Slip Op. 26-135

UNITED STATES COURT OF INTERNATIONAL TRADE

AMERICAN ALLIANCE FOR SOLAR MANUFACTURING TRADE COMMITTEE,

Plaintiff,

v.

UNITED STATES,

Defendant,

and

BYD AMERICA LLC, CANADIAN SOLAR INTERNATIONAL LIMITED, CANADIAN SOLAR MANUFACTURING (THAILAND) CO., LTD., CANADIAN SOLAR US MODULE MANUFACTURING CORPORATION, RUNERGY PV TECHNOLOGY (THAILAND) CO., LTD., RUNERGY USA TRADING LLC, RUNERGY ALABAMA INC., TRINA SOLAR U.S., INC., AND TRINA SOLAR SCIENCE AND TECHNOLOGY (THAILAND) LTD.,

Defendant-Intervenors.

Before: Mark A. Barnett, Chief Judge
Court No. 25-00163

OPINION

[Dismissing Plaintiff's case as moot.]

Dated: November 2, 2026

Timothy C. Brightbill, Laura El-Sabaawi, Stephanie M. Bell, Kimberly A. Reynolds, and Stephen A. Morrison, Wiley Rein LLP, of Washington, DC, for Plaintiff American Alliance for Solar Manufacturing Trade Committee.

Anthony C. Famiglietti, Attorney-Advisor, Office of the General Counsel, U.S. International Trade Commission, of Washington, DC, for Defendant United States. Also on the brief were Margaret D. Macdonald, General Counsel, and Karl von Schriltz, Assistant General Counsel for Litigation.

Craig A. Lewis, Nicholas W. Laneville, and Gregory M.A. Van Hawk, Hogan Lovells Cadwalader US LLP, of Washington, DC, for Defendant-Intervenor BYD America LLC.

Jonathan T. Stoel, Michael G. Jacobson, and Nicholas R. Sparks, Hogan Lovells Cadwalader US LLP, of Washington, DC, for Defendant-Intervenors Canadian Solar International Limited, Canadian Solar Manufacturing (Thailand) Co., Ltd., and Canadian Solar US Module Manufacturing Corporation.

Lian Yang, Elio Gonzalez, and Eric Xie, Alston & Bird, LLP, of Washington, DC, for Defendant-Intervenors Runergy PV Technology (Thailand) Co., Ltd., Runergy USA Trading LLC, and Runergy Alabama Inc.

Jonathan M. Freed, Didie Muller, Kenneth N. Hammer, and MacKensie R. Sugama, Trade Pacific PLLC, of Washington, DC, for Defendant-Intervenors Trina Solar U.S., Inc., and Trina Solar Science & Technology (Thailand) Ltd.

Barnett, Chief Judge: The matter before this court concerns final determinations by the U.S. International Trade Commission ("ITC" or "the Commission") that a domestic industry is threatened with material injury by reason of imports of crystalline silicon photovoltaic cells, whether or not assembled into modules ("CSPV products"), from Cambodia and Thailand.[1] *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From Cambodia, Malay., Thai., and Viet.*, 90 Fed. Reg. 25,075 (ITC June 13, 2025) ("*Final Determinations*").[2]

[1] As part of this investigation, the ITC found material injury by reason of imports of CSPV products from Malaysia and Vietnam. Those determinations are not challenged.
[2] Defendant filed the corrected confidential administrative record at ECF No. 59, and the corrected public administrative record at ECF No. 60. The parties also submitted joint appendices containing record documents cited in their briefs. *See* Public J.A., ECF No. 79; Confid. J.A., ECF No. 78. The Commission's staff report and views are contained in the administrative record. *See Crystalline Silicon Photovoltaic Cells, Whether or Not*

The ITC made affirmative determinations based on threat of material injury to the U.S. solar industry with respect to imports from these two countries; Plaintiff American Alliance for Solar Manufacturing Trade Committee ("the Committee" on behalf of the domestic industry) challenges the Commission's determinations that the industry was not materially injured by reason of these same imports.[3] Whether the Commission makes an affirmative determination based on present material injury or based on threat of material injury impacts the date upon which the U.S. Department of Commerce ("Commerce") begins the suspension of liquidation pursuant to any antidumping ("AD") or countervailing duty ("CVD") order. Had the Commission made an affirmative determination of material injury, liquidation would have remained suspended, and antidumping or countervailing duties could be assessed on entries made on or after publication date of the preliminary determination, or up to 90 days prior to the preliminary determination in the event of a "critical circumstances" finding.[4] When, as

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Assembled Into Modules from Cambodia, Malay., Thai., and Viet., Inv. Nos. 701-TA-722-725 and 731-TA-1690-1693, USITC Pub. 5631 (June 2025) ("Views of the Commission"), ECF No. 33-1; Confid. Views of the Commission (June 12, 2025), ECF No. 32-1; Confid. Staff Report (May 7, 2025), ECF No. 32-2.

