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DEPARTMENT OF COMMERCE

International Trade Administration

A-555-003, A-557-830, A-549-851, A-552-841

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from Cambodia, Malaysia, Thailand, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations

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

DATES: Applicable May 14, 2024.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Joshua Weiner (Cambodia) at (202) 482-3477 or (202) 482-3902, respectively; Patrick Barton (Malaysia) at (202) 482-0012; Drew Jackson (Thailand) at (202) 482-4406; and Laurel LaCivita and Deborah Cohen (the Socialist Republic of Vietnam (Vietnam)) at (202) 482-4243 and (202) 482-4521, respectively, AD/CVD Operations, Offices I, III, and IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petitions

On April 24, 2024, the U.S. Department of Commerce (Commerce) received antidumping duty (AD) petitions concerning imports of crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells), from Cambodia, Malaysia, Thailand, and Vietnam filed in proper form on behalf of the American Alliance for Solar Manufacturing Trade

Committee (the petitioner or the Committee).<sup>1</sup> On May 9, 2024, the petitioner filed an amendment to the Petitions, clarifying the identity of the members of the Committee.<sup>2</sup> These AD Petitions were accompanied by countervailing duty (CVD) petitions concerning imports of solar cells from Cambodia, Malaysia, Thailand, and Vietnam.<sup>3</sup>

Between April 26 and May 13, 2024, Commerce requested supplemental information pertaining to certain aspects of the Petitions in supplemental questionnaires.<sup>4</sup> The petitioner responded to Commerce's supplemental questionnaires between April 30 and May 13, 2024.<sup>5</sup>

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of solar cells from Cambodia, Malaysia, Thailand, and Vietnam are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act, and that imports of such products are materially injuring, or threatening material injury to, the solar cells industry in the United States. Consistent with

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<sup>1</sup> See Petitioner's Letters, "Petitions for the Imposition of Antidumping and Countervailing Duties," dated April 24, 2024 (the Petitions); and "Errata to General Issues Volume I of Antidumping and Countervailing Duty Petitions," dated April 26, 2024 (General Issues Errata).

<sup>2</sup> See Petitioner's Letter, "Amendment to Petitions for the Imposition of Antidumping and Countervailing Duties," dated May 9, 2024 (Petition Amendment). The petitioner clarifies that the members of the Committee are: First Solar, Inc., Hanwha Q CELLS USA, Inc., and Mission Solar Energy LLC. See Petition Amendment at 1

<sup>3</sup> See Petitions.

<sup>4</sup> See Commerce's Letters, "Supplemental Questions," dated April 26, 2024 (General Issues Questionnaire), and "Supplemental Questions," dated April 26, 2024 (Cambodia Supplemental); see also Country-Specific Supplemental Questionnaires: Malaysia Supplemental, Thailand Supplemental, and Vietnam Supplemental, dated April 26, 2024; and Memoranda, "Phone Call with Counsel to the Petitioner," dated May 3, 2024 (May 3 Memorandum); "Phone Call with Counsel to the Petitioner," dated May 9, 2023; and "Phone Call with Counsel to the Petitioner," dated May 13, 2024.

<sup>5</sup> See Petitioner's Letters, "Petitioner's Responses to First Supplemental Questionnaire Regarding General Injury Vol. I of the Petition," dated April 30, 2024 (First General Issues Supplement); see also First Country-Specific AD Supplemental Responses, dated April 30, 2024; Second Country-Specific Supplemental Responses," dated May 1, 2024; Third Cambodia and Vietnam Supplemental Responses," dated May 6, 2024; "Petitioner's Responses to Supplemental Questionnaire Phone Call Regarding General Injury Vol. I of the Petition," dated May 7, 2024 (Second General Issues Supplement); "Petitioner's Responses to May 9, 2024 Supplemental Questionnaire Phone Call Regarding Cambodia Antidumping Duty Volume II of the Petition," dated May 10, 2024; and "Petitioner's Response to the Third Supplemental Questionnaire Regarding General Injury Vol. I of the Petition," dated May 13, 2024 (Third General Issues Supplement).

section 732(b)(1) of the Act, the Petitions were accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed the Petitions on behalf of the domestic industry, because the petitioner is an interested party, as defined in section 771(9)(F) of the Act.<sup>6</sup> Commerce also finds that the petitioner demonstrated sufficient industry support for the initiation of the requested LTFV investigations.<sup>7</sup>

#### Periods of Investigation

Because the Petitions were filed on April 24, 2024, pursuant to 19 CFR 351.204(b)(1), the period of investigation (POI) for the LTFV investigations from Cambodia, Malaysia, and Thailand is April 1, 2023, through March 31, 2024. Because Vietnam is a non-market economy (NME) country, pursuant to 19 CFR 351.204(b)(1), the POI for LTFV investigation from Vietnam is October 1, 2023, through March 31, 2024.

