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February 28, 2017

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Senior Director, Office I
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Preliminary Results of the 2014-2016
Antidumping Duty Administrative Review of Certain Crystalline
Silicon Photovoltaic Products from Taiwan

SUMMARY

In response to requests from interested parties, the Department of Commerce (“Department”) is conducting an administrative review of the antidumping duty (“AD”) order on certain crystalline silicon photovoltaic products (“solar products”) from Taiwan, covering the period of review (“POR”) July 31, 2014, through January 31, 2016. The administrative review covers 14 exporters of the subject merchandise, including two mandatory respondents, Motech Industries, Inc. (“Motech”) and Sino-American Silicon Products Inc. (“SAS”). We have preliminarily treated Sino-American Silicon Products Inc. as a single entity with Solartech Energy Corp. (Solartech”) (collectively “SAS-Solartech”).¹ The Department preliminarily determines that sales of subject merchandise have been made below normal value (“NV”) by SAS-Solartech and Motech.

Background

On February 3, 2016, the Department notified interested parties of the opportunity to request an administrative review of orders, findings, or suspended investigations with anniversaries in February 2016, including the AD order on solar products from Taiwan.² On February 29, 2016, SolarWorld Americas Inc. (“Petitioner”), as well as various producers and exporters requested

¹ See Memorandum To Abdelali Elouaradia, Director, Office IV, Enforcement and Compliance, From Magd Zalok, International Trade Analyst, Office IV, Through Robert Bolling, Program Manager, Office IV – Antidumping Duty Administrative Review of Certain Crystalline Silicon Photovoltaic Products from Taiwan: Sino-American Silicon Products Inc. Preliminary Affiliation and Collapsing Memorandum, dated December 12, 2016 (the “Collapsing Entity Memorandum”).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 81 FR 5712 (February 3, 2016) (“*Opportunity to Request Administrative Review*”).



that the Department conduct an administrative review of certain exporters covering the POR. On April 7, 2016, the Department published a notice initiating an AD administrative review of solar products from the Taiwan covering 32 companies/company groupings for the POR.³

In the *Initiation Notice*, the Department stated that if it limited the number of respondents for individual examination, it intended to select respondents based on volume data contained in responses to its quantity and value (“Q&V”) questionnaire.⁴ On April 12, 2016, the Department issued Q&V questionnaires to all 32 companies.⁵ We received Q&V questionnaire responses from 14 companies⁶ named in the *Initiation Notice*. The remaining 18 companies⁷ withdrew their requests for administrative review, pursuant to 19 CFR 351.213(d)(1). Because these 18 companies timely withdrew their requests for administrative review pursuant to 19 CFR 351.213(d)(1), and no other party requested a review of these companies, we are rescinding the administrative review with respect to these companies.

On May 18, 2016, the Department selected Motech and SAS as mandatory respondents.⁸

On October 12, 2016, the Department extended the deadline for issuing the preliminary results of this administrative review to February 28, 2017.⁹

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 20324 (April 7, 2016) (“*Initiation Notice*”).

⁴ *Id.* at 20324.

⁵ The Department explained in the *Initiation Notice* that the units used to measure the imported quantities of solar cells and solar modules in the CBP data are in “piece” units, and it would not be meaningful to sum the number of imported solar cells and the number of imported solar modules in attempting to determine the largest Taiwan exporters of subject merchandise by volume. *Id.* Therefore, the Department stated that it would issue Q&V questionnaires to determine the volume of subject merchandise shipped to the United States by Taiwanese exporters/producers. *Id.*

⁶ The 14 companies that submitted a Q&V questionnaire response include: AU Optronics Corporation, EEPV CORP., E-TON Solar Tech. Co., Ltd., Gintech Energy Corporation, Inventec Energy Corporation, Inventec Solar Energy Corporation, Kyocera Mexicana S.A. de C.V., Motech Industries, Inc., Sino-American Silicon Products Inc., Solartech Energy Corporation, Sunengine Corporation Ltd., Sunrise Global Solar Energy, TSEC Corporation, and Win Win Precision Technology Co., Ltd.

⁷ Baoding Jiasheng Photovoltaic Technology Co. Ltd., Baoding Tianwei Yingli New Energy Resources Co., Ltd., Beijing Tianneng Yingli New Energy Resources Co. Ltd., Boviet Solar Technology Co., Ltd., Canadian Solar Inc., Canadian Solar International, Ltd., Canadian Solar Manufacturing (Changshu), Inc., Canadian Solar Manufacturing (Luoyang), Inc., Canadian Solar Solution Inc., Hainan Yingli New Energy Resources Co., Ltd., Hengshui Yingli New Energy Resources Co., Ltd., Lixian Yingli New Energy Resources Co., Ltd., Shenzhen Yingli New Energy Resources Co., Ltd., Tianjin Yingli New Energy Resources Co., Ltd., Vina Solar Technology Co., Ltd., Yingli Energy (China) Co., Ltd., Yingli Green Energy Holding Company Limited, and Yingli Green Energy International Trading Company Limited.

⁸ See memorandum from Thomas Martin, Senior International Trade Compliance Analyst, Office IV, AD/CVD Operations, Enforcement and Compliance to Abdelali Elouaradia, Director, Office IV, AD/CVD Operations, Enforcement and Compliance regarding “2014-2016 Antidumping Duty Administrative Review of Certain Crystalline Silicon Photovoltaic Products from Taiwan: Respondent Selection,” dated May 18, 2016 (“Respondent Selection Memorandum”) at 4-5.

⁹ See Memorandum from Magd Zalok, International Trade Compliance Analyst, Office IV, Antidumping and Countervailing Duty Operations through Abdelali Elouaradia, Director, Office IV, Antidumping and Countervailing Duty Operations, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, regarding “Crystalline Silicon Photovoltaic Products from Taiwan: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,” dated October 12, 2016.

From May 20, 2016 through February 23, 2017, the Department issued questionnaires to, and received timely responses from Motech and SAS-Solartech.¹⁰ Petitioner commented these responses on between July 8, 2016 and December 5, 2016.

On January 27, 2017, and February 6, 2017, SAS filed a submission containing unsolicited new factual information which the Department rejected from the record on February 7, 2017.¹¹ The Department permitted SAS to file a redacted version of its submission on February 9, 2017.

SAS-Solartech and Petitioner submitted comments in response to the Department's January 18, 2017, request for comments for consideration in these preliminary results of review, on February 9, 2017, and February 10, 2017, respectively.¹²

Scope of the Order

The merchandise covered by this order 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.

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.

Modules, laminates, and panels produced in a third-country from cells produced in Taiwan are covered by this order. However, modules, laminates, and panels produced in Taiwan from cells produced in a third-country are not covered by this order.

Excluded from the scope of this order 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 order 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 cells. Where more than one cell is permanently

¹⁰ See Letters from Motech to the Department dated June 21, July 11, July 15, August 12, September 19, September 23, October 24, November 15, 2016; January 18, 2017, February 14, 2017 and February 23, 2017; Letters from SAS and Solartech to the Department dated June 20, July 12, July 18, October 25, and November 8, 2016; January 9, January 12, January 24, and February 10, 2017.

¹¹ See Letter from the Department to SAS, "Antidumping Administrative Review of Certain Crystalline Silicon Photovoltaic Products from Taiwan: Rejection of Sino-American Silicon Products Inc.'s January 27, 2017, Submission Containing Unsolicited New Factual Information," dated February 7, 2017.

¹² See Letter to All Interested Parties, "Antidumping Duty Administrative Review of Certain Crystalline Silicon Photovoltaic Products from Taiwan: Notice of Opportunity to Submit Pre-Preliminary Results Comments," dated January 18, 2017; see also Letter from SAS-Solartech to Acting Secretary of Commerce, "Re: Certain Crystalline Silicon Photovoltaic Products from Taiwan: Resubmission of Comments Regarding the Department's Upcoming Preliminary Results," dated February 9, 2017 ("SAS-Solartech Comments"); and Letter from Petitioner to Acting Secretary of Commerce, "Re: Certain Crystalline Silicon Photovoltaic Products from Taiwan: Resubmission of Petitioner's Pre-Preliminary Comments," dated February 10, 2017 ("Petitioner Comments").

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.

Further, also excluded from the scope of this order 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 ("PRC").¹³ Also excluded from the scope of this order are modules, laminates, and panels produced in the PRC from crystalline silicon photovoltaic cells produced in Taiwan that are covered by an existing proceeding on such modules, laminates, and panels from the PRC.

Merchandise covered by the order 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 the order is dispositive.

Selection of Respondents

Section 777A(c)(1) of the Tariff Act of 1930, as amended (the "Act"), directs the Department to determine individual weighted-average dumping margins for each known exporter and producer of the subject merchandise. However, if it is not practicable to do so because of the large number of exporters or producers involved in the review, the Act and 19 CFR 35.1.204(c)(2) permit the Department to limit its examination and to determine individual dumping margins for a reasonable number of exporters and/or producers.¹⁴ The Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act also interprets this provision to mean that the authority to select respondents rests exclusively with the Department.¹⁵

In its Respondent Selection Memorandum, the Department determined, pursuant to section 777A(c)(2) of the Act, that given the large number of producers or exporters for which a review was initiated and the Department's current resource constraints, it would not be practicable to individually examine all known exporters/producers.¹⁶ Therefore, in accordance with section 777A(c)(2)(B) of the Act, the Department selected the two largest exporters for individual examination, from the 14 companies that submitted Q&V questionnaire responses to the Department.¹⁷ The Department selected Motech and SAS.

Affiliation and Collapsing of Affiliates

In accordance with section 771(33) of the Act, affiliated persons are: (A) members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants; (B) any officer or director of an organization and such organization; (C) partners;

¹³ 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).

¹⁴ See section 777A(c)(2) of the Act.

¹⁵ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol 1 (1994) at 872.

¹⁶ See Respondent Selection Memorandum at 2-3

¹⁷ *Id.* at 4-5.

