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International Trade Administration  
Washington, D.C. 20230

C-570-980  
Administrative Review  
POR: 03/26/2012-12/31/2012  
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**DATE:** July 7, 2015

**MEMORANDUM TO:** Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

**FROM:** Christian Marsh *CM*  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Issues and Decision Memorandum for the Final Results of the  
Countervailing Duty Administrative Review: Crystalline Silicon  
Photovoltaic Cells, Whether or Not Assembled Into Modules, from  
the People's Republic of China

## I. Summary

The Department of Commerce (the Department) conducted an administrative review of the countervailing duty (CVD) order on crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells), from the People's Republic of China (the PRC).<sup>1</sup> The period of review (POR) is March 26, 2012, through December 31, 2012. We find that the mandatory respondents, *i.e.*, Lightway Green New Energy Co., Ltd. (Lightway), and Shanghai BYD Co., Ltd. (Shanghai BYD) and its cross-owned affiliates, received countervailable subsidies during the POR. We are applying rates to the other firms subject to this review based on the CVD rates calculated for the respondents individually examined.

## II. Background

We published the *Preliminary Results* in this administrative review on January 8, 2015.<sup>2</sup> Since the publication of the *Preliminary Results*, we issued supplementary questionnaires to the Government of the PRC (the GOC), Lightway, and to Shanghai BYD, for which we received

<sup>1</sup> See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Countervailing Duty Order*, 77 FR 73017 (December 7, 2012).

<sup>2</sup> See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review, 2012; and Partial Rescission of Countervailing Duty Administrative Review*, 80 FR 1019 (January 8, 2015) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM), "Department Memorandum for the Preliminary Results of the Countervailing Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China."



timely responses. We also rescinded this review with respect to certain companies.<sup>3</sup> Between March 11, 2015, and March 18, 2015, we conducted verification of the questionnaire responses submitted by the GOC, Lightway, and Shanghai BYD.<sup>4</sup> On April 10, 2015, we extended the final results from May 8, 2015, to May 29, 2015.<sup>5</sup> We released the Post-Preliminary Results on April, 23, 2015.<sup>6</sup> Between April 30, 2015, and May 7, 2015, interested parties submitted case<sup>7</sup> and rebuttal briefs.<sup>8</sup> On May 22, 2015, we extended the final results from May 29, 2015, to July 7, 2015.<sup>9</sup> We did not conduct a hearing in this proceeding as the only timely hearing request was withdrawn.<sup>10</sup>

The “Subsidy Valuation Information” and “Analysis of Programs” sections below describe the subsidy programs and the methodologies we used to calculate the subsidy rates for these final

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<sup>3</sup> See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Notice of Correction to Preliminary Results of Countervailing Duty Administrative Review; 2012 and Partial Rescission of Countervailing Duty Administrative Review*, 80 FR 8597 (February 18, 2015) (*Rescission Notice*) at Appendix II. We note that, while the BYD Group withdrew its request for administrative review, SolarWorld Industries America Inc. (Petitioner) did not withdraw its review request for the BYD Group.

<sup>4</sup> See Department Memoranda, “Verification of the Questionnaire Responses Submitted by Lightway Green New Energy Co., Ltd.,” (April 2, 2015) (Lightway VR); “Verification of the Questionnaire Responses Submitted by Shanghai BYD Co., Ltd.,” (April 3, 2015) (BYD Group VR); and “Verification of the Questionnaire Responses Submitted by the Government of the People’s Republic of China,” (April 6, 2015) (GOC VR).

<sup>5</sup> See Department Memorandum, “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Extension of Deadline for Final Results of the Countervailing Duty Administrative Review,” (April 10, 2015).

<sup>6</sup> See Department Memorandum, “Post-Preliminary Analysis in the Countervailing Duty Administrative Review: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China,” (April 21, 2015) (Post-Preliminary Analysis).

<sup>7</sup> See Letter to the Secretary from SolarWorld Americas, Inc. (Petitioner), “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China: Case Brief,” (April 30, 2015) (Petitioner’s Case Brief); Letter from the GOC, “GOC Administrative Case Brief: First Administrative Review of the Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or not Assembled Into Modules from the People’s Republic of China (C-570-980),” (April 30, 2015) (GOC Case Brief); Letter from Shanghai BYD, “Crystalline Silicon Photovoltaic Cells, Whether Or Not Assembled Into Modules, from the People’s Republic of China – 2012 Review: Case Brief,” (April 30, 2015) (BYD Group Case Brief); Letter from Lightway, “Crystalline Silicon Photovoltaic Cells from P.R. China: Case Brief,” (April 30, 2015) (Lightway Case Brief).

<sup>8</sup> See Letter to the Secretary from Petitioner, “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China: Rebuttal Brief,” (May 7, 2015) (Petitioner’s Rebuttal Brief); Letter from the GOC, “GOC Rebuttal Brief: First Administrative Review of the Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or not Assembled into Modules from the People’s Republic of China (C-570-980),” (May 7, 2015) (GOC Rebuttal Brief); Letter from Shanghai BYD, “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China – 2012 Review: Rebuttal Brief,” (May 7, 2015) (BYD Group Rebuttal Brief); Letter from Lightway, “Crystalline Silicon Photovoltaic Cells from P.R. China: Rebuttal Case Brief,” (May 7, 2015) (Lightway Rebuttal Brief); Letter from Goal Zero, LLC (Goal Zero) (a U.S. importer of subject merchandise), “Crystalline Silicon Photovoltaic Cells, Whether Or Not Assembled Into Modules from the People’s Republic of China; Rebuttal Brief of Goal Zero, LLC,” (May 7, 2015) (Goal Zero Rebuttal Brief).

<sup>9</sup> See Department Memorandum, “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Second Extension of Deadline for the Final Results of the Countervailing Duty Administrative Review,” (May 22, 2015).

<sup>10</sup> See Letter to the Secretary, “Crystalline Silicon Photovoltaic Cells, Whether Or Not Assembled Into Modules, From the People’s Republic of China: Shanghai BYD Co., Ltd. Request for Hearing,” (February 9, 2015); Letter to the Secretary from Shanghai BYD, “Crystalline Silicon Photovoltaic Cells, Whether Or Not Assembled Into Modules, from the People’s Republic of China – 2012 Review: Withdrawal of Hearing Request,” (May 11, 2015).

results. Additionally, we analyzed the comments submitted by interested parties in their case and rebuttal briefs in the “Analysis of Comments” section below, which contains our responses to the issues raised in the briefs. Based on our analysis of the information we have received after publication of the *Preliminary Results* (e.g., information from supplemental questionnaire responses, verification, and comments from interested parties), we made certain modifications to the *Preliminary Results* and Post-Preliminary Results for these final results, which are discussed below under each program.

Below is a complete list of the issues in this administrative review for which we received comments from interested parties.

Issues:

- Comment 1:** Whether the Ex-Im Bank Buyer’s Credit Program is Countervailable
- Comment 2:** Whether the Department Should Continue to Apply AFA in Determining Whether to Use an Internal or External Benchmark
- Comment 3:** Whether the Provision of Aluminum Extrusions at LTAR is Specific
- Comment 4:** Whether the Department Should Adjust the Polysilicon Benchmark for the Final Results
- Comment 5:** Whether the Department Should Remove Certain Polysilicon Purchases Regarding the Polysilicon for LTAR Benefit Calculation with Respect to Lightway
- Comment 6:** Whether the Department Should Find the BYD Group to be Uncreditworthy During 2008, 2011, and 2012
- Comment 7:** Whether the Department Should Revise the Benefit Calculation Regarding the BYD Group’s Loans
- Comment 8:** Whether the Department Should Find the Subsidies Discovered at Lightway’s Verification to be Countervailable
- Comment 9:** Whether the Department Should Revise Lightway’s Benefit Calculation to Remove Certain Transactions Regarding the Preferential Policy Lending Program
- Comment 10:** Whether the Department Should Revise the Principal Amounts with Respect to Certain Lightway Loans
- Comment 11:** Whether the Department Should Revise the Rate for the Non-Selected Companies for these Final Results

### **III. Scope of the Order**

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

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

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

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

Also excluded from the scope of this order are crystalline silicon photovoltaic cells, not exceeding 10,000mm<sup>2</sup> in surface area, that are permanently integrated into a consumer good whose function is other than power generation and that consumes the electricity generated by the integrated crystalline silicon photovoltaic cell. Where more than one cell is permanently integrated into a consumer good, the surface area for purposes of this exclusion shall be the total combined surface area of all cells that are integrated into the consumer good.

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

Merchandise covered by this order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 8501.61.0000, 8507.20.80, 8541.40.6020, 8541.40.6030, and 8501.31.8000.<sup>11</sup> These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of this order is dispositive.

#### **IV. Partial Rescission of the 2012 Administrative Review**

Based on Petitioner's timely filed withdrawal of certain requests for, we rescinded this administrative review with respect to certain companies,<sup>12</sup> pursuant to 19 CFR 351.213(d)(1). We proceeded with the review of Lightway and Shanghai BYD and its affiliated companies, and other companies not selected for individual review.

#### **V. Companies Not Selected for Individual Review**

For the companies subject to this review and not selected for individual review,<sup>13</sup> because the rates calculated for Lightway and Shanghai BYD were above *de minimis* and not based entirely on adverse facts available (AFA), we applied a subsidy rate based on a weighted-average of the subsidy rates calculated for Lightway and Shanghai BYD, the companies selected for individual review (*i.e.*, the mandatory respondents) using publicly-ranged sales data submitted by the mandatory respondents so as to avoid disclosure of proprietary information.

<sup>11</sup> CBP provided notification that HTSUS number 8501.31.8000 should be added to the scope of the order, as certain articles under this number might fall within the scope. See Department Memorandum to The File, "ACE Case Reference File Update," (May 16, 2012).

<sup>12</sup> See *Rescission Notice* at Appendix II.

<sup>13</sup> *Id.* at Appendix III; see also the Attachment to this memorandum.



## VI. Subsidies Valuation Information

### A. *Period of Review*

The POR is March 26, 2012, through December 31, 2012. While we have analyzed data and information on an annual basis, *i.e.*, for the entire 2012 calendar year, duties will be applied to entries made during the POR, *i.e.*, March 26, 2012, through December 31, 2012.

### B. *Allocation Period*

The average useful life (AUL) period in this proceeding, as described in 19 CFR 351.524(d)(2), is 10 years according to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System, as revised, for assets used to manufacture subject merchandise. Accordingly, we have only measured subsidies from the beginning of the AUL, *i.e.*, January 1, 2003. No interested party has challenged our use of a 10-year AUL.

Further, for non-recurring subsidies, we have applied the "0.5 percent expense test" described in 19 CFR 351.524(b)(2). Under this test, we compare the amount of subsidies approved under a given program in a particular year to sales (*e.g.*, total sales or total export sales, appropriate) for the same year. If the amount of the subsidies is less than 0.5 percent of the relevant sales, then the benefits are allocated to the year of receipt rather than allocated over the AUL period.

### C. *Attribution of Subsidies*

*Cross Ownership:* In accordance with 19 CFR 351.525(b)(6)(i), the Department normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provide additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership "exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets." This section of the Department's regulations states that this standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. The *CVD Preamble* to the Department's regulations further clarifies the Department's cross-ownership standard. According to the *CVD Preamble*, relationships captured by the cross-ownership definition include those where:

the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100

percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a “golden share” may also result in cross-ownership.<sup>14</sup>

Thus, the Department’s regulations make clear that we must look at the facts presented in each case in determining whether cross-ownership exists. The U.S. Court of International Trade (CIT) upheld the Department’s authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.<sup>15</sup>

In the *Preliminary Results*, because Lightway reported no affiliates were involved in the production of subject merchandise, we attributed subsidies received by Lightway to its own sales, in accordance with 19 CFR 351.525(b)(6)(i).<sup>16</sup> We have made no changes on this issue regarding Lightway since the *Preliminary Results*, and we received no comments from interested parties. Therefore, we continue to attribute subsidies received by Lightway to its own sales for these final results.

In addition, in the *Preliminary Results*, we determined that Shanghai BYD is cross-owned with Shangluo BYD Industrial Co., Ltd. (Shangluo BYD), a producer of subject merchandise located in the PRC, and with BYD Company Limited (BYD Co.), the holding company for both Shanghai BYD and Shangluo BYD.<sup>17</sup> We made no changes regarding Shanghai BYD and its affiliates since the *Preliminary Results*, and we received no comments from interested parties. As a result, and pursuant to 19 CFR 351.525(b)(6)(vi), we continue to determine that Shanghai BYD and Shangluo BYD are cross-owned through the common ownership of their parent company, BYD Co.<sup>18</sup> Because both Shanghai BYD and Shangluo BYD are producers of subject merchandise, we are attributing any subsidy received by either company to the combined sales of both companies, excluding intercompany sales, pursuant to 19 CFR 351.525(b)(6)(ii). Additionally, because BYD Co. is the holding company of Shanghai BYD and Shangluo BYD, but does not sell or produce subject merchandise, we are attributing any subsidy received by BYD Co. to the consolidated sales of the holding company and its subsidiaries, excluding intercompany sales, in accordance with 19 CFR 351.525(b)(6)(iii). We refer to Shanghai BYD, Shangluo BYD, and BYD Co. collectively as the “BYD Group,” unless otherwise noted.

#### D. Denominators

In accordance with 19 CFR 351.525(b)(1)-(5), the Department considers the basis for the respondent’s receipt of benefits under each program when attributing subsidies, *e.g.*, to the

<sup>14</sup> See *Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

<sup>15</sup> See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

<sup>16</sup> See *Preliminary Results* and accompanying PDM at 7.

<sup>17</sup> *Id.* at 8.

<sup>18</sup> The Department’s regulations at 19 CFR 351.525(b)(6)(vi) state that cross-ownership exists when one corporation can use or direct the assets of another corporation in essentially the same way it can use its own. Normally, however, “this standard will be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations.”

respondent's exports or total sales. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs described below are explained in the Final Calculation Memoranda, prepared for this countervailing duty administrative review.<sup>19</sup>

#### *E. Benchmarks and Discount Rates for Allocating Non-Recurring Subsidies*

We are examining loans received by the respondents from Chinese policy banks and state-owned commercial banks (SOCBs), as well as non-recurring, allocable subsidies.<sup>20</sup> The derivation of the benchmark and discount rates used to value these subsidies is discussed below. In the Post-Preliminary Analysis, we determined that the BYD Group was uncreditworthy during 2008, 2011, and 2012, based on its poor financial ratios, negative cash flows, and rising debt-to-equity ratios.<sup>21</sup> Consequently, we stated our intention to adjust the interest rate benchmarks in these final results.<sup>22</sup> We also referenced the record information we intended to use in making these adjustments, and we used those data for these final results. Interested parties commented on our determination regarding the BYD Group's uncreditworthiness, which we address at Comment 6, below.

#### *F. Short-Term RMB-Denominated Loans*

Section 771(5)(E)(ii) of the Tariff Act of 1930, as amended (the Act) explains that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." Normally, the Department uses comparable commercial loans reported by the company as a benchmark.<sup>23</sup> If the firm did not have any comparable commercial loans during the period, the Department's regulations provide that we "may use a national average interest rate for comparable commercial loans."<sup>24</sup>

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. For the reasons first explained in *CFS from the PRC*, loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market.<sup>25</sup> Because of this, any loans received by the company respondents from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). For the same reasons, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). There is

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<sup>19</sup> See Department Memoranda, "Countervailing Duty Administrative Review of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: BYD Group Final Calculation Memorandum," (BYD Group Final Calculation Memorandum), and "Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Lightway Green New Energy Final Calculation Memorandum," (Lightway Final Calculation Memorandum) both dated concurrently with this memorandum (collectively, Final Calculation Memoranda).

<sup>20</sup> See 19 CFR 351.524(b)(1).

<sup>21</sup> See Post-Preliminary Analysis at 1-5.

<sup>22</sup> *Id.* at 5; see also 19 CFR 351.505(a)(3)(iii).

<sup>23</sup> See 19 CFR 351.505(a)(3)(i).

<sup>24</sup> See 19 CFR 351.505(a)(3)(ii).

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

no new information on the record of this review that would lead us to deviate from our prior determinations regarding government intervention in the PRC's banking sector. Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, the Department has selected an external market-based benchmark interest rate. The use of an external benchmark is consistent with the Department's practice. For example, in *Lumber from Canada*, the Department used U.S. timber prices to measure the benefit for government-provided timber in Canada.<sup>26</sup>

In past proceedings involving imports from the PRC, we calculated the external benchmark using the methodology first developed in *CFS from the PRC*, and more recently updated in *Thermal Paper from the PRC*.<sup>27</sup> Under this methodology, we first determine which countries are similar to the PRC in terms of gross national income, based on the World Bank's classification of countries as: 1) low income; 2) lower-middle income; 3) upper-middle income; and 4) high income. As we explained in *CFS from the PRC*, this pool of countries captures the broad inverse relationship between income and interest rates. For 2003 through 2009, the PRC fell in the lower-middle income category.<sup>28</sup> Beginning in 2010, however, the PRC fell into the upper-middle income category, and remained there from 2011 to 2012.<sup>29</sup> Accordingly, as explained further below, we are using the interest rates of lower-middle income countries to construct the benchmark and discount rates for 2003-2009, and we used the interest rates of upper-middle income countries to construct the benchmark and discount rates for 2010-2012. This is consistent with the Department's calculation of interest rates for recent CVD proceedings involving merchandise from the PRC.<sup>30</sup>

After the Department identifies the appropriate interest rates, the next step in constructing the benchmark has been to incorporate an important factor in interest rate formulation, the strength of governance as reflected in the quality of countries' institutions. The strength of governance has been built into our analysis by using a regression analysis that relates the interest rates to governance indicators.

In each of the years from 2003-2009, and 2011-2012, the results of the regression analysis reflected the intended, common sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates. For 2010, however, the regression does not yield that outcome for the PRC's income group. This contrary result for a single year does not lead us to reject the strength of governance as a determinant of interest rates. Therefore, we continue to rely on the regression-based analysis used since *CFS*

<sup>26</sup> See *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada*, 67 FR 15545 (April 2, 2002) (*Lumber from Canada*) and accompanying IDM at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."

<sup>27</sup> See *CFS from the PRC* and accompanying IDM at Comment 10; see also *Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (*Thermal Paper from the PRC*) and accompanying Issues and Decision Memorandum at 8-10.

<sup>28</sup> See World Bank Country Classification at <http://econ.worldbank.org/>.

<sup>29</sup> *Id.*

<sup>30</sup> See, e.g., *Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Countervailing Duty Determination*, 78 FR 33346 (June 4, 2013) and accompanying PDM at the section, "Benchmarks and Discount Rates," unchanged in *Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013).



from the PRC to compute the benchmarks for the years from 2001-2009, and 2011-2012. For the 2010 benchmark, we are using an average of the interest rates of the upper-middle income countries.

Many of the countries in the World Bank's upper-middle and lower-middle income categories reported lending and inflation rates to the International Monetary Fund, and they are included in that agency's international financial statistics (IFS). With the exceptions noted below, we used the interest and inflation rates reported in the IFS for countries identified as "upper middle income" by the World Bank for 2010-2012 and "lower middle income" for 2003-2009. First, we did not include those economies that the Department considered to be non-market economies for antidumping purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates for the IFS for those years. Third, we removed any country that reported a rate that was not a lending rate, or that based its lending rate on foreign-currency denominated instruments.<sup>31</sup> Finally, for each year the Department calculated an inflation-adjusted short-term benchmark rate, we also excluded any countries with aberrational or negative real interest rates for the year in question.<sup>32</sup> Because the resulting rates are net of inflation, we adjusted the benchmark to include an inflation component before comparing them to the interest rates on loans issued by SOCBs.

#### G. Long-Term RMB-Denominated Loans

The lending rates reported in the IFS represent short- and medium-term lending, and there are not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, the Department developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates.<sup>33</sup>

In *Citric Acid from the PRC*, this methodology was revised by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where "n" equals or approximates the number of years of the term of the loan in question.<sup>34</sup> Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.<sup>35</sup>

<sup>31</sup> For example, Jordan reported a deposit rate, not a lending rate, and the rates reported by Ecuador and Timor L'Este are dollar-denominated rates; therefore, the rates for these three countries have been excluded.

<sup>32</sup> For example, we excluded Brazil from the 2010 and 2011 benchmarks because the country's real interest rate was 34.95 percent and 37.25 percent, respectively, which were aberrantly high.

<sup>33</sup> See, e.g., *Thermal Paper from the PRC*, and accompanying IDM at 10.

<sup>34</sup> See *Citric Acid and Certain Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009) (*Citric Acid from the PRC*), and accompanying Issues and Decision Memorandum at Comment 14.

<sup>35</sup> See Final Calculation Memoranda for the resulting inflation-adjusted benchmark lending rates.

## H. Foreign Currency-Denominated Loans

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

### I. Discount Rate Benchmarks

Consistent with 19 CFR 351.524(d)(3)(i)(A), we are using as the discount rate the long-term interest rate calculated according to the methodology described above for the year in which the government provided non-recurring subsidies.<sup>36</sup>

### J. Land Benchmark

Section 351.511(a)(2) of the Department's regulations sets forth the basis for identifying comparative benchmarks for determining whether a government good or service is provided for less than adequate remuneration (LTAR). These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under review; (2) world market prices that would be available to purchasers in the country under review; or (3) an assessment of whether the government price is consistent with market principles. As explained in detail in previous proceedings, the Department cannot rely on the use of so-called "first-tier" and "second-tier" benchmarks to assess the benefits from the provision of land for LTAR in the PRC.<sup>37</sup>

For this administrative review, the BYD Group submitted the same 2010 Thailand benchmark information, *i.e.*, "Asian Marketview Reports" by CB Richard Ellis (CBRE), which we relied on in calculating land benchmarks for the original investigation.<sup>38</sup> We selected this information in *LWS from the PRC* after considering a number of factors, including national income levels, population density, and producers' perceptions that Thailand is a reasonable alternative to the

<sup>36</sup> *Id.*, for the discount rates.

<sup>37</sup> See, e.g., *Laminated Woven Sacks From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination; Preliminary Affirmative Determination of Critical Circumstances, In Part; and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 72 FR 67893, 67906-08 (December 3, 2007), unchanged in *Laminated Woven Sacks From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008) (*LWS from the PRC*).

<sup>38</sup> See Letter to the Secretary from the BYD Group, "Crystalline Silicon Photovoltaic Cells, Whether Or Not Assembled Into Modules, from the People's Republic of China – 2012 Review: Benchmark Submission BYD," (November 19, 2014) (BYD Group Benchmark Submission) at 1-2 and Exhibit 1; see also *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012) (*Investigation Final Determination*), and accompanying Issues and Decision Memorandum at 6 and Comment 11.

PRC as a location for Asian production.<sup>39</sup> During the original investigation, we calculated annual land benchmarks covering the years 2002 through 2010, and a monthly industrial rental benchmark for 2010.<sup>40</sup> As stated in the *Preliminary Results*, we find that these benchmarks are suitable for this administrative review, adjusted accordingly for inflation to account for benefits received by the respondent companies during the POR.<sup>41</sup> No parties commented on using this information for PRC land benchmarks. Therefore, we will continue to rely on this same information for these final results.

#### K. *Provision of Polysilicon, Aluminum Extrusions, and Solar Glass for LTAR*

We selected the benchmarks for measuring the adequacy of the remuneration for solar grade polysilicon, aluminum extrusions, and solar glass in accordance with 19 CFR 351.511(a).

For polysilicon, the GOC provided information indicating that PRC imports of polysilicon accounted for 42.1 percent of domestic consumption, and that production by state-invested enterprises (SIEs) was negligible.<sup>42</sup> The GOC stated that it was unable to obtain statistics for solar grade polysilicon, but instead reported information for polysilicon, covering “all high-purity polysilicon extracted from industrial silicon through physical or chemical methods, which is the raw material for monocrystalline silicon.”<sup>43</sup> The GOC stated that this category includes solar grade polysilicon and “others.”<sup>44</sup> The Department normally relies on so-called “first-tier” benchmarks, pursuant to 19 CFR 351.511(a)(2)(i), which includes prices stemming from actual transactions between private parties, actual imports, and, in certain circumstances, actual sales from competitively run government auctions, although we do not do so where the foreign government’s presence in the input market is significant enough to lead to distorted prices. While no party suggested the use of “first-tier” benchmarks for polysilicon or submitted information specifically for this purpose, the respondent companies imported portions of the polysilicon they used during the POR. Under 19 CFR 351.511(a)(2)(i), actual imports may be considered a “first-tier” benchmark.

Notwithstanding the regulatory preference for the use of prices stemming from actual transactions in the country in question, where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government’s involvement in the input market, we will resort to the next alternative in the hierarchy.<sup>45</sup> Consistent with the *Preliminary*

<sup>39</sup> The complete history of our reliance on this benchmark is discussed in the *Investigation Final Determination*, and accompanying IDM at 6 and Comment 11. In that discussion, we reviewed our analysis from *LWS from the PRC* and concluded that the CBRE data were still a valid land benchmark.

<sup>40</sup> *Id.*

<sup>41</sup> See *Preliminary Results* and PDM at 12.

<sup>42</sup> See Letter to the Secretary from the GOC, “GOC Initial CVD Questionnaire Response : First Administrative Review of the Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or not Assembled into Modules from the People’s Republic of China (C-570-980),” at 53-79 (June 2, 2014) (GOC’s June 2<sup>nd</sup> IQR); see also Letter to the Secretary from the GOC, “GOC First Supplemental Response: First Administrative Review of the Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or not Assembled into Modules from the People’s Republic of China (C-570-980),” at 11 (October 10, 2014) (GOC’s October 10<sup>th</sup> SQR). SIEs include companies in which the GOC maintains an ownership or management interest.

<sup>43</sup> See GOC’s October 10<sup>th</sup> SQR at 3.

<sup>44</sup> *Id.*

<sup>45</sup> See *CVD Preamble*, 63 FR at 65377.

*Results*,<sup>46</sup> and as explained below in the section, “Use of Facts Otherwise Available and Adverse Inferences,” we continue to find that the GOC’s involvement in the PRC’s solar grade polysilicon market leads to significantly distorted solar grade polysilicon prices in the PRC. Thus, we do not find that it is appropriate to rely on transactions in the PRC as a benchmark for polysilicon, and we are relying on the “Silicon Price Index,” published by the firm Photon Consulting, as the polysilicon benchmark for these final results.<sup>47</sup> We relied on this same source for the original investigation.<sup>48</sup> Parties have commented on the use of this benchmark for these final results, which we address at Comment 4, below.

For solar glass and aluminum extrusions, none of the parties offered an internal “first-tier” benchmark for valuing solar glass or aluminum extrusions, and we have no benchmark prices from actual market transactions in the Chinese market for these inputs. Therefore, we are relying on world market prices to determine the subsidy rate for the provision of aluminum extrusions and solar glass for these final results. For aluminum extrusions, we are relying on Global Trade Atlas data as suggested by Petitioner and the BYD Group. For solar glass, we are relying on data collected by the European Commission; this is the same data relied on by the Department for valuing solar glass in the recently completed investigation of *Solar Products from the PRC*.<sup>49</sup>

Petitioner provided two sets of information to value ocean freight: international rates for 40-foot Maersk tankers and for shipping 20-foot cargo containers.<sup>50</sup> Petitioner suggested using the former for polysilicon and for solar glass, and the latter for aluminum extrusions. Lightway provided additional information on 20-foot cargo containers; specifically, Lightway provided information for shipping 20-foot cargo containers from Asian ports only, arguing that the Department’s “sigma rule” in antidumping proceedings calls for relying on freight values representing freight from locations from which the respondent would reasonably import.<sup>51</sup> For these final results, we determine that it is appropriate to use the rates for 20-foot cargo containers for all three inputs (*i.e.*, polysilicon, aluminum extrusions, and solar glass). Neither polysilicon nor solar glass is shipped by tanker, and Petitioner did not explain why a tanker rate would be more appropriate for these two inputs. In addition, because we are calculating a “world market price,” we did not limit our freight values to nearby Asian ports as suggested by Lightway.

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<sup>46</sup> See *Preliminary Results* and accompanying PDM at 13.

<sup>47</sup> See 19 CFR 351.511(a)(2)(ii); see also Department Memorandum, “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China; Key Benchmark Data for the Final Results,” dated concurrently with this memorandum (Final Benchmark Memorandum).

<sup>48</sup> See *Investigation Final Determination*, and accompanying IDM at 5.

<sup>49</sup> See the BYD Group’s Benchmark Submission at Exhibit 4; see also *Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014) (*Solar Products from the PRC*).

<sup>50</sup> See Letter to the Secretary from Petitioner, “Certain Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Submission of Benchmark Information,” (November 19, 2014) (Petitioner’s Benchmark Submission) at Exhibits 1-4.

Lightway’s Benchmark Submission; *Solar Products from the PRC* and accompany IDM at 8.

<sup>51</sup> See Letter to the Secretary from Lightway, “Crystalline Silicon Photovoltaic Cells from the People’s Republic of China – Final Benchmark Submission,” (November 19, 2014) at 1-2.



### L. *Provision of Electricity for LTAR*

In the *Preliminary Results*, we relied, as AFA on PRC provincial tariff schedules for electricity supplied by the GOC as a benchmark for measuring the benefit from electricity provided to the BYD Group and to Lightway for LTAR.<sup>52</sup> We received no comments on the appropriateness of this benchmark, and we continue to rely on this same information for these final results.

## VII. Use of Facts Otherwise Available and Adverse Inferences

Sections 776(a)(1) and (2) of the Act provide that the Department shall, subject to section 782(d) of the Act, apply “facts otherwise available” if, *inter alia*, 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 the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. The Department’s practice when selecting an adverse rate from among the possible sources of information is to ensure that the result is sufficiently adverse as to effectuate the statutory purposes of the AFA rule to induce respondents to provide the Department with complete and accurate information in a timely manner.<sup>53</sup> The Department’s practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>54</sup>

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is “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 concerning the subject merchandise.”<sup>55</sup> The SAA provides that to “corroborate” secondary information, the Department will satisfy itself that the secondary information to be used has probative value.<sup>56</sup>

In analyzing whether information has probative value, it is the Department’s practice to examine the reliability and relevance of the information to be used.<sup>57</sup> However, the SAA emphasizes that

<sup>52</sup> See *Preliminary Results* and PDM at 31.

<sup>53</sup> See *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).

<sup>54</sup> See, e.g., Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. 1, at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199 (SAA) at 870.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> See, e.g., SAA at 869.

the Department need not prove that the selected facts available are the best alternative information.<sup>58</sup>

With respect to the relevance aspect of corroborating the rates selected, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Where circumstances indicate that the information is not appropriate as AFA, the Department will not use it.<sup>59</sup>

For the subsidies discovered at Lightway's verification, and for assigning an AFA rate regarding the Ex-Im Bank Buyer's Credit Program, we have applied our CVD AFA methodology for calculation of the subsidy rates. Specifically, for programs other than those involving income tax exemptions and reductions, it is the Department's practice in a CVD administrative review to select, as AFA, the highest above *de minimis* calculated rate for the identical program in the proceeding at issue.<sup>60</sup> If there is no identical program above *de minimis*, we then determine if there is a similar/comparable program (based on the treatment of the benefit) and apply the highest calculated rate for a similar/comparable program from the proceeding at issue. Where there is no comparable program in the proceeding at issue, we look outside the proceeding (but within the same country) for the highest non-*de minimis* calculated rate for the identical program. If there is no identical program in any other CVD proceeding involving the same country, we look for the highest non-*de minimis* rate for a similar/comparable program from another proceeding. If that option is unavailable, we apply the highest calculated rate from any non-company specific program, but we do not use a rate from a program if the industry in the proceeding cannot use that program.<sup>61</sup>

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given 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, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit.<sup>62</sup> As explained

<sup>58</sup> *Id.* at 869-870.

<sup>59</sup> *See, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 8612 (February 22, 1996).

<sup>60</sup> *See, e.g., Laminated Woven Sacks From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008), and accompanying Issues and Decision Memorandum at "Selection of the Adverse Facts Available;" *Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Aluminum Extrusions from the PRC*), and accompanying Issues and Decision Memorandum at "Application of Adverse Inferences: Non-Cooperative Companies;" *Galvanized Steel Wire From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 17418 (March 26, 2012), and accompanying Issues and Decision Memorandum at "Use of Facts Otherwise Available and Adverse Inferences"; *see also Essar Steel Ltd. v. United States*, 753 F.3d 1368, 1373-1374 (Fed. Cir. 2014) (upholding "hierarchical methodology for selecting an AFA rate").

<sup>61</sup> *See, e.g., Aluminum Extrusions from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 78788 (December 31, 2014), and accompanying Issues and Decision Memorandum at 15-16.

<sup>62</sup> *See, e.g., Non-Oriented Electrical Steel From Taiwan: Final Affirmative Countervailing Duty Determination*, 79 FR 61602 (October 14, 2014) and accompanying Issues and Decision Memorandum at Comment 10.

above, in applying the AFA hierarchy, the Department seeks to identify rates from identical or similar programs calculated for a cooperative respondent in the proceeding at issue or, if there are no such rates, from another proceeding involving the same country. Alternatively, the Department seeks the highest rate from any countervailable program involving the same country. Actual rates calculated based on actual usage by PRC companies are reliable where they have been calculated in the context of an administrative proceeding. Moreover, under our CVD AFA methodology, we strive to assign AFA rates that are the same in terms of the type of benefit, (e.g., grant to grant, loan to loan, indirect tax to indirect tax) because these rates are relevant to the respondent. Additionally, by selecting the highest rate calculated for a cooperative respondent we arrive at a reasonably accurate estimate of the respondent's actual rate, and a rate that also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."<sup>63</sup> Finally, the Department will not use information where circumstances indicate that the information is not appropriate as AFA.<sup>64</sup>

In the absence of record evidence concerning certain programs due to the GOC's and the respondent companies' failure to provide requested information, we reviewed the information concerning PRC subsidy programs in this and other proceedings. 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 review. The relevance of these rates is that they are actual calculated CVD rates for PRC programs, from which the non-cooperative respondent could actually receive a benefit. Due to the lack of participation by the respondents and the resulting lack of record information concerning these programs, the Department corroborated the rates it selected to use as AFA to the extent practicable for this final determination.<sup>65</sup>

As discussed below, due to the failure of the GOC and respondent companies, in part, to respond to the Department's questionnaires concerning the programs at issue, the Department relied on information concerning PRC subsidy programs from this and other proceedings. In light of the above, the Department corroborated the rates it selected to use as AFA to the extent practicable for this final determination.<sup>66</sup> Because these rates reflect the actual behavior of the GOC with respect to similar subsidy programs, and lacking questionnaire responses or adequate information from the GOC and the respondent companies demonstrating otherwise, the rates calculated for cooperative respondents provide a reasonable AFA rate.

#### *Application of AFA: Input Producers are "Authorities"*

In the *Preliminary Results*, relying on AFA, we found that all producers of polysilicon, aluminum extrusions, and solar glass purchased by the BYD Group and by Lightway were "authorities" within the meaning of section 771(5)(B) of the Act.<sup>67</sup> For these final results, we continue to determine, relying on AFA, that all of these producers of polysilicon, and certain of

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<sup>63</sup> SAA at 870.

<sup>64</sup> See, e.g., *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

<sup>65</sup> See, e.g., *Non-Oriented Electrical Steel From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 61606 (October 14, 2014) and accompanying Issues and Decision Memorandum at 7-8.

<sup>66</sup> *Id.*

<sup>67</sup> See *Preliminary Results* at 15-20.

these producers of aluminum extrusions and solar glass, are authorities for the reasons described in the *Preliminary Results*.

*The GOC's Involvement in the PRC's Solar Grade Polysilicon Industry Results in the Significant Distortion of Prices*

In response to our questions concerning its role in the production of solar grade polysilicon, the GOC provided no information specific to “solar grade” polysilicon.<sup>68</sup> In response to our supplemental questions, the GOC stated the National Bureau of Statistics or State Statistical Bureau (SSB) “has not begun information collection for specific types of polysilicon. What the SSB records in its database is polysilicon, which include solar grade polysilicon and others.”<sup>69</sup> The GOC also reported that there is no specific polysilicon association in the PRC, but that in order to obtain information for solar grade polysilicon, it consulted some related industry associations (for example, the China Electronics Materials Industry Association).<sup>70</sup> It explained, however, that those associations only gather information from enterprises that are their members and therefore the data is too limited to provide an accurate picture of the entire industry.<sup>71</sup>

With respect to the information that the GOC did provide in its questionnaire response, the GOC provided information regarding SIE involvement in the polysilicon industry based solely on information collected from the SSB.<sup>72</sup> The GOC stated in its questionnaire response that there were 66 producers of polysilicon during the POR.<sup>73</sup> However, we find the information in the GOC’s response to be unverifiable because it refused to allow us to examine the SSB’s databases (*i.e.*, the source of this reported information) at verification.<sup>74</sup>

Specifically, during the verification the GOC’s questionnaire responses, the Department found that the SSB only collects polysilicon information from companies with more than RMB 20 million in annual sales, and thus excluded a number of producers in its reports.<sup>75</sup> The fact that the industry information submitted to the Department does not include PRC companies in the polysilicon industry with less than RMB 20 million in sales, limits our ability to analyze the entirety of this industry in the PRC, and SIE involvement therein. Therefore, we determine that necessary information is not available on the record and, pursuant to section 776(a)(1) of the Act, will rely on the facts otherwise available in reaching our determination on the GOC’s involvement in the PRC solar grade polysilicon market, and whether this government involvement significantly distorts the prices in this industry in the PRC. Parties submitted comments on this issue, which we address at Comment 2, below.

Public information from the record of the *Solar Products from the PRC* investigation placed on the record of this proceeding contains the following information relevant to determining whether the GOC’s involvement in the PRC solar grade polysilicon market significantly distorts prices:

<sup>68</sup> See GOC’s June 2<sup>nd</sup> IQR at 69-73.

<sup>69</sup> See GOC’s October 10<sup>th</sup> SQR at 3.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* at 3-4.

<sup>72</sup> *Id.*

<sup>73</sup> See GOC’s June 2<sup>nd</sup> IQR at 69.

<sup>74</sup> See the GOC’s VR at 2-3.

<sup>75</sup> *Id.*



- The petition for *Solar Products from the PRC* points to a WTO Dispute Settlement Panel determination that the GOC maintains WTO-inconsistent export restraints on silicon exports, and contends that these restraints operate to ensure “an abundant domestic supply of silicon in China, thus artificially depressing the domestic price of polysilicon.”<sup>76</sup>
- A 2009 *New York Times* article explaining that the GOC’s State Council, or cabinet, has the ability to manage several key aspects of the solar grade polysilicon industry, including its capacity, access to the industry, land use, and lending from SOCBs.<sup>77</sup>
- Another article on the record explains that the GOC maintains “Polysilicon Industry Access Standards,” outlining rules and restrictions that prospective solar grade polysilicon manufacturers in the PRC must adhere to.<sup>78</sup>
- The record also includes publicly available information indicating that the largest polysilicon producer in China, GCL-Poly, is selling polysilicon at prices below the amount it needs to break even, and that it is able to do so due to the assistance of government subsidies.<sup>79</sup>

In the absence of further information, these items indicate significant distortion in the PRC’s solar grade polysilicon industry. Prices are distorted if they are higher or lower than what would be a normal price in a competitive market without government intervention such as limiting access to an industry and financing, which reduces competition. When government intervention in the marketplace actively manages the amount of supply through means such as capacity restrictions, limitations on access to the industry and subsidization of uneconomic production, it prevents a price from achieving its competitive equilibrium level, and it can result in a significant distortion of prices in the market. Thus, based on the information detailed above, and because we could not verify the information submitted by the GOC, we find that the facts otherwise available on the record of this case support a determination that the GOC’s involvement in the PRC’s solar grade polysilicon industry significantly distorts the prices in this industry. As such, we are not relying on domestic prices in the solar grade polysilicon market in the PRC as a “tier 1” benchmark pursuant to 19 CFR 351.511(a)(2)(i). Consequently, we are relying on world market prices as our benchmarks for the provision of polysilicon for LTAR program, pursuant to 19 CFR 351.511(a)(2)(ii). The use of an external benchmark is consistent with our past practice.<sup>80</sup> We address comments submitted by interested parties on this issue at Comment 2, below.

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<sup>76</sup> See Letter to the Secretary, “Petition for the Imposition of Antidumping and Countervailing Duties: Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China and Taiwan (December 31, 2013) (*Solar Products from the PRC Petition*) at 38, citing *China - Measures Related to the Exportation of Various Raw Materials*, Report of the Panel, WT/DS394/R (July 5, 2011), Exhibit III-51, placed on the record of this proceeding on December 30, 2014.