#### Scope of the Investigations

The products covered by these investigations are solar cells from Cambodia, Malaysia, Thailand, and Vietnam. For a full description of the scope of these investigations, *see* the appendix to this notice.

#### Comments on the Scope of the Investigations

On May 3, 2024, Commerce requested information and clarification from the petitioner regarding the proposed scope to ensure that the scope language in the Petitions is an accurate reflection of the products for which the domestic industry is seeking relief.<sup>8</sup> On May 7, 2024, the

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<sup>6</sup> The majority of the members of the Committee are interested parties under section 771(9)(C) of the Act; thus, the Committee qualifies as an interested party under section 771(9)(F) of the Act.

<sup>7</sup> *See* section on “Determination of Industry Support for the Petitions,” *infra*.

<sup>8</sup> *See* May 3 Memorandum.

petitioner provided clarifications and revised the scope.<sup>9</sup> The description of merchandise covered by these investigations, as described in the appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.*, scope).<sup>10</sup> Commerce will consider all scope comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determinations. If scope comments include factual information,<sup>11</sup> all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that scope comments be submitted by 5:00 p.m. Eastern Time (ET) on June 3, 2024, which is 20 calendar days from the signature date of this notice.<sup>12</sup> Any rebuttal comments, which may include factual information, and should also be limited to public information, must be filed by 5:00 p.m. ET on June 13, 2024, which is 10 calendar days from the initial comment deadline.

Commerce requests that any factual information that parties consider relevant to the scope of these investigations be submitted during that period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party must contact Commerce and request permission to submit the additional information. All scope comments must be filed simultaneously on the records of the concurrent LTFV and CVD investigations.

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<sup>9</sup> See Second General Issues Supplement at 2-6.

<sup>10</sup> See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*); see also 19 CFR 351.312.

<sup>11</sup> See 19 CFR 351.102(b)(21) (defining "factual information").

<sup>12</sup> See 19 CFR 351.303(b)(1).

## Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.<sup>13</sup> An electronically filed document must be received successfully in its entirety by the time and date it is due.

## Comments on Product Characteristics

Commerce is providing interested parties an opportunity to comment on the appropriate physical characteristics of solar cells to be reported in response to Commerce's AD questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant factors of production (FOP) or cost of production (COP) accurately, as well as to develop appropriate product comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) general product characteristics; and (2) product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe solar cells, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the

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<sup>13</sup> See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011); see also *Enforcement and Compliance: Change of Electronic Filing System Name*, 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on using ACCESS can be found at <https://access.trade.gov/help.aspx> and a handbook can be found at [https://access.trade.gov/help/Handbook\\_on\\_Electronic\\_Filing\\_Procedures.pdf](https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf).

physical characteristics should be used in matching products. Generally, Commerce attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all product characteristics comments must be filed by 5:00 p.m. ET on June 3, 2024, which is 20 calendar days from the signature date of this notice.<sup>14</sup> Any rebuttal comments must be filed by 5:00 p.m. ET on June 13, 2024, which is 10 calendar days from the initial comment deadline. All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on the record of each of the LTFV investigations.

#### Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the “industry.”

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<sup>14</sup> See 19 CFR 351.303(b)(1).

Section 771(4)(A) of the Act defines the “industry” as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether “the domestic industry” has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC apply the same statutory definition regarding the domestic like product,<sup>15</sup> they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce’s determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.<sup>16</sup>

Section 771(10) of the Act defines the domestic like product as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.” Thus, the reference point from which the domestic like product analysis begins is “the article subject to an investigation” (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigations.<sup>17</sup> Based on our analysis of the information submitted on the record, we have determined that solar cells, as defined in the

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<sup>15</sup> See section 771(10) of the Act.

