Dated: May 22, 2012.

Andrew McGilvray,

Executive Secretary.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–979]

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Affirmative Preliminary Determination of Critical Circumstances

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* May 25, 2012.

SUMMARY: The Department of Commerce (''Department'') preliminarily determines that crystalline silicon photovoltaic cells, whether or not assembled into modules (''solar cells''), from the People's Republic of China (''PRC'') are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Tariff Act of 1930, as amended (''the Act''). The estimated margins of sales at LTFV are shown in the ''Preliminary Determination'' section of this notice.

FOR FURTHER INFORMATION CONTACT: Howard Smith, Jeffrey Pedersen, Krisha Hill, or Drew Jackson, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5193, (202) 482–2769, (202) 482–4037, or (202) 482–4406, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 19, 2011, the Department received a petition concerning imports of solar cells from the PRC filed in proper form by SolarWorld Industries America Inc. (''Petitioner'').[1] In October and November, 2011, the Department issued requests for information regarding, and clarification of, certain areas of the petition. Petitioner timely filed responses to these requests. In November 2011, the Department received comments from interested parties both supporting and opposing the petition.[2] The Department initiated an antidumping (''AD'') duty investigation of solar cells from the PRC on November 8, 2011.[3]

In the *Initiation Notice,* the Department stated that it intended to issue quantity and value (''Q&V'') questionnaires to exporters/producers named in the petition and select respondents based on Q&V questionnaire responses.[4] On November 9, 2011, the Department requested Q&V information from 75 companies identified in the petition as potential producers and/or exporters of solar cells from the PRC.[5] The Department received timely responses to its Q&V questionnaire from 76 companies. After examining the responses to the Q&V questionnaire, in accordance with section 777A(c)(2) of the Act, the Department selected as mandatory respondents the two companies reporting the largest quantity of solar cell sales to the United States during the period of investigation (''POI''), namely Wuxi Suntech Power Co., Ltd. (''Wuxi Suntech'') and Changzhou Trina Solar Energy Co., Ltd. (''Trina Solar'').[6] On December 9, 2011, the Department issued the AD questionnaire to both companies. In January and February 2012, Wuxi Suntech and Trina Solar submitted timely responses to the Department's AD questionnaire. Petitioner submitted comments regarding those responses in January and February 2012. The Department issued supplemental questionnaires to Wuxi Suntech and Trina Solar from January to May 2012. Wuxi Suntech and Trina Solar submitted timely responses to the Department's supplemental questionnaires, and Petitioner submitted comments thereon, from February through May 2012.

In the *Initiation Notice,* the Department notified parties that they had an opportunity to comment on the scope of the investigation as well as the appropriate physical characteristics of solar cells to be reported in response to the Department's AD questionnaire.[7] In November and December, 2011 parties submitted comments to the Department regarding the scope and the physical characteristics of merchandise under consideration to be used for reporting purposes. On March 19, 2012, the Department clarified the scope language of both the AD and countervailing duty (''CVD'') investigations of solar cells stating that modules, laminates, and panels produced in a third-country from solar cells produced in the PRC are covered by the investigations; however, modules, laminates, and panels produced in the PRC from solar cells produced in a third-country are not covered by the investigations.[8]

In November 2011, CNPV Dongying Solar Power Company Limited (''CNPV''), Yingli Green Energy Holding Company Limited and Yingli Green Energy Americas, Inc. (''Yingli''), Jiangsu Green Power PV Co., Ltd. (''Jiangsu''), and Trina Solar requested to be treated as voluntary respondents in this investigation.[9] In its Respondent

[1] *See* Petition for the Imposition of Antidumping and Countervailing Duties: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China, dated October 19, 2011 (''Petition'').

[2] *See* Letter from the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union to the Department, regarding ''Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China,'' dated November 7, 2011; *see also* Letter to the Department, regarding ''Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China, DOC Inv. No. A–570–979 and C–570–980, USITC Investigation Nos: 701–TA–481 and 731–TA–1190: Standing Challenge,'' dated November 7, 2011.

[3] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, From the People's Republic of China: Initiation of Antidumping Duty Investigation,* 76 FR 70960 (November 16, 2011) (*''Initiation Notice''*).

[4] *See Initiation Notice,* 76 FR at 70964.

[5] *See* Memorandum to the File from Rebecca Pandolph, International Trade Analyst, AD/CVD Operations, Office 4, regarding, ''Issuance of Quantity and Value Questionnaires'' (December 8, 2011).

[6] *See* Memorandum from Drew Jackson to Abdelali Elouaradia regarding, ''Respondent Selection in the Antidumping Duty Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China,'' dated December 8, 2011 (''Respondent Selection Memorandum'').

[7] *See Initiation Notice,* 76 FR at 70960—70961.

[8] *See* Memorandum from Jeff Pedersen to Christian Marsh, regarding ''Scope Clarification: Antidumping and Countervailing Duty Investigations of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China,'' dated March 19, 2012 (''Scope Clarification Memorandum'').

[9] *See* Letter from CNPV to the Department, regarding ''Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from Peoples Republic of China: Request for Treatment of CNPV as a Voluntary Respondent,'' dated November 17, 2011; *see also* Letter from Yingli to the Department, regarding ''Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from Peoples Republic of China; Entry of Appearance; Application for Administrative Protective Order; and Request for Voluntary Respondent Treatment,'' dated November 17, 2011; *see also* Letter from Jiangsu to the Department, regarding ''Scope Comments in the Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China,'' dated November 28, 2011; *see also* Letter from Trina Solar to the Department, regarding ''Crystalline Silicon Photovoltaic Cells Whether or Not Assembled Into Modules (''Solar Cells'') from the People's Republic of China (''PRC''),'' dated November 29, 2011.

Selection Memorandum,[10] the Department explained that given the large number of exporters involved in this investigation, it was not practicable to individually examine each company. Therefore, the Department selected for individual examination the two respondents accounting for the largest volume of merchandise under consideration that reasonably could be examined, Wuxi Suntech and Trina Solar. Further, the Department explained that the number of companies that requested to be voluntary respondents is large enough that individual examination of the companies requesting to be treated as voluntary respondents would be unduly burdensome and would inhibit timely completion of the investigation.[11] Therefore, the Department determined that it would not individually examine non-selected companies that place responses on the record as long as the mandatory respondents continue to cooperate in this investigation.

On March 8, 2012, the Department again addressed the matter of voluntary respondents. Specifically, the Department determined that CNPV and Jiangsu did not submit responses to the Department's AD questionnaire and thus they did not qualify as voluntary respondents. Furthermore, the Department continued to find that, given its existing resources and the complexity of the case, examining Yingli as a voluntary respondent would be unduly burdensome and inhibit the timely completion of the investigation. Therefore, the Department stated that it did not intend to calculate an individual weighted average dumping margin for Yingli.[12]

On December 5, 2011, the U.S. International Trade Commission (''ITC'') preliminary determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from the PRC of solar cells.[13]

In the *Initiation Notice,* the Department notified parties that in order to obtain separate rate status in this investigation, exporters and producers must timely file a separate rate application and a timely response to the Q&V questionnaire. During December 2011 and January 2012, the Department received separate rate applications from 68 companies that it accepted. The Department issued supplemental questionnaires to certain companies applying for a separate rate, and received responses thereto, from February through May 2012. From March through May 2012, Petitioner commented on the issue of whether certain applicants should be granted a separate rate, including comments regarding the National People's Congress and the Chinese People's Political Consultative Conference. On April 10, 2012, SUMEC Hardware & Tools Co. Ltd, Ningbo ETDZ Holding Ltd., Hangzhou Zhejiang University Sunny Energy Science and Technology Co., Ltd., LDK Solar Hi-Tech (Nanchang) Co., Ltd., LDK Solar Hi-Tech (Suzhou) Co., Ltd., ERA Solar Co., Ltd., and ET Solar Industry Limited, exporters of solar cells from the PRC, responded to Petitioner's comments regarding separate rates. In May 2012, Yingli and its affiliates responded to Petitioner's comments regarding certain separate-rate applicants.

On January 24, 2012, the Department identified potential surrogate countries for use in the investigation and invited interested parties to comment on surrogate country and surrogate value selection.[14] From February through May 2012 interested parties submitted comments on the appropriate surrogate country and surrogate values.

On February 13, 2012, Petitioner alleged that Wuxi Suntech and Trina Solar engaged in targeted dumping. In the Petition, Petitioner alleged, based on trade statistics since August 2010 and prior knowledge of an impending trade case, that there is a reasonable basis to believe or suspect that critical circumstances exist with regard to imports of solar cells from the PRC. Based on this allegation, the Department requested, and Trina Solar and Wuxi Suntech supplied, shipment information regarding the merchandise under consideration for the periods May 2009 through March 2012 and May 2009 through April 2012, respectively. From November 2011 through April 2012, interested parties submitted comments regarding Petitioner's allegation of critical circumstances.

On March 2, 2012, Petitioner made a timely request pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e) for a 30-day postponement of the preliminary determination.[15] On March 13, 2012, the Department published a postponement fully extending the due date of the preliminary AD determination on solar cells from the PRC.[16]

In April and May 2012, Petitioner, Yingli, Canadian Solar, Inc., and Trina Solar filed comments for the Department to consider in its preliminary determination. Interested parties also submitted factors of production (''FOP'') data from February to May 2012.

Period of Investigation

The POI is April 1, 2011, through September 30, 2011. This period corresponds to the two most recent fiscal quarters prior to the month in which the petition was filed, October 2011.[17]

Scope of the Investigation[18]

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

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

Merchandise under consideration may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited

[10] *See* Memorandum from Abdelali Elouaradia to Christian Marsh, regarding ''Respondent Selection in the Antidumping Duty Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from Peoples Republic of China,'' dated December 8, 2011.

[11] *See id.,* at 6.

[12] *See* Memorandum from Abdelali Elouaradia to Christian Marsh, regarding ''Antidumping Duty Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from People's Republic of China; Voluntary Respondents,'' dated March 8, 2012.

[13] *See Crystalline Silicon Photovoltaic Cells and Modules From China,* 76 FR 78313 (December 16, 2011).

[14] *See* Letter to All Interested Parties, Antidumping Duty Investigation of Crystalline Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Request for Surrogate Country and Surrogate Value Comments and Information (''Surrogate Country Memorandum''), dated January 24, 2012.

[15] *See* Letter from Petitioner to the Department, regarding ''Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Request to Extend Preliminary Determination in Antidumping Duty Investigation,'' dated March 2, 2012.

[16] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, From the People's Republic of China: Postponement of Preliminary Determination of Antidumping Duty Investigation,* 77 FR 14732 (March 13, 2012).

[17] *See* 19 CFR 351.204(b)(1).

[18] *See* Scope Clarification Memorandum.

to, modules, laminates, panels, building-integrated modules, building-integrated panels, or other finished goods kits. Such parts that otherwise meet the definition of merchandise under consideration are included in the scope of this investigation.

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

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

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

Merchandise covered by this investigation is currently classified in the Harmonized Tariff System of the United States (''HTSUS'') under subheadings 8501.61.0000, 8507.20.80, 8541.40.6020, 8541.40.6030, and 8501.31.8000.[19] These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of this investigation is dispositive.

Scope Comments

In November and December 2011, parties submitted comments to the Department regarding the scope of the AD and CVD investigations of solar cells. One party requested that the scope exclude monocrystalline solar panels for the recreational vehicle industry. Petitioner opposed this request. Another party requested that the scope exclude off-grid modules. Several respondents jointly requested that the Department modify certain language in the scope which identifies the products that are subject to the investigations as well as language which explains that merchandise under consideration described as parts at the time of importation is also covered by the scope. After examining the comments, the Department has preliminarily determined not to make the requested exclusions or modify the scope language as requested. For a detailed discussion of these issues, *see* the memorandum from Rebecca Pandolph to Christian Marsh regarding ''Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China: Scope'' dated concurrently with this notice.

Additionally, as noted above, on March 19, 2012, the Department clarified the scope language of both the AD and CVD investigations of solar cells stating that modules, laminates, and panels produced in a third-country from solar cells produced in the PRC are covered by the investigations; however, modules, laminates, and panels produced in the PRC from solar cells produced in a third-country are not covered by the investigations.

Critical Circumstances

In the petition filed on October 19, 2011, Petitioner alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to the AD investigation of solar cells from the PRC.[20] Section 733(e)(1) of the Act provides that the Department will determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) 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 (ii) 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 subject merchandise over a relatively short period. Section 351.206(h)(1) of the Department's regulations provide that, in determining whether imports of the subject merchandise have been ''massive,'' the Department will normally examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, section 351.206(h)(2) of the Department's regulations provides that an increase in imports of 15 percent during the ''relatively short period'' of time may be considered ''massive.'' Section 351.206(i) of the Department's regulations defines ''relatively short period'' as normally being the period beginning on the date the proceeding begins (*i.e.,* the date the petition is filed) and ending at least three months later (*i.e.,* the comparison period). However, if the Secretary finds that importers, exporters, or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, the Secretary may consider a period of not less than three months from that earlier time. The comparison period is normally compared to a corresponding period prior to the filing of the petition (*i.e.,* the base period).

In order to determine whether there is a history of dumping pursuant to section 733(e)(1)(A)(i) of the Act, the Department generally considers current or previous AD duty orders on subject merchandise from the country in question in the United States and current orders in any other country with regard to imports of subject merchandise.[21] No parties have made any claims regarding AD proceedings for solar cells, and the Department is not aware of the existence of any active AD orders on solar cells from the PRC in other countries. As a result, the Department does not find that there is a history of injurious dumping of solar cells from the PRC pursuant to section 733(e)(1)(A)(i) of the Act.

Nevertheless, the Department has determined that importers knew, or should have known that the exporters were selling the merchandise under consideration at LTFV and that there was likely to be material injury by reason of such sales. The Department generally bases its decision with respect to knowledge on the margins calculated in the preliminary AD determination and the ITC's preliminary injury determination.[22] The Department

[19] U.S. Customs and Border Protection (''CBP'') provided notification that HTSUS number 8501.31.8000 should be added to the scope of the investigation, as certain articles under this number may fall within the scope. *See* Memorandum from Gene H. Calvert through Mark Hoadley to the File, ''ACE Case Reference File Update,'' dated May 16, 2012.

[20] *See* Petition at Volume IV, ''Information Relating to the People's Republic of China—Critical Circumstances,'' dated October 19, 2011.

[21] *See Certain Oil Country Tubular Goods From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination,* 74 FR 59117, 59120 (November 17, 2009) unchanged in *Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping,* 75 FR 20335 (April 19, 2010).

[22] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Bottom Mount*

Continued

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.[23] Wuxi Suntech and Trina Solar had both EP and CEP sales, a majority of which are CEP sales. The dumping margins calculated for Wuxi Suntech and Trina Solar exceed the threshold sufficient to impute knowledge of dumping (*i.e.,* 15 percent for CEP sales). Therefore, we determine that there is sufficient basis to find that importers should have known that the exporters were selling the merchandise under consideration at less than its fair value.[24] Consistent with Department practice, we based the margin for the separate rate respondents on the average of the margins calculated for the individually examined respondents, excluding any rates that are zero, *de minimis,* or based entirely on adverse-facts-available (''AFA'').[25] Accordingly, we have preliminarily applied to the separate rate companies a margin of 31.18 percent. Because we calculated preliminary margins for Wuxi Suntech's and Trina Solar's sales in excess of 15 percent, and the experience of the mandatory respondents has been applied to the separate-rate respondents, the record supports imputing importer knowledge of sales at LTFV with respect to these companies. Moreover, for the reasons discussed below, the Department has preliminarily determined a rate for the PRC-wide entity of 249.96 percent. This PRC-wide rate exceeds both the 25 percent threshold for EP sales and the 15 percent threshold for CEP sales. Therefore, the Department is preliminary imputing importer knowledge of sales at LTFV with respect to the PRC-wide entity. Furthermore, since the ITC preliminarily found a reasonable indication that an industry in the United States is materially injured by imports from the PRC of solar cells, the Department has determined that there is a reasonable basis to believe or suspect that the importers knew or should have known that there was likely to be material injury by reason of sales at LTFV of solar cells from Wuxi Suntech, Trina Solar, the separate rate companies, and the PRC-wide entity.

In determining whether there have been massive imports of merchandise under consideration over a relatively short period, pursuant to 19 CFR 351.206(i), the Department may consider a period of not less than three months from the date on which this proceeding began if importers, exporters or producers had reason to believe, at some time prior to the filing of the petition, that a proceeding was likely. The Department has concluded that record information indicates that exporters, producers, and importers of solar cells from the PRC had reason to believe that AD and CVD proceedings were likely during September 2011. The petition included factual information from August 24, 2009, through October 11, 2011. The factual information included commentary about the closing and/or bankruptcy of U.S. solar cell companies, articles discussing subsidies given to Chinese solar cell producers in the PRC, and articles concerning actions being taken by the U.S. Trade Representative. However, it is not until September 2011 that the information submitted explicitly refers to AD and CVD remedies.[26] Given the factual information in the petition, we find that knowledge was imputed to importers, exporters, and producers during September 2011.

The Department typically determines whether to include the month in which a party had reason to believe that a proceeding was likely in the base, or comparison, period depending on whether the event that gave rise to the reason for belief occurred in the first or second half of the month. However, in this case, regardless of whether knowledge was imputed to importers, exporters or producers in the first or second half of September 2011, it does not change our findings with respect to whether imports have been massive over a relatively short period of time.

For Wuxi Suntech and Trina Solar, we first compared imports during a base period of February 2011 through August 2011 to imports from September 2011 through March 2012 (assuming knowledge was imputed in early September, putting that month into the comparison period). Second, we compared imports during a base period of April 2011 through September 2011 to imports from October 2011 through March 2012 (assuming knowledge was imputed in late September, putting that month into the base period). It is the Department's practice to base the critical circumstances analysis on all available data, using base and comparison periods of no less than three months.[27] The latest available shipment data that we were able to use for the preliminary determination are data up through March 2012. While Wuxi Suntech also submitted shipment data for April 2012, the data were submitted too close to the preliminary determination to be used in our analysis.

When we compared both Wuxi Suntech's shipments and Trina Solar's shipments[28] during the relevant comparison periods with the base periods, we found that imports of Wuxi Suntech's and Trina Solar's merchandise under consideration increased by more than 15 percent over their respective imports in the base periods in terms of watts during the comparison periods. Hence pursuant to section 351.206(h) of the Department's regulations we consider the imports of Wuxi Suntech's and Trina Solar's merchandise under consideration to be massive.[29] Furthermore, we find that the

Combination Refrigerator-Freezers From Mexico 77 FR 17422, 17425 (March 26, 2012).

[23] *See id.*

[24] *See* Memorandum from Drew Jackson and Heidi Schriefer to The File regarding, ''Analysis of the Preliminary Determination Margin Calculation for Wuxi Suntech Power Co., Ltd.,'' dated May 16, 2012; *see also* Memorandum from Jeff Pedersen and Krisha Hill to The File regarding, ''Analysis of the Preliminary Determination Margin Calculation for Changzhou Trina Solar Energy Co., Ltd.,'' dated May 16, 2012 (collectively, ''Wuxi Suntech and Trina Solar Analysis Memoranda'').

[25] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 71 FR 77373, 77377 (December 26, 2006) (''*PSF Preliminary Determination*''), unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 72 FR 19690 (April 19, 2007) (''*PSF Final Determination*''); *see also* ''Separate Rates'' section below.

[26] *See, e.g.,* Petition at Volume IV, Exhibit 13 (an article by Bloomberg, dated September 8, 2011) and Exhibit 16 (an article by Bloomberg, dated September 28, 2011).

[27] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India,* 69 FR 47111, 47118–47119 (August 4, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Negative Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From India,* 69 FR 76916 (December 23, 2004); and *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China,* 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 3.

[28] *See* Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China; Response to Critical Circumstances Questionnaire, on behalf of Trina, dated December 19, 2011; *see also* Crystalline Silicon Photovoltaic Cells from the People's Republic of China: Quantity & Value Data for May 2009 through November 2011, on behalf of Wuxi Suntech dated December 19, 2011.

