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The Honorable Gina M. Raimondo
Secretary of Commerce
International Trade Administration
Attn: Enforcement and Compliance
APO/Dockets Unit, Room 18022
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

Re: ***Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China:*** New Subsidy Allegations

Dear Secretary Raimondo:

On behalf of the American Alliance for Solar Manufacturing (the "Alliance"), we hereby submit to the U.S. Department of Commerce (the "Department") the following allegations of additional subsidies conferred by the Government of the People's Republic of China ("GOC") in the above-referenced countervailing duty ("CVD") administrative review. The Alliance is submitting the new factual information contained in this filing under 19 C.F.R. § 351.102(b)(21)(ii) (*i.e.*, "evidence, including statements of fact, documents, and data submitted . . . in support of allegations"). This submission is timely filed pursuant to 19 C.F.R. § 351.301(2)(iv)(B); *i.e.*, within 20 days after all responses to the Department's initial questionnaire were filed in this administrative review.[1] The Alliance respectfully requests that the Department initiate an investigation into the subsidy programs detailed in this submission.

I. CURRENCY UNDERVALUATION

A. Background

The GOC provides a countervailable subsidy to subject merchandise producers in the People's Republic of China ("China") by undervaluing its currency through intervention in the Chinese renminbi ("RMB") – U.S. dollar ("USD") exchange rate. This undervaluation provides an unfair subsidy to firms in China that receive more RMB in exchange for USD earned on their exports than they otherwise would receive absent GOC intervention.

In February 2020, the Department modified its regulations to clarify how it will determine the existence of a benefit when examining a currency undervaluation subsidy.[2] In the *Federal Register* notice announcing the modification, the Department explained that, under existing law and practice, "{t}he receipt of domestic currency from an authority (or an entity entrusted or directed by an authority) in exchange for U.S. dollars could constitute the financial contribution under section 771(5)(D) of the {Tariff Act of 1930, as amended ("the Act")}."[3] The Department also clarified that it "normally will consider enterprises that buy or sell goods internationally to comprise a 'group' of enterprises within the meaning of section 771(5A)(D) of the Act."[4] Further, the Department specified that a benefit exists when: (1) a country's currency was undervalued

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[1] On June 29, 2021, mandatory respondent JA Solar Technology Yangzhou Co., Ltd. filed its last response to the Department's initial CVD questionnaire in this administrative review. *See* Letter from Mowry & Grimson, PLLC to Sec'y of Commerce, re: *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China: Section III Response Part IV* (June 29, 2021).

[2] *Modification of Regulations Regarding Benefit and Specificity in Countervailing Duty Proceedings*, 85 Fed. Reg. 6,031 (Dep't Commerce Feb. 4, 2020) ("Currency Undervaluation FR Notice").

[3] *Id.*

[4] *Id.* at 6,039.

during the relevant period; (2) government action on the exchange rate contributed to the currency's undervaluation; and (3) the amount of local currency that a firm received in exchange for USD was greater than the amount the firm would have received if the country's nominal, bilateral USD exchange rate was consistent with the real effective exchange rate ("REER").[5] The regulations also specify that the Secretary of the Department of the Treasury ("Treasury") will provide its evaluation and conclusion.[6]

B. Treasury Has Determined that the RMB Was Undervalued by Approximately 5% Relative to the U.S. Dollar During the 2019 Period of Review ("POR")

On November 9, 2020, Treasury, in consulting with the Department for its CVD investigation of *Twist Ties from the People's Republic of China*, found that the GOC's actions had the effect of undervaluing the RMB relative to the USD by approximately five percent in 2019.[7] Treasury found that the GOC possessed "multiple tools for influencing the exchange rate," and it noted that the GOC "has offered limited transparency about how and for what purpose these tools are employed."[8] Based on the factors in 19 C.F.R. § 351.528(a)(1), Treasury assessed that the RMB was undervalued during the relevant period.[9] Treasury stated: "China's status as a fast-growing emerging market economy suggests that a reasonable medium-term external balance would entail very limited current account surpluses, or more likely modest current account deficits. Conversely, China's trade and account surpluses trended higher in 2019."[10] Treasury concluded

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5 *Id.* at 6,043.

6 *Id.* at 6,044.

7 *See* Letter from Andy Baukol, Principal Deputy Assistant Sec'y for Int'l Monetary Policy, to James Maeder, Deputy Assistant Sec'y, AD/CVD Operations, Dep't of Commerce (Nov. 9, 2020) at 1, attached at **Exhibit NSA-1** ("Treasury 2019 Currency Assessment").

8 *Id.*

9 *Id.* at 2.

10 *Id.* (citations omitted).

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that these external surpluses were the result of policy distortions within China, such as fiscal and credit policies that favor state-owned enterprises ("SOEs") and industrial firms.[11] Further, Treasury noted that the REER has been flat or falling in recent years.[12]

Treasury also found that the GOC undertook "government action on the exchange rate that contributed to the undervaluation," as required for an affirmative finding under 19 C.F.R. § 351.528(a)(2).[13] Treasury stated, "In particular, China does not disclose the amount of intervention in foreign exchange markets, including from state banks, nor does it disclose other key features of its exchange rate management regime."[14] Treasury noted that the People's Bank of China ("PBOC") managed the RMB through a range of tools, including: (1) setting the central parity rate (or "daily fix") that serves as the midpoint daily trading band for the RMB; (2) directly intervening in foreign exchange markets; (3) influencing the interest rates of RMB-denominated assets that trade offshore; (4) altering reserve requirements for foreign exchange derivatives trading; and (5) directing the timing and volume of forward swap sales and purchases by Chinese state-owned banks.[15]

Treasury concluded that the GOC's actions on the exchange rate "had the effect of undervaluing the RMB vis-à-vis the U.S. dollar by about 5% in 2019."[16] Because of uncertainty due to a lack of transparency into Chinese currency management, Treasury determined that the

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11 *Id.*

12 *Id.*

13 *Id.*

14 *Id.*

15 *Id.* at 2-3.

16 *Id.* at 3.

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potential impacts of China's actions ranged from an undervaluation of between 3% – 7%.[17] Taking into account the impact of the GOC's actions on the exchange rate, Treasury assessed that the actual, nominal bilateral RMB exchange rate against the USD in 2019 was 6.9081 RMB per USD, whereas the nominal, bilateral RMB exchange rate consistent with the equilibrium REER was 6.5627 RMB per USD (with the uncertainty range around this assessment spanning from 6.4246 to 6.7009 RMB per USD).[18]

C. The Subsidy Is Countervailable

1. Financial Contribution

Per the Department, "{t}he receipt of domestic currency from an authority (or an entity entrusted or directed by an authority) in exchange for U.S. dollars could constitute the financial contribution under section 771(5)(D) of the Act."[19] The GOC's currency undervaluation confers a subsidy to Chinese exporters as (1) a direct financial contribution under section 771(5)(D)(i) of the Act, through state-owned commercial banks ("SOCBs") or other GOC-controlled banks that provide RMB to exporters in exchange for USD; and/or (2) through private entities entrusted or directed by the GOC under section 771(5)(B)(iii) of the Act, as these entities provide RMB to exporters in exchange for USD at a rate that the GOC tightly controls.

Regarding SOCBs and other GOC-controlled banks, the Department has found that in "China's still bank-dominated financial system, the state (at the central and local government levels) maintains and exercises effective control over the vast bulk of banking sector assets."[20]

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17 *Id.*

18 *Id.* at 4.

19 *See* Currency Undervaluation FR Notice at 6,034.

20 *See* Memorandum from Lingjun Wang, Analyst, AD/CVD Operations, Off. VII, Enf't & Compliance, to The File, re: *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic*

Additionally, in the Banks and Trust Companies Memo, the Department determined that all banks and trust companies in China are authorities because the GOC exercises meaningful control over them.[21] In determining that all banks and trust companies in China possess, exercise, or are vested with governmental authority, the Department determined that these banks and trust companies "function as policy instruments to help the Chinese government (the government) carry out its constitutional mandate to ensure a leading role in the economy for the state sector."[22]

The conclusions in the Department's Banks and Trust Companies Memo support a determination that GOC authorities provide a financial contribution through the GOC's currency undervaluation. However, to the extent that a private entity in China provides excess RMB to Chinese exporters in exchange for USD, a subsidy may still exist if an authority "entrusts or direct a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments."[23] The Department uses a two-part test to determine whether a government entrusts or directs a private entity: (1) whether the government has in place a policy to support the respondent; and (2) whether record evidence establishes a pattern of practices on the

of China – Countervailing Duty Administrative Review; 2019: Analysis of China's Financial System (Apr. 28, 2021) at Attachment 1, p. 2.

[21] *See* Memorandum from Lingjun Wang, Analyst, AD/CVD Operations, Off. VII, Enf't & Compliance, to The File, re: *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China – Countervailing Duty Administrative Review; 2019: Analysis of Banks and Trust Companies in China* (Apr. 28, 2021) at Attachment 1, p. 2.

[22] *Id.*

[23] Section 771(5)(B)(iii) of the Act.

part of the government to act upon that policy by entrusting or directing an associated private entity's decisions.[24]

The Department has found that a policy to support an industry by lowering the industry's prices for inputs via export restraints met this test.[25] Here, the GOC has implemented policies to tightly manage the RMB / USD exchange rate to keep Chinese exports competitive, thereby benefiting Chinese exporters.[26] The GOC – through the PBOC and the State Administration of Foreign Exchange – actively manages the daily RMB / USD exchange rate, and it intervenes in currency markets to ensure that the RMB's value remains within a narrow target band.[27] The PBOC confirmed GOC control over the RMB / USD exchange rate in August 2019, noting that it "has accumulated rich experience and policy tools, and will continue to innovate and enrich the control toolbox, and take necessary and targeted measures against the positive feedback behavior that may occur in the foreign exchange market."[28] Additionally, the GOC has placed strict guidelines on banks that participate in foreign exchange, bank relationships with customers that use foreign exchange, and companies that use foreign exchange for export/import transactions.[29]

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[24] *See, e.g.*, Issues and Decision Memorandum accompanying *Biodiesel from the Republic of Argentina*, 82 Fed. Reg. 53,477 (Dep't Commerce Nov. 16, 2017) (final affirm. countervailing duty deter.) at 20 (citations omitted).

[25] *Id.*

[26] *See, e.g.*, Treasury 2019 Currency Assessment, attached at **Exhibit NSA-1**.

[27] Saheli Roy Choudhury, *The Yuan Hit a 11-year Low This Week. Here's a Look at How China Controls its Currency*, CNBC (Aug. 28, 2020), attached at **Exhibit NSA-2**.

[28] *See* Press Release, *Treasury Designates China as a Currency Manipulator*, U.S. Department of the Treasury (Aug. 5, 2019), attached at **Exhibit NSA-3**.

[29] Administrative Rules on Purchase and Sale of Foreign Exchange by Banks, Decree of the People's Bank of China {No. 2, 2014} (June 22, 2014), attached at **Exhibit NSA-4**.

Collectively, this evidence supports a determination that the provision of RMB by GOC authorities or by private entities entrusted or directed by the GOC constitutes a financial contribution in accordance with section 771(5)(D)(i) of the Act.