[3] In their briefing, the parties dispute whether the Commission properly found that subject imports from Cambodia and Thailand, respectively, did not exceed the negligibility threshold for purposes of its material injury analysis and that, therefore, the U.S. solar industry was not materially injured by reason of subject imports from those countries. *See* Corrected Confid. Mem. of P. & A. in Supp. of Pl. [the Comm.'s] Mot. for J. on the Agency R., ECF No. 56; Def. [ITC's] Confid. Mem. in Opp'n to Pl.'s Rule 56.2 Mot. for J. on the Agency R., ECF No. 61; Confid. Canadian Solar, Runergy, and Trina's Resp. to Pl.'s Mot. for J. on the Agency R., ECF No. 65; BYD Am. LLC's Mem. in Opp'n to Pl.'s Mot. for J. on the Agency R., ECF No. 67. The court does not reach these arguments because the case is moot.

[4] The date of the preliminary determination varies between the AD and CVD investigations. *See* 19 U.S.C. §§ 1671b(b)(1), 1673b(b)(1)(A). Generally, Commerce

here, the Commission finds a threat of material injury, only those entries that occur on or after the publication date of the Commission's final determination may remain suspended. As a consequence, following the Commission's *Final Determinations*, Commerce instructed U.S. Customs and Border Protection ("Customs" or "CBP") to lift the suspension of liquidation that was in effect for imports that entered prior to the Commission's determinations and to liquidate such entries without antidumping or countervailing duties. In other words, the potential impact of this challenge to the Commission's determinations is limited to the application of antidumping and countervailing duties to entries during a four-to-nine-month period prior to the Commission's determinations (i.e., entries for which the suspension of liquidation was lifted). As discussed herein, however, Customs has liquidated the entries that occurred during the period in question and, as a result, the court is not able to provide relief to the Plaintiff, even if it were to otherwise prevail on the merits. Plaintiff's case, therefore, must be dismissed as moot.

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will instruct CBP to suspend liquidation and collect cash deposits beginning on the date the preliminary determination is published in the Federal Register. *See id.* §§ 1671b(d)(1)–(2), 1673b(d)(1)–(2). However, if Commerce finds that critical circumstances exist, Commerce may instruct CBP to suspend liquidation and collect cash deposits retroactively, for 90 days or beginning on the date the initiation of the investigation was published, whichever is later. *See id.* §§ 1671b(e)(2), 1673b(e)(2). All references to the U.S. Code are to the 2024 edition. Throughout this opinion, the court cites the corresponding provisions relevant to both countervailing duties (19 U.S.C. §§ 1671–1671i) and antidumping duties (19 U.S.C. §§ 1673–1673i).

BACKGROUND

I. Legal Background

When a domestic industry files a petition with Commerce and the ITC, the agencies engage in a bifurcated investigative process. In its preliminary investigation, the ITC determines whether there is a reasonable indication of material injury or threat of injury to the domestic industry. If so, Commerce will then determine whether the subject imports are sold at less than fair value or the foreign government provided a countervailable subsidy. Upon making an affirmative preliminary determination, Commerce will order Customs to suspend the liquidation, and collect cash deposits of estimated duties, on entries of subject merchandise (and may do so for a retroactive period when the agency finds critical circumstances). *See* 19 U.S.C. §§ 1671b(d)(1)–(2), (e)(2), 1673b(d)(1)–(2), (e)(2). These so-called "provisional measures" offer a temporary remedy while the investigation proceeds.[5] If both Commerce and the ITC make affirmative final determinations, Commerce publishes an antidumping or countervailing duty order pursuant to 19 U.S.C. §§ 1671e(a) or 1673e(a).[6] Whether the duties will be applied only to merchandise entered after the date of publication of the ITC final determination, or also applied to the entries that were subject to the provisional

[5] Provisional measures may remain in effect for no more than four months from a CVD preliminary determination, and no more than six months from an AD preliminary determination (excluding any critical circumstances period that may be retroactively included). *See id.* §§ 1671b(d), 1673b(d).

