietnam, Cambodia, and Thailand), and it represents world export prices for silicon wafers. We acknowledge that the petitioner's submission differs in some respects from Commerce's submission. Commerce retrieved the UN Comtrade data in the same manner as the petitioner retrieved the UN Comtrade data that it submitted. Commerce officials ensured: (1) the HS subheading was consistent with the petitioner's submission; (2) it was contemporaneous to the POI; and (3) the prices were on an export basis. Pursuant to 19 CFR 351.301(c)(4), "{Commerce} may place factual information on the record of the proceeding at any time." We provided an opportunity for interested parties to file comments on the appropriateness of using the disaggregated data (the placement of the UN Comtrade data).[221] Commerce acknowledges that by disaggregating the data, it could be considered to be new factual information. In this proceeding, Commerce determined that it needed useable benchmark data to ensure *all* distorted markets could be removed from the dataset so that it could properly compare the government price to a market determined price for the good (*i.e.*, silicon wafers, silver paste, and solar glass). The benchmark submissions provided by the petitioner and Boviet Solar were not usable for the silicon wafer benchmark. Thus, we continue to use the disaggregated UN Comtrade data with HS subheading 3818.00.

With JAVN's concerns on imports by certain countries, the petitioner submitted on the record the *Solar Photovoltaics Supply Chain Deep Dive Assessment* from the U.S. Department of Energy (USDOE Report) to help resolve this matter.[222] The USDOE Report identifies the specific countries that produce photovoltaic (PV) silicon wafers for the production of solar cells.[223] In this instance, as noted above, based on the case-specific record evidence which allows us to reliably remove certain countries, we find it appropriate to exclude from the benchmark data countries with no production of PV silicon wafers. Accordingly, we have removed from the tier two UN Comtrade benchmarks for HS code 3818.00 countries not identified as PV silicon wafer producers in the USDOE Report.[224] As indicated in our Post-Preliminary Determination, we have continued to exclude exports to and 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.[225] Finally, because we have determined that the silicon wafer markets of China, Thailand, Vietnam, and Cambodia are distorted, we have

[220] *Id.* at Exhibits 3 and 5-8.
[221] *See* Post-Preliminary Determination at 12; *see also* 19 CFR 351.301(3)(iv) and (4).
[222] *See* Petitioner's Letter, "New Subsidy Allegations," dated August 12, 2024 (Petitioner's Wafer Allegation) at Exhibit NSA-9.
[223] *See* Petitioner's Wafers Allegation at ExhibitNSA-9, pp. 29 and 33.
[224] *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, the 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, the Philippines, Malaysia, and Singapore in the tier two benchmarks. *See* JAVN Final Calculation Memorandum; *see also* Boviet Solar Final Calculation Memorandum.
[225] *See* Post-Preliminary Determination.

excluded exports to and from these distorted markets, which is consistent with our practice.[226] 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.

In their briefs, GOV, Boviet Solar, and JAVN argued that the data within HS subheading 3818.00 is overinclusive and includes a broad basket of products and, therefore, cannot be used as a benchmark for solar silicon wafers.[227] As an initial matter, the legal requirements governing Commerce's selection of benchmarks do not require perfection.[228] As we have explained in other proceedings, a benchmark, by nature, is not an exact match to the subsidy being evaluated.[229] Rather, we look to whether a benchmark is comparable based on the record and, thus, is usable.[230] 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. 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.[231]

With any concerns on the variation of value for total exports of the input within the UN Comtrade,[232] in *Drawn Stainless Steel Sinks from China*, Commerce adjusted benchmark prices for stainless steel coils to account for differences between two specific grades of stainless steel in the benchmarks.[233] 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.[234] 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.[235] Similarly, in this case, we have accounted for factors affecting comparability by removing countries that have no production of PV silicon wafers.

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[226] *See* Thailand 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.").
[227] *See* JAVN's Case Brief at 34; *see also* Boviet Solar's Case Brief at 40; and GOV's Case Brief at 12-13.
[228] *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.
[229] *Id.*
[230] *Id.*
[231] *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), and accompanying IDM at Comment 6.
[232] *See* Rebuttal Comments 3.
[233] *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*), and accompanying IDM at Comment 12.
[234] *Id.*
[235] *Id.* (citing 19 CFR 351.511(a)(2)(ii)).

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JAVN argues that: (1) Commerce provided no justification for concluding that a 71 percent threshold is sufficient to distort an external market; (2) Commerce cannot countervail these purchases of silicon wafers as it purchase silicon wafers from non-GOC authorities;[236] and (3) Commerce did not provide a reasonable explanation to exclude Chinese export prices.[237] We disagree with JAVN's arguments. First, in the Post-Preliminary Determination, we stated that because the GOC withheld information regarding the input producers in China that supplied to Boviet Solar and JAVN with silicon wafers, and failed to provide other relevant information requested by Commerce, we must rely on "facts otherwise available."[238] The petitioner provided evidence relating to three silicon wafer producers in China that indicated these input producers in China are authorities pursuant to section 771 (5)(B) of the Act.[239] For any other producers for which no record information was available, we relied on "facts otherwise available." Contrary to JAVN's contention, Commerce did not apply AFA to the GOC; rather, Commerce relied on "facts otherwise available" for the Input for LTAR programs, and did not apply an adverse inference.[240]

JAVN argues that because Commerce verified the silicon wafers for LTAR program, Commerce can determine that the input producers that supplied JAVN are non-GOC authorities.[241] In the Post-Preliminary Determination, we explained that we requested information from the GOC to assess the relationship between the GOC and the input producers from which the mandatory respondents purchased silicon wafers. The GOC did not provide a complete response to our information requested in the Input Producer Appendix. The GOC reported that, "to the best of its knowledge, no Chinese producers of silicon wafers, solar glass, or silver paste supplied to Boviet Solar and JAVN were majority government-owned enterprises during the POI,"[242] and only provided basic registration and ownership structure for certain silicon wafer producers in question.[243] The GOC withheld information requested of it regarding the input producers in China that supplied silicon wafers, which included the certain producers from which JAVN purchased silicon wafers. We require this information from the GOC to assess whether these input producers are "authorities" within the meaning of section 771(5)(B) of the Act. As we lack this necessary information from the GOC, we continue to find it necessary to rely on "facts otherwise available."

Based on facts otherwise available, we continue to find that GOC public entities (and, hence, "authorities" pursuant to section 771(5)(B) of the Act) have provided a financial contribution to Boviet Solar and JAVN (and its affiliates) in the form of the provision of goods.

In regard to input producers in China for which no record information is available (*i.e.*, certain producers that supplied JAVN silicon wafers), the only information on the record shows that

[236] Boviet Solar also argues this issue in their rebuttal brief. *See* Boviet Solar's Rebuttal Brief at 13-15.
[237] *See* JAVN's Case Brief at 20-40.
[238] *See* Post-Preliminary Determination at 5-6.
[239] *Id*. at 7.
[240] *Id.* at 4-8.
[241] Boviet Solar emphasizes the remarks that JAVN indicated regarding this issue. See Boviet Solar's Rebuttal Brief at 13-15.
[242] *See* GOC Wafer QR at 5.
[243] *See* GOC Wafer QR at 6 and Exhibits A.1 and A.2

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GOC authorities accounted for at least 71 percent of silicon wafer production.[244] Therefore, we will continue to rely on "facts otherwise available" and rely on the 71 percent threshold on silicon wafers for the final determination.

Commerce did provide a reasonable explanation for its conclusion that Chinese export prices are distorted. As we explained in the Post-Preliminary Determination, due to the particular facts of this threshold investigation, in which we are examining the provision of an input from Chinese authorities, the presence of imports from China in the benchmark data, and the record evidence indicating that the majority of Chinese producers of silicon wafers are controlled by the GOC, as noted above, we continue to find it appropriate to exclude imports from China from the tier two benchmarks. As noted above, we continue excluding exports from China from the tier two benchmark, we also excluded exports from Vietnam because the goods from the government provider (China) constitute a majority of the Vietnamese market. Finally, because we determined Vietnam's and China's markets to be distorted,[245] we have also excluded exports to the distorted markets (*i.e.*, China and Vietnam), which is consistent with our practice.[246]

Comment 8: Whether JAVN's Purchases of Silicon Wafers Can Be Tied to Non-Subject Merchandise

JAVN's Case Brief:

The following is a verbatim summary of arguments submitted by JAVN. For further details, *see* JAVN's Case Brief at 20-40.

> In the Final Determination, Commerce cannot countervail the alleged cross border provision of silicon wafers for {LTAR} by the{GOC} program ("silicon wafers program") with respect to {JAVN} for three reasons: (1) Commerce's standard practice is to not countervail a LTAR subsidy program where the input product can be tied to the production of nonsubject merchandise and the record demonstrates that {JAVN} intended for its purchases silicon wafers to be used in non-subject merchandise and said silicon wafers were indeed used in non-subject merchandise; (2) The record did not support Commerce's application of adverse facts available ("AFA") against the GOC as Commerce failed to meet its statutory obligations under 19 U.S.C § 1677m(d) and regardless other information on the record demonstrates that JAPV's suppliers were not government authorities based on Commerce granting separate rate status to other {JAVN} affiliates with the same ownership structure as {JAVN's} wafer suppliers; (3) Commerce unlawfully relied on AFA to find that the silicon wafer program is specific because it failed to identify any deficiencies in the GOC's responses on this issue.[247]

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[244] *See* Petitioner's Letter, "New Subsidy Allegations," dated August 12, 2024, at 6.
[245] *See* Post-Preliminary Determination at 8-10.
[246] *See CVD 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.
[247] This language was an excerpt of the executive summary from another issue presented in this Issues and Decision Memorandum. *See* JAVN's Case Brief at 9-10 and 20-40.

VSUN, Trina Solar, and Jinko Solar submitted letters in which they adopted by reference the arguments made by Boviet Solar and JAVN.[248]

Petitioner's Rebuttal Brief:

The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* Petitioner's Rebuttal Brief at 26-27.

> First, {Commerce} treats the provision of goods for LTAR as an untied subsidy. Second, the only exception for "tying" an otherwise untied subsidy is defined by the intent of the provider of the subsidy at the time of bestowal and not the input's ultimate use. {JAVN} has presented no evidence as to the intent of the GOC at the time of the bestowal to tie the provision of wafers to the production of non-subject merchandise in this case. In fact, the record is clear that silicon wafers from China could be used to produce subject and non-subject merchandise depending on the origin of other materials used in the production of modules. In Taizhou, the Court noted that the Act and {Commerce's} regulations "allow {Commerce} to countervail goods provided to respondents at LTAR, and that these provisions 'do not require that the goods provided for LTAR be used, exclusively or otherwise, in the production of subject merchandise.'" {Commerce} should thus continue to countervail the provision of wafers for LTAR whether or not they are used in the production of subject merchandise.

Commerce's Position: We agree with the petitioner and will continue measuring benefits on all purchases of silicon wafers from Chinese suppliers by JAVN's affiliate, JAPV, for the final determination.

JAVN's questionnaire response for the Cross-Border Provision of Chinese Silicon Wafers for LTAR stated, "{i}n addition to its purchases from JAVN and JANE, JAPV also purchased silicon wafers that were not used to produce subject merchandise{.}"[249] At verification, Commerce examined JAPV's purchases of silicon wafers. JAVN argues that "{t}he record, which Commerce itself verified, demonstrated that JAPV used the wafers it purchased from China to produce non-subject merchandise."[250] However, relevant documentation for these Chinese silicon wafer purchases did not indicate that the purchases are for inputs for the exclusive production of non-subject merchandise.[251] Contrary to JAVN's uncited claim, the verification report does not indicate that Commerce reviewed documentation that would demonstrate that certain purchases of Chinese silicon wafers were to be used specifically to produce non-subject merchandise.[252]

To determine whether a subsidy is "tied," Commerce's focus is on "the purpose of the subsidy based on information available at the time of bestowal," and not on how a firm has actually used

[248] *See* VSUN's Case Brief; Trina Solar's Case Brief; Jinko Solar's Case Brief.
[249] *See* JAVN SP SG QR at 1.
[250] *See* JAVN's Case Brief at 22.
[251] *See* JAVN Verification Report at VE-9 and VE-10.
[252] *See* JAVN's Case Brief at 20-40.

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the subsidy.[253] Thus, under our tying practice, a subsidy is tied to particular products, operations, or markets only if the bestowal documents (*e.g.*, purchase/sales documents in the case of an input for LTAR) explicitly indicate that an intended link to the particular products, operations or markets was known to the government authority and so acknowledged prior to, or concurrent with, conferral of the subsidy.[254] In this proceeding, as noted above, we do not have information from any purchase transaction document which ties the purchase of inputs to non-subject merchandise. Therefore, we will continue to measure the benefits from all of JAVN's and JAPV's purchases of silicon wafers for this final determination.

Comment 9: Whether Commerce Should Revise Its Benchmark for the Cross-Border Provision of Chinese Silver Paste for LTAR

JAVN's Case Brief:

The following is a verbatim summary of arguments submitted by JAVN. For further details, *see* JAVN's Case Brief at 48-49.

> Commerce should include United States Harmonized Tariff Schedule ("HTS") Subheading 3824.99 for the purposes of its benchmark calculation of silver paste because it reflects the actual purchases of silver paste and is an accurate description of {JAVN's} silver paste.

VSUN, Trina Solar, and Jinko Solar submitted letters in which they adopted by reference the arguments made by Boviet Solar and JAVN.[255]

Petitioner's Case Brief:

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

> In the post-preliminary determination, {Commerce} used {POI} export data for Harmonized Tariff Schedule ("HTS") 7106.92 as the benchmark for purchases of silver paste from Chinese authorities for {LTAR}. In support of its selection, {Commerce} relied on a case involving the selection of factors of production in an antidumping duty proceeding. However, this case has no application to benchmarks used for measuring the adequacy of remuneration in {CVD} proceedings. Such cases involve different regulations with different standards. In fact, 19 C.F.R. § 351.511(a)(2) requires that {Commerce} use HTS 7115.90 rather than 7106.92 as a benchmark.

[253] *See CVD Preamble*, 63 FR at 65403 ("Our tying rules are an attempt at simple, rational set of guidelines for reasonably attributing the benefit from a subsidy based on the stated purpose of the subsidy or the purpose we evince from record evidence at the time of bestowal."); *see also Drill Pipe from China Investigation* IDM at Comment 6.
[254] *Id*., 63 FR at 65402.
[255] *See* VSUN's Case Brief; Trina Solar's Case Brief; and Jinko Solar's Case Brief.

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> Petitioner submitted world export data for HS code 7115.90 which covers "Other articles of precious metal or of metal clad with precious metal; Other." Record information support use of these data, including a ruling from U.S. Customs and Border Protection {CBP} confirming that HTS 7115.90 was the appropriate classification for silver paste with 78% silver concentration that is mixed with "various chemical compounds." In contrast, HTS 7106.92 covers "Silver (including silver plate with gold or platinum), unwrought or in semi manufactured forms, or in powder form," and respondents provide no information to show that HTS 7106.92 was the appropriate classification for the importation of silver paste in the context of world market prices.
>
> {Commerce} must rely on facts from this record, which show that HTS 7115.90 is actually used for the exportation and importation of silver paste on the world market and is otherwise the correct benchmark by which to measure the respondents' benefit for silver paste inputs provided for LTAR.