(D) employer and employee; (E) any person directly or indirectly owning, controlling, controlled by, or holding with power to vote, five percent or more of the voting stock or shares of any organization and such organization; (F) two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and, (G) any person who controls any other person and such other person. To determine affiliation between two companies, the Department must find that at least one of the criteria above is applicable. Further, the Department has long recognized that it is appropriate to treat certain groups of companies as a single entity and to determine a single weighted-average margin for that entity to determine margins accurately and to prevent manipulation that would undermine the effectiveness of the antidumping law.¹⁸

Pursuant to our practice, we preliminarily determined that SAS and Solartech, an affiliated entity involved in the production, sales and distribution of the products covered by this administrative review, are affiliated, pursuant to section 771(33)(E) of the Act.¹⁹ In addition, based on the evidence provided in SAS and Solartech's questionnaire responses and 19 CFR 351.401(f), we preliminarily determined that SAS and Solartech should be collapsed and treated as a single entity in this administrative review.²⁰ This finding is based, in part, on the determination that SAS and Solartech have production facilities for similar or identical products that would not require substantial retooling in order to restructure manufacturing priorities, pursuant to 19 CFR 351.401(f)(1). Additionally, our finding was based on the determination that the level of common ownership, management overlap, and intertwined operations between SAS and Solartech may result in a significant potential for manipulation of price or production of subject merchandise, pursuant to 19 CFR 351.401(f)(2).²¹

By contrast, we have considered the evidence on the record and preliminarily determine that affiliation does not exist with respect to Motech and Win Win Precision Technology Co. Ltd. ("Win Win") because Motech and Win Win neither control each other, nor are they under the common control of another entity, pursuant to section 771(33)(F) of the Act. The level of common ownership between these two companies is indirect and minimal, as it centers on a third party, which owned only 5.83 percent of Motech, and just 6.93 percent of Win Win, during the POR.²² Moreover, the third party with common ownership of Motech and Win Win does not control the board of directors of either company.²³

Unexamined Respondents

After respondent selection and the collapsing of SAS-Solartech,²⁴ eleven companies, AU Optronics Corporation, EEPV CORP., E-TON Solar Tech. Co., Ltd., Gintech Energy

¹⁸ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Brazil*, 69 FR 76910 (December 23, 2004) and accompanying Issues and Decision Memorandum at Comment 5.

¹⁹ See Collapsing Entity Memorandum.

²⁰ *Id.* at 1-3.

²¹ *Id.* at 3-7.

²² See Motech's June 20, 2016 Section A Response at A-12 (regarding percentages of ownership).

²³ See Motech's August 11, 2016 Supplemental Section A Response," at 4, Exhibit A-38; See Motech's October 24, 2016 Supplemental Sections A-C Questionnaire Response at 5, 15 (regarding the board members of Motech and Win Win).

²⁴ See Collapsing Entity Memorandum.

Corporation, Inventec Energy Corporation, Inventec Solar Energy Corporation, Kyocera Mexicana S.A. de C.V., Sunengine Corporation Ltd., Sunrise Global Solar Energy, TSEC Corporation, and Win Win Precision Technology Co., Ltd., remain subject to this administrative review. None of these eleven companies: (1) was selected as a mandatory respondent;²⁵ (2) was the subject of a withdrawal of request for review; (3) requested to participate as a voluntary respondent; or (4) submitted a claim of no shipments. As such, these eleven companies remain as unexamined respondents.

The statute and the Department's regulations do not address the establishment of a rate to be applied to companies not selected for examination when the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, the Department looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual review in an administrative review. Under section 735(c)(5)(A) of the Act, the all others rate is normally "an amount equal to the weighted-average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}." In this review, we have preliminarily calculated a weighted-average dumping margin for these eleven companies using the calculated rates of the mandatory respondents, which are not zero, *de minimis*, or determined entirely on the basis of facts available. With two respondents, we normally calculate: (A) a weighted average of the dumping margins calculated for the mandatory respondents; (B) a simple average of the dumping margins calculated for the mandatory respondents; and (C) a weighted average of the dumping margins calculated for the mandatory respondents using each company's publicly-ranged values for the merchandise under consideration. We compare (B) and (C) to (A) and select the rate closest to (A) as the most appropriate rate for all other companies.²⁶ Accordingly, we have applied a rate of 4.09 percent to the non-selected companies.²⁷

DISCUSSION OF THE METHODOLOGY

We are conducting this administrative review of the order in accordance with section 751(a) of the Act, and 19 CFR 351.213.

Comparisons to Normal Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether Motech's and SAS-Solartech's sales of the subject merchandise from Taiwan to the United States were made at less than normal value, the Department compared the export price ("EP") and constructed export price ("CEP") to the normal value as described in the "Export Price/Constructed Export Price" and "Normal Value" sections of this memorandum.

²⁵ See Respondent Selection Memorandum.

²⁶ See *Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661, 53663 (September 1, 2010).

²⁷ See Memorandum from Thomas Martin to the File, "Calculation of the Rate for Non-Selected Respondents," dated February 28, 2017.

A) *Determination of Comparison Method*

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average normal values to weighted-average EPs (or CEPs) (*i.e.*, 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 normal values with the export prices (or CEPs) of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of administrative reviews, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in less-than-fair-value investigations.²⁸

In recent investigations, the Department applied a “differential pricing” analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.²⁹ The Department finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. 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 a respondent’s weighted-average dumping margin.

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of export prices (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchaser, region and time period to determine whether a pattern of prices that differ significantly exists. 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 analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, zip code or state code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP (or CEP) and normal value for the individual dumping margins.

²⁸ See *Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012) and the accompanying Issues and Decision Memorandum at comment 1; see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (Ct. Int’l Trade 2014).

²⁹ See, e.g., *Xanthan Gum From the People’s Republic of China: Final Determination of Sales at Less Than Fair*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar From Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); or *Welded Line Pipe From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region or time period differ significantly from the 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 (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen’s *d* test, 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 prices 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 prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, the Department examines 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 comparison 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, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison 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 margins 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 margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, 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 the differential pricing analysis, the Department preliminarily finds that 77.55 percent of the value of U.S. sales pass the Cohen's *d* test,³⁰ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that the average-to-average method cannot account for such differences, because there is a 25 percent relative change between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for these preliminary results, the Department is applying the average-to-transaction method to all U.S. sales to calculate the weighted-average dumping margin for Motech.

For SAS-Solartech, based on the results of the differential pricing analysis, the Department preliminarily finds that 66.55 percent of the value of U.S. sales pass the Cohen's *d* test,³¹ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that the average-to-average method cannot account for such differences because there is a 25 percent relative change between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Thus, for these preliminary results, the Department is applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test to calculate the weighted-average dumping margin for SAS-Solartech.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by the Motech and SAS-Solartech in Taiwan during the POR that fit the description in the "Scope of the Order" section of the accompanying *Federal Register* notice to be foreign like products for purposes of determining NV for the subject merchandise sold in the United States. Pursuant to 19 CFR 351.414(f) (3), we compared Motech's and SAS-Solartech's U.S. sales to foreign like product sales made in the home market, where appropriate.

Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, according to section 771(16)(A) of the Act, we

³⁰ See Memorandum from Thomas Martin to File, "2014-2016 Antidumping Duty Administrative Review of Certain Crystalline Silicon Photovoltaic Products from Taiwan, Preliminary Results Analysis for Motech Industries, Inc.," dated February 28, 2017.(Motech Preliminary Analysis Memorandum) at 3.

³¹ See Memorandum from Magd Zalok to File, "2014-2016 Antidumping Duty Administrative Review of Certain Crystalline Silicon Photovoltaic Products from Taiwan, Preliminary Results Analysis for the SAS-Solartech Entity," dated February 28, 2017. (SAS-Solartech Preliminary Analysis Memorandum) at pages 2-3.

compared U.S. sales to sales of the most similar foreign-like product made in the ordinary course of trade. In making the product comparisons, we matched foreign-like products based on the physical characteristics reported by the respondents to the product sold in the United States. In the order of importance, these physical characteristics are as follows: Product, crystal/dopant type, total power, frame, cell technology, backing material, front material, junction box, inverter, and battery.³²

Date of Sale

Section 351.401(i) of the Department's regulations states that, in identifying the date of sale of the merchandise under consideration or foreign like product, the Department normally will use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business. However, the regulations permit the Department to 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.³³ The Department has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.³⁴

For both its home market and U.S. sales, Motech³⁵ and SAS-Solartech³⁶ each reported invoice date as the date of sale, except in instances where shipment date preceded the invoice date, as the date when materials terms of sale are fixed. Based on this information, and consistent with the Department's practice,³⁷ we preliminarily determine that the earliest date, either the invoice date or the shipment date, is the most appropriate selection for the date of sale for sales in both the home and U.S. markets.

Export Price/Constructed Export Price

For sales reported as EP sales by Motech and SAS-Solartech, we used EP methodology, in accordance with section 772(a) of the Act, because the merchandise under consideration was first sold by the producer/exporter outside of the United States directly to the first unaffiliated purchaser in the United States prior to importation and because CEP methodology was not otherwise warranted.

³² See e.g., Motech's July 8, 2016 Section B and C Response, at B-25, C-22. See, e.g., SAS's July 11, 2016 Section B and C Responses.

³³ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

³⁴ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Germany*, 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

³⁵ See Motech's June 20, 2017, section A response at A-27.

³⁶ See SAS's June 17, 2016, section A response at A-23; Solartech's June 17, 2016 section A response at A-23.

³⁷ See *Narrow Woven Ribbons with Woven Selvedge from Taiwan; Preliminary Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 60627 (October 7, 2015) and accompanying Preliminary Decision Memorandum at 9, unchanged in *Narrow Woven Ribbons with Woven Selvedge from Taiwan; Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 22578 (April 18, 2016).

Motech

For sales reported by Motech as CEP sales, we used CEP methodology, in accordance with section 772(b) of the Act, because the subject merchandise was sold in the United States by a U.S. seller affiliated with the producer and because EP methodology was not otherwise warranted.

We calculated EP and CEP for Motech based on packed prices to unaffiliated purchasers in the United States. We made deductions, where appropriate, from the starting price for billing adjustments, discounts and rebates. We also made deductions from the starting price, where appropriate, for movement expenses, *i.e.*, foreign inland freight, inland insurance expenses, brokerage and handling expenses incurred in the country of manufacture, international freight, marine insurance, brokerage and handling expenses incurred in the United States, harbor construction fees, trade promotion fees, terminal handling charges, U.S. inland freight and U.S. customs duties, in accordance with section 772(c)(2)(A) of the Act. For EP sales, we then added U.S. direct selling expenses, *i.e.*, credit expenses, warranty expenses, bank charges, and packing costs, to the NV calculation.

Pursuant to section 772(d)(1) of the Act, we made additional adjustments to CEP for Motech by deducting selling expenses associated with economic activities occurring in the United States, including certain direct selling expenses, *i.e.*, credit expenses packing costs, toll fees, and indirect selling expenses, including inventory carrying costs incurred in the United States.

We made an adjustment for CEP 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 incurred by Motech and SAS-Solartech and its U.S. affiliate on their sales of the subject merchandise in the United States and the profit associated with those sales.

