

demonstrated that further violations were “imminent” within the meaning of 15 CFR 766.24, and an order temporarily denying Respondent’s export privileges would be necessary to prevent them.

B. Respondent’s Argument and Evidence Did Not Diminish BIS’ Case

As stated above, Respondent must show there is no support for the finding the TDO is necessary to prevent an imminent violation of the EAR. 15 CFR 766.24(e)(2). In his appeal, Respondent presented seven exhibits, one of which was a copy of the June 12, 2024, TDO (Ex. A); the remaining six exhibits were business records showing Respondent’s transfer of ownership in and resignation as director of Skywind, Hong Fan, and Lufeng. (Exs. B–G). With these exhibits as support, Respondent makes two arguments. He first argues a TDO is not necessary to prevent him from imminently violating the EAR because he is no longer an owner or director of Skywind, Hong Fan, and Lufeng. Specifically, Respondent argues the TDO “addresses alleged violations that occurred after February 2022,” and that Respondent “was divesting his ownership and resigning” from the companies during 2022 and 2023. (Appeal at Para. 14). Respondent asserts his “ownership of the companies is the only allegation that purportedly ties him to the alleged violations described in the TDO.” (Appeal at Para. 14). I am not persuaded.

First, I note Respondent never challenged the truth of the allegations of the TDO, he merely distances himself from the conduct by stating he gave up ownership of two of the companies (Hong Fan and Lufeng) by June 2022. (Appeal at Paras. 15, 16). Respondent conveniently ignores his own exhibits, which show he was still director of the companies until November 14, 2022. (Exs. E, F).

Respondent’s exhibits also show he remained in control, as owner and director, of Skywind until November 23, 2023. (Ex. G). Despite Respondent’s claim that he relinquished control of Hong Fan and Lufeng by November 14, 2022, BIS presented exhibits in its reply showing Respondent was listed as a beneficial owner of Hong Fan and Lufeng until at least September 6, 2023. (Exs. E, F; Exs. 1, 2). The TDO set forth numerous violations of the EAR committed by Skywind, Hong Fan, and Lufeng that occurred from May through November 2022, while Respondent was, by both his and BIS’ claims, owner and director of the companies. (Ex. A at 7–8). As the director and owner of these companies, it is reasonable to conclude

an order proscribing Respondent’s export privileges is necessary to prevent future violations.

Respondent alternatively argues even if he was in control of the companies while they were engaged in the illicit conduct, the TDO does not prove he “was involved in or even knew about those events.” (Appeal at Para. 14). I find this argument unpersuasive. As owner and director of the companies, Respondent’s role imparts responsibility on him for the actions of the company. *See Faour v. U.S. Dept. of Agriculture*, 985 F.2d 217 (5th Cir. 1993) (petitioner was responsibly connected to actions of company because he was an officer, director, and owner of stock during time that company committed repeated violations of the law). Respondent did not refute any allegations of violative conduct in the TDO, but instead only demonstrated he has executed paperwork to divest from the companies. In the absence of the TDO, nothing would prevent Respondent from creating new companies to engage in the same violative conduct.

Wherefore,

ORDER

It is hereby recommended the Temporary Denial Order be affirmed.

Done and dated September 4, 2024, at Houston, Texas



The Hon. Tommy Cantrell,
Administrative Law Judge, United States Coast Guard.

Attachment A: Exhibit List

Attachment A

Respondent’s Exhibits

Exhibit A: Temporary Denial Order issued Jun. 12, 2024

Exhibit B: Company Particulars—Skywind International Limited

Exhibit C: Company Particulars—Hong Fan Global Limited

Exhibit D: Company Particulars—Lufeng Limited

Exhibit E: Resignation and transfer instruments—Hong Fan

Exhibit F: Resignation and transfer instruments—Lufeng

Exhibit G: Resignation and transfer instruments—Skywind

BIS Exhibits

Exhibit 1: Sep. 6, 2023, email re: Hong Fan

Exhibit 2: Sep. 6, 2023, email re: Lufeng

Certificate of Service

I hereby certify that I have transmitted the above document to the following persons, as indicated below:

ALJ Docketing Center, U.S. Custom House, Email: aljdocketcenter@uscg.mil, Phone: (410) 962–5100, Sent by email

Gregory Michelsen, Esq., Tristan de Vega, Esq., Office of Chief Counsel for BIS, U.S. Dept. of Commerce, Sent by email

George Benaur, Esq., Benaur Law LLC, Sent by email

Done and dated September 4, 2024, at Houston, Texas



Ericka J. Pollard,
Paralegal Specialist to The Hon. Tommy Cantrell Administrative Law Judge United States Coast Guard

[FR Doc. 2024–22549 Filed 10–3–24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–557–831]

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From Malaysia: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells), from Malaysia. The period of investigation is January 1, 2023, through December 31, 2023. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable October 4, 2024.

FOR FURTHER INFORMATION CONTACT: Preston Cox or Scarlet Jaldin, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5041 or (202) 482–4275, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on May 20, 2024.¹ On July 3, 2024, Commerce postponed the preliminary determination of this investigation until September 23, 2024.² On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.³

The deadline for the preliminary determination is now September 30, 2024.

For a complete description of the events that followed the initiation of this investigation, see the Preliminary Decision Memorandum.⁴ A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Investigation

The product covered by this investigation is solar cells from Malaysia. For a complete description of the scope of this investigation, see Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,⁵ the *Initiation Notice* set aside a period of time for

¹ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from Cambodia, Malaysia, Thailand, and the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigations*, 89 FR 43816 (May 20, 2024) (*Initiation Notice*).

² See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from Cambodia, Malaysia, Thailand, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Countervailing Duty Investigations*, 89 FR 55231 (July 3, 2024).

³ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated July 22, 2024.

⁴ See Memorandum, "Decision Memorandum for the Preliminary Affirmative Determination in the Countervailing Duty Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from Malaysia," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁵ See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

parties to raise issues regarding product coverage, (*i.e.*, scope).⁶

We received several comments concerning the scope of this investigation, as well as in the companion less-than-fair-value (LTFV) and countervailing duty (CVD) investigations of solar cells, as it appeared in the *Initiation Notice*. We are currently evaluating the scope comments filed by interested parties. We intend to issue our preliminary decision regarding the scope of the LTFV and CVD investigations in the preliminary determinations of the companion LTFV investigations, the deadline for which is November 27, 2024.⁷ We will incorporate the scope decisions from the LTFV investigations into the scope of the final CVD determination for this investigation after considering any relevant comments submitted in scope case and rebuttal briefs.⁸

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.*, a financial contribution by an "authority" that gives rise to a benefit to the recipient, and that the subsidy is specific.⁹ For a full description of the methodology underlying our preliminary determination, see the Preliminary Decision Memorandum.

In making these findings, Commerce relied, in part, on facts available and, because it finds that one or more respondents did not act to the best of their ability to respond to Commerce's requests for information, it drew an adverse inference, where appropriate, in selecting from among the facts otherwise available.¹⁰ For further information, see the "Use of Facts Otherwise Available and Adverse Inferences" section in the Preliminary Decision Memorandum.

⁶ See *Initiation Notice*.

⁷ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from Cambodia, Malaysia, Thailand, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Less-Than Fair-Value Investigations*, 89 FR 77473 (September 23, 2024) (*LTFV Preliminary Postponement*).

⁸ The deadline for interested parties to submit scope case and rebuttal briefs will be established in the preliminary scope decision memorandum.

⁹ See sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

¹⁰ See sections 776(a) and (b) of the Act.

Alignment

In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final determination in this investigation with the final determination in the companion LTFV investigation of solar cells from Malaysia based on a request made by the petitioner.¹¹ Consequently, the final CVD determination will be issued on the same date as the final LTFV determination, which is currently scheduled to be issued no later than February 10, 2025.¹²

All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act.

In this investigation, Commerce calculated individual estimated countervailable subsidy rates for Hanwha Q CELLS Malaysia Sdn. Bhd. (Hanwha Q CELLS) and Jinko Solar Technology Sdn Bhd (Jinko Solar) that are not zero, *de minimis*, or based entirely on facts otherwise available. However, because publicly ranged sales values for all mandatory respondents are not on the record of this investigation, for the preliminary determination, we are unable to weight average the subsidy rates of Hanwha Q CELLS and Jinko Solar derive an estimated all-others rate for companies not individually examined. Therefore, we calculated a simple average of the subsidy rates calculated for Hanwha Q CELLS and Jinko Solar for application to the all-others rate.

Rate for Non-Responsive Companies

Three exporters and/or producers of solar cells from Malaysia (Baojia New Energy, Pax Union Resources SDN BHD, and SunMax Energy SDN BHD, collectively, the non-responsive companies) did not respond to Commerce's quantity and value (Q&V) questionnaire. We find that, by not responding to the Q&V questionnaire, these companies withheld requested information and significantly impeded

¹¹ See Petitioner's Letter, "Request to Align Countervailing Duty Investigation Final Determinations with Antidumping Duty Investigation Final Determinations," dated September 23, 2024.

¹² See *LTFV Preliminary Postponement*.

this proceeding. Thus, in reaching our preliminary determination, pursuant to sections 776(a)(2)(A) and (C) of the Act, we are basing the CVD subsidy rate for the non-responsive companies on facts otherwise available.

In addition, we preliminarily determine that an adverse inference is warranted, pursuant to section 776(b) of the Act. By failing to submit responses to Commerce’s Q&V questionnaire, these companies did not cooperate to the best of their ability in this investigation. Accordingly, we preliminarily find that an adverse inference is warranted to ensure that the non-responsive companies will not obtain a more favorable result than had they fully complied with our request for information. For more information on the application of adverse facts available, see “Use of Facts Otherwise Available and Adverse Inferences” in the Preliminary Decision Memorandum.

Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (percent <i>ad valorem</i>)
Hanwha Q CELLS Malaysia Sdn. Bhd	14.72
Jinko Solar Technology Sdn Bhd and its cross-owned companies: Jinko Solar (Malaysia) Sdn. Bhd. and Omega Solar Sdn. Bhd	3.47
Baojia New Energy	* 123.94
Pax Union Resources SDN BHD	* 123.94
SunMax Energy SDN BHD	* 123.94
All Others	9.13

* Rate based on facts available with adverse inferences.

Suspension of Liquidation

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in Appendix I of this notice entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

Disclosure

Commerce intends to disclose its calculations and analysis performed in this preliminary determination to interested parties within five days of its

public announcement of the preliminary determination, or if there is no public announcement, within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Consistent with 19 CFR 351.224(e), Commerce will analyze and, if appropriate, correct any timely allegations of significant ministerial errors by amending the preliminary determination. However, consistent with 19 CFR 351.224(d), Commerce will not consider incomplete allegations that do not address the significance standard under 19 CFR 351.224(g), following the preliminary determination. Instead, Commerce will address such allegations in the final determination together with issues raised in the case briefs or other written comments.

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

All interested parties will have the opportunity to submit scope case and rebuttal briefs on the preliminary decision regarding the scope of the CVD and LTFV investigations. The deadlines to submit scope case and rebuttal briefs will be provided in the preliminary scope decision memorandum. For all scope case and rebuttal briefs, parties must file identical documents simultaneously on the records of the ongoing CVD and LTFV investigations. No new factual information or business proprietary information may be included in either scope case or rebuttal briefs.

Case briefs or other written comments not related to the scope of this investigation may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. A timeline for the submission of case briefs and written comments will be notified to interested parties at a later date. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.¹³ Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of

contents listing each issue; and (2) a table of authorities.¹⁴

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹⁵ Further, we request that interested parties limit their public, executive summary of each issue to no more than 450 words, not including citations. We intend to use the public, executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations in the public, executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹⁶

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice in the **Federal Register**. Requests should contain the party’s name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

U.S. International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of solar

¹³ See 19 CFR 351.309(d); see also *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

¹⁴ See 19 351.309(c)(2) and (d)(2).

¹⁵ We use the term “issue” here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹⁶ See *AP0 and Service Final Rule*.

cells from Malaysia are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: September 30, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation 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 investigation 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 the investigation.

Excluded from the scope of the investigation 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 the investigation are crystalline silicon photovoltaic cells, not exceeding 10,000 mm² 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.

Additionally, excluded from the scope of the investigation are panels with surface area from 3,450 mm² to 33,782 mm² with one black wire and one red wire (each of type 22 AWG or 24 AWG not more than 206 mm in length when measured from panel extrusion), and not exceeding 2.9 volts, 1.1 amps, and

3.19 watts. For the purposes of this exclusion, no panel shall contain an internal battery or external computer peripheral ports.

Also excluded from the scope of the investigation are:

(1) Off grid CSPV panels in rigid form with a glass cover, with the following characteristics: (A) a total power output of 100 watts or less per panel; (B) a maximum surface area of 8,000 cm² per panel; (C) do not include a built-in inverter; (D) must include a permanently connected wire that terminates in either an 8 mm male barrel connector, or a two-port rectangular connector with two pins in square housings of different colors; (E) must include visible parallel grid collector metallic wire lines every 1–4 millimeters across each solar cell; and (F) must be in individual retail packaging (for purposes of this provision, retail packaging typically includes graphics, the product name, its description and/or features, and foam for transport); and

(2) Off grid CSPV panels without a glass cover, with the following characteristics: (A) a total power output of 100 watts or less per panel; (B) a maximum surface area of 8,000 cm² per panel; (C) do not include a built-in inverter; (D) must include visible parallel grid collector metallic wire lines every 1–4 millimeters across each solar cell; and (E) each panel is (1) permanently integrated into a consumer good; (2) encased in a laminated material without stitching, or (3) has all of the following characteristics: (i) the panel is encased in sewn fabric with visible stitching, (ii) includes a mesh zippered storage pocket, and (iii) includes a permanently attached wire that terminates in a female USB–A connector.

In addition, the following CSPV panels are excluded from the scope of the investigation: off-grid CSPV panels in rigid form with a glass cover, with each of the following physical characteristics, whether or not assembled into a fully completed off-grid hydropanel whose function is conversion of water vapor into liquid water: (A) a total power output of no more than 80 watts per panel; (B) a surface area of less than 5,000 square centimeters (cm²) per panel; (C) do not include a built-in inverter; (D) do not have a frame around the edges of the panel; (E) include a clear glass back panel; and (F) must include a permanently connected wire that terminates in a twoport rectangular connector.

Additionally excluded from the scope of this investigation are off-grid small portable crystalline silicon photovoltaic panels, with or without a glass cover, with the following characteristics: (1) a total power output of 200 watts or less per panel; (2) a maximum surface area of 16,000 cm² per panel; (3) no built-in inverter; (4) an integrated handle or a handle attached to the package for ease of carry; (5) one or more integrated kickstands for easy installation or angle adjustment; and (6) a wire of not less than 3 meters either permanently connected or attached to the package that terminates in an 8 mm diameter male barrel connector.

Also excluded from the scope of this investigation are off-grid crystalline silicon photovoltaic panels in rigid form with a glass cover, with each of the following physical

characteristics, whether or not assembled into a fully completed off-grid hydropanel whose function is conversion of water vapor into liquid water: (A) a total power output of no more than 180 watts per panel at 155 degrees Celsius; (B) a surface area of less than 16,000 square centimeters (cm²) per panel; (C) include a keep-out area of approximately 1,200 cm² around the edges of the panel that does not contain solar cells; (D) do not include a built-in inverter; (E) do not have a frame around the edges of the panel; (F) include a clear glass back panel; (G) must include a permanently connected wire that terminates in a two-port rounded rectangular, sealed connector; (H) include a thermistor installed into the permanently connected wire before the twoport connector; and (I) include exposed positive and negative terminals at opposite ends of the panel, not enclosed in a junction box.

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

Also excluded from the scope of this investigation are all products covered by the scope of the antidumping and countervailing duty orders on *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order*, 77 FR 73018 (December 7, 2012); and *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).

Merchandise covered by the investigation is currently classified in the Harmonized Tariff System of the United States (HTSUS) under subheadings 8541.42.0010 and 8541.43.0010. Imports of the subject merchandise may enter under HTSUS subheadings 8501.71.0000, 8501.72.1000, 8501.72.2000, 8501.72.3000, 8501.72.9000, 8501.80.1000, 8501.80.2000, 8501.80.3000, 8501.80.9000, 8507.20.8010, 8507.20.8031, 8507.20.8041, 8507.20.8061, and 8507.20.8091. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope Comments
- IV. Injury Test
- V. Use of Facts Available and Adverse Inferences
- VI. Subsidies Valuation Information
- VII. Benchmarks and Interest Rates
- VIII. Analysis of Programs
- IX. Recommendation

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