[6] If the final determination by Commerce or the ITC is negative, the investigation is terminated and Commerce will instruct Customs to terminate the suspension of liquidation, release any bond or other security, and refund any cash deposit. *See id.* §§ 1671d(c)(2), 1673d(c)(2).

measures, depends on the nature of the injury identified by the ITC. *See id.* §§ 1671e(b), 1673e(b); *Wind Tower Trade Coal. v. United States*, 741 F.3d 89, 96–97 (Fed. Cir. 2014) (summarizing the effects of varying ITC injury determinations).

If the ITC finds present material injury or a threat of material injury which, but for the suspension of liquidation from the date of Commerce's preliminary determination, would have led to a finding of present material injury, the "General Rule" applies, and antidumping or countervailing duties may be imposed on the entries subject to the provisional measures ("provisional measures entries"). *See* 19 U.S.C. §§ 1671e(b)(1), 1673e(b)(1). Liquidation of those entries will remain suspended until the completion of an administrative review, if one is requested. *See id.* §§ 1671e(a), 1673e(a), 1675(a); *Am. Power Pull Corp. v. United States*, 39 CIT 1705, 1712, 121 F. Supp. 3d 1296, 1301 (2015) (citing *Ambassador Div. of Florsheim Shoe v. United States*, 748 F.2d 1560, 1565 (Fed. Cir. 1984)). However, if the ITC finds a threat of material injury, but does not find that there would be material injury but for the suspension of liquidation of the provisional measures entries, then the "Special Rule" applies,[7] and duties may be imposed only prospectively (i.e., upon entries made on or after the date of publication of the affirmative final determination by the Commission). *See* 19 U.S.C. §§ 1671e(b)(2), 1673e(b)(2). In such a case, Commerce instructs Customs to release any bond or other security and refund any cash deposit made on the provisional measures entries. *See id.*

[7] The Special Rule also applies if the ITC finds material retardation of the establishment of an industry in the United States. *See id.* §§ 1671e(b)(2), 1673e(b)(2).

II. Factual Background

On April 24, 2024, the Committee filed petitions with the Commission and Commerce, alleging material injury or threat of material injury to an industry in the United States by reason of dumping and subsidization of imports of CSPV products from Cambodia, Malaysia, Thailand, and Vietnam. *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From Cambodia, Malay., Thai., and Viet.*, 89 Fed. Reg. 34,268, 34,269 (ITC Apr. 30, 2024) (institution of AD and CVD investigations and scheduling of preliminary phase investigations).

On June 14, 2024, the Commission published its preliminary determinations that there was a reasonable indication that a U.S. industry is materially injured by reason of imports of CSPV products from Cambodia, Malaysia, Thailand, and Vietnam that are alleged to be sold in the United States at less than fair value and subsidized by the governments of Malaysia, Thailand, and Vietnam, and that there was a reasonable indication that a U.S. industry is threatened with material injury by reason of imports of CSPV products from Cambodia that are alleged to be subsidized by the government of Cambodia. *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From Cambodia, Malay., Thai., and Viet.*, 89 Fed. Reg. 50,633 (ITC June 14, 2024) (determinations).

For Cambodia and Thailand, Commerce issued affirmative preliminary determinations in the CVD investigations on October 4, 2024, and affirmative

preliminary determinations in the AD investigations on December 4, 2024.[8] *See, e.g.*, *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules From the Kingdom of Cambodia*, 89 Fed. Reg. 80,877 (Dep't Commerce Oct. 4, 2024) (preliminary affirmative CVD determination and alignment of final determination with final AD determination); *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From Cambodia*, 89 Fed. Reg. 96,226 (Dep't Commerce Dec. 4, 2024) (affirmative preliminary determination of sales at less than fair value, postponement of final determination, and extension of provisional measures). Commerce issued affirmative final determinations in all four investigations on April 25, 2025. *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules From Cambodia*, 90 Fed. Reg. 17,406 (Dep't Commerce Apr. 25, 2025) (final affirmative CVD determination); *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From Cambodia*, 90 Fed. Reg. 17,392 (Dep't Commerce Apr.

[8] While the preliminary determinations for Cambodia and Thailand were issued on the same date, Commerce ordered the suspension of liquidation to begin on different dates because, in the case of Thailand, Commerce preliminarily determined that critical circumstances existed with respect to imports from certain producers and exporters. *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From Thai.*, 89 Fed. Reg. 80,874 (Dep't Commerce Oct. 4, 2024) (preliminary affirmative CVD determination, preliminary affirmative critical circumstances determination, in part, and alignment of final determination with final AD determination); *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From Thai.*, 89 Fed. Reg. 96,214 (Dep't Commerce Dec. 4, 2024) (preliminary affirmative determination of sales at less-than-fair-value, affirmative determination of critical circumstances, postponement of final determination, and extension of provisional measures). These differences are not relevant to the issue before the court because Commerce ultimately instructed CBP to terminate the suspension of liquidation for all entries from Cambodia and Thailand that pre-dated publication of the *Final Determinations*.