<sup>16</sup> See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff’d Algoma Steel Corp., Ltd. v. United States*, 865 F.2d 240 (Fed. Cir. 1989)).

<sup>17</sup> See Petitions at Volume I (pages 27-31); see also Petitioner’s Letter, “Response to Comments on Standing and Industry Support,” dated May 9, 2024 (Petitioner Response) at 7-12 and Exhibit 2.

scope, constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product.<sup>18</sup>

In determining whether the petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the “Scope of the Investigations,” in the appendix to this notice. To establish industry support, the petitioner provided the 2023 production of the domestic like product for the U.S. producers that support the Petitions.<sup>19</sup> The petitioner estimated the production of the domestic like product for the entire domestic industry based on the production data from the ITC’s 2024 report from its second monitoring proceeding of the safeguard measures on solar cells and made certain adjustments to these data to estimate total U.S. production of the domestic like product in 2023.<sup>20</sup> The petitioner compared the production of the supporters of the Petitions to the estimated total 2023 production of the domestic like product for the entire domestic industry.<sup>21</sup> We have relied on the data provided by the petitioner for purposes of measuring industry support.<sup>22</sup>

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<sup>18</sup> For a discussion of the domestic like product analysis as applied to these cases and information regarding industry support, *see* Checklists, “Antidumping Duty Investigation Initiation Checklists: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from Cambodia, Malaysia, Thailand, and the Socialist Republic of Vietnam,” dated concurrently with, and hereby adopted by, this notice (Country-Specific AD Initiation Checklists), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from Cambodia, Malaysia, Thailand, and the Socialist Republic of Vietnam (Attachment II). These checklists are on file electronically via ACCESS.

<sup>19</sup> *See* Petitions at Volume I (pages 9-11 and Exhibits I-3 and I-19); *see also* First General Issues Supplement at 3 and Exhibit I-Supp-5; and Petitioner Response at 16-17 and Exhibits 8-9.

<sup>20</sup> *See* Petitions at Volume I (pages 9-11 and Exhibit I-19); *see also* First General Issues Supplement at 1-4 and Exhibits I-Supp-2 through I-Supp-5; and Petitioner Response at 16-17 and Exhibits 9-10.

<sup>21</sup> *See* Petitions at Volume I (pages 9-11 and Exhibits I-3 and I-19); *see also* First General Issues Supplement at 1-4 and Exhibits I-Supp-2 through I-Supp-5; and Petitioner Response at 16-17 and Exhibits 8-10.

<sup>22</sup> *See* Petitions at Volume I (pages 8-11 and Exhibits I-1, I-2, and I-19); *see also* First General Issues Supplement at 1-4 and Exhibits I-Supp-2 through I-Supp-5; Petitioner Response at 16-17 and Exhibits 8-10; and Third General Issues Supplement. For further discussion, *see* Attachment II of the Country-Specific AD Initiation Checklists.



On May 3, 2024, we received timely filed comments on industry support from NextEra Energy Constructors, LLC (NextEra), a U.S. importer of solar cells.<sup>23</sup> On May 7, 2024, we received timely filed comments on industry support from Illuminate USA LLC (Illuminate), a U.S. producer of the domestic like product.<sup>24</sup> On May 7, 2024, we also received timely filed comments on industry support from Canadian Solar US Module Manufacturing Corporation, Canadian Solar International Limited, and Canadian Solar Manufacturing (Thailand) Co., Ltd. (collectively, Canadian Solar), a U.S. producer of the domestic like product and foreign producer and exporter of solar cells.<sup>25</sup> On May 9, 2024, the petitioner responded to the comments from NextEra, Illuminate, and Canadian Solar in a timely filed rebuttal submission.<sup>26</sup>

Our review of the data provided in the Petitions, the First General Issues Supplement, the Third General Issues Supplement, the Petitioner Response, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petitions.<sup>27</sup> First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.*, polling).<sup>28</sup> Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.<sup>29</sup> Finally, the domestic producers (or workers) have met the statutory

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<sup>23</sup> See NextEra's Letter, "Request to Reject the Petitions or to Poll the Industry," dated May 3, 2024.

<sup>24</sup> See Illuminate's Letter, "Challenge to Petitioner's Standing for Domestic Production of Cells and Request to Poll the Domestic Industry," dated May 7, 2024.

