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April 18, 2025

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

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

SUBJECT: Issues and Decision Memorandum for the Final Affirmative Determination of Sales at Less Than Fair Value in the Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from Thailand

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I. SUMMARY

The U.S. Department of Commerce (Commerce) finds that crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells), from Thailand are being, or are likely to be, sold in the United States at less-than-fair-value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act).

After analyzing the comments submitted by interested parties, and based on our findings at verification, we made certain changes to the *Preliminary Determination*[1] with respect to the margin calculation for Trina Solar Science & Technology (Thailand) Ltd. (TTL), the sole mandatory respondent in this investigation. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues for which we received comments from interested parties:

Comment 1: Whether Commerce Should Adjust TTL's Costs in Accordance with Issues Raised in its Cost Verification Report
Comment 2: Whether Commerce Should Have Selected Two Mandatory Respondents

[1] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from Thailand: Preliminary Affirmative Determination of Sales at Less-Than-Fair-Value, Affirmative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures*, 89 FR 96214 (December 4, 2024) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

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Comment 3: Whether Commerce Should Use Financial Ratios Derived from Risen Solar to Calculate TTL's Constructed Value Profit and Selling Expenses
Comment 4: Whether Commerce Should Adjust TTL's Antidumping Duty Margin to Account for Subsidies Countervailed
Comment 5: Whether the Final Determination Should Continue to Base the "All Others" Weighted-Average Dumping Margin on TTL's Rate
Comment 6: Whether Commerce Should Render a Negative Critical Circumstances Determination
Comment 7: Whether Commerce Should Adjust Its Major Input and Transactions Disregarded Rules Analyses
Comment 8: Whether Commerce Should Find the Existence of a Particular Market Situation Affecting Solar Inputs
Comment 9: Whether Commerce Should Adjust TTL's Reported Costs to Address the Particular Market Situation Affecting Solar Inputs

We note that arguments related to the benchmark for wafers for use in the major input analysis as well as in the particular market situation analysis are identical. Accordingly, Commerce has addressed the issue of the appropriate wafer benchmark to use for both the major input analysis and PMS analysis in Comment 8 below. Arguments involving adjustments to make to the COP used in our major input analysis are addressed in Comment 7 below.

II. BACKGROUND

On December 4, 2024, Commerce published in the *Federal Register* its *Preliminary Determination*, in which we also postponed the final determination until April 18, 2025. In December 2024 and February 2025, respectively, Commerce conducted verifications of the cost and sales information relied upon in making the final determination in this investigation consistent with section 782(i) of the Act.[2] Specifically, Commerce conducted verifications of the information and data on TTL's cost of production and U.S. sales.

The petitioner,[3] TTL, and Canadian Solar International Limited, Canadian Solar Manufacturing (Thailand) Co., Ltd., and Canadian Solar US Module Manufacturing Corporation (collectively, Canadian Solar) timely submitted case briefs.[4] The petitioner, TTL, and Canadian Solar timely submitted rebuttal briefs,[5] and Runergy PV Technology (Thailand) Co. Ltd. (Runergy) timely

[2] *See* Memorandum, "Verification of the Cost Response of Trina Solar Science & Technology (Thailand) Ltd. in the Less Than Fair Value Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from Thailand," dated March 6, 2025 (TTL Cost Verification Report); *see also* Memorandum, "Verification of the Sales Response of Trina Solar Science & Technology (Thailand) Ltd.'s U.S. Affiliate, Trina Solar (U.S.), Inc., in the Less-Than-Fair-Value Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from Thailand," dated February 28, 2025 (TTL Sales Verification Report).
[3] The petitioner is the American Alliance for Solar Manufacturing Trade Committee.
[4] *See* Petitioner's Letter, "Case Brief," dated March 17, 2025 (Petitioner's First Case Brief); *see also* TTL's Letter, "TTL's Case Brief," dated March 17, 2025 (TTL's First Case Brief); and Canadian Solar's Letter, "Case Brief of Canadian Solar," dated March 17, 2025 (Canadian Solar's First Case Brief).
[5] *See* Petitioners' Letter, "Rebuttal Brief," dated March 25, 2025, (Petitioners' First Rebuttal Brief); *see also* TTL's Letter, "TTL's Rebuttal Brief," dated March 25, 2025 (TTL's First Rebuttal Brief); and Canadian Solar's Letter, "Rebuttal Brief of Canadian Solar," dated March 25, 2025 (Canadian Solar's First Rebuttal Brief).

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submitted a letter in lieu of a rebuttal brief.[6] Additionally, on March 25, 2024, M.L.T. Solar Energy Product Company Limited (MLT) filed a rebuttal brief, which Commerce rejected on March 27, 2025 as it contained new affirmative arguments.[7] On March 28, 2025, MLT submitted a request for reconsideration of this rejection.[8] On March 31, 2025, the petitioner submitted comments on MLT's request.[9] On April 4, 2025, Commerce allowed MLT the opportunity to resubmit its rebuttal comments with certain information redacted.[10] MLT timely resubmitted this redacted rebuttal brief on April 7, 2025.[11]

On September 20, 2024, the petitioner filed a timely allegation that a particular market situation (PMS) exists in Thailand such that the cost of producing subject merchandise is outside the ordinary course of trade.[12] Commerce issued its PMS Memorandum on March 24, 2025, in which it found that a cost-based PMS existed during the POI regarding the prices the respondent paid for solar wafers and solar glass.[13] We invited interested parties to comment on the PMS Analysis Memorandum.[14] On March 31, 2025, we received case briefs regarding the PMS Analysis Memorandum from TTL and Canadian Solar,[15] and a letter in lieu of a case brief from the petitioner.[16] On April 4, 2025, Commerce received rebuttal briefs regarding the PMS Analysis Memorandum from the petitioner and TTL,[17] and a letter in lieu of a rebuttal brief from Canadian Solar.[18]

III. CHANGES SINCE THE *PRELIMINARY DETERMINATION*

Based on the review of the record and comments received from interested parties, we made the following changes from the *Preliminary Determination*:

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[6] *See* Runergy's Letter, "Letter in Lieu of a Rebuttal Brief," dated March 25, 2025 (Runergy's Letter in Lieu of a Rebuttal Brief).
[7] *See* Commerce's Letter, "Rejection of M.L.T. Solar Energy Product Company Limited's Rebuttal Brief," dated March 27, 2025; *see also* Memorandum, "Rejection of M.L.T. Solar Energy Product Company Limited's Rebuttal Brief," dated March 27, 2025.
[8] *See* MLT's Letter, "M.L.T. Solar Energy Product Company Limited Request for Reconsideration," dated March 28, 2025.
[9] *See* Petitioner's Letter, "Comment on MLT Request for Reconsideration," dated March 31, 2025.
[10] *See* Commerce's Letter, "Reconsideration of Rebuttal Brief Rejection," dated April 4, 2025.
[11] *See* MLT's Letter, "Resubmission of Rebuttal Brief of M.L.T. Solar Energy Product Company Limited," dated April 7, 2025 (MLT's Rebuttal Brief).
[12] *See* Petitioner's Letter, "Allegations of a Cost-Based Particular Market Situation," dated September 19, 2024 (PMS Allegation).
[13] *See* Memorandum, "Post-Preliminary Analysis of the Particular Market Situation Allegation," dated March 24, 2025 (PMS Analysis Memorandum).
[14] *See* Memorandum, "Briefing Schedule for Case and Rebuttal Briefs: Particular Market Situation Analysis," dated March 25, 2025.
[15] *See* TTL's Letter, "TTL's Case Brief on Particular Market Situation Analysis," dated March 31, 2025 (TTL's Second Case Brief); *see also* Canadian Solar's Letter, "Particular Market Situation Analysis Case Brief," dated March 31, 2025 (Canadian Solar's Second Case Brief).
[16] *See* Petitioner's Letter, "Letter in Lieu of a Particular Market Situation Case Brief," dated March 31, 2025 (Petitioner's Letter in Lieu of a Second Case Brief).
[17] *See* Petitioner's Letter, "PMS Rebuttal Brief," dated April 4, 2025 (Petitioner's Second Rebuttal Brief); TTL's Letter, "TTL's PMS Rebuttal Brief," dated April 4, 2025 (TTL's Second Rebuttal Brief).
[18] *See* Canadian Solar's Letter, "Particular Market Situation Analysis Letter in Lieu of Rebuttal Brief," dated April 4, 2025 (Canadian Solar's Letter in Lieu of a Second Rebuttal Brief).

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TTL:

- We adjusted TTL's cost of production to account for our finding that a particular market situation exists in Thailand based on sales of Chinese solar inputs to Thailand.[19]
- We made certain changes to TTL's cost of production and sales data based on findings at verification.[20]

Sunshine Electrical Energy and Taihua New Energy (Thailand) Co. Ltd.:

- We updated the export subsidy rate in the final determination of the concurrent countervailing duty (CVD) investigation to adjust the cash deposit rates. As a result, we revised our cash deposit as explained in the "Adjustments to Cash Deposit Rates for Export Subsidies" section below.

IV. ADJUSTMENTS TO CASH DEPOSIT RATES FOR EXPORT SUBSIDIES

In an LTFV investigation where there is a concurrent CVD investigation, it is Commerce's normal practice to calculate the cash deposit rate for each respondent by adjusting the respondent's estimated weighted-average dumping margin to account for export subsidies found for each respective respondent in the concurrent CVD investigation. Doing so is in accordance with section 772(c)(1)(C) of the Act, which states that U.S. price "shall be increased by the amount of any countervailing duty imposed on the subject merchandise ... to offset an export subsidy."

In the final determination of the companion CVD investigation of solar cells from Thailand, Commerce determined that producers and exporters of solar cells from Thailand, specifically Sunshine Electrical Energy and Taihua New Energy (Thailand) Co. Ltd., benefitted from certain subsidy programs contingent on exports.[21] Accordingly, for the final determination of this investigation, Commerce has determined the cash deposit rate for Sunshine Electrical Energy and Taihua New Energy (Thailand) Co. Ltd. by adjusting their estimated dumping margins by export subsidies found countervailable in the companion CVD investigation.[22]

[19] *See* PMS Analysis Memorandum.
[20] *See* TTL Cost Verification Report and TTL Sales Verification Report.
[21] *See* unpublished *Federal Register* notice titled "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from Thailand: Final Affirmative Countervailing Duty Determination," dated concurrently with this notice (Solar Cells from Thailand CVD Final Determination), and accompanying Issues and Decision Memorandum (IDM).
[22] *See Preliminary Determination* PDM at 24 for Commerce's explanation on the preliminary adjustments to cash deposit rates for export subsidies.

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V. DISCUSSION OF THE ISSUES

Comment 1: Whether Commerce Should Adjust TTL's Costs in Accordance with Issues Raised in its Cost Verification Report

Petitioner's Comments:

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

> {Commerce} identified three issues in its cost verification report: (1) auditor adjustments, (2) an unreconciled difference between POI costs and TTL's financial accounting system, and (3) an adjustment to the financial expense rate due to interest income.[23] In the final determination, {Commerce} should adjust TTL's reported costs consistent with {Commerce}'s findings and observations at verification.

TTL's Rebuttal Comments:

The following is a verbatim summary of arguments submitted by TTL. For further details, *see* TTL's First Rebuttal Brief at 17-20.

> Commerce should make only certain adjustments to TTL's reported costs of production based on verification findings. Commerce has the authority to disregard small non-reconciling amount.[24] In this case, the reconciling difference is relatively small, was identified to Commerce early in the proceeding, and has an insignificant impact on the calculation of normal value.
>
> Commerce should also not increase TTL's cost of manufacturing to account for an adjustment related to impairment losses for unused machinery that TTL recorded in 2023. TTL's auditors reversed this loss when they prepared TTL's 2023 financial statements, because the auditors already made an adjustment for the impairment losses for the 2022 financial statements. TTL based its reported costs on trial balance costs prior to any reclassifications or adjustments by its auditors. This impairment provision related to production during the prior FY2022 fiscal period,

[23] *See* TTL Cost Verification Report.
[24] *See* section 777A(a)(2) of the Act.

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and TTL's auditors made an adjustment to exclude it from TTL's 2023 financial statements since it related to 2022.[25]

Section 773(f)(1)(A) of the Act directs Commerce to rely on the costs of production in the books and records of the exporter of the merchandise, if such records are kept in accordance with the GAAP of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise. Commerce's antidumping questionnaire provides that COP data should be calculated based on the actual costs incurred during the POI, and it has long been Commerce's practice to require respondents to report their costs on this basis.[26] Here, the accrued losses for unused machinery that TTL recorded during the POI to recognize the 2022 impairment losses would be inappropriate because such impairment losses do not reflect TTL's costs of production during the POI.

In contrast to G&A expenses, which are by nature indirect expenses incurred by a company as a whole and are not directly related to a process or product,[27] Commerce considers expenses related to a particular production process or product to be product-specific manufacturing costs.[28] Because the provision related to impairment losses of unused machinery, and TTL's auditors originally made this adjustment in 2022, they are appropriately considered prior period manufacturing costs.

In this case, the 2022 auditor adjustment amount was not a normal recurring provision. Nor was the provision recorded by TTL in 2023 the type of expense that TTL routinely makes each year in carrying out its operations. Nor was it a quantifiable obligation that needed to be recorded in the current year to ensure a proper matching with current revenue and expenses. Commerce therefore should not increase TTL's costs of production in its calculations for the final determination

[25] *See, e.g.*, TTL's Letters, "Section D Response," dated August 15, 2024 (TTL's Section D QR), at Exhibit D-14 ("TTL relied on the trial balance costs prior to any reclassifications relating to prior years"); and "Section D Supplemental Questionnaire Response," dated November 12, 2024 (TTL's Section D SQR), at SuppD-20 (TTL relied on the trial balance costs prior to any reclassifications); *see also* TTL Cost Verification Report at 8 and Cost Verification Exhibit (CVE) 5.

[26] *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 30326 (June 14, 1996) (*Pasta from Italy*) (citing *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from Spain*, 59 FR 66931 (December 28, 1994) (*Steel Bar from Spain*) and *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from Italy*, 59 FR 66921 (December 28, 1994) (*Steel Bar from Italy*).

[27] *See e.g.*, *Certain Carbon and Alloy Steel Cut-to-Length Plate from France: Final Determination of Sales at Less Than Fair Value*, 82 FR 16363 (April 4, 2017) (*CTL Plate from France*), and accompanying IDM at Comment 10.

[28] *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea*, 77 FR 17413 (March 26, 2012) (*Refrigerator-Freezers from Korea*), and accompanying IDM at Comment 35.

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to account for TTL's 2023 provision that was recorded solely to recognize the FY 2022 impairment losses.

MLT's Rebuttal Comments:[29]

MLT incorporates TTL's and other respondents' rebuttal arguments by reference.

Commerce's Position: We agree with the petitioner and have adjusted TTL's reported costs pursuant to Commerce's cost verification findings. Specifically, for the final determination, we have excluded an offset related to non-recurring prior period losses, excluded antidumping and countervailing duty (AD/CVD) refunds, and included an unreconcilable difference from the cost reconciliation.[30]

First, in reporting to Commerce, TTL decreased its fiscal year (FY) 2023 cost of goods sold (COGS) to exclude an auditor adjustment recognizing an impairment loss for unused machinery.[31] Because it was an end-of-year provision set up by the company's auditor, this impairment loss was recognized in the FY 2022 financial statements, but not recorded in TTL's general ledger until FY 2023.[32] Thus, according to TTL, the provision needed to be reversed so that it was not double-counted by being recognized in both FY 2022 and FY 2023. However, at verification, we found that TTL's auditor already reversed this amount when preparing the COGS for the FY 2023 audited financial statements.[33] Because the COGS from the FY 2023 financial statements was the starting point for the cost reconciliation, the FY 2022 impairment losses were already excluded from the calculation of the reported costs. While we agree with TTL that the impairment loss recorded by the auditor was a provision solely related to production during 2022 (*i.e.,* outside of the POI), the record shows the FY 2023 COGS was already net of the impairment losses; therefore, there was no need to further reduce the reported costs. Accordingly, for the final determination, we increased TTL's reported costs to exclude the additional offset for the FY 2022 impairment losses.[34]

Second, we have increased TTL's financial expense rate to exclude the offset for interest income earned on AD/CVD refunds. It is Commerce's practice to exclude expenses or income that are related to antidumping or countervailing duty orders.[35] Therefore, for the final determination, we excluded the interest income earned on AD/CVD refunds from the financial expense rate.[36]

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[29] *See* MLT's Rebuttal Brief.
[30] *See* Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Trina Solar Science & Technology (Thailand) Ltd.," dated concurrently with this memorandum (TTL Final Cost Memorandum).
[31] *See* TTL's Section D SQR at Exhibit SD-9a-1.
[32] *See* TTL Cost Verification Report at 7-8 and CVE 5.
[33] *Id.*
[34] *See* TTL Final Cost Memorandum at Attachment 2.
[35] *See Final Results of Antidumping Duty Administrative Reviews and Termination in Part: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan*, 62 FR 11825, 11828 (March 13, 1997) (*Tapered Roller Bearings from Japan*).
[36] *See* TTL Final Cost Memorandum at Attachment 3.

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Finally, we agree with the petitioner that we should adjust for the unreconciled difference between the total costs from TTL's financial accounting system and its total reported costs. TTL argues that the difference is relatively small and would have an insignificant impact on normal value. However, at verification, TTL was unable to explain or determine the source of the difference.[37] Therefore, for the final determination, we have increased TTL's reported cost of manufacturing to account for the unreconciled difference.[38]

Comment 2: Whether Commerce Should Have Selected Two Mandatory Respondents

Petitioner's Comments:

The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* Petitioner's First Case Brief at 39-40.