Boviet Solar's Rebuttal Brief:

The following is a verbatim summary of arguments submitted by Boviet Solar. For further details, *see* Boviet Solar's Rebuttal Brief at 8-9.

> In the Post-Preliminary determination, Commerce properly chose to rely upon HTS 7106.92 exports as a benchmark for silver paste. As justification for this HTS selection, Commerce cited to its antidumping determinations that 7106.92 is more specific to silver paste than HTS 7115.90 for purposes of valuing the factors of production. Petitioner attempts to argue that because the antidumping surrogate value and countervailing benchmarks serve different purposes, Commerce should not rely upon the antidumping findings. However, this ignores that underlying both the antidumping surrogate value selection and the countervailability benchmark selection is specificity. Commerce's finding in the antidumping reviews were also not only specific to the particular surrogate country, but was based upon a wider understanding that HTS 7115.90 included dissimilar gold or platinum products at much higher {average useful life} AUVs while HTS 7106.92 was specific to silver products. Thus, relying on HTS 7106.92 is more specific and would result in the most accurate margin calculation.

JAVN's Rebuttal Brief:

The following is a verbatim summary of arguments submitted by JAVN. For further details, *see* JAVN's Rebuttal Brief at 18-23.

> Commerce must reverse its Post-Preliminary Determination to countervail {JAVN's} purchase of Chinese silver paste. If Commerce continues to wrongly countervail {JAVN's} purchases of silver paste, Commerce should find that the most appropriate HS subheading to value silver paste is an average of data for silver paste prices under HS subheadings 3824.99 and 7106.92. If Commerce rejects HS

> subheadings 3824.999 as advocated for by {JAVN} in its opening brief, Commerce should affirm its preliminary determination, contrary to the arguments by Petitioner, that the benchmark data submitted for HS subheading 7106.92 is the only appropriate tier-two benchmark
>
> Petitioner argues that Commerce improperly relied on U.N. Comtrade data for 7106.92 as its benchmark and instead HS subheading 7115.90 constitutes the best data for silver paste benchmark.
>
> Contrary to Petitioner's claims, Commerce's reasoning for selecting HS subheading 7106.92 over HS subheading 7115.90 in its past determinations and this investigation is supported by the physical characteristics and manufacturing process of silver paste used to produce subject merchandise as illustrated in the substantial evidence on the record and relevant AD proceedings. No reasonable explanation exists for Commerce to reverse its findings and depart from its past practices.
>
> Finally, Commerce must dismiss the ruling by {CBP} classifying silver paste under HTS 7115.90 that Petitioner placed on the record because similar to its previous findings in related proceedings, there is substantial evidence on the record that outweighs a single CBP ruling classifying silver paste under HTS 7115.90.

GOV's Rebuttal Brief:

The following is a verbatim summary of arguments submitted by the GOV. For further details, *see* GOV's Rebuttal Brief at 2-3.

> Commerce relied upon UN Comtrade exports under HTS 7106.92 to benchmark silver paste and solar glass prices from PVinsights to benchmark solar glass. These are the most specific benchmarks available on the record, and thus Commerce should continue to rely upon these benchmarks. (Commerce should rely on benchmarks in accordance to prevailing market conditions, which include "price, quality, availability, marketability, transportation, and other conditions of purchase or sale" which entails the benchmarks should be the most specific to the input at issue.). Petitioner argues for silver paste that Commerce should rely upon HTS 7115.90 instead. However, Commerce already properly reasoned that HTS 7106.92 was the most specific to silver paste, consistent with its finding in the antidumping reviews, while 7115.90 is broader and includes very dissimilar and differently priced gold and platinum products.

Petitioner's Rebuttal Brief:

The following is a verbatim summary of arguments submitted by the petitioner. For further details, see Petitioner's Rebuttal Brief at 24.

> As {Commerce} noted in its post-preliminary determination, HTS chapter 38 covers "miscellaneous chemical products," and is not suitable as a benchmark for

> silver paste. Further, there is no information on the record of this investigation that HTS 3824.99 and its subheadings are used by any country that would be included in the tier two world market price for silver paste. In contrast, HTS 7115.90 and its subheadings are used by countries included in the tier two world market price for silver paste. Accordingly, {Commerce} should use HTS 7115.90 as the benchmark by which to measure the benefit of the silver paste.

Commerce's Position: We have continued using the average of Trade Data Monitor (TDM) and UN Comtrade data with HS subheadings 7106.92 as the benchmark for the Cross-Border Provision of Chinese Silver Paste for LTAR for this final determination.

At the Post-Preliminary Determination, we found that the silver paste market in Vietnam was distorted during the POI and, therefore, relied on tier two (world market prices) benchmarks, pursuant to 19 CFR 351.511(a)(2)(ii).[256] The petitioner, JAVN, and Boviet submitted potential benchmarks for silver paste. The petitioner placed on the record UN Comtrade world export data for HS subheading 7115.90 for the POI. The UN Comtrade data contained monthly export data for silver paste classified under HS subheading 7115.90. HS subheading 7115.90 covers "Other articles of precious metal or of metal clad with precious metal; Other,"[257] and HS chapter 71 covers more broadly "precious metals (*i.e.*, silver, gold and platinum) and articles thereof{.}"[258]

JAVN submitted TDM world-wide export data for silver paste under HS subheadings 3824.99 and 7106.92 for the POI.[259] Boviet Solar submitted UN Comtrade monthly export data for silver paste under HS subheadings 3824.99 and 7106.92 for the POI. HS subheading 3824.99 covers "Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included; other; other," and HS subheading 7106.92 covers "Silver (including silver plate with gold or platinum), unwrought or in semi manufactured forms, or in powder form."[260]

As explained in the Post-Preliminary Determination, we did not select the UN Comtrade data with HS subheading 7115.90 as this HS chapter 71 covers "Other articles of precious metal or of metal clad with precious metal; Other."[261] The petitioner provided a ruling from CBP showing that HS subheading 7115.90 was the appropriate classification for silver paste with 78 percent silver concentration that is mixed with "various chemical compounds."[262] However, we continue to find that the HS subheading 7115.90 description indicates that HS 7115.90 includes imports not similar to silver paste (*e.g.*, gold and articles of precious metals). In contrast, the description of HS subheading 7106.92 covers semi-manufactured silver powders, which we find is a better match for silver paste for purposes of identifying benchmark data because silver paste is itself a

[256] *See* Post-Preliminary Determination at 14.
[257] *See* Petitioner's Letter, "Petitioner's Benchmark Submission for Solar Glass and Silver Paste," dated November 22, 2024.
[258] *See* Post-Preliminary Determination at 14.
[259] *Id.*
[260] *Id.*
[261] *Id.*
[262] *See* Petitioner's Case Brief at 15; *see also* Petitioner's Letter, "Petitioner's Benchmark Submission for Solar Glass and Silver Paste," dated November 22, 2024, at Exhibit NFI-2.

manufactured silver product and would therefore fall under this HS subheading. Thus, we continue to find that the most appropriate HS subheading to value silver paste is 7106.92, which covers semi-manufactured silver powders. The petitioner argued that we relied on an AD proceeding to make our determination that HS subheading 7106.92 is more specific to the product for which we are seeking a benchmark. The petitioner argues that cases involving the selection of factors of production address different concerns, which have no application relevant to CVD benchmarks.[263] Commerce selected HS subheading 7106.92 as the more appropriate benchmark because it better represents the silver paste at issue in this investigation than HS subheading 7115.90. In the *Solar Cells China AD Administrative Review*, Commerce continued to use HS subheading 7106.92 as it is within Commerce's practice is to select surrogate value (SVs) based on a number of criteria (*i.e.*, public availability, contemporaneity, broad-market average, tax and duty-exclusive, and specificity)[264] of which specificity is particularly important.[265] In CVD proceedings, Commerce normally looks for product similarity and other factors affecting comparability between the benchmark and the products purchased by respondents. Further, where there are data for more than one commercially available world market price, Commerce will average such prices to the extent practicable. The assessment of input benchmarks and surrogate values are similar but completed for different purposes because both evaluate the data to ensure comparability.

Lastly, JAVN argued that Commerce should consider averaging HS subheading 3824.99 and HS subheading 7106.92 because both Boviet Solar and JAVN import silver paste under HS subheading 3824.99. We recognize that Boviet Solar and JAVN used HS subheading 3824.99 to import silver paste. However, we continue to find that HS subheading 3824.99 is not the most representative of the silver paste input used by respondents, as compared with HS subheading 7106.92. As stated above, HS subheading 3824.99 covers "Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included; other; other."[266] Based on this HS category description, we find that HS subheading 3824.99 covers miscellaneous chemical products, rather than being specific to silver paste. Therefore, we find that HS subheading 3824.99 is not a reasonable HS subheading to use as a benchmark, and we have not averaged the data within HS subheading 3824.99 with the data within HS subheading 7106.92 for this final determination.

As indicated in our Post-Preliminary Determination, we have continued to exclude exports to and from China from the tier two benchmark because, as explained above, in the context of this transnational subsidy, China is the provider of the subsidy at issue. Finally, because we have

[263] *See* Petitioner's Case Brief at 14.
[264] *See Crystalline Silicon Photovoltaic Cells Whether or Not Assembled into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2020- 2021*, 88 FR 43302 (July 7, 2023) (*Solar Cells China AD Administrative Review*), and accompanying IDM. For a description of our practice, *see* Policy Bulletin 04.1, available on Commerce's website at https://enforcement.trade.gov/policy/bull04-1.html.
[265] *See Solar Cells China AD Administrative Review*; *see also Taian Ziyang v. United States*, 783 F. Supp. 2d 1292, 1330 (holding that "in sum, 'product specificity' logically must be the primary consideration in determining 'best available information.' If a set of data is not sufficiently 'product specific,' it is of no relevance whether or not the data satisfy the other criteria set forth in Policy Bulletin 04.1.").
[266] *See* Post-Preliminary Determination at 14.

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determined that the silver paste markets of China, Vietnam, Cambodia, and Malaysia are distorted, we have excluded exports to and from these distorted markets, which is consistent with our practice.[267] 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.

Comment 10: Whether Commerce Should Revise Its Benchmark for the Cross-Border Provision of Chinese Solar Glass for LTAR

Petitioner's Case Brief:

The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* Petitioner's Case Brief at 16-18.

> {Commerce} should use the UN Comtrade data for HTS 7007.19 as the benchmark to calculate the benefit for the provision of solar glass, as these data represent a publicly available, world market price for the input at issue and allow {Commerce} to exclude distortive data. In contrast, the data relied on by {Commerce} in the post-preliminary determination suffer from several fatal flaws that render the data unusable as a benchmark.

Boviet Solar's Rebuttal Brief:

The following is a verbatim summary of arguments submitted by Boviet Solar. For further details, *see* Boviet Solar's Rebuttal Brief at 10-13.

> In the Post-Preliminary determination, Commerce properly relied upon PV insights to benchmark solar glass. This determination was consistent with Commerce's consistent practice of relying on this source and preferring to rely upon the most specific benchmark. Petitioner argues Commerce should depart from this practice and rely upon UN Comtrade data, arguing first that the PV insights data are estimated rather than actual prices and arguing second that the dataset is unreliable because it is inclusive of China-produced solar glass.
>
> First, PV insights data is not a mere estimate: the PV insights information on the record establishes this in their methodology. Second, Commerce is not required to remove China-prices from the benchmarks and has consistently found that the specificity of the PV insights data is more important than any such preference to do so. Commerce has consistently preferred this precise benchmark source over petitioner's suggested HTS (that would allow the removal of China, etc) in not only this investigation, but in multiple reviews of *Solar Cells from China* because PV insights is specific to solar glass instead of the overly generic glass HTS category.

[267] *See* Post-Preliminary Determination; *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.").

> In fact, in an earlier review of *Solar Cells from China*, Commerce departed from this practice in a particular review and relied on the HTS suggested by petitioner and it was overturned by the Court, finding that the dataset was "fatally overinclusive of non-solar glass in Commerce's calculation of the solar glass benchmark." *Changzhou Trina Solar Energy Co. v. United States*, 2018 Ct. Intl. Trade LEXIS 179, *18-19. Following the regulation and precedent, the UN Comtrade data is fatally overinclusive and results in a fatally inaccurate benchmark. PV insights is the only reliable, specific benchmark for solar glass.

JAVN's Rebuttal Brief:

The following is a verbatim summary of arguments submitted by JAVN. For further details, *see* JAVN's Rebuttal Brief at 24-32.

> Commerce has repeatedly relied on the data from PV Insights to calculate its benchmark for solar glass, finding that this data is the most specific and accurate on the record. Further, Commerce has repeatedly found that the non-specific nature of the U.N. Comtrade data for HS subheading 7007.19 means that it is incomparable to the input used to produce the subject merchandise, allegedly provided at LTAR.
>
> Further, there are significant discrepancies in the U.N. Comtrade data on the record that makes the data unusable as a benchmark. Simply put, the U.N. Comtrade data initially submitted by Petitioner is significantly different than the U.N. Comtrade data recently placed on the record by Commerce. Additionally, neither Petitioner nor Commerce has provided a converter for the U.N. Comtrade data in the factual submissions that would allow a comparison with the respondent data, reported in differing units.
>
> In the event that Commerce decides to consider using U.N. Comtrade data for solar glass, at a minimum Commerce should revise its benchmark calculation to not exclude Chinese and Vietnamese origin prices in the Final Determination.

GOV's Rebuttal Brief:

The following is a verbatim summary of arguments submitted by the GOV. For further details, *see* GOV's Rebuttal Brief at 2-3.

> For solar glass, petitioner argues that Commerce should rely on exports under HTS 7007.19 instead of the PV insights data. Similar to the GOV's argument in its case brief regarding wafer, this record, the statute and regulation, and Commerce's history in the *Solar Cells from China* Orders support relying upon PV insights. PV insights provides prices specific to solar glass prices at the precise same thickness as purchased by respondents. This source has been relied upon for numerous reviews, and the Court has even overturned Commerce's reliance on 7007.19 over PV insights. *Changzhou Trina Solar Energy Co. v. United States*, 2018 Ct. Intl.

> Trade LEXIS 179, *18-19 (Remanding the reliance on 7007.19 as "fatally overinclusive of non-solar glass" in Commerce's calculation of the solar glass benchmark). 7007.19 is a broad category of tempered safety glass, while PV insights is precisely specific to the input being benchmarked. Commerce's practice in accordance with the regulation and statute require Commerce to rely on this more specific PV insights data.[268]

Commerce's Position: We agree with the petitioner that Commerce should revise its solar glass benchmark to use the UN Comtrade data with HS subheading 7007.19. We have relied on the UN Comtrade data with HS subheading 7007.19 that Commerce placed on the record in this investigation.