25, 2025) (final affirmative determination of sales at less than fair value); *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From Thai.*, 90 Fed. Reg. 17,380 (Dep't Commerce Apr. 25, 2025) (final affirmative CVD determination and final affirmative determination of critical circumstances); *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From Thai.*, 90 Fed. Reg. 17,395 (Dep't Commerce Apr. 25, 2025) (final affirmative determination of sales at less-than-fair-value and final affirmative determination of critical circumstances).

On June 13, 2025, the Commission published its final determinations that a U.S. industry is threatened with material injury by reason of imports of CSPV products from Cambodia and Thailand, covered by Commerce's affirmative final determinations.[9] *See Final Determinations*.

On June 24, 2025, Commerce published the AD and CVD orders based on the affirmative final determinations by Commerce and the ITC. *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules From Cambodia, Malay., Thai., and the Socialist Republic of Viet.*, 90 Fed. Reg. 26,791, 26,792–93 (Dep't Commerce June 24, 2025) (CVD orders); *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules From Cambodia, Malay., Thai., and the*

[9] The Commission determined that the volume of subject imports from Cambodia and Thailand were negligible for purposes of present material injury but likely to imminently exceed the applicable negligibility thresholds for purposes of determining threat of material injury. Views of the Commission at 42, 46–48. Typically, the ITC will terminate an investigation when imports are negligible, *see* 19 U.S.C. §§ 1671d(b)(1), 1673d(b)(1), however, when there is the potential for the volume to imminently exceed the negligibility threshold, the Commission will consider the imports for the purposes of determining threat of material injury, *see id.* § 1677(24)(iv).

Socialist Republic of Viet., 90 Fed. Reg. 26,786, 26,787–88 (Dep't Commerce June 24, 2025) (AD orders).

Pursuant to the orders and in accordance with 19 U.S.C. §§ 1673e(b)(2) and 1671e(b)(2), Commerce issued instructions directing Customs to "terminate the suspension of liquidation for all shipments . . . that were entered, or withdrawn from warehouse, for consumption before 06/13/2025," and that these entries "should be liquidated without regard to . . . [AD/CVD] duties (i.e., return all cash deposits)." *See, e.g.*, Message 5183402 (July 2, 2025) (AD); Message 5183404 (July 2, 2025) (CVD).

On August 22, 2025, Plaintiff filed a complaint in this case, challenging the negligibility findings upon which the Commission's negative determinations of present material injury were based. *See* Compl., ECF No. 8. At no time during this litigation did Plaintiff move to enjoin the liquidation of the provisional measures entries.

The court convened a status conference on June 30, 2026, to discuss Plaintiffs' constitutional standing. *See* Status Conf., ECF No. 69. Following this conference, the court ordered Plaintiff to "address the legal and factual bases for . . . constitutional standing" in its reply brief. Order (June 30, 2026), ECF No. 70. Plaintiff offered several arguments for constitutional standing in its reply brief, *see* Confid. Reply Br. of Pl. [the Comm.] ("Pl.'s Reply"), ECF No. 73, which were opposed by Defendant and Defendant-Intervenors, *see* Def. [ITC's] Sur-Reply Regarding Standing in Opp'n to Rule 56.2 Mot. for J. on the Agency R. ("Def.'s Sur-Reply"), ECF No. 76; Def.-Ints.' Joint Sur-Reply to Pl.'s Mot. for J. on the Agency R. ("Def.-Ints.' Sur-Reply"), ECF No. 77.

JURISDICTION

Article III grants federal courts jurisdiction over "cases" and "controversies." U.S. Const. art. III, § 2; *see also Already, LLC v. Nike, Inc.*, 568 U.S. 85, 90 (2013). "A corollary to this case-or-controversy requirement is that an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed." *Life Sci. Logistics, LLC v. United States*, 172 F.4th 1357, 1362 (Fed. Cir. 2026) (quoting *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 71 (2013)). In other words, "a plaintiff must maintain a personal interest in the dispute" at all stages of the litigation. *Uzuegbunam v. Preczewski*, 592 U.S. 279, 282 (2021). "The doctrine of standing generally assesses whether that interest exists at the outset, while the doctrine of mootness considers whether it exists throughout the proceedings." *Id.* To establish standing, a plaintiff must have suffered an injury in fact that is fairly traceable to the challenged action of the defendant and likely to be redressed by a favorable decision. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). But "if in the course of litigation a court finds that it can no longer provide a plaintiff with any effectual relief, the case generally is moot." *Uzuegbunam*, 592 U.S. at 282.

