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Investigation
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AD/CVD IV: CJR/MZ/JM

DATE: July 24, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh 
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Antidumping Duty Investigation: Certain Crystalline Silicon
Photovoltaic Products From Taiwan

SUMMARY

The Department of Commerce (“the Department”) preliminarily determines that certain crystalline silicon photovoltaic products (“certain solar products”) from Taiwan 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 weighted-average dumping margins are shown in the “Preliminary Determination” section of the accompanying *Federal Register* notice.

BACKGROUND

On December 31, 2013, the Department received an antidumping duty (“AD”) petition concerning imports of certain solar products from Taiwan filed in proper form by SolarWorld Industries America, Inc. (“Petitioner”). In January 2014, the Department requested information and clarification of certain areas of the petition. Petitioner filed timely responses to these requests. The Department initiated an AD investigation of certain solar products from Taiwan on January 29, 2014.¹

In the *Initiation Notice*, we set aside a period of time for parties to raise issues regarding product coverage, and encouraged interested parties to submit such comments by February 11, 2014. In addition, we set aside time for parties to submit comments regarding product characteristics, and

¹ See *Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China and Taiwan: Initiation of Antidumping Duty Investigations*, 79 FR 4661 (January 29, 2014) (“Initiation Notice”).



instructed all parties to submit comments by February 5, 2014, and to submit rebuttal comments by February 12, 2014.

In the *Initiation Notice*, we stated that the petition named 21 companies in Taiwan as producers/exporters of certain solar products, and we stated our intention to select respondents based on United States Customs and Border Protection (“CBP”) data. Therefore, we obtained CBP data for entries of subject merchandise during the period of investigation (“POI”). However, after examining the CBP data, we found that the units used to measure the imported quantities of solar cells and solar modules are “numbers,” and that it would not be meaningful to sum the number of imported solar cells and the number of imported solar modules to determine the largest Taiwanese exporters of the merchandise under investigation by volume. Therefore, on January 29, 2014, we issued quantity and value (“Q&V”) questionnaires to the 21 producer/exporter companies listed in the petition and requested that the companies report the quantity of subject solar cells and modules in numbers, as well as their total number of megawatts and U.S. dollar sales value. We received timely responses to our Q&V questionnaire.

On March 4, 2014, the U.S. International Trade Commission (“ITC”) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of certain solar products from Taiwan.²

On March 21, 2014, the Department stated its intention to limit the number of respondents examined in the instant investigation to no more than two producers/exporters.³ Because of the large number of companies identified in the petition, and after careful consideration of our resources, we concluded that it would not be practicable in this AD investigation to examine all known producers/exporters of the subject merchandise. For the reasons stated in the Respondent Selection Memo, the Department selected the following two producers/exporters of subject merchandise as mandatory respondents: Gintech Energy Corporation (“Gintech”) and Motech Industries, Inc. (“Motech”).

On June 3, 2014, Petitioner timely filed allegations that Gintech and Motech made sales of certain solar products in the home market at prices below the cost of production (“COP”) during the POI.⁴ On June 12, 2014, the Department initiated investigations to determine whether Motech’s and Gintech’s home market sales were made at prices below the COP during the POI.⁵ On June 12, 2014, the Department also requested that Motech and Gintech respond to section D

² See *Certain Crystalline Silicon Photovoltaic Products From China and Taiwan*, 79 FR 12221 (March 4, 2014).

³ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Antidumping Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from Taiwan: Respondent Selection,” dated March 21, 2014 (“Respondent Selection Memo”).

⁴ See Letter from Petitioners, titled “Certain Crystalline Silicon Photovoltaic Products from Taiwan: Sales Below Cost Allegation for Gintech,” and “Certain Crystalline Silicon Photovoltaic Products from Taiwan: Sales Below Cost Allegation for Motech,” dated June 3, 2014.

⁵ See Memorandum to Abdelali Elouaradia, Director, AD/CVD Operations, Office IV, from Team, regarding “Petitioner’s Allegation of Home Market Sales at Prices Below the Cost of Production for Gintech Energy Corporation,” (June 12, 2014); see also Memorandum to Abdelali Elouaradia, Director, AD/CVD Operations, Office IV, from Team, regarding “Petitioner’s Allegation of Home Market Sales at Prices Below the Cost of Production for Motech Industries, Inc.,” (June 12, 2014).

of the Department's questionnaire,⁶ and on July 2, 2014, Motech and Gintech submitted their section D questionnaire responses.⁷

Between April 24 and July 10, 2014, Gintech and Motech submitted responses to the Department's sections A, B, C & D supplemental questionnaires. Petitioner submitted comments on the supplemental responses between May 9 and July 7, 2014.

On July 9, 2014, and July 10, 2014, respectively, Motech and Gintech requested a postponement of the final determination and an extension of provisional measures.⁸ On July 14, 2014, Petitioner requested a postponement of the final determination in the event that the Department made a negative preliminary determination.

On July 8 and July 9, 2014, Gintech and Petitioner, respectively, filed comments for the Department to consider in its preliminary determination.⁹

PERIOD OF INVESTIGATION

The POI is October 1, 2012, through September 30, 2013. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was December 2013.¹⁰

POSTPONEMENT OF PRELIMINARY DETERMINATION

On May 27, 2014, pursuant to section 733(c)(1)(B) of the Act and 19 CFR 351.205(b)(2), the Department determined that it was appropriate to postpone the preliminary determination. Specifically, the Department postponed the deadline for issuing the preliminary determination by 43 days.¹¹

⁶ See Letter from the Department to Motech Industries, Inc., regarding "Investigation of Certain Crystalline Silicon Photovoltaic Products from Taiwan: Request for Response to Section D Questionnaire" (June 12, 2014); *see also* Letter from the Department to Gintech Energy Corporation, regarding "Investigation of Certain Crystalline Silicon Photovoltaic Products from Taiwan: Request for Response to Section D Questionnaire" (June 12, 2014).

⁷ See Letter from Gintech to the Department, regarding "Gintech Section D Response" (July 2, 2014); *see also* Letter from Motech to the Department, regarding "Section D Questionnaire Response" (July 2, 2014).

⁸ See Letter from Motech to the Department, regarding "Request for Extension of Final Determination" (July 9, 2014); *see also* Letter from Gintech to the Department, regarding "Gintech Request to Postpone Final Determination" (July 10, 2014); *see also* Letter from Petitioner to the Department, regarding "Request to Extend Antidumping Duty Final Determination in the Event of a Negative Preliminary Determination" (July 14, 2014).

⁹ See Letter from Gintech to the Department, regarding "Gintech's Response to Petitioner Comments on Gintech's Indirect Sales to the United States" (July 8, 2014); *see also* Letter from Petitioner to the Department, regarding "Petitioner's Pre-Preliminary Determination Comments" (July 8, 2014).

¹⁰ See 19 CFR 351.204(b)(1).

¹¹ See *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China and Taiwan: Postponement of Preliminary Determination of Antidumping Duty Investigations*, 79 FR 30084 (May 27, 2014).

POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES

Pursuant to section 735(a)(2) of the Act, on July 9, 2014 and July 10, 2014, Motech and Gintech, respectively, requested that the Department postpone the final determination, and requested that the Department extend provisional measures from four months to six months. Additionally, on July 14, 2014, Petitioner requested that the Department fully postpone the final determination in the event that the Department makes a negative preliminary determination. In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), because (1) our preliminary determination is affirmative, (2) the requesting exporters, Motech and Gintech, account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the request and are postponing the final determination until no later than 135 days after the publication of the preliminary determination notice in the *Federal Register*, and we are extending provisional measures from four months to a period not to exceed six months. Suspension of liquidation will be extended accordingly.

SCOPE OF THE INVESTIGATION

The merchandise covered by this investigation is crystalline silicon photovoltaic cells, and modules, laminates and/or panels consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including building integrated materials. For purposes of this investigation, subject merchandise also includes modules, laminates and/or panels assembled in the subject country consisting of crystalline silicon photovoltaic cells that are completed or partially manufactured within a customs territory other than that subject country, using ingots that are manufactured in the subject country, wafers that are manufactured in the subject country, or cells where the manufacturing process begins in the subject country and is completed in a non-subject country.

Subject merchandise includes 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.

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 any products covered by the existing antidumping and countervailing duty orders on crystalline silicon photovoltaic cells, whether or not assembled into modules, from the People's Republic of China. *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order*, 77 FR 73018 (December 7, 2012); *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Countervailing Duty Order*, 77 FR 73017 (December 7, 2012).

Also excluded from the scope of this investigation are crystalline silicon photovoltaic cells, not

exceeding 10,000mm² 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.

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 8501.61.0000, 8507.20.8030, 8507.20.8040, 8507.20.8060, 8507.20.8090, 8541.40.6020, 8541.40.6030 and 8501.31.8000. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of this investigation is dispositive.

The subject imports are normally classified in subheadings 7306.40.5005, 7306.40.5040, 7306.40.5062, 7306.40.5064, and 7306.40.5085 of the Harmonized Tariff Schedule of the United States (HTSUS). They may also enter under HTSUS subheadings 7306.40.1010, 7306.40.1015, 7306.40.5042, 7306.40.5044, 7306.40.5080, and 7306.40.5090. The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of these investigations is dispositive.

SCOPE COMMENTS

In accordance with the preamble to the Department's regulations,¹² in our Initiation Notice we set aside a period of time for parties to raise issues regarding product coverage. Between February 18, 2014, and April 21, 2014, numerous interested parties timely submitted scope comments and rebuttal scope comments.¹³ The Department is continuing to analyze interested parties' scope comments, including comments on whether it is appropriate to apply a traditional substantial transformation or other analysis in determining the country of origin of certain solar modules described in the scope of the investigation.

With respect to administering this investigation, we note that the scope explicitly excludes any products covered by the existing AD and countervailing duty ("CVD") orders on crystalline silicon photovoltaic cells, whether or not assembled into modules, from the PRC.¹⁴ Further, this investigation and the ongoing investigation of certain solar products from the PRC are not intended to cover the same merchandise. We will continue to work with CBP to ensure that the scope of this investigation and the ongoing investigation of certain solar products from the PRC

¹² See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) ("Preamble").

¹³ See scope comment submissions, dated February 18, 2014, from Gintech; Motech; Neo Solar Power Corporation; NextEra Energy, Inc.; SunEdison, Inc.; Suniva, Inc.; Solartech Energy Corp.; and Yingli Green Energy Holding Company Limited, Yingli Green Energy Americas, Inc., Canadian Solar Inc., Changzhou Trina Solar Energy Co., Ltd., Wuxi Suntech Power Co., Ltd., Shanghai JA Solar Technology Co., Ltd., Hefei JA Solar Technology Co., Ltd., and Jinko Solar Co., Ltd.; see also rebuttal scope comment submissions, dated April 3, 2014, from Petitioner, and dated April 21, 2014, from Yingli Green Energy Americas, Inc., Canadian Solar Inc., Changzhou Trina Solar Energy Co., Ltd., Wuxi Suntech Power Co., Ltd., Shanghai JA Solar Technology Co., Ltd., Hefei JA Solar Technology Co., Ltd., and Jinko Solar Co., Ltd.

¹⁴ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order*, 77 FR 73018 (December 7, 2012); *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Countervailing Duty Order*, 77 FR 73017 (December 7, 2012).

is properly administered for each investigation and that the appropriate cash deposit rates are applied. In addition, we are implementing a certification requirement with respect to these investigations that is described in our preliminary determination notice.

SELECTION OF RESPONDENTS

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters or producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. As explained in the “Background” section above, we selected Gintech and Motech for individual examination in this investigation.¹⁵

DISCUSSION OF METHODOLOGY

Fair Value Comparisons

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether sales of certain solar products from Taiwan to the United States were made at LTFV, we compared the export prices (“EP”) (or constructed export prices (“CEP”)) to the normal value (“NV”), as described in the “Export Price,” “Constructed Export Price,” and “Normal Value” sections of this memorandum.

A. Determination of the Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates individual dumping margins by comparing weighted-average NVs to weighted-average EPs or CEPs (the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, the Department examines whether to compare weighted-average NVs to the EPs or CEPs of individual transactions (the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.

In order to determine which comparison method to apply, in recent proceedings, the Department applied a “differential pricing” analysis to determine whether application of the average-to-transaction comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.¹⁶ The Department finds that the differential pricing analysis used in those recent proceedings may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department’s additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating weighted-average dumping margins.

¹⁵ See Respondent Selection Memo.

¹⁶ See, e.g., *Xanthan Gum From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33350 (June 4, 2013), and accompanying Issues and Decision Memorandum at Comment 3.

The differential pricing analysis used in this preliminary determination requires a finding of a pattern of prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The differential pricing analysis used in this preliminary determination evaluates all purchasers, regions, and time periods to determine whether a pattern of significant price differences exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the customer codes reported by Motech and Gintech. Regions are defined using the reported destination code (*i.e.*, zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarters within the POI being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region, and time period, that the Department uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen’s *d* test is applied when the test and comparison groups of data each have at least two observations, and when the sales quantity for the comparison group accounts for at least 5 percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is calculated to evaluate the extent to which the net prices to a particular purchaser, region, or time period differ significantly from the net prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium or large. Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant if the calculated Cohen’s *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test account for 66 percent or more of the value of total sales, then the identified pattern of CEPs and EPs that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen’s *d* test as an alternative to the average-to-average method and application of the average-to-average method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes the Cohen’s *d*

test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (*i.e.*, the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of CEPs and EPs that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, we examine whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis and, therefore, an alternative method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margin between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting weighted-average dumping margin moves across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in this preliminary determination, including arguments for modifying the group definitions used in this proceeding.

B. Results of the Differential Pricing Analysis

For Motech, based on the results of differential pricing analysis, the Department found that between 33 percent and 66 percent of Motech's U.S. sales pass the Cohen's *d* test such that we considered, as an alternative comparison method, applying a combination of the average-to-average comparison method to those sales that did not pass the Cohen's *d* test, and the average-to-transaction comparison method to those sales that passed the Cohen's *d* test.¹⁷ However, we found that when comparing the weighted-average dumping margin calculated using the standard average-to-average comparison method and the weighted-average dumping margin calculated using the appropriate alternative method, there is not a meaningful difference in the results. Accordingly, because the average-to-average comparison method can take into account the observed differences, we preliminarily determined to use the standard average-to-average comparison method for all U.S. sales in making comparisons of EP and CEP to NV for Motech.

For Gintech, based on the results of the differential pricing analysis, the Department finds that less than 33 percent of Gintech's export sales pass the Cohen's *d* test, which confirms that there is not a pattern of EPs for comparable merchandise that differ significantly among purchasers and time periods.¹⁸ Accordingly, the Department preliminarily determined to use the average-to-

¹⁷ See Memorandum to the File, Through Robert Bolling, Program Manager, AD/CVD Operations, Office IV, from Magd Zalok, AD/CVD Operations, Office IV, Regarding "Preliminary Determination Analysis for Motech Industries, Inc." ("Motech Preliminary Determination Analysis Memo"), dated concurrently with this memorandum.

¹⁸ See Memorandum to the File, "Preliminary Determination Analysis for Gintech Energy Corporation" ("Gintech Analysis Memo"), dated concurrently with this memorandum.

average method for all U.S. sales in making comparisons of EP to NV for Gintech.¹⁹

Product Comparisons

In the *Initiation Notice*, we set aside a period of time for parties to raise issues regarding product characteristics and model matching. On February 12, 2014, Petitioner, Gintech, Yingli Green Energy Holding Company Limited, Yingli Green Energy Americas, Inc., Canadian Solar Inc., Changzhou Trina Solar Energy Co., Ltd., and Jinko Solar Co., Ltd. submitted comments on product characteristics. On February 19, 2014, Petitioner submitted rebuttal comments on the product characteristics.

We considered the comments that were submitted and established the appropriate product characteristics to use as a basis for defining models of the merchandise under consideration sold in the United States, and for identifying the identical or the most similar model sold in the comparison market that may serve as a basis for NV for this LTFV investigation. The Department identified the following eleven criteria for matching U.S. sales of subject merchandise to NV: product form, crystal/dopant type, total power output, cell technology, cell backing, frame form, backing material, front material, junction box, inverter, and battery. These criteria were included in the questionnaires issued to Gintech and Motech, as well as the questionnaires issued to the respondents in the concurrent investigation of certain solar products from the People's Republic of China.

Exclusions of Reported Indirect Sales to China for Gintech and Motech

Both Gintech and Motech had sales of cells to unaffiliated Taiwanese marketing companies, unaffiliated third-country resellers, and/or unaffiliated purchasers in the People's Republic of China during the POI in which the purchasers requested a certificate of origin. Gintech and Motech reported these transactions as EP sales to the United States under the theory that there was a possibility that the purchasers were requesting the certificates of origin because they were assembling panels in China or other countries to be exported to the United States.

Under section 772(a) of the Act, the basis for EP is the price at which the first party in the chain of distribution who has knowledge of the U.S. destination of the merchandise sells the subject merchandise, either directly to a U.S. purchaser or to an intermediary such as a trading company. The party making such a sale, with knowledge of the destination, is the appropriate party to be reviewed. The Department's test for determining knowledge is whether the relevant party knew or should have known that the merchandise was for export to the United States.

The Department has preliminarily determined that the record does not demonstrate that either Gintech or Motech knew, or should have known, that its merchandise was for export to the United States.

In general, the Department's practice has been to consider documentary or physical evidence that the party knew or should have known its goods were destined for the United States, because this type of evidence is more probative, reliable and verifiable than unsubstantiated

¹⁹ See Gintech Analysis Memo.

statements or declarations.²⁰ The Department will also consider an admission by the producer or a representative of the producer to the Department that it knew the ultimate U.S. destination.²¹ In some situations, the Department might find other evidence to be relevant to the knowledge issue. For example, the Department has considered whether the relevant party prepared or signed certificates, shipping documents, contracts, or other such documents stating that the merchandise was destined for the United States²² and whether the relevant party used packaging or labeling stating that the merchandise was destined for the United States.²³ Additionally, the Department has examined whether the features, brands, or specifications of the merchandise indicated that it was destined for the United States.²⁴

One factor that ties all of the aforementioned determinations together is that in each case, the Department was satisfied that there was record evidence that the relevant party knew, or had reason to know, that the ultimate designation of the specific indirect sales was the United States. A general knowledge or belief on the part of the first party in the sales chain that the next party generally sells some products to the United States would not meet this standard.²⁵ A producer's speculation that the goods might ultimately have been destined for export to the United States is also insufficient for a knowledge determination.

None of the normal factors indicative of knowledge are present for Gintech and Motech in this investigation with respect to a large portion of their sales. The requests for certificates of origin could have pertained to the requirements of importing countries other than the United States, and record evidence supports a determination that other importing countries do, in fact, request such certificates.²⁶ We find that the record does not support a finding that Gintech or Motech either knew or should have known at the time of the sale that certain of their specific sales of certain solar cells to unaffiliated Taiwanese marketing companies, unaffiliated third-country resellers, or unaffiliated Chinese customers were ultimately destined for the United States. Accordingly, we have, for this preliminary determination, excluded these sales from their margin calculations.²⁷

²⁰ See *Wonderful Chemical Industrial, Ltd. v. United States*, 259 F. Supp. 2d 1273, 1279-80 (CIT 2003).

²¹ In *Dynamic Random Access Memory Semiconductors of One Megabit or Above from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Order in Part*, 64 FR 69694 (December 14, 1999), the individual who had been the world-wide sales manager for the relevant company during the POR told the Department that he knew that the merchandise was destined for the United States. Customs and Border Protection ("CBP") entry information corroborated the admissions of this individual. Therefore, based on this information, including the statements of admission, the Department found that the company had knowledge of the ultimate U.S. destination of the merchandise.

²² See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Synthetic Indigo from the People's Republic of China*, 64 FR 697236, 69727 (December 14, 1999).

²³ See *Certain Pasta from Italy: Termination of New Shipper Antidumping Duty Administrative Review*, 62 FR 66602 (December 19, 1997).

²⁴ See, e.g., *GSA, S.R.L. v. United States*, 77 F. Supp. 2d 1349, 1355 (CIT 1999).

²⁵ See *Final Results of Antidumping Duty Administrative Review: Certain In-Shell Raw Pistachios from Iran*, 70 FR 7470 (Feb. 14, 2005) and accompanying Issues and Decisions Memorandum ("Pistachios from Iran") at Comment 1; see also *Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium from the Russian Federation*, 66 FR 49347 (September 27, 2001), and accompanying Issues and Decision Memorandum at Comment 3.

²⁶ See exhibit S-11 of Gintech's June 20, 2014 supplemental questionnaire response.

²⁷ See Gintech Analysis Memo and Motech Preliminary Analysis Memorandum.

Exclusions of Further Manufactured Sales for Motech

On May 12, 2014, the Department determined that Motech was not required to respond to the Department's section E questionnaire regarding the further processed U.S. sales by Motech's wholly-owned U.S. subsidiary, Motech America ("MA").²⁸ Motech stated that further processed sales constitute less than 5 percent of its total U.S. sales, which the Department has previously excused parties from reporting.²⁹

Date of Sale

In identifying the date of sale of the merchandise under consideration, the Department will normally, in accordance with 19 CFR 351.401(i), "use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business." In *Allied Tube*, the United States Court of International Trade ("CIT") held 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.'"³⁰ Additionally, the Department may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.³¹ This normally includes the price, quantity, delivery terms and payment terms.³²

For both home-market and U.S. sales, Gintech reported the sale invoice date as the date of sale.³³ Gintech reported the sale invoice date because all material terms are set at the time of invoice. For both home-market and U.S. sales, Motech reported the earlier of shipment date or the commercial invoice date as the date of sale.³⁴ Motech stated that the quantity of an individual sale is not finalized until Motech ships the merchandise and issues the commercial invoice. Therefore, Motech has reported the earlier of shipment date or the commercial invoice date as the date of sale.

Export Price/Constructed Export Price

Section 772(a) of the Act defines EP as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c)." In accordance

²⁸ See Letter from the Department to Motech, regarding "Exemption of Section E Response" (May 12, 2014).

²⁹ See Motech section A questionnaire response (April 24, 2014) at Exhibit A-1.

³⁰ See *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)) (*Allied Tube*).

³¹ See 19 CFR 351.401(i); see also *Allied Tube*, 132 F. Supp. 2d at 1090-1092.

³² 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 Determinations 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 Issue 2 "Date of Sale," Comment 1.

³³ See Gintech section A questionnaire response (April 24, 2014) at 20.

³⁴ See Motech section A questionnaire response (April 24, 2014) at 22 and 23.

with section 772(a) of the Act, we used the EP methodology for Gintech because the merchandise under consideration was sold directly to the first unaffiliated purchaser in the United States before the date of importation by the producer or exporter of the merchandise under consideration outside the United States, and the use of the CEP methodology was not otherwise warranted based on the facts of record.

For certain of Motech's sales we used the EP methodology because the merchandise under consideration was sold directly to the first unaffiliated purchaser in the United States before the date of importation by the producer or exporter of the merchandise under consideration outside the United States, and the use of the CEP methodology was not otherwise warranted based on the facts of record. We used CEP methodology for the remainder of Motech's sales, in accordance with section 772(b) of the Act, because the subject merchandise was first sold in the United States by a U.S. seller affiliated with the producer and EP methodology was not otherwise indicated.

Gintech

We based EP on packed prices to the first unaffiliated customer for all sales destined for the United States. We based the starting price on the prices to unaffiliated purchasers in the United States, or to unaffiliated domestic or third-country customers where Gintech reported that it knew or had reason to know that the ultimate destination of the merchandise was the United States. We made deductions from the starting price for movement expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act.³⁵

Motech

We based EP on packed prices to the first unaffiliated customer for certain of Motech's sales destined for the United States. We based the starting price on the prices to unaffiliated purchasers in the United States. We made deductions from the starting price for movement expenses where appropriate, in accordance with section 772(c)(2)(A) of the Act.³⁶ For the remaining sales, we based CEP on packed prices to the first unaffiliated purchasers in the United States. Where appropriate, we made deductions from the starting price for billing adjustments, in accordance with 19 CFR 351.401(c). We also made deductions from the starting price for international freight expenses, U.S. brokerage and handling expenses, marine insurance, U.S. customs duties, U.S. inland freight from port to warehouse, U.S. warehouse expenses, and other movement expenses, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, we calculated CEP by deducting selling expenses associated with economic activities occurring in the United States, which includes direct selling expenses (imputed credit expenses, and bank charges) and indirect selling expenses (inventory carrying costs and other indirect selling expenses). Finally, we made an adjustment for profit allocated to these expenses, in accordance with section 772(d)(3) of the Act. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses

³⁵ For further discussion, see the Gintech Preliminary Determination Analysis Memorandum.

³⁶ For further discussion, see the Motech Preliminary Determination Analysis Memorandum.

incurred by Motech and its U.S. affiliate on their sales of the subject merchandise in the United States and the profit associated with those sales.

During the POI, in addition to Motech selling subject merchandise directly to the unaffiliated U.S. customer, Motech also sold subject merchandise to the United States via Motech America LLC ("MA") and Motech (Suzhou) Renewable Energy Co., Ltd. ("SNE"). MA is a wholly-owned subsidiary of Motech located in the United States and assists with Motech's export sales. SNE is a wholly-owned subsidiary of Motech located in the PRC and makes sales in the U.S. through MA. We preliminarily find that all of Motech's and SNE's sales through MA are CEP sales.³⁷

Normal Value

A. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales),³⁸ we compared Gintech's and Motech's volume of home market sales of the foreign like product to their respective volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act. Based on this comparison, we determined that Gintech's and Motech's aggregate volume of home market sales of the foreign like product was greater than five percent of the aggregate volume of U.S. sales of the subject merchandise. Therefore, we used home market sales as the basis for NV, in accordance with section 773(a)(1)(B) of the Act.

B. Affiliated Party Transactions and Arm's-Length Test

Pursuant to the Act and the Department's regulations, the Department will examine whether inputs purchased from or sales made to an affiliate were made at arm's-length before relying on reported costs and sales prices in its margin calculation. We exclude home market sales to affiliated customers that are not made at arm's-length prices from our margin analysis because we consider them to be outside the ordinary course of trade. Consistent with 19 CFR 351.403(c) and (d) and our practice, "the Department may calculate normal value based on sales to affiliates if satisfied that the transactions were made at arm's length."³⁹

Gintech made home market sales of modules to an affiliated customer. Because Gintech made only cell sales to the United States during the POI, and all of Gintech's U.S. sales match to cell sales made to unaffiliated home market customers, for the preliminary determination we have excluded Gintech's home market module sales to its affiliate.

Motech made all of its home market sales to unaffiliated customers, therefore, the arm's-length test is not applicable to Motech's home market sales.

³⁷ See Motech's supplemental questionnaire response (June 27, 2014) at 9.

³⁸ See 19 CFR 351.404(b)(2).

³⁹ See *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1366-1367 (CIT 2003) (holding that "Commerce has discretion to calculate normal value pursuant to subsections (c) and (d)").

C. Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP.⁴⁰ The LOT for NV is based on the starting prices of sales in the home market or, when NV is based on CV, those of the sales from which we derived selling, general, and administrative expenses and profit.⁴¹ For EP, the LOT is based on the starting price, which is usually the price from the exporter to the importer.⁴² In this investigation, Gintech reported only EP sales to the United States,⁴³ whereas Motech reported both EP and CEP sales to the United States.

To determine if the home-market sales are made at a different LOT than EP or CEP sales, we examined stages in the marketing process and the selling functions performed along the chain of distribution between the producer and the unaffiliated customer.⁴⁴ If home-market sales are at a different LOT, as manifested in a pattern of consistent price differences between the sales on which NV is based and home-market sales made at the LOT of the export transaction, and the difference affects price comparability, then we make a LOT adjustment to NV under section 773(a)(7)(A) of the Act and 19 CFR 351.412.⁴⁵

Gintech

Gintech reported three channels of distribution in the home market.⁴⁶ First, Gintech made direct sales to unaffiliated module maker customers in the home market. Second, Gintech made home market sales to domestic trading companies in Taiwan. Finally, Gintech also sold certain solar modules to home market systems customers. We found that the degree to which Gintech performed selling activities and functions such as market research, technical services, and sales services (e.g., processing and purchasing arrangements and delivery arrangements) did not vary between the three channels of distribution. Accordingly, we found that the three home market channels of distribution constitute a single level of trade.

Gintech reported EP sales in the U.S. market made through three different channels of distribution.⁴⁷ However, as explained above, the Department has preliminarily determined that Gintech did not have sufficient knowledge at the time of the sale that its "indirect U.S. sales," i.e., sales to unaffiliated Taiwanese trading companies or to unaffiliated third-country customers, were ultimately destined for the United States.⁴⁸ As a result, for the preliminary determination, the Department is only analyzing Gintech's sales made directly to unaffiliated U.S. module

⁴⁰ See also section 773(a)(7)(A) of the Act.

⁴¹ See 19 CFR 351.412(c)(1)(iii).

⁴² See 19 CFR 351.412(c)(1)(i).

⁴³ See Gintech section A response at 15.

⁴⁴ See 19 CFR 351.412(c)(2).

⁴⁵ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732-61733 (November 19, 1997).

⁴⁶ See Gintech section A response at 13.

⁴⁷ *Id.* at 14.

⁴⁸ See Gintech analysis memo.

maker customers. We considered Gintech's EP sales to be at one level of trade because we found the same selling functions were performed by Gintech on all U.S. sales.

We determined that the selling activities associated with EP sales were essentially the same as those associated with the home market level of trade and, therefore, the EP level of trade did exist in the home market. In its April 24, 2014, supplemental questionnaire response, Gintech reported that selling functions "are offered to the same extent to all customers on all sales." The selling function chart submitted by Gintech in exhibit 7 of its April 24, 2014 questionnaire response shows that for each of the selling functions listed Gintech performed the same selling activities at approximately the same level of intensity in both the U.S. and home markets. As a result, we find that there were no significant differences between the selling activities associated with the EP sales and those associated with each of the home market distribution channels. Therefore, we preliminarily find that, during the POI, Gintech sold the merchandise under consideration to the United States and the foreign like product in the home market at a single level of trade, and we made no level-of-trade adjustment under section 773(a)(7)(A) of the Act.