<sup>25</sup> See Canadian Solar's Letter, "Request to Exclude Hanwha from Commerce's Industry Support Calculations," dated May 7, 2024.

<sup>26</sup> See Petitioner Response.

<sup>27</sup> See Attachment II of the Country-Specific AD Initiation Checklists.

<sup>28</sup> *Id.*; see also section 732(c)(4)(D) of the Act.

<sup>29</sup> See Attachment II of the Country-Specific AD Initiation Checklists.

criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.<sup>30</sup> Accordingly, Commerce determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.<sup>31</sup>

#### Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at LTFV. In addition, the petitioner argues that subject imports from Cambodia, Malaysia, Thailand, and Cambodia individually exceed the negligibility threshold provided for under section 771(24)(A) of the Act.<sup>32</sup>

The petitioner contends that the industry's injured condition is illustrated by the significant and increasing volume of subject imports; the increase in subject imports' market share; underselling and price depression and/or suppression; lost sales and revenues; negative impact on capacity utilization, employment, planned expansions and new facilities, and financial performance; and the magnitude of the alleged dumping margins.<sup>33</sup> We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as

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<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> See Petitions at Volume I (pages 40-41 and Exhibit I-32).

<sup>33</sup> *Id.* at Volume I (pages 3-8, 26-27, 32-59 and Exhibits I-5 through I-16, and I-25 through I-53); see also First General Issues Supplement at 4 and Exhibit I-Supp-6.

negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.<sup>34</sup>

#### Allegations of Sales at LTFV

The following is a description of the allegations of sales at LTFV upon which Commerce based its decision to initiate LTFV investigations of imports of solar cells from Cambodia, Malaysia, Thailand, and Vietnam. The sources of data for the deductions and adjustments relating to U.S. price and normal value (NV) are discussed in greater detail in the Country-Specific AD Initiation Checklists.

#### U.S. Price

For Cambodia, Malaysia, Thailand, and Vietnam, the petitioner based export price (EP) on pricing information for sales, or offers for sale, of solar cells produced in and exported from each country.<sup>35</sup> For each country, the petitioner made certain adjustments to U.S. price to calculate a net ex-factory U.S. price, where applicable.<sup>36</sup>

#### Normal Value<sup>37</sup>

For Cambodia, Malaysia, and Thailand, the petitioner stated that it was unable to obtain home market or third country pricing information for solar cells to use as a basis for normal value (NV).<sup>38</sup> Therefore, for Cambodia, Malaysia, and Thailand, the petitioner calculated NV

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<sup>34</sup> See Country-Specific AD Initiation Checklists at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from Cambodia, Malaysia, Thailand, and Vietnam.

<sup>35</sup> See Country-Specific AD Initiation Checklists.

<sup>36</sup> *Id.*

<sup>37</sup> In accordance with section 773(b)(2) of the Act, for the Cambodia, Malaysia, and Thailand investigations, Commerce will request information necessary to calculate the constructed value (CV) and COP to determine whether there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that represent less than the COP of the product.

<sup>38</sup> See Country-Specific AD Initiation Checklists.

based on CV.<sup>39</sup> For further discussion of CV for Cambodia, Malaysia, and Thailand, *see* the section “Normal Value Based on Constructed Value,” below.

Commerce considers Vietnam to be an NME country.<sup>40</sup> In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by Commerce. Therefore, we continue to treat Vietnam as an NME country for purposes of the initiation of the Vietnam LTFV investigation. Accordingly, we base NV on FOPs valued in a surrogate market economy country in accordance with section 773(c) of the Act.

The petitioner claims that Indonesia is an appropriate surrogate country for Vietnam because it is a market economy that is at a level of economic development comparable to that of Vietnam and is a significant producer of comparable merchandise.<sup>41</sup> The petitioner provided publicly available information from Indonesia to value all FOPs.<sup>42</sup> Based on the information provided by the petitioner, we believe it is appropriate to use Indonesia as a surrogate country for Vietnam to value all FOPs.

Interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value FOPs within 30 days before the scheduled date of the preliminary determination.

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<sup>39</sup> *Id.*

<sup>40</sup> *See, e.g., Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results, and Final Results of No Shipments of the Antidumping Duty Administrative Review; 2016-2017*, 84 FR 18007 (April 29, 2019).