<sup>77</sup> See “Chinese Solar Firm Revises Price Mark,” Keith Bradsher, *New York Times*, (August 27, 2009), Volume I of the Petition at Exhibit I-1B, placed on the record of this proceeding on December 30, 2014.

<sup>78</sup> See Polysilicon Productions Data, placed on the record of this proceeding on December 30, 2014.

<sup>79</sup> See *Solar Products from the PRC Petition* at 41-42 and sources cited therein, placed on the record of this proceeding on December 30, 2014.

<sup>80</sup> See, e.g., *Countervailing Duty Investigation of 1,1,1,2 Tetrafluoroethane From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 62594 (October 20, 2014) (*Tetrafluoro from the PRC*) and accompanying IDM at 14 and 27.

### *Provision of Electricity for LTAR*

We stated in the *Preliminary Results* that we relied on the facts available with an adverse inference in finding that the provision of electricity to the BYD Group and to Lightway constitutes a financial contribution within the meaning of section 771(5)(D) of the Act, and is specific within the meaning of section 771(5A)(D) of the Act.<sup>81</sup> We also relied on AFA in selecting the benchmark for determining the existence and the amount of the benefit.<sup>82</sup> For determining the existence and the amount of the benefit under this program in the *Preliminary Results*, we relied on usage information reported by the BYD Group and by Lightway. We received no comments on this determination from interested parties, and we continue to rely on this information for these final results.

### *Provision of Land for LTAR*

In the *Preliminary Results*, we found that, based on AFA, land provided to the BYD Group and to Lightway is countervailable because the GOC did not provide complete responses to our questionnaires regarding the derivation of the prices paid by the BYD Group and by Lightway for their land-use rights.<sup>83</sup> We received no comments on our preliminary findings on this issue. For these final results, for the same reasons as in the *Preliminary Results*, we continue to find that the BYD Group's and Lightway's land use is countervailable.

### *Export Buyer's Credits*

The Department has determined that the use of AFA is warranted in determining the countervailability of Export Buyer's Credits. As discussed below in Comment 1, the GOC refused to allow the Department to examine or query electronic databases regarding the recipients of export buyer's credits from the China Ex-Im Bank. Pursuant to section 776(a)(2)(D) of the Act, when an interested party provides information that cannot be verified, the Department uses the facts otherwise available. Further, pursuant to section 776(b) of the Act, we find that the GOC failed to cooperate by not acting to the best of its ability, because it refused to allow the Department to examine the source of information that it placed on the record regarding this issue. Accordingly, an adverse inference is warranted. As adverse facts available, we find, as discussed below under Comment 1, that both the BYD Group and Lightway benefitted from this program at the rate of 5.46 percent *ad valorem*, the highest calculated rate for a similar/comparable program from the proceeding at issue. This is the calculated rate for Lightway for the program, Preferential Policy Lending to the Renewable Energy Industry.

### *Subsidies Discovered During the Course of this Administrative Review*

At the verification of Lightway's questionnaire responses, the Department examined the company's financial accounts for any indication that it received unreported assistance.<sup>84</sup> In examining these accounts, we noted entries for unreported government grants that were received

<sup>81</sup> See *Preliminary Results* and accompanying PDM at 30-31.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 32.

<sup>84</sup> See Lightway VR at 5.

by Lightway during the POR. When we asked whether this assistance was reported in its questionnaire responses, Lightway representatives referenced the company's statement in its May 19, 2014, questionnaire response regarding "other programs,"<sup>85</sup> and stated that the company reported all of the assistance requested by the Department. Lightway representatives also stated that information on these government grants was already on the record in the company's audit reports, and that the Department never asked about them specifically.<sup>86</sup>

The Department previously asked both Lightway and the GOC to report information regarding "other subsidies" in the initial questionnaire. Specifically, with respect to Lightway, we asked:

Did your government (or entities owned directly, in whole or in part, by your government or any provincial or local government) provide, directly or indirectly, any other forms of assistance to your company between January 1, 2003 and the end of the POR? If so, please describe such assistance in detail, including the amounts, date of receipt, purpose, and terms, and answer all questions in the appropriate appendices.<sup>87</sup>

In response, Lightway stated that it fully answered our specific questions on the programs under review, and explained that it could not respond to this question without sufficient or specific allegations and evidence, consistent with Article 11.2 of the WTO Agreement on Subsidies and Countervailing Measures (WTO SCM).<sup>88</sup> Lightway went on to say that it would provide additional information to the Department if the Department first identified specific areas or concerns during this proceeding.<sup>89</sup>

Regarding the GOC, we asked:

Has the Government, or entities owned in whole or in part by the Government, either directly or indirectly, provided to the producers or exporters of the subject merchandise under review any other non-recurring benefits over the ten-year AUL (*i.e.*, the POR and preceding nine years), or recurring benefits during the POR. Please coordinate with the respondent companies to determine if they are reporting usage of any subsidy program(s) not previously examined. For each such program, please answer all questions in the Standard Questions Appendix and any other applicable appendices to this section, separately for each program. If the Government has not provided any other benefits, then please so state.<sup>90</sup>

The GOC responded by stating that it had cooperated with respect to our requests, and in the absence of allegations and sufficient evidence in respect to "other" subsidies consistent with

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<sup>85</sup> See Letter to the Secretary from Lightway, "Crystalline Silicon Photovoltaic Cells from P.R. China: Section III Questionnaire Response," at 33 (May 19, 2014) (Lightway May 19<sup>th</sup> QR).

<sup>86</sup> See Lightway VR at 5.

<sup>87</sup> See Department's Letter to Interested Parties, "Administrative Review of the Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Countervailing Duty Questionnaire," at III-20 (March 28, 2014) (Initial Questionnaire).

<sup>88</sup> See Lightway May 19<sup>th</sup> QR at 33.

<sup>89</sup> *Id.*

<sup>90</sup> See Initial Questionnaire at II-18.

Article 11.2 and other relevant articles of the WTO SCM that no reply to this question is warranted or required.<sup>91</sup>

Given these responses, and in light of the unreported information discovered at Lightway's verification, we determine that the use of facts available pursuant to sections 776(a)(2)(A) and 776(a)(2)(D) of the Act is warranted in determining the countervailability of these apparent subsidies that were discovered during verification. Lightway and the GOC withheld information that was requested of them by not providing information regarding other subsidies in response to the questions noted above. Further, due to this withholding, we could not verify Lightway's usage of other subsidies. Because Lightway and the GOC failed to respond to the best of their ability regarding our questions on other, non-reported subsidies provided by the GOC, we determine that an adverse inference is warranted with respect to these subsidies pursuant to section 776(b) of the Act. As a result, we are finding that, as AFA, these discovered subsidies provide a financial contribution and are specific within sections 771(5)(D) and 771(5A) of the Act, respectively. As a result of Lightway's and the GOC's non-cooperation, we can infer that Lightway benefitted from the programs at issue within the meaning of section 771(5)(E) of the Act. For each of the programs, we are applying a rate of 0.58 percent. Interested parties commented on our applying AFA to these unreported government subsidies, which we address at Comment 8.

### **VIII. Analysis of Programs**

Based upon our analysis of the record and the responses to our questionnaires, we determine the following:

#### **A. Programs Determined To Be Countervailable**

##### **1. Provision of Polysilicon for LTAR**

In the original investigation, the Department determined this program to be countervailable based on AFA.<sup>92</sup> For the reasons explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we are basing our determination regarding the government's provision of polysilicon, in part, on AFA. Specifically, relying on AFA, and as explained in the section above, "Use of Facts Otherwise Available and Adverse Inferences," we determine that all of the producers of the polysilicon purchased by both respondents are "authorities" within the meaning of section 771(5)(B) of the Act and, as such, that the provision of polysilicon constitutes a financial contribution under section 771(5)(D)(iii) of the Act.

In response to our questions concerning specificity, the GOC stated: "There are a vast number of uses for polysilicon, and the type of consumer that may purchase polysilicon is highly varied within China's economy."<sup>93</sup> However, the GOC provided no information concerning the industries consuming polysilicon and the amounts purchased by those individual industries. Then, in its supplemental response, the GOC merely stated that "Polysilicon has a wide range of

<sup>91</sup> See GOC's June 2<sup>nd</sup> IQR at 118.

<sup>92</sup> See *Investigation Final Determination*, and accompanying IDM at 12-13.

<sup>93</sup> See GOC's June 2<sup>nd</sup> IQR at 55.



uses, including but not limited to use in the solar and semiconductor industries.”<sup>94</sup> However, the GOC listed no industries other than the solar and semiconductor industries that use polysilicon in the PRC. Accordingly, we continue to determine that the provision of polysilicon is limited to the specific industries listed by the GOC within the meaning of section 771(5A)(D)(iii)(I) of the Act, namely the solar and semiconductor industries.

As described above, we are relying on the facts available to find that the solar grade polysilicon industry in the PRC is significantly distorted by the government’s intervention. This means that we will not use a “tier one” benchmark under 19 CFR 351.511(a)(2)(i), but rather a “tier two” benchmark under 19 CFR 351.511(a)(2)(ii). We find that a benefit is being conferred because the polysilicon is being provided for LTAR. As discussed above under the “Subsidies Valuation Information” section, the Department is relying on world market prices, the “Silicon Pricing Index” published by Photon Consulting, to calculate a benefit for each respondent.<sup>95</sup> The Department adjusted the benchmark price to include delivery charges, import duties, and value added tax (VAT) pursuant to 19 CFR 351.511(a)(2)(iv).<sup>96</sup>

Regarding delivery charges, we included ocean freight and the inland freight charges that would be incurred to deliver polysilicon to respondents’ production facilities. We added import duties as reported by the GOC, and the VAT applicable to imports of polysilicon into the PRC, where applicable, also as reported by the GOC.<sup>97</sup> In calculating VAT, we applied the applicable VAT rate to the benchmark after first adding amounts for ocean freight and import duties, as applicable. We compared these monthly benchmark prices to the respondents’ reported purchase prices for individual domestic transactions from authorities, including VAT and delivery charges. Based on comments submitted by Lightway, we have removed certain imported polysilicon purchases from its benefit calculation.<sup>98</sup>

Based on this comparison, we determine that polysilicon was provided for LTAR and that a benefit exists for each respondent in the amount of the difference between the benchmark prices and the prices each respondent paid.<sup>99</sup> We divided the total benefits for each respondent by the appropriate total sales denominator, as discussed in the “Subsidies Valuation Information” section above, and in the Final Calculation Memoranda. On this basis, we determine a countervailable subsidy rate of 1.42 percent *ad valorem* for Lightway and 0.40 percent *ad valorem* for the BYD Group.

## 2. Provision of Aluminum Extrusions for LTAR

Petitioner alleged that the respondents received countervailable subsidies in the form of the provision of aluminum extrusions for LTAR.<sup>100</sup> For the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are basing our determination

<sup>94</sup> See GOC’s October 10<sup>th</sup> SQR at 10.

<sup>95</sup> See Final Benchmark Memorandum.

<sup>96</sup> The Department concludes that the data do not already include delivery charges.

<sup>97</sup> See GOC’s June 2<sup>nd</sup> IQR at 72.

<sup>98</sup> See Comment 5.

<sup>99</sup> See 19 CFR 351.511(a).

<sup>100</sup> See Department Memorandum, “Initiation of the February 27, 2014 New Subsidy Allegations,” (May 20, 2014) (NSA Initiation Memorandum) at 2-3.

regarding the government's provision of aluminum extrusions, in part, on AFA. Specifically, we are relying on AFA to determine that certain producers of the aluminum extrusions purchased by both respondents are "authorities" within the meaning of section 771(5)(B) of the Act and, as such, that the provision of aluminum extrusions constitutes a financial contribution under section 771(5)(D)(iii) of the Act.

The GOC provided information indicating that one producer of aluminum extrusions is wholly-owned by the government.<sup>101</sup> As explained in the Additional Documents Memorandum, majority state-owned enterprises in the PRC possess, exercise, or are vested with governmental authority.<sup>102</sup> 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. Therefore, for these final results, we determine that this entity is an "authority" within the meaning of section 771(5)(B) of the Act and that the respondent companies received a financial contribution from it in the form of a provision of a good, pursuant to section 771(5)(D)(iii) of the Act.<sup>103</sup>

In addressing specificity, the GOC provided third-party information nearly identical to what it provided in the recently completed *Solar Products from the PRC* investigation, indicating usage by several major industries/sectors in the PRC: construction, transportation, mechanical and electrical equipment, consumer durable goods, electricity, and "others."<sup>104</sup> As in *Solar Products from the PRC*, the third-party information also included lists of "major projects" and applications within these industries/sectors (e.g., window and door frames, curtain walls, high speed-rail, furniture).<sup>105</sup> While this information indicates the predominant or disproportionate user of aluminum extrusions is the construction industry, as we explained in *Solar Products from the PRC*, a specificity finding does not require that the solar industry is a predominant or disproportionate user.<sup>106</sup> Instead, our determination rests on a finding that the provision of

<sup>101</sup> See Letter to the Secretary from the GOC, "GOC NSA Input Supplier Appendix Response: First Administrative Review of the Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or not Assembled into Modules from the People's Republic of China (C-570-980)," (June 23, 2014) (GOC's June 23<sup>rd</sup> SQR) at Exhibit N-1.

<sup>102</sup> See the Department Memorandum, "Additional Documents Memorandum," (December 30, 2014) (Additional Documents Memorandum) at Attachment III, "Memorandum to Paul Piquado, Assistant Secretary for Import Administration, "Section 129 Determination of the Countervailing Duty Investigation of Circular Welded Carbon Quality Steel Pipe; Light-Walled Rectangular Pipe and Tube; Laminated Woven Sacks; and Off-the-Road Tires from the People's Republic of China: An Analysis of Public Bodies in the People's Republic of China in Accordance with the WTO Appellate Body's Findings in WTO DS 379," (May 18, 2012) (Public Body Memorandum), and at Attachment IV, "Memorandum to Paul Piquado, Assistant Secretary for Import Administration, "The Relevance of the Chinese Communist Party for the limited purpose of determining whether particular enterprises should be considered to be "public bodies" within the context of a countervailing duty investigation," (May 18, 2012) (CCP Memorandum).

<sup>103</sup> See *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), and accompanying Issues and Decision Memorandum at Comment 6.

<sup>104</sup> See Letter to the Secretary from the GOC, "GOC New Subsidy Allegation Questionnaire Response: First Administrative Review of the Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or not Assembled into Modules from the People's Republic of China (C-570-980), at 14 (June 19, 2014) (GOC June 19<sup>th</sup> QR).

<sup>105</sup> *Id.* at 12.

<sup>106</sup> *Solar Products from the PRC* and accompanying IDM at Comment 6.

aluminum extrusions at LTAR is limited to specific industries. Thus, we find that the recipients of aluminum extrusions are limited in number to the industries listed by the GOC, and that the provision of aluminum extrusions is *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act. This is consistent with our past practice. For example, in *CWP from the PRC*, we found that, although hot-rolled steel is used in a spectrum of industries, the actual users of hot-rolled steel were limited in number.<sup>107</sup> Likewise, although the GOC's information indicates aluminum extrusions is used in a variety of industries and sectors across the PRC, on an enterprise or industry basis, the industries within those sectors that actually consume aluminum extrusions are limited in number. The statute notes that the term "enterprise or industry" "includes a group of such enterprises or industries."<sup>108</sup> Interested parties commented on our specificity finding for this program, which we address below at Comment 3.

Lastly, a benefit is being conferred because the aluminum extrusions are being provided for LTAR. As discussed above under the "Subsidies Valuation Information" section, because we have no first tier benchmarks on the record for aluminum extrusions, we are basing our aluminum extrusions benchmark on GTA data for HTSUS subheading 7604.29, *e.g.*, "solid profiles of aluminum alloys," as provided by the BYD Group.<sup>109</sup> We adjusted the benchmark price to include delivery charges, import duties, and VAT pursuant to 19 CFR 351.511(a)(2)(iv).<sup>110</sup> We added import duties as reported by the GOC, and the VAT applicable to imports of aluminum extrusions into the PRC, also as reported by the GOC.<sup>111</sup> In calculating VAT, we applied the applicable VAT rate to the benchmark after first adding amounts for ocean freight and import duties. We compared these monthly benchmark prices to the respondents' reported purchase prices for individual transactions, including VAT and delivery charges.

Based on this comparison, we determine that aluminum extrusions were provided for LTAR and that a benefit exists for each respondent in the amount of the difference between the benchmark prices and the prices each respondent paid.<sup>112</sup> We divided the total benefits for each respondent by the appropriate total sales denominator, as discussed in the "Subsidies Valuation Information" section above, and in the Final Calculation Memoranda. On this basis, we determine a countervailable subsidy rate of 0.70 percent *ad valorem* for Lightway and 0.40 percent *ad valorem* for the BYD Group.

### 3. Provision of Solar Glass for LTAR

Petitioner alleged that the respondents received countervailable subsidies in the form of the provision of solar glass for LTAR. For the reasons explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we are basing our determination regarding the GOC's provision of solar glass, in part, on AFA. Specifically, we are relying on AFA to determine that certain producers of the solar glass purchased by both respondents are

<sup>107</sup> See *CWP from the PRC* and accompanying IDM 62.

<sup>108</sup> See section 771(5A)(D) of the Act.

<sup>109</sup> See the BYD Group Benchmark Submission, at Exhibit. 3.

<sup>110</sup> The Department concludes that these data do not already include delivery charges.

<sup>111</sup> See GOC June 19<sup>th</sup> QR at 7.

<sup>112</sup> See 19 CFR 351.511(a).

“authorities” within the meaning of section 771(5)(B) of the Act and, as such, that the provision of solar glass constitutes a financial contribution under section 771(5)(D)(iii) of the Act.

The GOC reported that one solar glass producer is wholly-owned by the government.<sup>113</sup> As explained above, the GOC maintains meaningful control over government-owned entities and uses them to put into force its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector. As such, we determine that this producer is an “authority” within the meaning of section 771(5)(B) of the Act, and that the company respondents received a financial contribution from this producer in the form of a provision of a good, pursuant to section 771(5)(D)(iii) of the Act.

In response to our questions concerning specificity, the GOC stated: “{a}s a basic material input, solar glass is suitable for many downstream applications including use in the solar industry.”<sup>114</sup> The GOC provided none of the information requested concerning the amounts of solar glass purchased by individual industries. Petitioner’s allegation provided information demonstrating solar glass has lower iron content than other types of glass in order to allow the transmission of more sunlight and that it has a particular thickness, between three and four millimeters.<sup>115</sup> Thus, solar glass is a particular type of flat and rolled glass most suitable for particular purposes and customers in the solar industry. Based on this, we determine that actual recipients of solar glass are limited in number (on an industry basis) within the meaning of section 771(5A)(D)(iii)(I) of the Act. Specifically, the use of solar glass is limited to the solar industry.

Lastly, a benefit is being conferred because the solar glass is being provided for LTAR. As discussed above under the “Subsidies Valuation Information” section, because we have no first tier benchmarks on the record for solar glass, the Department selected as a solar glass benchmark the world pricing data provided by the BYD Group.<sup>116</sup> The Department adjusted this benchmark price to include delivery charges, import duties, and VAT pursuant to 19 CFR 351.511(a)(2)(iv).<sup>117</sup> We added import duties as reported by the GOC, and the VAT applicable to imports of solar glass into the PRC, also as reported by the GOC.<sup>118</sup> In calculating VAT, we applied the applicable VAT rate to the benchmark after first adding amounts for ocean freight and import duties. We compared the benchmark prices to the respondents’ reported purchase prices for individual transactions, including VAT and delivery charges.

Based on this comparison, we determine that solar glass was provided to the company respondents for LTAR and that a benefit exists for each respondent in the amount of the difference between the benchmark prices and the prices each respondent paid.<sup>119</sup> We divided the total benefits for each respondent by the appropriate total sales denominator, as discussed in the

<sup>113</sup> See GOC’s June 23<sup>rd</sup> SQR at Exhibit N-12.

<sup>114</sup> See GOC June 19<sup>th</sup> QR at 28.

<sup>115</sup> See Letter to the Department from Petitioner, “*Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China: New Subsidy Allegations*,” (February 27, 2014) (Petitioner’s NSA) at 13.

<sup>116</sup> See the BYD Group Benchmark Submission at Exhibits 3 and 4.

<sup>117</sup> The Department concludes that these data do not already include delivery charges.

<sup>118</sup> See GOC June 19<sup>th</sup> QR at 27.

<sup>119</sup> See 19 CFR 351.511(a).