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 JAVN, we are unable to disaggregate individual prices by country of origin.[269]

In the Post-Preliminary Determination, we found that the solar glass market in Vietnam was distorted during the POI; therefore, we relied on tier two benchmarks (world market prices), pursuant to 19 CFR 351.511(a)(2)(ii).[270] The petitioner placed UN Comtrade world export data for HS subheading 7007.19 for the POI on the record as a potential benchmark. JAVN submitted PV Insights data that contain monthly solar glass prices during the POI as another potential benchmark.[271] We preliminarily determined on the basis of facts available that GOC authorities account for at least 71 percent of solar glass production in China.[272] Moreover, Commerce has previously found that the Chinese market for solar glass is distorted based on the level of government participation in the market.[273] 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. Therefore, we determined to use the PV Insights data that JAVN submitted for the solar glass benchmark because we preliminarily determined it was comparable to the solar glass input than the UN Comtrade data, and we found it appropriate to select non-China solar glass prices reported within this dataset.[274]

As explained in the Post-Preliminary Determination, we assessed both the Chinese and Vietnamese solar glass markets and found them both to be distorted due to the market conditions of the China-sourced good.[275] Record evidence indicated that the majority of Chinese producers

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[268] The language was an excerpt of the executive summary from another issue presented in this Issues and Decision Memorandum. *See* GOV's Rebuttal Brief at 2-3.
[269] *Id.* The details of this price source are business proprietary information (BPI). *See* JAVN SP SG QR at 10 and Exhibit NSA2-16.
[270] *See* Post-Preliminary Determination at 16.
[271] *Id.*
[272] *See* Post-Preliminary Memorandum at 16-17.
[273] *See, e.g.*, *Solar China CVD 2021 Prelim*PDM at 28-29, unchanged in *Solar China CVD 2021 Final*.
[274] *Id.*
[275] *Id.* at 9-11.

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of solar glass are controlled by the GOC; therefore, at the Post-Preliminary Determination, we found it appropriate to select the Non-China solar glass prices reported by PV Insights.

JAVN, Boviet Solar, and the GOV made the following arguments that Commerce should continue using PV Insights data for the final determination: (1) PV Insights is more specific to the solar glass input investigated in comparison to HS subheading 7007.19; and (2) usage of PV Insights data is consistent with Commerce's practice and preference to rely on this data source for a solar glass benchmark.[276] Commerce acknowledges that PV Insights data has been preferred in previous *Solar Cells China* cases.[277] After evaluating the solar glass benchmarks further, we now determine that the PV Insights data do not provide the best benchmark to use in this investigation. It is Commerce's practice to remove distorted prices from benchmarks.[278] 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).[279] 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 no longer serves 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.[280] 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.[281]

After further reviewing the filed solar glass benchmarks, we determine that the UN Comtrade data with HS subheading 7007.19, filed by Commerce, is the most reasonable and usable benchmark within this record for this final determination. Commerce has acknowledged in another proceeding that solar glass is traded under HS code 7007.19.[282] There is no statutory or

[276] *See* GOV's Rebuttal Brief at 2-3; *see also* Boviet Solar's Rebuttal Brief at 10-13; JAVN's Rebuttal Brief at 24-27.
[277] *See Solar Cells China 2020*; *see also Solar Cells China 2021*; *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 of Review, in Part; 2019*, 87 FR 748 (January 23, 2022), and accompanying PDM; unchanged in *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 (collectively, *Solar Cells China 2019*).
[278] *See*, *e.g.*, *Rebar from Türkiye* IDM at Comment 1.
[279] *See* Thailand 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).
[280] *See* JAVN SP SG QR at 10 and Exhibit NSA2-16. JAVN requested proprietary treatment of PV Insights Data submitted under Exhibit NSA2-16. S
[281] *See CVD Preamble*, 63 FR at 65377; *see also, e.g., Barium Chloride India CVD Inv Final* IDM at Comment 3.
[282] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2019*, 87 FR 40491 (July 7, 2022), and accompanying IDM at Comment 8.

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regulatory requirement that benchmarks be identical.[283] 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.[284] As indicated in our Post-Preliminary Determination, we have continued to exclude exports to and from China from the tier two benchmark because, as explained above, in the context of this transnational subsidy, China is the provider of the subsidy at issue. Finally, because we have determined that the solar glass markets of China, Thailand, Vietnam, Cambodia, and Malaysia are distorted, we have excluded exports to and from these distorted markets, which is consistent with our practice.[285] 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. Consistent with other proceedings, we are also removing unspecified categories such as "Areas, nes," "Free Zones," and "World" from the benchmarks.[286]

In their rebuttal briefs, JAVN and Boviet Solar raise additional arguments regarding the comparability of the UN Comtrade export data in HS subheading 7007.19. For example, JAVN compares the petitioner's UN Comtrade data to Commerce's UN Comtrade data,[287] and Boviet Solar argues the HS subheading 7007.19 is an overly generic glass category.[288] As explained above in Comment 7 the legal requirements governing Commerce's selection of benchmarks do not require perfection.[289] As we have explained in other proceedings, a benchmark, by nature, is not an exact match to the subsidy being evaluated.[290] To emphasize, in *Drawn Stainless Steel Sinks from China*, Commerce adjusted benchmark prices based on record evidence of specific differences between two grades of stainless steel and the magnitude of the price differential that resulted from these differences.[291] Therefore, we are able to adjust benchmark data if needed per the input under investigation and benchmark data provided.

JAVN argues that neither Commerce nor the petitioner placed unit conversion information on the record which would enable Commerce to convert the square meters of Comtrade data into the kilograms of JAVN's specific inputs.[292] Commerce does not require unit conversion in order to use the UN Comtrade data with HS subheading 7007.19 it placed on the record. 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.[293] However, as explained above in Comment 7, 9, and 10, Commerce's practice is to rely on all usable data provided to construct

[283] *See*, *e.g.*, *Archer Daniels Midland*, 968 F. Supp. 2d at 1278 (stating that Commerce "is required only to select benchmarks that are comparable, not identical").
[284] *See* JAVN Final Calculation Memorandum; *see also* Boviet Solar Final Calculation Memorandum.
[285] *See Post-Preliminary Determination; see also* Malaysia Solar Cells IDM; Cambodia Solar Cells IDM, *e.g.*, *GranularPTFE from Russia* 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.").
[286] *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.
[287] *See* JAVN's Case Brief at 28.
[288] *See* Boviet Solar's Case Brief at 2.
[289] *See*, *e.g.*, *Softwood Lumber from Canada 2017-2018 AR* IDM at Comment 15; *see also supra*, Comment 7.
[290] *Id.*
[291] *See Drawn Stainless Steel Sinks from China* IDM at Comment 12.
[292] *See* JAVN's Case Brief at 29.
[293] *See* JAVN Final Calculation Memorandum; *see also* Boviet Solar Final Calculation Memorandum.

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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.[294] Therefore, we find that JAVN has not provided a basis to find the entire UN Comtrade dataset for HS code 7007.19 unusable. Using monthly export prices for 17 to 22 countries with export data in kilograms allows us to construct the most robust benchmark possible, based on available record information.

Comment 11: Whether Commerce Should Exclude VAT and Import Duties from the Benchmark Calculations

Boviet Solar's Case Brief:

The following is a verbatim summary of arguments submitted by Boviet Solar. For further details, *see* Boviet Solar's Case Brief at 43-44.

> Commerce added 10 {percent} VAT and import duties to the LTAR benchmarks. However, the regulation directs {Commerce} to make adjustments to the benchmarks for delivery charges such that "the comparison price to reflect the price that a firm actually paid or would pay if it imported the product." 19 C.F.R. §351.511(a)(2)(iv). Since Boviet {Solar} is an {EPE}, the prices Boviet {Solar} actually paid do not include VAT or import duties. Thus, Boviet {Solar}, when buying any inputs, including wafer, silver paste, and glass, from any international market (including Vietnam) would not incur VAT or import duties. Therefore, under the regulation, Commerce should not include the VAT and import duties. Indeed, this is the only way to ensure an apples-to-apples comparison to Boviet {Solar's} actual purchases.[295]

JAVN's Case Brief:

The following is a verbatim summary of arguments submitted by JAVN. For further details, *see* JAVN's Case Brief at 54-56.

> Commerce wrongly added {VAT} and import duties to its benchmark price for silicon wafers, silver paste and solar glass. Commerce's benchmark can only be adjusted to reflect the price that a firm actually paid or would pay if it imported the product. Here, JAVN and its affiliates JAPV and JANE did not pay VAT and import duties as export processing enterprises. Commerce itself recognized that JAVN, JAPV and JANE did not pay VAT and import duties by countervailing the alleged Import Duty Exemptions on Imported Raw Materials for Export Processing Enterprises and Export Processing Zones program with respect to all three companies. Commerce in effect double counted VAT and import duties by countervailing them under this program as well as adding VAT and import duties to its benchmark price for silicon wafers, silver paste and solar glass. Commerce

[294] *Id.*

[295] The language was an excerpt of the executive summary from another issue presented in this Issues and Decision Memorandum. *See* Boviet Solar's Case Brief at 2-3.

> cannot add VAT and import duties to its benchmark price as it does not reflect the price that {JAVN} paid to purchase its inputs.

VSUN, Trina Solar, and Jinko Solar submitted letters in which they adopted by reference the arguments made by Boviet Solar and JAVN.[296]

Petitioner's Rebuttal Brief:

The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* Petitioner's Rebuttal Brief at 24-25.

> Given this is a tier two price, no such allowance should be made for the specific respondent's particular tax situations. Further, whether the respondents would actually owe any duties is an open question until the hypothetical GOV inspection of the respondents' records, if such an inspection were ever to actually occur. Boviet {Solar's} argument regarding double counting confuses the effects of two distinct programs – the calculation of its benefit for the LTAR programs and the exemption from the import duties themselves. {Commerce} should continue to include VAT and import duties in the benchmarks of inputs provided for LTAR to the respondents.

Commerce's Position: We disagree with Boviet Solar and JAVN and have continued including VAT and import duties within the tier two benchmark calculations.

To determine the benefit from the Cross Border Provision of Chinese Inputs (*e.g.*, silicon wafer, silver paste, and solar glass), we compared the prices that Boviet Solar and JAVN paid for silicon wafers, silver paste, and solar glass with the benchmarks selected, in accordance with 19 CFR 351.511. As explained in the Post-Preliminary Determination, because we found that the silicon wafer, silver paste, and solar glass markets in Vietnam are distorted due to the intervention of authorities, we relied on "tier two" benchmarks (world market prices) for the cross-border provision of Chinese silicon wafers, Chinese silver paste, and Chinese solar glass for LTAR, pursuant to 19 CFR 351.511(a)(2)(ii).[297]

Pursuant to 19 CFR 351.511(a)(2)(iv), in measuring adequacy of remuneration, we 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. The *CVD Preamble* also provides that "in determining the adequacy of remuneration, {Commerce} will adjust comparison prices to reflect the price a company would pay if it imported the good or service," and that "{t}his adjustment will account for delivery charges and import duties."[298] Both the *CVD Preamble* and 19 CFR 351.511(a)(2)(iv) instruct Commerce to use adjusted prices that include delivery charges and import duties.

[296] *See* VSUN's Case Brief; Trina Solar's Case Brief; and Jinko Solar's Case Brief.
[297] *See* Post-Preliminary Determination at 11-17.
[298] *See CVD Preamble*.

With respect to JAVN's and Boviet Solar's argument that we should remove VAT and import duties from the benchmarks to ensure we conduct an "apples-to-apples" comparison, we determine by including the VAT and import duties, we are ensuring a proper comparison on these input purchases, pursuant to 19 CFR 351.511(a)(2)(iv). We find that removing the VAT and import duties from the tier two benchmark calculation, as argued by Boviet Solar and JAVN, would not comport with the directions in 19 CFR 351.511(a)(2)(iv) to use "delivered prices" as the comparison benchmark price. The "delivered price" under 19 CFR 351.511(a)(2)(iv) is simply the nominal price at the point of delivery.[299] Thus, whether a firm recovers VAT subsequent to delivery of the input or is exempted due to country specific circumstances is immaterial to the delivered price that Commerce must use as the comparison price under 19 CFR 351.511(a)(2)(iv).[300]

Further, both the *CVD Preamble* and 19 CFR 351.511(a)(2)(iv) direct Commerce to adjust the benchmark price to reflect the price "a firm" would pay if it imported the product.[301] As long as the inclusion of VAT is reflective of what a firm located in Vietnam – and not necessarily the respondent specifically – would have ordinarily paid, then it is appropriate to include the VAT in our benchmark.[302] These inputs (silicon wafers, silver paste, and solar glass) would compete with world-market inputs based on delivered prices that would include all delivery charges, taxes, and duties required for sale within the Vietnamese market.

We also disagree with Boviet Solar's and JAVN's arguments that adding VAT and import duties would result in double-counting. For an "Input for LTAR" subsidy program, we find a benefit is conferred to the extent that an input (*i.e.*, silicon wafers, silver paste, and solar glass) is being provided for LTAR. In an "Import Duty Exemption" program, we find "a benefit exists to the extent that the exemption extends to inputs that are not consumed in the production of the exported product, making normal allowance for waste…"[303] The benefit calculated under these two programs is different. Therefore, we find that including VAT and import duties to the tier two benchmark prices would not create a "double-counting" effect. Consistent with 19 CFR 351.511(a)(2)(iv) and our practice,[304] we have continued to include VAT in the benchmark prices at the rates that the government reported.[305]

Comment 12: Whether Commerce Should Revise Its Inland Freight Benchmark

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[299] *See* 19 CFR 351.511(a)(2)(iv).
[300] *See Certain Collated Steel Staples from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2022*, 89 FR 102104 (December 17, 2024), and accompanying IDM at Comment 1.
[301] *Id.*; *see also CVD Preamble*, 63 FR at 65378.
[302] *Id.*; *see also* 19 CFR 351.511(a)(2)(ii); and Beijing Tianhai, 52 F. Supp. 3d 1351, 1373-75 (stating that the reference to "a firm" means a hypothetical firm located in China purchasing the input during the POR, not the respondent specifically).
[303] *See* 19 CFR 351.519(a)(1)(ii).
[304] *See, e.g.*, *High Pressure Steel Cylinders from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012), and accompanying IDM at 42-44; *see also 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), and accompanying IDM at 44-46; *see also Beijing Tianhai*, 52 F. Supp. 3d at 1374 (holding that Commerce properly adjusted the benchmark price for an input to account for VAT and import duties that firms located in China which purchased such input would ordinarily have paid).
[305] *See* GOV Wafer QR at Exhibit NSA-4; *see also* GOV SP SG QR at Exhibits NSA2-4 and NSA2-8.

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Boviet Solar's Case Brief:

The following is a verbatim summary of arguments submitted by Boviet Solar. For further details, *see* Boviet Solar's Case Brief at 40-43.

> Commerce relied upon a tier two benchmark for inland freight, instead of Boviet {Solar's} own inland freight expenses saying it could not rely upon them because the silicon wafer market is distorted. This is contrary to Commerce's long-standing practice of preferring to rely upon a respondent's own inland freight and unsupported by this record. Whether the wafer market in Vietnam is distorted has absolutely no bearing on whether inland freight in Vietnam or by Boviet {Solar} is distorted. Inland freight would not be distorted because the price of the goods shipped, such as wafers, was distorted. Further, there has also been no allegation that freight in Vietnam is distorted. Further, the tier two benchmark relied upon is not contemporaneous and is not related to the LTAR industries or trading of the respondents.[306]

JAVN's Case Brief:

The following is a verbatim summary of argument submitted by JAVN. For further details, *see* JAVN's Case Brief at 56-58.