> {Commerce} should have selected an additional mandatory respondent in this investigation. Both the statute and binding court precedent require that {Commerce} select at a minimum two respondents where there are more than one foreign producer or exporter of subject merchandise.[39]

No other party commented on this issue.

Commerce's Position: Commerce issued quantity and value (Q&V) questionnaires for respondent selection purposes, and reviewed Q&V responses from each exporter and/or producer.[40] According to the Q&V responses, a single exporter/producer accounts for the overwhelming majority of imports of subject merchandise during the POI from companies which responded to the Q&V questionnaire.[41] While the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) has held that the statute generally requires that the reasonable number of respondents Commerce individually examines be greater than one,[42] we find that, in this particular instance, individual examination of a sole mandatory respondent in this investigation is appropriate considering that this exporter/producer, TTL, accounts for the overwhelming majority of imports[43] during the POI among companies that responded to the Q&V questionnaire and that by examining this mandatory respondent, Commerce captures the largest volume of the subject merchandise from the exporting country that can be reasonably examined in light of resource constraints and statutory requirements.[44] Accordingly, we will continue to examine only TTL for purposes of this investigation.

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[37] *See* TTL Cost Verification Report at 11-12 and CVE 5.
[38] *See* TTL Final Cost Memorandum at Attachment 2.
[39] *See* section 777A(e) of the Act; *see also YC Rubber Co. (North America) LLC v. United States,* 2022 WL 3711377 at 3 (Fed. Cir. 2022) (*YC Rubber*).
[40] *See* Commerce's Letter, "Less-Than-Fair-Value Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from Thailand," dated May 20, 2024; s*ee also* Memorandum, "Less-Than-Fair-Value Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from Thailand: Respondent Selection," dated June 21, 2024 (Respondent Selection Memorandum); and *Preliminary Determination* PDM at 2.
[41] *See* Respondent Selection Memorandum at 6.
[42] *See YC Rubber*, 2022 WL 3711377 at 3.
[43] *See* Respondent Selection Memorandum at Attachment.
[44] *Id*. at 6-7.

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Comment 3: Whether Commerce Should Use Financial Ratios Derived from Risen Solar to Calculate TTL's Constructed Value Profit and Selling Expenses

Petitioner's Comments:

The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* the Petitioner's First Case Brief at 40-45.

> In the *Preliminary Determination*, {Commerce} relied on the financial statements of Gintech, M.L.T. Solar, and Talesun because the three companies are significant producers of solar cells and modules in Thailand.[45] {Commerce} acknowledged that Risen Solar engages in the same business but declined to rely on Risen Solar's financials because Risen Solar produces in Malaysia.[46] {Commerce}'s analysis failed to acknowledge that Risen Solar's financial statements are superior because, unlike the statements of the Thai producers, those financial statements are publicly available and free from countervailable subsidies. Therefore, to value constructed value (CV) profit and selling expenses in the final determination, {Commerce} should use the 2023 financial statement of Risen Solar to calculate CV profit and selling expenses.

TTL's Rebuttal Comments:

The following is a verbatim summary of arguments submitted by TTL. For further details, *see* TTL's First Rebuttal Brief at 69-76.

> In the *Preliminary Determination*, Commerce found that the 2023 financial statements of Gintech, M.L.T. Solar, and Talesun are the "best sources available" for determining the CV profit and selling expenses for TTL.[47] The Petitioner argues that Commerce should instead use the financial statements of Malaysian company Risen Solar in the Final Determination arguing that the financial statements for the three Thai solar producers are not publicly available and that they had countervailable subsidies.[48] The Petitioner's allegations are not supported. The Petitioner's claim that the financial statements of Gintech, M.L.T. Solar, and Talesun are not publicly available is demonstrably false. These audited 2023 financials were obtained from the RTG's Business Development ("DBD") website and TTL submitted screenshots of DBD's website portal at https://ebiz.dbd.go.th/eservice-web/home.xhtml.[49] Each of the Thai financial statements carry marks from the Thai DBD confirming their authenticity.

[45] *See Preliminary Determination* PDM at 17.
[46] *Id*.
[47] *Id*.
[48] *See* Petitioner's First Case Brief at 41-44.
[49] *See* TTL's Letter, "Submission of Factual Information Concerning CV Profit and Selling Expenses," dated October 18, 2024 (TTL's CV Profit Submission), at 2-3 and Exhibit 5.

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The Petitioner's claims that there are limitations of access to DBD's website are speculative and baseless, with a translated user manual inexplicably being the only purported evidence provided.[50] Commerce has found financial statements filed with a government registry as publicly available, which is the case here.[51] The Thai financial statements are publicly available and Petitioner has not identified any reason why they should not be relied upon.

The Petitioner alleges the Thai companies may have benefited from countervailable subsides citing a negative final countervailing duty determination in *Shrimp from Thailand*.[52] However, a negative final determination is not compelling evidence that these programs, even if used by Gintech, MLT Solar, or Talesun, would distort the profit and selling expense ratios determined from those statements. Even if these companies received some income tax reduction, there is no evidence that this amounts to a countervailable subsidy. Moreover, Petitioner's claim that Risen Solar's financial statements are superior because it is free from countervailable subsidies is false. In the Malaysia solar investigation Commerce calculated CVD rates for Malaysian exporters ranging from 9.92 percent to 14.72 percent.[53] Risen Solar's financial statement shows it benefits from significant income tax exemptions, specifically, the "company was granted by the Malaysia Investment Development Authority (MIDA) for 0% income tax rate…for a period of 15 years… for the activity of design, development and manufacturing of solar cell and solar module."[54] Thus, even if the record contains generalized information indicating the potential for a countervailable subsidy for all of the potential sources of information, then Commerce should base its decision on other factors with statutory factors weighing most heavily.

MLT's Rebuttal Comments:[55]

MLT incorporates TTL's and other respondents' rebuttal arguments by reference.

Commerce's Position: In the *Preliminary Determination*, we relied on the financial statements of Gintech (Thailand) Company Limited (Gintech), M.L.T. Solar Energy Product Co., Ltd. (M.L.T. Solar) and Talesun Technologies (Thailand) Co., Ltd. (Talesun), under section

[50] *See* Petitioner's Letter, "Rebuttal CV Profit Information," dated October 28, 2024 (Petitioner's CV Profit RFI) at 2 and Exhibit 1.
[51] *See Boltless Steel Shelving Units Prepackaged for Sale from India: Final Negative Determination of Sales at Less Than Fair Value*, 89 FR 28746 (April 19, 2024) (*Boltless Shelving from India*), and accompanying IDM at Comment 1, where Commerce noted that "Triune's October 23, 2023 submission included an exhibit showing TMTE's financial statement was filed with the Registrar of Companies Chennai, and was, thus, publicly available."
[52] *See* Petitioner's First Case Brief at 44 (citing *Certain Frozen Warmwater Shrimp from Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013) (*Shrimp from Thailand*), and accompanying IDM at 10-12).
[53] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from Malaysia: Amended Preliminary Determination of Countervailing Duty Investigation*, 89 FR 88232, 88233 (November 7, 2024) (*Solar Cells from Malaysia CVD Amended Prelim*).
[54] *See* Petitioner's Letter, "Comments and Factual Information Relevant for CV Profit and Selling Expenses," dated October 18, 2024 (Petitioner's CV Profit Submission), at Exhibit 2, at 29.
[55] *See* MLT's Rebuttal Brief.

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773(e)(2)(B)(iii) of the Act, as the surrogate sources for TTL's CV profit and selling expenses. As explained below, after considering the record evidence and the arguments raised by interested parties, for the final determination, we continue to find that the financial statements of Gintech, M.L.T. Solar, and Talesun constitute the best source of CV profit and selling expense data on the record of this proceeding.

TTL did not have a viable home or third country market during the POI.[56] Thus, because TTL did not have home or third country market sales to serve as a basis for NV, NV must be based on CV in accordance with section 773(a)(4) of the Act and 19 CFR 351.404(b). Likewise, absent a viable home or third country market, Commerce cannot determine CV profit and selling expenses using the "preferred method" under section 773(e)(2)(A) of the Act, *i.e.,* based on the respondent's own home or third country sales made in the ordinary course of trade. In situations where we cannot calculate CV profit under section 773(e)(2)(A) of the Act, section 773(e)(2)(B) of the Act sets forth the following three alternatives:

(i) the use of the actual amounts incurred and realized by the specific exporter or producer in connection with the production and sale of merchandise that is in the same general category of products as the subject merchandise;

(ii) the use of the weighted average of the actual amounts incurred and realized by exporters or producers (other than the respondent) that are subject to the investigation or review; or

(iii) any other reasonable method, except that the amount for profit may not exceed the amount realized by exporters or producers (other than the respondents) in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise (*i.e.,* the "profit cap").

The statute does not establish a hierarchy for selecting among these alternative methodologies.[57] Moreover, as noted in the SAA, "the selection of an alternative will be made on a case-by-case basis, and will depend, to an extent, on available data."[58] In this case, the first alternative is not possible because TTL did not have sales in the general category of merchandise in the home market.[59] The second alternative for determining CV profit is not available to us in this case because there are no other exporters or producers subject to individual examination in this investigation that have sales in the comparison market.

Therefore, for the *Preliminary Determination*, we determined CV profit and selling expenses in accordance with section 773(e)(2)(B)(iii) of the Act (*i.e.*, based on "any other reasonable

[56] *See Preliminary Determination* PDM at 13.
[57] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. 103-316, vol. 1 (1994), at 840 ("At the outset, it should be emphasized, consistent with the Antidumping Agreement, new section 773(e)(2)(B) does not establish a hierarchy or preference among these alternative methods. Further, no one approach is necessarily appropriate for use in all cases.").
[58] *Id.*
[59] *See Preliminary Determination* PDM at 15.

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method"). When Commerce calculates CV profit and selling expense ratios under alternative (iii), it considers the following factors:[60]

1. The similarity between a potential surrogate company's business operations and products and the respondent's business operations and products;
2. The extent to which a potential surrogate company has sales in the United States and the home market;
3. The contemporaneity of the surrogate data; and
4. The similarity of the customer base between a potential surrogate company and the respondent.

In the *Preliminary Determination*, we considered the CV profit options proposed by interested parties in this investigation, and found that, for various reasons, many of them were not viable sources for CV profit and selling expenses.[61] Specifically, the financial statements of KCE Electronics Public Company Limited, Hana Microelectronics Company Limited, Delta Electronics (Thailand) Public Company Limited, and Canadian Solar Malaysia Sdn. Bhd. do not represent financial data of companies with similar products, *i.e.*, solar cells and modules, as produced by TTL.[62] While we noted that the financial statements of Risen Solar Technology Sdn. Bhd. (Risen Solar) identified that it was a producer of solar cells and modules, we declined to use the financial statements because they reflect production in Malaysia and not the country under investigation.[63] Thus, in the *Preliminary Determination*, we selected the 2023 financial statements of Gintech, M.L.T. Solar, and Talesun as the best sources available for determining the CV profit and selling expenses for TTL because these financial statements were contemporaneous with the POI, and the companies were significant producers of solar cells and modules, the identical merchandise, in Thailand.[64]

The petitioner argues that for the final determination the financial statements of Gintech, M.L.T. Solar, and Talesun should be set aside in favor of the financial statements of Risen Solar for the purposes of calculating TTL's CV profit and selling expenses. First, the petitioner argues that the financial statements of Gintech, M.L.T. Solar, and Talesun are not publicly available. Specifically, the petitioner argues that the source website is in Thai with minimal sections in English; thus, the petitioner was unable to replicate the steps necessary to obtain the financial statements. Further, the petitioner contends that the website requests the user to "specify the required juristic person registration number;" thus, it appears that only Thai nationals can request the financial documents. We disagree that the Thai financial statements are not publicly available. Commerce has found that the bar for public availability is that interested parties may

[60] *See Notice of Final Determination of Sales at a Less Than Fair Value: Pure Magnesium from Israel*, 66 FR 49349 (September 27, 2001) (*Magnesium from Israel*), and accompanying IDM at Comment 8; *see also Notice of Final Determination of Sales at Not Less Than Fair Value: Certain Color Television Receivers from Malaysia*, 69 FR 20592 (April 16, 2004) (*Color Television Receiver from Malaysia*), and accompanying IDM at Comment 8; and *Certain Oil Country Tubular Goods from the Republic Of Korea: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstance,* 79 FR 41983 (July 18, 2014) (*OCTG from Korea*), and accompanying IDM at Comment 1.
[61] *See Preliminary Determination* PDM at 16-17.
[62] *Id.*
[63] *Id.* at 17.
[64] *Id.*

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independently access the information.[65] The purpose of public availability is to ensure that interested parties can comment on the reliability and relevance of such information in a particular case. In submitting its CV profit options to Commerce, TTL identified and provided screen shots of the Royal Thai Government Department of Business Development website portal used to obtain the financial statements.[66] While our instructions to interested parties stated that the potential surrogate financial statements must be translated, we did not require that the underlying website or source of the financial statements must be in English to be considered publicly available.[67] In fact, such a requirement would unreasonably limit the surrogate financial statement options available to interested parties. Moreover, we do not find the request for a Thai national registration number to be a disqualifying factor. We find this akin to obtaining financial statements through subscription services. In prior cases, we have found that a financial statement need not be free of charge for it to be publicly available.[68] Thus, with the non-proprietary source identified, the interested parties could have retained a Thai citizen to obtain the information. Therefore, because the Gintech, M.L.T. Solar, and Talesun financial statements were filed with the Royal Thai Government and are available from a non-proprietary source, *i.e.*, the government's website portal, we find the statements are publicly available.

The petitioner also alleges that each surrogate Thai company benefitted from countervailable subsidies and therefore must be disregarded in favor of the Risen Solar financial statements that do not contain evidence of subsidies. Where Commerce has reason to believe that a company received subsidies, based on information in the company's financial statements, Commerce may find that the financial ratios derived from that company's financial statements are less representative of the financial experience of the company or the relevant industry compared to ratios derived from financial statements that do not contain evidence of subsidies..[69] In this regard, we find that the Thai financial statements (*i.e.*, Gintech, M.L.T. Solar, and Talesun) and the Malaysian financial statements (*i.e.*, Risen Solar) proffered by the petitioner are in equal standing. Specifically, for each of the Thai companies, the notes to their respective financial statements state that the Gintech, M.L.T. Solar, and Talesun received investment promotions from the Office of the Board of Investments for benefits that include exemptions or reduced income taxes on their net profits on promoted activities.[70] Likewise, the notes to the Risen Solar financial statements state that the company was granted by the Malaysian Investment Development Authority a zero percent tax rate on the chargeable income for a period of 15 years

[65] *See Mattresses from the Socialist Republic of Vietnam: Final Affirmative Determination of Sales at Less Than Fair Value*, 86 FR 15889 (March 25, 2021) (*Mattresses from Vietnam*), and accompanying IDM at Comment 2.
[66] *See* TTL's CV Profit Submission at 2-3 and Exhibit 5.
[67] *See* Memorandum, "Request for Constructed Value Profit and Selling Expense Comments and Information," dated October 10, 2024 (CV Profit Memorandum).
[68] *See 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 10545 (March 11, 2009) (*HEDP from China*), and accompanying IDM at Comment 1; *see also Certain Preserved Mushrooms from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission in Part*, 76 FR 56732 (September 14, 2011) (*Mushrooms from China*), and accompanying IDM at Comment 4; and *Certain Steel Nails from the People's Republic of China: Preliminary Results and Partial Rescission of the Third Antidumping Duty Administrative Review*, 77 FR 53845, 53852 (September 4, 2012) (*Steel Nails from China Prelim*).
[69] *See Boltless Shelving from India from India* IDM at Comment 1; and *Carbon and Alloy Steel Threaded Rod from India: Final Results of Antidumping Duty Administrative Review; 2019-2021,* 87 FR 55400 (September 9, 2022), and accompanying IDM at Comment 4.
[70] *See* TTL's CV Profit Submission at Exhibits 2A at 21, 3A at 19, and 4A at 22.

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for the activity of design, development and manufacturing of solar cells and modules.[71] Commerce has found certain Thai and Malaysian promotions that involve income tax to be countervailable.[72] Further, Commerce's practice states that if we have reason to believe or suspect a company benefitted from countervailable subsidies, we may disqualify a financial statement for use as a surrogate financial statement.[73] However, because both the Malaysian and Thai financial statements contain evidence of subsidies, we do not find the Malaysian financial statement to be superior to the Thai financial statements.

Because all four of the financial statements proffered for the final determination show reason to suspect they received countervailable subsidies, but three of the four reflect Thai producers of identical merchandise, we find it unnecessary to resort to the experience of a producer outside of Thailand. Accordingly, for the final determination, we have relied on the average profit and selling expense rates derived from the 2023 financial statements of the following Thai-producers: Gintech, M.L.T. Solar, and Talesun as the CV profit and selling expenses for TTL.

Comment 4: Whether Commerce Should Adjust TTL's Antidumping Duty Margin To Account For Subsidies Countervailed

TTL's Comments:

The following is a verbatim summary of arguments submitted by the petitioners. For further details, *see* TTL's First Case Brief at 41-42.