“Subsidies Valuation Information” section above, and in the Final Calculation Memoranda. On this basis, we determine a countervailable subsidy rate of 0.76 percent *ad valorem* for Lightway and 5.02 percent *ad valorem* for the BYD Group.

#### 4. Provision of Electricity for LTAR

In the original investigation, the Department determined this program to be countervailable based on the application of AFA.<sup>120</sup> For the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are basing our determination regarding the GOC’s provision of electricity in part on AFA. For these final results, we determine that Lightway and the BYD Group received a countervailable subsidy from electricity provided for LTAR.

Because of the GOC’s unwillingness to remedy deficiencies in its questionnaire responses, as explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are basing our determination regarding the government’s provision of electricity, in part, on AFA. In a CVD proceeding, the Department requires information from both the government of the country whose merchandise is under investigation and from the foreign producers and exporters. When the government fails to provide requested information concerning alleged subsidy programs, the Department, as AFA, typically finds that a financial contribution exists under the alleged program and that the program is specific.<sup>121</sup> However, where possible, the Department will rely on respondents’ reported information to determine the existence and the amount of the benefit to the extent that such information is useable and verifiable.<sup>122</sup> Thus, we relied on the usage information reported by the respondents in each instance. Lightway and the BYD Group each provided data on electricity consumed and electricity rates paid during the POR.

As described above in detail, the GOC did not provide certain information requested regarding its provision of electricity to the respondents and, as a result, we determine, as AFA, that the GOC is providing a financial contribution and that the subsidy is specific within the meaning of sections 771(5)(D)(iii) and 771(5A)(D) of the Act, respectively. To determine the existence and the amount of any benefit under this program pursuant to section 771(5)(E)(iv) of the Act and 19 CFR 351.511, we relied on the companies’ reported consumption volumes and rates paid. We compared the rates paid by the respondents to the benchmark rates, which, as discussed above, are the highest rates charged in the PRC during the POR. We made separate comparisons by price category (*e.g.*, great industry peak, basic electricity, *etc.*). We multiplied the difference between the benchmark and the price paid by the consumption amount reported for that month and price category. We then calculated the total benefit during the POR for each company by summing the difference between the benchmark prices and the prices paid by each company.

<sup>120</sup> See *Investigation Final Determination*, and accompanying IDM at 14-15.

<sup>121</sup> See, *e.g.*, *Hardwood and Decorative Plywood from the People’s Republic of China: Final Affirmative Countervailing Duty Determination; 2011*, 78 FR 58283 (September 23, 2013), and accompanying IDM at Comment 3, “Provision of Electricity.”

<sup>122</sup> See the BYD Group’s June 2, 2014, questionnaire response at 22-23 and Exhibits 14-16 (Shanghai BYD), at 20-21 and Exhibits 18, 19, and 20 (Shangluo BYD), and at 21 and Exhibits 12-14 (BYD Co.); see also Lightway’s May 19, 2014, questionnaire response at 26 and Exhibit 2.15.



To calculate the electricity benchmark, in accordance with 19 CFR 351.511(a)(2), we selected the highest rates in the PRC for the user category of the respondents (*e.g.*, “large industrial users”) for the non-seasonal general, peak, normal, and valley ranges, as provided in the electricity tariff schedules submitted by the GOC.<sup>123</sup> This benchmark reflects an adverse inference, which we drew as a result of the GOC’s failure to act to the best of its ability in providing requested information about its provision of electricity in this review.<sup>124</sup>

To calculate the subsidy rates, we divided the benefit amount by the appropriate total sales denominator, as discussed in the Final Calculation Memoranda. On this basis, we determine countervailable subsidy rates for this program of 4.44 percent *ad valorem* for Lightway and 0.71 percent *ad valorem* for the BYD Group.

## 5. Provision of Land for LTAR

In the original investigation, the Department determined this program to be countervailable based on the application of AFA.<sup>125</sup> For the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are basing our determination regarding the GOC’s provision of land, in part, on AFA. For these final results, we determine that Lightway and the BYD Group received a countervailable subsidy through land provided for LTAR.

We continue to find that the provision of land by the GOC constitutes a financial contribution from an authority in the form of providing goods or services pursuant to section 771(5)(D)(iii) of the Act. Furthermore, as discussed above in the “Use of Facts Otherwise Available and Adverse Inferences” section, the Department continues to rely on AFA to determine that the provision of land to Lightway and the BYD Group is specific.

To calculate the benefit, we first multiplied the Thailand industrial land benchmarks discussed above under the “Land Benchmark” section, by the total area of Lightway’s and the BYD Group’s countervailed tracts. We then subtracted the price actually paid for each tract to derive the total unallocated benefit. Because land is related to the respondents’ capital structure, we treated the amount of the unallocated benefit as a non-recurring subsidy, pursuant to 19 CFR 351.524(c)(2)(iii). We then conducted the “0.5 percent test” pursuant to 19 CFR 351.524(b)(2), for the year of the relevant land-use agreement by dividing the total unallocated benefit for each tract by the appropriate sales denominator. If more than one tract was provided in a single year, we combined the total unallocated benefits from the tracts before conducting the “0.5 percent test.” As a result, we found that the benefits were greater than 0.5 percent of relevant sales and that allocation was appropriate for all tracts found to be countervailable. We allocated the total unallocated benefit amounts across the terms of the land-use agreements, using the standard allocation formula of 19 CFR 351.524(d), and determined the amount attributable to the POR. We then summed all of the benefits attributable to the POR and divided this amount by the appropriate total sales denominator, as discussed in the “Subsidies Valuation Information” section above, and in the Final Calculation Memoranda, to derive subsidy rates of 1.86 percent *ad valorem* for Lightway and 1.57 percent *ad valorem* for the BYD Group.

<sup>123</sup> See GOC’s June 2<sup>nd</sup> IQR at Exhibit E.3.c.

<sup>124</sup> See “Application of AFA: Provision of Electricity for LTAR” section, above.

<sup>125</sup> See *Investigation Final Determination*, and accompanying IDM at 7-8.

6. Preferential Policy Lending to the Renewable Energy Industry, aka Preferential Loans and Directed Credit

In the original investigation, the Department determined this program to be countervailable.<sup>126</sup> Article 25 of the Renewable Energy Law (REL) specifically calls for financial institutions to offer favorable loans to the renewable energy industry.<sup>127</sup> In addition, the “Directory Catalogue on Readjustment of Industrial Structure” of the National Development and Reform Commission (NDRC) (Catalogue No. 40) contains a list of encouraged projects, including solar energy, which the GOC targets through the provision of loans and other forms of assistance.<sup>128</sup>

In the original investigation, the Department determined that this program conferred countervailable subsidies on subject merchandise because: 1) it provides a financial contribution pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act, and 2) the loans provide a benefit pursuant to section 771(E)(ii) of the Act equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans.<sup>129</sup> The Department further determined that there is a program of preferential policy lending specific to the renewable energy industry, including solar cells, within the meaning of section 771(5A)(D)(i) of the Act. There is no new information on the record for us to reconsider this determination.<sup>130</sup> Therefore, we continue to find that this program provides a countervailable subsidy.

In its initial response, the GOC stated that the program at issue does not exist and that no loans to any of the respondents were issued pursuant to a policy lending program. The GOC further claimed that if an industrial policy existed, it had “no connection to or effect upon the decision of any bank to issue loans to any respondent,” and thus those loans did not constitute a countervailable subsidy.<sup>131</sup> The GOC, however, provided no documentation in support of these assertions that would call into question the Department’s conclusions from the investigation.

Lightway and the BYD Group reported having loans outstanding from banks in China during the POR under this program.

To calculate the benefit under this program, we used the benchmarks described under “Benchmark and Discount Rates” above. We also included a risk premium for the BYD Group’s loans provided in the years in which we determined that it was uncreditworthy. We divided the total benefits received during the POR by the appropriate total sales denominator, as discussed in the “Subsidies Valuation Information” section above, and in the Final Calculation Memoranda.

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<sup>126</sup> See *Investigation Final Determination*, and accompanying IDM at 12, “Preferential Policy Lending.”

<sup>127</sup> *Id.* at 46-47.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.* at 12.

<sup>130</sup> In a CVD administrative review, we do not revisit past determinations of countervailability made in the proceeding, absent new information. See *Magnola Metallurgy, Inc. v. United States*, 508 F.3d 1349 (Fed. Cir. 2007) (*Magnola*). See also *Dynamic Random Access Memory Semiconductors from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 7395 (February 17, 2009) (*DRAMs from Korea*), and accompanying Issues and Decision Memorandum at “Programs Previously Determined to Confer Subsidies.”

<sup>131</sup> See GOC’s June 2<sup>nd</sup> IQR at 3.

On this basis, we determine a subsidy rate of 5.46 percent *ad valorem* for Lightway and 1.82 percent *ad valorem* for the BYD Group.

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

In the original investigation, the Department determined this program to be countervailable.<sup>132</sup> Article 30.1 of the Enterprise Income Tax Law of the PRC created a new program regarding the deduction of research and development expenditures by companies, which allows enterprises to deduct, through tax deductions, research expenditures incurred in the development of new technologies, products, and processes. As explained in the original investigation, the income tax deduction afforded by this program is limited as a matter of law to certain enterprises, those with R&D in eligible high-technology sectors.<sup>133</sup> Article 95 of Regulation 512 provides that, if eligible research expenditures do not “form part of the intangible assets value,” an additional 50 percent deduction from taxable income may be taken on top of the actual accrual amount. Where these expenditures form the value of certain intangible assets, the expenditures may be amortized based on 150 percent of the intangible assets costs.<sup>134</sup>

The Department determined in the original investigation that this income tax reduction provides a financial contribution in the form of revenue foregone by the government, and it confers a benefit to the recipients in the amount of the tax savings, pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also continue to determine that the income tax deduction afforded by this program is limited as a matter of law to certain enterprises, *i.e.*, those with R&D in eligible high-technology sectors and, thus, is specific under section 771(5A)(D)(i) of the Act. There is no new information on the record for us to reconsider our determination from the original investigation.<sup>135</sup> Therefore, we continue to find that this program provides a countervailable subsidy.

Lightway and the BYD Group reported benefitting from this program during the POR.<sup>136</sup> To calculate the benefit from this program to Lightway and the BYD Group, we treated the tax deduction as a recurring benefit, consistent with 19 CFR 351.524(c)(1).<sup>137</sup> To compute the amount of the tax savings, we calculated the amount of tax each respondent would have paid absent the tax deductions. We then divided the tax savings by the appropriate total sales denominator for each respondent, respectively.

On this basis, we determine a countervailable subsidy rate of 0.53 percent *ad valorem* for Lightway and 0.03 percent *ad valorem* for the BYD Group under this program.

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<sup>132</sup> See *Investigation Final Determination* and accompanying IDM at 17, “Enterprise Income Tax Law, Research and Development (R&D) Program.”

<sup>133</sup> See *id.*

<sup>134</sup> See GOC’s June 2<sup>nd</sup> IQR at 7-12.

<sup>135</sup> See *Magnola*, 508 F.3d 1349. See also *DRAMs from Korea*, and accompanying Issues and Decision Memorandum at “Programs Previously Determined to Confer Subsidies.”

<sup>136</sup> See Lightway’s May 19, 2014, questionnaire response IQR at 8; see also the BYD Group’s June 2, 2014, questionnaire response at 14.

<sup>137</sup> See *Investigation Final Determination*, and accompanying IDM at 17, “Enterprise Income Tax Law, Research and Development (R&D) Program.”

## 8. Preferential Tax Programs for High or New Technology Enterprises (HNTE)

Article 28.2 of the Enterprise Income Tax Law of the PRC provides for the reduction of the income tax rate to 15 percent, from 25 percent, for enterprises that are recognized as HNTEs, regardless of whether the enterprise is an FIE or domestic company. Circular 172 provides details regarding the type of enterprises that qualify for HNTE status and it identifies eligible projects, which include renewable, clean energy technologies such as solar photovoltaic technologies.<sup>138</sup>

The Department determined in the original investigation that this program confers a countervailable subsidy, because the income tax reduction constitutes a financial contribution in the form of revenue foregone by the government, and it confers a benefit to the recipients in the amount of the tax savings, pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). The Department also found that the income tax reduction afforded by this program is limited as a matter of law to certain enterprises, *i.e.*, HNTEs, and, thus, is specific under section 771(5A)(D)(i) of the Act. There is no new information on the record for us to reconsider our prior determination.<sup>139</sup> Therefore, we continue to find that this program provides a countervailable subsidy.

Lightway and the BYD Group reported benefitting from this program.<sup>140</sup> To calculate the benefit the respondents received from this program, we treated the income tax reductions claimed by Lightway and the BYD Group as recurring benefits, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we compared the companies' tax rates (15 percent) applicable under this program to the rate that would have been paid by Lightway and the BYD Group without the program (the standard income tax rate of 25 percent). We multiplied the difference by the taxable income of each company. We then divided these amounts by the appropriate total sales denominator, as discussed in the "Benchmarks and Discount Rates" section above. On this basis, we determine a countervailable subsidy rate of 0.28 percent *ad valorem* for Lightway and 0.01 percent *ad valorem* for the BYD Group under this program.

## 9. Import Tariff and Value Added Tax (VAT) Exemptions for Use of Imported Equipment - Encouraged Industries

In the original investigation, the Department determined this program to be countervailable.<sup>141</sup> Circular 37 exempts FIEs and certain domestic enterprises from VAT and tariffs on imported equipment used in their production so long as the equipment does not fall into prescribed lists of non-eligible items, in order to encourage foreign investment and to introduce foreign advanced technology equipment and industry technology upgrades. As of January 1, 2009, the GOC

<sup>138</sup> See GOC's June 2<sup>nd</sup> IQR at 4-7 and Exhibit B.2.b.

<sup>139</sup> See *Magnola*, 508 F.3d 1349. See also *DRAMs from Korea*, and accompanying Issues and Decision Memorandum at "Programs Previously Determined to Confer Subsidies."

<sup>140</sup> See Lightway's May 19, 2014, questionnaire response at 8; see also the BYD Group's June 2, 2014, questionnaire response at 12-14.

<sup>141</sup> See *Investigation Final Determination*, and accompanying IDM at 18, "Import Tariff and Value Added Tax (VAT) Exemptions for Use of Imported Equipment."

discontinued VAT exemptions under this program, but companies can still receive import duty exemptions.<sup>142</sup>

In the investigation, we found that VAT and tariff exemptions on imported equipment confer a countervailable subsidy. The exemptions are a financial contribution in the form of revenue foregone by the GOC, and they provide a benefit to the recipient in the amount of the VAT and tariff savings.<sup>143</sup> We also determined that the VAT and tariff exemptions afforded by the program are specific under section 771(5A)(D)(iii)(I) of the Act because the program is limited to certain enterprises, *i.e.*, FIEs and domestic enterprises involved in “encouraged” projects. There is no new information on the record for us to reconsider this determination.<sup>144</sup> Therefore, we continue to find that this program provides a countervailable subsidy.

Lightway reported benefits from this program.<sup>145</sup> The BYD Group reported that it did not apply for nor receive any benefit from this program. In support of its statement that Shanghai BYD and Shangluo BYD did not receive any benefit from this program, the BYD Group submitted a listing reporting the equipment imported, its value, the duties and VAT owed, and the duties and VAT paid.<sup>146</sup> Upon the Department’s request, Lightway and the BYD Group each provided the China Tariff Schedules for the equipment listed in the respective exhibits.<sup>147</sup> The Department’s comparison of these tariff schedules to the goods imported by respondents, by tariff schedule heading, confirmed the benefit information reported by respondents (*i.e.*, Lightway benefited from the program, and Shanghai BYD and Shangluo BYD did not receive benefits).<sup>148</sup>

Since this indirect tax is provided for, or tied to, the capital structure or capital assets of a firm, as reported by Lightway, the Department treated this tax as a non-recurring benefit and allocated the amount of the VAT and/or tariff exemptions, as applicable in the given year, over the AUL.<sup>149</sup> To calculate the countervailable subsidy, we used our standard methodology for non-recurring grants.<sup>150</sup> In the years that the benefits received by each company under this program did not exceed 0.5 percent of relevant sales for that year, we expensed those benefits in the years that they were received, pursuant to 19 CFR 351.524(b)(2). We used the discount rates described above in the section “Subsidies Valuation Information,” to calculate the amount of the benefit allocable to the POR. We then divided the benefit amount by the appropriate sales denominator.

On this basis, we determine a countervailable subsidy rate of 0.05 percent *ad valorem* for Lightway and 0.0 percent *ad valorem* for the BYD Group under this program.

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<sup>142</sup> *Id.* We note that the GOC did not provide any laws and regulations in its submissions on the record of this review pertaining to this program.

<sup>143</sup> See section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1).

<sup>144</sup> See *Magnola*, 508 F.3d 1349. See also *DRAMs from Korea*, and accompanying Issues and Decision Memorandum at “Programs Previously Determined to Confer Subsidies.”

<sup>145</sup> See Lightway’s May 19, 2014, questionnaire response at 8.

<sup>146</sup> See the BYD Group’s June 2, 2014, questionnaire response at 16.

<sup>147</sup> See Lightway’s May 19, 2014, questionnaire response at Exhibit 2.11; see also the BYD Group’s September 22, 2014, questionnaire response at Exhibits S-41 and S-42.

<sup>148</sup> See Final Calculation Memoranda.

<sup>149</sup> See 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).

<sup>150</sup> See 19 CFR 351.524(b).



## 10. VAT Rebates on FIE Purchases of Chinese-Made Equipment

The BYD Group reported using this program, but it did not report its benefit information because it claimed that it did not use this program to purchase equipment related to the production of subject merchandise.<sup>151</sup> In the *Preliminary Results*, we stated that we would collect additional information on this program with respect to the BYD Group.<sup>152</sup> After the *Preliminary Results*, the BYD Group provided additional information regarding its usage of this program, which we examined at verification.<sup>153</sup> At verification, we reviewed information such as equipment purchase worksheets, banking information, and tax documents demonstrating that the BYD Group benefitted from this program in 2004, 2010, and 2012.<sup>154</sup> The record indicates that this program was terminated by the GOC in 2009,<sup>155</sup> and the BYD Group reported that because of the lengthy application process, some of the VAT rebates were received during 2010 and 2012 for equipment imported before 2009 (*i.e.*, after the program was terminated).<sup>156</sup> Information on the record (*e.g.*, the BYD Group's business registration documents, financial statements, and notes from its board of directors meetings) indicates that the BYD Group did not begin producing subject merchandise until 2010 (*i.e.*, the machinery purchased under this program was purchased before the BYD Group started producing subject merchandise).<sup>157</sup> Thus, according to the BYD Group, the rebates provided for VAT paid for this equipment are "tied" to non-subject merchandise and cannot be attributed to the production of the merchandise under review.

19 CFR 351.525(b)(5)(i) states that generally, "(i)f a subsidy is tied to the production or sale of a particular product, the Secretary will attribute the subsidy only to that product." However, in making this determination, the Department analyzes the purpose of the subsidy based on information available at the time of bestowal, and is not required to examine the use or effect of subsidies, *i.e.*, to trace how benefits are used by companies.<sup>158</sup> A subsidy is tied only when the intended use is known to the subsidy giver (in this case, the GOC) and so acknowledged prior to or concurrent with the bestowal of the subsidy.<sup>159</sup>

According to the BYD Group, to receive the VAT rebates at issue, companies must demonstrate to the GOC tax authorities that they are conducting business in "encouraged" industries and projects, but the BYD Group was unable to provide for the record any copies of either its application or approval documents, which would have demonstrated that the GOC provided these rebates pursuant to the BYD Group's participation in other industries.<sup>160</sup> Thus, the record does not contain information indicating that the GOC knew, at the time of bestowal, that the equipment could not be used to produce subject merchandise. In fact, the equipment appears to

<sup>151</sup> See the BYD Group's October 17, 2014, questionnaire response at 4.

<sup>152</sup> See *Preliminary Results* and accompanying PDM at 41.

<sup>153</sup> See the BYD Group's March 5, 2015, questionnaire response at 2-10; see also the BYD Group VR at 5-6.

<sup>154</sup> See BYD Group VR at 5-6. Shanghai BYD benefitted from this program in 2004, and BYD Co., Ltd. benefitted in 2010 and 2012.

<sup>155</sup> See the BYD Group's March 5, 2015, questionnaire response at Exhibit S-56-J, "Circular on Terminating Tax Refund Policies on Purchase of Domestically-Manufactured Equipment by Foreign-Invested Enterprises."

<sup>156</sup> See the BYD Group's March 5, 2015, questionnaire response at 3.

<sup>157</sup> See the BYD Group VR at 5-6.

<sup>158</sup> See *CVD Preamble*.

<sup>159</sup> See, *e.g.*, *Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 69 FR 51063 (August 17, 2004), and accompanying IDM at Comment 2.

<sup>160</sup> See the BYD Group's March 5, 2015, questionnaire response at 2-10.

be general industrial equipment that could be repurposed to produce a variety of types of merchandise. Therefore, we determine that rebates received under this program are attributable to all production of the BYD Group.

Based on our analysis of the record, we find that the VAT rebates under this program constitute a financial contribution to the BYD Group in the form of revenue foregone by the GOC and, that these rebates provide a benefit to the BYD Group in the amount of the tax savings.<sup>161</sup> We continue to find, as we did in the original investigation, that these VAT rebates are contingent upon the use of domestic over imported equipment, and are specific under section 771(5A)(A) and (C) of the Act.<sup>162</sup>

Since this indirect tax program is provided for the capital structure or capital assets of a firm, we are treating these tax rebates as non-recurring benefits, and we allocated benefits to the BYD Group over the AUL.<sup>163</sup> For the years where the benefit was less than 0.5 percent of the relevant sales amount, we expensed the rebates in the year of receipt.<sup>164</sup> For those years where the VAT rebates were greater than or equal to 0.5 percent, we allocated the benefit amount over the AUL. Where applicable, we used the discount rates described above in the “Subsidies Valuation Information” section to calculate the amount of the benefit allocable to the POR. On this basis, we determine a countervailable subsidy rate of 0.01 percent *ad valorem* for the BYD Group.<sup>165</sup>

Lightway is not an FIE and is therefore ineligible for this program. As such, it reported receiving no benefits under this program.

## 11. Discovered Subsidies

For the subsidies discovered at Lightway’s verification, we have applied our CVD AFA methodology for calculation of the subsidy rates. Specifically, we first determine if there is an identical program in the proceeding at issue and use the highest calculated rate for the identical program. If there is no identical program above *de minimis*, we then determine if there is a similar or comparable program based on treatment of the benefit. When there is no above *de minimis* rate from the same, or a similar, program in the proceeding, then we look outside the proceeding (but within the same country) for the highest calculated rate for the same program. If there is no such rate from a different proceeding, we look for the highest calculated rate from a comparable program. Where there is no comparable program, we apply the highest calculated rate from any non-company specific program, but we do not use a rate from a program if the industry in the proceeding cannot use that program.<sup>166</sup> As AFA, we are applying a total combined rate of 2.32 percent *ad valorem* to these discovered programs for Lightway. Interested parties have commented on the countervailability of these discovered subsidies, which we address at Comment 8, below.

<sup>161</sup> See section 771(5)(D)(ii) of the Act, and 19 CFR 351.510(a)(1); see also *Investigation Final Determination* and accompanying IDM 18-19.

<sup>162</sup> See *Investigation Final Determination* and accompanying IDM 18-19.

<sup>163</sup> See 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).

<sup>164</sup> See 19 CFR 351.524(a).

<sup>165</sup> See Department Memoranda, “Post-Preliminary Calculations for the BYD Group,” (April 21, 2015).

<sup>166</sup> See *id.*

## 12. Export Credit Subsidy Programs: Export Buyer's Credits

Through this program, the Ex-Im Bank provides loans at preferential rates for the purchase of exported goods from the PRC. We found that this program was not used by the company respondents in the *Preliminary Determination*.<sup>167</sup> However, we were not able to verify the reported non-use of export buyer's credits during the verification of the GOC.<sup>168</sup>

As explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we are determining, relying upon adverse facts available, that both the BYD Group and Lightway used this program during the POR. We find that financing from the Ex-Im Bank under this program constitutes a financial contribution within the meaning of sections 771(5)(B) and 771(5)(D)(i) of the Act. We further find that this program is specific because it is contingent upon export performance, within the meaning of section 771(5A)(A)-(B) of the Act. Our determination regarding the countervailability of this program, our reliance on AFA, and our selection of the appropriate rate to apply to this program are explained in further detail under Comment 1, below. On this basis, we determine a countervailable subsidy rate of 5.46 percent *ad valorem* for the BYD Group, and 5.46 percent *ad valorem* for Lightway under this program.

### **B. Programs Determined To Be Not Used or Not to Confer a Measurable Benefit During the POR**

#### Grant Programs<sup>169</sup>

1. Golden Sun Demonstration Program\*
2. 2010 Special Funds for the Development of Five Key Industries (Equipment Manufacturing Industry, Electronic Information Industry, New Materials Industry, Biological Technology and Pharmaceutical Industry, and New Energy Industry) by Changzhou Municipal Government and Xinbei District Government, Changzhou\*
3. Development Credit Insurance Funds supported by Changzhou Municipal Government\*
4. Award for Science and Technology Progress by Changzhou Municipal Government\*
5. Financial Subsidies for 2009 by Changzhou Municipal Government\*
6. Award from the export processing zone of Changzhou by Changzhou Municipal Government\*
7. Subsidy of 3.15 Income by Changzhou Municipal Government\*
8. Award for Municipal Technology Center Enterprise by Changzhou Municipal Government\*
9. Credit Guarantee Supporting Funds by Changzhou Municipal Government\*
10. Award for Water Conservation by Changzhou Municipal Government\*
11. Patent Funding\*

<sup>167</sup> See *Preliminary Results* and accompanying PDM at 41.

<sup>168</sup> See GOC VR at 4-7.

<sup>169</sup> Please note that certain programs (*see* \*) were found to be non-recurring subsidies and, therefore, the Department is examining benefits provided under these programs for the period between January 1, 2003, and the end of the POR.

- Lightway reported the receipt of a one-time grant payment during the POR under this program.<sup>170</sup> We divided the payment received by Lightway's total sales to derive a subsidy rate of 0.0 percent for this program.<sup>171</sup>

12. Subsidy for Other Technology Research Development Expenses by Changzhou Municipal Government\*II-5
13. Subsidy for Applied Technology Research and Development by Xinbei District Government, Changzhou\*
14. Incentives for Listed Enterprises by Changzhou Municipal Government\*
15. Patent Award by Changzhou Municipal Government\*
16. Award for listing by Changzhou Municipal Government\*
17. Incentive for Patents Invention from Xinbei District Government, Changzhou\*
18. Science and Technology Progress Award by Xinbei District Government, Changzhou\*
19. Top 10 in Tax Paid Amount of Year 2008 Award\*
20. Funding for Technological Transformation of 50 MW Highly Efficient Ultra-Thin Silicon Solar Cells Production Line by Xinbei District Government, Changzhou\*
21. Funding for 100 KW grid-connected photovoltaic generation system by Changzhou Municipal Government\*
22. Subsidies for the Overseas Exports by Changzhou Municipal Government\*
23. Funding for International Trade Fair Booth, Exhibition, Exhibits, Transportation, Costs of Exploring International Markets by Changzhou Municipal Government\*
24. Funding for technology development promotion center topics by Changzhou Municipal Government\*
25. Funding to further promote the Steady Growth of Foreign Trade Act of 2009 by Changzhou Municipal Government\*
26. Grants for major technology transformation project on equipment by Changzhou Municipal Government\*
27. Patent award by Xinbei District Government, Changzhou\*
28. Grants for efficient screen printing silicon solar battery development project by Xinbei District Government, Changzhou\*
29. Incentives for Patents of Invention by Changzhou Municipal Government\*
30. Funds for Promoting SME to be Listed by Jiangsu Finance Department/Funds for Technology Improvement by Jiangsu Province\*
31. Award for Provincial Engineering Technology Center\*
32. Awards for Jiangsu Famous Brand Products\*
33. Supporting Funds for "Going Global"\*
34. Subsidies for Foreign Cell Installation Experts\*
35. Grants for National High Technology Industry\*
36. Science and Technology Award\*
37. Subsidies for Environmental Protection\*
38. BIPV Projects\*
39. Funding on Infrastructure\*
40. Grants for Employee Bonuses\*
41. Wuxi Airport 800 KW Program\*

<sup>170</sup> See Lightway's May 19, 2014, questionnaire response at 10.

<sup>171</sup> See Lightway's Final Calculation Memorandum.

42. PV Technology Research Institute of Jiangsu (Suntech)\*
43. Fund for Solar Optoelectronic Application Demonstration by Management Committee of the New District\*
44. Self-Research on Core Equipment of Solar PV and Semiconductor Lighting Industry/Self-Research on New Online Direct Method of PEVCD\*
45. Demonstration Project of 300 KW Roof Solar PV Grid Power Generation System\*
46. Industrialization and Research of New Solar Cells\*
47. Research and Industrialization of Thin Film Cells\*
48. Research on Highly Efficient and Low-Cost Thin Film Cells\*
49. Technology and Application Research on Glass-Base Suede Gazno Transparent and Electrically Conductive Film Manufacture\*
50. Demonstration Program of 300 KW Roof Solar PV Grid Power Generation System\*
51. Renewable Energy of Finance Bureau, Wuxi City\*
52. Research on New-Style High-Transmission Solar Cell Reducing the Reflection Film with Nano Structure\*
53. Fund for Construction of Energy Institution by the Management Committee of New District\*
54. Public Welfare Project Funding from Supervision and Examination Station of Product Quality, Wuxi City\*
55. Provincial Export Credit Insurance Supporting Development Fund Allocation by Management Committee of New District from December 2008 to June 2009\*
56. Patent Fund from Management Committee of New District, Wuxi Government\*
57. Special Reward for “333” Program by Municipal Organization Department\*
58. Science and Research Budget Allocation for Renewable Energy Construction Application Technology Project by Construction Bureau of Wuxi\*
59. Photovoltaic Technology Research Expenses by Personnel Bureau\*
60. Social Insurance Fund for Employers from Sichuan Earthquake Stricken Area\*
61. Import Discount by Jiangsu Provincial Government\*
62. Employment Expansion Planning Reward by Management Committee of New District\*
63. Fund for Demonstration Company of 2009 Provincial Intelligence Introduction Program\*
64. The First Group of Patent Fund in 2010 Provided by the Wuxi Government\*
65. Research, Development, and Industrialization of Technology and Key Equipment for P-Type Solar Power Cells with High Efficiency and Low Cost\*
66. Award for Luoyang City Outstanding Private Enterprise for 2009\*
67. Plan for Thousand Talents\*
68. Fund for Henan Industry Structure Adjustment and High-New Technology Industrialization Program\*
69. Discount Loans for Luoyang High-New Technology Industrialization Program (1.5 million RMB)\*
70. Research and Development Expenditure for Highly Efficient Crystalline Silicon Solar Cells\*
71. Special Reward for the 2008 Annual Investment Invitation of Major Program\*
72. Reward for Industry Development in the High-New District\*
73. Investment Invitation Reward in the High-New District\*
74. Shanghai Major Program for Industrialization of Innovation and High-New Technology in 2010\*



75. Key technology renovation regarding industrialization of PV cells\*
76. Ultra-thin PV cells with annual productivity of 10 MW\*
77. Research and Development and Industrialization of Effective Crystalline Silicon Solar Cell\*
78. PV energy technology research center of Jiangsu Province\*
79. Research, development, and application of high temperature dispersing furnace with wide and closed-pipe\*
80. Industrialization research on highly efficient PV cells with new structure\*
81. Independent PV power generating system with mixing storage capability of ultracapacitor\*
82. Demonstration program of high-tech industrialization on solar cell\*
83. Solar cells expansion project with a 120 MW annual productivity\*
84. Science subsidy from New District Management Committee of Wuxi government\*
85. Patent Fund from New District Management Committee of Wuxi City\*
86. Fund for Construction of Patent Theme Database by Enterprises\*
87. Fund for Introduction of Talents\*
88. Reward for Patent\*
89. Reward for Nation-recognized Enterprise Tech Center\*
90. Standard for Program Construction\*
91. Social Security Refund for Employment of People from Earthquake Stricken Area in the Second Quarter of 2010\*
92. Export Credit Insurance Fund in the second quarter\*
93. Employment Activities Fund\*
94. Energy-saving and Economy-recycling Fund\*
95. Fund for Introduction of Talents of National and Provincial Level\*
96. Patent Fund\*
97. Fund for Introduction of Talents in Wuxi City\*
98. Reward for Establishment of General Standard of Polysilicon Solar Cell\*
99. Post-doctoral Fund\*
100. Import Discounting by New District Government of Wuxi City\*
101. Reward for Provincial Famous Brand\*
102. Economic Development Fund for Private Enterprises\*
103. Reward for Science and Technology Development\*
104. Fund for Foreign Trade Development\*
105. First Prize for Provincial Science and Technology Development\*
106. Reward for Recognition as Provincial Technology Center\*
107. Fund for Six Biggest Expenses\*
108. Reward Fund for Recycled Economy\*
109. Renewable Energy Development Fund\*
110. Adjusting the balance government grants of last year\*
111. Science and Technology and Other Fund and Reform Fund for Potential of Enterprises\*
112. Tengfei Prize\*
113. Reform Fund for Potential of Enterprises\*
114. Science and Technology and Other Fund\*
115. Fund for Clean Production Enterprises\*
116. Renewable Energy Fund\*

117. National “863” Program\*
118. Reward by Trade Promotion Commission\*
119. Standard Fund by Financial Bureau of New District\*
120. Fund for Employment of People from Earthquake Stricken Area\*
121. Export Credit Insurance Fund by Management Committee of New District\*
122. Patent Fund by Management Committee of New District of Wuxi City\*
123. Free Financing Program Contract of Innovation Fund in Luoyang High-New Technology Industry Development District (Energy-Saving and Pollution-Reduction Type)\*
124. Special Fund for Information Development of “Double-Hundred” Planning Program\*
125. International Science and Technology Cooperation Fund Program/Science and Research Planning Program of Shanghai City\*
126. Shanghai Major Program for Industrialization of Innovation and High-New Technology in 2009\*
127. Technical Improvement of Energy Saving and Pollution Deduction Program in 2009\*
128. Program for Encouraging Purchase of International Advanced Research Equipment in 2009\*
129. Technical Innovation Program in Minhang District in 2010\*
130. 2010 Shanghai Pujiang Talent Plan\*
  131. Technology Introduction and Innovation Plan in Shanghai City (Exclusively for Thin Film Cells)\*
132. Development and Industrialization of Advanced Manufacturing Tech for Production of Highly Efficient and Low-cost Wafers\*
133. Polysilicon Wet Etching Insulation Machine\*
134. Research and Development and Industrialization of Complete Set of Production Line for Photovoltaic Cells and Key Technology for Wet Processing Equipment\*
135. Research and Development and Industrialization of SC0809 Efficient Low-cost P-type Solar Cell Texturing Cleaning Equipment\*
136. Research and Development and Industrialization of efficient low-cost p-type solar cell texturing cleaning equipment\*
137. Science and Technology Development Planning Fund\*
138. High-tech Development Fund from the Financial Bureau of Wuzhong\*
139. Fund for Municipal High-tech Enterprises\*
140. Fund for Support of Introduced Research and Development Institute from the Financial Bureau of Wuzhong District\*
141. Science and Technology Innovation Reward from Financial Bureau of Wuzhong District\*
142. Big taxpayer incentives granted by the Financial Bureau of Wuzhong District\*
143. Taxpayer reward from Financial Bureau of Wuzhong District\*
144. Export Product Research and Development Fund
145. Subsidies for Development of “Famous Brands” and “China World Top Brands”
146. Sub-Central Government Subsidies for Development of “Famous Brands” and “China World Top Brands”
147. Special Energy Fund (Established by Shandong Province)
148. Funds for Outward Expansion of Industries in Guangdong Province

## Tax Benefit Programs

1. The Two Free/Three Half Program for FIEs
2. Income Tax Reductions for Export-Oriented Enterprises
3. Income Tax Benefits for FIEs Based on Geographic Locations – Preferential Tax Programs for Western Development
4. Local Income Tax Exemption and Reduction Programs for “Productive” FIEs
5. Tax Refunds for Reinvestment of FIE Profits in Export-Oriented Enterprises
6. Tax Reductions for High and New-Technology Enterprises Involved in Designated Projects
7. Preferential Income Tax Policy for Enterprises in the Northeast Region
8. Guangdong Province Tax Programs

## Other Tax Programs

1. VAT and Tariff Exemptions for Purchases of Fixed Assets Under the Foreign Trade and Development Fund Program
2. The Over-Rebate of VAT Program
3. Tax Reductions for FIE Purchases of Chinese-Made Equipment

With respect to “Tax Reductions for FIE Purchases of Chinese-Made Equipment,” prior to the *Preliminary Results*, we had contradictory information on whether the BYD Group used this program.<sup>172</sup> Specifically, the BYD Group reported using this program, but the GOC reported that this program was not used by either respondent in this administrative review. The BYD Group later stated that there was some confusion regarding its reported use of this program.<sup>173</sup> As a result, we stated that we would collect further information on this program from both the GOC and from the BYD Group.<sup>174</sup> After we issued the *Preliminary Results*, the GOC and the BYD Group each submitted questionnaire responses stating that the BYD Group did not receive benefits from, or use this program, during the POR.<sup>175</sup> The GOC also provided information stating that this program was terminated in 2008.<sup>176</sup>

During the verification of the BYD Group’s questionnaire responses, we examined its income tax returns along with various accounts in its financial accounting systems (*e.g.*, taxes payable, government subsidies, deferred income assets related to government subsidies, and other operating income), and we saw no indication that the BYD Group used this recurring income tax program during the POR.<sup>177</sup> In particular, the only preferential income tax treatments we noted were for its qualifying as a Hi- or New-Technology Enterprise, and for offsetting its R&D costs, which were both reported in its questionnaire responses. As such, we find that the BYD Group

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<sup>172</sup> See PDM at 41.

<sup>173</sup> See the BYD Group’s November 19, 2014, questionnaire response at 3.

<sup>174</sup> *Id.*

<sup>175</sup> See the GOC’s February 19, 2015, questionnaire response at 1; *see also* the BYD Group’s March 5, 2015, questionnaire response at 10.

<sup>176</sup> See the GOC’s February 19, 2015, questionnaire response at 9.

<sup>177</sup> See BYD Group VR at 5 and 7. In the original investigation, we treated this program as a recurring subsidy program. *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 77 FR 17439, 17455 (March 26, 2012); *see also Investigation Final Determination*, and accompanying IDM at 22.

did not use this program (*i.e.*, it did not take any tax reductions for purchasing Chinese-made equipment).

Lightway is not an FIE and is therefore ineligible for this program. As such it reported receiving no benefits under this program.

### Export Financing

1. Export Credit Insurance from SINOSURE

## **IX. Analysis of Comments**

### **Comment 1: Whether the Ex-Im Bank Buyer's Credit Program is Countervailable**

#### *Petitioner's Affirmative Arguments*

- The Department should apply AFA to the Ex-Im Bank's Buyer's Credit Program.
- As AFA, the Department should determine that the GOC provided a financial contribution and conclude that the BYD Group and Lightway both benefitted from this program.
- The Department should apply an AFA rate of 19.55 percent, or in the alternative, 11.83 percent to this program, as lesser AFA rates have proven insufficient to deter the GOC's non-compliance with regard to the investigation of this program.
- At the very least, the Department should apply an AFA rate of 10.54 percent to this program, which is consistent with its past practice.
- The Department should make clear that it will continue to apply AFA to all future administrative reviews with respect to this program, unless verification conducted in a subsequent review warrants a different finding.

#### *The GOC's Rebuttal Arguments*

- Record evidence establishes non-use in this case.
- This program can only be used where there is an export sales contract between the exporter and the importer valued at \$2 million or more; the Department did not uncover any sales contracts between the respondents and their U.S. customers that totaled \$2 million, thereby precluding the respondents' participation in this program.
- The Ex-Im Bank pays the exporter directly for goods as part of this program, and the Department confirmed at verification that neither respondent had any transactions with the Ex-Im Bank.
- Loan contracts under this program are between the Ex-Im Bank and the foreign importer; the importer's downstream customers are ineligible for buyer's credits.
- The Department could have, and should have, verified this program at the locations of the respondents' U.S. importers.
- The GOC's actions at verification do not warrant the application of AFA. At verification, the GOC attempted to cooperate in a manner that satisfied both the Department and the GOC's own confidentiality and bank secrecy rules.
- Ex-Im Bank officials provided the Department with screen shots of database queries showing that none of the U.S. customers received buyer's credits during the POR, which

the Department's verifiers reviewed. Ex-Im Bank officials only redacted these screen shots because of the Department's verifiers desire to take the screen shots as verification exhibits. Even with the redactions, the screen shots showed that the U.S. customers did not receive buyer's credits.

