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

SUBJECT: Decision Memorandum for Preliminary Results of Antidumping
Duty Administrative Review: Certain Crystalline Silicon
Photovoltaic Products from Taiwan; 2017-2018

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on certain crystalline silicon photovoltaic products (solar products) from Taiwan. The administrative review covers 31 exporters of the subject merchandise, including two mandatory respondents, Motech Industries, Inc. (Motech) and the collapsed entity of Sino-American Silicon Products Inc. and Solartech Energy Corporation (SAS-SEC).¹ The period of review (POR) is February 1, 2017, through January 31, 2018. We preliminarily determine that Motech and SAS-SEC made sales below normal value (NV) during this POR.

¹ In the 2014-2016 administrative review of the order, Commerce collapsed Sino-American Silicon Products Inc. and Solartech Energy Corp., and treated the companies as a single entity for purposes of the proceeding. *See Certain Crystalline Silicon Photovoltaic Products from Taiwan: Final Results of Antidumping Duty Administrative Review*; 2014-2016, 82 FR 31555 (July 7, 2017). Because there were no changes to the facts which supported that decision since that determination was made, we continue to find that these companies are part of a single entity for this administrative review. Additionally, we have preliminarily determined to collapse Sino-American Silicon Products Inc. and Solartech Energy Corp. with Sunshine PV Corporation. *See* “IV. AFFILIATION AND COLLAPSING,” below.



II. BACKGROUND

On February 1, 2018, Commerce notified interested parties of the opportunity to request an administrative review of the antidumping duty order on solar products from Taiwan.² On February 27, 2018, and February 28, 2018, SolarWorld Americas Inc. (the petitioner), as well as various exporters, requested that Commerce conduct an administrative review of certain exporters covering the POR. On April 16, 2018, Commerce published a notice initiating an AD administrative review of solar products from Taiwan covering 31 companies for the POR.³ In the *Initiation Notice*, Commerce stated that if it limited the number of respondents for individual examination, it intended to select respondents based on volume data contained in responses to its quantity and value (Q&V) questionnaire.⁴ On April 18, 2018, Commerce 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.⁵ We received Q&V questionnaire responses from 9 companies⁶ named in the *Initiation Notice*. On June 12, 2018, Commerce selected Motech and SAS-SEC as mandatory respondents.⁷

From June through December 2018, Commerce issued questionnaires to, and received timely responses from, Motech and SAS-SEC.⁸ The petitioner commented on these responses between August 2018 and December 2018. On February 26, 2019, SAS-SEC filed comments regarding these preliminary results.⁹

On October 16, 2018, Commerce partially extended the preliminary results of this administrative review by 90 days until January 29, 2019. However, Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 28, 2019, resulting in a revised deadline of March 11,

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 83 FR 4639 (February 1, 2018).

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 16298 (April 16, 2018) (*Initiation Notice*).

⁴ *Id.* at 16299.

⁵ Commerce 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 “number” 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, Commerce stated that it would limit the number of Q&V questionnaires issued based on the import values in CBP data. *Id.*

⁶ See Letters to Commerce dated May 7, 2018 from EEPV Corp., Gintech Energy Corporation, Inventec Solar Energy Corporation, Kyocera Mexicana S.A. de C.V., LOF Solar Corp., Motech Industries, Inc., SAS-SEC, Sunengine Corporation Ltd., and TSEC Corporation.

⁷ See Memorandum, “2017-2018 Antidumping Duty Administrative Review of Certain Crystalline Silicon Photovoltaic Products from Taiwan: Respondent Selection,” dated June 12, 2018 (Respondent Selection Memorandum) at 4-5.

⁸ See Letters from Motech to Commerce dated July 16, August 1, August 31, September 6, October 12, October 30, and December 3, 2018; see also letters from SAS-SEC to Commerce dated July 16, July 30, September 13, September 17, December 4, 2018, and February 19, 2019.

⁹ See Memorandum, “Certain Crystalline Silicon Photovoltaic Products from Taiwan: Comments on Upcoming Preliminary Results as to SAS-Solartech,” dated February 26, 2019.

2019.¹⁰ On February 28, 2019, Commerce fully extended the preliminary results of this administrative review by an additional 30 days until April 9, 2019.¹¹

III. SCOPE OF THE ORDER

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

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

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

Excluded from the scope of this order are thin film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS). Also excluded from the scope of this order are crystalline silicon photovoltaic cells, not exceeding 10,000mm² in surface area, that are permanently integrated into a consumer good whose function is other than power generation and that consumes the electricity generated by the integrated crystalline silicon photovoltaic cells. Where more than one cell is permanently 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").¹² 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

¹⁰ See Memorandum, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

¹¹ See Memorandum, "Certain Crystalline Silicon Photovoltaic Products from Taiwan: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated February 28, 2019.

¹² 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).

subheadings are provided for convenience and customs purposes; the written description of the scope of the order is dispositive.

IV. AFFILIATION AND COLLAPSING

Legal Framework

Section 771(33) of the Tariff Act of 1930, as amended (the Act), sets out several categories of persons who are considered to be “affiliated” or “affiliated persons” under the Act:

- (A) Members of a family;
- (B) Any officer or director of an organization and such organization;
- (C) Partners;
- (D) Employer and employee;
- (E) Any person, directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization;
- (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person;
- (G) Any person who controls any other person and such person.

The Act further states that “a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.”¹³ “Person” is defined to include “any interested party as well as any other individual, enterprise, or entity, as appropriate.”¹⁴

Section 351.401(f)(1) of Commerce’s regulations states that Commerce will treat affiliated producers as a single entity where they have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and Commerce concludes that there is a significant potential for the manipulation of price or production.¹⁵ Section 351.401(f)(2) of Commerce’s regulations further states that, in identifying a significant potential for manipulation, Commerce may consider factors including: (1) the level of common ownership; (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (3) 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.

¹³ See section 771(33) of the Act; *see also* 19 CFR 351.102(3).

¹⁴ See 19 CFR 351.102(b)(37).

¹⁵ See 19 CFR 351.401(f).

Affiliation and Single Entity Analysis

As noted in the “Background” section above, on July 16, 2018, SAS-SEC submitted a Section A questionnaire response, in which it indicated that it and another seller of subject merchandise, Sunshine PV Corporation, were affiliated during the POR.¹⁶ Commerce made additional requests for information regarding this affiliation, and SAS-SEC submitted timely responses to these requests.¹⁷

We analyzed the information on the record and determined that SAS-SEC is affiliated with Sunshine PV Corporation, pursuant to section 771(33)(E) of the Act.¹⁸ In addition, based on the evidence provided in SAS-SEC’s questionnaire response, we also preliminarily determined that Sunshine PV Corporation should be collapsed with SAS-SEC and treated as a single entity in this review. This finding is based on the determination that SAS-SEC and Sunshine PV Corporation have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure their manufacturing priorities, and that the level of common ownership, degree of overlapping management, and extent to which their operations are intertwined present a significant potential for manipulation of price or production of subject merchandise, pursuant to 19 CFR 351.401(f).¹⁹

V. COMPANIES NOT SELECTED FOR INDIVIDUAL EXAMINATION

After respondent selection, sixteen companies, Boviet Solar Technology Co., Ltd., Canadian Solar Inc., Canadian Solar International, Ltd., Canadian Solar Manufacturing (Changshu), Inc., Canadian Solar Manufacturing (Luoyang), Inc., Canadian Solar Solutions Inc., EEPV CORP., E-TON Solar Tech. Co., Ltd., Gintech Energy Corporation, Inventec Solar Energy Corporation, Kyocera Mexicana S.A. de C.V., Lof Solar Corp., Sunengine Corporation Ltd., Sunrise Global Solar Energy, TSEC Corporation, and Win Win Precision Technology Co., Ltd., remain subject to this administrative review. None of these sixteen companies: (1) was selected as a mandatory respondent;²⁰ (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 sixteen companies remain as unexamined respondents.

The statute and Commerce’s regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A)

¹⁶ See SAS-SEC July 16 Section A Questionnaire Response at A-4.

¹⁷ See Letters from SAS-SEC to Commerce dated July 30, September 13, September 17, December 4, December 12, and December 19, 2018.

¹⁸ See Memorandum, “Whether to Collapse the Sino-American Silicon Products Inc. and Solartech Energy Corporation entity with Sunshine PV Corporation in the 2017-2018 Antidumping Duty Administrative Review of Certain Crystalline Silicon Photovoltaic Products from Taiwan, dated April 9, 2019 at 4.

¹⁹ For a discussion of the facts on which these conclusions are based, see SAS-SEC Collapsing Memo.

²⁰ See Respondent Selection Memorandum.

of the Act, the all-others rate is normally “an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.”

In this review, we have preliminarily calculated weighted-average dumping margins for Motech and SAS-SEC that are not zero, *de minimis*, or determined entirely on the basis of facts available. Accordingly, we have preliminarily assigned to the sixteen companies not individually examined in this review a margin of 4.39 percent, which is the weighted average of Motech and SAS-SEC calculated weighted-average dumping margins.

VI. PRELIMINARY DETERMINATION OF NO SHIPMENTS

Thirteen companies filed timely statements reporting that they made no shipments of subject merchandise to the United States during the POR.²¹ On December 17, 2018, Commerce issued a no-shipment inquiry to U.S. Customs and Border Protection (CBP) requesting that it review these no-shipment claims. CBP responded with certain information concerning the no-shipment claims of certain companies.²² Vina Solar Technology Co., Ltd., and AU Optronics Corporation submitted comments regarding the information from CBP.²³ Vina Solar Technology Co., Ltd. reiterated that it had no shipments during the POR; AU Optronics Corporation reported that it had a shipment which was not a commercial sale, and submitted entry documentation. Based on the certifications submitted by these companies and our analysis of CBP information, we preliminarily determine that these thirteen companies had no shipments during the POR for which they received remuneration. Because these companies certified that they made no shipments of subject merchandise to the United States during the POR, and the information from CBP does not contradict their claims, we preliminarily determine that these companies did not have any reviewable transactions during the POR. Consistent with Commerce’s practice, we will not rescind the review, but, rather, will complete the review and issue instructions to CBP based on the final results.²⁴

²¹ See certifications of no shipments filed by AU Optronics Corporation and Inventec Energy Corporation, dated May 7, 2018, and certifications of no shipments filed by Vina Solar Technology Co., Ltd., Baoding Jiasheng Photovoltaic Technology Co., Ltd., Baoding Tianwei Yingli New Energy Resources Co., Ltd., Beijing Tianneng Yingli New Energy Resources Co., Ltd., Hainan Yingli New Energy Resources Co., Ltd., Hengshui Yingli New Energy Resources Co., Ltd., Lixian Yingli New Energy Resources Co., Ltd., Shenzhen Yingli New Energy Resources Co., Ltd., Tianjin Yingli New Energy Resources Co., Ltd., Yingli Energy (China) Co., Ltd., and Yingli Green Energy International Trading Company Limited, dated May 16, 2018.

²² See Commerce’s January 28, 2019 memorandum entitled “No shipment inquiry with respect to the companies below during the period 12/01/2017 through 11/30/2018.” See also Commerce’s December 19, 2018 memorandum entitled “No shipment inquiry with respect to the companies below during the period 12/01/2017 through 11/30/2018.”

²³ See Vina Solar Technology Co., Ltd.’s February 25, 2019 memorandum entitled “Certain Crystalline Silicon Photovoltaic Products from Taiwan – Response to February 20, 2019 Memorandum.” See also AU Optronics Corporation’s February 25, 2019 memorandum entitled “Certain Crystalline Silicon Photovoltaic Products from Taiwan: AU Optronics’ Confirmation of No Sales.”

²⁴ See, e.g., *Certain Frozen Warmwater Shrimp from Thailand; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments; 2012-2013*, 79 FR 15951, 15952 (March 24, 2014), *unchanged in Certain Frozen Warmwater Shrimp from Thailand: Final Results*

VII. 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.

A. Comparisons to Normal Value

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

1. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs or constructed export prices (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, Commerce examines whether to compare weighted-average NVs with the EPs (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 Commerce's examination of this question in the context of administrative reviews, Commerce 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.²⁵

In certain investigations, Commerce 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.²⁶ Commerce finds that the differential pricing analysis used in certain investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential

of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012-2013, 79 FR 51306, 51307 (August 28, 2014).

²⁵ See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010-2011*, 77 FR 73415 (December 10, 2012), and the accompanying IDM at Comment 1; see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (Ct. Int'l Trade 2014); see also *JBF RAK LLC v. United States*, 790 F.3d 1358, 1363-65 (Fed. Cir. 2015) ("the fact that the statute is silent with regard to administrative reviews does not preclude Commerce from filling gaps in the statute to properly calculate and assign antidumping duties") (*citations omitted*).

²⁶ See, e.g., *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); or *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

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

2. Results of the Differential Pricing Analysis

For Motech, based on the results of the differential pricing analysis, Commerce preliminarily finds that 2.91 percent of the value of U.S. sales pass the Cohen's *d* test,²⁷ and does not confirm the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Thus, for these preliminary results, Commerce is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Motech.

For SAS-SEC, based on the results of the differential pricing analysis, Commerce preliminarily finds that 56.67 percent of the value of U.S. sales pass the Cohen's *d* test,²⁸ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce 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 those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those

²⁷ See Memorandum, "Certain Crystalline Silicon Photovoltaic Products from Taiwan: Preliminary Analysis Memorandum for Motech Industries, Inc.," dated April 9, 2019 (Motech Prelim Analysis Memo) at 2.

²⁸ See Memorandum, "Certain Crystalline Silicon Photovoltaic Products from Taiwan: Preliminary Analysis Memorandum for Sino-American Silicon Products Inc., Solartech Energy Corporation, and Sunshine PV Corp. entity (SAS-SEC)," dated April 9, 2019 (SAS-SEC Prelim Analysis Memo) at 3.

sales which did not pass the Cohen's *d* test. Thus, for these preliminary results, Commerce is applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test to calculate the weighted-average dumping margin for SAS-SEC.

B. Date of Sale

Section 351.401(i) of Commerce's regulations states that, in identifying the date of sale of the subject merchandise or foreign like product, Commerce normally will use the date of invoice, as recorded in the producer or exporter's records kept in the ordinary course of business.

Additionally, Commerce may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.²⁹ Finally, Commerce has a long-standing practice of finding that, where the shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.³⁰

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.³¹ Based on this information, and consistent with Commerce's practice,³² 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.

For both its home market and U.S. sales, SAS-SEC 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.³³ Based on this information, and consistent with Commerce's practice,³⁴ 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.

²⁹ 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)).

³⁰ See, e.g., *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065 (September 12, 2007), and accompanying IDM at Comment 11; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002) (*Steel Beams from Germany*), and accompanying IDM at Comment 2.

³¹ See Motech's July 16, 2018, section A response at A-20; see also Motech's August 1, 2018 Section B&C Questionnaire Response at B-23 and C-19.

³² 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).

³³ See SAS-SEC's September 13, 2018, supplemental section A and C response at 6, 14.

³⁴ 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).

C. Product Comparisons

For the purposes of determining an appropriate product comparison to the U.S. sale, in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the scope of the order that were in the ordinary course of trade. In making the product comparisons, we matched foreign like products to the products sold in the United States based on the physical characteristics. In order of importance, these physical characteristics are product type, form, stability, dispersion, and tone.

Pursuant to 19 CFR 351.414(f), we compared U.S. sales of solar products to home market sales of solar products within the contemporaneous window period, which extends from three months prior to the month of the first U.S. sale until two months after the month of the last U.S. sale. 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)(B) of the Act, we compared U.S. sales of solar products to sales of the most similar foreign like product in the ordinary course of trade.

D. 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 subject merchandise 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.³⁵ 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. direct selling expenses, *i.e.*, credit expenses, warranty expenses, bank charges, and packing costs, to the NV calculation.

We calculated EP for SAS-SEC based on packed prices to unaffiliated purchasers in the United States. We made adjustments, where appropriate, to the starting price for indirect selling expenses and inventory carrying costs. For EP sales, we then added U.S. direct selling expenses, *i.e.*, credit expenses, warranty expenses, bank charges, and packing costs, to the NV calculation.³⁶

³⁵ See Motech Prelim Analysis Memo at 2.

³⁶ See SAS-SEC Prelim Analysis Memo at 2.

E. Normal Value

1. Home Market Viability and Selection of Comparison Market

To determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404. Based on this comparison, we determine that, pursuant to 19 CFR 351.404(b), Motech and SAS-SEC had viable home markets during the POR because the volume of their respective home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise.

Consequently, pursuant to section 773(a)(1)(B)(i) of the Act and 19 CFR 351.404(c)(1)(i), we based NV on home market sales for both Motech and SAS-SEC.

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

During the POR, Motech and SAS-SEC made sales of the foreign like product in the home market to affiliated parties, as defined in section 771(33) of the Act.³⁷ Consequently, we tested these sales to ensure that they were made at arm's-length prices, in accordance with 19 CFR 351.403(c). To test whether the sales to affiliates were made at arm's-length prices, where appropriate, we compared the unit prices of sales to affiliated and unaffiliated customers net of all billing adjustments, discounts, movement charges, direct selling expenses, and packing expenses. Pursuant to 19 CFR 351.403(c), and in accordance with Commerce's practice, where the price to that affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties at the same level of trade (LOT), we determined that the sales made to the affiliated party were at arm's length.³⁸ Sales to affiliated customers in the home market that were not made at arm's-length prices were excluded from our analysis because we considered these sales to be outside the ordinary course of trade.³⁹

3. LOT

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales of the foreign like product at the same LOT as U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).⁴⁰ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁴¹ To determine whether the comparison market sales were at different stages in the marketing process than the U.S. sales, we review the

³⁷ See SAS-SEC's July 30, 2018 Section B Response at B-21 (Solartech), B-20 (SAS).

³⁸ See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002) (establishing that the overall ratio calculated for an affiliate must be between 98 and 102 percent in order for sales to be considered in the ordinary course of trade and used in the NV calculation).

³⁹ See section 771(15) of the Act and 19 CFR 351.102(b)(35).

⁴⁰ See 19 CFR 351.412(c)(2).

⁴¹ *Id.*; see also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732 (November 19, 1997) (*Plate from South Africa*).

distribution system in each market (*i.e.*, the chain of distribution), including selling functions, 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 LOTs for EP and comparison market sales (*i.e.*, where NV is based on either home market or third country prices),⁴² we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.⁴³

When Commerce is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP sale, Commerce may compare the U.S. sales to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP sale and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment is possible), Commerce shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act and 19 CFR 351.412(f).⁴⁴

Motech

In the home market, Motech reported that it made sales to four customer categories (*i.e.*, original equipment manufacturers, trading companies, retailers and end users) through two channels of distribution (*i.e.*, direct sales from Motech to domestic customers and purchase and resale to customers with shipment from third-party suppliers).⁴⁵ We examined the selling activities performed and found that Motech performed the following selling functions for both home market channels of distribution: sales forecasting, strategic/economic planning, personnel training/exchange, engineering service, sales promotion, packing, inventory maintenance, order input/processing, direct sales personnel, sales/marketing support, market research, technical assistance, provision of rebates, warranty services, guarantees, after sales services, and freight and delivery.⁴⁶ 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 that it made sales to one customer category (*i.e.*, original equipment manufacturers) through the following sales channels: (1) direct exports made to unaffiliated U.S. customers and shipped directly to the United States; (2) direct exports made to

⁴² Where NV is based on constructed value (CV), we determine the NV LOT based on the LOT 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).

⁴³ See *Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314 (Fed. Cir. 2001).

⁴⁴ See *Plate from South Africa*, 62 FR at 61732-33.

⁴⁵ See Motech's August 1, 2018, Section B & C Response at B-22.

⁴⁶ See Motech's July 16, 2018, Section A Response at Exhibit A-11.

an unaffiliated non-U.S. customer and shipped directly to the United States.⁴⁷ These channels are marked as “1” and “2” respectively, in the U.S. sales database.⁴⁸

We examined the selling activities performed and found that Motech performed the following selling functions for both U.S. market channels of distribution: sales forecasting, engineering service, sales promotion, packing, inventory maintenance, order input/processing, direct sales personnel, sales/marketing support, market research, technical assistance, provision of rebates, warranty services, guarantees, after sales services, and freight and delivery.⁴⁹ 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 U.S. market. We examined the selling activities performed for EP sales in all two EP sales channels, and found that Motech performed the same selling activities, at the same levels of intensity.⁵⁰ Thus, we preliminarily determine that the two EP sales channels constitute one LOT.

With regard to the two 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.

SAS-SEC

In the home market, SAS-SEC reported that it made sales to four customer categories (*i.e.*, original equipment manufacturers, trading companies, end users, and education and research institutions) through three channels of distribution (*i.e.*, direct sales from SAS-SEC to domestic customers, sales to customers with shipment from third-party suppliers, sales from SAS-SEC to domestic customers after processing by third-party suppliers).⁵¹ We examined the selling activities performed and found that SAS-SEC performed the following selling functions for all three home market channels of distribution: sales forecasting, strategic/economic planning, personnel training/exchange, engineering service, sales promotion, packing, inventory maintenance, order input/processing, direct sales personnel, sales/marketing support, market research, technical assistance, provision of rebates, warranty services, guarantees, after sales services, and freight and delivery.⁵² Accordingly, based on the selling activities categories, we find that SAS-SEC performed sales and marketing, inventory maintenance and warehousing, and

⁴⁷ See Motech’s August 1, 2018, Section B & C Response at C-18.

⁴⁸ *Id.*

⁴⁹ See Motech’s July 16, 2018, Section A Response at Exhibit A-11.

⁵⁰ See Motech’s August 1, 2018, Section A Response at Exhibit A-11.

⁵¹ See SAS-SEC’s July 16, 2018 Section A Response at 13-14; A-15

⁵² *Id.* at Exhibit A-8, Exhibit A-8 (two exhibits).

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, SAS-SEC reported that it made sales to three customer categories (*i.e.*, original equipment manufacturers, trading companies, and end users) through one sales channel, delivery to the customer's carrier at SAS-SEC's factory.⁵³

We examined the selling activities performed and found that SAS-SEC performed the following selling functions for all customer categories in its U.S. market channels of distribution: sales forecasting, engineering service, sales promotion, packing, inventory maintenance, order input/processing, direct sales personnel, sales/marketing support, market research, technical assistance, provision of rebates, warranty services, guarantees, after sales services, and freight and delivery.⁵⁴ Accordingly, based on the selling activities categories, we find that SAS-SEC 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 U.S. market. We examined the selling activities performed for sales in the EP sales channel, and found that SAS-SEC performed the same selling activities, at the same levels of intensity.⁵⁵ Thus, we preliminarily determine that the EP sales channel constituted one LOT.

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 channel, 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, SAS-SEC 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.

F. Cost of Production Analysis

In accordance with Section 773(b)(2)(A)(ii) of the Act,⁵⁶ Commerce requested COP information from Motech and SAS-SEC. We examined Motech and SAS-SEC's cost data and determined that our quarterly cost methodology is not warranted; therefore, we are applying our standard methodology of using annual costs based on the reported data.

⁵³ See SAS-SEC's July 16, 2018 Section A Response at 14.

⁵⁴ *Id.* at Exhibit A-8.

⁵⁵ *Id.*

⁵⁶ See *Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA). The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>. See also *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).

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated the respondent's COP based on the sum of its costs of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) expenses and interest expenses (*see* "Test of Comparison Market Sales Prices" section, below, for treatment of home market selling expenses). We revised the G&A expense ratio to exclude certain offsets related to prior period provisions and revised the cost of goods sold (COGS) denominator of the G&A expense ratio and financial expense (INTEX) ratio to exclude certain costs which were excluded from cost of manufacturing (COM).⁵⁷

2. Test of Comparison Market Sales Prices

On a model-specific basis, pursuant to section 773(b) of the Act, we compared the weighted-average COP to the home market sales prices of the foreign like product, in order to determine whether the sales prices were below the COP. For purposes of this comparison, we used COP exclusive of selling and packing expenses. The prices (inclusive of billing adjustments, where appropriate) were exclusive of any applicable movement charges, direct and indirect selling expenses, and packing expenses.

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 home 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 when: 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.

For details regarding the results of the COP test for Motech and SAS-SEC, *see* Motech Prelim Analysis Memo and SAS-SEC Prelim Analysis Memo at 2.

⁵⁷ *See* Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results - Motech," dated concurrently with this memorandum.

G. Calculation of NV Based on Comparison Market Prices

We based NV for Motech on packed prices to unaffiliated customers in the home market. We adjusted, where appropriate, the starting price for billing adjustments, late payment fees, and other discounts, in accordance with 19 CFR 351.401(c). We made deductions, where appropriate, from the starting price for movement expenses, including inland freight and inland insurance, under section 773(a)(6)(B)(ii) of the Act. Pursuant to section 773(a)(6)(C) of the Act and 19 CFR 351.410, we made deductions for direct selling expenses (*i.e.*, imputed credit and commissions), as appropriate.

We based NV for SAS-SEC on packed prices to unaffiliated customers in the home market. We adjusted, where appropriate, the starting price for billing adjustments, in accordance with 19 CFR 351.401(c). We made deductions, where appropriate, from the starting price for movement expenses, including inland freight and warehousing, under section 773(a)(6)(B)(ii) of the Act. We made adjustments for differences in packing, in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and in circumstances of sale (imputed credit expenses and other direct selling expenses), in accordance with section 773(a)(6)(c)(iii) of the Act and 19 CFR 351.410. Where commissions were granted in the home market but not in the U.S. market, we made an upward adjustment to NV for the lesser of: (1) the amount of commission paid in the home market; or (2) the amount of indirect selling expenses (including inventory carrying costs) incurred for sales to the U.S. market.⁵⁸

Furthermore, when comparing U.S. sales with home market sales of similar merchandise, we made adjustments for differences in costs attributable to 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 for the foreign like product and subject merchandise.⁵⁹ We also made adjustments for differences in home market and U.S. packing expenses, in accordance with sections 773(a)(6)(A) and (B) of the Act.

H. 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.

⁵⁸ 19 CFR 351.410(e)

⁵⁹ See 19 CFR 351.411(b); *see also Stainless Steel Bar from France: Final Results of Antidumping Duty Administrative Review*, 70 FR 46482 (August 10, 2005), and accompanying IDM at Comment 8.

VIII. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

☒

Agree

☐

Disagree

4/8/2019

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