2. Benefit

As explained above, the Department will determine that a benefit exists when: (1) a country's currency was undervalued during the relevant period; (2) government action on the exchange rate contributed to the currency's undervaluation; and (3) the amount of local currency that a firm received in exchange for USD was greater than the amount the firm would have received if the country's nominal, bilateral USD exchange rate was consistent with the REER.[30]

Treasury has already found that the RMB was undervalued by approximately 5% during 2019, that the GOC took actions on the exchange rate that contributed to the currency's undervaluation, and that China's REER in 2019 was below the equilibrium REER.[31] Accordingly, there is a reasonable basis to believe that: (1) the RMB was undervalued during 2019; (2) the GOC took actions on the exchange rate during 2019; and (3) the amount of RMB that subject merchandise producers received in exchange for USD was greater than the amount they would have otherwise received absent the GOC's interventions. Thus, information reasonably available to the Alliance demonstrates that the currency undervaluation subsidy conferred a countervailable benefit to respondents as defined in 19 C.F.R. § 351.528(b).

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30 19 C.F.R. § 351.528.

31 *See* Treasury 2019 Currency Assessment, attached at **Exhibit NSA-1**.

3. Specificity

The Department's new regulations clarify that "enterprises that buy or sell goods internationally" constitute a "group" pursuant to section 771(5A)(D) of the Act.[32] The GOC's provision of excess RMB is specific because enterprises that buy or sell goods internationally are the predominant users of the currency undervaluation subsidy. The subsidy is therefore specific to this group of enterprises under section 771(5A)(D)(iii)(II) of the Act.

In its proposed rule modification, the Department stated:

> With respect to the specificity of an undervalued currency under a unified currency regime, an analysis under the proposed regulation could take into consideration a country's balance of payments data and, specifically, the amount of foreign currency supplied by broad categories of entities or activities in that country, e.g., exporters, foreign investors, tourists and recipients of factor income earned abroad. Information, where available, regarding the market supply of foreign currency could provide a reasonable proxy for the amount of U.S. dollars converted into the undervalued domestic currency of the country under investigation.
>
> The final step would be to determine the portion of this total amount that is composed of foreign exchange supplied by enterprises that primarily buy or sell goods internationally. Starting with gross foreign currency supplied by exporters, and deducting the foreign exchange needed by these exporters to purchase any imported inputs used in the production of exported goods, would result in a figure for net foreign exchange supplied by the enterprises in the exporting and importing sector of that country. If enterprises in a country that primarily buy or sell goods internationally collectively constitute a predominant user or account for a disproportionate share of net foreign exchange supply, Commerce could find a currency undervaluation subsidy to be specific to that group of enterprises within the meaning of section 771(5A)(D)(iii) of the Act.[33]

At **Exhibit NSA-5**, the Alliance provides an analysis of the International Monetary Fund's ("IMF") balance of payments data for China covering the 2019 POR. Consistent with the

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[32] *See* 19 C.F.R. § 351.502(c).

[33] *Modification of Regulations Regarding Benefit and Specificity in Countervailing Duty Proceedings*, 84 Fed. Reg. 24,406, 24,408 (Dep't Commerce May 28, 2019). The word "primarily" was deleted from the proposed definition of the group of enterprises that buy or sell goods internationally in the final rule. *See* Currency Undervaluation FR Notice at 6,039. *See also* 19 C.F.R. § 351.502(c).

Department's analysis in *Tires from Vietnam*, the analysis at **Exhibit NSA-5** includes the following four major channels of exchange: (a) export of goods, (b) exports of services, (c) various forms of portfolio and direct investment, and (d) earned income from abroad.[34] Based on the IMF data, enterprises in China that buy or sell goods internationally are collectively the predominant users of net foreign exchange supply, at 72.41% of all users.[35] Consequently, information reasonably available to the Alliance indicates that the currency undervaluation subsidy is specific to a group of enterprises under section 771(5A)(D)(iii)(II) of the Act.

II. PROVISION OF INTERNATIONAL OCEAN SHIPPING SERVICES FOR LESS THAN ADEQUATE REMUNERATION ("LTAR")

A. Background

The GOC has encouraged consolidation of already large SOEs in the shipping industry into massive conglomerates in logistical services, terminal operations, finance, equipment manufacturing, insurance, and ship repair.[36] Two of the largest of these SOEs are COSCO Shipping Corporation Limited ("COSCO") and China Merchants Group ("CMG").[37] Evidence described below demonstrates that the GOC provides a subsidy through the provision of international shipping services for LTAR through state-controlled companies such as COSCO and CMG.

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34 *See* Issues and Decision Memorandum accompanying *Passenger Vehicle and Light Truck Tires From the Socialist Republic of Vietnam*, 86 Fed. Reg. 28,566 (Dep't Commerce May 27, 2021) (final affirm. countervailing duty deter.) at cmt. 4.

35 China Currency Undervaluation – Balance of Payments Analysis, attached at **Exhibit NSA-5**.

36 *See* Christopher R. O'Dea, *Asia Rising: Ships of State?*, Naval War College Rev. vol. 72 no. 1, art. 5 (2019) at 5, attached at **Exhibit NSA-6**. *See also* Jude Blanchette, *et al.*, *Hidden Harbors: China's State-Backed Shipping Industry*, Center for Strategic & Int'l Studies (July 2020) at 1, attached at **Exhibit NSA-7**.

37 *See* Christopher R. O'Dea, *Asia Rising: Ships of State?*, Naval War College Rev. vol. 72 no. 1, art. 5 (2019) at 3, attached at **Exhibit NSA-6**. *See also* Jude Blanchette, *et al.*, *Hidden Harbors: China's State-Backed Shipping Industry*, Center for Strategic & Int'l Studies (July 2020) at 1, attached at **Exhibit NSA-7**.