[29] *See* memorandum from Patrick O'Connor to Christian Marsh regarding ''Antidumping Duty Investigation of Crystalline Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Preliminary Affirmative Determination of Critical Circumstances'', dated

imports of Wuxi Suntech's and Trina Solar's merchandise have been massive over a relatively short period of time, regardless of whether knowledge was imputed to the importers, exporters, or producers in the first or second half of September 2011. Although the respondents have argued that the volume of shipments during the comparison period can be explained by reasons other than reasons relating to AD/CVD issues, the Department has not found that the record supports the respondents' arguments.[30]

In determining whether imports of merchandise under consideration from the respondents who were not individually examined were massive, we relied on the experience of the mandatory respondents. Based on the experience of these mandatory respondents, we find that imports by all other producers or exporters also increased by more than 15 percent. Because, as discussed below, the PRC-wide entity did not respond to the Department's request for information (*see* the section ''Application of Facts Available and Adverse Facts Available'' below), we have no shipment data regarding the PRC-wide entity,[31] and thus we must apply facts available. Furthermore, as discussed below, the Department may use facts available with an adverse inference where a party has failed to cooperate by not acting to the best of its ability. The PRC-wide entity did not act to the best of its ability in responding to the Department's request for information. Therefore, the Department finds that the application of AFA is warranted. Consequently, we also preliminarily determine that imports have been massive over a relatively short period of time with respect to the PRC-wide entity.

Based on the above analysis, we preliminarily determine that critical circumstances exist for Wuxi Suntech, Trina Solar, the separate rate respondents, and the PRC-wide entity.

Non-Market Economy Country

In every case conducted by the Department involving the PRC, the PRC has been treated as a non-market economy (''NME'') country.[32] Moreover, the Department's most recent examination of the PRC's NME status determined that such status should continue.[33] 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 the administering authority. The Department has not revoked the PRC's status as an NME country, and thus we have treated the PRC as an NME in this preliminary determination and applied our NME methodology.

Surrogate Country

Section 773(c)(1) of the Act directs the Department to base normal value (''NV''), in most cases, on the NME producer's FOPs valued in a surrogate market-economy (''ME'') country or countries considered appropriate by the Department. In accordance with section 773(c)(4) of the Act, the Department will value FOPs using ''to the extent possible, the prices or costs of factors of production in one or more market economy countries that are—(A) at a level of economic development comparable to that of the nonmarket economy country, and (B) significant producers of comparable merchandise.'' Further, pursuant to 19 CFR 351.408(c)(2), the Department will normally value FOPs in a single surrogate country.

In its Surrogate Country Memorandum, the Department identified Colombia, Indonesia, the Philippines, South Africa, Thailand, Peru, and Ukraine as being equally comparable to the PRC in terms of economic development.[34] Petitioner argues that Thailand should be selected as the surrogate country because there is significant production capacity, and production of, identical and comparable merchandise in Thailand and there is Thai information on the record for all of the surrogate values that are needed to calculate a margin.[35] Both Wuxi Suntech and Trina Solar argue that India, a country not listed in the Surrogate Country Memorandum, is the most appropriate surrogate country primarily because India's solar cell industry is larger and more developed than that of Thailand and other countries on the surrogate country list.[36] The respondents also contend that India's solar cell industry is more similar in size and development to that of the PRC. Further, both respondents note that the record contains usable financial statements for Indian solar cell producers. Wuxi Suntech and Trina Solar point out that, in its petition, Petitioner argued that the Department should choose India as the surrogate country for initiation purposes and it supported its position that India is the most appropriate surrogate country.

Economic Comparability

The Department considers all seven countries listed in the Surrogate Country Memorandum as having satisfied the economic comparability prong of the surrogate country selection criteria. Unless we find that all of the countries determined to be equally economically comparable are not significant producers of comparable merchandise, do not provide a reliable source of publicly available surrogate data or are unsuitable for use for other reasons, we will rely on data from one of these countries.[37]

Once the countries that are economically comparable to the PRC have been identified, we select an appropriate surrogate country by determining whether an economically comparable country is a significant producer of comparable merchandise and whether the data for valuing FOPs is both available and reliable.[38]

Producers of Identical or Comparable Merchandise

Section 773(c)(4)(B) of the Act directs the Department, to the extent possible, to value FOPs in a surrogate country that is a significant producer of comparable merchandise. The record contains evidence of producers of identical or comparable merchandise in

concurrently with this notice (''Preliminary Critical Circumstances Memorandum'').

[30] *See* Preliminary Critical Circumstances Memorandum.

[31] *See, e.g.,* section 776(a)(1) of the Act.

[32] *See, e.g., Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 74 FR 9591, 9593 (March 5, 2009), unchanged in *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 74 FR 36656 (July 24, 2009).

[33] *See* Memorandum for David M. Spooner, Assistant Secretary for Import Administration, Antidumping Duty Investigation of Certain Lined Paper Products from the People's Republic of China (''China''): China's Status as a Non-Market Economy (''NME'') (August 30, 2006) (memorandum is on file in the Department's Central Records Unit on the record of case number A–570–901).

[34] *See* Surrogate Country Memorandum.

[35] *See, e.g.,* Letter from Petitioner to the Department, regarding ''Crystalline Silicon Photovoltaic (''c-Si PV'') Cells from the People's Republic of China: Comments on Surrogate Country and Initial Proposed Surrogate Values for the Preliminary Determination,'' dated April 12, 2012.

[36] *See, e.g.,* Letter from Wuxi Suntech to the Department, regarding ''Crystalline Silicon Photovoltaic Cells from the People's Republic of China: Comments of Wuxi Suntech Power Co., Ltd.—Surrogate Country and Surrogate Value Selection,'' dated February 21, 2012.

[37] *See Certain Steel Wheels From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination,* 76 FR 67703, 67708 (November 2, 2011), unchanged in *Certain Steel Wheels From the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value and Partial Affirmative Final Determination of Critical Circumstances,* 77 FR 17021 (March 23, 2012).

[38] *See id.,* 76 FR at 67708–67709.

Thailand, the Ukraine, and the Philippines. A market survey of worldwide solar cell producers identifies two producers of solar cells in Thailand but none in Ukraine or South Africa.[39] Nevertheless, Trina Solar placed evidence on the record that there is a solar cell producer in Ukraine[40] and Petitioner claims there is a solar cell producer in Ukraine and two in South Africa.[41] Petitioner placed additional evidence on the record that Thailand has four producers of merchandise under consideration.[42] Global Trade Atlas (''GTA'') statistics also identify exports of merchandise under consideration from Thailand of over $5,000,000 for the first eight months of 2011.[43] Export statistics for Colombia, Indonesia, the Philippines, South Africa and Ukraine[44] also show exports for a HTS category that would include merchandise under consideration. Based on information on the record, the Department has determined that Colombia, Indonesia, the Philippines, South Africa, Thailand, and Ukraine are significant producers of comparable merchandise under consideration.

Data Availability

If more than one country satisfies the statutory requirements for selection as a surrogate country, the Department selects a surrogate country from among the potential countries based on data availability and quality. When evaluating surrogate value data, the Department considers several factors including whether the surrogate values are publicly available, contemporaneous with the POI, representative of a broad market average, from an approved surrogate country, tax and duty-exclusive, and specific to the inputs being valued. There is no surrogate value information on the record for South Africa, and a very limited amount of information for the Philippines and Ukraine. In contrast, the record contains usable Thai surrogate values for almost every input that must be valued.

Because Thailand is the only country listed on the Surrogate Country Memorandum found to be both economically comparable to the PRC and a significant producer of comparable merchandise for which we have reliable data to value almost every one of the FOPs, we have selected Thailand as the surrogate country. Given that one of the countries found to be economically comparable to the PRC satisfies the requirements for selection as a surrogate country, for purposes of the preliminary determination, there is no need for the Department to evaluate India as a potential surrogate country.

In accordance with 19 CFR 351.301(c)(3)(i), for the final determination in an AD investigation, interested parties may submit publicly available information to value the FOPs within 40 days after the date of publication of the preliminary determination.[45]

Targeted Dumping

The statute allows the Department to employ an alternative dumping margin calculation methodology in an AD investigation under the following circumstances: (1) There is a pattern of EPs or CEPs for comparable merchandise that differ significantly among purchasers, regions, or periods of time; and (2) the Department explains why such differences cannot be taken into account using the standard average-to-average or transaction-to-transaction methodology.[46] On February 13, 2012, Petitioner alleged targeted dumping with respect to Wuxi Suntech's[47] and Trina Solar's[48] sales to certain U.S. customers and regions, and in certain time periods. In order to determine whether the respondents engaged in targeted dumping, the Department conducted a targeted dumping analysis established in *Steel Nails.*[49] The methodology employed involves a two-stage test; the first stage addresses the pattern requirement and the second stage addresses the significant-difference requirement.[50] We made all price comparisons in the test using prices for comparable merchandise (*i.e.,* by control number or CONNUM). The test procedures are the same for targeted-dumping allegations involving customers, regions, and time periods. We based all of our targeted-dumping calculations on the net U.S. price that we determined for U.S. sales by Wuxi Suntech and Trina Solar in our margin calculations.

As a result of our analysis, we preliminarily determine that for both Wuxi Suntech and Trina Solar there is a pattern of prices for U.S. sales of comparable merchandise that differ significantly among certain purchasers, regions, and time periods in accordance with section 777A(d)(1)(B)(i) of the Act and our practice, as discussed in *Steel Nails* and as modified in *Wood Flooring.* We find, however, that the pattern of price differences can be taken into account using the standard average-to-average methodology because, based on the data before us, the average-to-average methodology does not mask differences in the patterns of prices between the targeted and non-targeted groups. Here, we determine that the standard average-to-average methodology takes into account the price differences because the alternative average-to-transaction methodology yields a difference in the margin that is not meaningful relative to the size of the resulting margin.[51] Accordingly, for this preliminary determination we have applied the standard average-to-average methodology to all of Wuxi Suntech's and Trina Solar's U.S. sales.[52]

[39] *See* Volume I of the Petition at Exhibit I–10.

[40] *See* Trina Solar's April 10, 2012 Additional Surrogate Value Submission at Exhibit 5.

[41] *See* Petitioner's February 21, 2012 submission at 10.

[42] *See* Petitioner's February 21, 2012 submission at 10 and Exhibit 2. *See also* Petitioner's April 12, 2012 submission at 3.

[43] *See* Petitioner's October 25, 2011 supplement to its petition at Exhibit AD–Supp-3.

[44] *Id.*

[45] In accordance with section 351.301(c)(1) of the Department's regulations, for the final determination of this investigation, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by any other interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that section 351.301(c)(1) of the Department's regulations permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record alternative surrogate value information. *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2. Additionally, for each piece of factual information submitted with surrogate value rebuttal comments, the interested party must provide a written explanation of what information that is already on the record of the ongoing proceeding the factual information is rebutting, clarifying, or correcting.

[46] *See* section 777A(d)(1)(B) of the Act.

[47] *See* Letter from Petitioner to the Department, regarding ''Crystalline Silicon Photovoltaic (''CPSV'') Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Targeted Dumping Allegation for Suntech,'' dated February 13, 2012.

[48] *See* Letter from Petitioner to the Department, regarding ''Crystalline Silicon Photovoltaic (''CPSV'') Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Targeted Dumping Allegation for Trina,'' dated February 13, 2012.

[49] *See Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value,* 73 FR 33985 (June 16, 2008) (''*Steel Nails*'') and accompanying Issues and Decision Memorandum at Comments 1–9.

[50] *See* section 777A(d)(1)(B)(i) of the Act and *Steel Nails,* and accompanying Issues and Decision Memorandum at Comment 2.

[51] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103–316, vol. 1 (1994) at 843 (''SAA'').

[52] *See e.g., Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From Indonesia: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 75 FR 24885, 24888 (May 6, 2010) unchanged in *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From Indonesia: Final*

Single Entity Treatment

To the extent that the Department's practice does not conflict with section 773(c) of the Act, the Department has, in prior cases, treated certain NME exporters and/or producers as a single entity if the facts of the case supported such treatment.[53] Pursuant to section 351.401(f)(1) of the Department's regulations, the Department will treat producers as a single entity, or ''collapse'' them, where: (1) Those producers are affiliated; (2) the producers have production facilities for producing similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities; and (3) there is a significant potential for manipulation of price or production.[54] In determining whether a significant potential for manipulation exists, section 351.401(f)(2) of the Department's regulations states that the Department may consider various factors, including: (1) The level of common ownership; (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (3) whether the operations of the affiliated firms are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.[55]

Section 771(33) of the Act identifies persons that shall be considered ''affiliated'' or ''affiliated persons,'' including, *inter alia:* (1) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization; (2) two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and (3) any person who controls any other person and such other person.[56] Section 771(33) of the Act further states that a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

The Department has preliminarily determined that the producers Trina Solar and Trina Solar (Changzhou) Science & Technology Co., Ltd. are affiliated pursuant to sections 771(33)(F) of the Act and that these companies should be treated as a single entity for AD purposes.[57] These companies are under common control and, therefore, are affiliated in accordance with section 771(33)(F) of the Act (which states that affiliated persons include two or more persons directly or indirectly controlling, controlled by, or under common control with, any person). Further, we found that these companies operate production facilities that produce similar or identical products that would not require substantial retooling of their facilities in order to restructure manufacturing priorities.[58] We have also determined that there is a significant potential for the manipulation of price or production among these companies as evidenced by the level of common ownership, the degree of management overlap, and the intertwined nature of the operations of these companies.[59] Thus we have preliminarily treated these companies as a single entity.

In addition, the Department preliminarily determines that Wuxi Suntech, Luoyang Suntech Power Co., Ltd., Suntech Power Co., Ltd., and Wuxi Sun-Shine Power Co., Ltd. are affiliated pursuant to section 771(33)(F) of the Act and that these companies should be treated as a single entity for AD purposes.[60] These companies are under common control and, therefore, are affiliated in accordance with section 771(33)(F) of the Act. Further, we found that these companies operate production facilities that produce similar or identical products that would not require substantial retooling of their facilities in order to restructure manufacturing priorities.[61] We have also determined that there is a significant potential for the manipulation of price or production among these companies as evidenced by the level of common ownership, the degree of management overlap, and the intertwined nature of the operations of these companies.[62] Thus we have preliminarily treated these companies as a single entity.

Separate Rates

In the *Initiation Notice,* the Department notified parties that, in order to obtain separate rate status in this investigation, they must timely file a timely response to the Q&V questionnaire and timely file a separate rate application.[63] The Department received timely-filed separate rate applications from 68 companies.

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single AD rate.[64] It is the Department's policy to assign all exporters of merchandise under investigation that are in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.[65] The Department analyzes whether each entity exporting the subject merchandise is sufficiently independent under a test arising from *Sparklers,*[66] as further developed in *Silicon Carbide.*[67] In accordance with the separate rates criteria, the Department assigns separate rates in NME cases if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities. If, however, the Department determines that a company is wholly foreign owned, then a separate rate analysis is not necessary to

Determination of Sales at Less Than Fair Value, 75 FR 59223 (September 27, 2010) and *Polyethylene Retail Carrier Bags From Indonesia: Final Determination of Sales at Less Than Fair Value,* 75 FR 16431 (April 1, 2010) and accompanying Issues and Decision Memorandum at Comment 1.

[53] *See Certain Steel Nails From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances and Postponement of Final Determination,* 73 FR 3928, 3932 (January 23, 2008), unchanged in *Certain Steel Nails From the People's Republic of China: Amended Preliminary Determination of Sales at Less Than Fair Value,* 73 FR 7254 (February 7, 2008) and *Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances,* 73 FR 33977 (June 16, 2008).

[54] *See, e.g., Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review,* 63 FR 12764, 12774–12775 (March 16, 1998).

[55] *See also, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From Taiwan,* 62 FR 51427, 51436 (October 1, 1997).

[56] *See* sections 771(33)(E)–(G) of the Act.

[57] *See* Memorandum from Lilit Astvatsatrian to Christian Marsh, regarding ''Affiliation and Single Entity Status of Changzhou Trina Solar Energy Co., Ltd. and Trina Solar (Changzhou) Science & Technology Co., Ltd.,'' dated May 16, 2012.

[58] *See* section 351.401(f)(1) of the Department's regulations.

[59] *See id.* and section 351.401(f)(2) of the Department's regulations.

[60] *See* Memorandum from Drew Jackson and Patrick O'Connor to Christian Marsh, regarding ''Affiliation and Single Entity Status of Wuxi Suntech Power Co., Ltd.; Luoyang Suntech Power Co., Ltd.; Suntech Power Co., Ltd.; and Wuxi Sun-Shine Power Co., Ltd.,'' dated May 16, 2012.

[61] *See* section 351.401(f)(1) of the Department's regulations.

[62] *See* section 351.401(f)(2) of the Department's regulations.

[63] *See Initiation Notice,* 76 FR at 70964.

[64] *See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 55039, 55040 (September 24, 2008).

[65] *See Sparklers,* 56 FR at 20589, as amplified by *Silicon Carbide.*

[66] *See Sparklers,* 56 FR at 20588.

[67] *See Silicon Carbide,* 59 FR at 22585.

determine whether it is independent from government control.

A. Separate Rate Recipients [68]

Joint Ventures Between Chinese and Foreign Companies or Wholly Chinese-Owned Companies

Separate rate applicants in this investigation stated that they are either joint ventures between Chinese and foreign companies or are wholly Chinese-owned companies. Therefore, the Department must analyze whether these respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over their export activities.

a. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of the companies; and (3) other formal measures by the government decentralizing control of companies.[69]

The evidence provided by the SR Recipients supports a preliminary finding of *de jure* absence of governmental control based on the following: (1) An absence of restrictive stipulations associated with the individual exporters' business and export licenses; (2) the existence of applicable legislative enactments decentralizing control of the companies; and (3) formal measures by the government decentralizing control of Chinese companies.

Petitioner argues that certain Chinese solar cell producers are subject to the legal control of a state-owned enterprise (''SOE'') and thus they have not demonstrated an absence of *de jure* government control.[70] Petitioner claims that the Interim Regulations on Supervision and Management of State-owned Assets of Enterprises (State Council Decree 378) (''Interim Regulations'') give the government, and in particular the State-Owned Assets and Supervision and Administration Commission (''SASAC''), the responsibility and rights of an investor with regard to SOEs which includes the power to elect and remove corporate directors and managers, decide business policy, approve budgets and financial plans, and amend the company's articles of association. Additionally, Petitioner contends that the Interim Regulations promulgated regulations which ensure that there is no clear distinction between SOEs and the government. Thus, according to Petitioner, certain separate rate respondents owned in part by one or more SOEs cannot demonstrate an absence of *de jure* government control because the government has power over the equity interest of the SOEs in the respondent. Petitioner argues that an SOE's ownership interest in a respondent is effectively government property and, thus, the government can control the respondent.

The Department has preliminarily determined that the Interim Regulations do not automatically demonstrate *de jure* control over the export activities of an SOE. Articles 1 and 2 of the Interim Regulations state that the law is intended to be applicable to state-owned enterprises and assets as well as enterprises with state-owned equity.[71] Article 6 further clarifies that SASACs ''perform the responsibilities of investors according to law, supervise and administer State-owned assets of enterprises according to law,'' and, hence, are empowered to act in the capacity of representative of the state's role as ''investor.''

The Department notes that Article 7 of the Interim Regulations provides for the ''separation of government functions from enterprise management and separation of ownership from management.'' Further, Article 10 states that those companies operating under SASAC ''enjoy autonomy in their operation'' and that SASAC ''shall support the independent operation of enterprises according to law, and shall not interfere in their production and operation activities * * *'' The Department also notes that SASAC plays a role in approving the development of certain investment and business plans to ensure that these plans are in line with the PRC's industrial policy objectives as well in the appointment of the board and certain key senior management positions.[72] Therefore, there are contradictions in the Interim Regulations with respect to the separation of the government from the enterprise management. However, while SASAC may play a role with overseeing the overall regulation, development and structure of a state-owned sector, there is nothing on the record to indicate that SASAC's reach extends to such day-to-day activities as export pricing.

In addition, Article 42 of the Interim Regulations states that ''organizational form, organizational structure, rights and obligations * * * shall be governed by the Company Law'', which the Department has previously found to demonstrate an absence of *de jure* control over export activities, including pricing.[73]

Therefore, although SOEs may be shareholders in certain separate rate respondents, even where SASAC is the ultimate representative of the SOE holding shares, the Department finds that there is no information on the record that SASAC's role would extend to control over export activities, including pricing, in these separate rate applicants. Therefore, the Department finds that the laws placed on the record of this investigation establish the absence of *de jure* control of respondents whose shareholders include SOEs.

b. Absence of *De Facto* Control

Typically, the Department considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) Whether the EPs are set by, or are subject to the approval of, a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.[74] The Department has determined that an analysis of *de facto* control is critical in determining whether the respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates.

Each of the SR Recipients have asserted the following: (1) Their EPs are

[68] All separate rate applicants receiving a separate rate are hereby referred to collectively as the ''SR Recipients,'' including the mandatory respondents.

[69] *See Sparklers,* 56 FR at 20589.

[70] *See* Letter from Petitioner to the Department, regarding ''Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Comments on Separate Rate Application Responses,'' dated March 29, 2012 (''Petitioner Separate Rate Comments'').

[71] *See id.,* at Exhibit 3.

[72] *See id.*

[73] *See, e.g., Freshwater Crawfish Tail Meat From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative and New-Shipper Reviews,* 75 FR 34100 (June 16, 2010), unchanged in *Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Antidumping Duty Administrative and New-Shipper Reviews,* 75 FR 79337 (December 20, 2010).

[74] *See Silicon Carbide,* 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995).

not set by, and are not subject to, the approval of a governmental agency; (2) they have authority to negotiate and sign contracts and other agreements; (3) they have autonomy from the government in making decisions regarding the selection of management; and (4) they retain the proceeds of their export sales and make independent decisions regarding the disposition of profits or financing of losses.

Evidence placed on the record of this investigation by the SR Recipients demonstrates an absence of *de jure* and *de facto* government control with respect to their exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide.*

Petitioner argues that a number of separate rate applicants are not independent from the government with respect to certain activities such as selection of management and disposition of profits/financing losses. The Department has examined the record, including responses to supplemental questionnaires that were issued to a number of separate rate applicants, and preliminarily determined to grant these companies a separate rate.

Also, Petitioner argues that separate-rate respondents with senior managers who are members of the Chinese People's Political Consultative Conference (''CPPCC'') have not established *de facto* independence from the Chinese government.[75] Petitioner claims the CPPCC is under the control of the Chinese government and under the leadership of the Communist Party of the PRC. According to Petitioner, CPCC members must implement the decisions of the CPPCC, including its 12th Five-Year Plan for the solar photovoltaic industry. Hence, Petitioner contends that separate rate respondents with senior managers who are members of the CPPCC have not established *de facto* independence from the Chinese government.

Additionally, Petitioner asserts that separate-rate respondents affiliated with, or having strong ties to, Chinese universities and colleges under the direct supervision of the PRC's Ministry of Education have failed to establish independence from the Chinese government. Petitioner believes that the Chinese government can exert control and influence over solar companies through the universities by threatening to sever-ties between the company and the university which provides its research capabilities to the company or by withdrawing research and development funding or other assistance. Consequently, Petitioner believes such companies have failed to establish independence from the Chinese government.

We have examined the above criteria relating to a *de facto* absence of government control for the separate-rate applicants, including those which Petitioner claims have managers or directors who are members of CPPCC or are affiliated with certain universities and found, based on those criteria, that these companies have demonstrated an absence of *de jure* government control. Petitioner has not demonstrated that a separate rate respondent's relationship with CPPCC or certain universities resulted in a lack of autonomy on the part of the respondent to set EPs, negotiate and sign agreements, select management, or decide how to dispose of profits or financing of losses. Therefore, we are preliminarily granting separate rate status to the entities identified in the ''Preliminary Determination'' section of this notice, below.

Companies Not Receiving a Separate Rate

We have not granted a separate rate to the following companies for the following reasons: (1) Jiangsu Jiasheng Photovoltaic Technology Co., Ltd. failed to submit a timely response to the Department's Q&V questionnaire. The Department stated in the *Initiation Notice* that it ''requires that respondents submit a response to both the quantity and value questionnaire and the separate rate-application by the respective deadlines in order to receive consideration for separate-rate status.''[76] Further, in the Q&V questionnaire the Department stated that it ''will not give consideration to any separate-rate status application made by parties that fail to timely respond to the quantity and value questionnaire or fail to timely submit the requisite separate-rate status application.''[77] (2) Jiawei Solar (Wuhan) Co., Ltd., SunPower Corporation, SunPower Systems SARL, Sunenergy (S.Z.) Co., Ltd., Hanwa Solarone Hong Kong, and Anji DaSol Solar Energy Science and Technology Co., Ltd. did not sell merchandise under consideration to the United States. (3) Jiangyin Hareon Power Co., Ltd. and Wuxi Taichen Machinery & Equipment Co., Ltd. failed to submit a timely response to the Department's supplemental separate rate questionnaire.

Application of Facts Available and Adverse Facts Available

The PRC-Wide Entity and PRC-Wide Rate

The record indicates that there were PRC exporters/producers of the merchandise under consideration during the POI that did not respond to the Department's request for quantity and value information. Specifically, the Department did not receive a response to its Q&V questionnaire from over 30 PRC exporters of merchandise under consideration named in the petition who were issued the questionnaire.[78] Since these non-responsive PRC producers/exporters have not demonstrated that they are eligible for separate rate status, they are part of the PRC-wide entity. Thus, the record indicates that the PRC-wide entity withheld information requested by the Department.

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the AD statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

We find that the PRC-wide entity withheld Q&V information requested by the Department; failed to provide information in a timely manner, and significantly impeded the proceeding by not submitting the requested information. The PRC-wide entity did not file documents indicating it was having difficulty providing the information nor did it request that it be allowed to submit the information in an alternate form. As a result, pursuant to sections 776(a)(2)(A)–(C) of the Act, we find that the use of facts available is appropriate to determine the PRC-wide rate.[79]

[75] *See* Petitioner Separate Rate Comments at 37.

[76] *See Initiation Notice,* 76 FR at 70964.

[77] *See* ''Quantity and Value Questionnaire for Crystalline Silicon Photovoltaic Cells, Whether Or Not Assembled Into Modules (''Solar Cells'') from the People's Republic of China (''PRC'') (''Q&V Questionnaire''), dated November 9, 2011.

[78] *See* Respondent Selection Memorandum. The Department also posted a copy of the Q&V questionnaire on its Web site.

[79] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam,* 68 FR 4986, 4991 (January 31, 2003), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative*

Continued

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an inference that is adverse to a party if the party failed to cooperate by not acting to the best of its ability to comply with requests for information.[80] The Department finds that the PRC-wide entity's failure to provide the requested information constitutes circumstances under which it is reasonable to conclude that less than full cooperation has been shown.[81] Therefore, because the PRC-wide entity did not respond to our requests for information, it has failed to cooperate to the best of its ability. Therefore, the Department preliminarily finds that, in selecting from among the facts otherwise available, an adverse inference is appropriate.

When employing an adverse inference, section 776(b) of the Act states that the Department may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. In selecting a rate based on AFA, the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. It is the Department's practice to select, as an AFA margin, the higher of the: (a) Highest margin alleged in the petition, or (b) highest calculated margin of any respondent in the investigation.[82] The petition margins are 49.88 percent and 249.96 percent.[83] These rates are higher than any of the weighted-average rates calculated for the companies individually examined. Thus, as AFA, the Department's has selected the rate of 249.96 percent for the PRC-wide entity.

Corroboration of Information

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available. Secondary information is defined as ''information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.'' [84]

The SAA clarifies that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value.[85] The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.[86] To corroborate secondary information, the Department will, to the extent practicable, determine whether the information used has probative value through examining the reliability and relevance of the information.

In order to determine the probative value of the margins in the petition for use as AFA for purposes of this preliminary determination, we compared the petition margins to the margins we calculated for the individually examined respondents. We determined that the petition margin of 249.96 percent is reliable and relevant because it is within the range of the transaction-specific margins [87] on the record for the individually examined exporters of subject merchandise. Thus the highest petition margin has probative value. Accordingly, we have corroborated the petition margin to the extent practicable within the meaning of section 776(c) of the Act.

Margin for the Separate Rate Companies

The Department has preliminarily determined that in addition to the individually examined entities, 59 other companies have demonstrated their eligibility for separate rate status. Normally, the Department's practice is to assign a rate to separate rate entities not individually examined equal to the average of the rates calculated for the individually examined respondents, excluding any rates that are zero, *de minimis,* or based entirely on AFA.[88] Thus, we are assigning the SR Recipients a rate equal to an average of the rate calculated for the mandatory respondents.[89] The SR Recipients are listed in the ''Preliminary Determination'' section of this notice.

Date of Sale

Pursuant to section 351.401(i) of the Department's regulations, ''in identifying the date of sale of the merchandise under consideration or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business.'' The date of sale is generally the date on which the parties agree upon all substantive terms of the sale. This normally includes the price, quantity, delivery terms and payment terms.[90]

Sales during the POI were made pursuant to short-term contracts, long-term contracts, and/or purchase orders. Sales were also made on the spot market. Petitioner maintains that Wuxi Suntech's date of sale should be based on contract or purchase order date because: (1) Sales terms are generally fixed in Wuxi Suntech's sales contracts; (2) certain terms under the contracts make it unlikely that changes are made after the contract date; (3) the solar industry uses contracts with fixed prices and terms that rarely change, and (4) Wuxi Suntech did not sufficiently demonstrate that the material terms of its contracts and purchase orders changed. Petitioner also contends that Trina Solar's date of sale should be based on contract date because: (1) Most long-term and short-term contracts do not allow changes in material terms; (2) Trina Solar has not disputed the fact that material terms of sale in its short-term contracts do not change; and (3) the sample documents purportedly

Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 68 FR 37116 (June 23, 2003).

[80] *See also* SAA at 870; *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation,* 65 FR 5510, 5518 (February 4, 2000).

[81] *See Nippon Steel Corporation v. United States,* 337 F.3d 1373, 1383 (Fed. Cir. 2003) (noting that the Department need not show intentional conduct existed on the part of the respondent, but merely that a ''failure to cooperate to the best of a respondent's ability'' existed (*i.e.,* information was not provided ''under circumstances in which it is reasonable to conclude that less than full cooperation has been shown'')).

[82] *See Certain Stilbenic Optical Brightening Agents From the People's Republic of China: Final Determination of Sales at Less Than Fair* Value, 77 FR 17436, 17438 (March 26, 2012).

[83] *See Initiation Notice,* 76 FR at 70963.

[84] *See* SAA at 870.

[85] *See id.*

[86] *See id.*

[87] *See* Wuxi Suntech and Trina Solar Analysis Memoranda.

[88] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 71 FR 77373, 77377 (December 26, 2006), unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 72 FR 19690 (April 19, 2007).

[89] *See* Memorandum from Jeff Pedersen to the File, ''Calculation of the Preliminary Margin for Separate Rate Recipients,'' dated May 16, 2012.

[90] *See, e.g., Carbon and Alloy Steel Wire Rod From Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review,* 72 FR 62824 (November 7, 2007), and accompanying Issue and Decision Memorandum at Comment 1; *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Turkey,* 65 FR 15123 (March 21, 2000), and accompanying Issues and Decision Memorandum at Date of Sale, Comment 1.

showing changes in contract prices do not show changes in prices but consist of amendments to sales contracts that establish new prices. According to Petitioner, these are separate sales agreements that firmly establish all material terms of sale.

The relevant question in considering whether contract date or purchase order date better reflects the date on which the exporter or producer established the material terms of sale, and thus is the appropriate date of sale, is whether the material terms of sale were subject to change on the contract date or purchase order date. The date of sale is the date when the material terms of sale are established and final—that is no longer subject to change.[91] Wuxi Suntech and Trina Solar provided evidence that the material terms of contracts and purchase orders can and do change up until issuance of the commercial invoice.[92]

In *Allied Tube & Conduit Corp. v. United States,* the U.S. Court of International Trade noted that a ''party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to 'satisfy' the Department that 'a different date better reflects the date on which the exporter or producer establishes the material terms of sale.' '' [93] After examining the record, the Department has determined that there is insufficient evidence demonstrating that a date other than invoice date better reflects that date on which the material terms of sale were established. Therefore, the Department has relied upon the earlier of commercial invoice date, or shipment date as the date of sale.

Fair Value Comparisons

In accordance with section 777A(d)(1) of the Act, to determine whether the mandatory respondents sold merchandise under consideration to the United States at less than fair value during the POI, we compared EP and CEP of the sales to NV, as described in the ''Constructed Export Price,'' ''Export Price,'' and ''Normal Value'' sections of this notice.

U.S. Price

Constructed Export Price

In accordance with section 772(b) of the Act, CEP is ''the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d).'' Wuxi Suntech and Trina Solar reported that during the POI, they made CEP sales through their respective U.S. affiliates. In accordance with section 772(b) of the Act, we calculated a CEP for Wuxi Suntech's and Trina Solar's U.S. sales where the merchandise subject to this investigation was sold by the U.S. affiliates on behalf of the respondents to unaffiliated purchasers.

We calculated CEP for Wuxi Suntech and Trina Solar based on delivered prices to unaffiliated purchasers in the United States. We reduced the U.S. sales price by discounts and rebates. We also made deductions from the U.S. sales price, where applicable, for movement expenses in accordance with section 772(c)(2)(A) of the Act. The movement expenses included expenses such as inland freight from the plant to the port of exportation, brokerage and handling incurred in the country of export, international freight, marine insurance, U.S. duties, U.S. inland freight, U.S. inland freight, and other U.S. transportation and warehouse costs. In accordance with section 772(d)(1) of the Act, we also deducted from the U.S. price, direct and indirect selling expenses, credit, expenses, and inventory carrying costs, all of which relate to commercial activity in the United States. Where applicable, we reduced movement expenses by freight. We also adjusted U.S. price by interest revenue and insurance revenue. Finally, we deducted CEP profit, in accordance with sections 772(d)(3) and 772(f) of the Act.

Export Price

In accordance with section 772(a) of the Act, we calculated an EP for certain U.S. sales reported by Wuxi Suntech and Trina Solar. We calculated EP based on the packed prices at which merchandise under consideration was sold to unaffiliated purchasers in the United States, or sold for exportation to the United States. We made deductions from U.S. price for movement expenses, as appropriate (*e.g.,* foreign inland freight from the plant to the port of exportation, domestic brokerage, international freight to the port of importation), in accordance with section 772(c)(2)(A) of the Act. Where foreign inland freight or foreign brokerage and handling fees were provided by PRC service providers or paid for in renminbi, we based those charges on surrogate value rates.[94] Where applicable, we also adjusted U.S. price by the value of certain materials provided free of charge.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.[95] Thus, we calculated NV based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and section 351.408(c) of the Department's regulations. Under section 773(c)(3) of the Act, FOPs include, but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs.[96]

Factor Valuation Methodology

In accordance with section 773(c) of the Act, we calculated NV based on FOP data reported by the individually examined respondents for the POI. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available surrogate values (except as discussed below). In selecting the surrogate values, we considered among other factors, the quality, specificity, and contemporaneity of the data.[97] As

[91] *See PSF Preliminary Determination,* 71 FR 77377, unchanged in *PSF Final Determination.*

[92] *See* Trina Solar's February 13, 2012 Supplemental Response at Exhibits SA–2 and SA–7. *See also* Trina Solar's April 2, 2012 Supplemental Response at Exhibit 2SC–3. *See* Wuxi Suntech's March 21, 2012 supplemental questionnaire response at 8–11 and Exhibits 3–X and 3–Y.

[93] *See Allied Tube & Conduit Corp. v. United States,* 132 F. Supp. 2d 1087, 1090 (CIT 2001).

[94] *See* ''Factor Valuation'' section below for further discussion of surrogate value rates.

[95] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products From the People's Republic of China,* 71 FR 19695, 19703 (April 17, 2006), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China,* 71 FR 53079 (September 8, 2006).

[96] *See* section 773(c)(3)(A)–(D) of the Act.

[97] *See, e.g., Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of*

Continued

appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added a surrogate freight cost to surrogate input values using the shorter of the reported distance from the domestic supplier to the respondent's factory or the distance from the nearest seaport to the respondent's factory where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States,* 117 F.3d 1401, 1407–08 (Fed. Cir. 1997). A detailed description of all surrogate values used for Wuxi Suntech and Trina Solar can be found in the factor valuation memorandum.[98]

For the preliminary determination, except as noted below, we used Thai import data, as reported by the Thai Customs Department and published by GTA, and other publicly available sources from Thailand in order to calculate surrogate values for Wuxi Suntech's and Trina Solar's FOPs (*e.g.,* direct materials, packing materials) and certain movement expenses. In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, surrogate values which are non-export average values, contemporaneous with, or closest in time to, the POI, product-specific, and tax-exclusive.[99] The record shows that Thai import data obtained through GTA, as well as data used from other Thai sources are product-specific, tax-exclusive, and generally contemporaneous with the POI.[100] In those instances where we could not obtain publicly available information contemporaneous with the POI with which to value FOPs, we adjusted the surrogate values using, where appropriate, the Thai Consumer Price Indexes as published in the IMF's *International Financial Statistics.*

In calculating Thai import-based per-unit surrogate values, we have disregarded import prices that we have reason to believe or suspect may be subsidized. Guided by the legislative history, it is the Department's practice not to conduct a formal investigation to ensure that such prices are not subsidized.[101] Rather, the Department bases its decision on information that is available to it at the time it makes its determination.[102] We have reason to believe or suspect that prices of inputs from India, Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports from these countries to all markets may be subsidized.[103] Therefore, we have not used prices from these countries in calculating Thailand's import-based surrogate values.

Additionally, in calculating Thailand's import-based per-unit surrogate values, we disregarded prices from NME countries. Finally, we excluded from our calculation of Thailand's import-based per-unit surrogate values imports that were labeled as originating from an ''unspecified'' country because the Department could not be certain that they were not from either an NME country or a country with general export subsidies.[104]

To value polysilicon, we used world market prices from Photon Consulting and Energy Trend. We did not inflate the prices since they are contemporaneous with the POI.[105]

Pursuant to section 351.408(c)(1) of the Department's regulations, when a respondent sources inputs from an ME supplier in meaningful quantities (*i.e.,* not insignificant quantities) and pays in an ME currency, the Department uses the actual price paid by the respondent to value those inputs, except when prices may have been distorted by findings of dumping in the PRC and/or subsidies.[106] Where the Department finds ME purchases to be of significant quantities (*i.e.,* 33 percent or more), in accordance with our statement of policy as outlined in *Antidumping Methodologies: Market Economy Inputs,*[107] the Department uses the actual purchase prices to value the inputs. Where the quantity of the reported input purchased from ME suppliers is below 33 percent of the total volume of the input purchased from all sources during the POI, and where otherwise valid, the Department weight-averages the ME input's purchase price with the appropriate surrogate value for the input according to their respective shares of the reported total volume of purchases.[108]

Wuxi Suntech and Trina Solar claimed that certain of their reported material inputs were sourced from an ME country and paid for in ME currencies. Information reported by Wuxi Suntech and Trina Solar demonstrates that for some of the inputs sourced from an ME country and paid

Critical Circumstances, 73 FR 40485 (July 15, 2008), and accompanying Issues and Decision Memorandum at Comment 9.

[98] *See* Memorandum from Jeff Pedersen to The File regarding, ''Antidumping Duty Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Factor Valuation Memorandum'' dated May 16, 2012 (''Factor Valuation Memorandum'').

[99] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam,* 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam,* 69 FR 71005 (December 8, 2004).

[100] *See* Factor Valuation Memorandum.

[101] *See* Omnibus Trade and Competitiveness Act of 1988, Conference Report, H.R. Rep. 100–576 at 590 (1988); *see also Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 30758, 30763 (June 4, 2007) unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 60632 (October 25, 2007).

[102] *See Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value,* 73 FR 24552, 24559 (May 5, 2008), unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 55039 (September 24, 2008).

[103] *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China,* 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 7; *see also Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order,* 75 FR 13257 (March 19, 2010), and accompanying Issues and Decision Memorandum at pages 4–5; *Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review,* 70 FR 45692 (August 8, 2005), and accompanying Issues and Decision Memorandum at 4; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review,* 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at 17, 19–20; *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand,* 66 FR 50410 (October 3, 2001), and accompanying Issues and Decision Memorandum at II. Programs Determined to Confer Subsidies.

[104] *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates From the People's Republic of China,* 69 FR 75294, 75301 (December 16, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China,* 70 FR 24502 (May 10, 2005)

[105] *See* Factor Valuation Memorandum at Attachment XII.

[106] *See, e.g., Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27366 (May 19, 1997).

[107] *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments,* 71 FR 61716, 61717–61718 (October 19, 2006) (''*Antidumping Methodologies: Market Economy Inputs*'').

[108] *See Antidumping Methodologies: Market Economy Inputs,* 71 FR at 61718.

for in ME currencies the input was purchased in significant quantities (*i.e.,* 33 percent or more) from ME suppliers; hence, the Department used each respondent's actual ME purchase prices to value those inputs.[109] Where appropriate, freight expenses were added to the ME prices of the inputs.

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME AD proceedings.[110] In *Labor Methodologies,* the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (''ILO'') Yearbook of Labor Statistics (''Yearbook'').

The Department valued labor using the methodology described in *Labor Methodologies.* Specifically, to value the respondents' labor the Department relied on data reported by Thailand to the ILO in Chapter 6A of the Yearbook for the total manufacturing wage data. Although the Department found that the two-digit description under ISIC–Revision 3.1 (''Manufacture of Machinery and Equipment NEC'') is the best available information on the record with which to value labor because it is specific to the industry being examined, and is therefore derived from industries that produce comparable merchandise, Thailand has not reported data specific to the two-digit description since 2000. However, Thailand did report total manufacturing wage data in 2005. Accordingly, relying on Chapter 6A of the Yearbook, the Department calculated the labor value using total labor data reported by Thailand to the ILO in 2005, in accordance with section 773(c)(4) of the Act. Because these rates were in effect before the POI, we are adjusting the average value for inflation. A more detailed description of the wage rate calculation methodology is provided in the Factor Valuation Memorandum.

The ILO data from Chapter 6A of the Yearbook, which was used to value labor, reflects all costs related to labor, including wages, and indirect labor costs such as benefits, housing, and training. The financial statements used to calculate the surrogate financial ratios do not include itemized details regarding the indirect labor costs incurred. Therefore, the Department has not made adjustments to the surrogate financial ratios.

Because water was used by the respondents in the production of solar cells, the Department considers water to be a direct material input rather than overhead.[111] We valued water using data from the Metropolitan Waterworks Authority as reported by the Thailand Board of Investment in its 2011 publication *Costs of Doing Business in Thailand.* We did not inflate this rate since it is contemporaneous with the POI.[112]

We valued truck freight using Thai data published in the World Bank publication, *Doing Business in Thailand.* We did not inflate this rate since it is contemporaneous with the POI.[113] We were unable to identify a surrogate value explicitly for inland water freight in Thailand or any other country on the surrogate country list. Thus, we valued inland water freight using the same surrogate value used for truck freight.

We valued ocean freight using rates from the Web site *http://www.apx-ocean-freight.com/,* which lists international ocean freight rates offered by APX Ocean Freight Forwarder (''APX''). The APX database is a web-based service which publishes the ocean freight rates of numerous carriers. These rates are publicly available and cover a wide range of shipping rates which are reported on a daily basis.

We valued marine insurance using a marine insurance rate offered by RJG Consultants. RJG Consultants is an ME provider of marine insurance. The rate is a percentage of the value of the shipment; thus we did not inflate or deflate the rate.

We valued brokerage and handling using a price list for export procedures necessary to export a standardized cargo of goods in Thailand in a 20-foot container. The price list was published in the World Bank publication, *Doing Business in Thailand.* We did not inflate this rate since it is contemporaneous with the POI.[114]

We valued air freight using the rates published on the UPS Web site: *http://www.ups.com.* These rates are publicly available and cover a wide range of air routes which are reported on a daily basis.

To value factory overhead, selling, general, and administrative expenses, and profit, we used audited financial statements from Team Precision Public Ltd., Hana Microelectronics Co., Ltd., and KCE Electronics Public Company Limited, producers of comparable merchandise in Thailand. These financial statements cover the fiscal year ending December 2011 and, therefore, are contemporaneous.

Currency Conversion

Where necessary, we made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information submitted by Wuxi Suntech and Trina Solar.

Combination Rates

In the *Initiation Notice,* the Department stated that it would calculate combination rates for the respondents that are eligible for a separate rate in this investigation.[115] This practice is described in Policy Bulletin 05.1.[116]

Preliminary Determination

The weighted-average dumping margins are as follows:

[109] *See id. See also* Wuxi Suntech and Trina Solar Analysis Memoranda.

[110] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor,* 76 FR 36092 (June 21, 2011) (''*Labor Methodologies*'').

[111] *See Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings From the People's Republic of China,* 68 FR 61395 (October 28, 2003) and accompanying Issues and Decision Memorandum at Comment 11.

[112] *See* Factor Valuation Memorandum at Attachments VI and VII.

[113] *See* Factor Valuation Memorandum at Attachment VII.

[114] *See* Factor Valuation Memorandum at Attachments VI and VII.

[115] *See Initiation Notice,* 76 FR at 70964.

[116] *See* the Import Administration's Policy Bulletin No. 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' (April 5, 2005) (''Policy Bulletin 05.1''), available on the Department's Web site at *http://ia.ita.doc.gov/policy/bull05–1.pdf.*

Exporter	Producer	Weighted-average percent margin
Changzhou Trina Solar Energy Co., Ltd. and Trina Solar (Changzhou) Science & Technology Co., Ltd.	Changzhou Trina Solar Energy Co., Ltd.	31.14
	Trina Solar (Changzhou) Science & Technology Co., Ltd.	
Wuxi Suntech Power Co., Ltd., Luoyang Suntech Power Co., Ltd., Suntech Power Co., Ltd. and Wuxi Sun-shine Power Co., Ltd.	Wuxi Suntech Power Co., Ltd.	31.22
	Luoyang Suntech Power Co., Ltd.	
	Suntech Power Co., Ltd.	
	Wuxi Sun-shine Power Co., Ltd.	
Baoding Tianwei Yingli New Energy Resources Co., Ltd.	Baoding Tianwei Yingli New Energy Resources Co., Ltd.	31.18
	Yingli Energy (China) Company Limited.	
Tianwei New Energy (Chengdu) PV Module Co., Ltd.	Tianwei New Energy (Chengdu) PV Module Co., Ltd.	31.18
Canadian Solar International Limited	Canadian Solar Manufacturing (Changshu) Inc.	31.18
	Canadian Solar Manufacturing (Luoyang) Inc.	
Canadian Solar Manufacturing (Changshu) Inc.	Canadian Solar Manufacturing (Changshu), Inc.	31.18
Canadian Solar Manufacturing (Luoyang) Inc.	Canadian Solar Manufacturing (Luoyang), Inc.	31.18
Hanwha Solarone (Qidong) Co., Ltd.	Hanwha Solarone (Qidong) Co., Ltd.	31.18
CEEG (Shanghai) Solar Science Technology Co., Ltd.	CEEG (Shanghai) Solar Science Technology Co., Ltd.	31.18
	CEEG Nanjing Renewable Energy Co., Ltd.	
CEEG Nanjing Renewable Energy Co., Ltd.	CEEG Nanjing Renewable Energy Co., Ltd.	31.18
Jiawei Solarchina Co., Ltd.	Jiawei Solarchina (Shenzhen) Co., Ltd.	31.18
Yingli Energy (China) Company Limited	Yingli Energy (China) Company Limited	31.18
	Baoding Tianwei Yingli New Energy Resources Co., Ltd.	
LDK Solar Hi-tech (Nanchang) Co., Ltd.	LDK Solar Hi-tech (Nanchang) Co., Ltd.	31.18
LDK Solar Hi-tech (Suzhou) Co., Ltd.	LDK Solar Hi-tech (Suzhou) Co., Ltd.	31.18
Jiawei Solarchina (Shenzhen) Co., Ltd.	Jiawei Solarchina (Shenzhen) Co., Ltd.	31.18
Changzhou NESL Solartech Co., Ltd.	Changzhou NESL Solartech Co., Ltd.	31.18
China Sunergy (Nanjing) Co., Ltd.	China Sunergy (Nanjing) Co., Ltd.	31.18
Chint Solar (Zhejiang) Co., Ltd.	Chint Solar (Zhejiang) Co., Ltd.	31.18
Suzhou Shenglong PV–Tech Co., Ltd.	Suzhou Shenglong PV–TECH Co., Ltd.	31.18
tenKsolar (Shanghai) Co., Ltd.	tenKsolar (Shanghai) Co., Ltd.	31.18
Upsolar Group, Co., Ltd.	HC Solar Power Co., Ltd.	31.18
	Zhiheng Solar Inc.	
	Zhejiang Leye Photovoltaic Science & Technology Co., Ltd.	
	Tianwei New Energy (Chengdu) PV Module Co., Ltd.	
	Zhejiang ZG–Cells Co., Ltd.	
	Zhejiang Xinshun Guangfu Science and Technology Co., Ltd.	
	Zhejiang Jiutai New Energy Co., Ltd.	
Wanxiang Import & Export Co., Ltd.	Zhejiang Wanxiang Solar Co., Ltd.	31.18
Jinko Solar Import and Export Co., Ltd.	Jinko Solar Co., Ltd.	31.18
Jinko Solar International Limited	Jinko Solar Co., Ltd.	31.18
CNPV Dongying Solar Power Co., Ltd.	CNPV Dongying Solar Power Co., Ltd.	31.18
CSG PVTech Co., Ltd.	CSG PVTech Co., Ltd.	31.18
Delsolar Co., Ltd.	Delsolar Co., Ltd.	31.18
Dongfang Electric (Yixing) MAGI Solar Power Technology Co., Ltd.	Dongfang Electric (Yixing) MAGI Solar Power Technology Co., Ltd.	31.18
Eoplly New Energy Technology Co., Ltd.	Eoplly New Energy Technology Co., Ltd.	31.18
ERA Solar Co., Ltd.	ERA Solar Co., Ltd.	31.18
ET Solar Energy Limited	ET Solar Industry Limited	31.18
Hangzhou Zhejiang University Sunny Energy Science and Technology Co., Ltd.	Hangzhou Zhejiang University Sunny Energy Science and Technology Co., Ltd.	31.18
Himin Clean Energy Holdings Co., Ltd.	Himin Clean Energy Holdings Co., Ltd.	31.18
JA Solar Technology Yangzhou Co., Ltd.	JingAo Solar Co., Ltd.	31.18
Jetion Solar (China) Co., Ltd.	Jetion Solar (China) Co., Ltd.	31.18
Jiangsu Green Power PV Co., Ltd.	Jiangsu Green Power PV Co., Ltd.	31.18
Jiangsu Sunlink PV Technology Co., Ltd.	Jiangsu Sunlink PV Technology Co., Ltd.	31.18
JingAo Solar Co., Ltd.	JingAo Solar Co., Ltd.	31.18
Konca Solar Cell Co., Ltd.	Konca Solar Cell Co., Ltd.	31.18
Leye Photovoltaic Co., Ltd.	Leye Photovoltaic Co., Ltd.	31.18
Lightway Green New Energy Co., Ltd.	Lightway Green New Energy Co., Ltd.	31.18
Motech (Suzhou) Renewable Energy Co., Ltd.	Motech (Suzhou) Renewable Energy Co., Ltd.	31.18
Ningbo ETDZ Holdings, Ltd.	Hangzhou Zhejiang University Sunny Energy Science and Technology Co., Ltd.	31.18
Ningbo Komaes Solar Technology Co., Ltd.	Ningbo Komaes Solar Technology Co., Ltd.	31.18
Ningbo Qixin Solar Electrical Appliance Co., Ltd.	Ningbo Qixin Solar Electrical Appliance Co., Ltd.	31.18
Ningbo Ulica Solar Science & Technology Co., Ltd.	Ningbo Ulica Solar Science & Technology Co., Ltd.	31.18
Perlight Solar Co., Ltd.	Perlight Solar Co., Ltd.	31.18
Risen Energy Co., Ltd.	Risen Energy Co., Ltd.	31.18
Shanghai BYD Company Limited	Shanghai BYD Company Limited	31.18
Shanghai JA Solar Technology Co., Ltd.	Shanghai JA Solar Technology Co., Ltd.	31.18
Shanghai Solar Energy Science & Technology Co., Ltd.	Shanghai Solar Energy Science & Technology Co., Ltd.	31.18
Shenzhen Topray Solar Co., Ltd.	Shenzhen Topray Solar Co., Ltd.	31.18

Exporter	Producer	Weighted-average percent margin
Solarbest Energy-Tech (Zhejiang) Co., Ltd.	Solarbest Energy-Tech (Zhejiang) Co., Ltd.	31.18
Sopray Energy Co., Ltd.	Sopray Energy Co., Ltd.	31.18
Sumec Hardware & Tools Co., Ltd.	Phono Solar Technology Co., Ltd.	31.18
Sun Earth Solar Power Co., Ltd.	Sun Earth Solar Power Co., Ltd.	31.18
Yuhuan Sinosola Science & Technology Co., Ltd.	Yuhuan Sinosola Science & Technology Co., Ltd.	31.18
Yuhuan Solar Energy Source Co., Ltd.	Yuhuan Solar Energy Source Co., Ltd.	31.18
Zhejiang Jiutai New Energy Co., Ltd.	Zhejiang Topoint Photovoltaic Co., Ltd.	31.18
Zhejiang Shuqimeng Photovoltaic Technology Co., Ltd.	Zhejiang Shuqimeng Photovoltaic Technology Co., Ltd.	31.18
Zhejiang Sunflower Light Energy Science & Technology Limited Liability Company.	Zhejiang Sunflower Light Energy Science & Technology Limited Liability Company.	31.18
PRC–Wide Rate		249.96

Disclosure

We will disclose to parties the calculations performed in this investigation within five days of the date of pub'lication of this notice in accordance with section 351.224(b) of the Department's regulations.

Suspension of Liquidation

As noted above, the Department found that critical circumstances exist with respect to imports of merchandise under consideration from Wuxi Suntech, Trina Solar, the SR Recipients, and the PRC-wide entity. Therefore, in accordance with section 733(e)(2) of the Act, we will instruct U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all entries of merchandise under consideration from Wuxi Suntech, Trina Solar, the SR Recipients, and the PRC-wide entity that are entered, or withdrawn from warehouse, for consumption on or after the date 90 days prior to the date of publication of this notice in the **Federal Register** and require a cash deposit or bond for such entries as noted below.

We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which NV exceeds U.S. price, adjusted where appropriate for export subsidies, as follows: (1) The rate for the exporter/producer combinations listed in the table above will be the rate we have determined in this preliminary determination; (2) for all PRC exporters of merchandise under consideration which have not received their own rate, the cash-deposit rate will be the PRC-wide rate; and (3) for all non-PRC exporters of merchandise under consideration which have not received their own rate, the cash-deposit rate will be the rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter.

If importers are attempting to import solar panels/modules with solar cells produced in the PRC from third-countries without third-country case numbers related to this order, the importers should contact CBP Headquarters immediately.

In the companion CVD investigation, the Department preliminarily determined that the products under investigation exported by Trina Solar benefitted from an export subsidy.[117] Therefore, for merchandise under consideration exported by the Trina Solar, we will instruct CBP to reduce Trina Solar's cash deposit rate by the export subsidy rate determined for Trina Solar. Because the ''all-others'' rate in the companion CVD investigation included an export subsidy rate of less than 0.005 percent, we have not adjusted the separate-rate companies' cash deposit rate for export subsidies. None of the separate rate companies in the instant investigation were selected as respondents in the CVD investigation. These cash deposit instructions will remain in effect until further notice.

Certification Requirements

As noted above, the Department has clarified the scope of both the AD and CVD investigations of solar cells by stating that modules, laminates, and panels produced in a third-country from solar cells produced in the PRC are covered by the investigations; however, modules, laminates, and panels produced in the PRC from solar cells produced in a third-country are not covered by the investigations. If an importer imports solar panels/modules that it claims do not contain solar cells that were produced in the PRC, the importer is required to maintain the importer certification in the attachment to this notice. The importer and exporter are also required to maintain the exporter certification in the attachment to this notice if the exporter of the panels/modules for which the importer is making the claim is located in the PRC. We note that while importers and PRC-exporters will be required to maintain the aforementioned certifications and documentation, they will not have to provide this information to CBP as part of the entry documents, unless the certification or documentation is specifically requested by CBP.

If it is determined that the certification or documentation requirements noted in the certification have not been met, the Department intends to instruct CBP to suspend all unliquidated entries for which these requirements were not met and require the posting of a cash deposit or bond on those entries equal to the PRC-wide rate in effect at the time of the entry. If a solar panel/module contains some solar cells produced in the PRC, but the importer is unable or unwilling to identify the total value of the panel/module subject to the order, the Department intends to instruct CBP to suspend all unliquidated entries for which the importer has failed to supply this information and require the posting of a cash deposit or bond on the total entered value of the panel/module equal to the PRC-wide rate in effect at the time of the entry.[118]

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at LTFV. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of solar cells, or sales (or the likelihood of sales) for importation, of the merchandise under consideration

[117] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination,* 77 FR 17439, 17453–17454 (March 26, 2012).

[118] *See* memorandum from Maisha Cryor to Christian Marsh regarding ''Crystalline Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Third-Country Case Numbers and Certifications'', dated concurrently with this notice.

within 45 days of our final determination.

Public Comment

Case briefs or other written comments may be submitted to the Department no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline for case briefs.[119] A table of contents, list of authorities used, and an executive summary of issues should accompany any briefs submitted to the Department. The executive summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Interested parties, who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, filed electronically using Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5:00 p.m. Eastern Standard Time, within 30 days after the date of publication of this notice.[120] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we intend to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on March 29, 2012 and March 30, 2012, we received requests from Wuxi Suntech and Trina Solar, respectively, that the Department postpone its final determination by 60 days.[121] Additionally, consistent with section 351.210(e)(2) of the Department's regulations, Wuxi Suntech and Trina Solar requested that the Department extend the application of the provisional measures from a 4-month period to a 6-month period. In accordance with section 735(a) of the Act and section 351.210(b) of the Department's regulations, we are granting the requests and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register** because: (1) Our preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the merchandise under consideration; and (3) no compelling reasons for denial exist. Suspension of liquidation will be extended accordingly. We are further extending the application of the provisional measures from a four-month period to a six-month period.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: May 16, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

Attachment I

Importer Certification

I hereby certify that I am an official of *insert name of company importing solar panels/modules,* that I have knowledge of the facts regarding the importation of the solar panels/modules or other products containing solar panels/modules that entered under entry number(s) *insert entry number(s) covered by the certification,* and *that these solar panels/modules do not contain solar cells produced in the People's Republic of China.* By signing this certificate, I also hereby certify that *insert name of company importing solar panels/modules* maintains sufficient documentation supporting this certification for all solar cells used to produce the solar panels/modules imported under the above-referenced entry number(s). I understand that agents of the importer, such as brokers, are not permitted to make this certification. Also, I am aware that records pertaining to this certification may be requested by CBP. I understand that this certification should be completed at the time of the entry. Also, I understand that failure to maintain the required certification or failure to substantiate the claim that the panels/modules do not contain solar cells produced in the People's Republic of China will result in suspension of all unliquidated entries for which these requirements were not met and the requirement that the importer post an AD cash deposit or, where applicable, a bond, on those entries equal to the PRC-wide rate in effect at the time of the entry and a CVD cash deposit, or where applicable, a bond rate equal to the all-others rate in effect at the time of the entry.

Name of Company Official

Title

Date

Exporter Certification

I hereby certify that I am an official of *insert name of company exporting solar panels/modules,* that I have knowledge of the facts regarding the exportation of the solar panels/modules or other products containing solar panels/modules identified below, and *that these solar panels/modules do not contain solar cells produced in the People's Republic of China.* By signing this certificate, I also hereby certify that *insert name of company exporting solar panels/modules* maintains sufficient documentation supporting this certification for all solar cells used to produce the solar panels/modules identified below. I am aware that records pertaining to this certification may be subject to verification by Department of Commerce officials and I consent to verification with respect to this certification and these records. I understand that this certification should be completed at the time of shipment. I also understand that failure to maintain the required certification or failure to substantiate the claim that the panels/modules do not contain solar cells produced in the People's Republic of China will result in suspension of all unliquidated entries for which these requirements were not met and the requirement that the importer post an AD cash deposit or, where applicable, a bond, on those entries equal to the PRC-wide rate in effect at the time of the entry and a CVD cash deposit, or where applicable, a bond rate equal to the all-others rate in effect at the time of the entry.

The exports covered by this certification are *insert invoice numbers, purchase order numbers, export documentation, etc. to identify the exports covered by the certification.*

Name of Company Official

Title

Date

[FR Doc. 2012–12798 Filed 5–24–12; 8:45 am]

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[119] *See* section 351.309(c)(1)(i) and (d) of the Department's regulations.

[120] *See* section 351.310(c) of the Department's regulations.

[121] *See* Letter from Wuxi Suntech to the Department, regarding ''Crystalline Silicon Photovoltaic Cells from the People's Republic of China: Request to Postpone Final Determination,'' dated March 29, 2012; *see also* Letter from Trina Solar to the Department, regarding ''Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China; Extend Final Determination,'' dated March 30, 2012.