- The Department's refusal to accept the redacted screen shots was arbitrary and an abuse of discretion; the Department has accepted redacted material in many other instances, including from the SSB in the instant review.
- Petitioner's proposed AFA rates should be rejected as they cannot satisfy the corroboration requirement described under section 776(c) of the Act; these proposed AFA rates lack any commercial relationship to the respondents and are overly punitive.
- Rates from previous cases as the AFA rate should be rejected as they cannot be corroborated to the commercial reality of the respondents in this case.
- The Department has no basis to find that the 10.54 percent rate, or a higher rate proposed by Petitioner, is accurate or relevant to the respondents' commercial experience in this review.
- Instead of selecting an outdated rate based on loans from years prior to the POR, the Department should use the Ex-Im Bank Seller's credit rate that was calculated in *Citric Acid from the PRC*. This rate is from a program that is similar to the Ex-Im Bank Buyer's credit program.
- Petitioner's claim that AFA should be applied to the GOC in all future reviews for this program is contrary to law and should be rejected. It is well settled that each proceeding is based on its own record and its own unique facts.

#### *The BYD Group's Rebuttal Arguments*

- The Department properly determined non-use of this program in the *Preliminary Results*, and should continue to do for the final results.
- The BYD Group confirmed in its questionnaire responses that neither it, nor its U.S. customers participated in this program, and furnished a signed written statement from its U.S. customer as proof thereof.
- In *Chlorinated Isocyanurates from the PRC*,<sup>178</sup> the Department found that statements from the respondents' U.S. customers certifying that they did not receive financing under this program were sufficient evidence of non-use. The Department should apply the same reasoning in this case.
- The Department also conducted its own verification of loan benefits and on the non-use of other subsidy programs and found no evidence that the BYD Group used this this program. Verification of the GOC's questionnaire responses regarding this program does not detract from these facts.
- If the Department calculates a benefit for this program, it may not use the uncooperative and punitive rates proposed by Petitioner. The Department should instead apply a rate based on the methodology used to value benefits for the similar Export Seller's Credit program that was examined in *Citric Acid from the PRC*.
- The 10.54 percent rate from *Coated Paper from the PRC* cannot be corroborated, and is not appropriate based on the circumstances of this case.

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<sup>178</sup> See *Chlorinated Isocyanurates From the People's Republic of China: Final Affirmative Countervailing Duty Determination*; 2012, 79 FR 56560 (September 22, 2014) (*Chlorinated Isocyanurates from the PRC*).



### *Goal Zero's Rebuttal Arguments*

- The record shows that the GOC cooperated during verification.
- The facts of this record show that there is no evidence that the mandatory respondents benefitted from this program.
- The Department's verifiers met with officials from the Ex-Im Bank, who explained how the program works, including that it is a contract between the exporter and the importer, the requirements that the exporter's contract must meet to qualify for lending, the application process, and the lending verification process.
- At verification, Ex-Im Bank officials also probed their electronic system with a list of each respondent's customers that the Department reviewed to determine whether the buyer's credits were used.
- Before the Department can legally countervail an alleged subsidy, it must first determine that there is, indeed, a subsidy. The Department relies on information from the foreign government to determine whether an alleged subsidy program constitutes a financial contribution and is specific, and relies on information from the respondent company to determine whether a benefit has been conferred.
- The respondent companies have information pertaining to the existence and amount of the benefit conferred on them by the program, and retain the opportunity to demonstrate the absence of a benefit, or non-use, when the government is found to have failed to act to the best of its ability. Therefore, the Department can determine that a countervailable subsidy was not conferred if it determines that the participating respondent did not benefit from the program.
- At verification, Lightway proved that its sole U.S. customer did not use the program, and Shanghai BYD submitted an affidavit from its sole U.S. customer that it also did not use this program. In *Chlorinated Isocyanurates from the PRC*, the Department did not countervail the Ex-Im Bank program based on the fact that the U.S. importers filed affidavits with the Department confirming the non-use of this program. As established by this precedent, the respondents established that none of their U.S. customers utilized any Ex-Im Bank programs in the instant review.

### *Lightway's Rebuttal Arguments*

- Petitioner's allegation that Lightway received benefits under this program lacks evidentiary support on the record of this case, and has seized on this program as an easy way to significantly "pad" CVD rates.
- At verification, the Department verified that there was no evidence on the record that Lightway received loans from the Ex-Im Bank, which would have been dispersed directly to Lightway as the exporter.
- The Department reviewed similar evidence in *Chlorinated Isocyanurates from the PRC* and concluded that there was no evidence that this program was used. The result should be the same for Lightway, which has fully cooperated and disclosed the books and records of both itself and its U.S. importer.
- In any event if the Department decides to measure and countervail any facts available benefit for this program, it should use the rate calculated in the third CVD review of *Citric Acid from the PRC* for the Export Seller's Credit for High- and New-Technology Products, which is 1.1 percent.

**Department's Position:** The GOC and the company respondents all claim that the BYD Group and Lightway did not use this program during the POR, and they all contend that the Department could have verified this information at the company level. In prior CVD proceedings involving this GOC program, we explained that the Ex-Im Bank is the entity that possesses the records the Department needs to verify the accuracy of non-use claims.<sup>179</sup> Indeed, in *Solar Products from the PRC*, we explained that “because it is the Ex-Im Bank that provides loans to the customers of Chinese producers under this program, the Ex-Im Bank is the entity that possesses the records we need to verify the accuracy of non-use claims, because it was the lender.”<sup>180</sup> At the GOC on-site verification, Ex-Im Bank officials stated that the Bank maintains an electronic system for this program.<sup>181</sup> To determine that none of the buyer's credits were used, Ex-Im Bank officials received a list of each of the BYD Group's and Lightway's customers. These officials stated that they queried the electronic system to see if any of those customer names appeared. Ex-Im Bank officials stated that they found no records of loans issued to any of the BYD Group's or Lightway's customers.<sup>182</sup> Ex-Im Bank officials provided screenshots of these search results, which they claim demonstrated that there were “no results” for the queries performed using the customer names. However, because the Bank officials wished to redact most of the information from the screenshots, which would have rendered the exhibits unusable, the Department's verifiers declined to accept these screenshots as verification exhibits.<sup>183</sup>

Further, when the Department's verifiers requested to check the data queries in the Ex-Im Bank electronic system for themselves, Bank officials stated that the system contained proprietary and confidential information, and declined the verifiers' request.<sup>184</sup> The Department's established practice during verification is to test and confirm for itself whether information submitted in questionnaire responses is complete and accurate. Indeed, with respect to this program, our verification agenda stated, “If records are maintained electronically, we will need to check through data queries whether any of the U.S. customers of the respondents received buyer's credits that were outstanding during the POR.”<sup>185</sup> However, as explained in the GOC VR, Ex-Im Bank officials did not permit the Department's verifiers to trace the data in the query results to the underlying database, thereby preventing the verifiers from determining whether the information provided by Ex-Bank officials was complete and accurate.<sup>186</sup> In other words, even if the verifiers had accepted the heavily redacted screenshots, the Department still would not have been able to confirm the completeness and accuracy of the screenshots through queries of the databases themselves. Further, and importantly, other interested parties in this proceeding, even those with access under an administrative protective order, would not have been able to thoroughly comment on redacted screen shots of the Ex-Im Bank's search results.

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<sup>179</sup> See, e.g., *Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 78799 (December 31, 2014) and accompanying IDM at Comment 6; see also *Solar Products from the PRC* and accompanying IDM at Comment 16.

<sup>180</sup> See *Solar Products from the PRC* and accompanying IDM at 92.

<sup>181</sup> See GOC VR at 6.

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> See the Department's Letter to the GOC, “Administrative Review of the Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Government Verification Outline,” (March 4, 2015) (GOC Verification Agenda) at E-4.

<sup>186</sup> See GOC VR at 6.

With respect to Goal Zero's claim that the Department should not countervail the Ex-Im Bank program based on the exception made in *Chlorinated Isocyanurates from the PRC*, we find that the facts of this proceeding do not justify such an exception.<sup>187</sup> In *Chlorinated Isocyanurates from the PRC*, the company respondents submitted statements from *each* of their U.S. customers certifying that they did not receive any financing from the China Ex-Im Bank.<sup>188</sup> The record of this administrative review, however, does not contain statements or certification from *each* of the BYD Group's and Lightway's U.S. customers.<sup>189</sup> In other words, the Department cannot assume that the statements of *some* of the respondents' U.S. customers are applicable to *all* of their U.S. customers. The instant record shows that the BYD Group and Lightway each had more than one U.S. customer during the POR,<sup>190</sup> which contradicts Goal Zero's argument above that each respondent only had one (*i.e.*, "sole") customer in the United States.<sup>191</sup> As such, the facts of this proceeding are distinguishable from the exception made in *Chlorinated Isocyanurates from the PRC*.

Section 776(b) of the Act provides that the Department may use an adverse inference in selecting among the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. In *Nippon Steel Corporation v. United States*, the U.S. Court of Appeals for the Federal Circuit explained that a party fails to cooperate to the best of its ability when information is not provided "under circumstances in which it is reasonable to conclude that less than full cooperation has been shown."<sup>192</sup> In this proceeding, the Department made a request to query the Ex-Im Bank's electronic database to determine the accuracy and completeness of statements made by Ex-Im Bank officials regarding non-usage of the program, as well as the GOC's questionnaire responses. In refusing access to the database, we find that the GOC demonstrated less than full cooperation at the on-site verification, and as such, failed to cooperate by not acting to the best of its ability to comply with the Department's request for information. As explained in *Solar Cells from the PRC*, "{a}ssuming *arguendo* that there were means of verifying non-use at the companies, there is still no reason the Department should not expect the GOC to permit verification of its own questionnaire responses."<sup>193</sup>

In sum, we find that necessary information is missing from the record. Also, we find that the GOC failed to provide information requested at verification and also significantly impeded this proceeding. Accordingly, the use of facts available is warranted under sections 776(a)(1), (2)(A), (2)(C), and (2)(D) of the Act. Further, in selecting from among the facts available, we have determined, pursuant to section 776(b) of the Act, it is appropriate to use an adverse inference because the GOC failed to cooperate by not acting to the best of its ability to comply with

<sup>187</sup> See *Chlorinated Isocyanurates from the PRC* and accompanying IDM at 15.

<sup>188</sup> *Id.* (the Department found that "both {the company respondents} in their questionnaire responses provided statements from each of their U.S. customers in which each customer certified that they did not receive any financing from China ExIm.").

<sup>189</sup> See the BYD Group's June 2, 2014, questionnaire response at Exhibit 19, "Shanghai BYD List of Customers for Export Sales," see also Lightway's May 19, 2014 questionnaire response at Exhibit 2.20, "List of Foreign Customers."

<sup>190</sup> *Id.*

<sup>191</sup> See Goal Zero Rebuttal Brief at 6.

<sup>192</sup> *Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1383 (Fed. Cir. 2003).

<sup>193</sup> See *Investigation Final Determination*, and accompanying IDM at 63.

requests for information. Relying on AFA, we find that Lightway and the BYD Group benefitted from export buyer's credits provided by the Ex-Im Bank.

With regard to the applicable rate to apply as an AFA, we have established a CVD AFA methodology for selecting AFA rates for programs for which no verified usage information was provided, as explained in the section, "Use of Facts Otherwise Available and Adverse Inferences," above. According to this practice,<sup>194</sup> for programs other than those involving income tax exemptions and reductions, we will apply the highest calculated rate for the identical program in the same proceeding if another responding company used the identical program. If no other company used the identical program within the proceeding, we will use the highest calculated rate from a similar program in the proceeding at issue, unless the rate is *de minimis*.<sup>195</sup> If there is no identical or similar program match in the CVD proceeding at issue, we will use the highest rate calculated for an identical program in another CVD proceeding involving the same country.<sup>196</sup> In the absence of the identical program in another CVD proceeding, we will use the highest calculated rate from a similar program in another CVD proceeding involving the country at issue.

The BYD Group argues that we should use a rate of 1.1 percent, which was calculated in *Citric Acid from the PRC 2011* for the program, Export Seller's Credit for High- and New-Technology Products.<sup>197</sup> However, we first look within the proceeding at issue for an appropriate rate.

We note that the Department has not calculated a rate for the program at issue, the Export Buyer's Credits program, in this review. However, moving to the next step in our methodology, we have calculated a rate for a similar program, which is Preferential Policy Lending to the Renewable Energy Industry. Therefore, we determine that the highest calculated rate for a comparable lending program in this proceeding is 5.46 percent. In accordance with section 776(c) of the Act, we find that rate is corroborated to the extent practicable as we are relying on a rate calculated in this same proceeding.

## **Comment 2: Whether the Department Should Continue to Apply AFA in Determining Whether to Use an Internal or External Benchmark**

### *Petitioner's Affirmative Arguments*

- The Department should continue to apply AFA with respect to the GOC's provision of polysilicon, aluminum extrusions, and solar glass for LTAR in the final results because the GOC failed to allow the Department to verify the GOC's National Bureau of Statistics' (SSB) databases.
- As AFA, the Department should use the highest benchmark on the record for each of these inputs (*i.e.*, polysilicon, aluminum extrusions, and solar glass).

<sup>194</sup> See, e.g., *Aluminum Extrusions from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 78788 (December 31, 2014), and accompanying Issues and Decision Memorandum at 15-16.

<sup>195</sup> *Id.*

<sup>196</sup> See *id.*

<sup>197</sup> See *Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2011*, 79 FR 108 (January 2, 2014) (*Citric Acid from the PRC 2011*) and accompanying IDM at 18.

*The GOC's Affirmative Arguments*

- The Department should use the SSB data submitted in this case for its analysis of the relevant input industries.
- There is no basis for the Department to claim in this case that the SSB data are unreliable; record evidence demonstrates that the SSB remains a reliable source for market data regarding specific inputs.
- At verification, the Department reviewed hard copies of the databases that were the source of the information submitted by the GOC, and no discrepancies were discovered that would render this information unusable in the Department's analysis.
- The SSB had source documents available for the Department to review at verification, however these documents seem to have been discounted in favor of a desire for access to the SSB's databases, which were unavailable for the Department to review.
- The GOC established that the markets for polysilicon, aluminum extrusions, and solar glass are not distorted by SIEs.
- With respect to polysilicon, the Department should reverse its preliminary finding as the GOC demonstrated that the SSB data regarding the Chinese polysilicon industry are reliable.
- The GOC demonstrated that the RMB 20 million sales threshold for PRC companies to report their polysilicon usage does not distort the data on that industry.
- The findings from the previous *Solar Panels* case have been invalidated and the statutory criteria for using facts available have not been met in the instant proceeding.
- The Department should apply a tier one benchmark with respect to the provisions of polysilicon, aluminum extrusions, and solar glass.

*Petitioner's Rebuttal Arguments*

- The GOC verification report makes clear that SSB officials refused to allow the Department to verify the SSB databases. In sum, the GOC thwarted the Department's attempts to verify its responses with respect to the SSB data relevant to the polysilicon, solar glass, and aluminum extrusions for LTAR programs.
- The GOC has participated in numerous CVD cases before the Department and is well aware that information that the Department is not able to verify is unreliable and cannot be used. Had the GOC wanted the Department to be able to use such information, it should have allowed the Department to verify the information.
- Because the Department was unable to verify the SSB data, such data are unreliable and cannot be used to calculate margins for the final results.
- With respect to the provision of polysilicon for LTAR, notwithstanding the lack of reliability of the SSB data, because the SSB only collects information from polysilicon companies with more than RMB 20 million in sales, the Department does not have sufficient information to analyze the entire polysilicon industry. The Department reached a similar conclusion in the CVD investigation of *Solar Products from the PRC*, and there is no evidence on the instant record that would warrant a deviation from that determination.
- The Department should continue to use tier-two benchmarks for the provisions of polysilicon, aluminum extrusions, and solar glass for LTAR.



*The GOC's Rebuttal Arguments*

- Application of AFA for the SSB's actions at verification is not warranted.
- The unavailability of the SSB's databases was a foregone conclusion that could have been remedied had the Department's verifiers chosen to request to visit the SSB offices where the databases are located.
- The Department's verification outline afforded the GOC with the option of having source records and/or databases available for the verifiers to review. The Department reviewed source documents and took several as verification exhibits.
- The Department did not request accommodations to try to move the verification site to the SSB to review the SSB's databases.
- The GOC responded in good faith with its best efforts to meet the Department's verification requirements, and it would be improper for the Department to translate this event into a basis for applying some level of "facts available" to the GOC's participation in this case.

*The BYD Group's Rebuttal Arguments*

- The Department should reject Petitioner's request to apply an adverse inference in selecting the benchmarks for purchases of polysilicon, aluminum extrusions, and solar glass. Even if Petitioner is correct that the GOC failed to disclose confidential information concerning the number and distribution of producers in various PRC industrial sectors, this is relevant only to the question of specificity and not the benchmark.

**Department's Position:** As explained above and in the *Preliminary Determination*,<sup>198</sup> we have relied on facts available to find that the GOC's involvement in the PRC's solar grade polysilicon market leads to significantly distorted solar grade polysilicon prices in the PRC. Our facts available finding was limited to the determination that a so-called "external benchmark" was warranted for measuring the benefits from this program because the GOC failed to provide accurate data needed for evaluating the extent of its involvement in the PRC polysilicon market. That failure does not affect the accuracy of information provided by the company respondents regarding their purchases and is not relevant in choosing which of the various external benchmark options is most accurate in measuring the benefit from the solar grade polysilicon purchased by respondents during the POR. Thus, we disagree with Petitioner that we should apply the highest external benchmark on the record or that we should use a rate calculated for another program (*i.e.*, a "plug rate") in determining the subsidy rate for this program. Likewise, our reliance on external benchmarks for solar glass and aluminum extrusions is not affected by the accuracy of the SSB data that was provided by the GOC. As explained above and in the *Preliminary Determination*<sup>199</sup>, no party has offered an internal "first-tier" benchmark for valuing these two inputs. Thus, we have relied on external benchmark data for both these inputs provided by Petitioner and BYD.

We also disagree with the GOC that the reliance on facts available is completely unwarranted. As explained above and in the *Preliminary Determination*, the SSB data provided by the GOC is

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<sup>198</sup> See *Preliminary Results* and accompanying PDM at 13.

<sup>199</sup> *Id.*

not a reliable indicator of industry distortion for polysilicon production in the PRC.<sup>200</sup> In particular, the SSB does not collect data for particular types of polysilicon, and thus did not provide data for solar grade polysilicon, the particular input used by respondents. Moreover, the SSB does not collect information from companies with more than RMB 20 million in annual sales. While the GOC claims that an on-site verification with the SSB eliminated the Department's concerns with its data, it did not. At verification, the SSB stated, in contradiction to the Department's understanding, that its data does not vary from year to year depending on which companies answer its surveys. The SSB also confirmed that it does not maintain data for solar grade polysilicon, solar glass or aluminum extrusions.<sup>201</sup> It also refused to allow the Department to query its databases so that the verification team could confirm that it does not maintain data for these specific products.<sup>202</sup>

The GOC argues that the printouts taken at verification are adequate substitutes for allowing the verification team to query the SSB's databases. We disagree, as the actual examination of such electronic records is an important tool that the Department uses to verify the accuracy and completeness of hardcopy printouts of queries performed by the respondents themselves without the involvement of the Department. Moreover, these hardcopy printouts simply restated the data already reported in the GOC's questionnaire responses (*e.g.*, polysilicon in general), and did not allow the verification team to confirm that data for the specific inputs at issue were not available (*e.g.*, solar grade polysilicon). We also note that it was the GOC's choice to hold the entire verification in the headquarters of the Ministry of Commerce, and not to schedule a session at the SSB, despite having been notified more than a week before by the Department's written verification agenda that the Department would be verifying the three LTAR input programs, and the SSB's data specifically.<sup>203</sup> In fact, as the Department intended to verify only one other program with the GOC, the three input programs constituted the bulk of the verification, and thus the GOC had ample notice that it should have scheduled the verification – or part of the verification – at a location where the verification team could have access to the SSB's databases. Even, assuming *arguendo*, that the GOC had not realized earlier the need to provide access to the databases, once the on-site verification team stated its desire to query the databases, the GOC could reasonably have moved or rescheduled the verification to the SSB's headquarters.

In sum, because the data the SSB provided is not for solar grade polysilicon, as the GOC itself has admitted, the Department's reliance on third party information in determining, as facts available, that the input market is distorted is warranted.