<sup>41</sup> *See* Vietnam AD Initiation Checklist.

<sup>42</sup> *Id.*

### Factors of Production

Because information regarding the volume of inputs consumed by Vietnamese producers/exporters was not reasonably available, the petitioner used product-specific consumption rates from a U.S. producer of solar cells as a surrogate to value Vietnamese manufacturers' FOPs.<sup>43</sup> Additionally, the petitioner calculated factory overhead, selling, general, and administrative (SG&A) expenses, and profit based on the experience of an Indonesian producer of identical merchandise.<sup>44</sup>

### Normal Value Based on Constructed Value

As noted above for Cambodia, Malaysia, and Thailand, the petitioner stated that it was unable to obtain home market or third-country prices for solar cells to use as a basis for NV. Therefore, for Cambodia, Malaysia, and Thailand, the petitioner calculated NV based on CV.<sup>45</sup>

Pursuant to section 773(e) of the Act, the petitioner calculated CV as the sum of the cost of manufacturing, SG&A expenses, financial expenses, and profit.<sup>46</sup> For Cambodia, Malaysia, and Thailand, in calculating the cost of manufacturing, the petitioner relied on the production experience and input consumption rates of a U.S. producer of solar cells, valued using publicly available information applicable to the respective countries, where applicable.<sup>47</sup> In calculating SG&A expenses, financial expenses, and profit ratios, the petitioner relied on the fiscal year 2022-2023 financial statements of producers of identical merchandise domiciled in Malaysia, and Thailand.<sup>48</sup> For Cambodia, the petitioner was not able to find financial statements from a

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<sup>43</sup> *Id.*

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

<sup>45</sup> See Country-Specific AD Initiation Checklists.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

producer of identical or comparable merchandise in Cambodia and used a 2023 audited financial statements from a Thai producer of integrated circuits, microelectronics circuit boards.<sup>49</sup>

#### Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of solar cells from Cambodia, Malaysia, Thailand, and Vietnam are being, or are likely to be, sold in the United States at LTFV. Based on comparisons of EP to NV in accordance with sections 772 and 773 of the Act, the estimated dumping margins for solar cells for each of the countries covered by this initiation are as follows: (1) Cambodia –125.37 percent; (2) Malaysia –81.22 percent; (3) Thailand – 70.36 percent; and (4) Vietnam – 271.28 percent.<sup>50</sup>

#### Initiation of LTFV Investigations

Based upon the examination of the Petitions and supplemental responses, we find that they meet the requirements of section 732 of the Act. Therefore, we are initiating LTFV investigations to determine whether imports of solar cells from Cambodia, Malaysia, Thailand, and Vietnam are being, or are likely to be, sold in the United States at LTFV. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of these initiations.

#### Respondent Selection

##### *Cambodia*

In the Petitions, the petitioner identified 14 companies in Cambodia as producers or exporters of solar cells.<sup>51</sup> In the event Commerce determines that the number of companies is

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<sup>49</sup> See Cambodia AD Initiation Checklist.

<sup>50</sup> See Country-Specific AD Initiation Checklists.

<sup>51</sup> See Petitions at Volume I (page 23 and Exhibit I-23); see also General Issues Errata at 2 and Exhibit I-23; First General Issues Supplement at 1 and Exhibit I-Supp-1; and Second General Issues Supplement at 1 and Exhibit I-Supp2-2.

large, and it cannot individually examine each company based upon Commerce's resources, where appropriate, Commerce intends to select mandatory respondents based on quantity and value (Q&V) questionnaires issued to potential respondents. Following standard practice in AD investigations involving market economy countries, Commerce would normally select respondents based on U.S. Customs and Border Protection (CBP) entry data for imports under the appropriate Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the "Scope of the Investigations" in the Appendix. However, for these investigations, due to Commerce's determination that imports from Cambodia of solar cells are circumventing the AD order on solar cells from China,<sup>52</sup> we cannot rely on CBP data in selecting respondents, and instead, we will rely on shipment data gathered by issuing Q&V questionnaires.

Commerce will issue Q&V questionnaires to all Cambodian companies identified in the Petition with complete address information. Commerce will also post the Q&V questionnaires along with filing instructions on Commerce's website at <https://www.trade.gov/ec-adcvd-case-announcements>. Exporters/producers of solar cells from Cambodia that do not receive Q&V questionnaires may still submit a response to the Q&V questionnaire and can obtain a copy of the Q&V questionnaire from Commerce's website. Responses to the Q&V questionnaire must be submitted by the relevant Cambodian producers/exporters no later than 5:00 p.m. on May 28, 2024, which is two weeks from the signature date of this notice. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the deadline noted above. Commerce intends to finalize its decision regarding respondent selection within 20 days of publication of this notice.

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<sup>52</sup> See *Antidumping and Countervailing Duty Orders on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Scope Determination and Final Affirmative Determinations of Circumvention With Respect to Cambodia, Malaysia, Thailand, and Vietnam*, 88 FR 57419 (August 23, 2023) (Final Circumvention Determination).

*Malaysia and Thailand*

In the Petitions, the petitioner identified 27 companies in Malaysia and 23 companies in Thailand as producers or exporters of solar cells.<sup>53</sup> In the event Commerce determines that the number of companies is large, and it cannot individually examine each company based upon Commerce's resources, where appropriate, Commerce intends to select mandatory respondents based on Q&V questionnaires issued to potential respondents. Following standard practice in AD investigations involving market economy countries, Commerce would normally select respondents based on CBP entry data for imports under the appropriate HTSUS subheadings listed in the "Scope of the Investigations" in the Appendix. However, for these investigations, due to Commerce's determination that imports from Malaysia and Thailand of solar cells are circumventing the AD order on solar cells from China,<sup>54</sup> we cannot rely on CBP data in selecting respondents, and instead, we will rely on shipment data gathered by issuing Q&V questionnaires.

Notwithstanding the decision to rely on Q&V questionnaires for respondent selection for Malaysia and Thailand, due to the large number of producers and/or exporters identified in the Petitions, Commerce has determined to limit the number of Q&V questionnaires that it will issue to producers and/or exporters based on CBP data for entries of solar cells under the appropriate HTSUS subheadings listed in the "Scope of the Investigations," in the appendix. Accordingly, for Malaysia and Thailand, Commerce will send Q&V questionnaires to the largest producers and/or exporters that are identified in the CBP entry data for which there is complete address information on the record.

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<sup>53</sup> See Petitions at Volume I (page 23 and Exhibit I-23); see also Errata to General Issues Supplement at 2 and Exhibit I-23; First General Issues Supplement at 1 and Exhibit I-Supp-1; and Second General Issues Supplement at 1 and Exhibit I-Supp2-2.

<sup>54</sup> See Final Circumvention Determination.



Commerce will also post the Q&V questionnaires along with filing instructions on Commerce's website at <https://www.trade.gov/ec-adcvd-case-announcements>.

Exporters/producers of solar cells from Malaysia and Thailand that do not receive Q&V questionnaires may still submit a response to the Q&V questionnaire and can obtain a copy of the Q&V questionnaire from Commerce's website. Responses to the Q&V questionnaire must be submitted by the relevant Malaysian or Thai producers/exporters no later than 5:00 p.m. on May 28, 2024, which is two weeks from the signature date of this notice. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the deadline noted above. Commerce intends to finalize its decision regarding respondent selection within 20 days of publication of this notice.

#### *Vietnam*

In the Petitions, the petitioner named 50 companies in Vietnam as producers and/or exporters of solar cells.<sup>55</sup> Our standard practice for respondent selection in AD investigations involving NME countries is to select respondents based on Q&V questionnaires in cases where we have determined that the number of companies is large and it cannot individually examine each company based upon its resources. Therefore, considering the number of producers and/or exporters identified in the Petitions, Commerce will solicit Q&V information that can serve as a basis for selecting exporters for individual examination in the event that Commerce determines that the number is large and decides to limit the number of respondents individually examined pursuant to section 777A(c)(2) of the Act. Because there are 50 Vietnamese producers and/or exporters identified in the Petitions, Commerce has determined that it will issue Q&V

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<sup>55</sup> See Petitions at Volume I (page 23 and Exhibit I-23); see also Errata to General Issues Supplement at 2 and Exhibit I-23; First General Issues Supplement at 1 and Exhibit I-Supp-1; and Second General Issues Supplement at 1 and Exhibit I-Supp2-2.

questionnaires to the largest producers and/or exporters that are identified in the CBP data for which there is complete address information on the record.