> Commerce's determination to use Petitioner's benchmark for inland freight instead of {JAVN's} reported data departs from (1) Commerce's past practice of using respondent companies' actual inland freight expenses without a reasonable explanation; and (2) Commerce's preference for using contemporaneous data. Accordingly, Commerce should maintain its past practice and use the contemporaneous data submitted by {JAVN} for its actual inland freight expenses.

Petitioner's Rebuttal Brief:

The following is a verbatim summary of argument submitted by the petitioner. For further details, *see* Petitioner's Rebuttal Brief at 25-26.

> First, the issues discovered at verification with {JAVN's} freight reporting render it unusable for any use in this investigation. The one administrative review cited by {JAVN} is not sufficient to constitute a description of {Commerce's} practice. {Commerce} has used Doing Business 2020 subsequent to the decision in that administrative review. For the reasons stated in its post-preliminary determination, {Commerce} should continue to use the Petitioner's benchmark for inland freight to adjust the benchmarks for the inputs provided for LTAR.

[306] The language was an excerpt of the executive summary from another issue presented in this Issues and Decision Memorandum. *See* Boviet Solar's Case Brief at 2.

VSUN incorporates the arguments of Boviet Solar and JAVN to the extent that they impact the non-selected respondents' rate and do not adversely impact the calculation of the rate assigned.[307]

Trina Solar incorporates by reference the comments by Boviet Solar and JAVN regarding issues from the *Preliminary Determination*.[308]

Jinko Solar adopts by referenced the arguments of the mandatory respondents on cross border issues, and other issues which impact it's "all others" rate, and urges Commerce to issue a final decision that conforms to law.[309]

Commerce's Position: We agree with Boviet Solar and JAVN that we should rely on their actual inland freight expenses to derive the inland freight component of the benchmark prices. As explained in the Post-Preliminary Determination, because we found the silicon wafer, silver paste, and solar glass markets in Vietnam were distorted due to the intervention of authorities, we relied on "tier two" benchmarks (world market prices) for the cross-border provision of Chinese silicon wafers, Chinese silver paste, and Chinese solar glass for LTAR, pursuant to 19 CFR 351.511(a)(2)(ii).[310] Pursuant to 19 CFR 351.511(a)(2)(iv), Commerce will include delivery charges such as inland freight expenses in an adjustment to the comparison price to reflect the price that a firm actually paid or would pay if it imported the product. Accordingly, to derive the benchmark prices we included ocean freight and inland freight that would be incurred to deliver inputs to the respondents' production facilities. We used the petitioner's inland freight submission *Doing Business 2020* data to determine the inland freight to include in the tier two benchmark because we found the silicon wafer market is distorted.[311]

JAVN and Boviet Solar argue that Commerce did not provide support for its finding that Vietnam's inland freight market is distorted.[312] Commerce did not request additional information from Boviet Solar or JAVN and its cross-owned affiliate, JAPV, regarding Vietnam's inland freight market, because both mandatory respondents reported the inland freight they incurred for the inputs (*i.e.*, silicon wafers, silver paste, and solar glass) to their production facilities.[313] We find that the information on the record does not indicate inland freight distortion, nor did the petitioner provide information to rebut, clarify, or correct the mandatory respondents' responses regarding inland freight. Therefore, we find that the record lacks sufficient evidence to determine that the market for inland freight in Vietnam is distorted. Accordingly, consistent with previous CVD proceedings, we have determined to rely on the respondents' actual inland freight prices.[314] As a result, we will revise the inland freight benchmark to the actual inland freight prices reported by the respondents.

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[307] *See* VSUN's Case Brief.
[308] *See* Trina Solar's Case Brief.
[309] *See* Jinko Solar's Case Brief.
[310] *See* Post-Preliminary Determination at 11-17.
[311] *Id.*
[312] *See* JAVN's Case Brief at 56-57; *see also* Boviet Solar's Case Brief at 42.
[313] *See* Boviet Solar Wafer QR at 2; *see also* Boviet Solar SP SG QR at 2; JAVN Wafer QR at 3 and 7; and JAVN SP SG QR at 3-4 and 11.
[314] *See Multilayered Wood Flooring from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2020*, 88 FR 34828 (May 31, 2023), and accompanying IDM at Comment 11.

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With respect to the petitioner's concerns regarding verification of JAVN, we find that we are able to rely on the inland freight expenses reported by JAVN for the tier two benchmark calculations. For further details, and due to the business proprietary nature of details regarding JAVN's inland freight expenses, *see* JAVN Final Calculation Memorandum.[315]

Comment 13: Whether Import Duty Exemptions on Imported Raw Materials for EPE and Export Processing Zones is Countervailable

JAVN's Case Brief

The following is a verbatim summary of arguments submitted by JAVN. For further details, *see* JAVN's Case Brief at 58-66.

> Commerce should determine that the program "Import Duty Exemptions on Imported Raw Materials for Export Processing Enterprises" is not countervailable because Vietnam maintains a sophisticated system for tracking and monitoring the activity of export processing enterprises which more than fulfils the criteria of 19 C.F.R. § 351.519(a)(4)(i) for rigorous customs monitoring and Commerce is not permitted by statute to countervail programs without evidence of any forgone revenue. The only basis for Commerce's determination that the tracking system of the GOV was insufficient was that (1) JAVN had not been inspected during the POI, and (2) there was no system for tracking resalable waste. The first finding ignores the sophisticated, risk-based system employed by GOV in which inspections are conducted in response to particular activity, rather than on a predictable yearly basis. The second finding is not in accordance with the record, which shows that JAVN had a thorough tracking system for waste. Regardless of its past practice, Commerce is not permitted by law to countervail a duty exemption program with no finding of foregone revenue, pursuant to the plain terms of 19 U.S.C. § 1677(5)(D).

GOV's Case Brief

The following is a verbatim summary of arguments submitted by the GOV. For further details, *see* GOV's Case Brief at 15-27.

> Commerce incorrectly found that there was a countervailable benefit for EPEs receiving an exemption on import duties for imported raw materials. EPEs operate outside of the Vietnam customs territory, accordingly imports into EPEs are not subject to Vietnam duties. Thus, as an initial matter, this should not be considered a countervailable program because there was no revenue foregone by the Vietnam government, and thus no countervailable benefit conferred. Nonetheless, even if considering the requirements under 19 C.F.R 351.519, the program has met these requirements and no benefit should be found. Commerce found the GOV's system

[315] JAVN requested proprietary treatment of verification observations. *See* JAVN Final Calculation Memorandum; *see also* JAVN Verification Report.

for EPEs did not meet the requirements for a reasonable, effective system to confirm which inputs are consumed in the production of the exported products because the GOV does not track the amount of waste exiting the EPEs and because the GOV did not inspect the Respondents during the POI. However, an EPE could not exit anything resalable at all from its facility without undergoing an export procedure. The EPE is not part of the customs territory of Vietnam, such that a sale to Vietnam is an export sale and a sale to any other country is also an export sale. The GOV explained that when an EPE sells scrap or waste into the Vietnam domestic market, it is required to perform export procedures, and its buyer is required to perform import procedures which triggers the obligation of tax and duty payments on the buyer. Indeed, Commerce spent two days at the Vietnam Customs authority reviewing their detailed systems, including computers that monitored EPEs imports, EPEs' exports, EPEs' physical surveillance, and their risk management system. Further, the waste allowances and consumptions norms are reported in detail to the GOV. Commerce cannot conclude that the GOV does not track waste exiting the EPE. At verification, the GOV also explained the extensive annual reporting EPEs must provide, live system reporting, and multiple inspections that GOV conducts based on an independent risk management system. The GOV has a reasonable and rigorous verification system of the EPE that is consistent with the Vietnamese accounting standards and thus meets all of the requirements of 19 CFR 351.519(a)(4)(i).

Boviet Solar's Case Brief

The following is a verbatim summary of arguments submitted by Boviet Solar. For further details, *see* Boviet Solar's Case Brief at 44-54.

Commerce incorrectly found that there was a countervailable benefit for EPE, such as Boviet {Solar}, receiving an exemption on import duties for imported raw materials. Boviet {Solar} is an EPE and thus operates outside of the Vietnam customs territory, accordingly imports into EPEs are not subject to Vietnam duties. Thus, as an initial matter, this should not be considered a countervailable program because there was no revenue foregone by the Vietnam government, and no countervailable benefit conferred. Nonetheless, even under 19 C.F.R 351.519, no benefit should be found for Boviet {Solar}. Commerce found the {GOV} system for EPEs did not meet the requirements under 19 C.F.R 351.519 for a reasonable, effective system to confirm which inputs are consumed in the production of the exported products. Commerce raised two concerns with the system, first that the GOV does not track the amount of waste exiting the EPEs and second that the GOV did not inspect Boviet {Solar} during the POI. However, the first point is incorrect and the second, while true, fails to comprehend the full, rigorous system that certainly fulfills the requirements of 19 C.F.R 351.519. First, as an EPE, Boviet {Solar} cannot sell or exit a resalable good at all from its facility without undergoing an export procedure. The EPE is not part of the customs territory of Vietnam, such that a sale to Vietnam is an export sale and a sale to any other country is also an export sale. When Boviet {Solar} sells anything, including waste

materials or scraps, it must file export documentation and the buyer must file import documentation. Boviet {Solar} even provided examples of this. Thus, all imports and exports from Boviet {Solar} are monitored, tracked, and overseen by the GOV. Further, the record also establishes that the consumption norm and allowance for waste is tracked by the GOV as well. Boviet {Solar} must provide detailed reporting on consumption norms, annual reports, live system monitoring, and has been subject to multiple GOV inspections based on an independent risk management system. The GOV has a reasonable and rigorous verification system of EPE's imports and exports, including waste usage, that is consistent with the Vietnamese accounting standards and thus meets all of the requirements of 19 CFR 351.519(a)(4)(i).

VSUN, Trina Solar, and Jinko Solar submitted letters in which they adopted by reference the arguments made by Boviet Solar and JAVN.[316]

Petitioner's Rebuttal Brief:

The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* Petitioner's Rebuttal Brief at 28-29.

> {Commerce} found that the GOV's "system neither meets the regulatory requirements under {19 C.F.R. § 351.519(a)(4)(i)}, nor adheres to the 'rigorous customs enforcement' requirement outlined in CWP from Vietnam." The Vietnamese customs authority did not conduct inspections of any of the respondents nor their cross-owned affiliates during the POI. Additionally, record evidence demonstrates that the GOV does not track the amount of waste exiting the Export Processing Enterprise ("EPE"). {JAVN's} argument regarding scrap and the reporting of information to the GOV confuses record-keeping with the verification of those records. The lack of a POI verification by the GOV renders the companies' record-keeping irrelevant. {Commerce} should continue to find the Import Duty Exemptions on Raw Materials for EPEs to be countervailable for the final determination.
>
> Boviet {Solar} and the GOV also argue that EPEs are outside the customs territory of Vietnam and that there is no revenue forgone because the EPEs are not subject to Vietnamese customs duties. Whether the GOV monitors the zone for compliance with its customs laws implies in and of itself that it has customs enforcement powers over the EPE. The GOV continues to have enforcement powers over these companies. Further, these enforcement powers as applied by the GOV do not meet the standards of {Commerce's} regulation or prior cases such as *CWP from Vietnam*. Therefore, {Commerce} should continue to find the Import Duty Exemptions on Raw Materials for EPEs to be countervailable in the final determination.

[316] *See* VSUN's Case Brief; Trina Solar's Case Brief; and Jinko Solar's Case Brief.

Commerce's Position: We continue to find that the Import Duty Exemptions on Imported Raw Materials for EPEs and Export Processing Zones program is countervailable.

Under 19 CFR 351.519(a), "the term 'remission or drawback' includes full or partial exemptions and deferrals of import charges." Under 19 CFR 351.519(a)(1)(ii), in the case of exemptions of import charges upon export, "a benefit exists to the extent that the exemption extends to inputs that are not consumed in the production of the exported product, making normal allowance for waste…" Under 19 CFR 351.519(a)(4)(i), the entire amount of such exemptions will confer a benefit, unless Commerce determines that the government in question has in place, and applies, a system or procedure to confirm which inputs are consumed in the production of the exported products, and in what amounts, and the system is reasonable, effective for the purposes intended, and is based on generally accepted commercial practices in the country of export."

At the *Preliminary Determination*, we determined that the GOV does not track the amount of waste exiting the EPE, and the Vietnam Customs Authority did not conduct an inspection of Boviet Solar's, JAVN's and JAVN's cross-owned companies facilities during the POI; therefore, we found this system neither meets the regulatory requirements under 19 CFR 351.519(a)(4)(i), nor adheres to the "rigorous customs enforcement" requirement outlined in *CWP from Vietnam*.[317] Thus, we preliminarily determined that the program provides a financial contribution under section 771(5A)(D)(ii) of the Act in the form of revenue forgone by the GOV and preliminarily determined that this program is specific under sections 771(5A)(A) and (B) of the Act because import duty exemptions on raw materials are contingent upon export performance and the company being an export processing enterprise.

At verification of the GOV, we observed that EPEs are subject to a total of three inspections: (1) an initial physical inspection; (2) a post-customs clearance inspection; and (3) a customs settlement report inspection.[318] The GOV explained that an enterprises are required to meet the following criteria to be an EPE: (1) install a high fence to physically separate the EPE from the surrounding areas; (2) construct separate entrance and exit gates to ensure monitoring when imported goods are entering and exiting the building; (3) install of cameras to survey goods; (4) connect the camera footage to the local customs authority's system; (5) obtain a software system to manage and monitor imported goods; (6) store data from the software system for 12 months at the enterprise; (7) submit a Customs settlement report every first quarter annually; and (8) manage Customs declarations.[319] The GOV stated that the local Customs authorities conduct these physical inspections to ensure that the enterprise met all the criteria listed in Decree 18/2021/ND-CP (Decree 18).[320]

We also found that the other two inspections, *i.e.*, the post-Customs clearance and Customs settlement report, are not required to be performed annually.[321] The Customs settlement report inspection is meant to verify the accuracy of the Customs settlement report, which includes the

[317] *See Circular Welded Carbon-Quality Steel Pipe from the Socialist Republic of Vietnam: Final Negative Countervailing Duty Determination,* 77 FR 64471 (October 22, 2012) (*CWP from Vietnam*), and accompanying IDM at Comment 3.
[318] *See* GOV Verification Report at 9-11.
[319] *Id.* at 10.
[320] *Id.*
[321] *Id*.

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Customs declaration forms and the company data on imported goods.[322] The post-Customs clearance inspection is broader than the Customs settlement report inspection.[323] The post-Customs inspection includes tracking the volume of goods that companies import and verifying the inventory withdrawal reports and current inventory reports, and the merchandise they consumed in the production process, and the merchandise exported from the EPE zone.[324] We confirmed with GOV officials the actual number of inspections performed during the POI (post-Customs clearance and Customs settlement report).[325] We were able to confirm that none of these inspections were completed during the POI on Boviet Solar, JAVN, or JAVN's cross-owned companies. We inquired if these inspections were held prior to or after the POI, and the GOV confirmed these inspections were held prior to the POI for both mandatory respondents.[326]

The GOV, Boviet Solar, and JAVN argue that this program exceeds the "rigorous customs enforcement" and that this program should be found to be not countervailable because all imports, exports, and scrap are accounted for within the inspections for EPEs.[327] We disagree with these arguments.

GOV provides Article 71 of Circular 38/2015/TT-BTC (Circular 38), which states that waste or scrap within the norm that is the by-product of producing goods intended for export can be sold in the domestic market without paying import duty, but waste or scrap beyond the norm is subject to import duty when sold domestically.[328] Fundamentally, the GOV's system allows scrap created during the production of products bound for export markets to be sold on the domestic market without the encumbrance of the import duties normally associated with entering goods. As Commerce has found in other recent cases, "the GOV's system is not reasonable because producers may sell recovered forms of 'scraps or discarded products' that were created during the production of exported products, from imported inputs, without customs procedures (*i.e.*, paying duties) on that scrap even after making allowances for unrecoverable waste."[329]

In regard to the physical inspection, we find the GOV, Boviet Solar, and JAVN's arguments that Vietnam Customs requires physical surveillance and control measures including fencing of the export processing area, surveillance, and integration with Vietnam Customs software does not establish that the Customs authority tracks the amount of imported raw materials consumed in the production of the exported product and the amount of resalable scrap generated from this process and sold to domestic producers by the export processing enterprises. Moreover, we find the GOV's argument that Vietnam Customs requires physical surveillance and control measures including fencing of the export processing area, CCTV surveillance, and integration with Vietnam Customs software to be irrelevant in regard to whether its customs authority tracks the amount of imported raw materials consumed in the production of the exported product and the

[322] *Id.*
[323] *Id.*
[324] *Id.*
[325] *Id.* The GOV requested business proprietary treatment on the exact number of inspections held during the POI.
[326] *Id*.
[327] *See* GOV's Case Brief at 15-27; *see also* Boviet Solar's Case Brief 44-54; and JAVN's Case Brief at 58-66.
[328] *See* GOV IQR at Exhibits C-2.1 and C-6.1.
[329] *See Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination,* 89 FR 85500 (October 28, 2024), and accompanying IDM at Comment 5; *see also Paper Plates from Vietnam Final* at Comment 1.

amount of resalable scrap generated from this process and sold to domestic producers by the export processing enterprises. Having physical surveillance and control measures does not demonstrate that Vietnamese customs are tracking the amount of imported and exported products from the export processing enterprises.

As for the Customs settlement report inspection and post-Customs clearance inspection, the GOV, Boviet Solar, and JAVN reiterate that the Customs settlement report is submitted annually, which allows the Customs authorities to ensure the EPEs are following the requirements of the export-import procedures and tracking of each transaction, which reveals effective monitoring of the EPE.[330] The GOV did not provide any documentation of how Vietnamese Customs accounts for scrap and waste leaving an export processing enterprise during the POI.[331] Further, the GOV did not state whether these inspections observed the recovery of scrap or waste. As noted in the verification report, the inspections monitored the volume of goods imported, verified inventory withdrawal reports, current inventory reports, merchandise consumed and exported, and ensured the company complied with all the requirements to be an EPE.[332] There were also no inspection reports demonstrating tracking capabilities that took place during the POI, which we find indicates this is not an adequate system and that, therefore, the GOV does not have a "rigorous customs enforcement" program.

Lastly, the GOV, Boviet Solar, and JAVN argue that these EPEs are "outside the customs territory" of Vietnam. Accordingly, they argue that imports into EPEs are not subject to Vietnam duties, and, therefore, there was no revenue forgone by the GOV and no countervailable benefit conferred. We disagree.

The GOV and Boviet also argue that Commerce should not find that exemptions on raw material imports used in the production of exported products, are countervailable because these exemptions are provided "outside the custom's territory" of Vietnam.[333] Respondent parties base their arguments on the supposition that an "export processing enterprise is outside the custom's territory of Vietnam."[334] In support of their arguments, respondent parties cite *CWP from Vietnam*[335] and *ATC Tires*.[336]

We acknowledge that based on the facts and arguments presented in *CWP from Vietnam*, we found that a financial contribution did not exist based on an understanding that the GOV did not forgo revenue when it deemed Hongyuan an export processing enterprise.[337] However, our understanding of the steps necessary to designate an export processing enterprise has evolved — the designation of an EPE in fact causes no duties to be collected on imports which is revenue foregone. Further, *ATC Tires* held that a respondent was not considered outside the customs

[330] *See* GOV's Case Brief at 15-27; *see also* Boviet Solar's Case Brief 44-54; and JAVN's Case Brief at 58-66.
[331] *See Preliminary Determination* PDM at 41.
[332] *See* GOV Verification Report at 10.
[333] See GOV's Case Brief at 15; *see also* Boviet Solar Case Brief at 45.
[334] *See* Boviet Solar's Case Brief at 45.
[335] *See Circular Welded Carbon-Quality Steel Pipe from Vietnam: Final Negative Countervailing Duty Determination,* 77 FR 64,471, and accompanying IDM at 14 (October 22, 2012).
[336] *See ATC Tires Priv. Ltd. v. United States*, 322 F. Supp. 3d 1365 (CIT 2018) (*ATC Tires*).
[337] *See CWP from Vietnam* IDM at Comment 3.

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territory of India despite operating in a "special economic zone."[338] In doing so, the U.S. Court of International Trade (CIT) addressed arguments based on *CWP from Vietnam* and distinguished the monitoring systems in place in Vietnam from those in place in India. The CIT did not hold that the EPE program in Vietnam had a sufficient monitoring system but instead focused its analysis on the programs at issue in that case in India.

Record evidence indicates that Boviet Solar's, JAVN's, JAPV's and JANE's export processing zone is not subject to rigorous customs enforcement measures that ensure goods entering the free trade area are accounted for through exportation or entry into the country's customs territory and, appropriate duties are collected.[339]

Our understanding of the government designation of export processing enterprises, which has developed in the intervening years since *CWP from Vietnam*, is addressed in the *REAL Final Preamble*) stating,

> The government designation of either a firm or a zone as being outside the customs territory constitutes a government act or program is consistent with the definition of "government provided" under § 351.102(a)(25). By establishing areas in which it will not collect taxes or import charges on capital goods, the government has taken an explicit action to provide both a financial contribution and a benefit to a firm that is operating within the designated area. Absent the government action, the firm otherwise would have paid either direct taxes or import charges to the government. These government actions provide incentives to exporters, and, as the Supreme Court explained in Zenith, a purpose of the countervailing duty law and the imposition of countervailing duties is "to offset the unfair competitive advantage that foreign producers would otherwise enjoy from export subsidies paid by their governments."[340]

Based on this understanding, the GOV's action of designating an EPE, provides a financial contribution to the designated firms in the form of revenue foregone. Additionally, because this program provides for such exemptions upon export, it is appropriately analyzed under section § 351.519(a)(ii), and, therefore, must also meet the criteria discussed above.

Based on the above, we find that the GOV did not adhere to the "rigorous customs enforcement" requirement outlined in *CWP from Vietnam* and that the GOV's system did not meet the requirements set forth in 19 CFR 351.519(a)(4). As a result, we find this program

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[338] *See ATC Tires.*

[339] *See Paper Plates from Vietnam Final* IDM at Comments 1 and 2.

[340] *See Regulations Enhancing the Administration of the Antidumping and Countervailing Duty Trade Remedy Laws*, 89 FR 101694, 101730 (December 16, 2024). We note that Commerce has not amended 19 CFR 351.519 as it "addresses long-established rules of global trade adopted by the United States that were first established under the General Agreement on Tariffs and Trade (GATT) and later incorporated into the SCM Agreement." However, the clarification of the more general definition of whether an exemption through an EPE designation is a "government provided" financial contribution is equally applicable to this program. We also note that the definition of "government-provided" is unchanged in the regulations. *See Paper Plates from Vietnam Final* IDM at Comment 1 and Comment 2.

countervailable and the entire amount of exemptions provided under this program to confer a benefit.

Comment 14: Whether Total AFA Should Be Applied to JAVN

Petitioner's Case Brief:

The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* Petitioner's Case Brief at 5-13.

> {Commerce} should apply total AFA to {JAVN} due to the numerous problems with the verification of its responses as discussed in its verification report. Prior to verification, {Commerce} requested information on {JAVN's} languages employed prior to hiring an interpreter. {JAVN} represented that most company officials speak Vietnamese and some Mandarin. Therefore, Commerce officials retained a Vietnamese interpreter for verification. At the beginning of verification, counsel stated the {JAVN} officials mainly speak Mandarin, not Vietnamese. Further, many of {JAVN's} and its cross-owned reporting affiliate's systems and documents were maintained in Mandarin. All Mandarin at verification, including "many of {JAVN} and its cross-owned reporting affiliates'} systems and documents {that} were maintained in Mandarin{,}" were translated, by {JAVN} officials due to the incorrect information provided by {JAVN} to {Commerce}. {Commerce} was forced to rely on translations provided by the very company officials whose responses {Commerce} was there to verify. Solely on this basis, {Commerce} should not consider {JAVN's} response verified within the meaning of section 776(a)(2)(B) of the Tariff Act of 1930, as amended (the "Act"). Additionally, in providing information regarding certain programs, {JAVN} withheld information requested by {Commerce} within the meaning of section 776(a)(2)(A) of the Act; failed to provide such information by the deadlines established by {Commerce} pursuant to section 776(a)(2)(B) of the Act; and seriously impeded this investigation within the meaning of section 776(a)(2)(C) of the Act. Thus, the application of facts otherwise available is appropriate in this case.
>
> Further, because these actions, individually and taken together, demonstrate that {JAVN} did not cooperate to the best of its ability in responding to {Commerce}, including the nature of the languages used its records and electronic record keeping systems, the application of total AFA is appropriate.

JAVN's Rebuttal Brief:

The following is a verbatim summary of arguments submitted by JAVN. For further details, *see* JAVN's Rebuttal Brief at 3-12.

> Commerce must reject Petitioner's request to apply total {AFA} against {JAVN} due to any alleged language barriers that occurred during verification. {JAVN} did not withhold information, fail to provide information by deadlines, significantly

> impede the proceeding or provide information that could not be verified given that Commerce nor Petitioner identified a single instance where Commerce did not receive a complete and accurate translation during verification. Commerce's standard practice is to rely on the translations of documents provided by respondents and there is no evidence on the record that {JAVN} did not submit fully accurate translations. {JAVN} also cooperated to the best of its ability because it accurately reported the language abilities of JAVN, the company subject to verification, and had no reason to know that Commerce would not be aware that it would need to review documents in Mandarin during verification.

Commerce's Position: We disagree with the petitioner that the application of total AFA is appropriate based on the language translation matter identified in Commerce's verification report for JAVN.

Sections 776(a)(1) and (2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply "facts otherwise available" if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from 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 this case, we find that there is no indication, based on the information on the record, that Commerce's verification of JAVN was materially hindered by the available language translation. Although it may have been preferable for Commerce to have engaged translation services in both Vietnamese and Mandarin for its verification of JAVN, we do not find that necessary information is missing from the record as a result of the verification language translation because JAVN officials also spoke English and were able to communicate with Commerce staff throughout the verification without issue. There is no information on the record to suggest that JAVN's information could not be verified, or that JAVN failed to cooperate to the best of its ability regarding this issue. Indeed, the verification report repeatedly describes how Commerce reconciled JAVN's reporting and noted no discrepancies.[341] Thus, we do not find that the application of total AFA for JAVN is appropriate in this case, based on the requirements of sections 776(a) and (b).

The petitioner's arguments concerning the information provided or withheld by JAVN for certain programs are addressed in Comments 15 and 16, below.

Comment 15: Whether AFA Should Be Applied to JAVN in Respect to Import Duty Exemptions on Imported Equipment during the AUL Period

Petitioner's Case Brief:

[341] *See, e.g.*, JAVN Verification Report at 10 (reconciling Income Tax Preferences for New Investment);10 (reconciling Income Tax Preferences for Enterprises in Special Zones).

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The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* Petitioner's Case Brief at 5-13.

> During verification of the GOV's questionnaire responses, {Commerce} found entries of fixed assets in 2022 for {JAVN} that entered duty-free pursuant to its status as an {EPE}. {JAVN} did not report these duty free imports during the AUL period in its questionnaire responses. {Commerce} requested in its questionnaires that {JAVN} report any other usage of any other subsidies where the GOV provided, directly or indirectly, any other forms of assistance to producers or exporters of solar cells. {JAVN} confirmed all three cross-owned affiliated companies imported machinery during the AUL period duty free. Given that {JAVN} did not disclose the import of equipment under this program by {JAVN}, {JAPV} and {JANE} as requested by {Commerce}, {JAVN} withheld necessary information that {Commerce} requested, failed to provide information within the established deadlines, and significantly impeded this investigation regarding this program within the meaning of section 776(a)(2) of the Act. Further, {JAVN} failed to cooperate to the best of its ability pursuant to section 776(b) of the Act and the application of AFA to determine the benefit {JAVN}, JAPV, and JANE each received from this program is warranted.

JAVN's Rebuttal Brief:

The following is a verbatim summary of arguments submitted by JAVN. For further details, *see* JAVN's Rebuttal Brief at 13-18.

> Commerce's questionnaire did not require that {JAVN} report its purchases of machinery during the average {useful} life (AUL) period. As Commerce initiated a program that was specific to the importation of raw materials during the POI, Commerce cannot reasonably require that a respondent report an alleged benefit beyond the parameters of this program.[342]

Commerce's Position: We agree with the petitioner that the application of AFA to JAVN is warranted for the unreported assistance of Import Duty Exemptions on Imported Equipment during the AUL.

In the Initial Questionnaire, under "Other Subsidies," we asked mandatory respondents if "the GOV (or entities owned directly, in whole or in part, by the GOV or any provincial or local government) provide, directly or indirectly, any other forms of assistance to your company between January 1, 2014, and the end of the POI. If so, describe such assistance in detail including the amounts, date of receipt, purpose and terms, and answer all questions in the appropriate appendices."[343] This question explicitly identifies the period that includes the POI and the relevant year of the AUL period, which in this case starts in 2014. In response to the

[342] The language was an excerpt of the executive summary from another issue presented in this Issues and Decision Memorandum. *See* JAVN's Rebuttal Brief at 1.
[343] *See* Initial Questionnaire at III-21.

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Initial Questionnaire, under "Other Subsidies," JAVN stated "Not applicable, {it} did not apply for, use or receive any assistance under other subsidy programs."[344]

At verification of the GOV, we reviewed the program, "Import Duty Exemptions on Imported Equipment in Industries Entitled to Import Duty Preferences," under which Boviet Solar had reported receiving benefits during the AUL (*i.e.*, since 2014). This was a program Boviet Solar self-reported in an "additional response" to the "Import Duty Exemptions on Raw Materials for Export Processing Enterprises and Export Processing Zones."[345] As we reviewed Boviet Solar's usage of this program, for a non-use evaluation of JAVN based on JAVN"s reporting, we asked GOV officials to review any fixed assets that were imported by JAVN during the AUL, using the Vietnam Automatic Cargo & Port Consolidated System (VNACCS).[346] Due to the amount of data at issue for the period 2014-2023, we narrowed our requested query to the year 2022.[347] The query, conducted using JAVN's tax identification code returned a result showing that JAVN had imported fixed assets during 2022 on which import duty exemptions were granted.[348] After the GOV verification, we conducted verification for JAVN, and its affiliates (*i.e.*, JAPV and JANE). While reviewing the program, "Import Duty Exemptions on Imported Raw Materials for Export Processing Enterprises and Export Processing Zones, we examined whether all exemptions under this program were reported.[349] As this program pertained to "Raw Materials" we asked JAVN if any imports of machinery (*e.g.*, equipment) were completed during the AUL to confirm JAVN's reported non-use of "Other Assistance," and that no other subsidies were received during the AUL.[350] In response, JAVN officials confirmed that all three companies (*i.e.*, JAVN, JAPV, and JANE) imported machinery during the AUL. After examining a sampling of customs declarations we requested, we found that JAVN and JAPV imported equipment during the AUL on which it had received exemptions from paying import duties.[351] This was inconsistent with JAVN's reporting in its questionnaire responses where it stated that JAVN "did not apply for, use or receive any assistance under other subsidy programs."[352] Boviet Solar had reported imports of equipment in its Initial Questionnaire response as an "additional response" to the Import Duty Exemptions on Imported Raw Materials for Export Processing Enterprises and Export Processing Zones,"[353] and provided additional clarification under section, "Other Subsidies," of its response.[354] Therefore, the record demonstrated that Boviet Solar received other assistance under a program for EPEs, and there was an opportunity for JAVN to clarify its response regarding any additional imports duty exemptions it may have received over the AUL and during the POI.

JAVN argued that the Initial Questionnaire under the "Import Duty Exemptions on Imported Raw Materials for Export Processing Enterprises and Export Processing Zones," did not require

[344] *See* JAVN IQR at 56-57.
[345] *See* Boviet Solar IQR.
[346] *See* GOV Verification Report at 15.
[347] *Id.*
[348] *Id*.
[349] *See* JAVN Verification Report at 12.
[350] *Id.*
[351] *Id.*
[352] *See* JAVN IQR at 56-57.
[353] *See* Boviet Solar IQR at 22-23
[354] *See GOV* at 38.

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that it had to report its imports of machinery during the AUL and limited its reporting requirements to the POI only.[355] We disagree with JAVN that the questionnaire limited its reporting to the POI. In the Initial Questionnaire, under "Import Duty Exemptions on Imported Raw Materials for Export Processing Enterprises and Export Processing Zones," we asked mandatory respondents to respond to the following:

> 1) Respond to the *Standard Questions Appendix*; 2) Indicate each of the raw materials for which your company received import duty exemptions during the POI. In addition, indicate the duties and other import fees that would have been charged on these items absent the import duty exemption. Provide documentation to support your answer, including copies of all relevant sections of the tariff schedule, amendments thereto, and policies affecting the relevant rates, for all raw materials imported by your company during the POI. Submit the information requested in the VAT and Import Tariff Exemptions Template as an attachment to your response and in electronic format using Microsoft Excel; and 3) Explain, in detail, whether the exemption is limited to raw materials consumed in the production of the exported product.[356]

This program is directed to only raw materials. However, in the Initial Questionnaire, Commerce stated "{t}hus, in addition to the investigating alleged subsidies that your company may have received during the POI, Commerce is also investing alleged allocable, non-recurring subsidies that your company may have received during the AUL period."[357] Therefore, we are examining *any* assistance provided during the AUL period (*i.e.*, 2014-2023).

In addition, in the Initial Questionnaire, under "Other Subsidies," Commerce specifically asked if "the GOV (or entities owned directly, in whole or in part, by the GOV or any provincial or local government) provide, directly or indirectly, any other forms of assistance to your company between January 1, 2014, and the end of the POI. If so, describe such assistance in detail including the amounts, date of receipt, purpose and terms, and answer all questions in the appropriate appendices."[358] If JAVN was unsure whether to report the import duty exemptions it received on its importation of equipment under the "Raw Materials Program," as the Initial Questionnaire mentioned, "during the POI," its obligation to report its import duty exemptions on machinery was nevertheless explicit under the "Other Subsidies" section as it is a different program and provided assistance during the AUL.

JAVN stated that it properly disclosed that it had imports of machinery by explaining, "all machinery, equipment, parts are not subject to duty so long as they are used in the production of exported products,"[359] and "all machinery, equipment, exported products, as an eligible export processing enterprise under applicable legal statutes, are not subject to import duties under Vietnamese domestic law and various free trade agreements."[360] JAVN contends that because Commerce asked no further questions regarding its statements that it did not receive any other

[355] *See* JAVN's Case Brief at 14-15.
[356] *See* Initial Questionnaire at III-13.
[357] *Id.* at III-3.
[358] *See* Initial Questionnaire at III-21.
[359] *See* JAVN IQR at 29.
[360] *See* JAVN IQR at 35; *see also* JAVN's Rebuttal Brief at 15.

assistance, JAVN would not have known it withheld necessary information. By contrast, Boviet Solar reported imports of equipment in its Initial Questionnaire response to ensure that its reporting was complete with regard to other assistance in the form of import duty exemptions for machinery imports during the AUL.[361]

We acknowledge that JAVN did highlight indicate in the response to the "Import Duty Exemptions on Imported Raw Materials for Export Processing Enterprises and Export Processing Zones," language regarding importation of duty-free machinery. However, it is still JAVN's responsibility to report all subsidies that it has received during the AUL period; and the unreported assistance reflected "fixed assets" (*i.e.*, machinery) which does not fall under the category of "Raw Materials."

As stated in the Initial Questionnaire, it is the mandatory respondent's responsibility to coordinate with the GOV to report the receipt any other forms of assistance to producers or exporters of subject merchandise, beyond the specific programs listed in the Initial Questionnaire.[362] JAVN failed to provide the requested information and did not cooperate to the best of its ability to provide this information. By not disclosing duty-free importation of equipment and not completing any appendices regarding this program, Commerce lacked the evidence necessary to evaluate the administration of this program and therefore, to make a determination on the countervailability of this program. Therefore, JAVN withheld information that was requested by Commerce, failed to provide such information by the established deadline, and significantly impeded this investigation within meaning of sections 776(a)(2)(A)-(C) of the Act.

In addition, as we observed usage of this program for the first time at verification, this was recognized as new factual information. As explained in the verification agenda, Commerce stated "verification is not intended to be an opportunity for submission of new factual information."[363] The purpose of verification is to examine the accuracy and completeness of submitted factual information.[364] JAVN did not provide in its questionnaire responses the information regarding import duty exemptions it received on imports of equipment. Therefore, Commerce was unable to verify the benefits that JAVN did receive under this program. As such, JAVN did not "do the maximum is it able to do," and thus, did not cooperate to the best of its ability pursuant to section 776(b) of the Act. For this final determination, we find application of AFA is warranted pursuant to sections 776(a) and (b) of the Act.[365] Based on AFA, we determine that this program conferred a benefit to JAVN within the meaning of section 771(5)(E)(iv) of the Act. As explained above in the "Application of AFA to JAVN: Import Duty Exemptions on Imported Equipment" section, we determine that JAVN did not report the receipt of other assistance under this program in the form of import duty exemptions of importation of fixed assets during the AUL and Commerce was unable to verify this program at verification, and, as a result, we are relying on AFA to determine the rate for JAVN for this program. We selected the highest calculated rate from a similar or comparable program from

[361] *See* Boviet Solar IQR at 22-23 and 38.
[362] *See* Initial Questionnaire at III-21.
[363] *See* JAVN Verification Agenda.
[364] *See* 19 CFR 351.307(d).
[365] *See* 19 CFR 351.108(b).

another countervailing duty case involving Vietnam to apply to JAVN and its affiliates rate.[366] On this basis, we determine countervailable subsidy rate of 5.53 percent *ad valorem* for JAVN and its affiliates.

Comment 16: Whether AFA Should Be Applied to JAVN and Boviet Solar with respect to the Import Duty Exemptions on Imported Raw Materials for EPEs and Export Processing Zones

Petitioner's Case Brief:

The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* Petitioner's Case Brief at 5-13. The petitioner exceeded its 450-word count within the executive summary. To review the entire executive summary provided by the petitioner, *see* Petitioner's Case Brief at 1-4.

> While examining the import duty exemption programs during the verification of {JAVN}, {Commerce} discovered that three import customs declarations appeared to show an exemption for both antidumping ("AD") duties and import duties. {JAVN} had not reported in its responses that received exemptions from both AD and import duties. However, at verification when questioned, {JAVN} confirmed it had received exemption from AD duties as well as import duties as an EPE. Given that {JAVN} did not disclose the exemption from antidumping duties under this program for {JAVN}, JAPV, and JANE as requested by {Commerce}, {JAVN} withheld necessary information that {Commerce} requested, failed to provide information within the established deadlines, and significantly impeded this investigation regarding this program and the application of AFA to determine the benefit {JAVN}, JAPV and JANE received from this program is warranted because {JAVN} did not cooperate to the best of its ability.
>
> While conducting verification of Boviet, {Commerce} determined that Boviet {Solar} had not reported AD duty exemptions that it received on imported aluminum frames. {Commerce} had asked Boviet {Solar} to "indicate the duties and other import fees that would have been charged on these items absent the import duty exemption." Boviet {Solar} reported various duty rates, but not the AD duty rate for aluminum frames. Boviet {Solar} officials explained that as an EPE, it was not required to pay the AD duties. Given that Boviet {Solar} did not disclose the exemption from AD duties under this program as requested by {Commerce}, Boviet {Solar} withheld necessary information that the agency requested, failed to provide information within the established deadlines, and significantly impeded this investigation regarding this program and the application of AFA to determine the benefit Boviet {Solar} received from this program is warranted because it did not cooperate to the best of its ability.

JAVN's Rebuttal Brief:

[366] *See Paper Plates from Vietnam Final*.

The following is a verbatim summary of arguments submitted by JAVN. For further details, *see* JAVN's Rebuttal Brief at 13-18.[367]

> Commerce must also not be persuaded by Petitioner's argument that it should apply partial AFA against {JAVN} pertaining to the alleged Import Duty Exemptions on Imported Raw Materials for Export Processing Enterprises Program ("Raw Materials Program"). Commerce also cannot lawfully apply partial AFA again {JAVN} based on Commerce's finding during verification that {JAVN} did not pay antidumping duties (AD} on its imports of {…} because the record contains sufficient information for Commerce to otherwise countervail these exemptions. In the alternative, if Commerce wrongfully applies partial AFA against {JAVN}, it can only do so against these purchases as no other gap existed on the record with respect to the rest of {JAVN's} purchases of raw materials.

Boviet Solar's Rebuttal Brief

The following is a verbatim summary of arguments submitted by Boviet Solar. For further details, *see* Boviet Solar's Rebuttal Brief at 3-8.

> Boviet {Solar} was requested to report their raw material purchases during the POI and "indicate the duties and other import fees that would have been charged on these items absent the import duty exemption." Boviet {Solar} reported their raw material purchases, which were verified by {Commerce} without discrepancy. Boviet {Solar} also explained that it is an EPE, and thus is never charged import duties, as EPEs are treated legally as if they are outside the territory of Vietnam. Thus, there is no actual exemption of duties. At verification, Commerce observed that Vietnam has an antidumping duty order on aluminum frames from China and that in theory, if Boviet {Solar} was an EPE, it would have had to pay such antidumping duties. Boviet {Solar} explained at verification, consistent with its written submissions, that since it is an EPE, it is not charged any AD duties. Petitioner's argument that from these facts, Commerce should apply AFA to the EPE program with respect to Boviet {Solar} must be rejected. Boviet {Solar} did not withhold information, fail to provide information, or significantly impede the investigation and acted to the best of its ability with all requests for information. The "best of its ability" standard "does not require perfection" but rather Commerce is required to "examine respondents' actions and assess the extent of respondents' abilities, efforts, and cooperation in responding to Commerce's requests for information." Boviet {Solar} answered Commerce's initial questionnaire to the best of its ability and understood it had provided all information. In Boviet {Solar's} normal course of business, it does not deal with any import duties. When Commerce requested that Boviet {Solar} report the duties it "*would have been charged* on these its *absent the import duty exemption*," Boviet {Solar} accurately reported that it had no import duty exemption and thus there are no duties it would

[367] We note that we requested that interested parties provide a public executive summary for each issue raised in their briefs. *See Preliminary Determination*, 89 FR at 80869. Therefore, because the executive summary in JAVN's Rebuttal Brief contains BPI, we have redacted that content herein.

> have been charged. Nonetheless, in Boviet {Solar}'s best efforts to answer the spirit of Commerce's question, Boviet {Solar} looked up the normal import duties for the product it imports – which again, is not what Boviet {Solar} would actually pay. This was already well beyond the scope of information that Boviet {Solar} maintain in its normal business, since under Boviet {Solar}'s business, it has no knowledge or need to have knowledge of import duties. Boviet {Solar} answered Commerce's question to the best of its ability and complied with all requests for information at verification.

GOV's Rebuttal Brief

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

> Petitioner argues that Commerce should apply AFA to both respondents for not reporting antidumping duties in response to Commerce's request to "indicate the duties and other import fees that would have been charged on these items absent the import duty exemption." However, as explained in the GOV's opening brief, the respondents are export processing enterprises. When the respondents import any goods, the company does not consider duties or deal with duties, because they are not considered within the customs territory of Vietnam. When Commerce requested that the respondents report the duties it "*would have been charged* on these items *absent the import duty exemption,"* the respondents accurately reported that they did not import duty exemption and thus there are no duties it would have been charged. The entire program and the notion of an import duty exemption is inaccurate and not the actual situation applicable to each respondent. As argued in the GOV's opening brief, this program should be found not to exist. But to the extent that Commerce still countervails this program, Commerce must find that each respondent fully complied with the Commerce's request for information within the best of their ability.

Commerce's Position: We agree with the petitioner to apply AFA to Boviet Solar and JAVN for the "Import Duty Exemptions on Imported Raw Materials for Export Processing Enterprises and Export Processing Zones" program.

In the Initial Questionnaire, Commerce requested mandatory respondents to "Indicate each of the raw materials for which your company received import duty exemptions during the POR. In addition, indicate the duties and other import fees that would have been charged on these items absent the import duty exemption."[368] In response, Boviet Solar and JAVN provided their VAT and import tariff exemptions template.[369] Specifically, Boviet Solar reported the Original/Standard Import Duty Rate, the Most Favored Nation (MFN) rate, the ASEAN-China Free Trade Agreement (ACFTA) duty rates, and the ASEAN Trade in Gods Agreement (ATIGA) duty rates.[370] JA Solar clarified that "under the ACTA and other free trade agreements

[368] *See* Initial Questionnaire at III-13.
[369] *See* Boviet Solar IQR at Exhibit 10-2; *see also* JAVN IQR at Exhibit I-16.
[370] *See* Boviet Solar IQR at 20-22.

applicable to Vietnam, most of the raw materials imported by JAVN are not subject to import duties."[371] To assist in reviewing the import tariff exemptions, both Boviet Solar and JAVN provided the tariff schedule of Vietnam.[372]

At verification of Boviet Solar and JAVN,[373] we reviewed their usage of the "Import Duty Exemptions on Imported Raw Materials for Export Processing Enterprises and Export Processing Zones" program, including examining Customs declarations to ensure all exemptions under this program were reported. At Boviet Solar's verification, we found that for a certain product, antidumping tax (AD duties) was also exempted.[374] We asked Boviet Solar officials about the exemption from AD duties. Boviet Solar officials explained that the GOV had placed AD duties on imports of a certain product from China, and provided supporting documentation.[375] Boviet Solar stated that as an EPE, it is not required to pay AD duties.[376] At verification of JAVN, we also found from its Customs declarations that it was exempted from paying AD duties.[377] JAVN officials stated an EPE would not be subject to any otherwise applicable AD duties.[378] JAVN officials clarified that EPEs would not be subject to AD or other normal import duties.[379] Neither Boviet Solar nor JAVN reported information regarding AD duties that would have been charged absent the import duty exemption granted to them as EPEs.[380]

We disagree with the arguments made by the GOV, Boviet Solar, and JAVN. Boviet Solar and JAVN had the responsibility to report *all* duties that would have been charged absent the import duty exemption. We were not able to verify the entirety of this program during our verifications, as neither Boviet Solar nor JAVN reported the exempted AD duties in their questionnaire responses.[381] In the verification agendas, Commerce stated "verification is not intended to be an opportunity for submission of new factual information."[382] The purpose of verification is to examine the accuracy and completeness of submitted factual information.[383] Because JAVN and Boviet Solar did not originally submit information about their exemption from payment of AD duties in their questionnaire responses and in their reported exemption templates, Commerce was unable to verify usage of this program. JAVN argued that, at most, Commerce should apply partial AFA with respect to JAVN's purchases of the certain product otherwise subject to AD duties. We disagree with JAVN. As mentioned above, at both verifications (*i.e.*, Boviet Solar and JAVN), we reviewed Customs declarations to ensure all exemptions under this program were reported. For both mandatory respondents, we examined a similar product that was exempted from AD duties. Because we discovered at verification that for imports of a certain product, Boviet Solar and JAVN did not report the exemption of AD duties, we were unable to

[371] *See* JAVN IQR at 34.
[372] *See* Boviet Solar IQR at Exhibit 10.3; *see also* JAVN IQR at Exhibit I-17.
[373] *See* Boviet Solar Verification Report; *see also* JAVN Verification Report.
[374] *See* Boviet Solar Verification Report at 9-10.
[375] *Id.*
[376] *Id.*
[377] *See* JAVN Verification Report at 12-13.
[378] *Id.*
[379] *Id.*
[380] *See* Boviet Solar IQR at Exhibits 10-2 and 10-3; *see also* JAVN IQR at 29-35.
[381] *See* Boviet Solar IQR at Exhibits 10-2 and 10-3; *see also* JAVN IQR at 29-35.
[382] *See* JAVN Verification Agenda; *see also* Commerce's Letter, "Verification Agenda," dated December 2, 2024.
[383] *See* 19 CFR 351.307(d).

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confirm whether AD duties otherwise applied and were exempted on other imports the mandatory respondents made. In other words, the exemption of AD duties could have been applied to numerous or even all raw materials that the mandatory respondents imported during the POI. As Boviet Solar and JAVN did not disclose the exemption of AD duties and how it may or may not apply only to specific products, we were not able to verify this information at verification.

Similar to Comment 15, Boviet Solar and JAVN failed to provide the requested information and did not cooperate to the best of their ability to provide this information. By not disclosing the exemption of AD duties, Commerce lacked the evidence necessary to evaluate the administration of this program and to make a determination on the countervailability of this program. Therefore, we find that Boviet Solar and JAVN withheld information that was requested by Commerce, failed to provide such information by the established deadline, and significantly impeded this investigation within meaning of sections 776(a)(2)(A)-(C) of the Act. We find that Boviet Solar and JAVN did not "do the maximum" they were able to do, and thus, did not cooperate to the best of its ability pursuant to section 776(b) of the Act.[384] For this final determination, we find application of AFA is warranted pursuant to section 776(b) of the Act. Based on AFA, we determine that this program conferred a benefit to Boviet Solar and JAVN within the meaning of section 771(5)(E)(iv) of the Act. As explained above in the "Application of AFA to JAVN and Boviet Solar: Exemption of AD Duties" section, we determined that Boviet Solar JAVN did not report all exemptions under this program and was unable to verify this program at verification, and, as a result, we are relying on AFA to determine the rate for Boviet Solar and JAVN for this program. We selected the highest calculated rate from a similar or comparable program from another countervailing duty case involving Vietnam to apply to Boviet Solar's and JAVN's rate (and its affiliates).[385] On this basis, we determine countervailable subsidy rate of 5.53 percent *ad valorem* for JAVN, its affiliates, and Boviet Solar.

Comment 17: Critical Circumstances

Jinko Solar's Case Brief:

The following is a verbatim summary of arguments submitted by Jinko Solar. For further details, *see* Jinko Solar's Case Brief at 2-7.

> Commerce should reach a negative critical circumstances decision in this case. First, since in its *Preliminary Determination*, Commerce found that the rate for one mandatory respondent was zero and the only mandatory respondent with an above *de minimis* rate did not have massive imports, Commerce should have reached a negative massive imports decision for the "all others" companies. If in the Final Determination, Commerce determines that Boviet {Solar} and/or JAVN's subsidy rates are *de minimis*, Commerce should not rely on these *de minimis* rates to

[384] *See Nippon Steel*, 337 F.3d at 1382 ("Thus ,the statutory mandate that a respondent act to the 'best of its ability' requires the respondent to do the maximum it is able to do.").
[385] *See Paper Plates from Vietnam Final.*

determine whether the "all others" companies had massive imports over a relatively short period of time.

Assuming that in the Final Determination, Commerce reaches affirmative subsidy determinations for the mandatory respondents Commerce should issue a negative critical circumstances decision by basing its 15 percent massive imports decision on the value of imports (cells and modules) or the quantity of modules. Relying on these data, rather than the quantity of cells and modules is required because of the dramatically different facts and circumstances underlying imports of cells and modules. The quantity of module imports was steady in the pre-petition and post-petition periods. Relying on module quantities would lead to a negative determination. In contrast, the quantity of cells increased substantially from the pre-petition to post-petition period. This increase was not related to the filing of the petition; rather, cell imports increased because cells were not produced in the United States and domestic producers needed cells to produce modules in the United States. Alternatively, Commerce should base its decision on the value of cells and modules rather than the combined quantity. Relying on value is appropriate due to the significant difference in $/watt of modules and cells.

Petitioner's Rebuttal Brief:

The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* Petitioner's Rebuttal Brief at 29-30.

{Commerce}'s long-standing practice is to base its critical circumstances determinations on volume. {Jinko Solar's} sole justification for a departure from {Commerce's} standard practice is the unsubstantiated claim that "{t}he quantity of module imports was steady in the pre-petition and post-petition periods{,}" and that cell imports increased because cells were not produced in the United States. The scope of this investigation covers cells and modules. The novel concept that portions of subject merchandise should not be included in {Commerce's} critical circumstances determination is without merit or any legal justification. {Commerce's} well-established practice to use volume to determine if a surge in imports is "massive" pursuant to the Act and {Commerce's} regulations and it should do so here.

Commerce's Position: Section 703(e)(1) of the Act provides that, upon receipt of a timely allegation of critical circumstances, Commerce will determine whether there is a reasonable basis to believe or suspect that: (A) "the alleged countervailable subsidy" is inconsistent with the SCM Agreement; (B) there have been massive imports of the subject merchandise over a relatively short period.[386]

[386] 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).

As stated above in Section IV, above, in the *Preliminary Determination*, we determined that critical circumstances did not exist for Boviet Solar because it received a *de minimis* preliminary net subsidy rate and, therefore, there would be no suspension of liquidation for entries of subject merchandise produced and/or exported by Boviet Solar as a result of the *Preliminary Determination*.[387] In the *Preliminary Determination*, we also determined that critical circumstances did not exist for JAVN. Although we preliminarily determined that JAVN used an export subsidy program that is sufficient to meet the criterion of being inconsistent with the SCM Agreement under section 703(e)(1)(A) of the Act, we found that JAVN did not have massive imports over a relatively short period, based on analysis of imports in the comparison period of May 2024 through August 2024 and the base period of January 2024 through April 2024.[388] Finally, in the *Preliminary Determination*, we determined that critical circumstances existed for the non-responsive companies and for all other exporters/producers. For all other exporters/producers, we based the determination of massive imports on an analysis of aggregated shipments of Boviet Solar and JAVN for the comparison period of May 2024 through August 2024 and the base period of January 2024 through April 2024.[389]

For this final determination, because Boviet Solar's net subsidy rate is above *de minimis*, we have reexamined critical circumstances with respect to Boviet Solar, as explained in Section IV, above.

Jinko Solar first argues that if Commerce finds zero or *de minimis* subsidy rates for Boviet Solar and/or JAVN for the final determination, Commerce should conduct its massive imports analysis differently than it did in the *Preliminary Determination* for all other exporters and producers. Because we have calculated above-*de minimis* subsidy rates for Boviet Solar and JAVN for this final determination, this argument is moot.

Jinko Solar next argues that if Commerce finds above-*de minimis* subsidy rates for Boviet Solar and JAVN in the final determination, Commerce should conduct its massive imports analysis for all other exporters and producers using the comparison period of May 2024 through September 2024, and the base period of December 2023 through April 2024, and should base the analysis on either the value of solar cells and modules, or the quantity of modules alone, rather than the quantity of watts for both solar cells and modules.

We agree with Jinko Solar with respect to the number of months considered in the analysis of massive imports. Consistent with Commerce's standard practice, we will "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 these producers/exporters.[390] Accordingly, we have compared the volume of imports during the five-month comparison period

[387] *See Preliminary Determination* PDM at 7.
[388] *Id.* at 7-8.
[389] *Id.* at 8-9; *see also* Memorandum, "Analysis of Critical Circumstances," dated September 30, 2024.
[390] *See, e.g.*, *Paper Plates from Vietnam Final* IDM at 3; *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.

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(*i.e.*, May through September 2024) and the five-month base period (*i.e.*, December 2023 through April 2024) for this final determination.

However, we disagree with Jinko Solar with respect to relying on either the value of solar cells and modules, or the quantity of modules alone, to conduct the massive import analysis. Commerce's practice in past cases has been to base its massive import analysis on volume, rather than value,[391] and Jinko Solar provides no compelling reason why Commerce should depart from its practice in this case. Jinko Solar refers to a "dramatic difference" between the unit value in U.S. dollars per watt for solar modules versus for solar cells, but it does not explain the relevance of this observation. Jinko Solar states that the price differences "result from the fact that cells and modules are totally different products, with cells constituting a part of modules," and concludes that Commerce should apply its massive imports analysis to the decline in value, rather than the increase in wattage (*i.e.*, quantity).[392] However, solar cells and modules are both covered by the scope of the investigation, and it is not clear why Jinko Solar concludes that an analysis of the value of solar cells and modules, rather than the volume, would resolve any potential problem resulting from differences among in-scope products. Additionally, Jinko Solar does not explain why Commerce should disregard solar cells and limit its analysis of massive imports to the volume of only solar modules when the scope of this investigation covers both solar cells and solar modules. Although Jinko Solar states that Commerce has discretion to examine other factors in its critical circumstances analysis, we do not find that any change to our normal analysis is warranted in this case. Accordingly, we have made no changes to the *Preliminary Determination* with respect to our consideration of volume of cells and modules (in watts) for purposes of our massive imports analysis.

Comment 18: Whether JAVN was Uncreditworthy

JAVN's Case Brief:

The following is a verbatim summary of arguments submitted by JAVN. For further details, *see* JAVN's Case Brief at 70-72.

> {JAVN} was creditworthy during the year in question because Commerce's own analysis shows that another conventional commercial bank would have granted {JAVN} these loans.

VSUN, Trina Solar, and Jinko Solar submitted letters in which they adopted by reference the arguments made by Boviet Solar and JAVN.[393]

[391] *See, e.g.*, *Utility Scale Wind Towers from Indonesia: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 85 FR 40241 (July 6, 2020), and accompanying IDM at 3-5; and *Certain Paper Plates From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Determination of Critical Circumstances, in Part, and Alignment of Final Determination With Final Antidumping Duty Determination*, 89 FR 54432 (July 1, 2024) (*Paper Plates from China Prelim*), and accompanying PDM at 5-8, unchanged in *Paper Plates from China Final* (collectively, *Paper Plates from China INV*), and accompanying IDM at 3.
[392] *See* Jinko Solar's Case Brief at 5.
[393] *See* VSUN's Case Brief; Trina Solar's Case Brief; and Jinko Solar's Case Brief.

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Petitioner's Rebuttal Brief:

The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* Petitioner's Rebuttal Brief at 12.

> … {Commerce's} decision that {JAVN} was uncreditworthy during certain years of the AUL period is supported by the record in this investigation as discussed in the post-preliminary determination.[394]

Commerce's Position: We disagree that JAVN was creditworthy and we continue to determine that JAVN was uncreditworthy during the year in question.

Pursuant to 19 CFR 351.505(a)(4)(i)(A)-(D), Commerce normally examines the following indicators of creditworthiness: (1) receipt by the firm of comparable commercial long term loans; (2) present and past indicators of the firm's financial health, as reflected in various financial indicators calculated from the firm's financial statements and accounts; (3) recent past and present indicators calculated of the firm's ability to meet its costs and fixed financial obligations with its cash flow; and (4) evidence of the firm's future financial position, such as market studies, country and industry and economic forecasts, and project and loan appraisals prepared prior to the agreement between the lender and the firm on the terms of the loan.[395] When there is evidence that the company received long-term commercial loans, unaccompanied by a government guarantee, during or prior to the period at issue, then Commerce would normally find that the company is not uncreditworthy, in accordance with 19 CFR 351.505(a)(4)(ii). Lacking evidence of such loans, Commerce turns to the other factors enumerated under 19 CFR 351.505(a)(4)(i)(B)-(D) to further assess the firm's creditworthiness.

With regard to the other three factors, Commerce's practice has focused on whether the firm has adequate cash flow, cash on hand, and other current and liquid assets available to cover existing and upcoming short-term obligations.[396] The regulations state that Commerce will determine creditworthiness on a case-by-case basis, examining various financial health indicators, including the firm's current and quick ratios, which indicate whether a firm has sufficient cash and other liquid assets on hand to cover short-term obligations without having to engage in additional borrowing.[397] As Commerce explained in *Solar Cells from China*, a company's current and quick ratios are highly relevant under 19 CFR 351.505(a)(4)(i)(B)-(C) because they are indicators of a firm's financial health and its ability to meet its costs and fixed financial obligations with cash flow.[398] Moreover, the meaning of these ratios is clear: either the respondents have liquid funds available to cover upcoming obligations, or they do not.[399] As

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[394] The language was an excerpt of the executive summary from another issue presented in this Issues and Decision Memorandum. *See* Petitioner's Rebuttal Brief at 3.
[395] *See* 19 CFR 351.505(a)(4)(i)(A)-(D).
[396] *See 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) (*Solar Cells from China Investigation*), and accompanying IDM at Comment 17.
[397] *Id.*
[398] *Id.*
[399] *Id.*

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benchmarks, Commerce considers whether the firm's current ratio (current assets over current obligations) is above or below 2.0, and whether the firm's quick ratio (liquid assets over current obligations) is above or below 1.0.[400] Commerce also considers trends regarding the accounts receivable turnover ratio and the firm's debt-to-equity ratio to determine its ability to meet its costs and fixed financial obligations, and any other factors raised by interested parties in their comments. As indicated above, future financial health may be assessed from market studies, economic forecasts, and appraisals.