> Where goods are subject to both antidumping duties and countervailing duties, the statute instructs that, "the price used to establish export price and constructed export price shall be—(1) increased by…..(C) the amount of any countervailing duty imposed on the subject merchandise under part I of this subtitle to offset an export subsidy,…"[74] As such, when calculating TTL's antidumping duty rate, Commerce is required to increase TTL's export price by any countervailing duty imposed in the companion CVD proceeding to offset an export subsidy.[75] If Commerce imposes countervailing duties and finds those programs to be specific as export

[71] *See* Petitioner's CV Profit Submission at Exhibit 2 at 29.
[72] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from Thailand: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, in Part, and Alignment of Final Determination with Final Antidumping Duty Determination,* 89 FR 80874 (October 4, 2024) (*Solar Cells from Thailand CVD Prelim*), and accompanying PDM at 17-21; *see also Solar Cells from Malaysia CVD Amended Prelim* and *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,* 89 FR 80861 (October 4, 2024), and accompanying PDM at 22-24.
[73] *See Boltless Shelving from India* IDM at Comment 1 (stating that evidence of receipt of "countervailable" subsidies may serve as a basis to disqualify a financial statement for use as a surrogate financial statement).
[74] *See* section 772(c)(1)(C) of the Act.
[75] *See Changzhou Trina Solar Energy Co., Ltd., et. al v. United States*, 975 F.3d 1318, 1328 (Fed. Circ. 2020) (*Changzhou Trina*) (citing *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998) (explaining that "shall" generally creates "an obligation impervious to judicial discretion") (*internal citation omitted*).

> subsidies, then Commerce must decrease TTL's antidumping duty rate by the amount of the export subsidy determined.
>
> In addition, if Commerce…imposes a countervailing duty for any materials provided for less than adequate remuneration ("LTAR"), then Commerce cannot also disregard TTL's acquisition costs for such materials under the major input rule. For example, if Commerce imposes a countervailing duty for wafers purchased from China for LTAR and Commerce replaces TTL's actual wafer costs with a "market price", then Commerce will apply a double remedy. In both instances, Commerce would be adjusting upward from TTL's actual purchase prices. Commerce is not comparing U.S. constructed export price to sales in the home market or a third country. Rather, Commerce is basing normal value on constructed value. When Commerce bases normal value on comparison market sales, there may not be a double-remedy because both the comparison market sale and the export price or constructed export price sale benefit from the same domestic subsidy. But, when Commerce calculates normal value based on constructed value, the imposition of both an LTAR adjustment and an adjustment under the major input rule would impose an inaccurate double remedy.

Petitioner's Rebuttal Comments:

The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* Petitioner's First Rebuttal Brief at 38-40.

> TTL argues that, should "Commerce impose {} countervailing duties and find {} those programs to be specific as export subsidies, then Commerce must decrease TTL's anti dumping duty rate by the amount of the export subsidy."[76] There are no grounds to increase TTL's U.S. prices in this investigation because there have not been, and will not be, any countervailing duty imposed on the U.S. sales considered in the investigation.
>
> TTL further argues that, if {Commerce} makes any affirmative…LTAR finding as to TTL's inputs in the final CVD investigation, the agency is prohibited from implementing the major input rule with respect to that input.[77] TTL offers no statutory authority, no judicial precedent, and no {Commerce} regulation or practice to justify this argument. The argument is not developed and does not explain its rationale. This alone should be sufficient for {Commerce} to reject the claim.

Commerce's Position: We disagree with TTL with regard to the issue of double remedies. We disagree with the petitioners with regard to the export subsidy offset.

With regard to TTL's double remedies argument that if Commerce finds countervailable subsidies related to inputs for LTAR in the companion CVD investigation, we do not implement

[76] *See* TTL's First Case Brief at 40-41.
[77] *Id*. at 41.

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the major input rule, we disagree. In dumping cases, Commerce may examine whether to reduce antidumping duties by the estimated increase in those duties that is due to the countervailable subsidies (other than export subsidies) as provided under section 777A(f)(1) of the Act. However, this provision of the statute applies only to dumping proceedings involving non-market economy countries. Thailand is a market economy. Therefore, we find that TTL's argument lacks a statutory or regulatory basis for Commerce to offset TTL's dumping margin to account for countervailable LTAR subsidies that Commerce found TTL to have received in the companion CVD investigation and TTL fails to cite to any prior AD proceeding involving a market economy country in which Commerce has utilized the offset method it proposes.

Further, Commerce is directed by sections 773(f)(2) and (3) of the Act to examine transactions between a respondent and its affiliates regarding production of inputs. Commerce conducted such an analysis both at the *Preliminary Determination* and in this final determination. TTL has provided no support for Commerce to deviate from its obligations under sections 773(f)(2) and (3) of the Act.

In an AD investigation where there is a concurrent CVD investigation, the statute directs Commerce to calculate the cash deposit rate for each respondent by adjusting the respondent's estimated weighted-average dumping margin to account for export subsidies found for each respective respondent in the concurrent CVD investigation. Specifically, section 772(c)(1)(C) of the Act states that U.S. price "shall be increased by the amount of any countervailing duty imposed on the subject merchandise {…} to offset an export subsidy."[78] If Commerce imposes countervailing duties and finds those programs to be export-specific subsidies in the companion CVD investigation, we will decrease TTL's margin thereby decreasing its cash deposit rate. Because we find certain subsidies to be export contingent in the companion CVD investigation, we will make an offset for export subsidies with regard to the AFA rate applicable to Sunshine Electrical and Taihua New Energy.[79] Further, because we do not find subsidies to be export contingent for TTL in the companion CVD proceeding, we are not offsetting TTL's estimated weighted-average dumping margin for export subsidies. Finally, because the all-others rate calculated in the companion CVD proceeding is equal to TTL's subsidy rate (which as discussed in Comment 5 below tracks the calculation of the all others rate in the instant AD investigation), and we do not find any subsidies to be export contingent in the companion CVD investigation, we will make no adjustment to the all-others rate in the instant AD investigation for export subsidies.

Comment 5: Whether the Final Determination Should Continue to Base the "All Others" Weighted-Average Dumping Margin on TTL's Rate

Canadian Solar's Comments:

The following is a verbatim summary of arguments submitted by Canadian Solar. For further details, *see* Canadian Solar's First Case Brief at 32.

[78] *See, e.g.*, *Carbazole Violet Pigment 23 from India:Final Results of Antidumping Duty Administrative Review*, 75 FR 38076, 38077 (July 1, 2010), and accompanying IDM at Comment 1.
[79] *See* Memorandum, "Final Determination Analysis Memorandum for Trina Solar Science & Technology (Thailand) Ltd.," (TTL Final Analysis Memorandum), dated concurrently with this memorandum.

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> In the *Preliminary Determination*, Commerce assigned "all other" companies a weighted-average dumping margin based on the rate calculated for TTL.[80] Commerce's use of TTL's rate was consistent with the terms of the statue, and {Commerce} should continue to rely on TTL's rate in the final determination. It would be unlawful for Commerce to calculate the "all other" rate through some other methodology, such as use of a simple average of the rates assigned to TTL and companies that were not individually investigated. In the final determination, Commerce should correct TTL's margin and attribute that margin for the "all other" companies.

No other party commented on this issue.

Commerce's Position: As explained in the *Preliminary Determination*, sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that, in a preliminary determination, Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.[81] In this investigation, Commerce calculated an individual estimated weighted-average dumping margin for TTL, the only individually examined exporter/producer in this investigation. Because the only individually calculated dumping margin is not zero, *de minimis*, or based entirely on facts otherwise available, we continue to find that the estimated weighted-average dumping margin calculated for TTL is the margin assigned to all other producers and exporters, pursuant to section 735(c)(5)(A) of the Act.

Comment 6: Whether Commerce Should Render A Negative Critical Circumstances Determination

Canadian Solar's Comments:

The following is a summary of arguments submitted by Canadian Solar.[82] For further details, *see* Canadian Solar's First Case Brief at 32.

> In assessing whether critical circumstances exist in this investigation, Commerce should separately consider CSPV cells and modules because subject imports of cells enable U.S. domestic module manufacturing, which could not exist without imported cells. When the Petition was filed, there was no U.S. cell manufacturing, meaning that U.S. module manufacturers (including Canadian Solar US Module Manufacturing Corporation) were forced to import subject cells to sustain their

[80] *See Preliminary Determination,* 89 FR at 96215-6.
[81] *Id.*, 89 FR at 96215.
[82] We note that we requested that interested parties provide a public, executive summary for each issue raised in their briefs. *See Preliminary Determination*, 89 FR at 96216-7. Therefore, because the executive summary in Canadian Solar's First Case Brief contains business proprietary information (BPI), we have redacted that content herein.

operations. Imports of subject cells thus did not claim U.S. producers' share of domestic sales and are not demonstrative of critical circumstances.

Commerce's regulations require an assessment of the "share of domestic consumption accounted for by the imports," {19 CFR 351.206(h)(1)}, and cell imports make possible the consumption of domestic modules. The regulations weigh this "share of domestic consumption" prong equally alongside the volume and value of imports in the "massive" imports critical circumstances analysis. Commerce may not disregard this prong; the regulations specify "normally will examine" and record information is available for Commerce to complete this analysis here.

Furthermore, in the post-Petition period, CSPV module imports were clearly not massive by volume and did not approach the 15 percent "massive" threshold specified by the regulations. Module import volumes were not massive no matter which data set Commerce decides to employ- based on public import data, {company specific information from TTL}, or a combination of the two. Moreover, import trends during the post-Petition period aligned with seasonal and long-term trends that account for increased solar sales and installations during the spring and summer seasons. Even if Commerce aggregates cell and module data and considers combined import volumes, it should render a negative determination because these volumes increase year-after-year in the spring, following clear seasonal trends. As such, Commerce should recognize that critical circumstances for "all other" companies do not exist in this investigation.

TTL's Comments:

The following is a verbatim summary of arguments submitted by TTL. For further details, *see* TTL's First Case Brief at 41-42.

In the *Preliminary Determination*, Commerce found the critical circumstances exist for TTL.[83] In the final determination, Commerce cannot consider TTL's exports of solar cells that fed U.S. module manufacturing in the post-petition period to be massive. TTL incorporates by reference the case brief filed by Canadian Solar Manufacturing (Thailand) Co., Ltd., on this topic.

As explained early in the investigation, TTL supplies cells to its U.S. affiliate, Trina Solar US Manufacturing Module 1 LLC (TUM), for the module manufacturing plant in Wilmer, TX. Trina invested over 200 million USD in the TUM factory to employ approximately 1,500 Texas workers. The TUM factory started production in 2024. The cells that TTL exported to TUM are vital to the creation of and sustainment of those U.S. manufacturing jobs.[84]

[83] *See* Memorandum, "Preliminary Analysis of Critical Circumstances," dated November 27, 2024 (Preliminary Analysis of Critical Circumstances).
[84] *See* TTL's Letter, "Section A Response," dated July 26, 2024 (TTL's Section A QR), at A-19.

> The increase in shipments following the filing of the petition was entirely attributable to TTL's exports of cells, which fueled U.S. module manufacturing. Attachment VI includes a worksheet presenting Commerce's preliminary critical circumstances analysis which included both modules and cell exports and the same analysis including only TTL's module exports. As demonstrated in Attachment VI, when examining TTL's module exports only, TTL's shipments decreased after the filing of the petition by 67 percent. TTL's cells exported to the United States were and remain critical to the vitality of U.S. solar manufacturing. In the final determination, Commerce must render a negative critical circumstances determination as to TTL.

MLT's Rebuttal Comments:[85]

> MLT incorporates TTL's and other respondents' rebuttal arguments by reference.

Petitioner's Rebuttal Comments:

The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* Petitioner's First Rebuttal Brief at 35-37.

> The record shows that following the filing of the petition, there were massive imports of subject merchandise. These imports exceeded the 15 {percent} threshold for finding that imports are massive.[86] Furthermore, Respondent provide no support for their argument that {Commerce} should disaggregate cells and modules and determine if individually imports of cells and modules increased by at least 15 {percent}.

Commerce's Position: We disagree with Canadian Solar and TTL and continue to include TTL's imports of solar cells in our analysis of critical circumstances. For the final determination, we continue to find critical circumstances exist for TTL and all other producers and exporters.

Section 733(e)(1) of the Act provides that Commerce will preliminarily determine that critical circumstances exist in an less than fair value (LTFV) investigation if there is a reasonable basis to believe or suspect that: (A) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period.

Section 351.206(h)(1) of Commerce's regulations provides that, in determining whether imports of the subject merchandise have been "massive," Commerce normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption

[85] *See* MLT's Rebuttal Brief.
[86] *See* TTL's Letter, "Monthly Quantity and Value Shipment Data," dated January 15, 2025.

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accounted for by the imports. In addition, section 351.206(h)(2) of Commerce's regulations provides that, "In general, unless the imports during the 'relatively short period' . . . have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive. Commerce normally considers margins of 25 percent or more for Export Price (EP) sales and 15 percent or more for constructed export price (CEP) sales sufficient to impute importer knowledge of sales at LTFV."

For the final determination, parties argued whether Commerce correctly examined the factors in the critical circumstances analysis of seasonal trends and the share of domestic consumption accounted for by the imports. Commerce's practice is to review seasonality in the industry under the investigation and then, if seasonal trends are found, to examine respondent data to examine if the seasonal trends explain the change in the post-petition period.[87] The burden of demonstrating seasonality is on the respondents.[88] Commerce has previously found that "{s}easonal trends, such as those affecting shipments of agricultural products, are the result of conditions known to repeat themselves each year (*e.g.*, a harvest at the end of each summer, or a surge in consumer shopping during the Christmas season)."[89] For "durable building goods which have a long shelf life demand may ebb and flow over the course of the year; however, Commerce sets a higher bar when analyzing seasonal trends than minor fluctuations in import volumes."[90] For example, in *Aluminum Oxide from China* we stated that:

> {Commerce} normally does not find seasonality for products for which production and sale are not linked to the seasons. Furthermore, {Commerce} cannot assume that the nature of the production and sale of the subject merchandise {} is seasonal, irrespective of how {the respondent} chooses to ship the subject merchandise. {The respondent} has not provided any evidence that links its shipment data to seasonal changes.[91]

The data on the record for the critical circumstances analysis are TTL's shipment data. The respondents claim that the U.S. solar installation increases in late spring and summer were due to

[87] *See, e.g., 1,1,1,2-Tetrafluroethane from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 62597 (October 20, 2014), and accompanying IDM at Comment 6.
[88] *See Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 80 FR 34888 (June 18, 2015), and accompanying IDM at Comment 23; and *Notice of Final Determination of Sales at Less Than Fair Value: Refined Brown Aluminum Oxide (Otherwise known as Refined Brown Artificial Corundum or Brown Fused Alumina) from the People's Republic of China*, 68 FR 55589 (September 26, 2003) (*Aluminum Oxide from China*), and accompanying IDM at Comment 2.
[89] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012) (*Solar Cells from China CVD Inv*), and accompanying IDM at Comment 4.
[90] *See Certain Quartz Surface Products from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances*, 84 FR 23767 (May 23, 2019), and accompanying IDM at Comment 2.
[91] *See Aluminum Oxide from China* IDM at Comment 2.

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seasonal nature of construction of utility-scale solar projects.[92] Thus, argue the respondents, higher imports occur during the spring and early summer, which coincided with the post-Petition period. TTL argues that the increase in imports for the post-Petition period is attributable to TTL's exports of cells for a module manufacturing plant that started production in 2024.[93] TTL's shipment data does not support linkage to the seasons in general nor a linkage to the seasons as Canadian Solar contends because we do not see consistent spikes and dips, imports dominated by seasonality and predictable fluctuations over time that Commerce requires to make a seasonality adjustment.[94] To the extent there are differences between the periods, we find they are minor.[95] Further, the base and comparison periods that TTL and Canadian Solar provide in their arguments are not the same periods Commerce is using for its analysis. A review of the base and comparison periods we are using support a finding of massive imports.[96]

With regard to Canadian Solar's argument that Commerce should exclude solar cells from the critical circumstances analysis, we disagree. While solar cells are used in the production of solar modules, 19 CFR 351.206(h)(1) explains that Commerce reviews imports of subject merchandise when analyzing whether imports have been massive. The scope of this investigation includes both solar cells and modules, and cells and modules are of the same class or kind of product. TTL has not provided reference to, and we are unaware of, any provision in the statute or case law that directs Commerce to apply 19 CFR 351.206(h)(1) in a manner that would exclude certain in-scope products from the massive shipments analysis. Therefore, we continue to analyze both solar cells and modules when determining whether imports of subject merchandise were massive under 19 CFR 351.206(h)(1).

[92] *See* Canadian Solar's First Case Brief at 21 (citing Canadian Solar's Letter, "Factual information Rebutting, Clarifying, and Correcting Petitioner's Critical Circumstances Allegations," dated August 26, 2024 (Canadian Solar's CC Rebuttal) at Exhibit 13; and USITC Pub. 5517, Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from Cambodia, Malaysia, Thailand, and Vietnam, Inv. Nos. 701-TA-722-725 and 731-TA-1690-1693 (Preliminary) (June 2024), Excerpts, at II-1–2.))

[93] *See* TTL's First Case Brief at 42.

[94] *See*, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People's Republic of China*, 70 FR 24502, 24504 (May 10, 2005); *see also Solar Cells from China CVD Inv* IDM at Comment 4 ("This type of sporadic variation is not the type of predictable fluctuation associated with seasonal trends. Seasonal trends, such as those affecting shipments of agricultural products, are the result of conditions known to repeat themselves each year (*e.g.*, a harvest at the end of each summer, or a surge in consumer shopping during the Christmas season). It is possible to subtract the effects of such predictable, measurable, cyclical patterns from import surges and then determine if what remains constitutes a 'massive increase.' There is no convincing explanation as to what might be the theoretical condition that causes an end-of year increase in solar cell shipments"). Additionally, even if, *arguendo*, we were to consider a seasonality adjustment for TTL, its data demonstrate that its imports continue to be "massive," *i.e.*, imports have increased more than 15 percent over the imports during the immediately preceding period of comparable duration.