Commerce will also post the Q&V questionnaires along with filing instructions on Commerce's website at <https://www.trade.gov/ec-adevd-case-announcements>.

Exporters/producers of solar cells from Vietnam that do not receive Q&V questionnaires may still submit a response to the Q&V questionnaire and can obtain a copy of the Q&V questionnaire from Commerce's website. Responses to the Q&V questionnaire must be submitted by the relevant Vietnamese producers/exporters no later than 5:00 p.m. on May 28, 2024, which is two weeks from the signature date of this notice. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the deadline noted above. Commerce intends to finalize its decision regarding respondent selection within 20 days of publication of this notice.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). As stated above, instructions for filing such applications may be found on Commerce's website at <https://www.trade.gov/administrative-protective-orders>.

#### Separate Rates

In order to obtain separate rate status in an NME investigation, exporters and producers must submit a separate rate application. The specific requirements for submitting a separate rate application in an NME investigation are outlined in detail in the application itself, which is available on Commerce's website at <https://access.trade.gov/Resources/nme/nme-sep-rate.html>. The separate rate application will be due 30 days after publication of this initiation notice. Exporters and producers must file a timely separate rate application if they want to be considered for individual examination. Exporters and producers who submit a separate rate application and

have been selected as mandatory respondents will be eligible for consideration for separate rate status only if they respond to all parts of Commerce's AD questionnaire as mandatory respondents. Commerce requires that companies from Vietnam submit a response both to the Q&V questionnaire and to the separate rate application by the respective deadlines to receive consideration for separate rate status. Companies not filing a timely Q&V questionnaire response will not receive separate rate consideration.

### Use of Combination Rates

Commerce will calculate combination rates for certain respondents that are eligible for a separate rate in an NME investigation. The Separate Rates and Combination Rates Bulletin states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that {Commerce} will now assign in its NME investigation will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the {weighted average} of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.<sup>56</sup>

### Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the Petitions have been provided to the governments of Cambodia, Malaysia, Thailand, and Vietnam via ACCESS. To the extent practicable, we will attempt to provide a

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<sup>56</sup> See Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, "Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation involving NME Countries," (April 5, 2005) at 6 (emphasis added), available on Commerce's website at <https://access.trade.gov/Resources/policy/bull05-1.pdf>.

copy of the public version of the Petitions to each exporter named in the Petitions, as provided under 19 CFR 351.203(c)(2).

#### ITC Notification

Commerce will notify the ITC of our initiation, as required by section 732(d) of the Act.

#### Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petitions were filed, whether there is a reasonable indication that imports of solar cells from Cambodia, Malaysia, and Thailand, and/or Vietnam are materially injuring, or threatening material injury to, a U.S. industry.<sup>57</sup> A negative ITC determination for any country will result in the investigation being terminated with respect to that country.<sup>58</sup> Otherwise, these LTFV investigations will proceed according to statutory and regulatory time limits.

#### Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)-(iv). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted<sup>59</sup> and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the

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<sup>57</sup> See section 733(a) of the Act.

<sup>58</sup> *Id.*

<sup>59</sup> See 19 CFR 351.301(b).

factual information seeks to rebut, clarify, or correct.<sup>60</sup> Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in these investigations.

#### Particular Market Situation Allegation

Section 773(e) of the Act addresses the concept of particular market situation (PMS) for purposes of CV, stating that “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, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.” When an interested party submits a PMS allegation pursuant to section 773(e) of the Act (*i.e.*, a cost-based PMS allegation), Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a cost-based PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act, nor 19 CFR 351.301(c)(2)(v), sets a deadline for the submission of cost-based PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a cost-based PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of a respondent’s initial section D questionnaire response.

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<sup>60</sup> See 19 CFR 351.301(b)(2).

We note that a PMS allegation filed pursuant to sections 773(a)(1)(B)(ii)(III) or 773(a)(1)(C)(iii) of the Act (*i.e.*, a sales-based PMS allegation) must be filed within 10 days of submission of a respondent's initial section B questionnaire response, in accordance with 19 CFR 351.301(c)(2)(i) and 19 CFR 351.404(c)(2).

#### Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301, or as otherwise specified by Commerce.<sup>61</sup> For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, standalone submission; under limited circumstances we will grant untimely filed requests for the extension of time limits, where we determine, based on 19 CFR 351.302, that extraordinary circumstances exist. Parties should review Commerce's regulations concerning the extension of time limits and the *Time Limits Final Rule* prior to submitting factual information in these investigations.<sup>62</sup>

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<sup>61</sup> See 19 CFR 351.301; *see also* *Extension of Time Limits; Final Rule*, 78 FR 57790 (September 20, 2013) (*Time Limits Final Rule*), available at <https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm>.

<sup>62</sup> See 19 CFR 351.302; *see also*, *e.g.*, *Time Limits Final Rule*.

### Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.<sup>63</sup> Parties must use the certification formats provided in 19 CFR 351.303(g).<sup>64</sup> Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

### Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Parties wishing to participate in these investigations should ensure that they meet the requirements of 19 CFR 351.103(d) (e.g., by filing the required letter of appearance). Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).<sup>65</sup>

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: May 14, 2024.

/S/ Ryan Majerus

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

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<sup>63</sup> See section 782(b) of the Act.

<sup>64</sup> See *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (*Final Rule*). Additional information regarding the *Final Rule* is available at <https://access.trade.gov/Resources/filing/index.html>.

<sup>65</sup> See *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069 (September 29, 2023).

## Appendix

### Scope of the Investigations

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

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

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

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

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

Additionally, excluded from the scope of the investigations are panels with surface area from 3,450 mm<sup>2</sup> to 33,782 mm<sup>2</sup> with one black wire and one red wire (each of type 22 AWG or 24 AWG not more than 206 mm in length when measured from panel extrusion), and not exceeding 2.9 volts, 1.1 amps, and 3.19 watts. For the purposes of this exclusion, no panel shall contain an internal battery or external computer peripheral ports.

Also excluded from the scope of the investigations are:

- 1) Off grid CSPV panels in rigid form with a glass cover, with the following characteristics: (A) a total power output of 100 watts or less per panel; (B) a maximum surface area of 8,000 cm<sup>2</sup> per panel; (C) do not include a built-in inverter; (D) must include a permanently connected wire that terminates in either an 8 mm male barrel connector, or a two-port rectangular connector with two pins in square housings of different colors; (E) must include visible parallel grid collector metallic wire lines every 1-4 millimeters across each solar cell; and (F) must be in individual



retail packaging (for purposes of this provision, retail packaging typically includes graphics, the product name, its description and/or features, and foam for transport); and

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

In addition, the following CSPV panels are excluded from the scope of the investigations: off-grid CSPV panels in rigid form with a glass cover, with each of the following physical characteristics, whether or not assembled into a fully completed off-grid hydropanel whose function is conversion of water vapor into liquid water: (A) a total power output of no more than 80 watts per panel; (B) a surface area of less than 5,000 square centimeters (cm<sup>2</sup>) per panel; (C) do not include a built-in inverter; (D) do not have a frame around the edges of the panel; (E) include a clear glass back panel; and (F) must include a permanently connected wire that terminates in a twoport rectangular connector.

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

Also excluded from the scope of these investigations are off-grid crystalline silicon photovoltaic panels in rigid form with a glass cover, with each of the following physical characteristics, whether or not assembled into a fully completed off-grid hydropanel whose function is conversion of water vapor into liquid water: (A) a total power output of no more than 180 watts per panel at 155 degrees Celsius; (B) a surface area of less than 16,000 square centimeters (cm<sup>2</sup>) per panel; (C) include a keep-out area of approximately 1,200 cm<sup>2</sup> around the edges of the panel that does not contain solar cells; (D) do not include a built-in inverter; (E) do not have a frame around the edges of the panel; (F) include a clear glass back panel; (G) must include a permanently connected wire that terminates in a two-port rounded rectangular, sealed connector; (H) include a thermistor installed into the permanently connected wire before the twoport connector; and (I) include exposed positive and negative terminals at opposite ends of the panel, not enclosed in a junction box.

Modules, laminates, and panels produced in a third-country from cells produced in a subject country are covered by the investigations; however, modules, laminates, and panels produced in

a subject country from cells produced in a third-country are not covered by the investigations.

Also excluded from the scope of these investigations are all products covered by the scope of the antidumping and countervailing duty orders on *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order*, 77 FR 73018 (December 7, 2012); and *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Countervailing Duty Order*, 77 FR 73017 (December 7, 2012).

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