Motech

In the home market, Motech made sales to one customer category (*i.e.*, original equipment manufacturers) through one channel of distribution (*i.e.*, direct sales from Motech to domestic customers). We examined the selling activities performed and found that Motech performed the following selling functions: sales forecasting, strategic/economic planning, personnel training/exchange, engineering services; sales promotion, procurement/sourcing services, packing, inventory maintenance, order input/processing, direct sales personnel, sales/marketing support, market research, technical assistance, warranty services, after sale services; and freight and delivery. Accordingly, based on the selling activities categories, we find that Motech performed sales and marketing, inventory maintenance and warehousing, and warranty and technical services at the same level of intensity for all customers and terms of delivery in the home market. Therefore, we preliminarily determine that there is one LOT in the home market.

In the U.S. market, Motech reported (1) direct EP sales to original equipment manufacturers ("OEM"); (2) indirect EP sales to Chinese module manufacturers; (3) CEP sales of modules finished by SNE, Motech's wholly-owned subsidiary in China, and sold, back-to-back, to the unaffiliated U.S. customers via MA, Motech's wholly-owned U.S. subsidiary; (4) CEP sales of modules finished by SNE, sent to MA, and sold from MA's inventory; and (5) CEP sales of modules finished by Motech and sent to MA. These channels are marked as "1," "2," "3," "4," and "5," respectively in the U.S. sales database. As noted above, we preliminarily determined not to consider Motech's indirect EP sales in our margin calculation. Accordingly, we did not consider the indirect EP sales under channel 2 in our LOT analysis.

We examined the selling activities performed for EP sales from Motech to unaffiliated U.S. customers (Channel 1) and found that Motech performed the following selling activities: sales forecasting, strategic/economic planning, personnel training/exchange, engineering services; sales promotion, procurement/sourcing services, packing, inventory maintenance, order

input/processing, direct sales personnel, sales/marketing support, market research, technical assistance, warranty services, after sale services; and freight and delivery.⁴⁹

We also examined the selling activities performed for Channels 3 and 4 CEP sales from Motech/SNE to MA. SNE performed the following selling activities: engineering services; procurement/sourcing services, packing, inventory maintenance, order input/processing, direct sales personnel, technical assistance, warranty services, after sale services, and freight and delivery.⁵⁰ Additionally, we examined the selling activities performed for Channel 5 CEP sales from Motech to MA. Motech performed the following selling activities for Channel 5 sales: engineering services; procurement/sourcing services, packing, order input/processing, direct sales personnel, technical assistance, warranty services, after sale services, and freight and delivery.⁵¹ Based on the selling functions noted above for channels 3, 4, and 5, we find that Motech/SNE performed the same relative selling functions for these channels, at the same relative level of intensity.⁵² Accordingly, because Motech/SNE performed the same selling functions at the same relative level of intensity for channels 3, 4, and 5, we determine that sales in channels 3, 4, and 5 are at the same LOT.

Additionally, we preliminarily find that Channel 1 direct EP sales are at a LOT different from the LOT for Channel 3, Channel 4, and Channel 5 CEP sales. Motech's EP sales in Channel 1 are sufficiently different from its CEP sales in Channel 3, Channel 4, and Channel 5. Record evidence indicates that Motech performs a full complement of selling activities for Channel 1 direct EP sales, whereas the selling activities for Channel 3, Channel 4, and Channel 5 CEP sales are minimal. Specifically, the selling activities and intensity of such functions for Channel 1 EP sales indicate that Motech is proactive in its customer contacts and forecasting/planning activities, its strategic/economic planning; personnel training/exchange, sales promotion, order input/processing, direct sales personnel, sales/marketing support, and marketing research, when compared to the activities performed by Motech/SNE for CEP sales in Channels 3, 4, and 5. Therefore, we preliminarily determine that during the POI, Channel 1 EP sales are at one LOT in the U.S. market and Channels 3, 4, and 5 CEP sales are at another LOT in the U.S. market.

With regard to Channel 1 direct EP sales, we evaluated the selling function categories in the U.S. and home market LOTs and found that the selling functions in each of the categories (*i.e.*, sales and marketing, inventory maintenance, freight and delivery services, and warranty and technical support) were performed in both the U.S. and home markets. Finally, we compared the EP LOT to the home market LOT and found that the selling functions performed for U.S. and home market customers do not differ substantially, such that they meet the regulatory requirement of being made at "different marketing stages." As noted above, Motech performs a full complement of selling activities for EP sales, as it does for its home market sales. Moreover, as is the case in the home market, Motech is proactive in its customer contacts and forecasting/planning activities for its EP sales. Therefore, for the preliminary determination, we have determined that EP sales and home market sales during the POR were made at the same LOT, and as a result, a CEP offset is not warranted.

⁴⁹ See Motech's June 27, 2014 submission at Exhibit A-27.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

We evaluated the selling function categories in the U.S. and home market LOTs and found that the selling functions in each of the categories (*i.e.*, sales services and order/input processing; warranty and technical support; and freight and delivery services) were performed in both the U.S. and home markets. While we find that Motech/SNE performed limited selling activities to sell to MA, we find that the activities performed in the home market are more significant in terms of the number of selling functions and the level of intensity of such selling functions. Specifically, the record evidence shows that Motech: 1) engaged in sales forecasting; 2) performed strategic/economic planning; 3) provided personnel training and personnel exchange; 4) provided sales promotion; 5) procured/sourced services for home market sales, 6) processed orders for home market sales; 7) employed direct sales personnel; 8) provided sales/marketing support and technical assistance for home market customers; 9) provided after-sale services and warranty; and 10) provided freight and delivery.⁵³ Individually, these selling activities are not sufficient to meet the regulatory standard of a “different marketing stage,” however, in the aggregate we find that they are substantial, such that they constitute a marketing stage which differs from (and is more advanced than) the marketing stage at which Motech/SNE sells to MA in Channels 3, 4, and 5. The available data do not provide an appropriate basis for determining a LOT adjustment. Therefore, consistent with section 773(a)(7)(B) of the Act, for the preliminary determination, we are granting Motech a CEP offset for its Channels 3, 4, and 5 CEP sales.

D. Cost of Production

As noted in the Background section above, we received allegations from Petitioner that Motech and Gintech made home market sales below their COPs. Based on our analysis of these allegations, we found that there were reasonable grounds to believe or suspect that Motech’s and Gintech’s sales of certain solar products in the home market were made at prices below their COPs. Accordingly, on June 12, 2014, the Department initiated sales-below-COP investigations of Motech’s and Gintech’s sales.⁵⁴

1. *Calculation of COP*

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative expenses, interest expenses, and comparison market packing costs.⁵⁵ We examined the cost data and preliminarily determined that our quarterly cost methodology is not warranted. Therefore, we have applied our standard methodology of using annual costs based on the reported data, as adjusted below.⁵⁶

⁵³ See Motech’s June 2, 2014 submission at Exhibit A-13 and its June 27, 2014 submission at Exhibit A-27.

⁵⁴ See Memorandum to Abdelali Elouaradia, Director, AD/CVD Operations, Office IV, “Petitioners’ Allegation of Home Market Sales Below the Cost of Production for Gintech Energy Corporation,” dated June 12, 2014; *see also* Memorandum to Abdelali Elouaradia, Director, AD/CVD Operations, Office IV, “Petitioners’ Allegation of Home Market Sales Below the Cost of Production for Motech Industries, Inc.,” dated June 12, 2013.

⁵⁵ See “Test of Comparison Market Sales Prices” section, below, for treatment of comparison market selling expenses.

⁵⁶ See *Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products From Japan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 78 FR 69371 (November 19, 2013) and accompanying Preliminary Decision Memorandum at Section D “Cost of Production.”

Gintech

For Gintech, we made the following adjustment to the company's submitted COP data: pursuant to section 773(f)(3) of the Act, we adjusted the transfer price of a major input obtained from an affiliated party to reflect the fair market value of the input.⁵⁷

Motech

We relied on Motech's COP data as submitted.

2. Test of Comparison Market Sales Prices

With respect to each respondent, on a product-specific basis, pursuant to section 773(b)(1)(B) of the Act, we compared the adjusted weighted-average COPs to the home market sales prices of the foreign like product, in order to determine whether the sale prices were below the COPs. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices for each respondent were net of billing adjustments, movement charges, direct and indirect selling expenses and packing expenses, where appropriate.⁵⁸

3. Results of the COP Test

In determining whether to disregard comparison market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act whether: 1) within an extended period of time, such sales were made in substantial quantities; and, 2) such sales were made at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's comparison market sales of a given product are at prices less than the COP within an extended period of time within the meaning of section 773(b)(2)(B) of the Act, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities."⁵⁹ Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP within an extended period of time, we disregard the below-cost sales when, based on our comparison of prices to the weighted-average COPs for the POI, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Because we are applying our standard annual-average cost test in this preliminary determination, we also applied our standard cost recovery test with no adjustments.

⁵⁷ For further discussion, see Memorandum entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Gintech Energy Corporation" dated concurrently with this memorandum.

⁵⁸ See Gintech Preliminary Analysis Memorandum and Motech Preliminary Analysis Memorandum.

⁵⁹ See *Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products From Japan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 78 FR 69371 (November 19, 2013) and accompanying Preliminary Decision Memorandum at Section D "Cost of Production."

We found that, for certain products, more than 20 percent of Gintech's and Motech's comparison market sales were made within an extended period of time at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.⁶⁰

E. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV for Gintech and Motech based on the reported packed, ex-factory or delivered prices to comparison market customers. Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(b), we made, where appropriate, circumstance-of-sale adjustments (*i.e.*, credit expenses and bank charges). We added U.S. packing costs and deducted home market packing costs, in accordance with sections 773(a)(6)(A) and (B)(i) of the Act.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, for Gintech and Motech, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign-like product and subject merchandise.⁶¹ For detailed information on the calculation of NV, *see* Gintech Preliminary Analysis Memorandum and Motech Preliminary Analysis Memorandum.⁶²

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415(a), based on the exchange rates in effect on the date of the U.S. sales as certified by the Federal Reserve Bank.

VERIFICATION

As provided in section 782(i) of the Act, we will verify information relied upon in making our final determination.


⁶⁰ See Gintech Preliminary Analysis Memorandum and Motech Preliminary Analysis Memorandum.

⁶¹ See 19 CFR 351.411(b).

⁶² See Gintech Preliminary Analysis Memorandum and Motech Preliminary Analysis Memorandum.

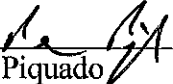
CONCLUSION

We recommend applying the above methodology for this preliminary determination.



Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

24 JULY 2014
(Date)