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**DATE:** June 21, 2018

**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  
Associate Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations,  
performing the duties of Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Issues and Decision Memorandum for the Final Results of the  
2016-2017 Administrative Review of the Antidumping Duty Order  
on Certain Crystalline Silicon Photovoltaic Products from Taiwan

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## I. SUMMARY

The Department of Commerce (Commerce) analyzed the comments submitted by interested parties in the 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. This administrative review covers 33 producers/exporters of the subject merchandise. Of these 33 companies, we find that 14 had no shipments during the POR. We have determined dumping margins for the remaining 19 companies, one of which is a mandatory respondent, while the remaining 18 are non-selected respondents. Based upon our analysis of the comments received, we made changes from the *Preliminary Results*<sup>1</sup> and *Amended Preliminary Results*<sup>2</sup> to the margin calculation for the mandatory respondent, Motech Industries Inc. (Motech). We continue to find that Motech sold subject merchandise in the United States at prices below normal value during the POR. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum.

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<sup>1</sup> See *Certain Crystalline Silicon Photovoltaic Products from Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review; 2016-2017*, 82 FR 60370 (December 20, 2017) and accompanying Preliminary Decision Memorandum (*Preliminary Results*).

<sup>2</sup> See *Certain Crystalline Silicon Photovoltaic Products from Taiwan: Amended Preliminary Results and Preliminary Determination of No Shipments*, 83 FR 3674 (January 26, 2018) (*Amended Preliminary Results*).



## II. LIST OF ISSUES

- Comment 1: Whether Motech Had Actual or Constructive Knowledge of U.S. Sales to a Specific U.S. Customer.
- Comment 2: Whether Motech's Contract Numbers Should be Made Public for Purposes of Liquidating Entries
- Comment 3: Correction of a Cell Reference in the Preliminary Cost Calculations
- Comment 4: Whether Commerce Should Assign Cell Grades to Prime and Non-Prime Categories for Normal Value Calculation and Model Matching
- Comment 5: Whether the Draft Liquidation Instructions Properly Reference the "All Others" Rate
- Comment 6: Whether the Motech Liquidation Instructions Instruct CBP to Liquidate Exports by Trina Schweiz and Trina Singapore at the "All Others" Rate

## III. BACKGROUND

On December 20, 2017, Commerce published the *Preliminary Results* of this administrative review.<sup>3</sup> On January 18, 2018, Commerce issued draft liquidation instructions regarding Motech.<sup>4</sup> On January 26, 2018, Commerce published the *Amended Preliminary Results*.<sup>5</sup> On February 7, 2018, Commerce issued draft cash deposit instructions and liquidation instructions regarding respondents that were not selected as mandatory respondents.<sup>6</sup>

On January 29, 2018, Commerce received case briefs from Motech, Trina Solar (Schweiz) AG and Trina Solar (Singapore) Science and Technology Pte Ltd, (collectively, Trina), and SolarWorld Americas Inc. (the petitioner).<sup>7</sup> On February 5, 2018, Commerce received rebuttal briefs from Motech, Canadian Solar Inc., Canadian Solar International, Ltd., Canadian Solar Manufacturing (Changshu), Inc., Canadian Solar Manufacturing (Luoyang), Inc., and Canadian Solar Solutions Inc. (collectively, Canadian Solar), JA Solar USA, Inc. (JA Solar), and the petitioner.<sup>8</sup> On February 28, 2018, Inventec Energy Corporation and E-TON Solar Tech. Co., Ltd. commented regarding the draft liquidation instructions for respondents that were not

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<sup>3</sup> See *Preliminary Results*.

<sup>4</sup> See Memorandum, "Draft Liquidation Instructions for Motech Industries, Inc. and Extension of Deadline for Filing Case Briefs and Rebuttal Briefs," dated January 18, 2018.

<sup>5</sup> See *Amended Preliminary Results*.

<sup>6</sup> See Memorandum, "Certain Crystalline Silicon Photovoltaic Products from Taiwan: Draft Customs Instructions for Comment," dated February 7, 2018.

<sup>7</sup> See Motech's Case Brief, "Certain Crystalline Silicon Photovoltaic Products from Taiwan: Case Brief," dated January 29, 2018 (Motech Case Brief); Trina's Case Brief, "Certain Crystalline Silicon Photovoltaic Products from Taiwan: Case Brief," dated January 29, 2018 (Trina Case Brief); Petitioner's Case Brief, "Certain Crystalline Silicon Photovoltaic Products from Taiwan: Case Brief," dated January 29, 2018 (Petitioner Case Brief).

<sup>8</sup> See Motech's Rebuttal Brief, "Certain Crystalline Silicon Photovoltaic Products from Taiwan: Rebuttal Brief," dated February 5, 2018 (Motech Rebuttal Brief); Canadian Solar's Rebuttal Brief, "Crystalline Silicon Photovoltaic Products from Taiwan: Canadian Solar Entities' Rebuttal Brief," dated February 5, 2018 (Canadian Rebuttal Brief); JA Solar's Rebuttal Brief, "Certain Crystalline Silicon Photovoltaic Products from Taiwan: Rebuttal Brief," dated February 5, 2018 (JA Solar Rebuttal Brief); Petitioner's Rebuttal Brief, "Certain Crystalline Silicon Photovoltaic Products from Taiwan: Rebuttal Brief," dated February 5, 2018 (Petitioner Rebuttal Brief).

selected as mandatory respondents.<sup>9</sup>

#### IV. 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.

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<sup>9</sup> See Comments of Inventec Energy Corporation and E-TON Solar Tech. Co., Ltd., "Certain Crystalline Silicon Photovoltaic Products from Taiwan: Inventec's Comments on 'No Shipments Inquiry,'" dated February 28, 2018.

<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).

## V. DISCUSSION OF THE ISSUES

### Comment 1: Whether Motech Had Actual or Constructive Knowledge of U.S. Sales to a Specific U.S. Customer

#### *The Petitioner's Case Brief*

- In the *Preliminary Results*, Commerce accepted Motech's claim of constructive knowledge of exports to the U.S., with respect to sales to a specific U.S. customer that directed Motech to ship subject merchandise solar cells to a third country. However, Motech reported that it sold subject merchandise to many non-U.S. companies within the U.S. customer's corporate group, and the U.S. company purchased from Motech on behalf of the group. As there is no record documentation specifying the U.S. as the final destination for sales to this customer, all group customers may in fact be involved in the sale. Because Motech has no conclusive documentary evidence that the merchandise at issue was destined for the U.S., Motech does not have constructive knowledge that the subject solar cells were ultimately destined for the U.S., and the sales should be excluded.<sup>11</sup>
- In the first administrative review of this proceeding, in which Commerce found constructive knowledge with respect to sales to a U.S.-based entity, Motech reported that the cells were shipped to a third country module producer for further processing prior to importation into the U.S. In this administrative review, Motech does not claim that the cells were shipped to a third country module producer for importation into the U.S., but only that the customer for the sales was a U.S. customer. Because the U.S. customer was only acting as a purchasing agent for its corporate group (which included non-U.S. entities), Motech has, at most, a general knowledge that its cells may have been destined for the U.S., and the sales should be excluded.<sup>12</sup>

#### *Motech Rebuttal*

- Motech reported that it sold subject merchandise to a certain U.S. customer, as well as to several of this customer's affiliates located outside of the U.S. Because only one of the group of companies was a U.S. company, and the group used this entity to make purchases and payments, Motech understood at the time of sale that all such POR sales to the U.S. customer were destined for the U.S. market. Although the customer did not specifically inform Motech of the final destination of the merchandise, Motech had reason to believe at the time of sale that the merchandise was destined for the U.S. market.<sup>13</sup>
- Motech's reporting of these sales, and Commerce's treatment of these sales, is consistent with prior segments of this proceeding. The petitioner's arguments (1) distinguishing Motech's statements regarding further processing in the previous review from its

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<sup>11</sup> See Petitioner Case Brief at 2-5.

<sup>12</sup> *Id.* at 6-8.

<sup>13</sup> See Motech Case Brief at 2-3.

statements in the present review; and (2) claiming that the U.S. customer made purchases on behalf of its non-U.S. affiliates, are an effort to confuse the issue. The record does not support the petitioner's claim that the U.S. customer purchased subject merchandise destined for third countries. Moreover, several of the U.S. customer's non-U.S. affiliates purchased subject merchandise, and Motech understood that sales to the U.S. affiliate were for the U.S. market after the module assembly process.<sup>14</sup>

#### *JA Solar Rebuttal*

- Commerce correctly determined that Motech knew or should have known at the time of the sale that sales placed by the U.S. customer were destined for the U.S. market, due to the customer's location in the U.S.<sup>15</sup>

**Commerce's Position:** We agree with the petitioner that Motech did not have actual or constructive knowledge that sales to the U.S. customer were destined for the U.S. market. Under section 772(a) of the Tariff Act of 1930, as amended (the Act), the basis for export price is the price at which the first party in the chain of distribution who has knowledge of the U.S. destination of the merchandise sells the subject merchandise, either directly to a U.S. purchaser or to an intermediary such as a trading company. The party making such a sale, with knowledge of the destination, is the appropriate party to be investigated. To effectuate section 772(a) of the Act, Commerce over the years has established what is known as the "knowledge test."

Commerce's practice under the "knowledge test" is to consider documentary or physical evidence that the producer knew (had actual knowledge) or should have known (had constructive knowledge) at the time of sale that the ultimate destination of the products it sold was the U.S. market, because this type of evidence is more probative, reliable and verifiable than unsubstantiated statements or declarations.<sup>16</sup> Given the record evidence, we find that Motech did not have actual or constructive knowledge that sales to the U.S. customer were destined for the U.S. market. Thus, we are excluding these sales from Motech's U.S. sales database for the final results of review. We disagree with Motech's claim that finding a lack of knowledge here would be inconsistent with prior segments of this proceeding. We find that the underlying facts on the record of this administrative review are distinguishable from those of the administrative review covering July 31, 2014, through January 31, 2016.

In the investigation of this proceeding, we stated that Commerce should "be cautious in determining the universe of indirect sales that it permits to be reported as U.S. sales. 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

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<sup>14</sup> See Motech Case Brief at 3-7.

<sup>15</sup> See JA Solar Rebuttal Brief at 1-4.

<sup>16</sup> See, e.g., *Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Final Results of Antidumping Duty Administrative Review*, 76 FR 36086 (June 21, 2011) 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).

the predicted outcome.”<sup>17</sup> For this reason, in the investigation we found that documentation that did not refer to specific transactions that could be identified in the respondent’s U.S. sales data, and that was only general in reference to sales destined for the U.S., did not support that the respondent knew or should have known at the time of the sale that any specific sale of cells to third-country customers was destined for the United States.<sup>18</sup>

As noted by Motech, in the first administrative review, we included sales to the U.S. customer in Motech’s U.S. sales database.<sup>19</sup> Motech’s narrative response in that administrative review specifically stated that it was “directed by the customer to send the cells to a third country module producer for further processing *prior to importation to the United States* (emphasis added).”<sup>20</sup> Moreover, there was record evidence of written communication between Motech and the customer indicating that some purchases of subject merchandise were destined for the U.S., but which could not be connected to specific sales.<sup>21</sup> Finally, Motech had submitted one sales contract with the U.S. customer, which supported the fact that the customer’s business address was located within the United States.<sup>22</sup> We explained that we “carefully examined all sales documentation that Motech submitted for sales to this customer” and that this documentation supported Motech’s claim that it was directed by the customer “to send the cells to a third country module producer for further processing prior to importation to the United States.”<sup>23</sup> Thus, Commerce determined that “Motech had specific knowledge that the solar cells sold to this customer were shipped to a third country to be inserted into panels destined for the U.S. market” based, first, on the claim by Motech that this process in fact occurred, and second, the supporting documentation for Motech’s claim, *i.e.*, the written communication that generally referred to the U.S. destination of some sales, and also the sales agreement which contained the U.S. customer’s business address in the United States.

In this administrative review, Motech’s narrative response fails to state that the solar cells are sent to the U.S. after assembly into modules in a third country:

For indirect export sales, Motech 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 assembly of modules. Motech was not

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<sup>17</sup> See *Certain Crystalline Silicon Photovoltaic Products from Taiwan: Final Determination of Sales at Less Than Fair Value*, 79 FR 76966 (December 23, 2014) and the accompanying Issues and Decision Memorandum (IDM) at Comment 4.

<sup>18</sup> *Id.*

<sup>19</sup> See *Certain Crystalline Silicon Photovoltaic Products from Taiwan: Final Results of Antidumping Duty Administrative Review; 2014-2016*, 82 FR 31555 (July 7, 2017) (*Solar Cells Taiwan 2014-2016 Final*) and accompanying IDM at Comment 19.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

informed of the final destination of such modules, and has reported these sales to the U.S. customer as U.S. sales merely based on the fact that the customer is a U.S. company.<sup>24</sup>

Additionally, Motech reported that the U.S. customer that directed Motech to ship the cells it purchased to a third country did not indicate in any written communication to Motech that any purchased solar cells were destined for the U.S.<sup>25</sup> Further, to support its claim that these sales were destined for the United States, Motech submitted just one sales contract with the U.S. customer at issue, which contained a defect calling into question the contract's authenticity.<sup>26</sup> We find that the existence of the defect in the contract weighs against finding the contract reliable. In addition to the threshold reliability concerns of the submitted contract, we further note that the sales contract Motech submitted in this administrative review did not specify that merchandise subject to this contract was destined for the United States.<sup>27</sup>

It is well settled that the onus for creating a complete and accurate record rests with the respondent. The Court of International Trade (CIT) has stated in numerous cases, "the burden of creating an accurate record rests with the respondent, not the United States Department of Commerce."<sup>28</sup> However, the record evidence does not support Motech's claim in this administrative review that it had knowledge the sales in question were destined for the United States. The only evidence supporting such a claim is that the U.S. customer is located in the United States, and the only supporting document establishing the customer location is defective, as noted above. Irrespective of whether the U.S. customer at issue is, in fact, located in the United States, given that Motech was instructed to deliver the goods to a third country, Motech has the burden of completing the record to establish the accuracy and consistency that it knew or should have known the sales to this customer in the POR were ultimately destined for the United States.

Thus, the record of this review lacks substantial evidence to support Motech's claim that it had 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. We find that the record does not support a determination that Motech 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. The record only supports finding that Motech had knowledge that the cells were destined for third party module assemblers. Therefore, for the final results, Commerce will exclude Motech's sales to this customer from the margin calculation.<sup>29</sup>

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<sup>24</sup> See Motech's Section A Response, dated June 22, 2017, at A-15.

<sup>25</sup> See Motech's Supplemental Section A Response, dated September 20, 2017, at SA-6.

<sup>26</sup> See Motech's Supplemental Section A Response, dated September 20, 2017, at Exhibit SA-12. Regarding the specific defect in the submitted sales agreement, see the BPI Memorandum, "Final Results Analysis for Motech Industries, Inc.," dated June 21, 2018 (*Final Results Analysis Memo*) at 3.

<sup>27</sup> See Motech's Supplemental Section A Response, dated September 20, 2017, at Exhibit SA-12.

<sup>28</sup> See, e.g., *Ta Chen Stainless Steel Pipe v. United States*, Slip Op. 00-107 (CIT 2000) (citing *Tianjin Machinery Import & Export Corp. v. United States*, 16 CIT 931, 936, 806 F. Supp. 1008, 1015 (1992) and *Chinsung Indus. Co. v. United States*, 13 CIT 103, 705 F. Supp. 598 (1989)).

<sup>29</sup> See *Final Results Analysis Memo* at 3.

## **Comment 2: Whether Motech's Contract Numbers Should Be Made Public for Purposes of Liquidating Entries**

### *The Petitioner's Case Brief*

- The petitioner does not object to using contract numbers to distinguish the indirect U.S. sales used in Commerce's margin calculation from other sales (and their corresponding entries), and there is no other information on the record that can readily be used to identify the sales/entries. It is likely that the resellers are also the importers of record, and therefore are already privy to the contract numbers. Where the importer is a third party, it would be in Motech's and the reseller's interest to ensure that the importer benefits from Motech's dumping margin if it is a lower rate than the "All Others" rate. Although Motech treats the contracts as business proprietary information, the contract numbers themselves reveal nothing of the underlying terms and details of the contracts. Thus, it is unlikely that the reasons of confidentiality would preclude Motech or the resellers from providing sales contract numbers to any third-party U.S. importers.<sup>30</sup>

*No interested parties rebutted this comment.*

### **Commerce's Position:**

We agree with the petitioner. The standard identified by the CIT for the knowledge test is "if a company knew or should have known that, at the time of a particular sale, the product sold was destined for export, the particular sale should be considered an export sale."<sup>31</sup> The standard requires that the knowledge test be applied to each "particular sale." In order to implement the knowledge test for a "particular sale," and to instruct U.S. Customs and Border Protection (CBP) to liquidate the corresponding entries pursuant to 19 CFR 351.212(b)(1), Commerce must have a means to identify these U.S. sales/entries with information that CBP can request from third-party importers to confirm that each sale/entry is given a rate that corresponds to the knowledge that Motech had with respect to that sale/entry. Without such identifying information, neither Commerce nor CBP can distinguish U.S. sales reported to Commerce and used to calculate a margin of dumping, from resold subject merchandise for which a respondent had no prior knowledge of ultimate entry into the U.S. market. In this instance, the only means that Commerce has to implement the knowledge test with respect to "particular sales" is to use Motech's contract numbers, which Motech has linked to specific sales in its U.S. sales database. Thus, Commerce will direct CBP to assess antidumping duties to entries in conformance with the contract numbers that Motech reported.

## **Comment 3: Correction of a Cell Reference in the Preliminary Cost Calculations**

### *The Petitioner's Case Brief*

- In recalculating the reported cost of prime grade and downgraded solar cells to reflect reduced value for downgraded products, Commerce intended that the total pool of costs

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<sup>30</sup> See Petitioner Case Brief at 9-10.

<sup>31</sup> See *Allegheny Ludlum Corp. v. United States*, 215 F. Supp. 2d 1322 -1345 (CIT 2000) (*Allegheny Ludlum*).



remain the same, as indicated by a comment in a cell containing the total of revised model (CONNUM)-specific total cost of manufacturing (TOTCOM). However, Commerce's revision reduced the total pool of cost by a small percentage, and Commerce did not make any further adjustments to correct this. Commerce should make this correction for the final results.<sup>32</sup>

#### *Motech Rebuttal*

- A careful review of the worksheet confirms that no other cells reference the cell containing the comment at issue (which adds the total of all revised TOTCOMs), but the recalculation does reference the cell to which the comment refers, indicating that the cell should contain a matching number. Thus, Commerce performed the calculation as intended, and no further adjustments are necessary.<sup>33</sup>

#### **Commerce's Position:**

Because we have determined that Motech's normal treatment of non-prime products is reasonable and we have not adjusted its non-prime product costs at the final results. Therefore, this comment is moot, and it is unnecessary to address the argument. *See* Comment 4, below.

#### **Comment 4: Whether Commerce Should Assign Cell Grades to Prime and Non-Prime Categories for Normal Value Calculation and Model Matching**

#### *Motech Case Brief*

- In the *Preliminary Results*, Commerce reallocated Motech's total cost of manufacturing for the POR to reflect lower-valued off-grade, or "non-prime," solar cells. However, Commerce made no designation for prime versus non-prime solar cells when averaging normal values, or when matching U.S. sales to normal values. Commerce's practice is to prevent prime merchandise from matching to non-prime merchandise.<sup>34</sup>

#### *The Petitioner Rebuttal*

- Motech is correct that Commerce has a practice of preventing potentially distortive price comparisons between prime and non-prime merchandise. However, Commerce must rely on compelling record evidence that meaningful physical and price differences exist between a respondent's prime and non-prime sales, to differentiate between the sales in the margin calculation.<sup>35</sup> The record does not establish significant physical differences between Motech's cells grades.<sup>36</sup> It is unclear what Motech considers a "serious" defect, or whether an "appearance defect," an "Irev" defect or whatever other defect is physically

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<sup>32</sup> *See* Petitioner Case Brief at 12-13.

<sup>33</sup> *See* Motech Rebuttal Brief at 7-8.

<sup>34</sup> *See* Motech Case Brief at 3-6.

<sup>35</sup> *See* Petitioner Rebuttal Brief at 1-3.

<sup>36</sup> *Id.* at 4.

significant enough to demonstrate a clear dividing line between prime and non-prime merchandise.

- If there were meaningful physical differences between solar cells of different grades, there would also be significant price differences. The record data does not reflect this. In instances where Motech made prime and non-prime sales of a CONNUM to a specific customer in a given month, there is no clear and consistent price distinction. Thus, Commerce's preliminary decision not to differentiate between prime and non-prime merchandise was correct.<sup>37</sup>

### Commerce's Position:

We agree with Motech and with the petitioner, in part. It is Commerce's practice to analyze products sold as non-prime on a case-by-case basis to determine how such products are costed in the respondent's normal books and records, whether they remain in scope, and whether they can still be used in the same applications as prime merchandise.<sup>38</sup> Occasionally downgrading is minor, and the product remains within a product group. Other times the downgraded product differs significantly, no longer belongs to the same group, and cannot be used for the same applications as the prime product. If the downgraded product cannot be used for the same applications as the prime product, then the downgraded product's market value is usually significantly impaired to a point where its full cost cannot be recovered. In such cases, assigning full costs to that product could be unreasonable.<sup>39</sup>

Motech reported that during the POR, in both its cost accounting system and in the calculation of the reported costs, it valued downgraded grade products at the full value of prime grade products.<sup>40</sup> Motech also reported that certain of its downgraded products have only minor cosmetic defects and are used for the same end use application as the prime grade products, *i.e.*, in the construction of modules.<sup>41</sup> However, Motech reported that other downgraded products cannot be used for the same end use application as the prime grade products, but rather are used in individual cell applications (*e.g.*, hobby applications, etc.).<sup>42</sup> Based on these facts, in the *Preliminary Results*, we re-allocated the total reported cost of manufacturing for the POR to each model to reflect the reduced value of downgraded products with different end use applications.<sup>43</sup>

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<sup>37</sup> *Id.* at 4-6.

<sup>38</sup> See *Certain Carbon and Alloy Steel Cut-to-Length Plate from France: Final Determination of Sales at Less Than Fair Value*, 82 FR 16363 (April 4, 2017) (*CTL Plate from France*) and accompanying IDM at Comment 11. See also *Welded Line Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015) (*Welded Line Pipe from Korea*) and the accompanying IDM at Comment 9. See also *Steel Concrete Reinforcing Bar from Turkey: Final Negative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances*, 79 FR 21986 (September 15, 2014), and accompanying IDM at Comment 15.

<sup>39</sup> See *CTL Plate from France* IDM at Comment 11, see also *Welded Line Pipe from Korea* IDM at Comment 9.

<sup>40</sup> See Motech's Supplemental Section D Response, dated October 13, 2017, at Supp D-10.

<sup>41</sup> See Motech's Section B, C and D Responses, dated July 13, 2017 at 29 (Section B), 22 (Section C). See also Motech's Second Supplemental Sections A, B and C Responses, dated November 6, 2017 at S2-6.

<sup>42</sup> *Id.*

<sup>43</sup> See *Preliminary Results*, accompanying Preliminary Decision Memorandum, "Cost of Production Analysis." See also Memorandum, "Preliminary Results Analysis for Motech Industries, Inc.," dated December 13, 2017, at 8-9.

We do not agree with the petitioner that the physical characteristics identified by Motech are not clear enough to distinguish products as either prime or non-prime due to the end use applications of solar cells with these different characteristics. The characteristics reported by Motech provide an indication of whether the solar cell can be used in a solar module or if it cannot be used in a module, and is sold for other purposes.<sup>44</sup> However, we agree with the petitioner's observation that the prices of the downgraded products that Commerce categorized as non-prime are, in many instances, the same as the contemporaneous prices of prime product (*i.e.*, with less than a one percent price difference), and thus do not appear to have significantly impaired market value in relation to prime sales.<sup>45</sup> Whatever the physical difference between the products, for commercial purposes the products are identical if they have both identical CONNUM matching characteristics and the same price, and Commerce should treat them as identical products.

Further, we note that section 773(f)(1)(A) of the Act mandates that a respondent's costs should be based on the company's normal books and records, if such records are kept in accordance with the GAAP of the exporting country and reasonably reflect the costs associated with the production of the merchandise. In its normal books and records, Motech values non-prime and prime products identically,<sup>46</sup> and, as noted above, Motech's non-prime and prime products have similar (and often identical) selling prices.<sup>47</sup> Motech reported that its accounting practices follow the GAAP of Taiwan, which has been modified to comply with the International Financial Reporting Standards as January 1, 2015.<sup>48</sup> Motech's financial statements, which are prepared at the end of each calendar year, are externally audited.<sup>49</sup> Based on these facts, for this POR, we find that Motech's normal treatment of non-prime products is reasonable and consistent with Taiwanese GAAP and the lower of cost or market principle. We find no basis for departing from Motech's normal treatment of these products in its books and records.

We agree with Motech generally that, where a respondent sells secondary or non-prime merchandise in the U.S., it is Commerce's standard practice to separate prime and non-prime comparison market sales when performing our standard cost test to comparison market sales, and include non-prime sales that pass the cost test in the margin calculation by attempting to match these sales to non-prime sales in the home market.<sup>50</sup> Even where there is no match in the home market, Commerce can assign a constructed value for these sales.<sup>51</sup> However, as noted above, we find that Motech's sales price data for this POR does not support that the market value of the downgraded products that Commerce designated as non-prime in the *Preliminary Results* was impaired in relation to those designated prime, and there is no commercially significant

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<sup>44</sup> *Id.* at 9.

<sup>45</sup> See *Final Results Analysis Memo*, at Attachments I and II, "Mean of Prime and Non-Prime by CONNUM"

<sup>46</sup> See Motech's Supplemental Section D Response, dated October 13, 2017, at Supp D-10.

<sup>47</sup> See *Final Results Analysis Memo* at Attachments I and II, "Mean of Prime and Non-Prime by CONNUM."

<sup>48</sup> See Motech's Section A Response, dated June 22, 2017 at 22-23.

<sup>49</sup> See Motech's Section A Response, dated June 22, 2017 at Exhibit A-15, page 4 (Independent Auditors' Report).

<sup>50</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Italy*, 64 FR 30750, 30753 (June 8, 1999) (matching non-prime U.S. sales to non-prime sales in the home market in the margin analysis); *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Korea*, 58 FR 37176, 37183 (July 9, 1993).

<sup>51</sup> See Section 773(a)(4) of the Act.

difference between the product grades. Therefore, for the final results, we will not separate the sales of these different grades into prime and non-prime sale categories.

**Comment 5: Whether the Draft Liquidation Instructions Properly Reference the “All Others” Rate**

*The Petitioner’s Case Brief*

- The draft instructions contain errors regarding the application of the “All Others” rate. Entries for which Motech did not have knowledge of an ultimate U.S. destination should receive the “All Others” rate. In paragraph 2, Commerce indicates the application of a 1.07 percent rate for exporter/reseller Canadian Solar International Limited, rather than the “All Others” rate. Given that Canadian Solar International Limited does not have its own rate in this proceeding, its entries should be assessed at the “All Others” rate.<sup>52</sup>
- Motech sales to U.S. customers in which Motech did not have constructive knowledge of a U.S. destination, should also be assessed at the “All Others” rate.<sup>53</sup>

*Canadian Solar Rebuttal*

- Commerce’s draft liquidation instructions for Motech, correctly and in accordance with policy, assign importer-specific assessment rates for certain customers’ entries, and assigns Motech’s weighted-average rate to the same customers that are also non-selected respondents. The “All Others” rate is not applicable to such entries.<sup>54</sup>

**Commerce’s Position:**

We agree with Canadian Solar. In the *Amended Preliminary Results*, we assigned a dumping margin to Canadian Solar International Limited, which was the same margin that Commerce assigned to all respondents that we did not select as mandatory respondents.<sup>55</sup> This rate is the applicable liquidation rate for all entries produced and exported by Canadian Solar International Limited.<sup>56</sup> Thus, the draft liquidation instructions were not erroneous with respect to Canadian Solar International Limited.

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<sup>52</sup> See Petitioner Case Brief at 10-11.

<sup>53</sup> *Id.* at 12.

<sup>54</sup> See Canadian Solar Rebuttal Brief at 2-4.

<sup>55</sup> See *Amended Preliminary Results*, 83 FR at 3674.

<sup>56</sup> *Id.*

**Comment 6: Whether the Motech Liquidation Instructions Instruct CBP to Liquidate Exports by Trina Schweiz and Trina Singapore at the “All Others” Rate**

*Trina*

- Paragraph 3 of the draft liquidation instructions for Motech improperly instructs CBP to assess antidumping duties on subject merchandise produced by Motech at the “All Others” rate in effect on the date of entry, including subject merchandise shipped by reseller exporters for which review requests were made and that are subject to the current review.<sup>57</sup> Paragraph 3 must be modified to state that subject merchandise produced by Motech and exported by a company separately subject to this administrative review with its own assessment rate as a non-mandatory respondent, should be assessed at the rate assigned to that company, and not the “All Others” rate.<sup>58</sup> Commerce should instruct CBP to liquidate Trina Schweiz and Trina Singapore entries at the assessment rates Commerce has assigned to non-mandatory respondents.<sup>59</sup>

*No interested parties rebutted this comment.*

**Commerce’s Position:**

We agree with Trina. Pursuant to Commerce’s Reseller Policy, if, in the course of an administrative review, we determine that the producer did not know that the merchandise it sold to a reseller was destined for the United States, the reseller’s merchandise will not be liquidated at the producer’s assessment rate, or automatically at the rate required as a deposit at the time of entry. In that situation, the entries of merchandise from the reseller during the POR would be liquidated at the “All Others” rate if there is no company-specific rate for the reseller.<sup>60</sup> In the *Amended Preliminary Results*, Trina Schweiz and Trina Singapore were assigned a preliminary rate applicable to non-selected respondents.<sup>61</sup> If Trina Schweiz and Trina Singapore entered subject merchandise into the U.S. produced by Motech during the POR (as Trina suggests) and Motech had no knowledge at the time of sale that the subject merchandise was destined for the U.S., the correct assessment rate for these entries is the assessment rate applicable to Trina Schweiz and Trina Singapore. For the final results, Commerce’s liquidation instructions will reflect this policy.<sup>62</sup>

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<sup>57</sup> See Trina Case Brief at 2.

<sup>58</sup> *Id.* at 3-4.

<sup>59</sup> *Id.* at 4-5.

<sup>60</sup> See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Reseller Policy*).

<sup>61</sup> See *Amended Preliminary Results*, 83 FR at 3674-3675.

<sup>62</sup> See Memorandum, “Certain Crystalline Silicon Photovoltaic Products from Taiwan: Draft Customs Instructions for Comment,” dated February 7, 2018.

## VI. RECOMMENDATION

We recommend following the above methodology for these final results.



\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

6/21/2018

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