Motech reported “indirect” sales of solar cells to several unaffiliated customers. These customers directed Motech to ship the solar cells to producers of modules in various third countries, other than the United States.³⁸ Motech states that, while it cannot directly trace its cells to individual modules destined for the United States, it considers certain of its sales of solar cells to these unaffiliated customers to be indirect U.S. EP sales, because it has knowledge, at or prior to the time of sale, based on email communication or other sales documentation, that such sales are destined for the United States.³⁹ The Department preliminarily determines that there is sufficient record evidence to support Motech’s claim that the sales in these channels are destined for the U.S. market,⁴⁰ with the exception of one customer for which Motech did not provide any supporting evidence of knowledge of an ultimate U.S. destination.⁴¹ Accordingly, but for this one exception, we included these indirect sales reported in Motech’s U.S. sales database in our margin calculation for purposes of these preliminary results of review.

³⁸ See Motech's June 20, 2016 Section A response at A-17, A-19 through A-22.

³⁹ *Id.*; see also Motech’s October 24, 2016 Supplemental A-C response at 2-4.

⁴⁰ See Motech's June 20, 2016 Section A response at Exhibits A-7 A-9, A-15; see also Motech’s Supplemental Section A Response dated February 22, 2017.

⁴¹ See Motech’s February 13, 2017 Supplemental Sections A and C Questionnaire Response at 1.

SAS-Solartech

For SAS-Solartech, we calculated EP based on packed prices to the first unaffiliated customer in the United States, or to the unaffiliated domestic or third-country customers where SAS-Solartech reported that it knew or had reason to know that the ultimate destination of the merchandise was the United States.⁴² We added U.S. direct selling expenses, *i.e.*, credit expenses, warranty expenses, bank charges, and packing costs, to the NV calculation.

SAS-Solartech stated that certain U.S. transactions were made under a “tolling arrangement” with a U.S. customer, pursuant to which the customer supplied SAS with wafers free of charge, and SAS, as the toller, processed such wafers into cells and charged the U.S. customer processing fees.⁴³ According to SAS, the U.S. customer took title of the wafers that were supplied and the cells that were tolled.⁴⁴ As such, SAS argues that the Department should not include in the U.S. sales database the reported transactions under the aforementioned tolling arrangement.⁴⁵ Based on record evidence, and consistent with the Department’s practice of not using transactions reflecting only processing fees as sales transactions,⁴⁶ we preliminarily determine that the above-referenced transactions do not reflect the actual selling prices of the finished products, in that SAS charged the customer only processing fees. Therefore, we have excluded from our analysis the reported U.S. transactions under the aforementioned tolling arrangements for purposes of these preliminary results.

SAS-Solartech also stated that it inadvertently included in the reported U.S. sales data certain sales transactions that were made to a third country.⁴⁷ Accordingly, SAS-Solartech argues that such sales transactions should be excluded from the reported sales data.⁴⁸ In reviewing the sales and shipping documentations on the record, we found that SAS-Solartech’s claim is supported by record evidence.⁴⁹ Therefore, we have excluded these sales transactions from our analysis for purposes of these preliminary results.

Moreover, SAS-Solartech alleged that some solar cells sold by SAS during the POR were shipped from Taiwan to foreign trade zones (“FTZs”) in the United States for transit to a third country.⁵⁰ SAS-Solartech maintains that, based on verbal discussions with the customer at the time of sale and sales documentation, it knew at the time of sale that the merchandise in question was destined for a third country.⁵¹ Accordingly, SAS-Solartech argues that the Department should not include in its analysis the transactions involving such sales, because they are not U.S. sales.⁵² In reviewing the information provided by SAS-Solartech, we found no documentary

⁴² See the SAS-Solartech’s Preliminary Analysis Memorandum at 2.

⁴³ See page C-7 of SAS’ July 11, 2016, submission and Exhibit Supp-SAS-13 and pages Vol. III -23 to Vol. III-26 of SAS’ October 24, 2016, submission.

⁴⁴ *Id.*

⁴⁵ See SAS-Solartech’s “Resubmission of Comments Regarding the Department’s Upcoming Preliminary Results,” dated February 10, 2017, at page 10.

⁴⁶ See *Brass Sheet and Strip from the Netherlands: Final Results of Antidumping Duty Administrative Review*, 62 FR 51450, 51451 (October 1, 1997), at Comment 1.

⁴⁷ See Sino-American’s January 12, 2017, Supplemental B and C Response at page 3 and Exhibit Supp-SAS/SEC-9.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ See, *e.g.*, “Certain Crystalline Silicon Photovoltaic Products from Taiwan: Sino-American’s Section A Response,” dated June 17, 2016 at A-9.

⁵¹ See, *e.g.*, SAS’ October 24, 2016, submission at 4.

⁵² See, *e.g.*, Sino-American’s 2nd Supplemental Response at 6.

evidence in support of SAS-Solartech's claim that it knew at the time of sale that the products in question that were shipped to the United States during the POR actually entered the FTZs and were then shipped to a third country. Given the terms of delivery between SAS-Solartech and the customers, and absent any specific documentation indicating that the merchandise in question actually entered FTZs in the United States, there is insufficient evidence to support SAS-Solartech's claim that it knew at the time of sale that such merchandise entered FTZs in the United States in transit for a third country. Therefore, we have treated all products that were shipped to the United States during the POR as U.S. sales, and included such sales in our analysis for purposes of these preliminary results.

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, we normally compare the respondent's volume of home market sales of the foreign-like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act. If we determine that no viable home market exists, we may, if appropriate, use a respondent's sales of the foreign-like product to a third country market as the basis for comparison market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

For each respondent, we determined that the 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.⁵³ Therefore, for Motech's and SAS-Solartech's margin analysis, 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*

During the POR, SAS-Solartech made sales of the foreign-like product in the home market to affiliated parties, as defined in section 771(33) of the Act. Consequently, we tested these sales to ensure that they were made at arm's-length prices, in accordance with 19 CFR 351.403(c). To test whether the sales to affiliates were made at arm's-length prices, where appropriate, we compared the unit prices of sales to affiliated and unaffiliated customers net of all billing adjustments, discounts, movement charges, direct selling expenses, and packing expenses. Pursuant to 19 CFR 351.403(c) and in accordance with the Department's practice, where the price to that affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties at the same level of trade, we determined that the sales made to the affiliated party were at arm's length.⁵⁴ Sales to affiliated customers in the home market that were not made at arm's-length prices were excluded from our

⁵³ See SAS-Solartech's June 17, 2016, submission at A-2.; see Motech's June 20, 2016 Section A response at A-5.

⁵⁴ See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002) (establishing that the overall ratio calculated for an affiliate must be between 98 and 102 percent in order for sales to be considered in the ordinary course of trade and used in the NV calculation).

analysis because we considered these sales to be outside the ordinary course of trade.⁵⁵ Thus, for SAS-Solartech's affiliated parties sales that failed the arm's length test, the Department, where applicable, used in its analysis the affiliated parties' resale to their first unaffiliated customers in the home market.⁵⁶

C) *Level of Trade*

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade ("LOT") as the U.S. sales. Sales are made at different levels of trade if they are made at different marketing stages (or their equivalent).⁵⁷ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁵⁸ In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market, *i.e.*, the chain of distribution, including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales, *i.e.*, NV based on either home market or third-country prices,⁵⁹ we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.⁶⁰

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same level of trade as the EP or CEP, the Department may compare the U.S. sale to sales at a different level of trade in the comparison market. In comparing EP or CEP sales at a different level of trade in the comparison market, where available data make it possible, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV level of trade is at a more advanced stage of distribution than the level of trade of the CEP and there is no basis for determining whether the difference in levels of trade between NV and CEP affects price comparability, *i.e.*, no level-of-trade adjustment is possible, the Department will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.⁶¹

Motech

In the home market, Motech reported that it made sales to one customer category (*i.e.*, original equipment manufacturers) through one channel of distribution (*i.e.*, direct sales from Motech to

⁵⁵ See section 771(15) of the Act and 19 CFR 351.102(b)(35).

⁵⁶ See SAS-Solartech's Preliminary Results Analysis Memorandum.

⁵⁷ See 19 CFR 351.412(c)(2).

⁵⁸ *Id.*; see also *Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010), and accompanying Issues and Decision Memorandum at Comment 7 (*OJ from Brazil*).

⁵⁹ Where NV is based on constructed value (CV), we determine the NV level of trade based on the level of trade of the sales from which we derive selling, general and administrative expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

⁶⁰ See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

⁶¹ See *OJ from Brazil* at Comment 7.

domestic customers).⁶² 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, provision of rebates, warranty services, guarantees, after sale services; and freight and delivery.⁶³ 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 of solar cells made to unaffiliated U.S. customers; (2) EP sales of solar cells made to unaffiliated U.S. customers, for shipment to third countries other than the PRC, where Motech received an indication from the customer of an ultimate U.S. destination; (3) EP sales of solar cells that are sold to unaffiliated Taiwanese module producers prior to shipment to the United States; (4) EP sales of solar cells made to unaffiliated customers in third countries for shipment to third countries other than the PRC, where Motech received an indication from the customer of an ultimate U.S. destination; (5) CEP sales of modules by Motech's U.S. affiliate; and (6) CEP sales of modules by Motech's U.S. affiliate that were toll processed after importation into the United States.⁶⁴ These channels are marked as "1," "2," "3," "4," "5," and "6," respectively, in the U.S. sales database.⁶⁵

We examined the selling activities performed for EP sales in all four EP sales channels, and found that Motech performed the same selling activities, at the same levels of intensity.⁶⁶ Further, the selling functions performed, and the intensity of performance are the same as in the home market LOT.⁶⁷ Thus, we preliminarily determine that the four EP sales channels constitute one LOT.

We also examined the selling activities performed for CEP sales in the two CEP sales channels, and found that Motech performed the same selling activities, at the same levels of intensity: sales forecasting, procurement/sourcing services, packing, inventory maintenance, order input/processing, technical assistance, warranty services, guarantees, and freight and delivery.⁶⁸ Thus, we preliminarily determine that the two CEP sales channels constitute one LOT.

Additionally, we preliminarily find that EP sales in all four sales EP sales channels are at a LOT different from the LOT of the two CEP sales channels. Motech performs a full complement of selling activities for its EP sales, whereas the selling activities for CEP sales are minimal. Specifically, the selling activities and intensity of such functions for EP sales indicate that Motech is proactive in its forecasting/planning activities, its strategic/economic planning; personnel training/exchange, engineering services, sales promotion, procurement/sourcing

⁶² See Motech's July 8, 2016 Section B & C Response at B-23.

⁶³ See Motech's June 20, 2016 Section A Response at Exhibit A-10.

⁶⁴ See Motech's July 8, 2016 Section B & C Response at C-6.

⁶⁵ *Id.*

⁶⁶ See Motech's June 20, 2016 Section A Response at Exhibit A-10.