DISCUSSION

Following the affirmative threat determinations by the Commission, Commerce instructed Customs to lift the suspension of liquidation on all entries during the provisional measures period and to liquidate such entries without regard to antidumping or countervailing duties. Plaintiff does not dispute that Customs effectuated those instructions. As a result, Plaintiff's case is moot because the court, in this case, may not

alter the status of the provisional measures entries that have been liquidated without antidumping or countervailing duties, even if Plaintiff were to otherwise prevail on the merits.

The court lacks jurisdiction to hear this case because the remedy sought by Plaintiff no longer offers "effectual relief," thus rendering the case moot. Even if Plaintiff were to obtain a favorable decision, namely an order from this court remanding the *Final Determinations* to the ITC, and this court were to sustain a remand redetermination finding present material injury, this course of action would have no effect on already-liquidated entries. Congress has stated that, when the court publishes a decision not in harmony with the original agency determination, only entries that occur after notice of that court decision, or earlier entries for which liquidation was enjoined pursuant to 19 U.S.C. § 1516a(c)(2), must be liquidated in accordance with the final court decision. *See* 19 U.S.C. § 1516a(e). Entries on or before the date of the publication of the court decision, if not enjoined, must be liquidated in accordance with the original agency determination. *See id.* § 1516a(c)(1). "As this court held in *Zenith Radio Corp. v. United States*, if there is no injunction, liquidation is automatic under 19 U.S.C. § 1516a(e) and § 1516a(c)(1), and any decision on the merits of a liquidation challenge after liquidation has taken place is without effect." *Yancheng Baolong Biochemical Prods. Co. v. United States*, 406 F.3d 1377, 1381 (Fed. Cir. 2005) (citing *Zenith Radio Corp. v. United States*, 710 F.2d 806, 810 (Fed. Cir. 1983)); *see also SKF USA, Inc. v. United States*, 512 F.3d 1326, 1328 (Fed. Cir. 2008) ("[O]nce liquidation occurs the trial

court is powerless to order the assessment of duties at any different rate." (citing same)).

Commerce instructed Customs to lift the suspension of liquidation and to liquidate the provisional measures entries in the AD/CVD investigations for Cambodia and Thailand without antidumping or countervailing duties in July and August of 2025. *See* Message 5183402; Message 5183404; Message 5216406 (Aug. 4, 2025) (AD); Message 5182401 (July 1, 2025) (CVD). Entries must be liquidated "within 6 months after receiving notice of the removal [of suspension] from [Commerce]," and any entry not so liquidated "shall be treated as having been liquidated at the rate of duty, value, quantity, and amount of duty asserted by the importer of record." 19 U.S.C. § 1504(d). The instructions that Commerce issued to Customs constituted an "unambiguous notice of the removal of the suspension of liquidation," *see Aspects Furniture Int'l, Inc. v. United States*, 42 F.4th 1366, 1371 (Fed. Cir. 2022), and over a year has passed since those instructions were issued. Plaintiff does not dispute that the provisional measures entries have either been liquidated or deemed liquidated.

Defendant argues that Plaintiff, "by neglecting to seek an injunction . . . lost the only remedy available to it when the entries that are the subject of its claims were liquidated." Def.'s Sur-Reply at 4. Plaintiff nevertheless maintains that it has constitutional standing regardless of whether the provisional measures entries have been liquidated based on the theory that the issue central to the plaintiff's challenge is "capable of repetition" but otherwise would evade review or on the theory that the challenged action has "collateral consequences that continue," notwithstanding

liquidation.[10] Pl.'s Reply at 3. The court now turns to these arguments for avoiding mootness.[11]

I. Capable of Repetition but Evading Review

A. Parties' Contentions

Plaintiff asserts that the ITC's use of "plug" questionnaire data[12] presents an issue that is "capable of repetition" but would evade review when there is an affirmative determination based on threat. Pl.'s Reply at 4. In support, Plaintiff relies upon *R-M Industries, Inc. v. United States*, 18 CIT 219, 848 F. Supp. 204 (1994). *See id.* at 3–4. There, the court held that the practice of two commissioners reaching an affirmative

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[10] Plaintiff relies on *Ames True Temper v. United States*, 34 CIT 321, 329, 700 F. Supp. 2d 1352, 1360 (2010), to argue that, because domestic interests are unable to challenge liquidation, the necessarily prospective relief that they seek is appropriate. *See* Pl.'s Reply at 5 n.1. However, the inability of domestic interested parties to challenge liquidation relates to the court's jurisdiction under 28 U.S.C. § 1581(a). In a § 1581(c) case, such as this one, domestic interested parties may seek injunctive relief to prevent the liquidation of entries. *See* 19 U.S.C. § 1516a(c)(2), (e); *Zenith Radio Corp.*, 710 F.2d at 810 ("Not even prospective relief will be available to Zenith for entries in the . . . review period once liquidation occurs."); *Int'l Bhd. of Elec. Workers v. United States*, 29 CIT 74, 75, 85 (2005) ("IBEW") (granting a preliminary injunction to domestic interested parties preventing liquidation of imports pending appeal of negative critical circumstances determination).