[95] *See* Memorandum, "Final Critical Circumstances Memorandum," (Final Critical Circumstances Memorandum), dated concurrently with this memorandum.

[96] *Id*.

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Comment 7: Whether Commerce Should Adjust Its Major Input and Transactions Disregarded Rules Analyses

TTL's Comments:

The following is a verbatim summary of arguments submitted by TTL.[97] For further details, *see* TTL's First Case Brief at 14-40.

> Commerce must revise its major input analysis to rely on TTL's reported affiliates' COP information. The record does not provide reasonable grounds for Commerce to believe that TTL's purchases of wafers from affiliates are less than COP. TTL's wafer cost is significantly higher than nearly every reference point remotely specific to solar wafers. In market-economy cases, actual prices paid for inputs produced in China or Vietnam "are typically used in the cost buildup in ME proceedings."[98] While Commerce uses its surrogate value methodology in investigations of non-market economy countries and in circumvention cases involving non-market economies, Commerce does not employ this method when determining costs for companies in market-economy countries like Thailand and Malaysia and there is no statutory basis for doing so…"[99]
>
> …In its *Preliminary Determination*, Commerce based costs of wafers on import prices for {Harmonized System (HS)} 3818.00 into Malaysia, Turkey, and Mexico, and Indonesia, pursuant to major input rule.[100] {HS} 3818.00 covers a broad basket category of highly dissimilar products not comparable to solar wafers… If Commerce relies on "information available" to determine COP,[101] Commerce should use Hanwha Q Cells' wafer cost of $0.45-0.49 per piece ...[102]Alternatively, Commerce should use non-Chinese solar wafers cost of $80.54 per kilogram from TrendForce, CEA, Descartes Datamyne and Volza, specific to solar wafers…

[97] We note that we requested that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. *See Preliminary Determination*, 89 FR at 96217. Therefore, because the executive summary in TTL's First Case Brief exceeds this word limit, we have compressed the comment summary herein.
[98] *See Certain Corrosion-Resistant Steel Products From the People's Republic of China: Affirmative Final Determination of Circumvention Involving the United Arab Emirates,* 85 FR 41957 (July 13, 2020) (*CORE from China UAE Circ*), and accompanying IDM at Comment 2.
[99] *Id.*, *see also Hydrofluorocarbon Blends From the People's Republic of China: Final Negative Scope Ruling on Gujarat Fluorochemicals Ltd.'s R-410A Blend; Affirmative Final Determination of Circumvention of the Antidumping Duty Order by Indian Blends Containing Chinese Components*, 85 FR 62930 (October 1, 2020) (*Hydrofluorocarbon Blends from China Circ)*, and accompanying IDM at Comment 2, at 10; and *Small Diameter Graphite Electrodes From the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 77 FR 47596 (August 9, 2012) (*Graphite Electrodes from China Circ*), and accompanying IDM at Comment 2.
[100] *See See* Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination - Trina Solar Science & Technology (Thailand) Ltd.," dated November 27, 2024 (TTL Preliminary Cost Memorandum) at 2.
[101] *See* section 773(f)(3) of the Act.
[102] *See* TTL's February Wafer and Solar Glass Submission at 4 and Exhibit 7.

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> …In its *Preliminary Determination*, Commerce determined the market price of wafers using Thai import price for {HS} 3818.00 pursuant to the major input rule…[103] Thai import data includes imports from countries with no solar wafer production…which further distorts Thai import price.[104] … Commerce should use the four superior solar wafer benchmarks … {discussed in TTL's case brief}. Alternatively, … Commerce must exclude imports from non-solar wafer producing countries and include Vietnam for an average unit price of $105.90 per kilogram.[105]
>
> World exports of {HS} 3818.00 are wholly unusable as a benchmark for solar wafers, as they are a broad basket category of highly dissimilar products…{O}nly export data from Norway is representative of solar wafers. Norway is a solar wafer producer, does not have solar cell production, and its exports are to solar cell producers in sufficient quantities.[106]

Petitioner's Comments:

The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* Petitioner's First Case Brief at 26-39.

> In the *Preliminary Determination*, and consistent with the statute, {Commerce} correctly adjusted certain of TTL's costs to account for purchases of inputs from affiliated parties.[107] Where unaffiliated purchases were unavailable, {Commerce} "determined a market price by using the {HS} number specific input data from the Thailand International Trade Statistics Report (excluding all NME countries and countries with export subsidies)."[108] In addition, "{i}n the absence of the affiliates' COP, {Commerce} derived the surrogate COP amount by using the {HS}…number specific inputs from the Trade Data Monitor (TDM) data (excluding NME countries and countries with export subsidies)."[109] For certain other inputs, {Commerce} "compared TTL's reported POI transfer prices to the weight-averaged market prices" and adjusted TTL's reported COM for the difference between the transfer prices and the weight- averaged market prices where the weight-averaged market prices exceeded the transfer prices.[110]
>
> For the final determination, {Commerce} should make four changes to its preliminary calculations under the major input rule and transactions disregarded rule. First, {Commerce} should make certain revisions to the data used to calculate

[103] *See* TTL Preliminary Cost Memorandum at 2.
[104] *See* TTL's February Wafer and Solar Glass Submission at Exhibit 4B, at 6; *see also* PMS Allegation at Exhibits PMS-1, NSA-1, and NSA-9, at 33; *see also* TTL's Letter, "Rebuttal to Petitioner's RFI on TTL's Supplemental D Response," dated December 9, 2024 (TTL's Supp D RFI Surrebuttal), at Exhibit WAFER-2A.
[105] *See* TTL's First Case Brief at Attachment II.A.
[106] *Id*. at Attachment I; *see also* PMS Allegation at Exhibits PMS-1, NSA-9, and NSA-15, at 2; and Petitioner's February Wafer and Solar Glass Submission at Exhibit 1.
[107] *See* sections 773(f)(2)-(3) of the Act.
[108] *See* TTL Preliminary Cost Memorandum at 2.
[109] *Id*.
[110] *Id.* at 3.

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the surrogate COP values for wafers. Specifically, {Commerce} should rely on export data to Malaysia rather than import data into Malaysia because the Malaysian import data are demonstrably inaccurate. {Commerce} should also rely on Global Trade Atlas ("GTA") data for Mexico because GTA is {Commerce}'s "preferred source"[111] and the {TDM} data for Mexico appears to be "preliminary."

Second, {Commerce} should make an adjustment for affiliated purchases of tin ribbon, which was not considered in the *Preliminary Determination*. In making its adjustment, {Commerce} should rely on Thai import statistics for the {HS} code under which TTL imported tin ribbon.

Third, {Commerce} should not rely on purchases from unaffiliated parties that do not "fairly reflect" market value to determine whether and how to adjust prices to account for affiliated party purchases. In making its adjustments, {Commerce} should rely on Thai import statistics for the {HS} code under which TTL imported the relevant input.

Fourth, {Commerce} should use the reported affiliates' cost of production as the price to adjust under the transactions disregarded and major input rule. Contrary to {Commerce}'s instruction, TTL reported the costs on the basis of the affiliates' cost of production rather than a transfer price basis. When {Commerce} has faced this reporting issue in the past, {Commerce} has adjusted the reported cost of production.[112] To make the adjustment here, {Commerce} should deem the values reported in the column "Affiliated Supplier's COP (USD/KG)" as the transfer price for purposes of the major input and transaction disregarded rules.

Canadian Solar's Comments:

The following is a verbatim summary of arguments submitted by Canadian Solar. For further details, *see* Canadian Solar's First Case Brief at 23-31.

In the *Preliminary Determination*, Commerce calculated a value of for solar wafers in assessing TTL's COP. This figure bears no resemblance whatsoever to the actual value of solar wafers employed in the production of CSPV solar cells—Commerce should not use this figure in the final determination and must instead rely upon an appropriate solar wafer value. In so doing, Commerce should recognize that the governing statute does not direct the agency to calculate a Thai market price. Commerce should recognize that there is no Thai solar wafer market price and, as it has in other proceedings, assess TTL's COP using affiliate information rather than inventing a market price.

[111] *See Steel Propane Cylinders from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination Measures*, 83 FR 66675 (December 27, 2018) (*Steel Propane Cylinders from China*), and accompanying PDM at 10, n.57 and 11, n.63, unchanged in *Steel Propane Cylinders from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 84 FR 29161 (June 21, 2019).

[112] *See Aluminum Extrusions from Italy: Final Affirmative Determination of Sales at Less Than Fair Value,* 89 FR 80521 (October 3, 2024) (*Aluminum Extrusions from Italy*), and accompanying IDM at Comment 6.

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> If Commerce does calculate a Thai market price, however, it should rely on established and reliable market indicators (like international prices) to determine a realistic and representative solar wafer valuation, rather than rely solely upon broad and overinclusive import data values. Canadian Solar and TTL provided overwhelming record evidence demonstrating that the wafer value selected by Commerce is untethered from solar wafer market conditions.[113] Moreover, even if it were appropriate for Commerce to calculate a Thai market price for solar wafers, Commerce's methodology was erroneous because it included values for wafers with applications irrelevant to solar manufacturing (*e.g.*, semiconductor manufacturing) and incorporated data from countries (*e.g.*, the United States) that have no solar wafer manufacturing. In sum, Commerce's use of a {extremely high} wafer valuation led to a faulty COP analysis, which must be corrected in the Final Determination.

Petitioner's Rebuttal Comments:

The following is a verbatim summary of arguments submitted by the petitioner.[114] For further details, *see* Petitioner's First Rebuttal Brief at 7-35.

> In *Mattresses from Cambodia*, {Commerce} used surrogate information to determine a "market price in the country under consideration…"[115] The use of such surrogate information is not an NME methodology, but rather filling the gaps in applying the major input rule.[116]
>
> {Commerce} properly adjusted TTL's COP to reflect the market price of wafers based on the Thai import statistics (after excluding imports from NMEs and countries with broadly available export subsidies), as these data represented the highest of transfer price, market price, and COP.[117] {Commerce} correctly used Thai import statistics for {HS} 3818.00. No party disputes that wafers are appropriately categorized under {HS}3818.00.[118] {Commerce} has found that

[113] *See* TTL's Letter, "Pricing Information with regard to Wafers and Solar Glass," dated February 5, 2025 (TTL's February Wafer and Solar Glass Submission); *see also* Canadian Solar's Letter, "Response to Commerce's Request for Wafer Pricing Information," dated February 5, 2025 (Canadian Solar's Wafer Submission).
[114] We note that we requested that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. *See Preliminary Determination*, 89 FR at 96217. Therefore, because the executive summary in Petitioner's First Rebuttal Brief exceeds this word limit, we have compressed the comment summary herein.
[115] *See Mattresses from Cambodia: Final Affirmative Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 86 FR 15894 (March 25, 2021) (*Mattresses from Cambodia*), and accompanying IDM at 10.
[116] *Id*. at 11.
[117] *See* TTL Preliminary Cost Memorandum at 2.
[118] *See* TTL's First Case Brief at 33 (quoting with approval from a determinations where {Commerce} stated "The HTS category covering silicon wafers {is} HTS 3818 (chemical elements doped for use in electronics, in the form of discs, wafers or similar forms; chemical compounds doped for use in electronics)"); *see also* Canadian Solar's First Case Brief at 28 (same); and TTL's Letter, "Response to PMS Allegation," dated October 18, 2024 (TTL's PMS Rebuttal) at 9, n.18, 10, and 25.

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similar data reported at the 6-digit {HS}level is reasonably specific for purposes of the major input rule.[119] Because the statute requires the market price to be derived from information specific to the "market under consideration,"[120] respondents' arguments for using other data sources fail. Respondents also argue that {Commerce} should revise the import data to only include countries that produce wafers. This additional step is not necessary because the data provided is "reasonably specific" to wafers.[121] Nevertheless, should Commerce agree with Respondents, it should also exclude data from NMEs and countries with broadly available export subsidies…

…The world export data for {HS} 3818.00 is the best data on the record for valuing wafers at an international price. {HS}3818.00 covers doped wafers and the world data is one of the broadest databases available because it includes all reporting countries. In addition, the analysis provided by Petitioner complies with {Commerce}'s request for information and excludes data causing or tainted by the PMS.[122] The data that the Respondents advocate {Commerce} use is tainted by Chinese production and sales and suffers from additional flaws.

Similar to the Thai import statistics, Respondents argue that, if {Commerce} relies on the world export data, {Commerce} should limit the data. Specifically, Respondents argue {Commerce} should only include exports from countries that produce wafers, and {Commerce} should remove exports to the United States because there is no cell production in the United States. Attachment 2 contains such an analysis, and limits the data to the wafer producing countries of France, Germany, Japan, Malaysia, Norway, Philippines, Singapore and Turkey.[123] Just as it did in the *Preliminary Determination* with the Thai data, {Commerce} should exclude NMEs and countries with broadly available export subsidies, *i.e.,* Vietnam India, Korea, and Thailand. In addition, it is inappropriate to include Thailand as a benchmark for an adjustment to address the PMS affecting Thailand. This analysis shows an AUV that {exceeds} the wafer AUV that Commerce used as the PMS benchmark for wafers in its preliminary analysis.

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[119] *See Mattresses from Cambodia* IDM at 9; *see also* Petitioner's Letter, "Rebuttal Factual Information," dated November 26, 2024 (Petitioner's Supp D RFI) (containing Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination - Best Mattresses International Company Limited and Rose Lion Furniture International Company Limited," dated March 18, 2021 (Mattresses from Cambodia Final Cost Memorandum).

[120] *See* section 773(f)(2) of the Act.

[121] *See Mattresses from Cambodia* IDM at 9.

[122] The lack of data from Vietnam or Taiwan does not undermine the validity of the data. Vietnam data would be excluded as an NME, so its absence is irrelevant. Moreover, Vietnam import statistics have not been reported to UN Comtrade for the POI and Vietnamese import statistics are notoriously unreliable. UN Comtrade does not ever include export data from Taiwan due to China and its role at the UN.

[123] *See* TTL's February Wafer and Solar Glass Submission at Exhibit 4B, at 5-6 (naming France and Germany as producers); *see also* PMS Allegation at Exhibits 1 and NSA-9, at 33 (stating wafer production is limited to Japan, Norway, Germany, Turkey, Philippines, Malaysia, Singapore, and Taiwan).

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TTL's Rebuttal Comments:

The following is a verbatim summary of arguments submitted by TTL.[124] For further details, *see* TTL's First Rebuttal Brief at 52-69.

> The Petitioner argues that Commerce should make two changes to its calculations of surrogate cost of production for wafers, using exports to Malaysia instead of imports, and GTA import data for Mexico. {HS} 3818.00 is a broad basket category…and is wholly inaccurate as a cost representing solar wafers….[125] Moreover, exports to Malaysia from countries with no solar wafer Production … had export prices…more than 3000 percent higher than Norway's export price to Malaysia …, a country with solar wafer production.[126] Third, export data to Malaysia is incomplete, missing data including Taiwan and Vietnam …[127] Moreover, Thai imports of {HS} 3818.00 … contain the exact same anomaly noted by the Petitioner for Malaysia imports from the United States… Rather, Commerce must revise its major input analysis to rely on TTL's reported affiliates' COP information. However, if Commerce continues to rely on "information available" to determine COP, pursuant to major input rule,[128] Commerce should use Hanwha Q Cells' wafer cost of $0.45-0.49 per piece…[129] Alternatively, Commerce should use non-Chinese solar wafers cost from TrendForce, specific to solar wafers.
>
> The Petitioner argues that Commerce did not analyze TTL's affiliated purchases of tin ribbon.[130] The Petitioner alleges that Thai import data of {HS} 8311.3099 is the best information on the record according to {section 773(f)(2) of the Act}.[131] While TTL imported tin coated PV ribbon under {HS} 8311.30.99, this is a broad HTS category... Rather, extensive information on the record shows that products under {HS} 7409 including {HS} 7409.11.00 and 7409.31.00…are specific to tin ribbon….[132] TTL has provided import prices for Thailand, Malaysia, Turkey, and Mexico of {HS} 7409.11.00 and 7409.31.00 and TTL's purchase price of tin ribbon from affiliates parties is higher than all of these import prices, and no adjustment is warranted under transactions disregarded…

[124] We note that we requested that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. *See Preliminary Determination*, 89 FR at 96217. Therefore, because the executive summary in TTL's First Rebuttal Brief exceeds this word limit, we have compressed the comment summary herein.
[125] *See* TTL's PMS Rebuttal at Exhibits BMARK-1A-B; *see also* TTL's Section D SQR at Appendix 9.1; and TTL's Supp D RFI Surrebuttal, at Exhibit WAFER-1.
[126] *See* Petitioner's Supp D RFI at Exhibit 2; *see also* TTL's February Wafer and Solar Glass Submission at Exhibit 4C.
[127] *See* TTL's Supp D RFI Surrebuttal at 6-7 and Exhibits WAFER-2 and WAFER-7-8; *see also* TTL's Letter, "Rebuttal to Petitioner's Wafer and Solar Glass Pricing Information," dated February 18, 2024 (TTL's February Wafer and Solar Glass Rebuttal) at 6; and PMS Allegation, at Exhibits PMS-1, NSA-1, and NSA-9, at 33.
[128] *See* section 773(f)(3) of the Act.
[129] *See* TTL's February Wafer and Solar Glass Submission at 4 and Exhibit 7.
[130] *See* Petitioner's First Case Brief at 30.
[131] *Id*.
[132] *See* TTL's Section D SQR at 14 and Appendices 3 and 9.6.

> …The {p}etitioner argues that the purchase prices from unaffiliated suppliers do not "fairly reflect" market value in Thailand because unaffiliated suppliers are NME producers or "engage in unfair trade…" The {p}etitioner is confusing the Thai market, a market economy, with the supplier market, which includes both market and non-market economies. Commerce has found that purchase prices from NME supplier "does not result in an unreasonable reflection of the cost associated with the production and sale of the merchandise…" and was sustained by the Court.[133] The {p}etitioner refers to {19 CFR 351.408(d)(l)(i)},…however, {19 CFR 351.408} covers the "Calculation of normal value of merchandise from nonmarket economy countries" whereas, this proceeding involves…a market-economy country…
>
> The {p}etitioner proposes Thai import stats for transactions disregarded analysis, which is illogical as Thai market prices, which TTL's purchases from unaffiliated suppliers represent… Commerce should continue to use TTL's unaffiliated market prices.
>
> {The p}etitioner contends that in implementing the transactions disregarded and major input rules, Commerce should calculate adjustments based on the difference between market price and TTL's affiliates' costs of production…The basis of {the p}etitioner's argument is its mistaken claim that "TTL reported its costs on the basis of {its} affiliates' cost of production…"[134] But as confirmed by TTL, and as verified by Commerce, TTL relied on its transfer prices from affiliates to report *its own costs of production*…Commerce should…continue to rely on the actual costs that TTL paid…that were the basis for its reported costs.

MLT's Rebuttal Comments:[135]

> MLT incorporates TTL's and other respondents' rebuttal arguments by reference.

Commerce's Position: We disagree that it is necessary for Commerce to revise its major input analysis of wafer inputs and transactions disregarded rule analysis for aluminum frames, solar glass and junction boxes from the *Preliminary Determination*.

Concerning wafers, we continue to find that a PMS exists with respect to the price of the input.[136] Pursuant to this PMS finding, we have also determined that an adjustment to the calculation of the constructed value of subject merchandise is appropriate, considering that the cost distortion is not already sufficiently addressed in the calculations in accordance with the major input rule.[137] Under the major input rule, Commerce uses the higher of the transfer price

[133] *See Notice of Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the Republic of Korea*, 71 FR 29310 (May 26, 2006) (*Diamond Sawblades from Korea*), and accompanying IDM at 46; *see also Diamond Sawblades Manufacturers Coalition v. United States*, Slip Op. 14-127 (CIT October 29, 2014) (*Diamond Sawblades*).
[134] *See* Petitioner's First Case Brief at 36-38.
[135] *See* MLT's Rebuttal Brief.
[136] *See* PMS Analysis Memorandum.
[137] *See* 19 CFR 351.416(f)(3).

of the input that the respondent paid to its affiliated supplier(s), the COP of the affiliated input supplier(s), or a market price for the input. Because the affiliated suppliers are located in a non-market economy, Commerce used import statistics for countries which are economically comparable to China as a proxy for COP at the preliminary determination. Concerning the COP prong of the major input rule analysis, the petitioner argues that for wafers Commerce should rely on export data to Malaysia rather than import data into Malaysia. We find that the petitioner's argument on this point is moot given our PMS determination and resultant adjustment. Specifically, assuming *arguendo*, Commerce were to use the world export price of wafers to Malaysia using HS 3818.0000 to derive an AUV for purposes of the COP prong of the major input rule analysis,[138] the resulting weighted average[139] for Turkey, Mexico and Malaysia would still be lower than the wafer price benchmark we have determined to use as part of the PMS adjustment for wafers.[140] In other words, the petitioner's proposed modification to the COP prong of the major input rule analysis results in a wafer cost adjustment that is less than the wafer cost adjustment we have applied pursuant to our PMS analysis. We reach a similar finding with regard to the petitioner's argument that Commerce should rely on GTA wafer prices for Mexico for purposes of the COP prong of the major input rule analysis because, like the petitioner's arguments regarding export prices of wafers to Malaysia, making the petitioner's proposed changes would result in a wafer cost adjustment that is lower than the wafer cost adjustment resulting from our PMS analysis. Thus, in both scenarios, the petitioner's proposed changes to the COP prong of the major input rule analysis still would result in an adjusted wafer price that fails to fully account for the PMS for wafers that we have found to exist..

Therefore, for this final determination, we continue to find that the cost adjustment for wafers under the major input rule does not sufficiently account for the distortion caused by the PMS.[141]

With regard to the petitioner's argument that Commerce should make an adjustment for affiliated purchases of tin ribbon by relying on Thai import statistics for the HTS code under which TTL imported tin ribbon, we agree that the tin ribbon inputs should be adjusted. However, we do not find it necessary to rely on import data for the market value. Section 773(f)(2) of the Act states that Commerce may analyze affiliated transactions to determine whether they were transacted at arm's length values. In applying sections 773(f)(2) and (3) of the Act, Commerce has established a preference for using a respondent's own purchases of the inputs from unaffiliated parties as the arm's length or market value.[142] Where a respondent has no unaffiliated purchases, Commerce will rely on the affiliated party's sales of the input to unaffiliated parties, or any reasonable method for establishing market value.[143] TTL purchased aluminum frames, EVA, and junction boxes from the same affiliated supplier that provided the tin ribbon.[144] In previous cases, when faced with this same fact pattern, *i.e.*, one affiliated party

[138] *See* Petitioner's Letter, "Rebuttal Factual Information," dated November 26, 2024, and TTL Final Analysis Memorandum.
[139] *See* TTL Final Analysis Memorandum.
[140] *See* PMS Analysis Memorandum.
[141] *Id*.
[142] *See, e.g., Refrigerator-Freezers from Korea* IDM at Comment 17; *see also Final Results of Antidumping Duty Administrative Review: Silicomanganese from Brazil*, 69 FR 13813 (March 24, 2004), and accompanying IDM at Comment 7.
[143] *Id.*
[144] *Id*. at Exhibit SD-4e.

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provides multiple inputs, we have relied on the difference between the transfer and market price for the inputs with market values to calculate the adjustment for the input without a market value.[145] Therefore, for the final determination we have relied on our transactions disregarded analysis of aluminum frames, EVA, and junction boxes, *i.e.*, the inputs with market values, to calculate the transactions disregarded adjustment for tin ribbon.[146] Finally, because we are able to extrapolate a market value for tin ribbon based on TTL's own purchases of other inputs from the same affiliated party and from unaffiliated parties, we do not find it necessary to resort to the use of publicly available data, *i.e.*, import values.

With regard to the petitioner's argument that Commerce should rely on Thai import statistics as the market values for aluminum frame, solar glass and junction boxes in the transactions disregarded analyses rather than rely on TTL's purchases from unaffiliated parties, we disagree. First, for solar glass we find this issue moot as, for this final determination, we find that a PMS exists with regard to TTL's purchases of solar glass. Further, any adjustments to the cost of solar glass pursuant to the transactions disregarded rule, as proposed by interested parties, result in adjusted solar glass costs that are lower than the adjusted solar glass cost derived under our PMS adjustment. As such, we find interested parties' arguments concerning revisions to the transaction disregarded rule analysis in connection with solar glass are moot.

Concerning aluminum frames and junction boxes, as explained in our preliminary PMS analysis and as we continue find in our final analysis, these two inputs are not sufficiently "significant" to warrant the application to of a PMS analysis. As such, we have conducted our normal transaction disregarded analysis that compares the prices TTL paid to its affiliated suppliers for aluminum frames and junction boxes to the prices TTL paid to its unaffiliated suppliers for these inputs. The petitioner argues that we should revise our approach because our transaction disregarded analysis relied on market prices from unaffiliated suppliers in non-market economies. However, in this investigation, we have not found that the market for these inputs is distorted, and we find there is no evidence on the record to find that the prices from the unaffiliated suppliers are an unreasonable reflection of the production and sale of the products.[147] Therefore, we find there is no basis for Commerce to deviate from its approach in the *Preliminary Determination*. Accordingly, we made no changes to our preliminary transactions disregarded adjustments to aluminum frames, EVA, and junction boxes, which are based on a comparison of TTL's purchases from affiliated and unaffiliated suppliers.[148]

Finally, the petitioner contends that for reporting purposes TTL's cost database reflects the affiliated suppliers' COPs for the solar inputs rather than the transfer prices TTL paid its affiliated suppliers. Under this assumption, the petitioner argues that any adjustments made to the solar inputs should be calculated based on the difference between the benchmark used, whether market price or AUV, and the affiliated suppliers' COP. We disagree. At the cost verification, we confirmed that TTL's cost database reflects the transfer prices paid to the affiliated suppliers and not the affiliated suppliers' COPs. Specifically, we examined supporting

[145] *See Light-Walled Rectangular Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review; 2016-2017,* 84 FR 16646 (April 22, 2019), and accompanying IDM at Comment 6.
[146] *See* TTL Final Cost Memorandum.
[147] *See Diamond Sawblades from Korea* IDM at 46.
[148] *See* TTL Preliminary Cost Memorandum and TTL Final Cost Memorandum.

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documentation for wafer purchases during our review of direct material costs in the cost buildup worksheets and our affiliated transactions test work.[149] Additionally, our review of the reconciliation of the total costs from the audited financial statements to the total cost of manufacturing reported in the cost database does not support the contention that the cost database reflects the affiliated suppliers' COPs, *i.e.*, we found no adjustments to remove the transfer prices for solar inputs and add the affiliates' COP of the inputs.[150] Therefore, we continued to calculate our adjustment for inputs using the transfer prices paid.[151]

Comment 8: Whether Commerce Should Find the Existence of a Particular Market Situation Affecting Solar Inputs

Petitioner's Comments:

The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* Petitioner's First Case Brief at 11-23.

> {Commerce} should find that a particular market situation for critical solar inputs exists in the Thai market that distorts TLL's reported costs of materials, fabrication, and other processing of crystalline silicon photovoltaic (CSPV) Products, such that TLL's reported costs of production do not reflect costs of production in the ordinary course of trade. Record information demonstrates that it is "more likely than not"[152] that the three requirements for a cost-based PMS are met,[153] and that a PMS contributed to distorted costs in Thailand.
>
> First, less-than-fair-value imports of critical solar inputs from China dominate the Thai market. More than ninety-five percent of all wafer imports into Thailand were Chinese and at prices over 108% lower than the rest of the world.[154] Similar trends exist for aluminum frames, solar glass, junction boxes, silver paste and ethylene vinyl acetate ("EVA").
>
> Second, China is a non-market economy ("NME") with state-owned producers that can, and do, sell CSPV inputs at less than fair value. Global prices are driven by a handful of large, subsidized, GOC-controlled Chinese producers,[155] such that the China price has effectively become the global price, reflecting the distortions inherent to Chinese non-market industrial policy and practices. UN Comtrade export data indicate China accounted for eighty percent of all wafer exports during the POI at prices eighty-seven percent lower than the average for the rest of the world.[156] China is similarly dominant in the production of other CSPV inputs, including polysilicon, aluminum frames, junction boxes, EVA, glass, and silver

[149] *See* TTL Cost Verification Report at 14-15 and 18.
[150] *Id.* at 7-12.
[151] *See* TTL Final Cost Memorandum.
[152] *See* 19 CFR 351.416(d)(2).
[153] *See* 19 CFR 351.416(d)(l)(i)-(iii).
[154] *See* PMS Allegation at 12 and Exhibit 20.
[155] *Id.* at Exhibit 11, at 20-27.
[156] *Id.* at 12 and Exhibit 15.

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paste; reports indicate that China accounts for more than eighty percent of market share for all key products in the CSPV supply chain.[157]

Third, these circumstances contribute to distortions in the Thai market. The costs at which Chinese solar inputs are produced in China and the price at which they are sold in Thailand are significantly distorted, thereby distorting the cost of production for Thai solar producers.

Petitioner's PMS Comments:[158]

Commerce correctly determined that a PMS exists for solar inputs.

TTL's PMS Comments:

The following is a verbatim summary of arguments submitted by TTL. For further details, *see* TTL's Second Case Brief at 8-10 and 20-22.

Commerce should find no PMS exists for wafers in Thailand. The basis of Petitioner's PMS allegation is Chinese polysilicon where Chinese polysilicon is a significant factor in Chinese wafer distortion. TTL sources all its polysilicon from non China sources, which are significantly higher prices, resulting in higher TTL wafer prices. Moreover, if "substantially all"[159] of the imports under {HS} 3818 into Malaysia are from China and there is no set of circumstances indicating distortion to the Malayia wafer market, then the same conditions in Thailand cannot be reasonably regarded as indicative of a set of circumstances distorting the Thai wafer market.

Commerce should not find that a PMS exists for solar glass in Thailand. Commerce's reliance on Thai imports disregards Thai production and large domestic solar glass producers.

Canadian Solar's PMS Comments:

The following is a verbatim summary of arguments submitted by Canadian Solar. For further details, *see* Canadian Solar's Second Case Brief at 6-10.

Commerce should have rejected {the p}etitioner's PMS Allegation because it is facially deficient for the reasons identified in TTL's October 18, 2024, response and

[157] *Id.* at 7.
[158] *See* Petitioner's Letter in Lieu of a Second Case Brief.
[159] Commerce has found in at least two other contexts that 85 percent or more constitutes "substantially all" of an industry or set of inputs. *See Certain Metal Lockers and Parts Thereof from the People's Republic of China: Final Results of Changed Circumstances Reviews*, 88 FR 63064 (September 14, 2023) (*Metal Lockers from China CCR*), and accompanying IDM at Comment 1; *see also Preliminary Results of the 2021-2023 Antidumping Duty Administrative Review of Pentafluoroethane (R-125) from the People's Republic of China*, 89 FR 22997 (April 3, 2024) (*R-125 from China 2021-23*), and accompanying PDM at 21.

> because it openly ignores the particularity requirement of a PMS allegation.[160] The…{CIT} and the {Federal Circuit} have both explained that PMS allegations must demonstrate particularity with respect to the affected jurisdiction—which here should be Thailand. The Federal Circuit has observed in a proceeding similar to this one, "Although low-priced Chinese {inputs} could contribute to a particular market situation, the record does not show sufficient particularity for this circumstance to create a particular market situation on its own."[161] There, concluding that Chinese inputs did not create a PMS, the CIT "agree{d} with Commerce's determination that the record evidence does not show that an increase in Chinese {input} exports was particular to {the country under investigation} and the drastic decline in average unit values from China was particular to {that country}."[162] Notwithstanding this exacting requirement, Petitioner here alleged that Chinese production somehow distorts global prices. A valid PMS in this investigation must be specific to the Thai market—there is thus a fatal defect in Petitioner's allegation given its admission and discussion of alleged global market impact.
>
> Acting contrary to law, Commerce has preliminarily duplicated Petitioner's error in the Post-Preliminary PMS Analysis, focusing on the role of Chinese inputs in the global, rather than Thai, market. The Post-Preliminary PMS Analysis is thus contradictory to judicial precedent and {Commerce}'s regulations, both of which require a PMS finding to be (i) specific only to certain parties or products, and (ii) in the subject country.[163] Commerce's identification of an alleged global phenomenon touching diverse industries and all countries across the globe is not particular.

TTL's Rebuttal Comments:

The following is a verbatim summary of arguments submitted by TTL. For further details, *see* TTL's First Rebuttal Brief at 20-42.

> The Petitioner argues a PMS exists for the Thai solar input market that distorts TTL's reported costs of production. Commerce may "use another calculation methodology" but this provision is triggered only if both a "particular market situation" exists and the respondent's "costs of materials and fabrication or other processing" do not "accurately reflect the cost of production in the ordinary course of trade."[164] TTL's costs are accurate, normal, and reasonable and there is no evidence that TTL's solar input purchases are outside the ordinary course of trade due to distortions in the Thai market. The {p}etitioner's evidence has several deficiencies, namely import data viewed in isolation without regard to domestic

[160] *See Metal Lockers from China CCR* IDM at Comment 1; *R-125 from China 2021-23* PDM at 21.
[161] *See NEXTEEL Co., Ltd. v. United States*, 28 F.4th 1226, 1234 (Fed. Cir. 2022) (*NEXTEEL Fed. Cir.*).
[162] *See NEXTEEL Co., Ltd. v. United States*, 633 F. Supp. 3d 1190, 1197 (CIT 2023) (*NEXTSTEEL CIT*).
[163] *See* 19 CFR351.416(e)(1).
[164] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015), revision section 773(e) of the Act.

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production. Moreover, no PMS was alleged in Malaysia where the respondent Hanwha sources inputs from China and the same facts exist.[165]

The Petitioner argues that China dominates global supply, but with little reliable evidence such as non-contemporaneous aluminum smelter capacity, which is entirely different product from aluminum frames.[166] The Petitioner alleges that China uses this purported market dominance to control the Thai solar input market, based solely on Thai imports of broad basket categories. Guardian and AGC are large Thai solar glass producers.[167] Thai Metal and Tostem Thai had 133,000 tons of aluminum extrusions production, no PMS was alleged in the investigation, and Thailand exported 9 million kilograms.[168] Import data for PV junction boxes is an entirely wrong category.[169] Thai EVA production totaled 202,000 tons and 40 percent domestic consumption.[170]

Import statistics alone cannot define the Thai solar input market. TTL had sizeable purchases of solar inputs from non-Chinese suppliers.[171] Thailand is a market-economy and application of surrogate values to Thai respondent's costs is wholly inaccurate and should be reserved for only substantiated allegations of costs distortions so severe that a respondent's costs cannot be used. The Petitioner has not even attempted to address critical aspects of determining "the cost of production in the ordinary course of trade," including local production share, sourcing, and local and global benchmarks. This fails any sort of evidentiary burden.

The Petitioner's purported proof of distortion relies on Thai import prices from China being significantly lower than rest of world.[172] But this indicates Chinese prices are not driving prices in the Thai market, otherwise rest of world prices should be depressed. The alleged cost distortions are unfounded, relying on broad import categories with dissimilar products that Commerce has rejected using in past

[165] *See* TTL's Supp D RFI Surrebuttal at 5 and Exhibit WAFER-3, at 6-7, discussing sourcing of Hanwha's wafers from China for solar cell production in Malaysia.
[166] *See* PMS Allegation at 8-24 and Exhibit PMS-3, at NSA-3-1; *see also* TTL's PMS Rebuttal at 15.
[167] *See* TTL's PMS Rebuttal at Exhibits GLASS-2A-5C.
[168] *Id*. at Exhibits ALUM-2-5D and Appendix I; *see also Aluminum Extrusions from Thailand: Final Affirmative Determination of Sales at Less Than Fair Value*, 89 FR 80517 (October 3, 2024) (*Aluminum Extrusions from Thailand*); and TTL's PMS Rebuttal at Exhibit ALUM-6 (containing *Aluminum Extrusions from Thailand: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 89 FR 38042 (May 7, 2024) and accompanying PDM).
[169] *See* TTL's PMS Rebuttal at 23; *see also* TTL's Section D QR at Exhibit D-22A.3-1; and TTL's Section D SQR at 13 and Appendix 3.
[170] *Id*. at Exhibit EVA-3A-4B and Appendix I.
[171] *See* TTL's Section D SQR at Exhibit SD-4e.
[172] *See* Petitioner's First Case Brief at 20-21.

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> solar proceedings.[173] Reliable price data specific to solar inputs demonstrate that TTL's purchase prices are above non-China prices and no cost distortions exist in the Thai market.[174] This allegation is wholly speculative and inaccurate and does not reasonably reflect evidence of cost distortions and no adjustment to TTL's costs is warranted.

Canadian Solar's Rebuttal Comments:

The following is a verbatim summary of arguments submitted by Canadian Solar. For further details, *see* Canadian Solar's First Rebuttal Brief at 4-9.

> Commerce should reject {the p}etitioner's PMS Allegation because it is facially deficient for the reasons identified in TTL's October 18, 2024, response and because it openly ignores the particularity requirement of a PMS allegation.[175] The {CIT} and {Federal Circuit}…have both explained that PMS allegations must demonstrate particularity with respect to the one jurisdiction affected — which, here, should be Thailand. Notwithstanding this requirement, {the p}etitioner alleges that Chinese production somehow distorts global prices. A valid PMS in this investigation must be specific to the Thai market—there is thus a fatal defect in {the p}etitioner's allegation given its admission and discussion of alleged global market impact. Moreover, Commerce may not implement a PMS finding in the Final Determination without first providing interested parties an opportunity to comment on the corresponding methodology and reasoning. The governing statute mandates that Commerce provide parties an opportunity to comment on information prior to the final determination, and Commerce in other proceedings provided a preliminary PMS analysis subject to public comment and review—Commerce has failed to do so here. As parties have had no opportunity to comment on a preliminary PMS determination — or even to assess, much less understand, the basis for {the p}etitioner's allegation — Commerce may not act on the PMS Allegation in its final determination.

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[173] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review: 2019*, 87 FR 40491 (July 7, 2022) (*Solar Cells from China CVD 2019*), and accompanying IDM at Comment 8; *see also Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments: 2017-2018*, 85 FR 7531 (February 10, 2020) (*Solar Cells from China 2017-18*), and accompanying PDM at 25-26; and *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments: 2016-2017*, 83 FR 67222, 67223 (December 28, 2018) (*Solar Cells from China 2016-17*), and accompanying PDM.

[174] *See* TTL Preliminary Cost Memorandum at 2-3 and Attachment IA; *see also* TTL's February Wafer and Solar Glass Submission at Exhibits 1-12; TTL's Section D SQR at Appendices 1-5; and TTL's PMS Rebuttal, at Exhibits GLASS-4A and EVA-3B.

[175] *See* TTL's PMS Rebuttal.

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Runergy's and MLT's Rebuttal Comments:[176]

- Runergy and MLT incorporate TTL's and other respondents' rebuttal arguments by reference.

Petitioner's PMS Rebuttal Comments:

The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* Petitioner's Second Rebuttal Brief at 4-11.

> Record information establishes the existence of a cost-based PMS in Thailand whereby
> {NME} suppliers, including state-owned enterprises, sell inputs at less than fair value in the Thai market, distorting the costs of production for Thai producers of subject cells and modules. Because Chinese produced wafers and glass are so dominant in the Thai market, China is the price setter in the Thai market and prices for all inputs are distorted. This market situation is particular because it impacts prices and costs for certain products in Thailand, *i.e.* prices of {CSPV} inputs and costs to produce CSPV products[177]
>
> {Commerce} correctly found, "based on record information ... that a circumstance or set of circumstances, as described, exist that may have particularly impacted the costs of wafer and solar glass inputs into the production of subject merchandise."[178] Record information demonstrates that substantial Chinese-produced inputs are sold into Thailand at below market prices and in such quantities that the Chinese imports distort the cost of production for Thai producers. In fact, "China accounted for over 95 percent of wafer imports and 80 percent of solar glass imports into Thailand during the POI."[179] As a result, {Commerce} correctly recognized that Chinese produced wafers and solar glass particularly affects Thai producers, as the sheer volume of Chinese inputs in the Thai market distorts prices for all wafers and solar glass in the Thai market. Moreover, because Chinese wafers and solar glass companies are state-owned, they can and do dominate the Thai market with dumped and subsidized wafers and solar glass.[180] Over 95 percent of all wafer imports into Thailand were Chinese and at prices over 108 percent lower than the rest of the world ("ROW").[181] And nearly 80 percent of all solar glass imports were Chinese and at prices over 11 percent lower than the ROW.[182]
>
> {Commerce}'s PMS findings are consistent with {Commerce}'s regulations and judicial precedent. Respondents would interpret these authorities so narrowly as to neuter the PMS regime. Congress intended to "give{} { Commerce} the kind of

[176] *See* Runergy's Letter in Lieu of a Rebuttal Brief; *see also* MLT's Rebuttal Brief.
[177] *See* 19 CFR 351.416(e)(l).
[178] *See* PMS Analysis Memorandum at 16.
[179] *Id*.
[180] *Id*.
[181] *See* PMS Allegation at 12.
[182] *Id*. at 13.

discretion to be able to look at the facts and to take recalcitrant countries and hold them accountable by creating what is accurate" and "empower{}" {Commerce} to "disregard prices or costs of inputs that foreign producers purchase if { Commerce} has reason to believe or suspects that the inputs in question have been subsidized or dumped."[183] Therefore, Commerce should continue to find a PMS in this investigation.

Commerce's Position: We disagree with TTL and Canadian Solar, and continue to find the existence of a PMS affecting the price of solar glass and wafers.[184]

Section 504 of the Trade Preferences Extension Act of 2015 (TPEA)[185] added language to sections 771(15) and 773(e) of the Act, that expressly incorporated the concept of PMS into the statutory provisions concerning the ordinary course of trade and CV, respectively. For example, section 771(15) of the Act provides that "ordinary course of trade" means the conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade with respect to the merchandise, and specifies that Commerce shall consider as outside the ordinary course of trade, "{s}ituations in which {Commerce} determines that the particular market situation prevents a proper comparison with the export price or constructed export price," among others.

The TPEA further amended section 773(e) of the Act to expressly permit Commerce to use an alternative calculation methodology when a PMS exists such that the cost of materials and fabrication or other processing of any kind does not "accurately reflect the cost of production in the ordinary course of trade."[186] One of the legislation's objectives was to empower Commerce to disregard prices or costs of inputs that foreign producers purchased if Commerce concluded that those input values were subsidized or otherwise outside the ordinary course of trade.[187] Accordingly, Commerce's regulations define a PMS as a circumstance or set of circumstances that: (1) prevents or does not permit a proper comparison of sales prices in the home market or third country market with export prices or constructed export prices; or (2) contributes to the distortion of the cost of materials and fabrication or other processing of any kind, such that the cost of production of merchandise subject to an investigation does not accurately reflect the cost of production in the ordinary course of trade.[188]

[183] *See* 161 Cong. Rec. H4655, H4690 (June 25, 2015) (statement of Rep. Meehan); *see also* 161 Cong. Rec. at H4695 (statement of Rep. Lee) (praising the PMS provision for "allowing ... Commerce to use a different calculation methodology to compare domestic and foreign costs if the methodology does not produce an appropriate comparison"); and 161 Cong. Rec. at H4697 (statement of Rep. Ryan) ("{W}hen another country . . . dump{s} product into our market, we ought to be able to do something about it. So there is a bipartisan acknowledgment on that front{.}").
[184] *See* PMS Analysis Memorandum at 16-22.
[185] *See* Section 504 of the Trade Preferences Extension Act of 2015, Public Law 114-27.
[186] *See* section 773(e) of the Act.
[187] *See Regulations Improving and Strengthening the Enforcement of Trade Remedies Through the Administration of the Antidumping and Countervailing Duty Laws*, 89 FR 20766, 20789, (March 25, 2024) (*RISE Regulations)* (citing Congressional Record—House, H4666, H4690 (June 25, 2015)).
[188] See 19 CFR 351.416(a) (2024); *see also RISE Regulations*, 89 FR at 20837.

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Under 19 CFR 351.416(d), Commerce will determine that a cost-based market situation existed during the investigation or review period, if, based on the record information, Commerce finds that:

(i) A circumstance or set of circumstances existed that may have impacted costs of producing subject merchandise, or costs or prices of inputs into the production of subject merchandise;
(ii) The cost of materials and fabrication or other processing of any kind, including the prices of inputs used to produce subject merchandise were not in accordance with market principles or distorted, and therefore did not accurately reflect the cost of production of subject merchandise in the ordinary course of trade; and
(iii) The circumstance or set of circumstances at issue contributed to the distortion of the cost of production of subject merchandise.

Commerce will weigh record information and determine whether it is more likely than not that the circumstance or set of circumstances contributed to the distortion in the cost of production of subject merchandise during the period of investigation or review, and therefore, that a market situation existed during that period.[189]

If Commerce continues to determine that a market situation exists, it must also determine if the market situation is particular.[190] Commerce's regulations provide that a market situation is particular if it impacts prices or costs for only certain parties or products in the subject country.[191]

If Commerce continues to determine a particular market situation exists in the subject country which has contributed to a distortion in the cost of materials and fabrication or other processing, such that those costs do not accurately reflect the cost of production of subject merchandise in the ordinary course of trade, in accordance with sections 771(15) and 773(e) of the Act, Commerce may address such distortions in its calculations.[192]

In the instant case, based on record information, we continue to find that China-sourced wafers and solar glass dominated the Thai market for these inputs.[193] As explained in the PMS Analysis Memorandum, China dominates both cell capacity and production compared to the rest of world, with 93.1 percent of production and 89.4 percent of capacity in 2023.[194] China accounts for 98 percent and 90 percent of the global production of silicon wafers and solar glass, respectively.[195] Additionally, China accounted for over 95 percent of wafer imports and 80 percent of solar glass imports into Thailand during the POI.[196] Further, Chinese wafer and solar glass companies are state-owned (*i.e.*, non-market economy country (NME)).[197] Based on this record information,

[189] *See* 19 CFR 351.416(d)(2).
[190] *See* 19 CFR 351.416(e).
[191] *See* 19 CFR 351.416(e)(1).
[192] *See* 19 CFR 351.416(f).
[193] *See* PMS Analysis Memorandum at 16; *see also* Petitioner PMS Allegation at 5-11.
[194] *See* PMS Analysis Memorandum at 16; *see also* Petitioner PMS Allegation at 6.
[195] *See* PMS Analysis Memorandum at 16; *see also* Petitioner PMS Allegation at 6.
[196] *See* PMS Analysis Memorandum at 16; *see also* Petitioner PMS Allegation at 6-7.
[197] *See* PMS Analysis Memorandum at 16; *see also* Petitioner PMS Allegation at 8.

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we continue to find that a circumstance or set of circumstances, as described, exist that may have particularly impacted the costs of wafer and solar glass inputs into the production of subject merchandise in accordance with 19 CFR 351.416(d)(1)(i) and 19 CFR 351.416(e). As such, we disagree with TTL and Canadian Solar that Commerce should decline to find the existence of a PMS affecting certain solar inputs.

TTL argues that Commerce's PMS analysis is flawed because it fails to account for Thailand's domestic production of "solar inputs" and TTL's imports of such "solar inputs" from non-China sources.[198] However, TTL makes no arguments in its case briefs regarding the domestic production of wafers in Thailand.[199] Rather, TTL cites only to its own experience, namely TTL states that it imports significant volumes of wafers from a non-China source.[200] We disagree with TTL's arguments. Our PMS analysis focuses on market conditions for wafers and solar glass in Thailand, as a whole, and not merely on TTL's own experience, as the prices that TTL paid for wafers and solar glass in Thailand reflect the larger market conditions in Thailand for those inputs. Additionally, concerning solar glass, Commerce has determined in the companion CVD investigation on solar cells from Thailand that information from the Royal Thai Government indicates there was no domestic production of solar glass in Thailand during the POI.[201] Accordingly, we reject TTL's claims that Commerce has failed to adequately account for domestic production of wafers and solar glass in Thailand when performing our PMS analysis.

We also disagree with Canadian Solar that petitioner's PMS allegation was deficient because it ignores the particularity requirement. Commerce's regulations provide that if Commerce determines that a market situation exists, it must also determine if the market situation is particular and, as cited by Canadian Solar, a market situation is particular if it impacts prices or costs for only certain parties or products in the subject country.[202] In reaching this determination, the regulations specify that "the same or similar market situations can exist in multiple countries or markets and still be considered particular … if {Commerce} determines that a market situation exists which distorts sales prices or costs of production for certain parties or products specifically in the subject country."[203] The petitioner alleged that China dominates the global market with respect to solar inputs and China is an NME with substantial government control and ownership in the CSPV inputs industry. According to the petitioner, Chinese-produced solar inputs are sold into Thailand at LTFV and in such quantities that they distort the cost of production for Thai solar cell producers.[204] Contrary to Canadian Solar's argument, Commerce did not determine that the PMS exists in *all* countries. Based on the record evidence and its PMS analysis, Commerce determined that Chinese global dominance as a supplier of these particular products (wafers and solar glass) and the volume of imports of these particular products into Thailand specifically effected Thai markets for wafers and solar glass, in particular.[205] Such a finding is consistent with 19 CFR 351.416(e)(1)(ii).

[198] *See* TTL's First Rebuttal Brief at 42.
[199] *Id*.; *see also* TTL's Second Case Brief.
[200] *See* TTL's First Rebuttal Brief at 25.
[201] *See Solar Cells from Thailand CVD Final Determination* IDM at 44.
[202] *See* 19 CFR 351.416(e)(1).
[203] *See* 19 CFR 351.416(e)(1)(i).
[204] *See* PMS Analysis Memorandum at 5.
[205] *See* PMS Analysis Memorandum at 20-21.

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Comment 9: Whether Commerce Should Adjust TTL's Reported Costs to Address the Particular Market Situation Affecting Solar Inputs

Petitioner's Comments:

The following is a verbatim summary of arguments submitted by Canadian Solar. For further details, *see* Petitioner's First Case Brief at 23-25.

> To mitigate distortions caused by the PMS, {Commerce} should rely on Petitioner's market-based surrogate values, which properly value the CSPV inputs at an international price, to adjust TTL's cost of production to calculate normal value.[206] The best data available for valuing wafers and solar glass at international prices is the UN Comtrade data. Comtrade includes all reporting countries and is one of the broadest databases available. The data can be easily dissected such that exports to and from China and Thailand may be excluded. Alternatively, {Commerce} may also use EU data to value solar glass because {Commerce} has determined elsewhere that the more specific EU code is specific to solar glass,[207] and the breadth of the EU coverage ensures that a large segment of the market is considered. {Commerce} should value the aluminum frame, EVA, and junction box inputs based on Thai import data without regard to imports from China, which is the best (and seemingly only) information on record to value these inputs.[208] Regardless of the values selected, {Commerce} should increase the valuation of each input by the requisite movement expenses to transport the goods from a global market to TTL.[209]

Petitioner's PMS Comments:[210]

> Commerce correctly used "data untainted by Chinese production and sales of wafers and solar glass"[211] in its PMS Analysis. In its final determination, Commerce should adjust these world-market prices for certain movement and import expenses.

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[206] *See* PMS Allegation at Exhibit 20; *see also* Petitioner's Letter, "Information Regarding Particular Market Situation Allegation," dated November 21, 2024) (Petitioner's November Solar Glass Submission); and Petitioner's Letter, "Wafer and Solar Glass Pricing Information," dated February 5, 2025 (Petitioner's February Wafer and Solar Glass Submission).

[207] *See, e.g., Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2020-2021,* 88 FR 43302 (July 7, 2023) (*Solar Cells from China 2020-21*), and accompanying IDM; *see also Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2019-2020,* 87 FR 38379 (June 28, 2022) (*Solar Cells from China 2019-20*), and accompanying IDM ; and Petitioner's February Wafer and Solar Glass Submission at Exhibit 4.

[208] *See* PMS Allegation at Exhibit 20.

[209] *See* Petitioner's November Solar Glass Submission at 3.

[210] *See* Petitioner's Letter in Lieu of a Second Case Brief.

[211] *Id*. at 2.

TTL's PMS Comments:

The following is a verbatim summary of arguments submitted by TTL.[212] For further details, *see* TTL's Second Case Brief at 10-20 and 22-26.

> Commerce's regulation instructs Commerce to use comparisons to the "same input."[213] Thus, specificity is the paramount consideration when evaluating benchmarks…Commerce erroneously disregarded superior {wafer} pricing data due to incorrect conclusions. First, TrendForce prices are for overseas non-China markets, that excludes wafers sourced from China…[214] TrendForce has tracked non-China sourcing prices for 210 mm wafers precisely specific to TTL's wafer and thus can be accurately converted.[215] Commerce's rationale for declining to consider the wafer values of Hanwha Q Cells is not supported by the record and is inconsistent with the regulation. Commerce's regulation instructs that it will compare to the "same input" in the "home country or elsewhere."[216] Malaysia is elsewhere and nothing in record or Commerce's regulation indicates why a broad average international price is preferable when comparison to the "same input" is the paramount consideration. Moreover, Commerce determined the zero percent preliminary antidumping rate for Hanwha Q Cells by relying "on Hanwha Q Cells' quarterly COP data as submitted."[217] Commerce has already determined that those values are a market-based, reliable basis for Hanwha Q Cells' costs of production, and Commerce cannot reach the opposite conclusion when used as a comparison to TTL's wafer purchases. Third, CEA wafer prices do not include China. Commerce relies on price forecasts as a benchmark.[218]

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[212] We note that we requested that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. *See Preliminary Determination*, 89 FR at 96217. Therefore, because the executive summary in TTL's First Rebuttal Brief exceeds this word limit, we have compressed the comment summary herein.
[213] *See* 19 CFR 351.416(d)(3)(i).
[214] *See* TTL's February Wafer and Solar Glass Submission at 2-3 and Exhibit 2A.
[215] *Id*. at Exhibit 2B.
[216] *See* 19 CFR 351.416(d)(3)(i).
[217] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From Malaysia: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 89 FR 96207 (December 4, 2024) (*Solar Cells from Malaysia Preliminary Determination*) and accompanying PDM at 22.
[218] *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, Rescission and Intent To Rescind, in Part; 2020*, 88 FR 1355 (January 10, 2023) (*Solar Cells from China CVD 2020*), and accompanying PDM at 24, unchanged in *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Notice of Correction to the Final Results, and Amended Final Results of Countervailing Duty Administrative Review; 2020*, 88 FR 56003 (August 17, 2023); *see also Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review and Intent To Rescind, in Part; 2019*, 87 FR 748 (January 6, 2022) (*Solar Cells from China CVD 2019*), and accompanying PDM at 24, unchanged in *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Notice of Amended Final Results of Countervailing Duty Administrative Review; 2019*, 87 FR 50069 (August 15, 2022); and *Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products From the Russian Federation: Final Results and Rescission of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 38948 (August 8, 2019) (*Hot-Rolled Steel from Russia 2016-17*), and accompanying IDM at Comment 2.

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> Fourth, bill of lading data further confirms the accuracy of other benchmark prices and the distortive pricing of trade data. {HS} 3818.00 contains highly dissimilar products…[219] The Court has affirmed that "product specificity" trumps all other criteria and here, trade data is not specific to solar wafers.[220]…Commerce erroneously disregarded superior {solar glass} pricing data due to incorrect conclusions. First, TTL provided Turkey import data from Trade Data Monitor but Commerce made no mention of this data in its benchmark considerations. Turkey is economically comparable to China, which the input under consideration is Chinese solar glass, and Commerce specifically asked for Turkish import data.[221] A comparison of Import Genius and TOM data for Turkey imports show similar value and volumes of imports and nearly all of imports of {HS} 7007.19.200011 and 7007.19.800015 are solar glass.[222] Turkey is a "broad-market average," which Commerce affirmed that a single country is a broad-market average.[223] Similarly, glass statistics from the Royal Thai Government are a broad-market average. Finally, PV Insights is priced on a per kilogram basis and is not estimated.[224] Whereas, {HS} 7007.19.80 contains dissimilar products…rang{ing} in thicknesses from 0.4 mm to 6.0 mm. Any differences in price are attributable to differences in products and weight…[225] Product specificity in benchmark prices is also critical for PMS cost distortions as demonstrated by the distortive pricing of other products included in EU imports.[226]

Canadian Solar's PMS Comments:

The following is a verbatim summary of arguments submitted by Canadian Solar. For further details, *see* Canadian Solar's Second Case Brief at 10-17.

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[219] *See* TTL's PMS Rebuttal at Exhibits BMARK-1A-B; *see also* TTL's Section D SQR at Appendix 9.1; and TTL's Supp D RFI Surrebuttal at Exhibit WAFER-1.

[220] *See Taian Ziyang Food Co., Ltd. v. United States*, 783 F. Supp. 2d 1292, 1330 (CIT 2011) (*Taian Ziyang*); *see also Qingdao Sea-Line Trading Co., Ltd. v. United States*, 766 F.3d 1378, 1386 (Fed. Cir. 2014) (*Qingdao Sea-Line Trading*) (upholding Commerce's surrogate value selection is justified where it treats product-specificity as "more important factor" than other criteria because "Commerce has broad discretion to determine what constitutes the best available information, as this term is not defined by statute").

[221] *See* Commerce's Letter, "Less-Than-Fair-Value Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from Thailand," dated October 23, 2024 (Section D Supp), at 6 (identifying Turkey as on Commerce's surrogate list for China).

[222] *See* TTL's Second Case Brief at Attachment I.

[223] *See Diamond Sawblades and Parts Thereof from the People's Republic of China; Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 32344 (June 8, 2015) (*Diamond Sawblades from China 2015*), and accompanying IDM at Comment 13; *see also Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 85 FR 62275 (October 2, 2020) (*Solar Cells from China 2017-18*), and accompanying IDM at Comment 2).

[224] *See* TTL's Section D SQR at Appendix 2.3.

[225] *See* TTL's November Solar Glass RFI Rebuttal at 3-8 and Exhibit 1; *see also* TTL's PMS Response at Exhibit HTS-2.

[226] *See Taian Ziyang*, 783 F. Supp. 2d at 1330; *see also Qingdao Sea-Line Trading,* 766 F.3d at 1386 (upholding Commerce's surrogate value selection is justified where it treats product-specificity as "more important factor" than other criteria because "Commerce has broad discretion to determine what constitutes the best available information, as this term is not defined by statute).

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> In the Post-Preliminary PMS Analysis, Commerce contemplates employing UN Comtrade data for subheading HS 3818.00 to value solar wafers in assessing TTL's COP.[227] For the reasons identified in Canadian Solar's case and rebuttal briefs, it would be unlawful and factually infirm for {Commerce} to employ HS 3818.00 data to assess TTL's COP.[228]
>
> Commerce should have rejected Petitioner's extreme request in this regard because (a) record evidence demonstrates that the actual value of solar wafers is much lower than the Petitioner's proposed figure and the Post-Preliminary PMS Analysis, and (b) the UN Comtrade data posited by Petitioner are unreliable and aberrational. One piece of record evidence highlights why it would be nonsensical for {Commerce} to rely on UN Comtrade data to value solar wafers—the data employed by {Commerce} in the Post-Preliminary PMS Analysis would lead to a finding that the cost of solar wafers is higher than the cost of solar cells, the downstream product the wafers are used to create. This would be an unlawful and aberrational outcome—the value of solar cells must be at minimum an absolute cap on Commerce's valuation of solar wafers. Moreover, Commerce should not employ UN Comtrade data to value solar wafers because these data rely on HS 3818.00, a subheading that includes merchandise (like semiconductor wafers) with very different applications and pricing than solar wafers.

TTL's Rebuttal Comments:

The following is a verbatim summary of arguments submitted by TTL.[229] For further details, *see* TTL's First Rebuttal Brief at 42-52.

> {the P}etitioner's proposed adjustments to TTL's costs for PMS distortions are inaccurate and distortive. While it is clear, based on the record that Commerce should find the cost-based PMS allegation is not supported and no adjustment to TTL's costs are necessary, TTL nonetheless addresses the highly inaccurate benchmarks proposed by Petitioner, that are not specific solar inputs.
>
> For solar wafers, {the p}etitioner proposes a wafer price of $438 per kilogram[230], or 342 to 873 percent higher than reliable benchmarks specific to solar wafers, ranging from $99 per kilogram for non-Chinese wafers to $45 per kilogram for Chinese wafers.[231] 18 {HS} 3818 world exports are a broad trade category including dissimilar non-silicon products that Commerce has repeatedly rejected using to value solar wafers in solar proceedings. "The {HS} category covering silicon wafers- {HS} 3818 ..... - is not further itemized and covers a wide range of

[227] *See* PMS Analysis Memorandum at 19.
[228] *See* Canadian Solar's First Case Brief at III; *see also* Canadian Solar's First Rebuttal Brief at II.
[229] We note that we requested that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. *See Preliminary Determination*, 89 FR at 96217. Therefore, because the executive summary in TTL's First Rebuttal Brief exceeds this word limit, we have compressed the comment summary herein.
[230] *See* Petitioner's First Case Brief at 24.
[231] *See* TTL's February Wafer and Solar Glass Submission at 1-6 and Exhibits 1-5.

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products that may not specifically reflect the cost of solar-grade wafers."[232] Exports of {HS} 3818 are not specific to solar-grade wafers and contain non silicon products including resin pastes, chemicals, CT-50 cans,…etc.[233]

Taiwan and Vietnam, representing 70 percent of non-China global wafer capacity are missing altogether from {HS} 3818.00 exports.[234] Taiwan was the fourth largest exporter in 2023.[235] World exports contain exports from countries with no solar wafer production, including the U.S., the third largest exporter.[236] Exports from solar wafer producing countries would at least potentially contain solar wafers, however, there are other notable issues. The U.S. has "no active U.S. production of c-Si PVcells" during the POI and thus no need for solar wafers, but had significant imports of HTS 3818.00.[237] Commerce should rely on non-Chinese solar wafers prices from TrendForce, specific to solar wafers for markets outside of China.[238]

For solar glass, {the p}etitioner proposes solar glass prices of $2.14 to $2.57 per kilogram, based on trade data,[239] or 263 to 498 percent higher than more reliable benchmarks specific to solar glass, *i.e.*, $0.59 per kilogram for non-Chinese solar glass and $0.43 per kilogram for Chinese solar glass.[240] {HS} 7007.19 and 7007.19.80 are broad basket categories containing dissimilar products including cell phone screen protectors, and glass for doors, stoves refrigerators, and washing machine, which Commerce has previously rejecting using as "too broad."[241] Only three EU countries produce solar glass, which intra-Europe trade is a significant source of trade.[242] Should Commerce rely on a solar glass price other than TTL's unaffiliated supplier purchase price, which is reliable, Thai government price is best information available.[243]

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[232] See *Solar Cells from China 2017-18* PDM at 25-26; *see also Solar Cells from China 2016-17* PDM.
[233] *See* TTL's PMS Rebuttal at Exhibit BMARK-IA and IB; *see also* TTL's Section D SQR at Appendix 9.1; TTL' s Supp D RFI Surrebuttal at Exhibit WAFER-1.
[234] *See* PMS Allegation at Exhibits PMS-I and NSA-9, at 33; *see also* TTL's Supp D RFI Surrebuttal at Exhibit WAFER-6; and TTL's February Wafer and Solar Glass Rebuttal at Exhibit 3A.
[235] *See* TTL's February Wafer and Solar Glass Rebuttal at Exhibit 3B.
[236] *See* PMS Allegation at Exhibits PMS-1, NSA-1, and NSA-9, at 33.
[237] *See* Petitioner's Letter, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from Cambodia, Malaysia, Thailand, and the Socialist Republic of Vietnam: Petitions for the Imposition of Antidumping and Countervailing Duties Pursuant to Section 701 and Section 731 of the Tariff Act of 1930," dated April 24, 2024 (Petition) at Volume I, at 9; *see also* TTL's First Case Brief at Attachment IV.
[238] *See* TTL's February Wafer and Solar Glass Submission at Exhibit 2.
[239] *See* Petitioner's First Case Brief at 24-25.
[240] *See* TTL's February Wafer and Solar Glass Submission at 7-9 and Exhibits 9-12.
[241] *See* TTL's Letter, "Rebuttal to Petitioner's Response to PMS Request for Information," dated November 25, 2024 (TTL's November Solar Glass RFI Rebuttal), at 9-10; *see also* TTL's Letter, "Response to PMS Request for Information," dated November 21, 2024 (TTL's PMS Response) at Exhibit HTS-2; TTL's Supp D RFI Surrebuttal at 6-7 and Exhibit GLASS-4; and *Solar Cells from China CVD 2019* IDM at Comment 8, at 51 (emphasis added).
[242] *See* TTL's November Solar Glass RFI Rebuttal at 10-11 and Exhibits 6-7, showing over 170 million euros of imports of HS 7007.19.80 are from EU countries with no solar glass manufacturing capabilities.
[243] *See* TTL's February Wafer and Solar Glass Submission at 7-9 and Exhibits 9-12.

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> Using broad trade data will cause the very distortions to TTL's costs alleged and result in wholly inaccurate costs not reflecting the ordinary course of trade.

Canadian Solar's Rebuttal Comments:

The following is a verbatim summary of arguments submitted by Canadian Solar. For further details, *see* Canadian Solar's Rebuttal Case Brief at 9-13.

> In its case brief, {the p}etitioner has requested that Commerce revise its calculated solar wafer market value upward in assessing TTL's COP.[244] For the reasons described in Canadian Solar's case brief, {the p}etitioner's purported calculation and request for an upward adjustment is nonsensical. Commerce must revise downward the wafer valuation figure relied on in the *Preliminary Determination* to reflect the actual value of solar wafers used in the manufacture of CSPV solar cells. Commerce should reject Petitioner's extreme request because (a) record evidence demonstrates that the actual value of solar wafers is much lower than {the p}etitioner's proposed figure, and (b) the UN Comtrade data posited by Petitioner are unreliable. Commerce should not use UN Comtrade data in valuing solar wafers because that data (i) rely on {HS} 3818.00, a subheading that includes merchandise (like semiconductor wafers) with very different applications and pricing than solar wafers, and (ii) include data for countries like the United States that have no solar wafer production.

Runergy's and MLT's Rebuttal Comments:[245]

> Runergy and MLT incorporate TTL's and other respondents' rebuttal arguments by reference. The petitioner's proposed solar glass benchmark is many times higher than the price Runergy paid to an unaffiliated Thai solar glass producer and is thus unreliable.

Petitioner's PMS Rebuttal Comments:

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

> {Commerce} correctly valued wafers using UN Comtrade export data for HS 3818.00 (excluding exports to and imports from China and Thailand).[246] {Commerce} correctly observed that the UN Comtrade export data) (1) reflects a "broad market average that is POI specific," (2) removes both "China and Thailand in terms of both the source and sales prices of the wafers" and (3) is expressed on a dollars per kilogram basis, thereby avoiding "concerns related to conversions."[247] {Commerce} also correctly valued solar glass using EU export data for HS

[244] *See* Petitioner's First Case Brief at 24.
[245] *See* Runergy's Letter in Lieu of a Rebuttal Brief; *see also* MLT's Rebuttal Brief.
[246] *See* PMS Analysis Memorandum at 18.
[247] *Id*.

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> 7007.19.80.[248] {Commerce} correctly observed that the "price data reflect a broad market average, ... are POI specific, ... reflect prices shipped to all countries except China and Thailand, and are reported in kilograms."[249] Moreover, {Commerce} has previously found that the EU HS 7007.19.80 is specific to solar glass.[250]
>
> Respondents advocate for various data sources but each source suffers from at least one fatal flaw, thus none of the proposed data sources are appropriate. {Commerce} should rely on values that represent broad market averages over the experience of a single company or country; {Commerce} should not rely on data from bill of lading databases or data that is undefined, unreliable, or biased, and {Commerce} should not use data without a proper conversion ratio. Thus, {Commerce} should continue to value wafers using UN Comtrade export data for HS 3818.00 and value solar glass using EU export data for HS 7007.19.80.

TTL's PMS Rebuttal Comments:

The following is a verbatim summary of arguments submitted by TTL. For further details, *see* TTL's Second Rebuttal Brief at 4-5.

> {The p}etitioner argues in its brief that Commerce should adjust world-market prices for movement and import expenses.[251] {The p}etitioner contends that Commerce should add movement and import expenses because these expenses represent the cost of transporting the products from the world-market and importing to Thailand for consumption. {the p}etitioner's methodology is flawed and inappropriate and erroneously inflates the already unrepresentative solar glass benchmark by as much as 60 percent.
>
> TTL did not incur duties on its Thai imports of solar glass during the POI.[252] There is no basis to add 50 percent duties to EU prices of glass. In fact, the actual duty rate is 0.005 percent for the glass classification for solar glass.[253] The fifty percent import duty proposed by Petitioner is baseless and there is no reason to use it to adjust upwards any benchmarks.
>
> {The p}etitioner's proposal to increase benchmarks to account for ocean freight and marine insurance is inappropriate for import prices, which already include the

[248] *Id*. at 19-20.
[249] *Id*. at 19.
[250] *See Solar Cells from China 2020-21*; *see also Solar Cells from China 2019-20* IDM; and Petitioner's February Wafer and Solar Glass Submission at Exhibit 4.
[251] *See* Petitioner's Second Case Brief at 2.
[252] *See* TTL's November Solar Glass RFI Rebuttal at 11.
[253] *Id*. at 11 and Exhibit 4; *see also* TTL's Section D SQR at Appendix 3, which showed the tariff schedule under the ASEAN Trade in Goods Agreement ("A TIGA") 2022, with duty rate of 0% for HTS 7007.19.90.

cost of freight and insurance (*i.e.*, terms CIF) for European Union countries.[254] The Petitioner has never identified Eurostat data as FOB basis, nor provided any evidence of such.[255] Moreover, Petitioner's proposed ocean freights are also highly distortive, representing one market between the U.S. and Thailand, which are extremely higher than other more comparable ocean freight rates for multiple markets.[256] TTL submitted Xeneta freight information specific to 40-foot high cube container to Laem Chabang from the ports of Port Klang, Ho Chi Minh City, Tokyo, Long Beach, and Rotterdam.[257] The data from Xeneta's database reflect that all terminal handling charges, including origin and destination terminal handling charges in the freight rate prices.[258] {Commerce} has relied on this source in prior segments for a benchmark ocean freight price to value respondents' purchases of various inputs.[259]

Commerce need not use these Xeneta ocean freight rates for any purpose, but they demonstrate the irrelevant and unreliable nature of the rates submitted by the Petitioner. If Commerce makes any adjustments, the Xeneta data are the only data available to reliable estimate ocean freight costs. Petitioner's proposed adjustments are highly inaccurate and unusable, and should be ignored.

Canadian Solar's PMS Rebuttal Comments:[260]

Canadian Solar incorporates by reference the arguments in TTL's Second Rebuttal Brief.

Commerce's Position: For this final determination, we continue to find that a PMS exists with respect to the price of wafers and solar glass in Thailand, because China's dominance of the solar input market in Thailand likely contributes to a decline in the price for solar cell inputs below what the market-determined price is for inputs sold outside of China, as detailed above.[261] Further, based on our PMS determination, we agree that the costs of solar glass and wafers must be adjusted to account for such price distortions.

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[254] *See Forged Steel Fluid End Blocks from Italy: Final Results of the Antidumping Duty Administrative Review; 2020- 2021*, 88 FR 55010 (August 14, 2023) (*Fluid End Blocks from Italy*), and accompanying IDM at Comment 3, "Eurostat data is reported on a CIF basis"; *see also Certain Aluminum Foil From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018) (*Aluminum Foil from China*), and accompanying IDM at Comment 1; and *Certain Steel Racks and Parts Thereof From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 84 FR 35595 (July 24, 2019) (*Steel Racks from China*), and accompanying IDM at Comment 1.

[255] *See* Petitioner's February Wafer and Solar Glass Submission at Exhibit 5.

[256] *See* TTL's November Solar Glass RFI Rebuttal at Exhibit 5.

[257] *Id*.

[258] *Id*.

[259] *See, e.g.*, *Risen Energy Co., v. United States*, 570 F. Supp. 3d 1369, 1372 (CIT 2022) *(Risen Energy I)*;*see also Risen Energy Co. v. United States*, Slip Op. 23-48 (CIT April 11, 2023) *(Risen Energy II)*; and *Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Notice of Court Decision Not in Harmony With the Final Results of the Countervailing Duty Administrative Review; Notice of Amended Final Results*, 89 FR 53042 (June 25, 2024) (wherein Commerce explained, "Commerce relied on ocean freight rates published by Xeneta AS (Xeneta) exclusively for the base ocean freight rates.").

[260] *See* Canadian Solar's Letter in Lieu of a Second Rebuttal Brief.

[261] *See* PMS Analysis Memorandum at 20-21.

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Section 773(e) of the Act provides "if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, {Commerce} may use another calculation methodology under this subtitle or any other calculation methodology." In other words, where a PMS exists such that the price of certain input materials does not accurately reflect the cost of manufacture, it is within Commerce's discretion to use another calculation methodology to calculate a normal value (NV) that reflects production costs in the ordinary course of trade. Additionally, pursuant to 19 CFR 351.416(f)(3), Commerce may determine not to adjust its calculations if the cost distortion is already sufficiently addressed in its calculations in accordance with another statutory provision, such as the transactions disregarded and major input rules of sections 773(f)(2) and (3) of the Act.[262]

At the *Preliminary Determination*, Commerce adjusted TTL's wafer prices using the major input rule and adjusted its affiliated solar glass prices using the transactions disregarded rule.[263] In the post-preliminary determination, with regard to wafers, Commerce found that the application of the major input rule for TTL's affiliated wafer purchases does not sufficiently address the cost distortion arising from the PMS.[264] That is, after application of the major input rule adjusting for affiliate prices, there remains a difference between the adjusted wafer input price and PMS benchmark price. Because the PMS cost distortion was not sufficiently addressed by application of the major input rule, we determined to further adjust the calculation. Therefore, in the post-preliminary determination, we increased TTL's affiliated wafer purchase prices by the difference between the wafer purchase prices and world benchmark price.[265] With regard to solar glass and TTL's affiliated purchases, we also found that application of the transactions disregarded rule did not sufficiently address the cost distortion. Specifically, after application of the transactions disregarded rule to affiliated input purchases, there remains a difference between TTL's solar glass purchase price and the PMS benchmark price.[266] Therefore, in the post-preliminary determination, we also increased TTL's affiliated solar glass purchase price based on the difference between the affiliated solar glass purchase price and the PMS benchmark price to address the PMS cost distortion. Lastly, with regard to TTL's unaffiliated solar glass purchases, because the PMS distorts the entire Thai solar market, we increased TTL's unaffiliated solar glass purchase price to the PMS benchmark price.

As we explained in the PMS Analysis Memorandum, for our PMS analysis, we examined all the pricing data on the record.[267] Further, following the *Preliminary Determination*, Commerce provided an opportunity for interested parties to provide pricing information to assist Commerce with the PMS determination.[268] We list the various data sources proposed by interested parties in a separate memorandum.[269] Ultimately, to account for the wafer cost distortion, we used the international wafer price for the POI based on HS 3818.00 excluding both exports to and exports

[262] *See* 19 CFR 351.416(f)(3)(i).
[263] *See* TTL Preliminary Cost Memorandum at Attachment 1A and Attachment.
[264] *See* PMS Analysis Memorandum at 20-22; *see also* 19 CFR 351.416(f)(3)(i).
[265] *Id*. at 20-22.
[266] *Id*. at 22.
[267] *See* PMS Analysis Memorandum at 16-21.
[268] *See* PMS Pricing Request at 1
[269] *See* Memorandum, "Proposed Data Sources for PMS Adjustments," dated concurrently with this memorandum.

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from China and Thailand.[270] For solar glass, we relied on the EU Eurostat HS subheading 7007.19.80 price for the POI.[271]

TTL argues that "specificity is paramount" and Commerce must use comparisons to the same input. Further, TTL argues that Commerce erroneously disregarded superior wafer pricing data. To clarify, Commerce's regulation instructs Commerce to consider "all relevant information placed on the record by interested parties, including but not limited to" "{c}omparisons of prices paid for significant inputs used to produce subject merchandise under the alleged market situation to prices paid for the *same input under market-based circumstances.*"[272] After Commerce specifically requested pricing information from parties to assist with the PMS analysis, the record contained certain pricing data for wafers and solar glass. Commerce relied on the best data on the record for its analysis.[273]

Specifically, for wafers, Commerce relied on the global price data for HS 3818.00, which reflects a broad market average for "Chemical elements; doped for use in electronics, in the form of discs, wafers or similar forms," prices from the world excluding China and Thailand, and is POI specific.[274] Given the nature of the PMS allegation and Commerce's PMS determination, importantly, the HS 3818.00 price data permit the exclusion of both China and Thailand in terms of both the source and destination of the wafers.[275] Also, the HS data are expressed in kilograms, which avoids concerns related to conversion of watts or pieces into kilograms.

We disagree with TTL's argument that Commerce erroneously disregarded superior wafer data. TTL argues that TrendForce data excludes wafers sourced from China. However, as Commerce stated in the PMS Analysis Memorandum, Commerce did not rely on the TrendForce pricing dataset because it is missing price data for almost half of the months of the POI and Commerce was unable to determine based on the record whether the TrendForce prices exclude Chinese production or reflect prices of sales to China.[276]

We also disagree with TTL that Commerce's rationale for declining to rely on the Hanwha Q Cells data is unsupported by the record and inconsistent with the regulation. Again, Commerce's regulation states that Commerce will consider relevant information placed on the record by parties including "{c}omparisons of prices paid for significant inputs used to produce subject merchandise under the alleged market situation to prices paid for the *same input under market-based circumstances.*"[277] However, while the Hanwha pricing data are POI-specific and reflect sales to Malaysia, the data contain China produced wafer prices.[278] Thus, they do not reflect prices paid for the same input under market-based circumstances. Further, Hanwha prices only reflect wafer sales in the Malaysian market, so the data do not reflect a broad average international price. Accordingly, Commerce correctly found the Hanwha prices not to be the

[270] *See* PMS Analysis Memorandum at 16, 16-18.
[271] *Id*. at 19.
[272] *See* 19 CFR 351.416(d)(3) (emphasis added).
[273] *See* PMS Analysis Memorandum at 16-21.
[274] *Id*. at 18.
[275] *See* TTL Final Cost Memorandum.
[276] *See* PMS Analysis Memorandum at 16-17.
[277] *See* 19 CFR 351.416(d)(3)(i) (emphasis added).
[278] *See* PMS Analysis Memorandum at 17.

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best source of wafer prices for our PMS analysis. TTL also argues that CEA wafer prices do not include China, and that Commerce relies on price forecasts as a benchmark. However, while CEA pricing data do not include China-produced wafers, sales prices are based on all markets in Southeast Asia, which presumably could include China, and the data do not specify whether China prices were included.

With regard to TTL's and Canadian Solar's argument that HS 3818.00 contains highly dissimilar products from wafers, we note that the category includes the input at issue (*i.e.*, wafers).[279] Specifically, HS subheading 3818.00 includes "Chemical elements; doped for use in electronics, in the form of discs, wafers or similar forms," products from the world excluding China and Thailand."[280] Moreover, given the nature of the PMS allegation—that the entire Thai solar industry suffers from Chinese low prices that effect production costs in Thailand—the fact that the HS subheading 3818.00 price data, which include wafers, exclude the allegedly distorted China and Thai prices is critical for our PMS analysis. Additionally, the subheading HS 3818.00 price data are reported on a per-kilogram basis, are POI specific, and reflect an international, broad-based average price. These characteristics, on balance, outweigh concerns about whether the HS subheading 3818.00 category, including wafers, may include other products, or data for non-solar producing countries.

Moreover, we disagree that Commerce's reliance on HS 3818.00 pricing data is unlawful, that record evidence demonstrates that the actual value of wafers is much lower, and that the data are unreliable and aberrational. Commerce must base its decisions on the record before it, and Commerce provided parties an opportunity to provide information on the record to assist with Commerce's PMS analysis in response to the PMS Allegation.[281] Parties placed information on the record including the wafer pricing data for HS 3818.00. However, as described above and in the PMS Analysis Memorandum, we found all other data sources on the record suffer from deficiencies that made them inappropriate for use in our PMS Analysis including unclear country of origin, non-market based circumstances, China production inherent in the price, and prices that are limited to single countries.[282] Further, determining whether data are aberrational is a factual inquiry based on the particular record circumstances and the fact that a value is higher than others is not sufficient grounds to exclude data as aberrational.[283] As such, given the nature of the PMS allegation, and the factors listed above, Commerce continues to find that the HS subheading 3818.00 price data are the best benchmark price of the sources available on the record of this investigation to use in our PMS analysis.

For solar glass, as stated above, Commerce relied on EU Eurostat HS subheading 7007.19.80 in its PMS Analysis.[284] We disagree that Commerce erroneously disregarded superior solar glass pricing data. On this point, TTL argues that Commerce did not mention Royal Thai Government data for solar glass or Turkey import data for solar glass from Trade Data Monitor and that these data reflect broad market averages. Our PMS Analysis Memorandum did not specifically

[279] *Id.* at 18-19.
[280] *Id*.
[281] *See* PMS Pricing Request.
[282] *See* PMS Analysis Memorandum at 19.
[283] *See, e.g., Trust Chem. Co. v. United States*, 791 F. Supp. 2d 1257, 1264 (CIT 2011) (stating more is required to show data are aberrational).
[284] *See* PMS Analysis Memorandum at 19-20.

address TTL's proposed solar glass prices from these two sources. We do so here. In the PMS Analysis Memorandum, we noted that interested parties provided multiple wafer and solar glass data sources that reflected import prices into various countries, and we explained that we did not use those prices because they reflected market conditions for a single country whereas the prices under HS 3818.0000 reflected a broad market average.[285] Thus, for the reasons explained in the PMS Analysis Memorandum, we find that the Turkey import data for solar glass from Trade Data Monitor and Royal Thai Government data are not suitable for use.

Both TTL and Canadian Solar argue that HS 7007.19.80 contains dissimilar products to solar glass and that the category is too broad for use as the PMS benchmark for solar glass. We disagree. Commerce addressed this issue in the PMS Analysis Memorandum in the context of the PMS benchmark for wafers. In the PMS Analysis Memorandum, we discussed how, unlike other proposed wafer prices on the record, wafer prices under HS 3818.0000 reflected an international, broad-based price, clearly identified the producing country and importing country, and excluded prices into and out of China and Thailand, and we concluded that these characteristics of the prices under HS 3818.0000 outweighed concerns about whether the HS sub-heading may include other products.[286] We reach the same conclusion as it regards EU prices for solar glass under HS 7007.19.80. This HS subheading reflects solar glass prices from many countries, identifies the producing and importing country, and excludes solar glass prices into and out of China and Thailand. Thus, we conclude, on balance, that the characteristics of EU prices for solar glass under HS 7007.19.80 outweigh the possibility that the data source may include some prices for products other than solar glass.

We disagree with TTL that Commerce's use of Hanwha Q Cells quarterly COP data, as submitted in the companion AD investigation on solar cells from Malaysia , precludes Commerce from determining that a PMS exists with regard to TTL's purchases of wafers and solar glass. There is no allegation in the companion AD investigation on solar cells from Malaysia that a cost-based PMS exists in Malaysia regarding wafers and solar glass.[287] Moreover, here, Commerce did not make a PMS finding with respect to Malaysia. Rather, as our preliminary PMS analysis indicated and as we continue to find in this final determination, "Chinese global dominance as a supplier of solar inputs and the volume of imports into Thailand specifically effected Thai markets for wafers and solar glass in particular, not all products."[288] Therefore, we find TTL's argument unavailing.

We disagree with the petitioner that Commerce should increase the PMS benchmarks for wafers and solar glass to include ocean freight and other transport-related expenses. Section 351.416(f) of Commerce's regulations discusses the adjustments that Commerce may make when addressing cost distortions caused by a PMS. Concerning adjustments made as part of a PMS analysis, the Preamble to the *RISE Regulations* explains that Commerce has "not defined what adjustments Commerce may make to address those cost distortions" and that "{w}hatever methodology Commerce employs to determine the appropriate adjustment . . . will be case-

[285] *Id*., e.g. at 18-19.
[286] *Id*. At 19.
[287] *See Solar Cells from Malaysia Preliminary Determination* PDM at 2-5.
[288] *See* PMS Analysis Memorandum at 20-21.

specific and depend on the facts of the record and what information is provided to Commerce for purposes of making an adjustment.[289]

Here, the ocean freight data proposed by the petitioner for use in the PMS wafer and solar glass benchmark only reflect shipping costs from the United States to Thailand, despite the fact that the PMS wafer benchmark reflects prices from several other countries in addition to the United States.[290] Meanwhile, the PMS benchmark for solar glass is comprised exclusively of prices from the European Union. For this reason, we find the petitioner's ocean freight data are not suitable. The ocean freight data that TTL proposes for use, should Commerce determine that inclusion of ocean freight expenses in the PMS benchmarks is required, exhibit the same flaws as the petitioner's data. Namely TTL's ocean freight prices do not reflect shipping expenses for any of the countries that comprise the PMS wafer benchmark and only reflect shipping cost for one of the 27 countries that comprise the solar glass PMS benchmark. Concerning import duty rates, parties provided no such information for wafers. Regarding solar glass, the petitioner submitted information on Thai import duty rates for imports under HS 7007.19; however, the benchmark data excludes Thailand.and thus this adjustment would not be appropriate. Accordingly, for this final determination, as stated above, we have not changed our PMS determination and we continue to adjust TTL's purchase prices for solar glass and wafers consistent with Commerce's post-preliminary determination to address the particular market situation affecting these inputs.[291]

VI. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final determination of the investigation and the final estimated weighted-average dumping margins in the *Federal Register* and will notify the U.S. International Trade Commission of our determination.

☒ Agree ☐ Disagree

4/18/2025

X

Signed by: CHRISTOPHER ABBOTT

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

[289] *See Rise Regulations,* 89 FR at 20808.
[290] *See* Petitioner's Letter in Lieu of a Second Case Brief at Attachment 2 (citing Petitioner's November Solar Glass Submission).
[291] *See generally*, PMS Analysis Memorandum.

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