⁶⁷ *Id.*

⁶⁸ *Id.*

services, packing, inventory maintenance, order input/processing, direct sales personnel, sales/marketing support, marketing research, technical assistance, provision of rebates, guarantees, and after-sales services, when compared to the activities performed by Motech for CEP sales, which were fewer.⁶⁹ Therefore, we preliminarily determine that during the POR, the EP sales channels are at one LOT in the U.S. market and CEP sales channels are at another LOT in the U.S. market.

With regard to the four EP sales channels, we evaluated the selling function categories in the U.S. and the home market LOT, and found that the selling functions in each of the categories were performed in both the U.S. and home markets. Finally, we compared the LOT of the EP sales channels, to the home market LOT and found that the selling functions performed for U.S. and home market customers do not differ, and do not 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. Therefore, for the preliminary results, we have determined that EP sales and home market sales during the POR were made at the same LOT.

We evaluated the selling function categories in the U.S. CEP sales channels and home market LOTs, and found that the selling functions in each of the categories substantially differ. 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 sells to its U.S. affiliate in its CEP sales channels. 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 CEP sales.

SAS-Solartech

SAS-Solartech reported four channels of distribution in the home market. The first channel is for direct sales of self-produced products made from the factory to home market customers who are not traders. The second channel is for direct sales of self-produced products made from the factory to trading companies. The third channel is for sales of products that were purchased from local suppliers and delivered directly from the suppliers to the customer. The fourth channel involves sales of products that were purchased from local suppliers and delivered from SAS-Solartech’s factories.⁷⁰ We also found that the degree to which SAS-Solartech 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 four channels of distribution. For this reason, the SAS-Solartech reported a single LOT for the home market. Accordingly, we found that the four home market channels of distribution constitute a single LOT.⁷¹

⁶⁹ *Id.*

⁷⁰ See SAS-Solartech’s Supplemental Questionnaire Response, dated January 9, 2017 at pages 5 and 6.

⁷¹ *Id.* See, also, Exhibit A-10 of SAS’ June 17, 2016, submission and Exhibit A-10 of Solartech’s June 17, 2016, submission for their selling activities.

SAS-Solartech reported EP sales in the U.S. market made through two channels of distribution. In the first channel of distribution, SAS-Solartech reported U.S. sales where the subject merchandise was delivered to the customer at or from SAS-Solartech's factories. In the second channel, SAS sold the subject merchandise to trading companies, with the knowledge that the sales were destined for the U.S. market. SAS-Solartech reported the terms of delivery involving the subject merchandise sales through both channels of distributions.⁷²

We determined that SAS-Solartech's EP sales were made at a single LOT, because we found that the same selling functions were performed by SAS-Solartech on all U.S. sales. Further, 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. Specifically, we noted that the selling function charts provided by SAS-Solartech⁷³ show that for virtually all selling functions, SAS-Solartech performed the same selling activities at approximately the same level of intensity in both the U.S. and home markets. In addition, we noted that, regardless of customer category, selling activities and services performed by SAS-Solartech do not differ in any systemic way. 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 POR, SAS-Solartech sold the subject merchandise and the foreign like product at the same LOT, and we made no LOT adjustment under section 773(a)(7)(A) of the Act.

Revisions to SAS-Solartech's Reported Home Market Sales

1. Exclusions of Transactions Reflecting Processing Fees:

SAS-Solartech reported that, during the POR, it acted as the toller for certain home market customers.⁷⁴ Pursuant to the tolling arrangements, the customers supplied Solartech with wafers or cells free of charge and Solartech processed the wafers or cells into cells or modules, and charged the customers processing fees.⁷⁵ SAS-Solartech argues that these sales are outside the ordinary course of business, because the selling prices reflect only processing fees.⁷⁶ Based on the information provided on the record, we preliminarily excluded the transactions involving the above-referenced tolling arrangements from our analysis for purposes of these preliminary results, because such transactions reflect only processing fees; not selling prices of the finished merchandise.⁷⁷

2. Exclusion of Sales Transactions Between SAS and Solartech:

SAS-Solartech reported inter-company sales between SAS and Solartech during the POR.⁷⁸ However, as noted above, the Department has preliminarily determined that SAS and Solartech

⁷² *Id.* See, also, page C-33 of SAS' July 11, 2016, submission and page C-22 of Solartech's July 11, 2016 submission.

⁷³ See Exhibit A-10 of Solartech's June 17, 2016, section A response.

⁷⁴ See Solartech's July 11, 2016, submission at B-7.

⁷⁵ *Id.*

⁷⁶ See Solartech's October 24, 2016, submission, at Vol. I/II-20-21.

⁷⁷ See SAS-Solartech's Preliminary Results Analysis Memorandum.