### **Comment 3: Whether the Provision of Aluminum Extrusions at LTAR is Specific**

#### *The GOC's Affirmative Arguments*

- The Department should reverse its finding in the *Preliminary Results* that the provision of aluminum extrusions for LTAR is specific.

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<sup>200</sup> *Id.*

<sup>201</sup> *See* GOC VR at 3.

<sup>202</sup> *Id.*

<sup>203</sup> *See* GOC Verification Agenda at E-2 – E-4.

- The GOC submitted information demonstrating that the industries that use aluminum extrusions are not limited, and that this input is widely distributed and used throughout the Chinese economy.
- One of the six industries the Department relied on in the *Preliminary Results* was “other industries,” which is not a single industry and consists of numerous PRC industries that consume aluminum extrusions.
- Aluminum extrusions are predominantly and disproportionately used by the construction industry in China, accounting for 65 percent of consumption, which prevents a specificity finding regarding the solar industry.
- With respect to whether the actual recipients of a subsidy are limited in number, the *CVD Preamble* explains that this analysis is not necessarily dependent on the number of enterprises involved, but instead is “focused on the makeup of the users.”
- A finding of no specificity with respect to the provision of aluminum extrusions for LTAR in this case is consistent with the Department’s specificity analysis in *Chlorinated Isocyanurates from the PRC*, where the Department found Urea for LTAR was not specific.

#### *Petitioner’s Rebuttal Arguments*

- The Department should continue to find that the provision of aluminum extrusions for LTAR is specific and countervailable.
- The GOC failed to address the Department’s specificity questions regarding aluminum extrusions; nowhere on the record did the GOC identify the industries or enterprises that purchase aluminum extrusions in the PRC.
- Given the GOC’s failure to cooperate, the application of AFA is warranted, consistent with the Department’s past precedent, such as in *Wind Towers from the PRC*.
- The Department explicitly acknowledged the GOC’s noncooperation in the *Preliminary Results*. The GOC has failed to provide any new information that would warrant a reversal of the Department’s preliminary findings.
- To the extent that the Department does not apply AFA, record evidence supports an affirmative finding that the provision of aluminum extrusions for LTAR is specific.
- The Department found the provision of aluminum extrusions for LTAR to be specific based on almost identical information in the recently concluded CVD investigation of *Solar Products from the PRC*.
- The Department determined that the provision of aluminum extrusions for LTAR is specific because this input is provided to a limited number of industries or enterprises. As a result, the Department is not required to determine that an industry or enterprise receives a disproportionately large amount of the subsidy, which is consistent with section 771(5A)(D)(iii) of the Act.
- The GOC’s contention that aluminum extrusions are widely consumed in the PRC is flawed. Even assuming that six industries consume aluminum extrusions in the PRC, the Department has, in the past, found the provision of a benefit to an even larger number of industries to be “limited” for purposes of specificity.

**Department’s Position:** The GOC provided third-party information concerning the industries in the PRC that used aluminum extrusions during the POR:

- “Construction industry:” 63.25%;
- “Transportation industry:” 12.45%;
- “Mechanical & electrical equipment industry:” 12.35%;
- “Consumer durable goods industry:” 4.62%;
- “Electricity:” 3.31%; and
- “Other industries:” 4.02%.<sup>204</sup>

The information also included lists of “major projects” or applications within these industries (e.g., window and door frames, curtain walls, high speed-rail, and furniture). Based on the information provided by the GOC, we find that the actual recipients of aluminum extrusions (on an industry basis) are limited in number within the meaning of section 771(5A)(D)(iii)(I) of the Act. With respect to the GOC’s claim that one of the six industries that we relied on in the *Preliminary Results* was “other industries,” which it contends is not a single industry and consists of numerous PRC industries that consume aluminum extrusions, we find that the GOC provided no information indicating the number of industries that constitute the category, “other industries.” We are therefore unable to determine the accuracy of the GOC’s statement that the category, “other industries,” includes numerous other industries that consume aluminum extrusions, particularly because the data provided by the GOC is from a third-party (i.e., not compiled by the GOC itself).

The GOC also argues that the PRC’s construction industry predominately or disproportionately consumed aluminum extrusions, whereas the entire electricity industry (which presumably includes the solar cell industry) accounts for only 3.31 percent of consumption. However, there is no need to analyze predominance or disproportionality under section 771(5A)(D)(iii)(II)-(III) of the Act when information on the record indicates that a subsidy is provided to a limited number of industries under section 771(5A)(D)(iii)(I) of the Act, as we found in the *Preliminary Determination* and as explained above.<sup>205</sup>

Finally, we disagree with the GOC’s argument that a determination that the program is not specific would be consistent with *Chlorinated Isocyanurates from the PRC*, where the Department found the program, urea for LTAR, to not be specific. In *Chlorinated Isocyanurates from the PRC*, we reached a “no specificity” determination after finding that urea is consumed by nine industries in the PRC.<sup>206</sup> Specifically, in *Chlorinated Isocyanurates from the PRC*, we verified that urea is consumed by at least nine different industries in the PRC, including: (1) agriculture (both as fertilizer and feed additives); (2) chemicals; (3) wood products; (4) textiles; (5) paper; (6) automotive; (7) industrial pollution control; (8) medicine; and (9) cosmetics.<sup>207</sup> In finding that the provision of urea for LTAR was not specific, we emphasized the diversity of the consuming industries and our lack of knowledge of the specific subindustries that consume urea. We found the program not to be specific based on the “overarching fact that a large number of diverse industrial sectors in the PRC use urea and that the industry producing subject

<sup>204</sup> See the GOC’s June 19, 2014, questionnaire response at 14.

<sup>205</sup> See, e.g., *Solar Products from the PRC* and accompanying IDM at 72; see also *CVD Preamble* at 65355.

<sup>206</sup> See *Chlorinated Isocyanurates from the PRC* and accompanying IDM at 23 and 38-41.

<sup>207</sup> *Id.*

merchandise is not the predominant or disproportionate user of urea.”<sup>208</sup> Further, while petitioners in *Chlorinated Isocyanurates from the PRC* argued that certain industries use only downstream urea products rather than just urea, the record lacked evidence to substantiate such a conclusion. We find that the list of industries consuming aluminum extrusions, however, is different. The industrial sectors for aluminum extrusions are less diverse.

#### **Comment 4: Whether the Department Should Adjust the Polysilicon Benchmark for these Final Results**

##### *Petitioner’s Affirmative Arguments*

- In the *Preliminary Results*, the Department used information from the Silicon Pricing Index from Photon Consulting as the polysilicon benchmark. The Department should use the average of the benchmarks on the record for the final results, which is consistent with its practice for applying a “second tier” benchmark.

##### *The BYD Group’s Rebuttal Arguments*

- The Department should continue to use the Photon Consulting benchmark for purchases of polysilicon. The Department has used this benchmark in all prior proceedings involving polysilicon.
- Petitioner failed to identify reasons to move away from using the Photon Consulting benchmark, and Petitioner has not explained the relevance and the accuracy of the alternative benchmarks it is proposing the Department use to calculate the average of the benchmarks on the record.

**Department’s Position:** Section 351.511(a)(2)(ii) of the Department’s regulations states that “{w}here there is more than one commercially available world market price, the Secretary will average such prices to the extent practicable . . .” Both Petitioner and the BYD Group submitted world prices for polysilicon.<sup>209</sup> However, Petitioner only submitted a chart titled, “Summary of Benchmarks for Solar Grade Polysilicon,” listing what appears to be pricing data from several sources without any underlying documentation demonstrating that these data are indeed prices for solar grade polysilicon covering the relevant period. And while the BYD Group submitted polysilicon pricing data from the “EnergyTrend Market Intelligent Service,” we find that this submission does not clearly demonstrate that it refers to solar grade polysilicon, which is the input under examination. As a result, we determine that we will continue to rely on the Silicon Price Index from Photon Consulting as the benchmark for solar grade polysilicon for these final results,<sup>210</sup> which clearly states that the pricing data is for solar grade polysilicon and covers the relevant period.<sup>211</sup>

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<sup>208</sup> *Id* at 40.

<sup>209</sup> See Letter to the Secretary from Petitioner, “Crystalline Silicon Photovoltaic Cells, Whether Or Not Assembled Into Modules, from the People’s Republic of China: Submission of Benchmark Information,” (May 19, 2014) at Exhibit 5; see also BYD Group Benchmark Submission at Exhibit 2.

<sup>210</sup> The Department used this same information for valuing solar grade polysilicon in the investigations of both solar cells and solar products.

<sup>211</sup> See Final Benchmark Memorandum. Solar grade polysilicon is more highly enriched and thus more expensive than polysilicon used for other applications, such as computer chips.



**Comment 5: Whether the Department Should Remove Certain Polysilicon Purchases from the Polysilicon for LTAR Benefit Calculation for Lightway**

*Lightway's Affirmative Arguments*

- The Department should not consider polysilicon purchases from suppliers located outside of the PRC in its benefit calculation.

No other party commented on this issue.

**Department's Position:** In the *Preliminary Results*, we inadvertently included certain of Lightway's polysilicon purchases from polysilicon producers located outside of the PRC in its benefit calculation. These purchases are clearly labeled as imports in the Excel chart Lightway provided. We have removed those purchases from Lightway's benefit calculation for these final results.

**Comment 6: Whether the Department Should Find the BYD Group to be Uncreditworthy During 2008, 2011, and 2012**

*The BYD Group's Affirmative Arguments*

- While the BYD Group did not receive long-term loans from lenders outside of the PRC during the periods in question, the record includes evidence of creditworthiness during these periods.
- The BYD Group received a \$230 million equity stake during 2008 from investors located in the United States.
- The BYD Group was given an AA+ credit rating during 2011 from the China Chengxin Securities Rating Co., Ltd. (CCSR) on bonds issued by the BYD Group in 2011 on the Shenzhen Stock Exchange.
- The BYD Group had a spotless credit history over an extended period of borrowing.

*Petitioner's Rebuttal Arguments*

- Substantial record evidence supports the Department's finding that the BYD Group was uncreditworthy, and the Department should continue to treat it as such for the final results.
- The BYD Group did not receive any long-term loans from sources outside of China.
- With respect to the 2008 equity investment by Berkshire Hathaway, the Department has previously held that equity investments are not akin to long-term commercial loans.
- The BYD Group's current and quick ratios were below the Department's benchmarks. In prior cases where these ratios were below the Department's benchmarks, the Department found the company to be uncreditworthy.
- Record evidence demonstrates that the BYD Group had negative cash flows net of its capital expenditures, and that it had high debt-to-equity ratios, indicating that the BYD Group's capital structure was in jeopardy.
- The GOC's involvement in, and subsequent distortion of, the Chinese financial sector renders credit ratings such as those from the CCSR likely to be distorted and therefore unusable.

**Department's Position:** The examination of creditworthiness is an attempt to determine if the company in question could obtain long-term financing from conventional commercial sources. According to 19 CFR 351.505(a)(4)(i), the Department will generally consider a firm to be uncreditworthy if, based on information available at the time at issue, the firm could not have obtained long-term loans from conventional commercial sources.

In making this determination, according to 19 CFR 351.505(a)(4)(i)(A)-(D), the Department may examine, *inter alia*, the following four types of information: 1) receipt by the firm of comparable commercial long-term loans; 2) present and past indicators of the firm's financial health; 3) present and past indicators 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. Under 19 CFR 351.505(a)(4)(i)(A), the Department looks to whether the company has received commercial long-term loans in assessing the company's creditworthiness. According to 19 CFR 351.505(a)(4)(ii), for companies not owned by the government, the Department normally considers a company's receipt of a long-term loan from a commercial source to be dispositive of its creditworthiness.

Based on an allegation from Petitioner,<sup>212</sup> we initiated an investigation on whether the BYD Group was uncreditworthy in 2008, 2011, and 2012.<sup>213</sup> As we explained in the CW Initiation, our initiation decision considered a number of factors, such as the BYD Group's lack of long-term comparable commercial loans during this time; low quick and current ratios (measures of the BYD Group's ability to meet its short-term financial obligations); declining operating cash flows (indicating that the BYD Group could not cover its costs and financial obligations through operating activities); and a rise in the BYD Group's "days in receivables" during 2007 to 2012, which indicates difficulty in collecting accounts and further liquidity problems.<sup>214</sup> Further, Petitioner's allegation indicated that the BYD Group's future financial position and its ability to repay its debts are negative, because antidumping and countervailing duties placed on solar products by the United States and in Europe make it difficult for Chinese manufacturers of subject merchandise to maintain operations without significant government intervention.<sup>215</sup>

After we initiated our creditworthiness investigation, we gave the BYD Group an opportunity to recalculate these financial ratios and cash flows itself, and to submit additional information such as internal and external studies relevant to its financial situation.<sup>216</sup> On March 5, 2015, the BYD Group responded to our questions regarding its creditworthiness,<sup>217</sup> and provided minor

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<sup>212</sup> See Letter to the Secretary from Petitioner, "Certain Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Allegation Regarding Creditworthiness of BYD," (November 26, 2014) (Creditworthiness Allegation).

<sup>213</sup> See Department Memorandum, "Administrative Review of the Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China; Uncreditworthiness Allegation," (February 11, 2015) (CW Initiation).

<sup>214</sup> *Id.* at 2-3.

<sup>215</sup> See Creditworthiness Allegation at 9.

<sup>216</sup> See Letter from the Department to the BYD Group, "Administrative Review of the Countervailing Duty Order on Certain Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Supplemental Questionnaire," (February 12, 2015).

<sup>217</sup> See Shanghai BYD's March 5, 2015, questionnaire response at 11-18.

corrections to its responses at verification.<sup>218</sup> The BYD Group's recalculated current and quick ratios were generally consistent with the ratios we relied on when initiating the creditworthiness investigation, and they were all lower than the benchmarks typically relied on by the Department (*i.e.*, lower than 2.0 for current ratios, and 1.0 for quick ratios).<sup>219</sup> The recalculated cash flows submitted by the BYD Group indicated that its operating cash flows were negative during the years in question. At the verification of the BYD Group's questionnaire responses, company officials stated that they did not make any adjustments to the financial information that they submitted, and that this information came directly from the BYD Group's financial statements.<sup>220</sup>

### Receipt by the Firm of Comparable Commercial Long-Term Loans

The first factor we consider is the receipt by the firm of comparable commercial long-term loans.<sup>221</sup> In the case of firms not owned by the government, the receipt of such loans, unaccompanied by a government-provided guarantee, will normally constitute dispositive evidence that the firm is not uncreditworthy.<sup>222</sup> We find that the BYD Group did not receive comparable commercial long-term loans in any of the years in question (years in which it received countervailable long-term loans from the GOC or years in which allocable, non-recurring subsidies were received). As the BYD Group itself admits, it received no long-term loans from lenders outside the PRC during the periods in question.

### Present and Past Indicators of the Firm's Financial Health, and Present and Past Indicators of the Firm's Ability to Meet its Costs and Fixed Financial Obligations with its Cash Flow

We next examined the BYD Group's financial ratios and indicators under the factors in 19 CFR 351.505(a)(4)(i)(B)-(C). Our analysis leads us to conclude that between 2006 and 2012, the BYD Group's current ratios ranged between 0.63 and 1.04, and its quick ratios ranged from 0.37 to 0.73, which are below the Department's respective typical benchmarks of 2.0 and 1.0, indicating the group cannot meet its short-term obligations (including existing short-term loan obligations) without resorting to additional short-term borrowing.<sup>223</sup> We also conclude that the BYD Group had negative cash flows net of its capital expenditures during this same time period (*i.e.*, ranging from negative \$462 million to negative \$1.95 billion), indicating that it was required to borrow to cover its cash outlays after servicing its long-term debts.<sup>224</sup> Moreover, the BYD Group had high debt-to-equity ratios during the period in question, reaching 1.90 in 2012, indicating nearly two thirds of the group's assets were financed through debt. At the same time, the group's long-term debt-to-equity ratios were only 0.36, indicating the vast majority of the

<sup>218</sup> See Letter to the Secretary from the BYD Group, "Crystalline Silicon Photovoltaic Cells, Whether Or Not Assembled Into Modules, from the People's Republic of China – 2012 Review: Minor Corrections Presented at Verification," (March 19, 2015) at Minor Correction No. 3.

<sup>219</sup> Petitioner alleged that the BYD Group's current ratio plunged from 1.046 in 2007 to 0.627 in 2012, and that its quick ratio declined from 0.711 in 2007 to 0.369 in 2012. See Creditworthiness Allegation at 5.

<sup>220</sup> See BYD Group VR at 7.

<sup>221</sup> See 19 CFR 351.505(a)(4)(i)(A).

<sup>222</sup> See 19 CFR 351.505(a)(4)(ii).

<sup>223</sup> See Post-Preliminary Analysis.

<sup>224</sup> *Id.*

debt used to finance its assets was short-term debt and suggesting an inability to obtain long-term lending, even from sources within the PRC.<sup>225</sup>

### Evidence of the Firm's Future Financial Position

Regarding evidence of the firm's financial position within the meaning of 19 CFR 351.505(a)(4)(i)(D), the BYD Group did not submit any feasibility studies that indicate its future financial position, but it did submit a credit rating report from the China Chengxin Securities Rating Co., Ltd., (CCSR) on bonds issued by the BYD Group in 2011 on the Shenzhen Stock Exchange. This credit rating report rated the BYD Group's bonds as "AA<sup>+</sup>," which "reflects high credit quality and low credit risk" and "reflects the strong debt service ability of BYD." The report, however, also warns of the unfavorable impact of such factors as the "too fast" expansion of the company's corporate sales network and the high concentration of customers in the mobile phone components and assembly business.<sup>226</sup> While the AA+ rating is one piece of information indicating the BYD Group is creditworthy, the Department's analysis is a "totality of the circumstances" analysis and we believe the information indicating uncreditworthiness is more convincing, taken as a whole. We also note the report provides little in the way of data or analysis for the Department to evaluate, instead providing mainly the conclusions of its authors, and is from a credit rating agency unknown to the Department.

Finally, regarding information that indicates the BYD Group's future financial position, the company provided information indicating that in 2008, MidAmerican Energy Holdings Company, a subsidiary of Berkshire Hathaway, purchased a 9.9 percent stake in the BYD Group on the Hong Kong Stock Exchange.<sup>227</sup> In prior proceedings, however, we have not considered equity investments to be akin to long-term commercial loans.<sup>228</sup> There are fundamental differences between lending to a company and owning equity in a company (*e.g.*, equity holders "own" the company and share decision making, whereas lenders generally do not), and the Department's regulations analyze lending and equity differently in other contexts (*e.g.*, loans are countervailed under 19 CR 351.505 and equity infusions are countervailed under 19 CFR 351.507).

### Conclusion on Creditworthiness

Based on an analysis of the factors in 19 CFR 351.505(a)(4)(i)(A)-(D), we continue to determine that the BYD Group was uncreditworthy in 2008, 2011, and 2012. Specifically, in each of these years, the BYD Group's financial ratios (*i.e.*, current and quick ratios), negative cash flows, and debt-to-equity ratios indicate that it did not have sufficient liquid assets to cover its short-term

<sup>225</sup> See Post-Preliminary Analysis, Attachment.

<sup>226</sup> See the BYD Group's March 5, 2015, questionnaire response at Exhibit S-71-A.

<sup>227</sup> See the BYD Group's March 5, 2015, questionnaire response at Exhibit 71-B.

<sup>228</sup> See, *e.g.*, *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) (*CVD Investigation*) and accompanying Issues and Decision Memorandum (IDM) at 54-58; see also *Countervailing Duties; Final Rule*, 63 FR 65348, 65403 (November 25, 1998) (*CVD Preamble*) at 65367.

debt obligations, and had to resort to additional borrowing to do so.<sup>229</sup> Moreover, it received no comparable long-term commercial loans during any of the relevant years.

With respect to investors located in the United States purchasing \$230 million in equity during 2008, we do not consider this to be dispositive. On the issue of whether purchases of equity in a company should be considered evidence of creditworthiness, the *CVD Preamble* states:

By its very terms, equity differs from loans and, hence, the presence of equity investments (even if made by private investors) is not necessarily indicative of whether the firm could obtain loans from commercial sources. As an extreme example, private owners may inject equity into their company because the debt-to-equity ratio is so high that it has become virtually impossible for the company to borrow funds. Clearly, in this situation, the presence of equity purchases by the owners would not be indicative of the firm's access to commercial loans.<sup>230</sup>

With respect to the BYD Group's 2011 credit rating of AA+ issued by the CCSR, this submission is only partially translated, and does not provide enough detail for us to consider probative for our analysis.<sup>231</sup> Finally, regarding the bonds issued in 2011 by the BYD Group on the Shenzhen Stock Exchange, we do not consider the issuance of these bonds to be akin to long-term commercial loans. In *Solar Cells from the PRC*, we found the convertible notes issued by Wuxi Suntech and by Trina Solar to be dispositive evidence of their creditworthiness. We stated that “[b]oth companies issued the notes to large institutional investors in the United States, and the notes were registered as long-term debt in both companies’ financial statements. Thus the notes essentially functioned as long-term commercial loans issued to private, market economy lenders.”<sup>232</sup> However, the facts are different in the instant proceeding as the BYD Group stated that it did not issue bonds outside of the PRC and there is no information on the record indicating who the buyers were in the initial offering or in the secondary market.<sup>233</sup>

### **Comment 7: Whether the Department Should Revise the Benefit Calculation Regarding the BYD Group's Loans**

#### *The BYD Group's Affirmative Arguments*

- The Department double-counted interest payments in certain quarters by calculating a benefit over the entire life of the loan, and then a second time by calculating a benefit over the remaining quarters of the same period.
- This double-counted the benefits because the second, third, and fourth quarter benefits were already included in the calculation for the first quarter.
- The Department used an RMB benchmark rate instead of a USD benchmark rate to calculate the benefit in these double-counted quarters.

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<sup>229</sup> See Attachment.

<sup>230</sup> See *CVD Preamble*, 63 FR at 65367; see also *Solar Cells from the PRC* and accompanying IDM at 57.

<sup>231</sup> See the BYD Group's March 5, 2015, questionnaire response at Exhibit S-71.

<sup>232</sup> See *Solar Cells from the PRC* and accompanying IDM at 55.

<sup>233</sup> See BYD Group VR at 6.



No other party commented on this issue.

**Department's Position:** We have revised the benefit calculation regarding the BYD Group's loans for the final results. We have revised the calculation to remove the double-counting and have used a USD benchmark.

**Comment 8: Whether the Department Should Find the Subsidies Discovered at Lightway's Verification to be Countervailable**

*Petitioner's Affirmative Arguments*

- The Department should apply AFA to the 13 unreported subsidies that were discovered at Lightway's verification, and apply a subsidy rate of either 10.54 percent, or 0.58 percent, for each unreported program.

*Lightway's Rebuttal Arguments*

- Lightway has been fully cooperative and forthcoming in this review. The subsidy items and amounts were listed in Lightway's initial questionnaire response in its 2012 audit report. Petitioner cannot reasonably claim that this is new information discovered at verification. The Department did not specifically pursue that information through supplemental questionnaires.
- Lightway is a first time mandatory respondent and had no reason to report these programs without the Department specifically alleging they were countervailable, consistent with Article 11.2 of the SCM Agreement.
- The Department should not countervail these programs, as there is no record information to indicate that they are countervailable. However, if the Department decides they are countervailable, the Department should apply neutral facts available to calculate the benefits based on the amounts showed in Lightway's audit report.
- While Petitioner claims that there are 13 unreported programs, there are actually only five.

*Goal Zero's Rebuttal Arguments*

- The Department should not countervail these grants in the final results and if it chooses to do so, it should calculate a subsidy rate based on the amounts received.
- Consistent with the Department's regulations and U.S. obligations under the WTO, these grants should not be countervailed because they were not alleged in the petition, or properly initiated by the Department.
- Articles 11.1 and 11.2 of the WTO SCM Agreement provide that an investigation of any alleged subsidy may be initiated only upon written application that must include sufficient evidence of a subsidy, injury, and causal link between the subsidy and alleged injury.
- Under the Department's regulations at 19 CFR 351.311(b), the Department can only examine a grant discovered during the course of an investigation if the Secretary concludes sufficient time remains before the schedule date or the final determination or final results of review. Since the deadline for the submission of factual information is far behind, there is not sufficient time to examine these alleged grants.

- Employing an AFA methodology for these discovered grants would be a departure from the Department's regulations and methodology in other cases. The record does not support a finding that Lightway failed to cooperate by not acting to the best of its ability to comply with a request for information, which is a necessary condition for applying AFA under the statute.
- In the investigations of *Large Residential Washers from Korea*, the Department discovered a grant at verification and calculated a subsidy rate by dividing the benefit by the respondent's sales. In *Bottom Mount Refrigerators from Korea*, the Department also discovered grants at verification and found it appropriate to calculate a benefit instead of applying an adverse inference. The facts are similar in the instant review, and there is no reason why the Department should depart from its prior practice of calculating a subsidy rate based on the amount received if it chooses, albeit improperly, to countervail the alleged grants.

**Department's Position:** The Department has countervailed subsidies discovered at verification in prior proceedings without a prior allegation.<sup>234</sup> The Department's questionnaire clearly states that respondents must identify all government assistance. Despite our questions concerning other forms of assistance in the initial questionnaire, the GOC and Lightway did not report the existence of these unreported grants in their initial and supplemental questionnaires. It is important to note that Lightway made no attempt to provide the information requested by the deadline for the submission of information, and gave no indication that it needed more time to provide the information requested, despite having done so in responding to questions on other topics.

As explained above in the section, "Use of Facts Otherwise Available and Adverse Inferences," we find that Lightway failed to provide information regarding this assistance discovered at its verification, and thus, sections 776(a)(2)(A) and 776(a)(2)(D) of the Act apply. We further find that by not reporting the receipt of this assistance prior to the commencement of verification, Lightway and the GOC each failed to cooperate by not acting to the best of its ability and precluded this unreported assistance from being verified. Thus, pursuant to section 776(b) of the Act, we are relying on AFA to determine that the unreported assistance in question is countervailable.

Regarding Lightway's and Goal Zero's arguments that we should use the information taken at verification to calculate a subsidy rate, we disagree. First, based on the reasons stated above, we are relying on an adverse inference in determining the benefit of these unreported programs, and not neutral facts available. By their own actions, Lightway and the GOC precluded the Department from verifying this information when they withheld such information until after the deadline for the submission of new factual information has passed. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the result is sufficiently adverse as to effectuate the statutory purposes of the AFA rule to induce respondents to provide the Department with complete and accurate information in a timely

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<sup>234</sup> See, e.g., *Solar Products from the PRC* and accompanying IDM at Comment 15.

manner.<sup>235</sup> The Department’s practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>236</sup>

Second, the information obtained at verification was collected only to record that Lightway received benefits from unreported government assistance programs.<sup>237</sup> The Department did not “verify” this information; it only examined certain accounts regarding government grants. For example, the Department did not reconcile the amounts of these unreported government grants to Lightway’s financial statements. Instead, we can reasonably rely on the adverse inference that Lightway chose not to timely report this information and subject it to verification because doing so would have resulted in a less favorable result than allowing the Department to discover this information at verification.<sup>238</sup>

Contrary to Lightway’s and Goal Zero’s arguments regarding the necessity for an allegation regarding these grants, section 775 of the Act and 19 CFR 351.311(b) direct the Department to examine apparent subsidy practices discovered during the course of the proceeding and not alleged if the Department concludes that sufficient time remains. The information in Lightway’s 2012 financial statements contains references to government grants,<sup>239</sup> and the grants that we “discovered” at verification were booked into accounts for recording government subsidies, such as government grants, under the PRC’s generally accepted accounting principles.<sup>240</sup> Such information indicates practices that appear to be countervailable subsidies, and, as such, the Department finds that these programs should be examined pursuant to section 775 of the Act and 19 CFR 351.311(b).<sup>241</sup>

While the Department’s practice regarding assistance discovered during verification has varied in past cases, we find that the facts of this particular proceeding merit the application of AFA. For example, in *Large Residential Washers from Korea*, the respondent demonstrated that the grant in question was not tied to subject merchandise, and thus, was not relevant to the investigation at hand. Therefore, the Department concluded that the grant in question was not tied to subject merchandise and was not countervailable.<sup>242</sup> In the instant proceeding, we have no information to demonstrate that the apparent assistance discovered at Lightway’s verification did not benefit subject merchandise or would otherwise not be countervailable. When these grants were discovered at verification, Lightway made no attempt to explain why they might not be countervailable.

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<sup>235</sup> See *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).

<sup>236</sup> See SAA at 870.

<sup>237</sup> See Lightway VR at 5.

<sup>238</sup> See SAA at 870.

<sup>239</sup> See Lightway VR at 5.

<sup>240</sup> *Id.*

<sup>241</sup> The Department has addressed these same arguments with nearly identical fact patterns in prior CVD proceedings involving the PRC. See, e.g., *Citric Acid from the PRC* and accompanying IDM at Comment 30; see also *Solar Cells from the PRC* and accompanying IDM at Comment 23; see also *Solar Products from the PRC* and accompanying IDM at Comment 15.

<sup>242</sup> See *Large Residential Washers from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 75975 (December 26, 2012) (*Large Residential Washers from Korea*) and accompanying IDM at Comment 18.

Goal Zero's argument that we did not have sufficient time to examine these programs because they were discovered at verification and after the deadline for the submission of factual information is unpersuasive. The fact that Lightway was not willing to respond fully to our earlier questions or divulge this information earlier should not bar the Department from considering the very information that Lightway failed to disclose earlier or from relying on adverse inferences in doing so.<sup>243</sup> Under Goal Zero's theory, a respondent could withhold any information pertaining to an unreported CVD program until the factual information deadline has passed, and the Department would be unable to examine that program as a result of the respondent's failure to cooperate. This is not acceptable.

Section 351.311(d) of the Department's regulations provides that the Department will notify parties to the proceeding of any subsidy discovered during an ongoing proceeding, and whether it will be included in the ongoing proceeding. Interested parties were notified of the discovery of this assistance discovered at Lightway's verification and its inclusion in this proceeding when the Department released Lightway's verification report. Such notice is evident in the fact that interested parties commented on the issues surrounding this assistance prior to these final results.

With respect to Lightway's argument that there are actually four unreported subsidy programs rather than 13, we agree. Our examination of Lightway's audited financial statements and the exhibit collected at verification on this issue lead us to conclude that the 13 items are grants provided pursuant to only four different unreported subsidy programs, and one previously reported subsidy program. The four unreported subsidy programs are the following:<sup>244</sup>

1. Interest Subsidy for Technological Transformation;
2. Interest Subsidy for Imported Equipment;
3. Construction Fund of Foreign Trade Public Service Platform; and
4. Support Fund for Export Credit Insurance.

We noted above in the section "Programs Determined To Be Not Used or Not to Confer a Measurable Benefit During the POR," that Lightway previously reported its receipt of the Patent Grant (which is included in Lightway's government subsidy account that we reviewed at verification), and we will not apply our AFA CVD methodology to this program when determining whether it is countervailable.

Finally, and consistent with our practice,<sup>245</sup> we will apply our CVD AFA methodology to determine the CVD rate to apply for the unreported assistance discovered during Lightway's verification. For each of these four grant programs, we are applying a rate of 0.58 percent, which was calculated for a similar/comparable program (based on the treatment of the benefit), "Special Fund for Energy Saving Technology," in the CVD investigation of *Chlorinated Isocyanurates from the PRC*.<sup>246</sup>

<sup>243</sup> See *Solar Products from the PRC* and accompanying IDM at Comment 15.

<sup>244</sup> See Lightway VR at VE-9; see also Lightway Rebuttal Brief at 8 (public version).

<sup>245</sup> See, e.g., *Solar Products from the PRC* and accompanying IDM at 88.

<sup>246</sup> See *Chlorinated Isocyanurates from the PRC* and accompanying IDM at 14.

### **Comment 9: Whether the Department Should Revise Lightway’s Benefit Calculation to Remove Certain Transactions Regarding the Preferential Policy Lending Program**

#### *Lightway’s Affirmative Arguments*

- In the *Preliminary Results*, the Department included “finance leasing” transactions in its benefit calculations.
- The Department should not countervail these transactions because they were not preferential policy loans provided by the state.

#### *Petitioner’s Rebuttal Arguments*

- The Department should reject Lightway’s arguments and should continue to countervail these transactions for the final results.
- Lightway itself reported the financing as loans, and put up collateral for the financing. These arrangements are just another debt instrument akin to a loan.
- The *CVD Preamble* states that a “loan is defined to include other forms of debt financing other than what one normally considers to be a loan.” As a result, the Department should continue to treat this debt financing as a “loan” under section 771(5)(D)(i) of the Act.

**Department’s Position:** Lightway argues that certain reported “finance leasing” arrangements were not actually loans from lending institutions, but lease-related financing arrangements from non-banking commercial entities. As such, Lightway argues that we should not countervail these transactions because they were not preferential policy loans provided by an “authority.”<sup>247</sup>

Lightway’s argument is not supported by the record. Lightway reported the funds at issue as loans.<sup>248</sup> We verified that they are “long term payables.”<sup>249</sup> As Petitioner notes, even if the funding is not a “loan” *per se*, the Department’s regulations define “loan” as including other forms of debt financing.<sup>250</sup>

Further, in *CFS from the PRC*, we found that the PRC’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. In *Solar Products from the PRC*, we also noted that the PRC’s banking system continues to be impacted by the legacy of government policy objectives, which continues to undermine the ability of the “Big Four” and the rest of the domestic banking sector to act on a commercial basis, and allows continued government involvement in the allocation of credit in pursuit of those objectives.<sup>251</sup> Thus, countervailable lending is not necessarily limited to the “big four” or other SOCBs.

<sup>247</sup> See Lightway Case Brief at 3-4.

<sup>248</sup> See Lightway’s May 15, 2014, questionnaire response, at Exhibit 2.7.

<sup>249</sup> See Lightway VR at 4.

<sup>250</sup> See 19 CFR 351.102(b)(31).

<sup>251</sup> See *Solar Products from the PRC*, and accompanying Issues and Decision Memorandum at Comment 9.



### **Comment 10: Whether the Department Should Revise the Principal Amounts with Respect to Certain Lightway Loans**

#### *Lightway's Affirmative Arguments*

- In the *Preliminary Results*, for certain loans, the Department apparently inadvertently relied on the initial principal amount when calculating Lightway's benchmark interest payment.
- For these loans, the Department should calculate the benchmark interest payments based on the POR monthly principal balance, rather than against the initial principal amount.

No other party commented on this issue.

**Department's Position:** We have revised the benefit calculation regarding certain Lightway loans for the final results. We agree that benchmark interest payments for these loans should be based on the principal due at the time of the payment and not on the initial amount lent.

### **Comment 11: Whether the Department Should Revise the Rate for the Non-Selected Companies for these Final Results**

#### *Petitioner's Affirmative Arguments*

- In the *Preliminary Results*, the Department apparently used a simple average of the mandatory respondents' rates to calculate the all others rate.
- For the final results, the Department should use a weighted average of the mandatory respondents' rates for calculating the all others rate.

#### *Goal Zero's Rebuttal Arguments*

- There is no reason why the Department should change its decision in the final results, and it should continue to use a simple average to calculate the all others rate.

**Department's Position:** For the final results, we have recalculated the rate for the non-selected respondents based on the weighted-average of the mandatory respondents' calculated subsidy rates. In certain situations, the Department relies on a simple average in order to avoid disclosing the business-proprietary sales data normally used to weight the rates when calculating an average. In this review, however, publicly ranged data was provided by the respondents that the Department is using to calculate a weighted-average rate for these final results. This public information was requested in a supplemental questionnaire issued after the preliminary results and thus was not available at that time. As discussed in the Department's proprietary memorandum,<sup>252</sup> we compared both the simple average and the weighted average based on the publicly ranged data to the weighted average based on proprietary data, and determine that in this circumstance, the weighted-average rate based on the ranged data is the most appropriate rate to use for this proceeding.<sup>253</sup>

<sup>252</sup> See Department Memorandum, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Calculation of the All Others Rate," dated concurrently with this Issues and Decision Memorandum.

<sup>253</sup> We note that using a weighted average mimics what the Department would do for the calculation of the "all others" rate in an investigation pursuant to section 705(c)(5)(A)(i) of the Act.

**X. Recommendation**

We recommend applying the above methodology for these final results.

✓  
Agree

\_\_\_\_\_  
Disagree

*Paul Piquado*  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

*7 July 2015*  
Date

Attachment  
Companies Not Selected for Individual Review

1. Baoding Jiansheng Photovoltaic Technology Co., Ltd.
2. Boading Tianwei Yingli New Energy Resources Co., Ltd.
3. Beijing Tianneng Yingli New Energy Resources Co. Ltd.
4. Canadian Solar International Limited
5. Canadian Solar Manufacturing (Changshu) Inc.
6. Canadian Solar Manufacturing (Luoyang) Inc.
7. Changzhou NESL Solartech Co., Ltd.
8. Changzhou Trina Solar Energy Co., Ltd.
9. Chint Solar (Zhejiang) Co., Ltd.
10. CSG PVTech Co., Ltd.
11. DelSolar Co., Ltd.
12. De-Tech Trading Limited HK
13. Dongfang Electric (Yixing) MAGI Solar Power Technology Co., Ltd.
14. Eopply New Energy Technology Co., Ltd.
15. Era Solar Co., Ltd.
16. ET Solar Energy Limited.
17. Hainan Yingli New Energy Resources Co., Ltd.
18. Hangzhou Zhejiang University Sunny Energy Science and Technology Co. Ltd.
19. Hendigan Group Dmegc Magnetics
20. Hengshui Yingli New Energy Resources Co., Ltd.
21. Himin Clean Energy Holdings Co., Ltd.
22. Innovosolar
23. Jiangsu Green Power PV Co., Ltd.
24. Jiangxi Sunlink PV Technology Ltd.
25. Jiangsu Jiasheng Photovoltaic Technology Co., Ltd.
26. Jiangsu Sunlink PV Technology Co., Ltd.
27. Jiawei Solarchina Co. Ltd.
28. Jinko Solar Co., Ltd.
29. Jinko Solar Import and Export Co., Ltd.
30. Jinko Solar International Limited
31. Konca Solar Cell Co., Ltd.
32. Kuttler Automation Systems (Suzhou) Co. Ltd.
33. LDK Solar Hi-tech (Suzhou) Co., Ltd.
34. LDK Solar Hi-tech (Nanchang)
35. Leye Photovoltaic Science & Technology Co., Ltd.
36. Lixian Yingli New Energy Resources Co., Ltd.
37. Luoyang Suntech Power Co., Ltd.
38. Magi Solar Technology
39. Motech (Suzhou) Renewable Energy Co., Ltd.
40. MS Solar Investments LLC
41. Ningbo Ulica Solar Science & Technology Co., Ltd.
42. Ningbo Qixin Solar Electrical Appliance Co. Ltd.
43. Ningbo ETDZ Holdings Ltd.
44. Perlight Solar Co., Ltd.
45. ReneSola
46. Renesola Jiangsu Ltd.

47. Shenzen Topray Solar Co., Ltd.
48. Shanghai Machinery Complete Equipment (Group) Corp., Ltd.
49. Shenglong PV Tech.
50. Shenzhen Suntech Power Co., Ltd.
51. ShunFeng PV
52. Solarbest Energy—Tech (Zhejiang) Co., Ltd.
53. Sopray Energy
54. Sumec Hardware & Tools Co., Ltd.
55. Sun Earth Solar Power Co., Ltd.
56. Suntech Power Co., Ltd.
57. Suzhou Shenglong PV-Tech Co., Ltd.
58. Tianwei New Energy (Chengdu) PV Module Co., Ltd.
59. Tianjin Yingli New Energy Resources Co, Ltd.
60. Trina Solar (Changzhou) Science & Technology Co, Ltd.
61. Topray
62. Upsolar Group, Co. Ltd.
63. Wanxiang Import & Export Co., Ltd.
64. Wuxi Sunshine Power
65. Wuxi Suntech Power Co., Ltd.
66. Yangzhou Rietech Renewal Energy Co., Ltd.
67. Yangzhou Suntech Power Co., Ltd.
68. Yingli Energy (China) Company Limited.
69. Yingli Green Energy International Trading Company Limited.
70. Zhejiang Jiutai New Energy Co. Ltd.
71. Zhejiang Shuqimeng Photovoltaic Technology Co., Ltd.
72. Zhejiang Xinshun Guangfu Science and Technology Co., Ltd.
73. Zhejiang ZG-Cells Co, Ltd.
74. Zhenjiang Rietech New Energy Science & Technology Co., Ltd.
75. Zhiheng Solar Inc.
76. Zhejiang Sunflower Light Energy Sciences & Technology Limited Liability Company