Commerce's creditworthiness practice is to make determinations on a year-by-year basis. The *CVD Preamble* states that, "we note our longstanding practice that creditworthiness determinations are made on a year-by-year basis," *i.e.*, for example, "if we are trying to determine whether a firm is creditworthy in 1998, we will look to whether the firm has negotiated commercial loans in 1998" and examine financial indicators for that year and recent years prior.[401] As such, Commerce's determination is based on evidence of creditworthiness at the time the terms of the government provided loan were agreed to and whether, based on the evidence, the firm could not have obtained long-term loans from conventional commercial sources.

The Creditworthiness Analysis Memorandum states our findings in examining JAVN indicators of its financial health (*i.e.*, quick ratio, current ratio, debt-to-equity ratio, operating profit, *etc.*) as reported in the firm's financial statements.[402] First, we determined that JAVN did not receive a loan from a conventional commercial source in the year in which JAVN received a loan from an "authority."[403] As explained above, when there is evidence that the company received long-term commercial loans, unaccompanied by a government guarantee, during or just prior to the year in which we are examining creditworthiness, Commerce would normally not find that the company is uncreditworthy, in accordance with 19 CFR 351.505(a)(4)(ii). JAVN did not have any other loans to compare with the non-commercial loans. Therefore, we continued to rely on the financial factors to further assess the firm's creditworthiness.

We continued to examine JAVN's financial factors (*i.e.*, quick and current ratios), which we found were below Commerce's benchmarks of 2.0 and 1.0, respectively.[404] We explained in the Creditworthiness Analysis Memorandum that the current ratios are used to measure the relationship between a firm's current assets and liabilities; quick ratios are used to measure whether a firm has sufficient liquid assets that it could use quickly to cover liabilities.[405] JAVN's ratios (*i.e.*, quick and current) indicate that JAVN cannot meet its ability to pay short-term debts using its most liquid assets.[406]

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[400] *Id.*
[401] *See CVD Preamble*.
[402] In addition to relying on JAVN's financial statements, we confirmed the financial ratios by conducting our own calculations. *See* Memorandum, "Analysis of Uncreditworthiness Allegations," dated March 13, 2025 (Creditworthiness Analysis Memorandum).
[403] *Id.* at 4.
[404] *See* Creditworthiness Analysis Memorandum at 4-5.
[405] *See Paper Plates from China INV.*
[406] *See* Creditworthiness Analysis Memorandum at 4-5.

Commerce explained in *Solar Cells from China Investigation* that a firm's current and quick ratios are highly relevant under 19 CFR 351.505(a)(4)(i)(B)-(C), because they are indicators of the firm's financial health and its ability to meet its current costs and fixed financial obligations with cash flow.[407] Unlike some of the other information we have been asked to consider for this analysis, the meaning of these ratios is straightforward: either the respondent (JAVN) has liquid funds available to cover upcoming obligations, or it does not.[408]

In the Creditworthiness Analysis Memorandum, we identified that JAVN may have signaled some stability to creditors based on other financial factors we asked about. However, as noted above, the current and quick ratios are clear and are highly relevant in assessing creditworthiness. Because JAVN did not receive any loans from commercial banks, there are no comparable commercial loans that could demonstrate JAVN's creditworthiness within the context of 19 CFR 351.505(a)(4)(i). Thus, we will continue to determine that JAVN is uncreditworthy within a certain year. As explained in the Creditworthiness Analysis Memorandum, we stated we would incorporate a risk premium to the loan benchmark interest rates, in accordance with 19 CFR 351.505(a)(3)(iii), for the final determination.[409] After applying the risk premium to the loan benchmark interest rates, we determine a countervailable subsidy rate for the Policy Lending from Chinese Banks for BRI Capacity Cooperation Projects of 0.02 percent *ad valorem* for JAVN.

Comment 19: Ministerial Error

JAVN's Case Brief:

The following is a verbatim summary of arguments submitted by JAVN. For further details, *see* JAVN's Case Brief at 72-73.

> Commerce{} should correct its calculation in error in the alleged benefit reported by JAVN and its cross-owned affiliates for importing raw materials exempt from import duties under the Import Duty Exemptions on Imported Raw Materials for Export Processing Enterprises and Export Processing Zones.

No other interested party commented on this issue.

Commerce's Position: As stated in the Ministerial Error Allegation Memorandum, we agreed with JAVN that we inadvertently used the incorrect formula in calculating the benefit for JAPV's use of the Imported Raw Materials for Export Processing Enterprises and Export Processing Zones program in the *Preliminary Determination*.[410] We found that this change in JAPV's program calculation was not a "significant" ministerial error within the meaning of 19 CFR 351.224(g). Therefore, we were not required to issue an amended preliminary determination, but

[407] *See* Creditworthiness Analysis Memorandum at 5-6; *see also, e.g.*, *Solar Cells China 2021*; and *Solar Cells from China Investigation* IDM at Comment 17.
[408] *See Solar Cells from China Investigation* IDM at Comment 17.
[409] *See* Creditworthiness Analysis Memorandum at 6.
[410] *See* Ministerial Error Allegation Memorandum.

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we stated that we intended to correct this error at the final determination.[411] However, as explained in Comment 16, above, we now find that AFA is warranted with respect to this program for JAVN; therefore, ministerial error comments regarding this program are moot.[412]

Comment 20: Whether to Amend the AFA Calculation

Petitioner's Case Brief:

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

> In the *Preliminary Determination*, for "Other Tax Programs" (*i.e.*, tax programs other than taxes on income), {Commerce} applied the 5.48 rate from the *Paper Plates from Vietnam* preliminary determination. The 5.48 {percent} rate was the calculate rate for the Import Duty Exemptions on Imported Raw Materials for Export Processing Enterprises and Export Processing Zones program. Subsequent to the preliminary determination in this case, {Commerce} issued the final determination in the Paper Plates from Vietnam, where it calculated a 5.53 {percent} rate for this program. Therefore, in this final determination for this investigation, {Commerce} should use the AFA rate of 5.53 {percent} for all tax programs other than income taxes.

No other interested party commented on this issue.

Commerce's Position: We agree with the petitioner that is appropriate to apply the rate of 5.53 percent rather than the rate of 5.48 percent rate for "Other Tax Programs" in the AFA calculation at the final determination. In the *Preliminary Determination*, we noted that we did not receive a response from four companies that received Quantity & Value (Q&V) questionnaires.[413] These companies were: (1) GEP New Energy Viet Nam Company Limited; (2) HT Solar Vietnam Limited Company; (4) Shengtian New Energy Vina Co., Ltd; and (4) Vietnam Green Energy Commercial Services Company Ltd.[414] We preliminary determined that an adverse inference was warranted in selecting from facts available, pursuant to section 776(b) of the Act, for these companies because they did not comply with our requests for information.[415] Thus, each of these companies did not cooperate to the best of its ability to comply with a request for information in this investigation. Accordingly, we preliminarily found that the application of AFA was warranted to ensure that these companies do not obtain a more favorable result by failing to cooperate than if it had fully complied with Commerce's requests for information.

As facts otherwise available with an adverse inference, we found that these non-responsive companies used and benefitted from all programs in this investigation,[416] and that these programs

[411] *Id.*
[412] *See supra*, Comment 16.
[413] *See Preliminary Determination* PDM at 12.
[414] *Id.*
[415] *Id.*
[416] *Id.*; *see also* Memorandum, "AFA Calculation Memorandum for the Final Determination," dated April 18, 2025 (Final AFA Calculation Memorandum).

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confer a benefit within a meaning of sections 771(5)(B) and (E) of the Act. We selected an AFA rate for each of these programs based on the statutory hierarchy provided in section 776(d) of the Act and in accordance with Commerce's practice. We then summed the program rates to determine the AFA rate applied for each of these companies.[417]

For this final determination, we continue to apply the highest above-*de minimis* subsidy rate calculated for the same or comparable programs in a CVD proceeding involving Vietnam (*i.e.*, programs listed under "Other Tax Programs"). At the *Preliminary Determination*, we relied on the highest above-*de minimis* rate from *Paper Plates from Vietnam Prelim* for programs listed under "Other Tax Programs."[418] However, at the time of our *Preliminary Determination*, *Paper Plates from Vietnam* had not reached a final determination. Commerce has since issued the *Paper Plates from Vietnam Final*, in which it revised the AFA rate applied to "Other Tax Programs."[419] The subsidy rate for "Other Tax Programs" was recalculated to 5.53 percent.[420] For this final determination, since there is a higher above-*de minimis* subsidy rate for programs under "Other Tax Programs," we are applying, as AFA, the 5.53 percent subsidy rate for all programs listed under "Other Tax Programs," rather than the 5.48 percent subsidy rate that was applied at the *Preliminary Determination*, as indicated in our statutory hierarchy provided in section 776(d) of the Act.[421]

In addition to the adjustment for "Other Tax Programs," listed in the Final Calculation Memorandum, we are adjusting the AFA subsidy rate for the "Cross Border Provision of Chinese Silver Paste." At the Post-Preliminary Determination, we selected the AFA subsidy rate of 0.01 percent *ad valorem*, from JAVN Post-Preliminary Calculations.[422] Pursuant to 19 CFR 351.308(j)(3)(i), the 0.01 percent *ad valorem* is considered *de minimis*.[423] Per the CVD hierarchy, if an identical program was used in another countervailing duty proceeding involving the same country and apply the highest calculated above-*de minimis* rate for the identical program. Therefore, we are now applying the AFA rate of 25.41 percent that we are calculating in this final determination for the Cross-Border Provision of Chinese Silver Paste for LTAR.[424] Lastly, regarding Policy Lending from Chinese Banks for BRI Capacity Cooperation Projects, we will continue applying the higher AFA rate of 1.38 percent to the non-responsive companies with respect to this program, because the 0.02 percent *ad valorem* subsidy rate we have calculated in this final determination for JAVN is considered *de minimis* pursuant to 19 CFR 351.308(j)(3)(i).

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[417] *See Preliminary Determination* PDM at 12-18.
[418] *Id.* at 53; *see also Certain Paper Plates from the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Determination of Critical Circumstances, in Part, and Alignment of Final Determination with Antidumping Duty Determination*, 89 FR 54429 (July 1, 2024) (*Paper Plates from Vietnam Prelim*).
[419] *See Paper Plates from Vietnam Final* IDM at 4.
[420] *Id.*
[421] *See Preliminary Determination* PDM at 53; *see also* Final AFA Calculation Memorandum.
[422] *See* Post-Preliminary Determination at 21 and 26; *see also* Memorandum, "Calculations for the Post-Preliminary Analysis: JA Solar Vietnam Company Limited," dated March 13, 2025 (JAVN Post-Preliminary Calculations).
[423] Commerce will treat rates less than 0.5 percent as *de minimis*. *See* 19 CFR 351.308(j)(3)(i).
[424] *See* Final AFA Calculation Memorandum; *see also* Appendix.

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VIII. RECOMMENDATION

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

☒	☐
Agree	Disagree

X

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

APPENDIX

AFA Rate Calculation[425]

Programs	AFA Rate (percent)
Income Tax Programs	20.00[426]
Income Tax Preferences Under Decree 164/2003	
Income Tax Preferences for Enterprises in Special Zones	
Corporate Income Tax for Hi-Tech Companies	
Tax Benefits Under Decree 60/2012	
Income Tax Preferences Under Decree No. 24/2007	
Income Tax Preferences for New Investment	
Accelerated Depreciation and Increases of Deductible Expenses	
Other Tax Programs	
Import Duty Exemptions for Imports Used to Produce Exported Goods	5.53[427]
Refund for Import Duties on Raw Materials Used to Produce Exports	5.53[428]
Exemption of Import Duties for Imports into Industrial Zones	5.53[429]
Exemption of Import Duties for Foreign-Invested Enterprises	5.53[430]
Import Duty Exemptions on Imports of Raw Materials to be Used by an Export Processing Zone or Export Processing Enterprise	5.53[431]
Import Duty Exemptions on Imported Equipment in Industries Entitled to Import Duty Preferences	5.53[432]
Land Programs	
Exemptions or Reduction from Land and Water Rents for Encouraged Industries or Selected Areas	25.41[433]
Exemptions of Land-Use Taxes and Levies for Encouraged Industries or Industrial Zones	25.41[434]
Land Rent Exemptions and Reductions for Enterprises Located in Special Zones	25.41[435]
Exemptions or Reductions of Rent Under Decision No. 189/2000	25.41[436]
Exemptions or Reductions of Rent for Foreign-Invested Enterprises	25.41[437]

[425] *See Preliminary Determination* PDM at 53-54; *see also* Final AFA Calculation Memorandum at Attachment I.
[426] *See Preliminary Determination* PDM at 53-54.
[427] *See Paper Plates from Vietnam Final*.
[428] *Id.*
[429] *Id.*
[430] *Id.*
[431] *Id.*
[432] *Id.*
[433] *See Preliminary Determination* PDM at 53-54..
[434] *Id.*
[435] *Id.*
[436] *Id.*
[437] *Id.*

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Loan Programs	
Preferential Lending to Exporters by SOCBs	1.38[438]
Export Factoring by SOCBs	1.38[439]
Investment Credits from VDB	1.38[440]
Interest Rate Support Program from the SBV	1.38[441]
Export Credits from the VDB	1.38[442]
Green Credit Preferential Lending from SOCBs	1.38[443]
Guarantees for Export Activities from SOCBs	1.38[444]
Grant Programs	
Export Promotion Grants	25.41[445]
Investment Support Grants	25.41[446]
Provision of Inputs and Services for LTAR	
Provision of Utilities for LTAR	25.41[447]
Transnational Subsidy Programs	
Policy Lending from Chinese Banks for BRI Capacity Cooperation Projects	1.38[448]
Cross-Border Provision of Chinese Origin Polysilicon for LTAR	25.41[449]
Cross-Border Provision of Chinese Silicon Wafers for LTAR	187.62[450]
Cross- Border Provision of Chinese Silver Paste for LTAR	25.41[451]
Cross-Border Provision of Chinese Solar Glass for LTAR	36.70[452]
Total	542.64

[438] *Id.*
[439] *Id.*
[440] *Id.*
[441] *Id.*
[442] *Id.*
[443] *Id.*
[444] *Id.*
[445] *Id.*
[446] *Id.*
[447] *Id.*
[448] *Id.*
[449] *Id.*
[450] *See* Boviet Solar Final Calculation Memorandum.
[451] *See Preliminary Determination* PDM at 53-54
[452] *See* Boviet Solar Final Calculation Memorandum.

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