As the 18th Congress of the Chinese Communist Party ("CCP") declared in 2012, the GOC's stated policy is "building China into a sea power nation."[38] A recent article from the *Naval War College Review* described the GOC's execution of this policy as follows:

> The port and shipping transactions of the People's Republic of China are a major vector of a government policy to achieve global maritime power and commensurate political influence without resorting to, or at least while mitigating the risk of, a direct confrontation with the United States or other nations with global maritime interests.[39]

Additionally, in testimony to the U.S. House of Representatives in 2019, the chair of the U.S.-China Economic and Security Review Commission explained,

> The {CCP} has repeatedly highlighted the importance of its maritime economy and shipbuilding industry in recent high-level meetings and policy documents, including the 13th Five-Year Plan, the 19th Party Congress, and the Made in China 2025 Plan. A major goal of {the Belt and Road Initiative} is to open more markets for Chinese goods, displacing goods and services currently provided by the U.S. and other countries.[40]

To promote this goal of building a globally dominant shipping industry, the GOC has provided massive support to SOEs such as COSCO and CMG. The Center for Strategic and International Studies ("CSIS") recently estimated that the GOC has provided approximately $132 billion in subsidies to firms such as COSCO and CMG as part of its strategy of building China into a maritime power.[41] These subsidies have included direct cash transfers, equity infusions, low-

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38 *See* Wu Xiaoyan, *China's "Sea Power" Nation Strategy*, Inst. for Security & Dev. Policy (June 2014) at 5-6, attached at **Exhibit NSA-8**.

39 *See* Christopher R. O'Dea, *Asia Rising: Ships of State?*, Naval War College Rev. vol. 72 no. 1, art. 5 (2019) at 2, attached at **Exhibit NSA-6**.

40 Testimony of Carolyn Bartholomew, Chairman, U.S.-China Economic and Security Rev. Comm'n Before the United States H. Comm. on Transportation and Infrastructure, Subcomm. on Coast Guard and Maritime Transportation, *Hearing on "China's Maritime Silk Road Initiative: Implications for the Global Maritime Supply Chain"* (Oct. 17, 2019) at 4, attached at **Exhibit NSA-9**.

41 *See generally* Jude Blanchette, *et al*., *Hidden Harbors: China's State-Backed Shipping Industry*, Center for Strategic & Int'l Studies (July 2020), attached at **Exhibit NSA-7**.

cost loans, and low-cost leases.[42] These subsidies allow GOC-controlled shipping companies to provide international ocean shipping services for LTAR, because they are not operating purely or even primarily based on commercial objectives. For example, the *Naval War College Review* article cited above also stated that "in some cases, shipping consultants have questioned the high valuations at which COSCO has acquired certain assets, suggesting that obtaining those assets is a matter of achieving strategic national security goals rather than a financial investment that will be required to deliver market-based returns."[43]

By operating based on the strategic interests of the GOC instead of primarily on commercial considerations, the SOEs are able to provide international shipping services for LTAR. COSCO, for example, openly touts its role as an SOE that will help build China into a maritime power. After its 2016 merger with China Shipping (Group) Company, COSCO released the following statement: "The consolidation of COSCO and China Shipping is a significant achievement of China's SOE reform, a major initiative for implementing China's Belt and Road Initiative, a further strategy of building a maritime power, and an inevitable choice to cope with international competition and to improve quality and effectiveness."[44] Additionally, CMG has stated that it is "a crucial participant and promoter of the national initiative of the Belt and Road," and it has expressed the alignment of its strategic objectives with those of the CCP.[45]

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42 *Id.*

43 *See* Christopher R. O'Dea, *Asia Rising: Ships of State?*, Naval War College Rev. vol. 72 no. 1, art. 5 (2019) at 6, attached at **Exhibit NSA-6**.

44 *See* COSCO, *COSCO SHIPPING's New Logo Launched in Shanghai* (Sept. 29, 2016), attached at **Exhibit NSA-10**.

45 *See* CMG, *About Us*, attached at **Exhibit NSA-11** ("In the new era, with Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era and the spirit of the 19th {CCP} National Congress as the guidelines, CMG has proposed the strategic principle of based on long-term, seizing the present, science and technology-led, embracing transformation and clarified the strategic blueprint of 'based in Hong Kong, deep-rooted in the Bay Area, One Belt One Road.'").

B. The Subsidy Is Countervailable

1. Financial Contribution

The provision of international ocean shipping services by GOC-controlled firms such as COSCO and CMG for LTAR constitutes a financial contribution within the meaning of section 771(5)(D)(iii) of the Act, in the form of a direct provision of services. COSCO (including its subsidiary Orient Overseas Container Line ("OOCL")) and CMG are SOEs, meaning they are government authorities within the meaning of section 771(5)(B) of the Act.[46]

In addition, one Chinese subject merchandise producer, JinkoSolar, recently signed a "strategic cooperation agreement" with COSCO.[47] Previously, in 2019, JinkoSolar and COSCO entered into a separate agreement for shipping and distributing JinkoSolar's products to the European market.[48] This evidence provides a reasonable indication that Chinese producers of subject merchandise have received a financial contribution through the provision of international ocean shipping services from COSCO and other GOC authorities.

2. Benefit

The provision of international ocean shipping services for LTAR confers a benefit under section 771(5)(E)(iv) of the Act equal to the difference between prices that the GOC-controlled shipping companies charge and the appropriate benchmark under 19 C.F.R. § 351.511(a)(2). COSCO alone has the largest total shipping capacity in the world and the third largest container

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[46] *See id. See also* COSCO, *Group Profile*, attached at **Exhibit NSA-12**; Jude Blanchette, *et al.*, *Hidden Harbors: China's State-Backed Shipping Industry*, Center for Strategic & Int'l Studies (July 2020) at 7, attached at **Exhibit NSA-7**.

