



A-583-853

Changed Circumstances Review: URE  
Public Document  
E&C/IV: RG, TEM

June 4, 2019

MEMORANDUM TO: Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

FROM: James Maeder  
Associate Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results of the  
Antidumping Duty Changed Circumstances Review: Certain  
Crystalline Silicon Photovoltaic Products from Taiwan

---

## I. Summary

The Department of Commerce (Commerce) is conducting a changed circumstances review (CCR) of the antidumping duty order on certain crystalline silicon photovoltaic products (solar products) from Taiwan. As a result of our analysis, we recommend that Commerce preliminarily determine that United Renewable Energy Co., Ltd. (URE) is the successor-in-interest to Gintech Energy Corporation (Gintech), Neo Solar Power Corporation (Neo Solar), and Solartech Energy Corporation (Solartech). If these preliminary results are adopted in our final results, we will assign URE the cash deposit rate assigned to Gintech, Neo Solar, and Solartech,<sup>1</sup> effective on the publication date of the final results in the *Federal Register*.

## II. Background

On February 18, 2015, we published in the *Federal Register* an antidumping duty order on solar products from Taiwan.<sup>2</sup> On February 1, 2019, we received a request on behalf of URE for an expedited CCR. URE asks Commerce to determine whether it is the successor-in-interest to Gintech, Neo Solar, and Solartech.<sup>3</sup> On February 28, 2019, we issued a supplemental questionnaire to URE, seeking additional information.<sup>4</sup> On March 11, 2019, URE submitted a

---

<sup>1</sup> All three companies received a cash deposit rate of 1.33 percent in the most recently completed administrative review. See *Certain Crystalline Silicon Photovoltaic Products from Taiwan: Final Results of Antidumping Duty Administrative Review*; 2016-2017, 83 FR 30401, 30402 (June 28, 2018).

<sup>2</sup> See *Certain Crystalline Silicon Photovoltaic Products from Taiwan: Antidumping Duty Order*, 80 FR 8596 (February 18, 2015).

<sup>3</sup> See URE's Letter, "Certain Crystalline Silicon Photovoltaic Products from Taiwan: Request for Changed Circumstances Review and Successor-in-Interest Determination," dated February 1, 2019 (CCR Request).

<sup>4</sup> See URE's Letter, "Certain Crystalline Silicon Photovoltaic Products from Taiwan: Request for Changed Circumstances Review and Successor-in-Interest Determination - Supplemental Questionnaire," dated February 28,



response.<sup>5</sup> On March 26, 2019, we initiated a CCR and published notice in the *Federal Register*.<sup>6</sup>

On April 10, 2019, SunPower Manufacturing Oregon LLC, a domestic producer of subject merchandise, and successor to SolarWorld Americas (the petitioner), filed a letter in support of an affirmative successor-in-interest determination.<sup>7</sup> We received no additional comments on URE's CCR request.

### **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 10,000mm<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 (China).<sup>8</sup> Also excluded from the scope of this order are modules, laminates, and panels produced in China from crystalline

---

2019.

<sup>5</sup> See URE's Letter, "Certain Crystalline Silicon Photovoltaic Products from Taiwan: Response to the Department's First Supplemental Questionnaire in the Pending Changed Circumstances Review and Successor-in-Interest Determination for URE," dated March 11, 2019 (URE March 11, 2019 SQR).

<sup>6</sup> See *Certain Crystalline Silicon Photovoltaic Products from Taiwan: Initiation of Antidumping Duty Changed Circumstances Review*, 84 FR 11284 (March 26, 2019).

<sup>7</sup> See the petitioner's Letter, "Certain Crystalline Silicon Photovoltaic Products from Taiwan: Support for Successor-in-Interest Determination Requested by United Renewable Energy Co. Ltd.," dated April 10, 2019.

<sup>8</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

silicon photovoltaic cells produced in Taiwan that are covered by an existing proceeding on such modules, laminates, and panels from China.

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.

#### **IV. Preliminary Results of Changed Circumstances Review**

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216(d), Commerce will conduct a CCR upon receipt of a request from an interested party or receipt of information concerning an antidumping order which shows changed circumstances sufficient to warrant a review of the order. As explained above, we initiated a CCR based upon a timely request submitted by URE. Since initiating this CCR, at our request, URE submitted additional information in support of its claim that it is the successor-in-interest to Gintech, Neo Solar, and Solartech.

##### **A. Discussion of Methodology**

In making a successor-in-interest determination, we examine a number of factors including, but not limited to, changes in: (1) management/ownership, (2) production facilities, (3) supplier relationships, and (4) customer base.<sup>9</sup> Although no single one of these factors, or even several taken together, will necessarily provide a dispositive indication of succession, generally, we will consider a company to be a successor if its resulting operation is not materially dissimilar to that of its predecessor.<sup>10</sup> Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the prior company, we will assign the new company the cash deposit rate of its predecessor.<sup>11</sup>

##### **B. Analysis**

In its initial request for a CCR, and in response to a supplemental questionnaire, URE provided information concerning the operations of URE and the three pre-merger entities, *i.e.*, Gintech, Neo Solar, and Solartech. Below, we analyze the information URE submitted in relation to the four main criteria considered in a successor-in-interest proceeding.

---

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).

<sup>9</sup> See, e.g., *Ball Bearings and Parts Thereof from France: Final Results of Changed-Circumstances Review*, 75 FR 34688 (June 18, 2010), and accompanying Issues and Decision Memorandum at Comment 1.

<sup>10</sup> See, e.g., *Fresh and Chilled Atlantic Salmon from Norway: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979, 9980 (March 1, 1999) (*Salmon from Norway*); *Multilayered Wood Flooring from the People's Republic of China: Initiation and Preliminary Results of Antidumping and Countervailing Duty Changed Circumstances Reviews*, 82 FR 9561 (February 7, 2017).

<sup>11</sup> See, e.g., *Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Initiation of Antidumping Duty Changed Circumstances Review*, 70 FR 17063, 17064 (April 4, 2005); *Salmon from Norway*, 64 FR at 9980.

## *1. Management / Ownership*

URE provided previous employment information for each of its executive/management level employees.<sup>12</sup> The data show that the overwhelming majority of URE executives and managers were previously employed by Gintech, Neo Solar, or Solartech.<sup>13</sup> Additionally, URE's current executives and managers represented a significant share of the upper-level positions in the three predecessor companies, further demonstrating continuity across the pre/post-merger entities.<sup>14</sup> Although we do not agree with URE's assessment that its executive officers and managers are "nearly identical"<sup>15</sup> to the combined officers and managers of the three predecessor companies, we find that the overlap in managerial and executive personnel is substantial. Because this analysis relies heavily on business proprietary information (BPI), please see note 1 of the accompanying BPI addendum for details.

URE also provided information on the composition of the pre and post-merger boards of directors. Five members of URE's (11 member) board of directors were members of the Gintech, Neo Solar, or Solartech boards prior to the merger.<sup>16</sup> Therefore, a significant share of URE's board seats are held by individuals who held seats on the boards of the pre-merger entities. Additionally, URE emphasizes that two of the new board members do not play a role in the day-to-day operations of URE, which further supports a finding of continuity between the pre- and post-merger companies.

Finally, URE provided a comparison of its ten largest shareholders and the three predecessors' largest shareholders. Eight out of the top ten shareholders in URE held a shareholding interest in Gintech, Neo Solar, and/or Solartech prior to the merger.<sup>17</sup> The two new shareholders listed among URE's top ten shareholders – Taiwan's National Development Fund (TNDF) and Yaohua Glass – are minority shareholders and do not exercise control over the day-to-day operations of URE.<sup>18</sup> URE also notes that TNDF and Yaohua Glass do not have any individuals serving in an executive-officer or management position within URE.<sup>19</sup>

We preliminarily find a high level of continuity with respect to URE's executives and managers prior to, and following, the merger of Gintech, Neo Solar, and Solartech. We find a moderate level of overlap with respect to ownership; although numerous shareholders saw their share percentage change following the merger, as would be expected, eight of URE's top ten shareholders held an interest in at least one of the pre-merger companies. Finally, we find a moderate level of overlap when comparing the pre/post-merger boards of directors. For these reasons, we preliminarily find that, the management and ownership of URE is largely consistent with that of Gintech, Neo Solar, and Solartech.

---

<sup>12</sup> See CCR Request at 8 and Attachment 9.

<sup>13</sup> See *id.*

<sup>14</sup> See URE March 12, 2019 SQR, at 1 and Exhibit FSQ-1.

<sup>15</sup> CCR Request at 6, n.7.

<sup>16</sup> See *id.* at 10.

<sup>17</sup> See *id.* at 9 and Attachment 10.

<sup>18</sup> See *id.* at 9.

<sup>19</sup> See *id.* (noting that the board seats held on behalf of these companies represent only their minority interests, and do not exercise control or influence over the day-to-day operations of URE).

## 2. *Production Facilities*

URE states that its facilities are comprised solely of the pre-merger production and administrative facilities of Gintech, Neo Solar, and Solartech.<sup>20</sup> The production facilities – which relate to photovoltaic cell production and module assembly – are being used in the same capacity as the pre-merger companies.<sup>21</sup> The only reported changes in facility usage pre/post-merger are minor, and do not have an impact on URE’s production process. Please see note 2 of the accompanying BPI addendum for additional detail.

The record does not indicate that URE acquired additional production capabilities, or that URE is using the production-related facilities in a manner different from the pre-merger companies. We preliminarily find that URE’s production facilities remained unchanged from those of its predecessors with respect to the production of subject merchandise.

## 3. *Customer Base*

URE provided data regarding its customers and the customers of the three pre-merger companies.<sup>22</sup> We compared Gintech, Neo Solar, and Solartech customer lists and sales data for 2017 (the last full year that the three companies were independent entities) to URE’s sales following the merger. Specifically, we compared the 2017 data with post-merger data covering the fourth quarter of 2018<sup>23</sup> and the first two months of 2019.<sup>24</sup> The data show the identity of the customers, as well as the percentage of URE’s sales represented by each customer.<sup>25</sup>

We find that there is substantial overlap between the pre/post-merger customer lists. We do not agree that the record supports URE’s characterization of the customer base as being “identical”<sup>26</sup> pre/post-merger; however, the data do demonstrate a high level of continuity in terms of customer identities and the relative share of sales attributable to each customer. Additionally, although URE’s customer relationships pre/post-merger – as substantiated by the sales figures – are not identical, URE states that it “took on the prior customer commitments and obligations of the three pre-merger companies with a plan to continue to sell to these {i.e., the predecessors’} customers.”<sup>27</sup> Note 3 of the accompanying BPI addendum provides a more detailed discussion of the degree of overlap between URE’s customers and those of its predecessors.

## 4. *Supplier Relationships*

URE provided a list of its post-merger suppliers of wafers, paste/screens, and modules.<sup>28</sup> URE stated that its supplier list is comprised solely of companies that previously supplied the inputs to

---

<sup>20</sup> See *id.* at 7-8.

<sup>21</sup> See *id.*

<sup>22</sup> See *id.* at 11.

<sup>23</sup> See *id.*

<sup>24</sup> See URE March 12, 2019 SQR, at Exhibit FSQ-2 and Exhibit FSQ-3.

<sup>25</sup> See *id.*

<sup>26</sup> See CCR Request at 7, 11.

<sup>27</sup> See URE March 12, 2019 SQR, at 2.

<sup>28</sup> See CCR Request at Attachment 13.

Gintech, Neo Solar, and/or Solartech pre-merger.<sup>29</sup> URE also provided data showing the largest wafer suppliers for each predecessor company,<sup>30</sup> which allowed us to assess the relative share of inputs accounted for by each of the suppliers, in both the pre/post-merger period. Based on our review of the data, we find that there is a high level of continuity in terms of supplier relationships. Please refer to note 4 of the accompanying BPI addendum for details.

### 5. *Summary of Preliminary Findings*

In conducting a CCR, Commerce generally considers a company to be the successor to another company for cash deposit purposes if the operations of the successor are not materially dissimilar from those of its predecessor. As the Court of International Trade (CIT) has explained, when a new entity is comprised of, and came in to being by merging of, multiple entities with “nothing extraneous added to the mix,” this fact supports an affirmative successor-in-interest finding.<sup>31</sup>

Here, we preliminarily find that URE is comprised of Gintech, Neo Solar, and Solartech, and that there are limited differences between the pre/post-merger entities. First, we find substantial continuity between URE and the pre-merger companies with respect to managers, officers, board members and owners. The pre/post-merger differences between the boards of directors and ownership patterns do not render the combined entity “dissimilar” to the pre-merger entities.<sup>32</sup> Second, the record indicates that the pre- and post-merger companies’ production facilities are identical. Third, the pre- and post-merger companies’ customer bases substantially overlap. Fourth, URE relies on a set of suppliers that is very similar to the suppliers relied on by the three predecessors. For these reasons, and based on the totality of the circumstances, we preliminarily find that the operations of URE are not materially dissimilar to the operations of Gintech, Neo Solar, and Solartech.

---

<sup>29</sup> See *id.* at 11. URE notes that, following the merger, in some cases the company consolidated its supplier base to eliminate duplicate suppliers for the same input.

<sup>30</sup> See URE March 12, 2019 SQR, at 1 and Exhibit FSQ-4.

<sup>31</sup> See *Marine Harvest (Chile) S.A. v. United States*, 244 F. Supp 2d 1364, 1369 (CIT 2002); see also *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Orange Juice from Brazil*, 71 FR 2183 (January 13, 2006), and accompanying Issues and Decision Memorandum.

<sup>32</sup> See *Salmon from Norway*, 64 FR at 9980; see also *Certain Polyester Staple Fiber from the Republic of Korea: Preliminary Results of Changed Circumstances Review*, 79 FR 62595 (October 20, 2014), and accompanying Preliminary Decision Memorandum at 3-5, unchanged in *Certain Polyester Staple Fiber from the Republic of Korea: Final Results of Changed Circumstances Review*, 79 FR 76301 (December 22, 2014) (making an affirmative successor-in-interest determination despite significant differences between the pre and post-merger companies’ board of directors); *Certain Lined Paper Products from India: Notice of Final Results of Antidumping Duty Changed Circumstances Review*, 80 FR 18373 (April 6, 2015), and accompanying Issues and Decision Memorandum at 7-8 (making an affirmative successor-in-interest determination notwithstanding new ownership following a merger).

## V. RECOMMENDATION

Based on our analysis of the information contained in URE's CCR Request and supplemental questionnaire response, we recommend preliminarily determining that URE is the successor-in-interest to Gintech, Neo Solar, and Solartech for purposes of the antidumping duty order on solar products from Taiwan.

☒

\_\_\_\_\_  
Agree

☐

\_\_\_\_\_  
Disagree

6/4/2019

X 

Signed by: JEFFREY KESSLER

\_\_\_\_\_  
Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance