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MEMORANDUM TO: Gary Taverman  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations,  
Performing the non-exclusive functions and duties of the  
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder  
Senior Director  
performing the duties of Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Preliminary Results of the 2016-2017  
Antidumping Duty Administrative Review of Certain Crystalline  
Silicon Photovoltaic Products from Taiwan

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## SUMMARY

In response to requests from interested parties, the Department of Commerce (Department) is conducting an administrative review of the antidumping duty (AD) order on certain crystalline silicon photovoltaic products (solar products) from Taiwan, covering the period of review (POR) February 1, 2016, through January 31, 2017. The administrative review covers 11 exporters of the subject merchandise, including one mandatory respondent, Motech Industries, Inc. (Motech). The Department preliminarily determines that sales of subject merchandise have been made below normal value (NV) by Motech.

## Background

On February 8, 2017, the Department notified interested parties of the opportunity to request an administrative review of orders, findings, or suspended investigations with anniversaries in February 2017, including the AD order on solar products from Taiwan.<sup>1</sup> On February 28, 2017, SolarWorld Americas Inc. (Petitioner), as well as various producers and exporters requested that the Department conduct an administrative review of certain exporters covering the POR. On

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<sup>1</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 82 FR 9709 (February 8, 2017) (*Opportunity to Request Administrative Review*).



April 10, 2017, the Department published a notice initiating an AD administrative review of solar products from Taiwan covering 34 companies for the POR.<sup>2</sup>

In the *Initiation Notice*, the Department stated that if it limited the number of respondents for individual examination, it intended to select respondents based on volume data contained in responses to its quantity and value (Q&V) questionnaire.<sup>3</sup> On April 10, 2017, the Department issued Q&V questionnaires to all 11 companies that appeared in the U.S. Customs and Border Protection (CBP) data for import and merchandise value.<sup>4</sup> We received Q&V questionnaire responses from 11 companies<sup>5</sup> named in the *Initiation Notice*. The remaining 23 companies<sup>6</sup> withdrew their requests for administrative review, pursuant to 19 CFR 351.213(d)(1). Because these 23 companies timely withdrew their requests for administrative review pursuant to 19 CFR 351.213(d)(1), and no other party requested a review of these companies, we are rescinding the administrative review with respect to these companies.

On May 24, 2017, the Department selected Motech as a mandatory respondent.<sup>7</sup> From May 25, 2017 through November 16, 2017, the Department issued questionnaires to, and received timely responses from, Motech.<sup>8</sup> The petitioner commented on these responses between July 6 and October 24, 2017.<sup>9</sup>

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<sup>2</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 17188, 17189 (April 10, 2017) (*Initiation Notice*).

<sup>3</sup> *Id.* at 17189.

<sup>4</sup> The Department explained in the *Initiation Notice* that the units used to measure the imported quantities of solar cells and solar modules in the CBP data are in “piece” units, and it would not be meaningful to sum the number of imported solar cells and the number of imported solar modules in attempting to determine the largest Taiwan exporters of subject merchandise by volume. *Id.* Therefore, the Department stated that it would limit the number of Q&V questionnaires issued based on the import values in CBP data. *Id.*

<sup>5</sup> The 11 companies that submitted a Q&V questionnaire response include: AU Optonics Corporation, EEPV Corp., Gintech Energy Corporation, Inventec Solar Energy Corporation, Kyocera Mexicana S.A. de C.V., Motech Industries, Inc., Neo Solar Power Corporation, Sino-American Silicon Products Inc., Solartech Energy Corporation, TSEC Corporation, and Vina Solar Technology Co., Ltd.

<sup>6</sup> Baoding Jiasheng Photovoltaic Technology Co Ltd., Baoding Tianwei Yingli New Energy Resources Co., Ltd., Beijing Tianneng Yingli New Energy Resources Co Ltd., Boviet Solar Technology Co., Ltd., Canadian Solar Inc., Canadian Solar International, Ltd., Canadian Solar Manufacturing (Changshu), Inc., Canadian Solar Manufacturing (Luoyang), Inc., Canadian Solar Solution Inc., E-TON Solar Tech. Co., Ltd., Hainan Yingli New Energy Resources Co., Ltd., Hengshui Yingli New Energy Resources Co., Ltd., Inventec Energy Corporation., Lixian Yingli New Energy Resources Co., Ltd., Shenzhen Yingli New Energy Resources Co., Ltd., Sunengine Corporation Ltd., Sunrise Global Solar Energy., Tianjin Yingli New Energy Resources Co., Ltd., Trina Solar (Schweiz) AG., Trina Solar (Singapore) Science and Technology Pte Ltd., Win Win Precision Technology Co., Ltd., Yingli Energy (China) Co., Ltd., and Yingli Green Energy International Trading Company Limited.

<sup>7</sup> See memorandum from Thomas Martin, Senior International Trade Compliance Analyst, Office IV, AD/CVD Operations, Enforcement and Compliance to Abdelali Elouaradia, Director, Office IV, AD/CVD Operations, Enforcement and Compliance regarding “2016-2017 Antidumping Duty Administrative Review of Certain Crystalline Silicon Photovoltaic Products from Taiwan: Respondent Selection,” dated May 24, 2017 (Respondent Selection Memorandum) at 4-5.

<sup>8</sup> See Letters from Motech to the Department dated June 22, July 13, September 20, October 3, October 13, November 6, November 13, and November 16, 2017.

<sup>9</sup> See Letters from Petitioner to the Department dated July 6, July 28, October 3, and October 24, 2017.

## Scope of the Order

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

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

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

Excluded from the scope of this order are thin film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS). Also excluded from the scope of this order are crystalline silicon photovoltaic cells, not exceeding 10,000mm<sup>2</sup> in surface area, that are permanently integrated into a consumer good whose function is other than power generation and that consumes the electricity generated by the integrated crystalline silicon photovoltaic cells. Where more than one cell is permanently integrated into a consumer good, the surface area for purposes of this exclusion shall be the total combined surface area of all cells that are integrated into the consumer good.

Further, also excluded from the scope of this order are any products covered by the existing antidumping and countervailing duty orders on crystalline silicon photovoltaic cells, whether or not assembled into modules, from the People's Republic of China ("PRC").<sup>10</sup> Also excluded from the scope of this order are modules, laminates, and panels produced in the PRC from crystalline silicon photovoltaic cells produced in Taiwan that are covered by an existing proceeding on such modules, laminates, and panels from the PRC.

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

## Selection of Respondents

Section 777A(c)(1) of the Tariff Act of 1930, as amended (the Act), directs the Department to determine individual weighted-average dumping margins for each known exporter and producer of the subject merchandise. However, if it is not practicable to do so because of the large

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<sup>10</sup> See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order*, 77 FR 73018 (December 7, 2012); *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Countervailing Duty Order*, 77 FR 73017 (December 7, 2012).

number of exporters or producers involved in the review, the Act and 19 CFR 351.204(c)(2) permit the Department to limit its examination and to determine individual dumping margins for a reasonable number of exporters and/or producers.<sup>11</sup> The Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act also interprets this provision to mean that the authority to select respondents rests exclusively with the Department.<sup>12</sup>

In its Respondent Selection Memorandum, the Department determined, pursuant to section 777A(c)(2) of the Act, that given the large number of producers or exporters for which a review was initiated and the Department's current resource constraints, it would not be practicable to individually examine all known exporters/producers.<sup>13</sup> Therefore, in accordance with section 777A(c)(2)(B) of the Act, the Department selected the largest exporter (*i.e.*, Motech) for individual examination, from the 11 companies that submitted Q&V questionnaire responses to the Department.<sup>14</sup>

### Unexamined Respondents

After respondent selection, ten companies, AU Optronics Corporation, EEPV Corp., Gintech Energy Corporation, Inventec Solar Energy Corporation, Kyocera Mexicana S.A. de C.V., Neo Solar Power Corporation, Sino-American Silicon Products Inc., Solartech Energy Corp. group, TSEC Corporation, and Vina Solar Technology Co., Ltd., remain subject to this administrative review. None of these ten companies: (1) was selected as a mandatory respondent;<sup>15</sup> (2) was the subject of a withdrawal of request for review; (3) requested to participate as a voluntary respondent; or (4) submitted a claim of no shipments. As such, these ten companies remain as unexamined respondents.

The statute and the Department's regulations do not address the establishment of a rate to be applied to individual respondents not selected for examination when the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, the Department looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents which we did not examine in an administrative review. Section 735(c)(5)(A) of the Act establishes a preference to avoid using rates which are zero, *de minimis*, or based entirely on facts available (FA) in calculating an all others rate. Accordingly, the Department's usual practice in administrative reviews has been to average the weighted-average dumping margins for the companies selected for individual examination in the annual review, excluding rates that are zero, *de minimis*, or based entirely on FA.<sup>16</sup>

In this review and consistent with our practice, we preliminarily calculated a weighted-average dumping margin for Motech that is above *de minimis* and not based entirely on FA. Therefore,

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<sup>11</sup> See section 777A(c)(2) of the Act.

<sup>12</sup> See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) at 872.

<sup>13</sup> See Respondent Selection Memorandum at 2-3

<sup>14</sup> *Id.* at 4-5.

<sup>15</sup> See Respondent Selection Memorandum.

<sup>16</sup> See *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part*, 73 FR 52823, 52824 (September 11, 2008), and accompanying Issues and Decision Memorandum at Comment 16.

we preliminarily assign to non-selected companies a margin of 1.07 percent (*i.e.*, the margin calculated for Motech) as the non-selected respondent rate for this review.

## DISCUSSION OF THE METHODOLOGY

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

### Comparisons to Normal Value

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

#### A) *Determination of Comparison Method*

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (or CEPs) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, the Department examines whether to compare weighted-average NVs with the export prices (or CEPs) of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of administrative reviews, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in less-than-fair-value investigations.<sup>17</sup>

In recent investigations, the Department applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.<sup>18</sup> The Department finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of export prices (or CEPs) for comparable merchandise that differ significantly among

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<sup>17</sup> See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012) and accompanying Issues and Decision Memorandum at comment 1; see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (Ct. Int'l Trade 2014).

<sup>18</sup> See, e.g., *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); and *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

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

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

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

If both tests in the first stage (*i.e.*, the Cohen’s *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, the Department

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

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

#### B) *Results of the Differential Pricing Analysis*

For Motech, based on the results of the differential pricing analysis, the Department preliminarily finds that 99.06 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>19</sup> and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that the average-to-average method cannot account for such differences, because the weighted-average dumping margin crosses the *de minimis* threshold when calculated using the average-to-average method and when calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for these preliminary results, the Department is applying the average-to-transaction method to all U.S. sales to calculate the weighted-average dumping margin for Motech.

#### Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by the Motech in Taiwan during the POR that fit the description in the "Scope of the Order" section of the accompanying *Federal Register* notice to be foreign like products for purposes of determining NV for the subject merchandise sold in the United States. Pursuant to 19 CFR 351.414(f)(1)-(3), we compared Motech's U.S. sales to foreign like product sales made in the home market, where appropriate.

Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, according to section 771(16)(A) of the Act, we compared U.S. sales to sales of the most similar foreign-like product made in the ordinary course of trade. In making the product comparisons, we matched foreign-like products based on the physical characteristics reported by the respondents to the product sold in the United States. In

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<sup>19</sup> See Memorandum from Thomas Martin to File, "2016-2017 Antidumping Duty Administrative Review of Certain Crystalline Silicon Photovoltaic Products from Taiwan, Preliminary Results Analysis for Motech Industries, Inc.," dated December 13, 2017 (Motech Preliminary Analysis Memorandum) at 3.

the order of importance, these physical characteristics are as follows: product form, crystal/dopant type, total power, frame, cell technology, backing material, front material, junction box, inverter, and battery.<sup>20</sup>

### Date of Sale

Section 351.401(i) of the Department's regulations states that, in identifying the date of sale of the subject merchandise or foreign like product, the Department normally will use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business. However, the regulations permit the Department to use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.<sup>21</sup> The Department has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.<sup>22</sup>

For both its home market and U.S. sales, Motech reported invoice date as the date of sale, except in instances where shipment date preceded the invoice date, as the date when material terms of sale are fixed.<sup>23</sup> Based on this information, and consistent with the Department's practice,<sup>24</sup> we preliminarily determine that the earliest date, either the invoice date or the shipment date, is the most appropriate selection for the date of sale for sales in both the home and U.S. markets.

### Export Price

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

We calculated EP for Motech based on packed prices to unaffiliated purchasers in the United States. We made deductions, where appropriate, from the starting price for billing adjustments, discounts and rebates. We also made deductions from the starting price, where appropriate, for movement expenses, *i.e.*, foreign inland freight, inland insurance expenses, brokerage and handling expenses incurred in the country of manufacture, international freight, and U.S. inland freight, in accordance with section 772(c)(2)(A) of the Act. For EP sales, we then added U.S.

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<sup>20</sup> See Motech Section B questionnaire response, dated July 13, 2017, at 11-21.

<sup>21</sup> See 19 CFR 351.401(i); *see also Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

<sup>22</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10; *see also Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

<sup>23</sup> See Motech's June 22, 2017, section A response at A-19.

<sup>24</sup> See *Narrow Woven Ribbons with Woven Selvedge from Taiwan; Preliminary Results of Antidumping Duty Administrative Review*; 2013-2014, 80 FR 60627 (October 7, 2015) and accompanying Preliminary Decision Memorandum at 9, unchanged in *Narrow Woven Ribbons with Woven Selvedge from Taiwan; Final Results of Antidumping Duty Administrative Review*; 2013-2014, 81 FR 22578 (April 18, 2016).



direct selling expenses, *i.e.*, credit expenses, warranty expenses, bank charges, and packing costs, to the NV calculation.

Motech reported “indirect” sales of solar cells to certain unaffiliated customers. These customers directed Motech to ship the solar cells to producers of modules in various third countries, other than the United States.<sup>25</sup> Motech states that, while it cannot directly trace its cells to individual modules destined for the United States, it considers certain of its sales of solar cells to these unaffiliated customers to be indirect U.S. EP sales, because it has knowledge, at or prior to the time of sale, based on email communication or other sales documentation, that such sales are destined for the United States.<sup>26</sup> The Department preliminarily determines that there is sufficient record evidence to support that certain sales in these channels are destined for the U.S. market.<sup>27</sup> Accordingly, we included these indirect sales reported in Motech’s U.S. sales database in our margin calculation for purposes of these preliminary results of review.

### Normal Value

#### A) *Home Market Viability*

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, *i.e.*, the aggregate volume of home market sales of the foreign-like product is equal to or greater than five percent of the aggregate volume of U.S. sales, we normally compare the respondent’s volume of home market sales of the foreign-like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act. If we determine that no viable home market exists, we may, if appropriate, use a respondent’s sales of the foreign-like product to a third country market as the basis for comparison market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

For Motech, we determined that the aggregate volume of home market sales of the foreign-like product was greater than five percent of the aggregate volume of U.S. sales of the subject merchandise.<sup>28</sup> Therefore, for Motech’s margin analysis, we used home market sales as the basis for NV, in accordance with section 773(a)(1)(B) of the Act.

#### B) *Level of Trade*

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales. Sales are made at different levels of trade if they are made at different marketing stages (or their equivalent).<sup>29</sup> Substantial differences in selling activities are a necessary, but not sufficient, condition for

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<sup>25</sup> See Motech’s June 22, 2017 Section A response at A-2, A-14 through A-16.

<sup>26</sup> *Id.*; see also Motech’s September 20, 2017 Supplemental A response at SA-5 through SA-7; Motech’s November 13, 2017 Supplemental A, B and C response (Part 2) at Exhibit SA2-1B.

<sup>27</sup> See Motech’s July 13, 2017 Section C response at Exhibit C-3; see also Motech’s November 13, 2017 Supplemental A, B and C response (Part 2) at SA2-3 through SA2-6.

<sup>28</sup> See Motech’s June 22, 2017 Section A response at A-4.

<sup>29</sup> See 19 CFR 351.412(c)(2).

determining that there is a difference in the stages of marketing.<sup>30</sup> In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market, *i.e.*, the chain of distribution, including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales, *i.e.*, NV based on either home market or third-country prices,<sup>31</sup> we consider the starting prices before any adjustments

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same level of trade as the EP, the Department may compare the U.S. sale to sales at a different level of trade in the comparison market. In comparing EP at a different level of trade in the comparison market, where available data make it possible, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act.

In the home market, Motech reported that it made sales to one customer category (*i.e.*, original equipment manufacturers, trading companies and end users) through one channel of distribution (*i.e.*, direct sales from Motech to domestic customers).<sup>32</sup> We examined the selling activities performed and found that Motech performed the following selling functions: sales forecasting, strategic/economic planning, personnel training/exchange, engineering service, advertising, sales promotion, distributor/dealer training, procurement/sourcing services, packing, inventory maintenance, order input/processing, direct sales personnel, sales/marketing support, market research, technical assistance, provision of rebates, cash discounts, payment of commissions, warranty services, guarantees, after sales services, freight and delivery, and post-sale warehousing.<sup>33</sup> Accordingly, based on the selling activities categories, we find that Motech performed sales and marketing, inventory maintenance and warehousing, and warranty and technical services at the same level of intensity for all customers and terms of delivery in the home market. Therefore, we preliminarily determine that there is one LOT in the home market.

In the U.S. market, Motech reported the following sales channels: (1) direct EP sales of solar cells made to unaffiliated U.S. customers; (2) EP sales of solar cells made to unaffiliated U.S. customers, for shipment to third countries other than the PRC, where Motech received an indication from the customer of an ultimate U.S. destination; and (3) EP sales of solar cells that are sold to unaffiliated Taiwanese module producers prior to shipment to the United States.<sup>34</sup> These channels are marked as “1,” “2,” and “3,” respectively, in the U.S. sales database.<sup>35</sup>

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<sup>30</sup> *Id.*; see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010), and accompanying Issues and Decision Memorandum at Comment 7 (*OJ from Brazil*).

<sup>31</sup> Where NV is based on constructed value (CV), we determine the NV level of trade based on the level of trade of the sales from which we derive selling, general and administrative expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

<sup>32</sup> See Motech’s July 13, 2017 Section B & C Response at B-22 and B-23.

<sup>33</sup> See Motech’s June 22, 2017 Section A Response at Exhibit A-11.

<sup>34</sup> See Motech’s July 22, 2017 Section A Response at A-14 and A-15.

<sup>35</sup> *Id.*

We examined the selling activities performed for EP sales in all three EP sales channels, and found that Motech performed the same selling activities, at the same levels of intensity.<sup>36</sup> Further, the selling functions performed, and the intensity of performance are the same as in the home market LOT.<sup>37</sup> Thus, we preliminarily determine that the three EP sales channels constitute one LOT.

With regard to the three EP sales channels, we evaluated the selling function categories in the U.S. and the home market LOT, and found that the selling functions in each of the categories were performed in both the U.S. and home markets. Finally, we compared the LOT of the EP sales channels, to the home market LOT and found that the selling functions performed for U.S. and home market customers do not differ, and do not meet the regulatory requirement of being made at “different marketing stages.” As noted above, Motech performs a full complement of selling activities for EP sales, as it does for its home market sales. Therefore, for the preliminary results, we have determined that EP sales and home market sales during the POR were made at the same LOT, and have not provided a level of trade adjustment.

### Cost of Production Analysis

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the AD and countervailing duty law, including amendments to section 773(b)(2) of the Act, regarding the Department’s requests for information on sales at less than the cost of production (COP).<sup>38</sup> This law does not specify dates of application for those amendments.<sup>39</sup> On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained in section 771(7) of the Act, which relate to determinations of material injury by the U.S. International Trade Commission.<sup>40</sup> Section 773(b)(2)(A)(ii) of the Act controls all determinations in which the complete initial questionnaire has not been issued as of August 6, 2015. It requires the Department to request CV and COP information from respondent companies in all AD proceedings.<sup>41</sup>

Accordingly, the Department requested this information from Motech in this administrative review.<sup>42</sup> We examined Motech’s cost data and determined that our quarterly cost methodology is not warranted and, therefore, we applied our standard methodology of using annual costs based on the reported data.

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<sup>36</sup> See Motech’s June 22, 2017 Section A Response at Exhibit A-11.

<sup>37</sup> *Id.*

<sup>38</sup> See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015).

<sup>39</sup> The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>; see also the Petitions.

<sup>40</sup> See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015).

<sup>41</sup> *Id.* at 46794-95.

<sup>42</sup> See Motech’s July 14, 2016 Section D response.

## 1. Calculation of COP

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

We relied on the COP data submitted by Motech except that we re-allocated the total reported cost of manufacturing for the POR to each model to reflect other off-grade products at reduced value.<sup>43</sup>

## 2. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the adjusted weighted-average COPs to the home market sales prices of the foreign like product, in order to determine whether the sales prices were below the COPs. In particular, in determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made within an extended period of time in substantial quantities and at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(2)(B), (C), and (D) of the Act. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices were net of billing adjustments, movement charges, direct and indirect selling expenses and packing expenses, where appropriate.<sup>44</sup>

## 3. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether: 1) within an extended period of time, such sales were made in substantial quantities; and 2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of the respondent's comparison market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales because: 1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and, 2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain products, more than 20 percent of Motech's home market sales during the POR were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used

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<sup>43</sup> See Motech's Preliminary Results Analysis Memorandum.

<sup>44</sup> *Id.*

the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.<sup>45</sup>

#### Calculation of NV Based on Comparison-Market Prices

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

When comparing U.S. sales with comparison-market sales of similar, but not identical, merchandise, we also made adjustments for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing of the foreign-like product and that of the subject merchandise.<sup>46</sup>

#### Currency Conversion

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

#### CONCLUSION

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

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Agree

☐

\_\_\_\_\_  
Disagree

12/13/2017

X 

Signed by: GARY TAVERMAN

Gary Taverman  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations,  
performing the non-exclusive functions and duties of the  
Assistant Secretary for Enforcement and Compliance

<sup>45</sup> *Id.*

<sup>46</sup> See Motech's Preliminary Results Analysis Memorandum.