⁷⁸ See, e.g., Solartech's October 24, 2016, submission at Exhibit Supp-GEN-7.

are affiliated persons within the meaning of Section 771(33)(E) of the Act and collapsed SAS and Solartech into a single entity, pursuant to 19 CFR 351.401(f).⁷⁹ Accordingly, upon the Department's request, SAS and Solartech reported their joint home market sales to their unaffiliated home market customers.⁸⁰ However, SAS-Solartech also included in the joint home market sales database the inter-company sales between SAS and Solartech.⁸¹ Because the Department used SAS' and Solartech's downstream sales to the unaffiliated home market customers, we have excluded the inter-company sales between SAS and Solartech from our analysis for purposes of these preliminary results.⁸²

Cost of Production Analysis

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 ("TPEA"), which made numerous amendments to the AD and countervailing duty law, including amendments to section 773(b)(2) of the Act, regarding the Department's requests for information on sales at less than the cost of production ("COP").⁸³ This law does not specify dates of application for those amendments.⁸⁴ On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained in section 771(7) of the Act, which relate to determinations of material injury by the U.S. International Trade Commission.⁸⁵ Section 773(b)(2)(A)(ii) of the Act controls all determinations in which the complete initial questionnaire has not been issued as of August 6, 2015. It requires the Department to request CV and COP information from respondent companies in all AD proceedings.⁸⁶

Accordingly, the Department requested this information from Motech and SAS-Solartech in this administrative review.⁸⁷ We examined Motech's and SAS-Solartech's cost data and determined that our quarterly cost methodology is not warranted and, therefore, we applied our standard methodology of using annual costs based on the reported data.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of costs of materials and fabrication for the foreign like product, plus amounts for general and administrative ("G&A") expenses and interest expenses.

⁷⁹ See the Department's letter to SAS 'Antidumping Duty Administrative Review of Certain Crystalline Silicon Photovoltaic Products from Taiwan: Sino-American Silicon Products Inc. and Solartech Energy Corp.,' dated December 12, 2016. See, also, the Collapsing Entity Memorandum.

⁸⁰ See, e.g., SAS-Solartech's January 9, 2017, submission and accompanying sales databases.

⁸¹ See SAS-Solartech's January 27, 2017, submission at pages 1 through 4.

⁸² See SAS-Solartech's Preliminary Analysis Memorandum.

⁸³ See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015).

⁸⁴ The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>; see also the Petitions.

⁸⁵ See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015).

⁸⁶ *Id.*, 80 FR at 46794-95.

⁸⁷ See Motech's July 14, 2016 Section D response; see SAS and Solartech's July 18, 2016 Section D responses.

We relied on the COP data submitted by SAS-Solartech and Motech except as follows:⁸⁸

SAS-Solartech:

- We revised SAS's and Solartech's reported per-unit costs to reflect the Department's reclassification of certain off-grade cell production as lower-valued byproducts rather than as non-prime merchandise allotted actual production costs.⁸⁹
- We added certain costs related to employee restricted stocks and non-leave bonuses to Solartech's reported fixed overhead costs.⁹⁰
- In accordance with section 773(f)(2) of the Act, we revised Solartech's reported costs to reflect the higher of the transfer or market price for the ethylene-vinyl acetate inputs and coloring services obtained from affiliated parties.⁹¹
- We revised SAS's and Solartech's G&A and financial expenses to reflect the company-specific G&A and financial expense rates, rather than using the reported weighted-average G&A and financial expense.⁹²

Motech:

- We re-allocated the total reported cost of manufacturing for the first seven months of the POR to each model to reflect certain off-grade products at full value, and we re-allocated the total reported cost of manufacturing for the subsequent eleven months of the POR to each model to reflect other off-grade products at reduced value.⁹³

2. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(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 sales prices were below the COPs. In particular, in determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made within an extended period of time in substantial quantities and at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(2)(B), (C), and (D) of the Act. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices were net of billing adjustments, movement charges, direct and indirect selling expenses and packing expenses, where appropriate.⁹⁴

3. Results of the COP Test

In determining whether to disregard home 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

⁸⁸ See SAS-Solartech's Preliminary Results Analysis Memorandum and Motech's Preliminary Results Analysis Memorandum.

⁸⁹ See SAS-Solartech's Preliminary Results Analysis Memorandum.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ See Motech's Preliminary Results Analysis Memorandum.

⁹⁴ See SAS-Solartech's Preliminary Results Analysis Memorandum and Motech's Preliminary Results Analysis Memorandum.

made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (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, 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." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales because: 1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and, 2) 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.

We found that, for certain products, more than 20 percent of Motech's and SAS-Solartech's home market sales during the POR were 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, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.⁹⁵

Calculation of NV Based on Comparison-Market Prices

We calculated NV based on delivered or ex-factory prices to unaffiliated customers in the home market. We made deductions, where appropriate, from the starting price for billing adjustments and early payment discounts, in accordance with 19 CFR 351.401(c). We also made deductions, where appropriate, from the starting price for certain movement expenses, *i.e.*, inland freight and inland insurance, and for certain direct selling expenses, *i.e.*, credit expenses, warranty expenses, and bank charges, pursuant to section 773(a)(6)(B)(ii) of the Act.

When comparing U.S. sales with comparison-market sales of similar, but not identical, merchandise, we also made adjustments for differences in the physical characteristics of 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 of the foreign-like product and that of the subject merchandise.⁹⁶

Finally, as discussed in the "Level of Trade" section above, we made an offset to CEP, pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f), for Motech. We calculated the CEP offset as the lesser amount of the indirect selling expenses incurred on the home market sales or the indirect selling expenses deducted from the starting price in calculating CEP.

Currency Conversion

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

⁹⁵ See SAS-Solartech's Preliminary Results Analysis Memorandum and Motech's Preliminary Results Analysis Memorandum.

⁹⁶ See SAS-Solartech's Preliminary Results Analysis Memorandum and Motech's Preliminary Results Analysis Memorandum.

CONCLUSION

We recommend applying the above methodology for these preliminary results of review.

☒

Agree

☐

Disagree

2/28/2017

X *Ronald K. Lorentzen*

Signed by: RONALD LORENTZEN

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance