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June 29, 2017

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

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

SUBJECT: Issues and Decision Memorandum for the Final Results of the 2014-2016 Administrative Review of the Antidumping Duty Order on Certain Crystalline Silicon Photovoltaic Products from Taiwan

I. SUMMARY

The Department of Commerce (the Department) analyzed the comments submitted by the interested parties in the administrative review of the antidumping duty (AD) order on crystalline silicon photovoltaic products (solar products) from Taiwan covering the period of review (POR) July 31, 2014, through January 31, 2016. This administrative review covers 12 producers or exporters of the subject merchandise. Based upon our analysis of the comments received, we made changes from the *Preliminary Results*[1] to the margin calculations for one of the two mandatory respondents, Sino-American Silicon Products Inc. (SAS) and its affiliated entity Solartech Energy Corp. (Solartech) (hereinafter, SAS-Solartech); we made no changes to the *Preliminary Results* margin calculations with respect to Motech Co., Ltd. (Motech). We continue to find that SAS-Solartech and Motech sold the subject merchandise in the United States at prices below the normal value (NV) during the POR. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

[1] *Certain Crystalline Silicon Photovoltaic Products From Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review; 2014-2016*, 82 FR 12802 (March 7, 2017) (*Preliminary Results*), and accompanying Memorandum from James Maeder, Senior Director, Office I, for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, "Decision Memorandum for the Preliminary Results of the 2014-2016 Antidumping Duty Administrative Review of Certain Crystalline Silicon Photovoltaic Products from Taiwan," dated February 28, 2017 (Preliminary Decision Memorandum).

II. LIST OF ISSUES

A. SAS-Solartech-Specific Issues

Comment 1: Whether Products Shipped to the United States are Third-Country Sales
Comment 2: Whether to Exclude Priced Sample Sales
Comment 3: Whether to Assign SAS-Solartech's Antidumping Duty Rate to Sunrise Global Solar Energy (Sunrise Global)
Comment 4: Whether to Revise the MFRH/U Fields to Reflect SAS-Solartech Collapsed Entity
Comment 5: Whether to Revise the Draft Cash Deposit and Assessment Instructions
Comment 6: Differential Pricing
Comment 7: Cost of Manufacturing for Grade 4 Non-Prime Products
Comment 8: Scrap Offset for Two Resold CONNUMs
Comment 9: Year End Adjustment for Items Relating to Profit
Comment 10: Loss in Inventory Devaluation
Comment 11: Other Certified Public Account (CPA) Adjustment
Comment 12: Scrap Offset
Comment 13: Rental Expenses
Comment 14: Fixed Overhead Costs
Comment 15: General and Administrative (G&A) and Financial Expenses

B. Motech-Specific Issues

Comment 16: Whether to Apply Partial AFA to Motech's Reported Per-Unit Costs
Comment 17: Whether to Deny Motech's Offset For Silver Paste Scrap
Comment 18: Whether to include fire losses in Motech's G&A expenses
Comment 19: Whether to Exclude Motech's Reported "Indirect" U.S. Sales For One Customer

III. BACKGROUND

On March 7, 2017, the Department published the *Preliminary Results* of this administrative review.[2] In accordance with 19 CFR 351.309(c), we invited interested parties to comment on the *Preliminary Results*.[3] On April 10, 2017, the Department received case briefs from SolarWorld Americas, Inc. (the petitioner), SAS-Solartech, and Motech.,[4] and rebuttal briefs from the petitioner, SAS-Solartech, and Motech on April 17, 2017.[5] Based on the requests of SAS-

[2] *See Preliminary Results.*
[3] *Id.*, 82 FR at 12804.
[4] *See* Letter from SAS-Solartech to the Department, "Certain Crystalline Silicon Photovoltaic Products from Taiwan: Case Brief," dated April 10, 2017 (SAS-Solartech Case Brief); Letter from Motech to the Department, "Crystalline Silicon Photovoltaic Products from Taiwan, Case No. A-583-853: Motech Case Brief," dated April 10, 2017; and Letter from the petitioner to the Department, "Certain Crystalline Silicon Photovoltaic Products from Taiwan: Case Brief of SolarWorld Americas, Inc.," dated April 10, 2017.
[5] *See* Letter from SAS-Solartech to the Department, "Certain Crystalline Silicon Photovoltaic Products from Taiwan: Rebuttal Brief," dated April 17, 2017; Letter from Motech to the Department, "Crystalline Silicon

Solartech, Motech, and the petitioner,[6] the Department held a public hearing on May 15, 2017.[7]

The Department conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

IV. SCOPE OF THE ORDER[8]

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 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 10,000mm^2 in surface area, that are permanently integrated into a consumer good

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Photovoltaic Products from Taiwan, Case No. A-583-853: Motech Rebuttal Brief," dated April 17, 2017; and Letter from the petitioner to the Department, "Certain Crystalline Silicon Photovoltaic Products from Taiwan: Rebuttal Brief," dated April 17, 2017 (the petitioner Rebuttal Brief).

[6] *See* Letter from Motech to the Department "Certain Crystalline Silicon Photovoltaic Products from Taiwan, Case No. A-583-853: Hearing Request," dated April 10, 2017, Letter from SAS-Solartech to the Department "Certain Crystalline Silicon Photovoltaic Products from Taiwan: Request for Hearing," dated April 10, 2017, and Letter from petitioner to the Department "Certain Crystalline Silicon Photovoltaic Products from Taiwan: Request for Hearing," dated April 10, 2017.

[7] *See* Transcript "Public Hearing, In the Matter Of: the Administrative Review of Certain Crystalline Silicon Photovoltaic Products from Taiwan," dated May 22, 2017.

[8] On April 5, 2017, the Department published its final results of changed circumstances reviews and intent to revoke, in part, AD and countervailing duty (CVD) orders on certain crystalline silicon photovoltaic products from the People's Republic of China (PRC) and the AD order on solar products from Taiwan with respect to certain solar panels that are incorporated in the battery charging and maintaining units that are (1) Less than 300,000 mm^2 in surface area; (2) less than 27.1 watts in power; (3) coated across their entire surface with a polyurethane doming resin; and (4) joined to a battery charging and maintaining unit (which is an acrylonitrile butadiene styrene (ABS) box that incorporates a light emitting diode (LED)) by coated wires that include a connector to permit the incorporation of an extension cable. The battery charging and maintaining unit utilizes high-frequency triangular pulse waveforms designed to maintain and extend the life of batteries through the reduction of lead sulfate crystals. The scope description below includes this exclusion language. *See Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China and From Taiwan: Final Results of Changed Circumstances Reviews, and Revocation of Antidumping Duty Orders and Countervailing Duty Order, in Part*, 82 FR 16573 (April 5, 2017).

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 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 PRC.[9] 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. Additionally, excluded from the scope of this order are solar panels that are: (1) less than 300,000 mm^2 in surface area; (2) less than 27.1 watts in power; (3) coated across their entire surface with a polyurethane doming resin; and (4) joined to a battery charging and maintaining unit (which is an acrylonitrile butadiene styrene ("ABS") box that incorporates a light emitting diode ("LED")) by coated wires that include a connector to permit the incorporation of an extension cable. The battery charging and maintaining unit utilizes high-frequency triangular pulse waveforms designed to maintain and extend the life of batteries through the reduction of lead sulfate crystals. The above-described battery charging and maintaining unit is currently available under the registered trademark "SolarPulse."

Merchandise covered by this order is currently classified in the 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 order is dispositive.

V. MARGIN CALCULATIONS

For SAS-Solartech, the Department calculated export price (EP) and NV using the same methodology as stated in the *Preliminary Results*, except as follows:

1) We used a consolidated code under the manufacturer fields MRFU/H in the U.S. and home market sales databases for purposes of calculating SAS-Solartech's final margin;
2) We incorporated a third PRIME category in the margin programs so that down grade 4 products in each market are matched only to each other;
3) We included loss recognized on raw material inventory devaluation in SAS' reported G&A used in the margin calculation;
4) We revised the denominator to the G&A expense ratio to reflect the cost of goods sold (COGS) from SAS' audited financial statements. We then adjusted the denominator only for the COGS items that were reported as G&A or selling expenses.[10]

[9] *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); and *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Countervailing Duty Order*, 77 FR 73017 (December 7, 2012).

[10] *See* Memorandum to The File "2014-2016 Antidumping Duty Administrative Review of Certain Crystalline Silicon Photovoltaic Products from Taiwan, Final Results Analysis for the SAS-Solartech Entity," dated concurrently with this memorandum (Analysis Memorandum for the Final Results).

For Motech, the Department calculated EP, Constructed Export Price, and NV using the same methodology as stated in the *Preliminary Results*.[11]

VI. DISCUSSION OF THE ISSUES

A. SAS-Solartech-Specific Issues

Comment 1: Whether Products Shipped to the United States are Third-Country Sales

SAS-Solartech's Argument:

- The Department incorrectly included in its margin calculation for the *Preliminary Results* certain sales made during the POR, *via* U.S. foreign trade zones (FTZs), to Mexico that should not be included in the Department's analysis, because SAS knew at the time of sale that such products were ultimately destined for Mexico.
- Under the Department's longstanding practice, the seller's knowledge at the time of sale determines whether the sales are reportable U.S. sales transactions; and merchandise that is admitted into an FTZ, which does not enter the U.S. customs territory, but rather, is destined for a third country, is not subject to U.S. antidumping laws.[12]
- There is substantial record evidence demonstrating that SAS knew at the time of sale that the merchandise in question was destined for Mexico, because: (1) its customers advised SAS that the final destination of the merchandise at issue is Mexico;[13] (2) the shipping documentation referenced Mexico as the ultimate "ship to" destination and a Mexican entity as the "notify" party;[14] (3) the U.S. address identified on the sales documentation fell within U.S. FTZs,[15] thereby, demonstrating that the merchandise would transit through U.S. FTZs and would not enter the United States for consumption; (4) SAS knew from its longstanding relationship with the customers at issue that they had facilities for modules assembly in Mexico;[16] and (5) SAS' internal accounting system treated the transactions at issue as sales to Mexico**.**
- While the Department's test of the ultimate destination is based on the knowledge at the time of sale, the evidence obtained from its customers, after the sales were concluded, such as emails and other sales documentation, confirm that the merchandise at issue was

[11] *See* Memorandum to the File "Preliminary Results Analysis for Motech industries, Inc.," dated February 28, 2017.
[12] *See* SAS-Solartech Case Brief at 14-15 (citing *Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Final Results of Antidumping Duty Administrative Review*, 76 FR 36086 (June 21, 2011) (*Mexican Standard Pipe*), and accompanying Issues and Decision Memorandum (IDM) (June 13, 2011) at Comment 1. *See also* SAS-Solartech Case Brief at 14 (citing the Department's Antidumping Procedures Manual, Chapter 7, page. 34 ("FTZs are considered to be outside of U.S. Customs territory for the purpose of customs duty payment")).
[13] *See* SAS-Solartech Case Brief at 15-16.
[14] *Id.*; *see also* SAS-Solartech Case Brief at 8 (citing Exhibit A-3 to SAS' June 17, 2016 Section A Response (SAS' June 17, 2016 QR)).
[15] *See* SAS-Solartech Case Brief at 18 (citing Exhibit SA-SAS-1 of SAS' August 11, 2016 Supplemental Questionnaire Response (SAS' August 11, 2016, Supp. QR)).
[16] *See* SAS-Solartech Case Brief at 15-16.

shipped to Mexico.[17]

- In the original investigation of this proceeding, the petitioner argued that the Department should exclude exports of subject merchandise to third countries from the pool of U.S. sales used to calculate the respondent's dumping margin, because the record contained no evidence at the time of sale that the United States was the ultimate destination.[18] Nevertheless, in this segment of the proceeding, the Department has inexplicably included exports of solar cells made to a third country.
- The same principle as in the original investigation applies here. SAS' knowledge at the time of sale was that the merchandise it sold to two of its customers on an ex-work/FOB basis was to be admitted to approved U.S. FTZs and, thereafter, delivered to Mexico. The record evidence supports this fact.
- Thus, as noted above, SAS-Solartech knew and had reason to believe that, at the time of sale, these two customers intended to deliver the merchandise to Mexico based on the documentation received and its communication with those customers.
- For the above-referenced reasons, the Department should exclude all such sales from its final margin calculations, because it would be unreasonable and unlawful to base SAS-Solartech's U.S. price calculation on sales made to a third country.

Petitioner's Rebuttal Argument:

- The Department properly included in SAS-Solartech's margin calculations SAS' alleged U.S. FTZs sales, as SAS has provided no conclusive documentary evidence that it had reason to know at the time of the specific sale of subject merchandise that the merchandise was ultimately destined for U.S. FTZs and then to Mexico.
- The knowledge test, as applied in the original investigation, is applicable here with regard to SAS-Solartech's alleged FTZ transactions. In the *Final Determination* of the original investigation, the Department articulated its standard for the "knowledge test," which is to consider documentary or physical evidence that the producer 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 statements or declarations.[19]
- In the *Final Determination*, the petitioner also noted that it is important for the Department to be cautious in determining the universe of indirect sales that it permits to be reported as U.S. sales, and that absent such evidence as to actual or constructive knowledge of the ultimate destination at the time of a sale, a respondent could manipulate the pool of transactions it reports to the agency, depending on the predicted outcome.[20]
- SAS-Solartech's claims of constructive knowledge at the time of sale that the products at issue were shipped to U.S. FTZs and were not sold in the United States is not

[17] *See* SAS-Solartech Case Brief at 18-19 (citing Exhibit Supp-GEN-4 to SAS' October 24, 2016 supplemental questionnaire response (SAS' October 24, 2016, Supp. QR) and Exhibit Supp-SAS/SEC-7 and Exhibit Supp-SAS/SEC-8 of SAS' January 12, 2017 supplemental questionnaire response (SAS' January 12, 2017 Supp. QR)). *See also* SAS-Solartech Case Brief at 14-15 (citing *Mexican Standard Pipe*).

[18] *See* SAS-Solartech Case Brief at 16 (citing *Certain Crystalline Silicon Photovoltaic Products from Taiwan: Final Determination of Sales at Less Than Fair Value*, 79 FR 76966 (December 23, 2014) (*Final Determination*), and accompanying IDM (December 15, 2015) at Comment 4.

[19] *See* the petitioner Rebuttal Brief at 6-7 (citing the *Final Determination).*

[20] *Id*.

conclusive.[21]

- After the Department provided SAS with multiple opportunities to submit evidence to support its claim that it knew at the time of sale that the products at issue entered U.S. FTZs in transit to Mexico, the evidence submitted by SAS-Solartech largely consisted of documents only recently obtained from its customer for the purpose of responding to the Department's supplemental questionnaires and thus cannot demonstrate knowledge at the time of the sale.
- SAS, itself, in response to the Department's request for information, confirmed that the two customers involved in the alleged FTZ sales only verbally advised it that the sales were ultimately destined for Mexico and that, because sales to these customers were made either on ex-factory terms or on FOB Taiwan port terms, SAS was unable to confirm if the merchandise actually entered into U.S. FTZs and ultimately was delivered to Mexico.[22]
- In its questionnaire response, SAS has acknowledged that it was unable to obtain confirmation from one of its two customers as to whether the merchandise entered into an FTZ in the United States in transit to Mexico, because this customer entered bankruptcy and its office is closed. [23] SAS further acknowledged that the other customer did not inform it of the specific address in Mexico to which the merchandise ultimately would be delivered.[24]
- SAS, eventually, provided recently obtained confirmations (*i.e.*, emails) from both customers indicating that the merchandise entered U.S. FTZs and was shipped to Mexico. However, such confirmations were dated, drafted and prepared after the POR.[25] For documentary evidence indicating that the merchandise at issue entered U.S. FTZs, SAS provided nothing more than a list of addresses for locations in the United States where it was informed to deliver the merchandise and Internet research indicating these addresses are within FTZs.[26]
- While SAS has recently submitted after-the-fact import invoices between one of its two customers and its Mexican entity as evidence that the products at issue were destined to Mexico, such documents should not serve as conclusive documentary evidence that SAS knew at the time of sale to the customer that the merchandise was destined to a U.S. FTZ and then Mexico.
- SAS did not have access to such documentation at the time of sale and it only obtained them from the customer for the purpose of responding to the Department's supplemental questionnaires. It is also unclear how the aforementioned invoices demonstrate actual shipment of SAS' exact merchandise to the alleged U.S. FTZs and from the U.S. FTZs to Mexico.
- Moreover, SAS' additional shipping documentation submitted for the second customer reflects a single sale and a U.S. shipping location.[27] There is no evidence that SAS was

[21] *See* the petitioner Rebuttal Brief at 5.
[22] *See* the petitioner Rebuttal Brief at 9-10 (citing SAS' August 11, 2016, Supp. QR at SAS-3 and SA-4).
[23] *Id*.
[24] *Id*.
[25] *See* the petitioner Rebuttal Brief at 10 (citing SAS' October 24, 2016, Supp. QR at Vol. I/II-4, Vol. I/II and Exhibit Sup-GEN-4.
[26] *Id*., at Exhibit SA-SAS-1.
[27] *See* the petitioner Rebuttal Brief at 12 (citing SAS' January 12, 2017 Supp. QR at Exhibit Supp-SAS/SEC-8).

provided with, or had access to, this additional documentation during the POR, such that it would be reasonable to conclude that it had knowledge at the time of sale of the shipments' entry into FTZs in transit to Mexico. Even if the Department were to determine this documentation sufficient for the knowledge test, such documentation reflects only a single invoice.

- For the aforementioned reasons, the record lacks the documentary evidence that SAS-Solartech had knowledge at the time of sale that the merchandise at issue was shipped to U.S. FTZs in transit to Mexico.

Department's Position:

After considering all factual information on the record of this review, we find that SAS-Solartech failed to demonstrate that the products sold to two of its customers were admitted to U.S. FTZs in transit to Mexico. Accordingly, we continue to treat all products that were shipped to the United States during the POR as U.S. sales for purposes of calculating SAS-Solartech's dumping margin.

Generally, merchandise that is shipped to U.S. FTZs is not subject to antidumping duties until it enters the U.S. customs territory.[28] This is because FTZs are considered to be outside the customs territory of the United States for duty purposes. If merchandise admitted to a U.S. FTZ does not enter the U.S. customs territory, but rather is re-exported to a third country, then (absent instruction otherwise from the FTZ Board) that merchandise is not subject to the U.S. dumping laws.[29]

At the same time, FTZ "procedures shall not be used to circumvent" antidumping and countervailing duty laws.[30] For this reason, items subject to antidumping or countervailing duty orders must be placed in privileged foreign status upon admission to a zone.[31] This "locks in" the merchandise as it was admitted to the FTZ, and, upon entry for consumption, antidumping duties and/or suspension is required.[32]

In this review, and as described below, SAS-Solartech has not established that its products sold to certain of its customers were admitted to U.S. FTZs. Accordingly, we included the sales of these products in the U.S. sales database and used them in the calculation of SAS-Solartech's dumping margin.[33]

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[28] *See, e.g.*, *Helmerich & Payne v. United States*, 24 F. Supp. 2d 304, 314 (CIT 1998) (explaining that "merchandise admitted into a foreign trade zone is exempt from an antidumping order or administrative review while it is in the zone; however, the exemption expires upon entry into the U.S. customs territory").

[29] *See Torrington Co. v. United* States, 826 F. Supp. 492, 494 (CIT 1993) (finding that products "imported into FTZs and re-exported without entering the U.S. customs territory are not subject to cash deposits and assessment of antidumping duties"); *Oil Country Tubular Goods from Argentina; Rescission of Antidumping Duty Administrative Review*, 62 FR 18747 (April 17, 1997);

[30] 15 CFR 400.14(e)(1).

[31] 15 CFR 400.14(e)(2).

[32] *See id.*

[33] Of course, if these products never entered the U.S. customs territory for consumption, then there are no entries for CBP to liquidate. But that is not the question before us. The question is whether the evidence on the record indicates that these are U.S. sales to include in the dumping margin calculation.

As an initial matter, it is clear on the record that SAS-Solartech had knowledge of the U.S. destination of the sales. The Department's general practice involving the "knowledge test" is to consider documentary or physical evidence that the producer knew or should have known at the time of sale the ultimate destination of the products it sells, because this type of evidence is more probative, reliable and verifiable than unsubstantiated statements or declarations.[34]

The Department will, nonetheless, also consider other evidence when conducting its analysis. For instance, an admission by the producer or a representative of the producer to the Department that it knew of the ultimate destination also may be relevant as to whether there was knowledge.[35] In prior cases, the Department considered whether the relevant party prepared or signed any certificates, shipping documents, contracts, or other such documents stating that the merchandise was destined for the United States.[36] The Department also considered whether the relevant party used any packaging or labeling stating that the merchandise was destined for the United States.[37] Additionally, in prior cases, the Department examined whether the features, brands, or specifications of the merchandise indicated that it was destined for the United States.[38]

Record evidence indicates that the terms of delivery between SAS and the two customers involved in the sales transactions at issue are based on either ex-factory or free on board (FOB) Taiwan port.[39] The sales and shipping documentation (*i.e.*, billing invoices; Air Waybills; and packing lists) generated at the time of sale for one of the two customers contain a shipping address located within the United States.[40] The sales and shipping documentation for the other customer also reflect a shipping address within the United States.[41] Throughout this review, SAS-Solartech has never disputed that these sales were sent to the United States.

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[34] *See*, *e.g.*, *Mexican Standard Pipe*, and accompanying IDM at Comment 1. *See also Certain In-Shell Raw Pistachios from Iran*, 70 FR 7470 (February 14, 2005) (*Pistachios from Iran*), and accompanying IDM at Comment 1*;* and *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders*, 60 FR 10900, 10951-10952 (February 28, 1995).

[35] *See 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 69696 (December 14, 1999) (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, and CBP entry information corroborated the admission).

[36] *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 69727 (December 14, 1999).

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

[38] *See*, *e.g.*, *GSA, S.R.L. v. United States*, 77 F. Supp. 2d 1349 (CIT 1999). The Court upheld the Department's finding that Company A knew the merchandise at issue was destined for the United States because Company A prepared the P-1 certificate, required for entry into the United States and which had imprinted at the top "For Certificate IPR Exports of Pasta to the USA;" Company A manufactured the labeling and packaging for the merchandise with the imprint: "Imported by Racconto, Melrose Park, IL 60160;" different package sizes were used for sale to the United States versus sales to Europe; and different brands were sold in the United States from those sold in Canada.

[39] *See* SAS' August 11, 2016, Supp. QR at SAS-3 and SA-4.

[40] *See*, *e.g.*, Exhibit A-3 of SAS' June 17, 2016.

[41] *Id*.

Rather, SAS-Solartech has claimed that these sales were shipped to U.S. FTZs for eventual re-exportation to Mexico. However, SAS was not the importer of record and was not in a position to know at the time of sale if the merchandise at issue was actually admitted to U.S. FTZs for shipment to Mexico. SAS acknowledged this fact, stating that because its sales to these two customers were made either on ex-factory or FOB Taiwan port terms, it was "unable to confirm whether the merchandise actually entered into the FTZs in the United States and ultimately was destined to Mexico."[42] SAS-Solartech provided no documentary evidence, such as FTZ admission documentation from U.S. Customs and Border Protection (CBP) or documentation from the FTZ operator or other FTZ entities, that would demonstrate that the merchandise shipped to the United States was actually admitted to U.S. FTZs. We note that there are numerous rules and procedures and requirements administered by CBP for admission of goods into zone.[43] Again, SAS could not provide such evidence, because it was not the importer of record to be able to know whether the merchandise actually went to U.S. FTZs in transit to Mexico.

Further, SAS-Solartech claims that the U.S. addresses identified on the aforementioned sales and shipping documentation fell within approved U.S. FTZs, thereby demonstrating that the merchandise would transit through U.S. FTZs and would not enter the United States for consumption. In support of its argument, SAS-Solartech provided maps, documentation from the FTZ Board website, and documentation from the website of a port of entry, showing that the U.S. addresses on shipping documentation fell within U.S. FTZs.[44] Although we agree with SAS-Solartech that this evidence indicates that the shipping addresses are FTZ-designated addresses, this does not mean that the merchandise was actually shipped there or was otherwise admitted to these FTZs. Again, CBP maintains stringent requirements for admission of products to FTZs, and SAS-Solartech has not provided any of the relevant documentation that would have been produced had the merchandise been admitted to these FTZs.

Moreover, there is insufficient record evidence that SAS-Solartech's sales to the two customers at issue were eventually destined for Mexico, much less that SAS-Solartech knew of this at the time of sale. SAS-Solartech contends that its customers verbally advised SAS that the destination of the merchandise at issue is Mexico, not the United States, and that the shipping documentation referenced Mexico as the ultimate "ship to" destination.[45] Nevertheless, there is insufficient documentary evidence, such as emails, notes, minutes, certificates, shipping documents, contracts, or other such documents generated at the time of sale, in support of SAS-Solartech's contention that it actually knew or should have known that Mexico is the ultimate destination. As described above, there is not even any documentary evidence that the merchandise at issue actually was admitted into any U.S. FTZs. Such a lack of documentary evidence is consistent with the fact that SAS was not in any position to know whether the merchandise actually entered into U.S. FTZs and ultimately was destined to Mexico, because SAS was not the importer of record for the sales in question.[46] The sales and shipping

[42] *Id.*, at SA-3 and SA-4.
[43] *See* 19 CFR part 146.
[44] *See* SAS-Solartech Case Brief at 18 (citing SAS' August 11, 2016, Supp. QR at Exhibit SA-SAS-1).
[45] *Id.*, at 8 and 15-16.
[46] *See* SAS' August 11, 2016, Supp. QR at SA-3 and SA-4.

documentation at the time of the sales indicate the names of Mexican entities to be notified, but, as described above, the shipping addresses for the sales are addresses located within the United States. Accordingly, SAS-Solartech's argument that the shipping documentation provide evidence that Mexico is the ultimate destination, merely because they notify, or show the name of, companies located in Mexico, is speculative.

SAS-Solartech further argues that because SAS' internal accounting system designated the sales at issue as sales to Mexico, and because it knew that the customers involved in such sales had facilities for module assembly in Mexico, it had constructive knowledge at the time of sale that the merchandise at issue was destined to Mexico.[47] However, absent any documentary evidence in support of SAS-Solartech's claim, we find this reasoning to be insufficient in determining whether SAS actually knew at the time of sale that the merchandise at issue was destined for Mexico.

SAS-Solartech also argues that the sales and shipping documentation it obtained from its customers after the sales were concluded provide evidence that the products sold were shipped to U.S. FTZs in transit to Mexico.[48] SAS-Solartech references emails obtained from its customers indicating that the merchandise at issue was shipped to Mexico, billing invoices from one of its two customers to its affiliated entity in Mexico, and shipping documentation, such as, an airway bill for the other customer.[49] As an initial matter, this documentation does not cover all of SAS-Solartech's sales at issue here. Further, because SAS-Solartech did not provide us with any official documentation that all of the merchandise at issue was admitted to U.S. FTZs and subsequently re-exported, there is no way, based on this record, to determine whether the merchandise was entered for consumption in the U.S. customs territory or not (even if it was subsequently sent to Mexico). Moreover, as SAS-Solartech acknowledges, the documents it relies upon were obtained long after the sales were concluded.[50] As discussed above, SAS-Solartech never had access to such documents at the time of sale. It is also worth noting that virtually all such documentation is not linked to, and could not be corroborated with, the sales books and records that SAS maintained at the time of sale in its normal course of business. Moreover, we note that one of SAS' two customers from whom SAS obtained sales and shipping documentation after the sale was concluded had not been in operation, as this customer declared bankruptcy and its sales office closed.[51] SAS-Solartech itself stated that, because that customer's office is closed, it was unable to obtain confirmation from the customer as to whether the merchandise entered into an FTZ in the United States and whether the merchandise was shipped to Mexico.[52] Accordingly, there are questions regarding the reliability of the shipping documentation obtained by SAS-Solartech. For the reasons noted above, we find that the documentation obtained by SAS-Solartech from its customers after the sale, provide insufficient evidence that the merchandise at issue was shipped to U.S. FTZs in transit to Mexico.

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[47] *Id.*, at 15-16.
[48] *Id.*, at 18-19 (citing SAS' October 24, 2016, Supp. QR at Exhibit Supp-GEN-4 and SAS' January 12, 2017 Supp. QR at Exhibit Supp-SAS/SEC-7 and Exhibit Supp-SAS/SEC-8).
[49] *Id.*
[50] *Id.*
[51] *See* SAS' August 11, 2016, Supp. QR at SA-3 and SA-4.
[52] *Id.*

Finally, we disagree with SAS-Solartech's argument that, in this segment of the proceeding, the Department applied a threshold for its knowledge test different from that used in the original investigation in that the Department excluded exports of products to third countries from the pool of U.S. sales.[53] We note that in the *Final Determination* of the AD investigation of this proceeding, Gintech Energy Corporation (Gintech), a mandatory respondent, argued that the Department should include in its analysis sales made to third-country customers that it claimed were ultimately destined to the United States (*i.e.*, indirect sales).[54] However, the Department found that Gintech failed to demonstrate that it either knew or should have known, at the time of sale, that the merchandise sold to third-country customers was destined for export to the United States.[55] The Department noted that "because the record is devoid of any substantial evidence supporting such a claim, we continue to find that the record does not support a determination that Gintech either knew or should have known at the time of the sale that any specific sale of the cells it sold to third-country customers was destined for the United States."[56] Accordingly, the Department excluded Gintech's claimed indirect sales from its margin calculation. In contrast, in this administrative review, as noted above, SAS-Solartech's specific sales and shipping documentation indicate that the merchandise at issue was shipped to the United States. SAS-Solartech, however, claims that this merchandise never entered the U.S. customs territory for consumption because it was sent to U.S. FTZs for eventual re-exportation to Mexico. Therefore, the issue here is not whether the merchandise sold to third-country customers was destined for export to the United States. Rather, it is whether the merchandise shipped to the United States was admitted to U.S. FTZs and, therefore, outside the scope of the U.S. dumping laws until entered for consumption. As discussed above, SAS-Solartech failed to demonstrate that the merchandise at issue was admitted to U.S. FTZs, that it was sent to Mexico without U.S. entry, or that SAS-Solartech knew any of this at the time of sale. Accordingly, we find no inconsistency between the original investigation of this proceeding and this administrative review.

For the reasons described above, the Department treated all products that were shipped to the United States during the POR as U.S. sales, and continued to include such sales in the margin calculations for the final results.[57]

Comment 2: Whether to Exclude Priced Sample Sales

SAS-Solartech's Argument:

- In its preliminary margin calculations, the Department included home market and U.S. sample transactions for which the customers provided some compensation to SAS or Solartech. Record evidence confirms that, even though SAS and Solartech charged prices for certain sample transactions based on negotiations with their respective customers, these samples are outside the ordinary course of trade, because they were intended for testing and not for consumption in the production of modules or solar

[53] *See* SAS-Solartech Case Brief at 16 (citing *Final Determination* and accompanying IDM at Comment 4).
[54] *See Final Determination*, and accompanying IDM at Comment 4.
[55] *Id*.
[56] *Id*.
[57] *See* Analysis Memorandum for the Final Results.

panels.
- Therefore, the Department should exclude such sample sales from its final margin calculations on the grounds that these sales were not commercial transactions in the ordinary course of business.

Petitioner's Rebuttal Argument:

- SAS-Solartech's assertion is misplaced and the Department should continue to include the priced sample sales in its margin calculations, because the ordinary course of trade provision applies only to home market sales, and there is no equivalent provision for disregarding U.S. sales.[58]
- None of the record documentation involving these priced sample sales transactions indicates that the merchandise was used for testing.[59]
- SAS-Solartech failed to provide other documentation typically generated for sample transactions, such as, testing documentation performed by the customer, certification of destruction of merchandise after testing, Customs Entry Form 7501 indicating that the merchandise were samples, or any other relevant documentation demonstrating that the products at issue were samples. Moreover, SAS-Solartech's documentation supporting its free-of-charge sample sales, by contrast, indicates that those were samples for testing purposes.[60]
- The fact that SAS-Solartech charged a price for the alleged priced sample transactions and that it received payment from the customer demonstrates that these sales were commercial transactions made in usual commercial quantities and in the ordinary course of trade.[61]

Department's Position:

We disagree with SAS-Solartech. As petitioner noted, the ordinary course of trade provision applies only to home market sales and there is no equivalent provision for disregarding U.S. sales. Accordingly, we find that SAS-Solartech's argument is misplaced as to the priced sample sales made to the U.S. market. Moreover, after reviewing record information pertaining to sample sales in the home market, we found no evidence to suggest that the priced sample sales transactions, unlike free samples, were for testing purposes.[62] Additionally, we found that the prices and quantities of such sales fall within the range of non-sample sales. Accordingly, we determined that there is no basis for SAS-Solartech's claim that the sales at issue are outside the ordinary course of trade, because these sales were made in commercial quantities and at prices comparable to other non-sample products that SAS-Solartech sold during the POR.[63]

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[58] *See* petitioner Rebuttal Brief at 22 (citing the Department's Antidumping Manual, Chapter 8, Section IV at 11-14).
[59] *Id.*, at 21 (citing SAS-Solartech's October 24, 2016 Supplemental Section A-C Questionnaire Response at Exhibit Supp-SEC-18 (for the home market) and Exhibit Supp-SEC-21 (for the U.S. market)).
[60] *Id*., at 22 (citing Volume IV of SAS' October 24, 2016, Supp. QR at Exhibit Supp-SEC-17 (home market) and Exhibit Supp-SEC-20 (U.S.).
[61] *Id*., at 22 (citing Section 773(a)(l)(B)(i) of the Act).
[62] *See*, *e.g.*, Volume IV of SAS' October 24, 2016, Supp. QR at Exhibit Supp-SEC-17 and Exhibit Supp-SEC-18.
[63] *See* Analysis Memorandum for Final Results at Attachments 1 and 2.

Comment 3: Whether to Assign SAS-Solartech's Antidumping Duty Rate to Sunrise Global

SAS-Solartech's Argument:

- In its *Preliminary Results*, the Department assigned the review-specific average rate to Sunrise Global, which was an affiliate of SAS, and for which SAS also requested this administrative review. However, Sunrise Global existed only for the first day of the POR (*i.e.*, July 31, 2014), because it merged into SAS and ceased to exist as a separate legal entity as of August 1, 2014.
- The Department should assign SAS-Solartech's final antidumping duty rate to any entries of merchandise produced and/or exported by Sunrise Global during the POR.

Petitioner's Rebuttal Argument:

- The Department should disregard SAS-Solartech's argument, because the proper avenue for such a request is through a changed circumstances review, wherein the Department will have an opportunity to examine Sunrise Global's change in status, relative to SAS, and determine whether it is, in fact, entitled to SAS' margin.
- Because the record lacks sufficient information for such a determination, the Department should continue to assign a review-specific average rate to Sunrise Global.

Department's Position:

In its response to the Department's questionnaire, SAS stated that its response was filed for both SAS and its affiliate, Sunrise Global, for the POR.[64] SAS also stated that Sunrise Global existed only for the first day of the POR (*i.e.*, July 31, 2014), because it merged into SAS and ceased to exist as a separate legal entity as of August 1, 2014.[65] Moreover, SAS noted that before the merger, it was a manufacturer of silicon wafers and Sunrise Global was a manufacturer of solar cells.[66] Therefore, as a result of the merger, SAS became a manufacturer and an exporter of the merchandise under review.

We agree that SAS-Solartech's company-specific assessment rate in this administrative review should be assigned to Sunrise Global. Record evidence indicates that SAS and Sunrise Global were affiliated entities until their merger on August 1, 2014 (*i.e.*, the second day of the POR). Moreover, as explained below, information on the record shows that SAS-Solartech and Sunrise Global should be treated as a single entity for the first day of the POR.

Section 771(33)(E) of the Act establishes that any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization are considered affiliated or affiliated persons. A review of SAS' Individual Financial Report for FY 2015 reveals that, prior to Sunrise Global's merger into SAS on August 1, 2014, SAS was the majority shareholder of Sunrise Global, with

[64] *See* SAS' June 17, 2016, Section A Questionnaire Response at A-1 (SAS' June 17, 2016 QR).
[65] *Id.*
[66] *Id.*

significant control over the company.[67] Accordingly, we find that SAS-Solartech and Sunrise Global were affiliated within the meaning of section 771(33)(E) of the Act during the first day of the POR.

The Department's practice of collapsing affiliated producers is codified in 19 CFR 351.401(f), which states that:

> {T}he Secretary will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production…. In identifying a significant potential for the manipulation of price or production, the factors the Secretary may consider include:
>
> (i) The level of common ownership;
> (ii) The extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and
> (iii) Whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.

The *Preamble* to the Department's regulations clarifies how the Department should apply the significant potential for manipulation factors in its collapsing analysis, explaining that this list of factors is "non-exhaustive."[68] The *Preamble* also states that "{t}he Department has not adopted the suggestion that it will collapse only in 'extraordinary' circumstances. A determination of whether to collapse should be based upon an evaluation of the factors listed in {19 CFR 351.401(f)}, and not upon whether fact patterns calling for collapsing are commonly or rarely encountered."[69] Furthermore, although our standard does not require evidence of actual manipulation, the *Preamble* states that the Department must still find that the potential for manipulation of price and production is "significant."[70]

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[67] *See* SAS' June 17, 2016 QR at Exhibit A-14, Note (VII) to SAS Individual Financial Report, December 31, 2015 and 2014, which indicates that SAS' equity in Sunrise Global was increased from 15.23 percent to 50.95 percent after August 1, 2013, and that SAS exercised significant control over Sunrise Global after such a date (Note (VII) to SAS Individual Financial Report for FY 2015).

[68] *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27345-46 (May 19, 1997) (*Preamble*).

[69] *Id*.

[70] *Id*. The Department's practice is consistent with the statement in the *Preamble* that the "significant potential" criteria provided in section 351.401(f) are non-exhaustive. *See*, *e.g.*, *Certain Welded Carbon Standard Steel Pipes and Tubes From India; Final Results of New Shippers Antidumping Duty Administrative Review*, 62 FR 47632, 47638 (September 10, 1997) ("Not all of these criteria must be met in a particular case; the requirement is that the Department determine that the affiliated companies are sufficiently related to create the potential of price or production manipulation.").

The Department's determination in *Fresh Cut Flowers from Colombia*,[71] details the concerns underlying the Department's practice of collapsing affiliates:

> Because the Department calculates margins on a company-by-company basis, it must ensure that it reviews the entire producer or reseller, not merely a part of it. The Department reviews the entire entity due to its concerns regarding price and cost manipulation. Because of this concern, the Department normally examines the question of whether reviewed companies "constitute separate manufacturers or exporters for purposes of the dumping law."[72]

The Court of International Trade (the CIT) expressly affirmed the Department's authority to collapse affiliated parties for purposes of antidumping analysis in *Queen's Flowers de Colombia v. United States*.[73]

As described above, we find that SAS and Sunrise Global were affiliated within the meaning of section 771(33)(E) of the Act. Consequently, the first collapsing criterion has been satisfied. Moreover, the record indicates that SAS produced wafers and Sunrise Global produced solar cells.[74] Thus, both producers had production facilities for identical or similar products that would not have required substantial retooling in order to restructure manufacturing priorities. Therefore, the criterion under 19 CFR 351.401(f)(1) has been met.

Regarding whether there was a "significant potential for manipulation of price or production," the Department notes that the factors listed in 19 CFR 351.401(f)(2) are "non-exhaustive," and that not all of the factors identified in paragraph (f)(2) need be present in order to collapse affiliated producers.[75] Additionally, the CIT has recognized that when determining whether there is a significant potential for manipulation, 19 CFR 351.401(f)(2)(i), (ii), and (iii) are considered by the Department in light of the totality of the circumstances; no one factor is dispositive in determining whether to collapse affiliated producers/exporters.[76] In examining the factors that pertain to a significant potential for manipulation, the Department considers both actual manipulation in the past and the possibility of future manipulation.[77] The *Preamble* underscores the importance of considering the possibility of future manipulation: "a standard based on the potential for manipulation focuses on what may transpire in the future."[78] In this case, we are examining whether there was a significant potential for manipulation of price or production during the first day of the POR. At the same time, we cannot ignore what happened after the first day of the POR – that is, that SAS-Solartech and Sunrise Global merged. Given

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[71] *See Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 42833 (August 19, 1996) (*Fresh Cut Flowers from Colombia*).
[72] *Id*., 61 FR at 42853 (citing *Final Determination of Sales at Less than Fair Value; Certain Granite Products from Spain*, 53 FR 24335, 24337 (June 28, 1988)).
[73] 981 F. Supp. 617, 622 (CIT 1997).
[74] *See* SAS' June 17, 2016 QR at A-1 and Note (VII) to SAS Individual Financial Report for FY 2015.
[75] *See Preamble*, 62 FR at 27346.
[76] *See Koyo Seiko Co., Ltd. v. United States*, 516 F. Supp. 2d 1323, 1346 (CIT 2007) (citing *Light- Walled Rectangular Pipe and Tube from Turkey: Notice of Final Determination of Sales at Less Than Fair Value*, 69 FR 53675 (September 2, 2004) and accompanying IDM at Comment 10).
[77] *See Preamble*, 62 FR at 27346.
[78] *Id*.

the impending merger on the first day of the POR, which was then completed on the second day, we find that there was a significant potential for the manipulation of price or production on the first day of the POR.

For the reasons noted above, we collapsed SAS-Solartech with Sunrise Global and assigned SAS-Solartech's assessment rate to all entries made by Sunrise Global during the POR in these final results. However, the cash deposit will remain specific to SAS-Solartech, given the fact that Sunrise Global ceased to exist after its merger with SAS on August 1, 2014.

Comment 4: Whether to Revise the MFRH/U Fields to Reflect SAS-Solartech Collapsed Entity

Petitioner's Argument:

- In the *Preliminary Results*, based on the evidence provided in SAS' and Solartech's questionnaire responses, the Department determined that SAS and Solartech should be collapsed and treated as a single entity.[79] However, in the combined U.S. and home market databases, under the Manufacturing (*i.e.*, MRFU/H) field, SAS reported separate codes under such a field.
- The Department should revise the MFRU/H fields to reflect a new, unified code for all sales for purposes of calculating SAS-Solartech's final margin.

SAS-Solartech's Rebuttal Argument:

- While the Department treated SAS and Solartech as a combined entity for purposes of calculating their AD rate, ultimately, SAS and Solartech are legally distinct and independently operated companies. Therefore, no change to the Department's treatment of the fields for MFRH/U should be made in these final results.

*Department's Position***:**

We agree with the petitioner. In the *Preliminary Results*, based on the evidence provided in SAS' and Solartech's questionnaire responses and 19 CFR 351.401(f), we determined that SAS and Solartech should be collapsed and treated as a single entity in this administrative review.[80] That determination has not been challenged by either SAS-Solartech or the petitioner in these final results. Accordingly, given the Department's determination to collapse SAS and Solartech as a single entity in this review, we find it appropriate to consolidate SAS-Solartech's manufacturing code in its combined sales databases. Therefore, for these final results, we used one consolidated code under the field MRFU/H for purposes of calculating SAS-Solartech's final margin.[81]

[79] *See* petitioner Case Brief at 30 (citing Preliminary Decision Memorandum).
[80] *See* Memorandum To Abdelali Elouaradia, Director, Office IV, Enforcement & Compliance Through Robert Bolling, Program Manager, Office IV, Enforcement & Compliance, From Magd Zalok, International Trade Analyst, Office IV, Enforcement & Compliance "Antidumping Duty Administrative Review of Certain Crystalline Silicon Photovoltaic Products from Taiwan: Sino-American Silicon Productrs Inc. Preliminary Affiliation and Collapsing Memorandum," dated December 12, 2016.
[81] *See* Analysis Memorandum for the Final Results.

Comment 5**:** Whether to Revise the Draft Cash Deposit and Assessment Instructions

SAS-Solartech's Argument:

- The draft cash deposit instructions state that Sunrise Global should receive a non-selected respondent cash deposit rate of 4.09 percent. However, Sunrise Global should receive the same cash deposit rate as SAS-Solartech, because SAS and Sunrise Global were affiliated at the start of the POR and merged into a single entity on August 1, 2014.
- The Department should remove all references in the final assessment instructions to the two customers who, according to SAS-Solartech, were involved in the sales of the products shipped to U.S. FTZs in transit to Mexico.
- Finally, the draft cash deposit instructions contain certain typographical errors involving the names of certain customers that should be corrected for purposes of the final assessment instructions.

Petitioner's Rebuttal Argument:

- There is no merit in SAS-Solartech's argument that Sunrise Global should receive SAS-Solartech's calculated margin. Accordingly, the Department should continue to assign Sunrise Global its own separate rate.
- The Department should not exclude the alleged FTZ sales from SAS-Solartech's margin calculations and should not amend its cash deposit instructions with respect to the two customers involved in such sales.

*Department's Position***:**

As discussed above, the Department determined that Sunrise Global was affiliated with SAS before it merged with the company on August 1, 2014, and we also collapsed Sunrise Global with the SAS-Solartech entity. Accordingly, in these final results, we assigned SAS-Solartech's assessment rate to all entries of the subject merchandise made by Sunrise Global during the POR. However, given the fact that Sunrise Global ceased to exist as a separate legal entity after its merger with SAS on August 1, 2014, the cash deposit rate remains applicable only to SAS-Solartech for these final results. Moreover, as noted above, the Department continued to include all of SAS-Solartech's shipments of the product under review, including SAS-Solartech's sales through the two customers analyzed in Comment 1 above, to the United States in our analysis for these final results.[82] Therefore, the Department's instructions to CBP will reflect such a determination.[83] Additionally, we agree that certain typographical errors involving the names of certain customers should be corrected for purposes of the final instructions to CBP. Accordingly, for these final results, we corrected such typographical errors in the final instructions to be issued to CBP.

[82] *See* Analysis Memorandum for the Final Results at Attachment 2.

[83] If in fact, for any given shipment, there was no entry for consumption into the customs territory of the United States, then of course there will be nothing for CBP to liquidate. However, given our finding in Comment 1 above, we are not going to remove the two customers' names from the assessment instructions.

Comment 6: Differential Pricing

SAS-Solartech's Argument:

- The Department should not employ its "differential pricing" methodology in light of a recently issued World Trade Organization (WTO) Panel Report finding that the Department's practice of "zeroing" negative dumping margins constitutes an "as such" violation of the United States' obligations under the WTO Antidumping Agreement.[84]
- If the Department cannot provide an adequately explained basis for the various thresholds that it used in its differential pricing analysis – *e.g.*, those related to passing the Cohen's *d* test and the change test for "meaningfulness," then it should not conduct any differential pricing analysis in this case.

Petitioner's Rebuttal Argument:

- The Department has previously rejected such arguments in other proceedings, and SAS-Solartech has offered no new arguments in this review that would justify a deviation from the prior decisions.
- SAS-Solartech's argument is misplaced, because WTO reports are not self-executing.[85] As the Department previously recognized,[86] the U.S. Court of Appeals for the Federal Circuit (CAFC) has held that WTO reports are without effect under U.S. law "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the Uruguay Round Agreements Act (URAA).[87]
- With regard to the use of the Department's differential pricing analysis in administrative reviews, the United States has not adopted a change to its established practice in response to the WTO findings upon which SAS-Solartech relies. Therefore, the cited WTO report provides no reason for the Department to alter its practice concerning differential pricing in the final results. Accordingly, the proper methodology in this proceeding is the Department's differential pricing analysis.

Department's Position:

We agree with the petitioner and have continued to apply the differential pricing analysis in these final results. As explained in various prior proceedings, the Department's differential pricing analysis is reasonable, including its use of the Cohen's *d* test as a component in this

[84] *See* SAS-Solartech Case Brief at 33-35 (citing *United States - Anti-dumping and Countervailing Measures on Large Residential Washers from Korea*, Report of the Panel, WT/DS464/R (Mar. 11, 2016) (*US-Washers (Korea)*).
[85] *See* the petitioner rebuttal brief at 25 (citing *Corus Staal BV v. Department of Commerce*, 395 F.3d 1343, 1347-49 (Fed. Cir. 2005) (*Corus Staal*); *accord Corus Staal BV v. United States*, 502 F.3d 1370, 1375 (Fed. Cir. 2007) (*Corus Staal BV*); and *NSK Ltd. v. United States*, 510 F.3d 1375 (Fed. Cir. 2007)).
[86] *Id*. (citing *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Changed Circumstances Review and Reinstatement of Shanghai General Bearing Co., Ltd. in the Antidumping Duty Order*, 82 FR 4853 (January 17, 2017) and accompanying IDM at 29.
[87] *Id*.

analysis, and it is in no way contrary to the law.[88] As the CAFC stated in *JBF RAK LLC v. U.S.*, when "a statute fails to make clear 'any Congressionally mandated procedure or methodology for assessment of the statutory tests,' Commerce 'may perform its duties in the way it believes most suitable.' Under *Chevron*, '{i}f Congress has explicitly left a gap for the agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation. Such legislative regulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute.'"[89] The Court in that case found that Commerce "exercised its gap-filling discretion by applying a comparison methodology (*i.e.*, the average-to-transaction {(A-to-T)} comparison method) in reviews that parallels the methodology used in investigations."[90]

Regarding the effect that the WTO panel and Appellate Body findings in *US-Washers (Korea)* have on the Department's methodology utilized in AD proceedings, the CAFC has held that WTO reports are without effect under U.S. law "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the URAA.[91] In fact, Congress has adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports. Indeed, the SAA noted that "WTO dispute settlement panels will have no power to change U.S. law or order such a change. Only Congress and the Administration can decide whether to implement a WTO panel recommendation and, if so, how to implement it."[92] As it is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Department's discretion in applying the statute. Accordingly, since the United States has not adopted changes to the differential pricing methodology pursuant to the URAA's implementation procedure, the Department has not revised or changed its methodology involving differential pricing in these final results.

Furthermore, with regard to SAS-Solartech's argument about the numerical thresholds in the Cohen's *d* test, as the petitioner noted, the Department has previously explained these thresholds, most recently in the *OCTG from Korea Final*.[93] Specifically, the Department addressed the establishment of the 33- and 66-percent thresholds as follows:

> In the differential pricing analysis, the Department reasonably established a 33 percent threshold to establish whether there exists a pattern of prices that differ significantly. The Department finds that when a third or less of a respondent's U.S. sale are not at

[88] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2012-2013*, 80 FR 40998 (July 14, 2015), and accompanying IDM at Comment 32 (citing *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013), and accompanying IDM at Comment 3).
[89] *See JBF RAK LLC v. United States*, 790 F.3d 1358, 1364 (Fed. Cir. 2015).
[90] *Id*.
[91] *See Corus Staal*, 395 F. 3d at 1347-49, *cert. denied*, 546 U.S. 1089 (2006); *accord Corus Staal BV*, 502 F.3d at 1375.
[92] *See* Statement of Administrative Action (SAA) Accompanying the URAA, H.R. Doc. 103-316, vol 1 (1994) at 659.
[93] *See Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 18105 (April 17, 2017) (*OCTG from Korea Final*) and accompanying IDM at 29.

> prices that differ significantly, then these significantly different prices are not extensive enough to satisfy the first requirement of the statute…
>
> Likewise, the Department finds reasonable, given its growing experience of applying section 777A(d)(1)(B) of the Act and the application of the A-to-T method as an alternative to the {average-to-average (A-to-A)} method, that when two thirds or more of a respondent's sales are at prices that differ significantly, then the extent of these sales is so pervasive that it would not permit the Department to separate the effect of the sales where prices differ significantly. Accordingly, the Department considered whether, as an appropriate alternative comparison method, the A-to-T method should be applied to all U.S. sales. Finally, when the Department finds that between one third and two thirds of U.S. sales are at prices that differ significantly, then there exists a pattern of prices that differ significantly, and that the effect of this pattern can reasonably be separated from the sales whose prices do not differ significantly. Accordingly, in this situation, the Department finds that it is appropriate to address the concern of masked dumping by considering the application of the A-to-T method as an alternative to the A-to-A method for only those sales which constitute the pattern of prices that differ significantly.[94]

The Department further expressed that "{a}lthough the selection of these thresholds is subjective, the Department's stated reason behind the 33- and 66-percent thresholds does not render them arbitrary."[95] SAS-Solartech has provided no new argument that would justify deviating from the prior explanation provided by the Department. Accordingly, the Department continued to apply the differential pricing analysis in these final results.

Comment 7: Cost of Manufacturing for Grade 4 Non-Prime Products

In reporting the cell grade field (CELLGRADE) in its sales databases, SAS-Solartech classified products into four categories: 1) grade 1 for prime goods (cells and modules); 2) grade 2 for non-prime modules; 3) grade 3 for non-prime cells with defects in appearance, but usable in modules; and 4) grade 4 for non-prime cells with power and other defects that cause the cells to be used in individual cell applications only.[96] In the *Preliminary Results*, the Department revised the costs of grade 4 non-prime products to reflect their net realizable values (NRV) and allocated the total difference between their full cost and their NRV to grade 1, 2, and 3 prime and non-prime products.

SAS-Solartech's Argument:

- The Department should not adjust the costs of grade 4 non-prime products as these products use the same inputs and undergo the same processing as the other prime and non-prime merchandise. Moreover, the grade 4 products can be used in individual cell applications, and, as explained in *CWP from Thailand*, where products can be used for

[94] *See OCTG from Korea Final* and accompanying IDM at 25.
[95] *Id*.
[96] *See* Letter from SAS-Solartech to the Department, regarding "Certain Crystalline Silicon Photovoltaic Products from Taiwan: Sino-American's 2nd Supplemental A-C Response," dated January 9, 2017, at 6.

the same general purpose, the Department's practice is to allocate production costs evenly to prime and non-prime products.[97]

- There is no factual or legal basis to treat the grade 4 products as byproducts or scrap, *i.e.*, value at NRV rather than full cost, when at the same time such products are included in the margin calculations as sales of commercial (albeit non-prime) merchandise.
- The Department's calculation artificially increases overall costs because the costs of the grade 4 products are added to the other products while the costs for the grade 4 products are kept in the calculations.
- If the Department continues to adjust the grade 4 non-prime products, the PRIMEH/U coding for these products should be set to "3" rather than "2" so that they do not match to grade 2 non-prime modules or grade 3 non-prime cells that can still be used to manufacture modules.
- The petitioner mischaracterizes the record by inferring that there should be a one-to-one relationship between the products reported as grade 4 (*i.e.*, CELLGRADE field) and the products reported with defective power outputs (*i.e.*, TOTALPOWR field). Instead, SAS-Solartech's questionnaire responses explain that unless a customer requests a re-measurement, Solartech does not normally measure the power output for non-prime products, no matter the reason for the defect. Thus, products originally reported with no power output can be found under both grades 3 and 4, while certain grade 4 products can be found with power outputs. As such, the record does not support a finding of facts available.

Petitioner's Argument:

- In the *Preliminary Results*, the Department appropriately determined that SAS-Solartech's grade 4 products, by the companies' own admissions, reflect significantly downgraded products that cannot be used in the same applications as their prime counterparts. Therefore, SAS-Solartech's costs were inaccurate, in that they did not properly account for off-grade products, and in accordance with its established practices, the Department found that an adjustment was warranted.
- While an adjustment is necessary, an accurate adjustment is not possible due to SAS-Solartech's misrepresentations and its failure to report requested data. For example, despite SAS-Solartech's assertions that products with defective power outputs have been classified as grade 4, the sales databases contain grade 4 products that have been reported with normal power outputs, while certain grade 1 and 3 products, which should have normal power outputs, have been reported with defective power outputs. Because the cost file does not include the CELLGRADE field, the Department relied on the total power reported to identify the products needing adjustment in the *Preliminary Results*. However, due to these unexplained discrepancies, the Department does not have the information necessary to properly determine which products need to be adjusted and therefore cannot eliminate the distortions in SAS-Solartech's reported costs.
- The Department has previously found it appropriate to apply adverse facts available

[97] *See* SAS-Solartech Case Brief at 23 (citing *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 65272 (October 31, 2013) (*CWP from Thailand*), and accompanying IDM at Comment 10).

(AFA) in those instances where a respondent has failed to properly code and/or has misrepresented its non-prime products.[98] As such, the Department should find that SAS-Solartech failed to cooperate to the best of its ability within the meaning of section 776(b) of the Act and use the highest reported total cost of manufacturing (TOTCOM) for the defective power sales as partial AFA in the final results.

Department's Position:

We have continued to use SAS-Solartech's revised per-unit costs to value certain off-grade cell production at the POR weighted-average NRV, of such products rather than at full production costs. In doing so, we allocated the difference between the full production costs and the NRV-based costs for the products originally reported with defective power outputs to the products originally reported with normal power outputs.[99]

When evaluating a company's reported costs, the Department's primary guidance is outlined in section 773(f)(1)(A) of the Act, which directs that the reported costs should be calculated based on a respondent's normal books and records if such records are kept in accordance with home country generally accepted accounting principles (GAAP) and reasonably reflect the costs associated with the production and sale of the merchandise. In their normal GAAP-based books and records, SAS-Solartech classify cells by grade and then allocate actual production costs to all cells produced, regardless of whether the cell's grade designation indicates that its function has been significantly impaired.[100] For reporting to the Department SAS-Solartech relied on the costs from their normal books and records, thus, meeting the first consideration (GAAP-based normal books and records) outlined by the statute.

At question, therefore, is whether the allocation of full costs to all grades of prime and non-prime products "reasonably reflect the costs associated with the production and sale of the merchandise."[101] In this regard, the Department has developed a practice of evaluating whether a downgraded product can still be used in the same applications as its prime counterparts.[102] Whether a product can be used for its originally-intended applications is an important distinction because if a product cannot be used in the same applications, the product's market value is

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[98] *See* petitioner Brief at 23-24, referencing *Certain Corrosion-Resistant Steel Products from Italy: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 81 FR 35320 (June 2, 2016), and accompanying IDM at Comment 3.

[99] SAS-Solartech originally reported a special code in the TOTALPOWR field for products with defective power output. However, the Department subsequently instructed SAS-Solartech to provide wattage for these products. Because the CELLGRADE field was not reported in the cost database, the Department relied on the TOTALPOWR originally reported to identify the products with defective power output in calculating the adjustment to SAS-Solartech's costs.

[100] *See* Letter from SAS-Solartech to the Department, "Certain Crystalline Silicon Photovoltaic Products from Taiwan: Sino American's Supplemental Section D Response," dated November 8, 2016, Volume I at 4-5.

[101] *See* section 773(f)(1)(A) of the Act.

[102] *See*, *e.g.*, *Certain Oil Country Tubular Goods from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 79 FR 41983 (July 18, 2014)(*2014 OCTG from Korea Final*), and accompanying IDM at Comment 18; and *Steel Concrete Reinforcing Bar From Turkey: Final Negative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances*, 79 FR 54965 (September 15, 2014), and accompanying IDM at Comment 15.

usually significantly impaired and may not be sufficient to recover production costs.[103] In such cases, we need to consider the proper valuation and allocation of costs to the downgraded merchandise.[104]

In the instant case, SAS-Solartech reported three categories of downgraded products which include non-prime modules (grade 2); non-prime cells with defects in appearance, but usable in modules (grade 3); and, non-prime cells with power and other defects that cause the cells to be used in individual cell applications only (grade 4).[105] Based on these categories, only the downgraded products classified as grade 2 or 3 can be used for the same applications as the prime grade 1 products, *i.e.*, power generation systems. SAS-Solartech's responses to the Department confirm that the grade 4 cells cannot be used for power generating systems, but rather can only be used in small electronic appliances.[106] SAS-Solartech further stated that the grade 4 cells are cut into small pieces for the use of small electronic appliances (*e.g.*, street lights, solar calculators, and small electricity chargers).[107] SAS-Solartech also state that "these solar cells that have defects in the power outputs were not intentionally produced."[108] Based on these descriptions, we concluded that the grade 4 products cannot be used for their originally-intended applications and, therefore, we had to consider if this resulted in an improper valuation of the downgraded products' costs.

In so doing, we sought guidance from GAAP as it relates to the valuation of inventories. To avoid the overstatement of inventory accounts on the balance sheet, GAAP does not allow companies to value products held in inventory at an amount greater than their market value.[109] This principle is known as the "lower of cost or market" (LCM) rule, and it attempts to measure the loss in value, for purposes of presentation on the balance sheet, of a company's inventory. The LCM rule recognizes that it is not always appropriate to value an inventory item at its allocated production costs if there is evidence that the market value of that item cannot recover those costs.[110] That is, an item's allocated cost is not always the most accurate or representative benchmark of its true value. Where a downgraded product cannot be used in its intended applications and it has a significantly impaired value compared to the prime product value, we do not consider it reasonable to assign full production costs to the non-prime merchandise. We believe that, under these circumstances, a more appropriate methodology is to assign a value to the downgraded products based on the price at which they can be sold in the marketplace. This

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[103] *Id.*
[104] *Id.*
[105] *See* Letter from SAS-Solartech to the Department, regarding "Certain Crystalline Silicon Photovoltaic Products from Taiwan: Sino-American's 2nd Supplemental A-C Response," dated January 9, 2017, at 6.
[106] *See* Letter from SAS-Solartech to the Department, regarding "Certain Crystalline Silicon Photovoltaic Products from Taiwan: Sino-American's Second Supplemental Section D Response," at 5.
[107] *See* Letter from SAS-Solartech to the Department, regarding "Certain Crystalline Silicon Photovoltaic Products from Taiwan: Sino-American's 2nd Supplemental Section D Response," dated January 23, 2017, at 5-6.
[108] *See* Letter from SAS-Solartech to the Department, regarding "Certain Crystalline Silicon Photovoltaic Products from Taiwan: Sino-American's Supplemental Sections A-C Response," dated October 24, 2016, Vol. I/II, at 14.
[109] *See 2014 OCTG from Korea Final* and accompanying IDM at Comment 18.
[110] *See*, *e.g.*, *2014 OCTG from Korea Final*, and *Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Antidumping Duty Administrative Review, Partial Revocation of Antidumping Duty Order and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 28659 (May 17, 2006), and accompanying IDM at Comment 1.

approach is a well-established, GAAP-compliant practice in cost and financial accounting.[111]

In the instant case, we performed a comparative analysis of the POR weighted-average sales values for the grade 4 cells reported in the U.S. and home market sales databases to the reported costs.[112] This analysis demonstrates that the market price of the grade 4 products is considerably less than the full production costs that the company assigns to them in the normal course of business. Consequently, we find it appropriate to revalue the reported costs of the downgraded grade 4 products to reflect their NRV.

Although the petitioner contends that partial adverse facts available must be employed because SAS-Solartech has failed to provide critical information that is necessary to calculate an accurate adjustment, we disagree. Rather, we find that SAS-Solartech was fully responsive to our supplemental questions with regard to non-prime merchandise. Further, SAS-Solartech's representations and other record evidence explain in a satisfactory manner the alleged grade and total power output anomalies raised by the petitioner. For example, SAS-Solartech's questionnaire responses explain that they classify solar cells as "non-prime merchandise where there are defects in appearance and/or in power output."[113] The companies also stated that in the normal course of business, Solartech "did not record the power output for such power defective cells," whereas SAS "either assigned defective products the standard or the average power output, or it did not record any information on the power output."[114] Thus, products originally reported with no power output can be found under both grades 3 and 4, while certain grade 4 products can be found with power outputs.[115] Thus, based on the foregoing, we do not find that partial AFA is warranted.

However, the Department did not request, nor did SAS-Solartech report, the CELLGRADE field in the cost database. Consequently, it is not possible to identify in the cost file those grade 4 products that were reported with power outputs, nor eliminate those grade 3 products that were reported without power outputs. Thus, for the *Preliminary Results*, the Department relied on the control numbers (CONNUMs) that were originally reported with no power output to be representative of the grade 4 products for purposes of calculating the non-prime adjustment. As such, the petitioner correctly points out that there is not a one-to-one correlation between the products reported with no power output in the cost file and the products reported as grade 4 in the sales files and that a precise reallocation of costs between grade 4 and grade 1, 2, and 3 products is not possible. Nevertheless, we find that the methodology employed in the *Preliminary Results* which revalues the six CONNUMs originally reported in the cost databases with no power output and assigns the difference to the residual CONNUMs, provides for a reasonable fill-in-the-gap re-allocation of costs based on the information available on the record.

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[111] *See 2014 OCTG from Korea Final* and accompanying IDM at Comment 18.
[112] *See* Analysis Memorandum for the Final Results at Attachment 3.
[113] *See* Letter from SAS-Solartech to the Department, regarding "Certain Crystalline Silicon Photovoltaic Products from Taiwan: Submission of Solartech's Sections B and C Responses," dated July 11, 2016, at 31.
[114] *Id.*, and Letter from SAS-Solartech to the Department, regarding "Certain Crystalline Silicon Photovoltaic Products from Taiwan: Submission of Sino-American's Sections B and C Responses," dated July 11, 2016, at 15.
[115] The petitioner also references certain grade 1 products that were originally reported with no power output. However, we found that these represented a very insignificant volume of sales, and based on the reported gross unit prices, it is reasonable to assume that these products may have been reported as grade 1 in error.

We also disagree with SAS-Solartech, that the Department's *Preliminary Results* calculation artificially increases overall costs because the costs of the grade 4 products are added to the other products while the costs for the grade 4 products are kept in the calculations. The programming instructions show that the six CONNUMs that were identified as having no power output were written down to their NRV, while only the residual CONNUMs were adjusted upward. The total decrease in the off-grade products' costs (*i.e.*, per-unit difference times quantity) and the total increase in the residual products' costs (*i.e.*, per-unit difference times quantity) offset each other and do not result in an increase in SAS-Solartech's total reported costs. Rather, the increase in the total costs that SAS-Solartech refers to is a result of the other adjustments that were applied at the *Preliminary Results*, *i.e.*, the fixed overhead and minor input adjustments.[116]

Finally, SAS-Solartech argues that if the Department continues to equate SAS' and Solartech's grade 4 products with downgraded products or byproducts, then it should revise its PRIME product category by incorporating a third PRIME category for matching purposes so that these written down grade 4 products are not matched to non-written down grade 1, 2, and 3 products.[117] We agree with SAS-Solartech's proposed methodology since it precludes matching written down grade 4 products to non-written down grades 1, 2, and 3 products. Accordingly, we have incorporated a third PRIME category for matching purposes in our margin calculation for these final results.[118]

Comment 8: Scrap Offset for Two Resold CONNUMs

Petitioner's Argument:

- The scrap offsets that SAS-Solartech reported for two CONNUMs should be denied, because other CONNUMs that use surrogate costs have been reported with no scrap offsets.

SAS-Solartech's Rebuttal Argument:

- There is no support or justification for the petitioner's argument that the Department should ignore the scrap offset in the total costs of manufacturing for most similar CONNUMs used as surrogates for the costs of CONNUMs that Solartech's affiliate resold in the home market.

Department's Position:
We disagree with the petitioner. It is the Department's practice to rely on the reported costs of a similar product in instances where a respondent did not manufacture a product during the reporting period.[119] Similarly, where a respondent has reported purchased finished goods for

[116] *See* Memorandum to the 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. at 11-12.
[117] *See* SAS-Solartech Case Brief at page 23, footnote 5.
[118] *See* Analysis Memorandum for the Final Results.
[119] *See*, *e.g.*, *Certain Stilbenic Optical Brightening Agents From Taiwan: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 61368 (October 13, 2015), and accompanying IDM (OBAs from Taiwan

which we have determined it is not necessary to obtain the producer's actual costs, we rely on the respondent's own cost of the identical or most similar CONNUM.[120] Further, in the event the Department resorts to using surrogate costs, we analyze whether the cost of the surrogate product reasonably reflects the cost of the product it is representing.[121] In this case, there is no objection to the surrogate CONNUM selected, but rather the objection is only to allowing a scrap offset where none was reported for other purchased CONNUMs. Upon review of the database, we found that the surrogate costs of the other CONNUMs referenced by the petitioner were presented in a single cost field (*i.e.*, they do not show amounts for direct labor, variable overhead, fixed overhead, or scrap offsets).[122] The fact that the costs for certain purchased CONNUMs were not reported in distinct cost fields does not mean that no conversion costs were incurred in their production. Likewise, it does not support the assertion that scrap would not have been generated during their production. As such, we find that there is no evidence to suggest that the costs of the surrogate CONNUMs are unreasonable. Therefore, for the final determination, we are relying on the total costs of manufacturing, including the reported scrap offsets, of the surrogate CONNUMs for the resold CONNUMs at question.[123]

Comment 9: Year-End Adjustment for Items Relating to Profit

Petitioner's Argument:

- The Department should include an item related to profit in SAS' reported cost. SAS claims that Taiwan GAAP does not allow an item related to profit to be recognized on sales to affiliated parties until a sale is made to a third party; however, Taiwan has adopted International Financial Reporting Standards (IFRS) since 2013 and this policy does not exist under IFRS. Moreover, SAS failed to provide the relevant GAAP documentation supporting its alleged GAAP policy.
- Absent a clear explanation, the Department should rely on the item's treatment in the audited financial statements (*i.e.*, because the amount is part of COGS, it should be included in the reported costs).

SAS-Solartech's Rebuttal Argument:

- SAS-Solartech fully explained the nature of this item which was recorded under Taiwanese GAAP and represents the profit on affiliated sales (*i.e.*, revenue minus COGS), which is then added as an expense to COGS on the financial statements.
- Moreover, the related party note to the financial statements shows that only the profits from sales to unrelated third parties can be recognized. Accordingly, this amount should

IDM) at Comment 2; and *Certain Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Preliminary Results of the Seventeenth Antidumping Duty Administrative Review*, 76 FR 55004, 55008 (September 6, 2011).

[120] *See*, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the Republic of Korea*, 71 FR 29310 (May 22, 2006), and accompanying IDM at Comment 56.

[121] *See*, *e.g.*, OBAs from Taiwan IDM at Comment 2.

[122] *See* SAS' February 10, 2017 COP database "copcv_sas05."

[123] *See* Analysis Memorandum for the Final Results.

not be included in the reported costs as it is neither a cost nor an expense.

Department's Position:
We disagree with the petitioner. SAS' audited financial statements state that the "company's direct sales to the related parties are deemed as transfer of inventory and not as sales and costs of the Company, as the sales revenue and related costs are offset in the financial statements."[124] The note in the financial statements also states that the deferred revenue from such transactions is recorded in the account of investment under equity method.[125] Thus, the difference between the sales revenue and the COGS for the affiliated sales results in a debit to COGS and a credit to the balance sheet account for investments. As the amount is related to the sale of finished products, rather than their production, we find that it is appropriate not to include the aforementioned profit-related amount in the reported costs. Therefore, for the final results, we have not included the above-referenced amount in SAS' reported costs.

Comment 10: Loss in Inventory Devaluation

Petitioner's Argument:

- The Department should include loss recognized on raw material inventory devaluations in SAS' reported costs since the Department routinely includes LCM losses related to raw materials in G&A expenses.

SAS-Solartech's Rebuttal Argument:

- The Department instructed SAS to clarify whether raw materials are consumed at historical cost or at the LCM-adjusted value. The Department then instructed SAS-Solartech to exclude the LCM adjustment if raw materials were consumed at historical cost. Further, the LCM adjustment is a temporary timing difference that will be settled upon the actual consumption of the raw materials, not as an actually-incurred expense.

Department's Position:

We agree that the expenses related to the loss in inventory devaluation should be included in G&A expenses. While the Department has at times excluded such adjustments as temporary timing differences, in recent cases the Department has resorted to its overarching principle of recognizing period expenses when they are recognized in the company's financial statements.[126] Because the inventory valuation adjustment was recognized in the company's 2015 financial statements and it is related to raw materials, we find it appropriate to include the amount in G&A expenses.[127] Accordingly, we have included the loss recognized on the raw material inventory devaluation in SAS' G&A expenses for the final results.[128]

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[124] *See* SAS' June 17, 2016 QR at Exhibit A-14, footnote 13 (1).
[125] *Id*.
[126] *See, e.g.*, *Certain Carbon and Alloy Steel Cut-To-Length Plate From Taiwan: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 82 FR 16372 (April 4, 2017), and accompanying IDM at Comment 6.
[127] *See* SAS' June 17, 2016 Section A QR at Exhibit A-14, footnote IV(III).
[128] *See* Analysis Memorandum for the Final Results at 3 and Attachment 3.

Comment 11: Other CPA Adjustment

Petitioner's Argument:

- SAS double-counted an amount relating to "Other CPA Adjustment" in the denominator used to derive its G&A expense ratio. According to SAS-Solartech's own description of the item, the amount included in COGS was subsequently eliminated for preparing the consolidated financial statements. Therefore, there is no reason to add this amount to the COGS denominator which is based on the unconsolidated financial statements.
- The Department should exclude this item from the denominator of SAS' G&A expense ratio calculation.

SAS-Solartech's Rebuttal Argument:

- The petitioner misunderstands the adjustment. SAS-Solartech's accounting personnel first combined the financial information of the company's various branches, then the auditor discovered amounts that should be offset for its transactions with related parties in its stand-alone financial statements. Accordingly, the above-referenced amount needs to be added to COGS to reach the cost of manufacturing in the cost accounting system.

Department's Position:

We agree with the petitioner that an adjustment is warranted and have revised the denominator to the G&A expense ratio to reflect the COGS from SAS' audited financial statements. We then adjusted the denominator only for the COGS items that were reported as G&A or selling expenses (*e.g.*, packing expenses, inventory devaluation, etc.) to ensure symmetry between the denominator and the per-unit costs to which the ratio is applied.[129] In doing so, we did not adjust the COGS denominator for the CPA adjustment.[130]

We note that in reporting the G&A expense ratio denominator to the Department, SAS increased the COGS from its audited financial statements by the CPA adjustment, which SAS describes as the elimination of transactions with related parties.[131] We disagree with the petitioner's claims that this then double-counts the CPA adjustment. Rather, when SAS states that "the amount is included in COGS," the reference is to the adjustment, *i.e.*, the elimination or reduction to costs was included in COGS.[132] Thus, SAS' addition of the amount to COGS, effectively reverses the auditor's year end adjustment.

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[129] See Analysis Memorandum for the Final Results at 3 and Attachment 3.
[130] *Id.*
[131] *See* Letter from SAS-Solartech to the Department, regarding "Certain Crystalline Silicon Photovoltaic Products from Taiwan: Sino-American's 2nd Supplemental Section D Response," dated January 23, 2017, at Exhibit SD2-SAS/SEC-3.
[132] *See* Letter from SAS-Solartech to the Department, regarding "Certain Crystalline Silicon Photovoltaic Products from Taiwan: Sino-American's Supplemental Section D Response," dated November 8, 2016, at Exhibit SD-SAS-7 and Letter from SAS-Solartech to the Department, regarding "Certain Crystalline Silicon Photovoltaic Products from Taiwan: Sino-American's 2nd Supplemental Section D Response," dated January 23, 2017, at 12.

Sections 773(b)(3)(B) and 773(e)(2)(A) of the Act direct the Department to calculate an amount for selling and G&A expenses based on actual data pertaining to the production and sale of the merchandise under consideration. However, the antidumping law does not prescribe a specific method for calculating the G&A expense rate. When a statute is silent or ambiguous, the determination of a reasonable and appropriate method is left to the discretion of the Department. Because there is no definition in the Act of what a G&A expense is or how the G&A expense rate should be calculated, the Department has developed a consistent and predictable practice for calculating and allocating G&A expenses.[133] This consistent and predictable method is to calculate the rate based on the company-wide G&A expenses incurred by the producing company allocated over the producing company's company-wide COGS and not on a divisional or product-specific basis.[134] Therefore, in accordance with the Department's normal practice, we have relied on the COGS from SAS' company-wide audited financial statements for purposes of calculating the G&A expense ratio. In doing so, we have continued to allow only those adjustments to the denominator for the COGS expenses that were reclassified to G&A and selling expenses for reporting purposes.[135]

Comment 12: Scrap Offset

Petitioner's Argument:

- The Department should deny SAS-Solartech's claimed scrap offset for silver paste, since it reflects the scrap sold, rather than the scrap generated.
- SAS asserts that it sells scrap "approximately" every three months; therefore, its reported scrap sales for the cost reporting period are essentially the same as the sales of scrap generated during the POR as there was only a one- or two-month time difference between generation and sales. However, the record contradicts such a claim, because SAS' sales of scrap were random and not evenly distributed.
- Therefore, there is no evidence to support SAS' claim that the scrap offset does not exceed the scrap quantity actually generated.

SAS-Solartech's Rebuttal Argument:

- The Department should continue to accept SAS' reported scrap offset in its final results. SAS has correctly reported the scrap amount sold and there is no legal or factual basis for the Department to deny such an offset.
- The petitioner's objection to the frequency and distribution of SAS' scrap sales during the cost reporting period does not change the fact that SAS actually generated and sold this scrap and correctly reported the amounts in its questionnaire responses.

[133] *See*, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada*, 67 FR 15539 (April 2, 2002), and accompanying IDM at Comment 33.
[134] *Id.*
[135] *See* Analysis Memorandum for the Final Results at Attachment 3.

Department's Position:

The Department's practice with respect to scrap and by-product offsets is to allow such offsets based on the amount of scrap and by-product generated, once the scrap and by-product have been shown to have commercial value, through evidence of sales or reintroduction into the production process.[136] Scrap and by-product offsets are only granted for merchandise that is either sold or reintroduced into production during the POR, up to the amount of that scrap or by-product actually produced during the POR.[137] The record of this review establishes that the silver paste and broken cells scrap generated by SAS-Solartech in manufacturing solar products were sold on a regular basis during the POR.[138] Further, SAS-Solartech provided monthly sales quantities of silver paste and broken cells scrap during the POR that were generated and sold during the POR.[139] However, SAS-Solartech explained that while it maintains raw material movement ledgers and finished goods movement reports, it does not maintain a scrap inventory movement schedule in its normal course of business to show the scrap generated.[140] Rather, SAS-Solartech maintains that it sells scrap approximately every three months and contends that its reported scrap sales for the cost reporting period are essentially the same as the sales of scrap generated during the POR as there was only a one or two month time difference between generation and sale.[141] We agree with the petitioner that SAS-Solartech's sales of scrap appear to be random. Our review of SAS' record of the quantity of scrap sold during the POR indicates that, for certain months the company sold scrap multiple times, whereas, for other months during the POR, it had no sales of scrap.[142] However, the record also shows that such sales were made frequently during the POR, which indicates that SAS sold its scrap within a short period of time after the scrap was generated throughout the POR.[143] Moreover, although SAS does not maintain a scrap inventory movement schedule in its normal course of business to show the scrap generated each month, it is reasonable to assume that the scrap generated during the POR is linked to the scrap sold during the POR, given the frequency with which SAS sells scrap. Accordingly, we find that the method SAS used to report its scrap sales is reasonable and consistent with the manner in which the company maintains its books and records. Therefore, we continue to grant SAS its reported scrap offset in the final results.[144]

Comment 13: Rental Expenses

Petitioner's Argument:

- SAS' land lease payments were classified as interest expenses in SAS' financial

[136] *See*, *e.g.*, *Frontseating Service Valves From the People's Republic of China: Final Results of the 2008-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 76 FR 70706 (November 15, 2011) (*Valves from PRC*), and accompanying IDM at Comment 18.
[137] *See*, *e.g.*, *Certain Steel Nails From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments and Final Partial Rescission; 2014-2015,* 82 FR 14344 (March 20, 2017) (*Steel Nails from PRC*), and accompanying IDM at Comment 6.
[138] *See*, *e.g.*, SAS' Supplemental D Questionnaire Response, dated November 8, 2016, at 8.
[139] *Id.*, at Exhibit SD-SAS-3.
[140] *Id*., at 9.
[141] *Id*.
[142] *Id*., at Exhibit SD-SAS-3.
[143] *Id*.
[144] *See* Analysis Memorandum for the Final Results at Attachments 1 and 2.

statements and based on this classification SAS reported the expense in its financial expense rate. However, the Department's longstanding practice is to treat rental expenses as G&A expenses. Accordingly, the Department should reclassify this amount from SAS-Solartech's reported interest to its reported G&A expenses.

SAS-Solartech's Rebuttal Argument:

- The amount is not a typical rental expense, but rather a financial lease, and under Taiwanese GAAP, the amount is recognized as an interest expense because it can be used to purchase the land under the terms of the contract. As such, the amount is properly classified as interest expense for reporting purposes.

Department's Position:

We disagree with the petitioner. Section 773(f)(1)(A) of the Act directs the Department to rely on a company's normal books and records, *i.e.*, how a particular item of income or expense is recorded on the company's financial statement, and whether the results reasonably reflect the costs associated with the production and sale of the merchandise under consideration. Here, SAS provided evidence that the expense at question is related to a financial lease and has been classified in the audited income statement as interest expense.[145] Further, the audited financial statements clarify that "{l}eases are classified as finance lease whenever the terms of the lease transfer substantially all the risks and rewards of ownership to the lessee," and the "lease payments should be apportioned between the financial charge and the outstanding liability."[146] Thus, since SAS' audited financial statements treat the expense at issue as interest, and we found no evidence that such treatment is distortive to the reported costs, we continue to include the amount in the consolidated financial expense rate.[147]

Comment 14: Fixed Overhead Costs

SAS-Solartech's Argument:

- In its preliminary margin calculations, the Department increased Solartech's fixed overhead costs to include employee restricted stock and non-leave bonuses. However, the Department should reverse such an adjustment, since Solartech did not actually pay the amounts involving employee restricted stock and non-leave bonuses to employees.
- Employee restricted stock represents the difference between the value of stocks issued to employees and the current market price which Solartech was required to include in the financial statements. Moreover, the non-leave bonus expense is related to an accrual account for unused annual leave.

Petitioner's Rebuttal Argument:

- Solartech's records are on an accrual, not cash, basis. Therefore, whether the payments

[145] *See* SAS' June 17, 2016 QR at Exhibit A-14, footnote VI (XII) of SAS' 2015 and 2014 financial statements.
[146] *Id.*, at Exhibit A-14, footnote I (XI) of SAS' 2015 and 2014 financial statements.
[147] *See* Analysis Memorandum for the Final Results.

were actually made is irrelevant. The company was required to report the expenses in its GAAP based financial statements. Therefore, the Department should continue to include the expenses in its margin calculations.

Department's Position:

We agree that the accrued expenses should be included in the margin calculation. The fact that a company uses accrual basis accounting does not provide evidence of distortion. Rather the accrual basis ensures that revenues and expenses are recognized in the period in which they are realized, regardless of when they are collected or paid. Pursuant to section 773(f)(1)(A) of the Act, costs will be calculated based on records kept in accordance with GAAP. In this regard, we note that financial statements prepared on the accrual basis are consistent with GAAP, while financial statements prepared on the cash basis are not.[148]

Comment 15: G&A and Financial Expenses

SAS-Solartech's Argument:

- The Department should have relied on the joint weighted-average ratios reported for SAS and Solartech, rather than the company-specific ratios, as this is more consistent with the Department's collapsing determination.
- The Department should not have included the loss on purchase agreements expense in SAS' G&A ratio calculation nor should the Department have included the bad debt expense on a loan to an affiliate in Solartech's interest ratio.
- SAS did not actually incur the purchase loss as it is merely a reserve account for potential losses on future obligations, while Solartech's expense was recorded as an administrative expense on the financial statements and is irrelevant to the merchandise under consideration, as the loan was to an affiliate that manufacturers non-scope products.

Petitioner's Rebuttal Argument:

- Under GAAP, the purchase loss represents a normal cost of doing business and is properly included in G&A. Further, the bad debt expense recognized on a long-term affiliated loan is a general expense that is related to the company's operations, as a whole.
- As to the use of weight-average or company-specific period expenses, SAS does not provide a single cite to support its arguments. Collapsing companies does not equate to consolidating the companies, as each company is required to provide its own cost database.

Department's Position:

We disagree with SAS-Solartech. It is the Department's normal practice to calculate the G&A

[148] *See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada: Final Results of Antidumping Duty Administrative Reviews*, 62 FR 18448, 18456 (April 15, 1997), and accompanying IDM at Comment 3.

expense ratio separately for the companies of a collapsed respondent, and to apply the separate ratios to each company's cost of manufacturing before weight averaging their costs of production together.[149] Financial expenses are calculated and applied in the same manner, *i.e.*, company specific, unless the results of the two collapsed respondents are reported in the same consolidated financial statements, in which case, the companies would have the same financial expense ratio. Here, SAS and Solartech are not part of the same consolidated financial statements. Therefore, in keeping with the Department's practice with regard to collapsed entities, we have continued to calculate and apply company-specific G&A and financial expense ratios for these final results.[150] In doing so, we have also continued to include the bad debt expense recognized on the affiliated loan in Solartech's financial expenses and the purchase loss in SAS' G&A expenses.[151] With regard to the bad debt expense, which is related to a loan to an affiliated party, we first note that the Department considers loaning monies to be a financing activity.[152] Therefore, we are likewise considering the anticipated losses, or bad debt expenses, recognized on the company's audited financial statements in relation to these loans to be a cost of financing. While the respondent states that the loan was unrelated to the merchandise under review, the Department's longstanding practice recognizes the fungible nature of a company's invested capital resources (*i.e.*, debt and equity).[153] The CIT has upheld the Department's policy of recognizing the fungible nature of invested capital resources.[154] Here, Solartech used its working capital to finance the activities of its affiliate. Solartech's auditors deemed it appropriate to recognize a bad debt expense related to these financing activities. Thus, we have likewise continued to include this financial expense in the financial expense ratio.[155]

Regarding the purchase loss, it has been included in SAS' financial statements as a general expense of the company.[156] Similar to the fixed overhead expense arguments above, the fact that a company uses accrual basis accounting does not provide evidence of distortion. Rather the accrual basis ensures that revenues and expenses are recognized in the period in which they are realized, regardless of when they are collected or paid. Section 773(f)(1)(A) specifies that costs will be calculated based on records kept in accordance with GAAP. In its GAAP-based financial statements, SAS was required to record these losses. Therefore, absent any evidence of distortion, we have likewise continued to include in G&A expenses the purchase losses that were

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[149] *See*, *e.g.*, *Polyethylene Terephthalate Film, Sheet, and Strip from Taiwan: Final Results of Antidumping Duty Administrative Review*, 76 FR 9745 (February 11, 2011), and accompanying IDM at Comment 2.
[150] *See* Analysis Memorandum for the Final Results at 3.
[151] *See* Memorandum From Magd Zalok, AD/CVD Operations, Office IV, To The 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 (Analysis Memorandum for the Preliminary Results) at Attachment 3.
[152] *See*, *e.g.*, *Sugar from Mexico: Final Determination of Sales at Less Than Fair Value*, 80 FR 57341 (September 23, 2015), and accompanying IDM at Comment 10.
[153] *See*, *e.g.*, *Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52055 (September 12, 2007) and accompanying IDM at Comment 7; *Notice of Final Determination of Sales at Less than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Mexico*, 67 FR 55800 (August 30, 2002) and accompanying IDM at Comment 8; and, *Notice of Final Results of Antidumping Duty Administrative Review: Fresh Atlantic Salmon from Chile*, 65 FR 78472 (December 15, 2000) and accompanying IDM at Comment 7.
[154] *See Camargo Correa Metais v. United States*, 17 C.I.T. 897, 902 (CIT 1993).
[155] *See* Analysis Memorandum for the Preliminary Results at Attachment 3.
[156] *See*, *e.g.*, SAS' June 17, 2016 QR at Exhibit A-14, footnote VI (XII) of SAS' 2015 and 2014 financial statements.

recognized on SAS' financial statements since such expenses are related to the general operations of the company.[157]

B. Motech-Specific Issues

Comment 16: Whether to Apply Partial AFA to Motech's Reported Per-Unit Costs

Petitioner's Argument:

- Motech reported in its response to section D of the questionnaire that it uses certain solar cell grades in the normal course of business to allocate cost; however, in its response to sections B and C of the questionnaire regarding the CELLGRADEH/U product characteristic, Motech reported additional grade codes. The correlation between the grade codes reported in section D, and in sections B and C, is unclear.
- Certain solar cells that the Department determined to be prime grade, based upon information in section D of questionnaire, may have defects precluding them from being prime grade, based on information that Motech reported in its section B response.
- Although the Department requested that Motech report production quantities by grade in both watts and cells, Motech reported only the production quantity in watts. Because off-grade products have lower efficiency than prime grade products (*i.e.*, fewer watts per cell), the Department's cost reallocation using watt quantity does not eliminate the distortions in Motech's valuation.
- The Department's reallocation of Motech's costs in the preliminary results between lower grade and higher grade products was inaccurate because Motech failed to reveal and properly describe the full extent of its product grading and the manner in which those grades are accounted for in its reported costs. Further, Motech failed to provide grade-specific production quantities in the manner requested by the Department.
- Because the Department lacks the data necessary to perform a more accurate reallocation, the Department should apply partial AFA to Motech's reported per-unit costs in the final results. Specifically, the Department should use the highest per-unit costs reported for a prime cell CONNUM for all prime cell CONNUMs, and the highest costs reported for a prime module CONNUM to all module CONNUMs.

Motech's Rebuttal Argument:

- Motech responded to all of the Department's requests regarding its cell grades with consistent information. The petitioner's argument is an attempt to sow confusion by conflating the grading used for cost with that used for sales purposes, which involves additional categories for certain lower grade cells, depending on the factory and the nature of the cosmetic defect.
- The section B exhibit cited by the petitioners confirms that more than one sales grade code fits under a single cost grade code, as Motech does not consider there to be a difference in cost between different cosmetic or color defects.
- The Department's determination that certain lower grade products have only minor

[157] *See* Analysis Memorandum for the Final Results at Attachment 3.

defects that warrant reallocation at full cost is consistent with the Department's determinations in the investigation of this proceeding, which the petitioner does not acknowledge.
- There is no basis for the petitioner's assertions that: (1) the defects of certain product grades identified in the section B response are not minor; and (2) these products are similar to SAS-Solartech products that the Department classified as by-products.
- Because the nominal power output is one of the characteristics within the CONNUM, products with the same narrow range of wattage are grouped under the same CONNUM. Thus, an adjustment of the cost on a per piece or per watt basis at the CONNUM level would have virtually identical results.
- Because the necessary information is on the record for the Department to reallocate per-unit costs correctly, and Motech responded to each of the Department's questionnaires and supplemental questionnaires, there is no basis for the petitioner's claim that the Department should base its determination on partial AFA.

Department's Position:

We disagree with the petitioner that the record data does not allow for an accurate reallocation of the costs assigned to downgraded solar cells. Therefore, consistent with the *Preliminary Results*, we have continued to adjust the value of all grade B products to reflect the full value of prime production, and to adjust all grade Z products to reflect the reduced value assigned by Motech in its normal books and records during the first part of the POI.

The focus of the petitioner's claim is that the cell grades reported in Exhibit B-11 of Motech's section B response are inconsistent with Motech's cell-grade reporting in its section D response.[158] We note that in Exhibit B-11, Motech classified its cell grades over the course of the POR into three categories and reported three categories of cell grades in its section D response. The petitioner argues that Motech identified other grade designations in these categories that it did not use in its Section D responses. However, the descriptions of the grade designations shown in Exhibit B-11 and the descriptions of Motech's cell grades reported in its section D response are consistent. Although additional grades are noted in Exhibit B-11 of Motech's section B response, these grades relate to the same below top-grade products (*i.e.*, products with either cosmetic or electrical defects).

Additionally, we disagree with the petitioner's argument that some of the grade B cells that the Department reallocated at full value may have defects precluding them from being qualified as prime grade products. We note that the record does not support such a conclusion. Rather, the record supports the Department's determination that grade B solar cells have only cosmetic defects and should be allocated the same value as prime products, and that grade Z solar cells cannot be used in the construction of modules, and thus should be allocated downgraded value.[159]

[158] *See* Motech's Section B&C response, dated July 8, 2016, at Exhibit B-11, and Motech's Section D response, dated July 14, 2016 at D-25.
[159] *See* Motech's Supplemental Section D response, dated January 17, 2017, at 4 (regarding Grade B products); *see* Motech's Supplemental Sections A, B, and D response, dated November 14, 2016 at 12 (Regarding Grade Z products).

Moreover, we disagree with the petitioner that the Department's cost reallocation using watt quantities causes distortions in the valuation of Motech's downgraded solar cells. In its original questionnaire, the Department set forth specific wattage intervals that largely determine the CONNUMs in this case.[160] For each CONNUM, the wattage characteristic consists of a narrow band, and all cells within the CONNUM share the same basic relationship between wattage and pieces. Thus, performing the reallocation of value based on the production quantity of each CONNUM in watts is entirely consistent with the reporting methodology in the cost database.

For the foregoing reasons, we have made no change to the Department's preliminary cost re-allocation for Motech's grade B and grade Z solar cell grades for the final results.

Comment 17: Whether to Deny Motech's Offset For Silver Paste Scrap

Petitioner's Argument:

- Motech has not established a link between silver paste scrap sold and produced at the same time, to support a claimed by-product offset. Motech's silver paste scrap is not picked up based on a regular schedule, thus there is no evidence to support Motech's claim that the amount processed in a given period correlates with the quantity of scrap picked up in a particular period, let alone the quantity produced within a given period. The Department should therefore deny the by-product offset for silver paste scrap.

Motech's Rebuttal Argument:

- Motech has submitted its contract with the purchaser of the silver paste scrap, which states that the scrap is picked up and sold on at least a bi-monthly basis. Moreover, there is a justifiable reason to explain Motech's inability to track production of paste scrap until the merchandise is sold, namely that the purchaser of the material extracts the silver paste after the pick-up from Motech's facilities. Therefore, the Department was correct to determine that the record evidence supports the paste scrap offset.

Department's Position:

The Department's practice with respect to by-product offsets is to allow such offsets based on the amount of by-product generated, once the by-product has been shown to have commercial value, through evidence of sales or reintroduction into the production process.[161] By-product offsets are only granted for merchandise that is either sold or reintroduced into production during the POR, up to the amount of that by-product actually produced during the POR.[162] The record of this review establishes that the silver paste scrap generated by Motech in manufacturing solar

[160] *See*, *e.g.*, Letter from the Department to Motech, dated May 20, 2016 at B-10.
[161] *See*, *e.g.*, *Valves From the PRC*, 76 FR at 70706 , and accompanying IDM at Comment 18.
[162] *See*, *e.g.*, *Steel Nails From the PRC,* 82 FR at 14344 and accompanying IDM at Comment 6.

cells was sold on a regular basis during the POR.[163] Further, Motech provided monthly sales quantities of silver paste scrap during the POR, as reported by its buyer, who collects the silver paste scrap on Motech's behalf.[164] Motech explained that it only records the quantity of silver paste collected and sold, and not the quantity generated, because it does not know the quantity of silver paste scrap that it produced until the buyer informs Motech of the quantity of scrap that it was able to recover.[165]

In *American Tubular Products*, cited by the petitioner, the CIT affirmed the Department's denial of a steel scrap offset because the respondent did not track the production information and could not corroborate its claim that the amount of steel scrap it produced and sold were the same.[166] The CIT specifically noted that "if an exporter does not record scrap production, the exporter may still claim the offset if it 'reasonably link{s}' the amount of scrap sold during the review period to the amount produced during the same time."[167] The CIT further stated that "{b}y demanding this proof, Commerce excludes scrap made during prior review periods from the offset formula, and ensures that NV reflects the actual cost of making subject goods." [168]

In the present case, because the buyer of the silver paste scrap collects all of the silver paste scrap generated during the production process on a regular basis (*i.e.,* two to four times a month), there is effectively no difference between the amount of silver paste scrap generated and sold during the POR.[169] Accordingly, we have continued to grant Motech's by-product offset for silver paste scrap at the final results.

Comment 18: Whether to include fire losses in Motech's G&A expenses

Motech's Argument:

- The Department's practice is to exclude losses from the calculation of G&A expenses where the losses are related to an event that was unforeseen and extraordinary. For the final results, the Department should calculate Motech's margin with the loss due to a factory fire excluded from the G&A expense calculation in accordance with case precedent.

[163] *See* Motech's Supplemental A, B, and D Questionnaire Response, dated September 22, 2016, at 4; *see also* Motech's Supplemental Section D Questionnaire Response, dated January 17, 2017 at Exhibit D-52 (contract with recycling company).
[164] *See* Motech's Supplemental Section D Questionnaire Response, dated January 17, 2017 at 3.
[165] *Id.*
[166] *See Am. Tubular Prods., LLC v. United States*, Slip Op. 14-116 (CIT 2014) at 17-19.
[167] *Id.*, at 18 (citing *Drawn Stainless Steel Sinks From the People's Republic of China: Investigation, Final Determination,* 78 FR 13019 (February 26, 2013), and accompanying IDM at Comment 9) ("...we reviewed warehouse out-slips for certain production orders that showed the amount of stainless steel coil withdrawn for these orders exceeded the amount represented by the number of sinks in that order by a ratio that substantially supports the rate of scrap production claimed by Superte.").
[168] *Id.*
[169] *See* Motech's Supplemental Section D Questionnaire Response, dated January 17, 2017 at 3.

Petitioner's Rebuttal Argument:

- The factory fire loss in question was not reported as an extraordinary item in the company's audited financial statements, and was instead treated as a non-operating loss. The Department generally finds that non-operating incomes and expenses, unless they relate to investment activities, do relate to the company's operations as a whole, and should be included in the G&A expenses.
- The Department has also specifically addressed losses related to fires, finding that the mere labeling of fire loss as extraordinary is in no way conclusive. Thus, the Department properly treated Motech's fire loss as part of G&A.

Department's Position:

We agree with the petitioner that the losses at issue, which relate to the shutting down of production in the aftermath of a 2015 factory fire, should continue to be included in the Motech's total G&A expenses. Section 773(f)(1)(A) of the Act instructs the Department to calculate costs based on a respondent's normal books and records if they are kept in accordance with home country GAAP and reasonably reflect the costs associated with the production and sale of the merchandise. Thus, unless a company's normal books and records kept in accordance with home country GAAP result in a distortion of the costs, the Department will rely on the assurances of the company's independent accountants and auditors as the basis for calculating costs.[170]

In the instant case, we find that Motech's auditors classified the net loss related to the fire under non-operating expenses in accordance with Taiwanese GAAP, rather than as an extraordinary loss,[171] and we find no record evidence to indicate that this treatment is unreasonable. Therefore, for the final results, we have continued to include the shutdown losses at issue, which were connected to the factory fire in 2015,[172] in Motech's G&A expense ratio calculation.

Comment 19: Whether to Exclude Motech's Reported "Indirect" U.S. Sales For One Customer

Petitioner's Argument:

- Motech demonstrated that it had knowledge at the time of sale that certain sales that it shipped to third countries were destined for the United States, by tracing specific Channel 2 and Channel 4 "indirect" sales to e-mails, contracts, and other customer communications. However, the record indicates that Motech failed to provide any such traces for Channel 2 customer's sales, which the Department included in the margin calculation. While Motech submitted supporting documentation that sales to this customer were destined for the United States, Motech could not tie this documentation to specific sales. Because Motech's knowledge only constitutes a general knowledge or belief that the sales were destined for the United States, sales to this customer should be

[170] *See, e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube from Mexico*, 73 FR 35649 (June 24, 2008), and accompanying IDM at Comment 10.
[171] *See* Motech's Section A response, dated June 20, 2016 at Exhibit A-17 (Motech's Unconsolidated 2014 and 2015 financial statements) at 53.
[172] *See* Motech's Section A, B and D response, September 22, 2016 at 11 and Exhibit D-29.

excluded.

Motech's Rebuttal Argument:

- The petitioner is engaging in an obvious margin shopping spree in arguing that the Department should exclude sales to this customer. The Department did not base its finding of knowledge on Motech's ability to trace documentation to individual sales for any customer, and has included customers and sales in the margin calculation where such tracing was not possible. Because it is clearly an abuse of discretion to treat similarly situated parties differently, the Department should continue to include sales to this customer in Motech's U.S. sales.

Department's Position:

In the *Preliminary Results*, we included a large number of sales in the margin calculation program which Motech reported were ultimately destined for the United States via a third country. Based upon a careful review of information on the record, we continue to include these sales in our calculation. We disagree with the petitioner that sales to the customer at issue should be excluded.

Motech reported sales to the customer that Petitioner identifies in its sales channel 2, "Sales to U.S. Customers With Shipment to a Third Country." [173] For sales in this sales channel, Motech reported that it

> "initially corresponds with the unaffiliated U.S. customer by e-mail, phone, or via electronic mediums *(e.g.,* Skype, smart phone messenger apps, etc.) regarding the monthly sales requirements of the customer for cells. However, instead of shipment directly to the U.S. customer, Motech is directed by the customer to send the cells to a third country module producer for further processing prior to importation to the United States. All communication regarding the sale is between Motech and the unaffiliated U.S. customer, and Motech invoices and is paid by the U.S. customer for the sale, thereby transferring ownership to the U.S. customer."[174]

The Department carefully examined all sales documentation that Motech submitted for sales to this customer, and the documentation supports Motech's description of its Channel 2 sales. [175]

As noted by the petitioner, Motech stated that it could not tie the written communications with the customer at issue which specifically mentions that the cells would be shipped to the United States, to specific sales of cells to this customer.[176] However, because the customer at issue is

[173] *See* Motech's Section A Response, dated June 20, 2016, at A-17.
[174] *Id.*
[175] *Id.*, at Exhibits A-7 and A-14.
[176] *See* Motech's Supplemental Section A Response, dated February 13, 2017, at 3.

located in the United States,[177] we find that Motech had specific knowledge that the cells sold to this customer were shipped to a third country to be inserted into panels destined for the U.S. market, and, therefore, should be included in the margin calculation.

Because we are including the sales at issue in the margin calculation for the final results of this administrative review, we are not making any change to the *Preliminary Results*.

VII. RECOMMENDATION

We recommend following the above methodology for these final results.

☒ ☐

Agree Disagree

6/29/2017

X Ronald K. Lorentzen

Signed by: RONALD LORENTZEN

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

[177] *See* Motech's Section A Response, dated June 20, 2016, at Exhibit A-14 (purchasing contract with U.S. customer).