[11] Plaintiff suggests that "procedural harm may be sufficient" to satisfy the constitutional injury requirement, and that "a court remand order that requires the agency to follow its proper process . . . provides sufficient, concrete relief." Pl.'s Reply at 6–7. However, "a bare procedural violation alone may be insufficient to confer standing where the violation does not result in harm to the plaintiff." *Invenergy Renewables LLC v. United States*, 43 CIT __, __, 422 F. Supp. 3d 1255, 1272 (2019). And "[a] federal court is without power to decide moot questions or to give advisory opinions which cannot affect the rights of the litigants in the case before it." *St. Pierre v. United States*, 319 U.S. 41, 42 (1943) (per curiam).

[12] "Plug" questionnaire data refer to proprietary, Census-edited Customs records used to fill in questionnaire data for an importer that did not respond to the Commission's questionnaire. *See* Views of the Commission at 5 n.17, 45.

threat determination without first evaluating present material injury was reviewable because liquidation of the provisional measures entries would "continually moot[]" the question of whether there was present material injury. *R-M Indus.*, 18 CIT at 229, 848 F. Supp. at 212. Plaintiff argues that the Commission's use of plug questionnaire data should be reviewable because it is "capable of repetition[] yet would evade review if liquidation of entries were considered to moot the action." Pl.'s Reply at 4.

Defendant and Defendant-Intervenors argue that the Commission's use of plug questionnaire data does not satisfy the requirements for this exception to apply because Plaintiff could have requested an injunction, and Plaintiff has not established a reasonable expectation that it will face the Commission's use of plug questionnaire data again or that Plaintiff (or a litigant with proper standing) would be unable to challenge such action in the future. Def.'s Sur-Reply at 5; Def.-Ints.' Sur-Reply at 7, 8 n.3. They further argue that *R-M Industries* does not support Plaintiff's application of the "capable of repetition" exception to this case. Def.'s Sur-Reply at 6; Def.-Ints.' Sur-Reply at 8.

B. Analysis

Plaintiff has not established that the challenged action is one that is capable of repetition, yet evading review. An issue that "is capable of repetition but is also, because of time constraints, likely to evade judicial review" gives rise to "[a] well-settled exception to the mootness doctrine." *Life Sci. Logistics, LLC*, 172 F.4th at 1362 (citing *Kingdomware Techs., Inc. v. United States,* 579 U.S. 162, 169 (2016)). The exception applies when: "(1) the challenged action is in its duration too short to be fully litigated prior to cessation or expiration, and (2) there is a reasonable expectation that the same

complaining party will be subjected to the same action again." *Id.* at 1362 (quoting *United States v. Sanchez-Gomez,* 584 U.S. 381, 391 (2018)).

The exception does not apply here because the above criteria are not satisfied as to the challenged action, namely the Commission's use of plug questionnaire data. With respect to the first criterion, Plaintiff suggests that a threat determination forecloses the opportunity to address the challenged action. *See* Pl.'s Reply at 4. However, the Commission's use of plug questionnaire data is not guaranteed to result in a threat determination. No inherent relationship exists between use of plug questionnaire data and a threat finding such that this exception is required to address the practice.

Furthermore, even when the Commission has made a threat determination, a domestic party plaintiff could seek to enjoin the liquidation of entries when such liquidation would otherwise result in irreparable harm by mooting the challenge. In *IBEW*, the court granted the domestic interested parties' motion to enjoin liquidation of entries during the "critical circumstances period" (the 90-day period preceding the preliminary determination), pending resolution of the challenge to the negative final determination of critical circumstances. 29 CIT at 75, 85. If not enjoined, those entries during the critical circumstances period would have been liquidated without duties, mooting the challenge to the negative final determination of critical circumstances. *See id.* at 78. The court found that the reasoning of *Zenith* was relevant to the facts of *IBEW* because the critical circumstances determination affected only past entries from a discrete period that would "elude judicial review" after liquidation such that an injunction

would preserve "the only remedy available" as to those entries. *See id.* at 81.[13] Like the merchandise entered in the critical circumstances period in *IBEW,* the liquidation of the provisional measures entries here would allow the negative determination of *present* material injury by reason of the Commission's use of plug questionnaire data to elude judicial review because any change in the Commission's determination and corresponding court order sustaining that determination could not affect already-liquidated provisional measures entries.

This case is distinguishable from *R-M Industries*.[14] That case relied in part upon *Sandoz Chemicals Corp. v. United States*, 17 CIT 1061 (1993). *See R-M Indus.*, 18 CIT at 229, 848 F. Supp. at 212. But in *Sandoz*, the court did not find irreparable harm to enjoin liquidation of entries following a *negative* material injury determination because liquidation of those entries would not moot the challenge. *See* 17 CIT at 1063. The court held that "the mere fact of liquidation" was not enough to establish irreparable harm because the possibility of prospective relief, in the form of an AD or CVD order if the case results in an affirmative injury determination, remained available. *See id.*

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[13] In *Zenith,* the plaintiff requested an injunction to prevent liquidation of entries pending a challenge to an administrative review determination. 710 F.2d at 808. Such administrative reviews "focus on discrete periods of time, and affect finite numbers of entries." *IBEW*, 29 CIT at 79; *see also Am. Spring Wire Corp. v. United States,* 7 CIT 2, 4, 578 F. Supp. 1405, 1407 (1984) ("Section [1675] administrative reviews focus on a discrete time period . . . . [A]ll unliquidated entries for the period prior to the administrative review are liquidated in accordance with the agency's determination of dumping margins or subsidies found to exist for that period.").

[14] To the extent that *R-M Industries*, in dicta, suggested that the Commission's negative injury determination would foreclose a finding of irreparable harm necessary to obtain an injunction, it does not appear that the court accounted for the plaintiff's loss of justiciability as an irreparable harm and, therefore, the court declines to follow that case.

(citing *Am. Spring Wire Corp.*, 7 CIT at 5, 578 F. Supp. at 1407). Here, however, the Commission reached *affirmative* threat determinations, which led to the imposition of AD and CVD orders.[15]

Moreover, Plaintiff has offered no evidence that it will be subject to the same action again. Whether a future investigation involving the Committee will present a set of facts, such as the missing questionnaire responses here, that would prompt the Commission to rely upon plug questionnaire data is speculative.[16]

II. Collateral Consequences

A. Parties' Contentions

Plaintiff argues that this action should continue, notwithstanding the liquidation of entries, because "the status quo may have a legal effect on subsequent proceedings." Pl.'s Reply at 5 (quoting *Hylsa, S.A. de C.V. v. United States*, 31 CIT 52, 56, 469 F. Supp. 2d 1341, 1346 (2007)). Plaintiff suggests that, if the Commission were to find

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[15] The court has found the irreparable harm requirement needed to obtain a preliminary injunction satisfied when the Commission issued a final affirmative determination resulting in the application of the Special Rule. *See Wind Tower Trade Coal. v. United States*, 37 CIT 468, 469, 477–78, 904 F. Supp. 2d 1349, 1351, 1358 (2013), *aff'd*, 741 F.3d 89 (Fed. Cir. 2014). However, the court in that case denied the preliminary injunction based upon circumstances that are not present here. There, the court pointed to *MBL (USA) Corp. v. United States*, 16 CIT 108, 787 F. Supp. 202 (1992), in which the court applied the Special Rule to the same "fragmented ITC voting pattern" present in *Wind Tower Trade Coalition* to conclude that the Plaintiff did not have a likelihood of success on the merits. *Wind Tower Trade Coal.*, 37 CIT at 473, 477, 904 F. Supp. 2d at 1354–55, 1358. Here, Plaintiff does not challenge the application of the Special Rule, but rather an underlying methodology that resulted in its application.

[16] In another case, the Commission relied on Census-edited Customs records to account for firms certifying that they did not import the subject merchandise. *See U.S. Aluminum Extruders Coal. v. United States*, 49 CIT __, __, 777 F. Supp. 3d 1344, 1348 (2025). Plaintiff has not established that it is likely to encounter this scenario either.

present material injury on remand, the provisional measures entries could be included in the first administrative review of the Thailand and Cambodia AD and CVD orders. *Id*.

Defendant argues that Plaintiff's alleged collateral consequence "is too speculative to constitute an injury-in-fact sufficient to confer standing" because there is no guarantee that Commerce's inclusion of the provisional measures entries in the first administrative review would yield higher AD/CVD rates. Def.'s Sur-Reply at 7–8; *see also* Def.-Ints.' Sur-Reply at 9–10.

B. Analysis

Plaintiff has not established the existence of a collateral consequence sufficient to sustain this action. "[A] case may remain alive based on collateral consequences" when "a judgment will affect future litigation or administrative action." *Comcast Corp. v. Int'l Trade Comm'n*, 951 F.3d 1301, 1307 (Fed. Cir. 2020) (citation omitted). However, the exception will not apply when the "purported collateral consequences are too speculative and hypothetical to confer standing."[17] *Exelixis, Inc. v. MSN Lab'ys Priv. Ltd.*, 189 F.4th 1139, 1148 (Fed. Cir. 2026) (concluding that the potential impact of the court's holding on another case involving appellant and a related patent does not mean that appellant "has a continued redressable injury").

Plaintiff's claim that the ITC's flawed determination here will affect future administrative action assumes that the potential collateral consequence, namely the

[17] A "collateral consequence" is a "continuing injury" that can save a case from mootness by satisfying the Article III requirement that there be an actual injury traceable to the defendant and likely to be redressed by a favorable decision. *United States v. Juv. Male*, 564 U.S. 932, 936 (2011).

exclusion of the provisional measures entries in the first administrative review, could be resolved by a court order in this action.[18] But a favorable court order here may not result in the inclusion of the provisional measures entries in the first administrative review, an otherwise distinct administrative action. While Plaintiff relies on *Hylsa,* the *Hylsa* court found that, despite the liquidation of entries under review, the potential for a *de minimis* dumping margin on remand to impact the plaintiff's "future ability to obtain revocation of the AD order covering its merchandise" constituted a sufficiently concrete collateral consequence to save plaintiff's challenge from mootness because Commerce considers three years of zero or *de minimis* margins to be a critical factor in deciding whether to revoke an AD order pursuant to 19 C.F.R. § 351.222(b)(2).[19] *Id.* at 53–56, 469 F. Supp. 2d at 1343–45. Here, Plaintiff has not offered any support for its suggestion that, should there be a remand redetermination finding present material injury, Commerce would alter the period of review of its ongoing proceeding to include the liquidated provisional measures entries in the first administrative review.[20] Even

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[18] Commerce is already in the process of conducting the first administrative review. *See Initiation of AD and CVD Admin. Revs.*, 91 Fed. Reg. 51,436 (Dep't Commerce Aug. 10, 2026). It is uncertain whether a final court decision favorable to Plaintiff, if otherwise appropriate, would occur in time to allow Commerce to include the provisional measures entries in the first administrative review in any case.

[19] The court also noted that a *de minimis* dumping margin may affect whether the AD order sunsets after five years pursuant to 19 U.S.C. §1675(c). *Hylsa*, 31 CIT at 54, 469 F. Supp. 2d at 1343–44.

[20] In fact, Commerce's approach in *Diamond Sawblades* suggests otherwise. *See Diamond Sawblades Mfrs. Coal. v. United States*, 33 CIT 48 (2009), *aff'd*, 612 F.3d 1348 (Fed. Cir. 2010). On remand, the Commission changed its negative determination to an affirmative determination based on threat. *See Diamond Sawblades and Parts Thereof From the People's Republic of China and the Republic of Korea*, 74 Fed. Reg. 57,145 (Dep't Commerce Nov. 4, 2009) (AD orders). In the absence of an injunction,

further speculation is required to consider whether the inclusion of such entries in the first administrative review would benefit Plaintiff by increasing any AD/CVD rates. The court will not engage in such speculation.

CONCLUSION

For the reasons stated above, the court dismisses this case as moot. Judgment will be entered accordingly.

/s/ Mark A. Barnett
Mark A. Barnett, Chief Judge

Dated: November 2, 2026
New York, New York

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the effective date of the orders (January 23, 2009), *see id.*, and the start date for the period of review for the first administrative review, was the effective date of the *Timken* notice, *see Diamond Sawblades and Parts Thereof From the People's Republic of China and the Republic of Korea*, 74 Fed. Reg. 6,570 (Dep't Commerce Feb. 10, 2009) (notice of court decision not in harmony with final determination of the AD investigations) (effective date of January 23, 2009); *Diamond Sawblades and Parts Thereof From the People's Republic of China*, 78 Fed. Reg. 11,143 (Dep't Commerce Feb. 15, 2013) (final results of AD admin. rev.; 2009–2010) (period of review covering January 23, 2009, through October 31, 2010). Commerce did not include any entries prior to the Commission's redetermination that theoretically might have been included had the Commission made an affirmative threat determination in the first instance.