[47] Barrons, *JinkoSolar Announces First Quarter 2021 Financial Results* (June 25, 2021), attached at **Exhibit NSA-13**.

[48] JinkoSolar, *JinkoSolar Signs Agreement with COSCO to Use Port of Piraeus as a Distribution Hub for Europe* (Dec. 10, 2019), attached at **Exhibit NSA-14**.

capacity, and CMG has the world's second largest total shipping capacity.[49] The status of COSCO and CMG, both SOEs, as two of the world's largest shipping companies provides a reasonable indication that the GOC's involvement in the Chinese market distorts domestic Chinese prices.

Additional evidence demonstrates that the GOC's involvement in the Chinese international ocean shipping market distorts domestic Chinese prices for the service. Examples of this evidence are as follows:

- SOEs such as COSCO operate to fulfill the GOC's goal of developing China into a "maritime power" at the expense of commercial considerations.[50] Because of this, maximizing profits through the provision of market-based prices is not a sole objective. As the chair of the U.S.-China Economic and Security Review Commission explained, a major goal of the GOC's Belt and Road Initiative "is to open more markets for Chinese goods, displacing goods and services currently provided by the U.S. and other countries."[51] Under the strategic agreement described above between JinkoSolar and COSCO, COSCO is likely providing shipping services to JinkoSolar for LTAR to promote JinkoSolar's exports under the Belt and Road Initiative.

- COSCO has historically not been profitable. The company was not profitable in three of the four years from 2009-2013, and again in 2016.[52] Despite this, COSCO merged with China Shipping in 2016 and took over OOCL in 2018.[53] A 2018 journal article from Laval University found that COSCO's ability to fund this expansion was the result of support from state-owned banks, which CSIS estimated at $127 billion for the Chinese shipping industry as a whole from 2010-2018.[54] These subsidies allow

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[49] *See* COSCO, *Group Profile*, attached at **Exhibit NSA-12**; *see also* CMG, *About Us*, attached at **Exhibit NSA-11**.

[50] *See, e.g.*, COSCO, *COSCO SHIPPING's New Logo Launched in Shanghai* (Sept. 29, 2016), attached at **Exhibit NSA-10**; *see also* Christopher R. O'Dea, *Asia Rising: Ships of State?*, Naval War College Rev. vol. 72 no. 1, art. 5 (2019) at 2, attached at **Exhibit NSA-6**.

[51] Testimony of Carolyn Bartholomew, Chairman, U.S.-China Economic and Security Rev. Comm'n Before the United States H. Comm. on Transportation and Infrastructure, Subcomm. on Coast Guard and Maritime Transportation, *Hearing on "China's Maritime Silk Road Initiative: Implications for the Global Maritime Supply Chain"* (Oct. 17, 2019) at 4, attached at **Exhibit NSA-9**.

[52] Linyan Huang, *et al.*, *The Evolution of the Chinese Shipping Market 1988-2018: An analysis of the struggle of state-owned Chinese Shipping Companies facing foreign competition*, Géotransports no. 11 (2018) at 33-34, attached at **Exhibit NSA-15**.

[53] *Id.*

[54] *Id.* *See also* Jude Blanchette, *et al.*, *Hidden Harbors: China's State-Backed Shipping Industry*, Center for Strategic & Int'l Studies (July 2020) at 2, attached at **Exhibit NSA-7**.

COSCO to charge low prices that support the GOC's broader goal of maritime expansion, thereby distorting the domestic market.

- The CSIS report cited above reported the following:

> Consider a recent announcement issued jointly by the Ministry of Transportation and the Ministry of Commerce, among other government bodies, calling for Chinese companies to utilize 'cost, insurance, freight' (CIF) for export and 'free on board' (FOB) for imports. Put simply, if a company exports on CIF terms, it means it arranges the transport, whereas if it exports on FOB terms, it is the importer who maintains cargo control. By making this announcement, Beijing is seeking to empower Chinese firms both in how export and import decisions are made, whereas most other advanced economies leave such decisions to the market.[55]

By calling for Chinese companies to export on a CIF basis, the GOC is directing Chinese exporters to use the services of state-controlled carriers such as COSCO and CMG and distorting domestic prices. This is another clear example of how state-controlled carriers operate based on broader GOC policy goals instead of on market-based considerations.

Hence, this evidence provides a reasonable basis to find that market-determined prices under 19 C.F.R. § 351.511(a)(2)(i) are not available because the GOC's involvement in the market distorts domestic prices.[56]

If no useable market-determined prices for the comparison under 19 C.F.R. § 351.511(a)(2)(i) are available, then the Department may measure the adequacy of remuneration by comparing the prices charged by COSCO and CMG to a world market price pursuant to 19 C.F.R. § 351.511(a)(2)(ii). In the investigation of *Chassis from China*, the Department preliminarily determined that the domestic market for international ocean shipping services in

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55 *See* Jude Blanchette, *et al.*, *Hidden Harbors: China's State-Backed Shipping Industry*, Center for Strategic & Int'l Studies (July 2020) at 7, attached at **Exhibit NSA-7**.

56 *See Countervailing Duties*, 63 Fed. Reg. 65,348, 65,377 (Dep't Commerce Nov. 25, 1998) (final rule) ("While we recognize that government involvement in a market may have some impact on the price of the good or service in that market, such distortion will normally be minimal unless the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market. Where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative in the hierarchy.").

China was distorted by the GOC's involvement.[57] As a result, the Department relied on world market prices for international ocean shipping services as a benchmark, consistent with 19 C.F.R. § 351.511(a)(2)(ii).[58]

Prices that COSCO and CMB charge Chinese producers and exporters of subject merchandise for international ocean shipping services are not reasonably available to the Alliance. Moreover, these services from China are not a globally traded commodity. The Alliance intends to provide more detailed world market pricing data where available by 30 days prior to the preliminary results of the review, in accordance with 19 C.F.R. § 351.301(c)(3)(ii). However, the information herein demonstrates that GOC authorities likely provide international ocean shipping services for LTAR, pursuant to section 771(5)(E)(iv) of the Act and 19 C.F.R. § 351.511(a)(2)(ii).

3. Specificity

This program is specific under section 771(5A)(D) of the Act because the GOC provides the subsidy to the traded goods sector, which constitutes a specific "group" of enterprises. Under 19 C.F.R. § 351.502(c), "In determining whether a subsidy is being provided to a 'group' of enterprises or industries within the meaning of section 771(5A)(D) of the Act, {the Department} normally will consider enterprises that buy or sell goods internationally to comprise such a group."[59] Chinese companies that buy and/or sell goods internationally are the only possible users of international ocean shipping services. Therefore, this program is *de facto* specific under section

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57 *See* Preliminary Decision Memorandum accompanying *Certain Chassis and Subassemblies Thereof from the People's Republic of China*, 86 Fed. Reg. 56 (Dep't Commerce Jan. 4, 2021) (prelim. affirm. countervailing duty deter.) at 30 ("*Chassis from China* Preliminary Determination"). In the *Chassis from China* final determination, the Department deferred a final determination with respect to this program until the first administrative review. *See* Issues and Decision Memorandum accompanying *Certain Chassis and Subassemblies Thereof from the People's Republic of China*, 86 Fed. Reg. 15,186 (Dep't Commerce Mar. 22, 2021) (final affirm. countervailing duty deter.) at 14 and cmt. 2 ("*Chassis from China* Final Determination").

58 *See Chassis from China* Preliminary Determination at 30.

59 19 C.F.R. § 351.502(c)

771(5A)(D)(iii)(I) of the Act because the actual recipients of the subsidy, when considered on the basis of a group of enterprises, are limited in number. The Alliance notes that the Department preliminarily found this program to be specific pursuant to section 771(5A)(D)(iii) of the Act in the preliminary determination of *Chassis from China*.[60]

III. INCOME TAX CONCESSIONS FOR ENTERPRISES ENGAGED IN COMPREHENSIVE RESOURCE UTILIZATION

A. Background

Article 33 of the Law of the People's Republic of China on Enterprise Income Tax ("EITL") allows enterprises to deduct income from "the production of products in line with state industrial policies through comprehensive use of resources" from their taxable income.[61] In a separate proceeding, the GOC specified that Article 33 "provides that incomes generated by an enterprise from using any of the materials as listed in the Catalogue of Resources for Comprehensive Utilization by Enterprises Entitled to Preferential Income Tax Treatment {("*Catalogue of Resources*")} as its major raw material may use ten percent of that income to reduce its overall taxable income."[62] Under the "renewable resources" category, the *Catalogue of Resources* identifies several resources that are applicable to the production of subject merchandise, including "battery, electronic and electrical products" and "photosensitive material."[63]

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60 *See Chassis from China* Preliminary Determination at 30. As cited above, the Department deferred a final determination with respect to this program until the first administrative review of the proceeding. *See Chassis from China* Final Determination at 14 and cmt. 2.

61 *See* Letter from Morris, Manning & Martin LLP to Sec'y of Commerce, re: *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China, Case No. C-570-980: GOC's Initial Questionnaire Response* (Jun. 22, 2021) at Exhibit B-2, Art. 33 ("GOC IQR").

62 *See* Issues and Decision Memorandum accompanying *Certain Uncoated Paper from the People's Republic of China*, 81 Fed. Reg. 3110 (Dep't Commerce Jan. 20, 2016) (final affirm. countervailing duty deter.) at 33 ("*Uncoated Paper from China* Final Determination").

63 *See* Letter from Morris, Manning & Martin LLP to Sec'y of Commerce, re: *Certain Uncoated Paper from the People's Republic of China, C-570-023: Supplemental Questionnaire Response and Addendum to Supplemental Questionnaire Response* (June 16, 2015) (PUBLIC VERSION), excerpts attached at **Exhibit NSA-16**.

PUBLIC DOCUMENT

The Department has previously found this program to be countervailable.[64] In addition, the Department recently initiated an investigation into this program in another proceeding.[65] Accordingly, the Department should initiate an investigation into this program.

B. The Subsidy Is Countervailable

1. Financial Contribution

These preferential tax benefits provide a financial contribution in the form of revenue forgone by the GOC, pursuant to section 771(5)(D)(ii) of the Act.

2. Benefit

Pursuant to section 771(5)(E) of the Act and 19 C.F.R. § 351.509(a)(1), this program provides a benefit to the recipient in the amount of income tax savings.

3. Specificity

The *Catalogue of Resources* identifies three categories of raw material usage for eligibility: symbiosis, associated mineral resources; waste (liquid), waste gas and waste residue; and renewable resources.[66] On this basis, the tax reductions are *de jure* specific under section 771(5A)(D)(i) of the Act, because the GOC limits the program to enterprises that use the raw materials under these categories in the *Catalogue of Resources*, explicitly including the renewable resources industry.[67]

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64 *See Uncoated Paper from China* Final Determination at 33-34.

65 *See* Initiation Checklist, *Certain Walk-Behind Snow Throwers and Parts Thereof from the People's Republic of China* (DOC Case No. C-570-142) (Apr. 19, 2021) (PUBLIC VERSION), excerpts attached at **Exhibit NSA-17**.

66 *See* Letter from Morris, Manning & Martin LLP to Sec'y of Commerce, re: *Certain Uncoated Paper from the People's Republic of China, C-570-023: Supplemental Questionnaire Response and Addendum to Supplemental Questionnaire Response* (June 16, 2015) (PUBLIC VERSION), excerpts attached at **Exhibit NSA-16**.

67 *Id.*; *see also Uncoated Paper from China* Final Determination at 34.

IV. INCOME TAX DEDUCTIONS / CREDITS FOR PURCHASES OF SPECIAL EQUIPMENT

A. Background

Article 34 of the EITL states that the GOC provides a tax credit for "investment by {e}nterprises on procurement of special facilities for environmental protection, energy and water conservation and safe production."[68] Article 100 of the *Regulations on the Implementation of Enterprise Income Tax Law of the People's Republic of China* ("Decree No. 512") provides additional details on this program.[69] Decree No. 512 specifies that taxpayers may deduct 10% of the cost of the investments specified in Article 34 from taxable income for the current year, and they may carry forward the deduction for up to five years.[70] In past segments of this proceeding, the Department found that respondents have received benefits under at least 10 other GOC subsidy programs to promote energy savings.[71] This provides a reasonable basis to suspect that subject merchandise producers have also received benefits under the program specified in Article 34 of the EITL.

The Department previously found this program to be countervailable.[72] In addition, the Department recently initiated an investigation into this program in another proceeding.[73] Accordingly, the Department should initiate an investigation into this program.

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68 *See* GOC IQR at Exhibit B-2, Art. 34.

69 *See* Letter from Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt LLP to Sec'y of Commerce, re: *GOC's Third (2) Supplemental Questionnaire Response: Fifth Administrative Review of the Countervailing Duty Order on Citric Acid from the People's Republic of China* (May 14, 2015) (PUBLIC VERSION), excerpts attached at **Exhibit NSA-18**.

70 *Id.*

71 Countervailing Duty Request for Information, *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China*, sec. II (Apr. 23, 2021) at II-4 through II-25.

B. <u>The Subsidy Is Countervailable</u>

1. <u>Financial Contribution</u>

These preferential tax benefits provide a financial contribution in the form of revenue forgone by the GOC, pursuant to section 771(5)(D)(ii) of the Act.

2. <u>Benefit</u>

Pursuant to section 771(5)(E) of the Act and 19 C.F.R. § 351.509(a)(1), this program provides a benefit to the recipient in the amount of income tax savings.

3. <u>Specificity</u>

Under Article 34 of the EITL, the GOC limits the program to enterprises that invest in special facilities for environmental protection, energy and water conservation, and safe production.[74] Hence, the tax reductions are *de jure* specific under section 771(5A)(D)(i) of the Act.

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72 *See*, *e.g.*, Issues and Decision Memorandum accompanying *Common Alloy Aluminum Sheet from the People's Republic of China*, 83 Fed. Reg. 17,651 (Dep't Commerce Apr. 23, 2018) (prelim. affirm. countervailing duty deter., alignment of final countervailing duty deter. with final antidumping duty deter., and prelim. countervailing duty deter. of critical circumstances) at 44, *unchanged in* Issues and Decision Memorandum accompanying *Common Alloy Aluminum Sheet From the People's Republic of China*, 83 Fed. Reg. 57,427 (Dep't Commerce Nov. 15, 2018) (final affirm. deter.) at 16.

73 *See* Initiation Checklist, *Certain Walk-Behind Snow Throwers and Parts Thereof from the People's Republic of China* (DOC Case No. C-570-142) (Apr. 19, 2021) (PUBLIC VERSION), excerpts attached at **Exhibit NSA-17**.

74 *See* GOC IQR at Exhibit B-2, Art. 34.

* * *

If you have any questions regarding this submission, please contact us.

Respectfully submitted,

/s/ Timothy C. Brightbill
Timothy C. Brightbill, Esq.
Laura El-Sabaawi, Esq.
Paul A. Devamithran, Esq.

Counsel to the American Alliance for Solar Manufacturing

ECONOMIC CONSULTANT:

Shane Subler

WILEY TRADE ANALYTICS GROUP
1776 K Street, NW
Washington, DC 20006
(202) 719-7000

COMPANY CERTIFICATION

I, Andrew Munro, General Counsel, currently employed by Q CELLS North America, certify that I prepared or otherwise supervised the preparation of the attached submission of, *New Subsidy Allegations*, due or filed on July 19, 2021, pursuant to the 01/01/19 – 12/31/19 Administrative Review Under the Countervailing Duty Order on *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China*, (Case No. C-570-980). I certify that the public information and any business proprietary information of The American Alliance for Solar Manufacturing contained in this submission is accurate and complete to the best of my knowledge. I am aware that the information contained in this submission may be subject to verification or corroboration (as appropriate) by the U.S. Department of Commerce. I am also aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. Government. In addition, I am aware that, even if this submission may be withdrawn from the record of the AD/CVD proceeding, the U.S. Department of Commerce may preserve this submission, including a business proprietary submission, for purposes of determining the accuracy of this certification. I certify that a copy of this signed certification will be filed with this submission to the U.S. Department of Commerce.

Signature: ______________________

Andrew Munro

Date: July 19, 2021

REPRESENTATIVE CERTIFICATION

I, Timothy C. Brightbill, with Wiley Rein LLP, counsel to the American Alliance for Solar Manufacturing, certify that I have read the attached submission, *New Subsidy Allegations*, due or filed on July 19, 2021, pursuant to the 01/01/19 – 12/31/19 Administrative Review Under the Countervailing Duty Order on *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China*, (Case No. C-570-980). In my capacity as counsel for this submission, I certify that the information contained in this submission is accurate and complete to the best of my knowledge. I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. Government. In addition, I am aware that, even if this submission may be withdrawn from the record of the AD/CVD proceeding, the U.S. Department of Commerce may preserve this submission, including a business proprietary submission, for purposes of determining the accuracy of this certification. I certify that a copy of this signed certification will be filed with this submission to the U.S. Department of Commerce.

Signature: Timothy C Brightbill
Timothy C. Brightbill

Date: July 19, 2021

CERTIFICATE OF SERVICE

PUBLIC SERVICE

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China
C-570-980
Administrative Review POR 01/01/2019 – 12/31/2019

I certify that a copy of this public submission was served on the following parties, via electronic service, on July 19, 2021.

/s/ John Allen Riggins

Craig A. Lewis, Esq.
Hogan Lovells US LLP
555 Thirteenth St., NW
Washington, DC 20004

Gregory S. Menegaz, Esq.
deKieffer & Horgan
1090 Vermont Ave., NW
Suite 410
Washington, DC 20005

Andrew T. Schutz, Esq.
Grunfeld Desiderio Lebowitz Silverman Klestadt, LLP
1201 New York Ave., NW
Suite 650
Washington, DC 20005

John M. Gurley, Esq.
Arent Fox LLP
1717 K St., NW
Washington, DC 20006

Jeffrey S. Grimson, Esq.
Mowry & Grimson PLLC
5335 Wisconsin Ave., NW
Suite 810
Washington, DC 20015

Richard Weiner, Esq.
Sidley Austin LLP
1501 K St., NW
Washington, DC 20005

Robert G. Gosselink, Esq.
Trade Pacific PLLC
700 Pennsylvania Ave., SE
Suite 500
Washington, DC 20003

Brady W. Mills, Esq.
Morris, Manning & Martin, LLP
1401 I St., NW
Suite 600
Washington, DC 20005

Yangfan Xie
Embassy of the Peoples Republic of China
Economic and Commercial Office
2133 Wisconsin Ave., NW
Washington, DC 20007

EXHIBIT LIST		
Exhibit No.	**Exhibit**	**Security**
NSA-1	Letter from Andy Baukol, Principal Deputy Assistant Sec'y for International Monetary Policy to James Maeder, Deputy Assistant Sec'y for Antidumping and Countervailing Duty Operations (Nov. 9, 2020)	Public
NSA-2	Saheli Roy Choudhury, *The Yuan Hit a 11-year Low This Week. Here's a Look at How China Controls its Currency*, CNBC (Aug. 28, 2020)	Public
NSA-3	Press Release, *Treasury Designates China as a Currency Manipulator*, U.S. Department of the Treasury (Aug. 5, 2019)	Public
NSA-4	Administrative Rules on Purchase and Sale of Foreign Exchange by Banks, Decree of the People's Bank of China {No. 2, 2014} (June 22, 2014)	Public
NSA-5	China Currency Undervaluation – Balance of Payments Analysis	Public
NSA-6	Christopher R. O'Dea, *Asia Rising: Ships of State?*, Naval War College Rev. vol. 72 no. 1, art. 5 (2019)	Public
NSA-7	Jude Blanchette, *et al.*, *Hidden Harbors: China's State-Backed Shipping Industry*, Center for Strategic & Int'l Studies (July 2020)	Public
NSA-8	Wu Xiaoyan, *China's "Sea Power" Nation Strategy*, Inst. for Security & Dev. Policy (June 2014)	Public
NSA-9	Testimony of Carolyn Bartholomew, Chairman, U.S.-China Economic and Security Rev. Comm'n Before the United States H. Comm. on Transportation and Infrastructure, Subcomm. on Coast Guard and Maritime Transportation, *Hearing on "China's Maritime Silk Road Initiative: Implications for the Global Maritime Supply Chain"* (Oct. 17, 2019)	Public

EXHIBIT LIST		
Exhibit No.	**Exhibit**	**Security**
NSA-10	COSCO, *COSCO SHIPPING's New Logo Launched in Shanghai* (Sept. 29, 2016)	Public
NSA-11	CMG, *About Us*	Public
NSA-12	COSCO, *Group Profile*	Public
NSA-13	Barrons, *JinkoSolar Announces First Quarter 2021 Financial Results* (June 25, 2021)	Public
NSA-14	JinkoSolar, *JinkoSolar Signs Agreement with COSCO to Use Port of Piraeus as a Distribution Hub for Europe* (Dec. 10, 2019)	Public
NSA-15	Linyan Huang, *et al.*, *The Evolution of the Chinese Shipping Market 1988-2018: An analysis of the struggle of state-owned Chinese Shipping Companies facing foreign competition*, Géotransports no. 11 (2018)	Public
NSA-16	Letter from Morris, Manning & Martin LLP to Sec'y of Commerce, re: *Certain Uncoated Paper from the People's Republic of China, C-570-023: Supplemental Questionnaire Response and Addendum to Supplemental Questionnaire Response* (June 16, 2015) (PUBLIC VERSION) (excerpts)	Public
NSA-17	Initiation Checklist, *Certain Walk-Behind Snow Throwers and Parts Thereof from the People's Republic of China* (DOC Case No. C-570-142) (Apr. 19, 2021) (PUBLIC VERSION) (excerpts)	Public
NSA-18	Letter from Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt LLP to Sec'y of Commerce, re: *GOC's Third (2) Supplemental Questionnaire Response: Fifth Administrative Review of the Countervailing Duty Order on Citric Acid from the People's Republic of China* (May 14, 2015) (PUBLIC VERSION) (excerpts)	Public