



A-583-853
Administrative Review
02/01/2019-01/31/2020
Public Document
E&C/OIV: TEM

April 23, 2021

MEMORANDUM TO: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

FROM: Scot Fullerton
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results and Partial
Rescission of Antidumping Duty Administrative Review and
Preliminary Determination of No Shipments: Certain Crystalline
Silicon Photovoltaic Products from Taiwan; 2019-2020

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, for the period of review (POR), February 1, 2019, through January 31, 2020. This review covers thirty-four producers or exporters. We preliminarily find that the two mandatory respondents, the Inventec Solar Energy Corporation (ISEC) and E-TON Solar Tech. Co., Ltd. (E-TON) single entity (ISEC/E-TON entity), and United Renewable Energy Co., Ltd. (URE), made sales of the subject merchandise in the United States at prices below normal value (NV) during the POR, and preliminarily assigned the weighted-average of the dumping margins calculated using the public ranged sales data of the ISEC/E-TON entity and URE to eighteen companies not individually examined in this review. In addition, we preliminarily find that seven exporters had no shipments during the POR. Finally, Commerce has rescinded the reviews initiated for Mega Sunergy Co., Ltd. (Mega), Sino-American Silicon Products Inc. (SAS), Solartech Energy Corporation (Solartech), Gintech Energy Corporation (Gintech), and Neo Solar Power Corporation (Neo Solar). We preliminarily intend to rescind the administrative review with respect to Inventec Energy Corporation (IEC).

II. BACKGROUND

On February 18, 2015, Commerce published the AD order on solar products from Taiwan.¹ On February 3, 2020, we published a notice of opportunity to request an administrative review of the

¹ See *Certain Crystalline Silicon Photovoltaic Products From Taiwan: Antidumping Duty Order*, 80 FR 8596 (February 18, 2015) (*Order*).



Order pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act).² On February 28, 2020, Mega requested a review of its shipments.³ On March 2, 2020, SunPower Manufacturing Oregon, LLC (the petitioner) requested a review of thirty-three companies.⁴ On March 2, 2020, URE requested a review of its shipments.⁵ On March 2, 2020, Vina Solar Technology Co., Ltd. (Vina Solar), requested a review of its shipments.⁶ Pursuant to those requests and in accordance with 19 CFR 351.221(c)(1)(i), on April 8, 2020, we initiated this review on thirty-four companies.⁷

We stated in the *Initiation Notice* that, in the event we limited the number of respondents, we intended to select respondents based on U.S. Customs and Border Protection (CBP) data for entries of subject merchandise during the POR.⁸ On April 28, 2020, we released the CBP data.⁹ On May 8, 2020, Vina Solar commented on the CBP data.¹⁰

Between April 24 and June 29, 2020, seven exporters timely filed no-shipment certifications: (1) AU Optronics Corporation (AU);¹¹ (2) Canadian Solar Inc.; (3) Canadian Solar International, Ltd.; (4) Canadian Solar Manufacturing (Changshu), Inc.; (5) Canadian Solar Manufacturing

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 85 FR 5938 (February 3, 2020).

³ See Mega's Letter, "Certain Crystalline Silicon Photovoltaic Products from Taiwan, Case No. A-583- 853 REQUEST FOR ADMINISTRATIVE REVIEW," dated February 28, 2020.

⁴ See Petitioners' Letter, "Certain Crystalline Silicon Photovoltaic Products from Taiwan: Request for Administrative Review," dated March 2, 2020. The thirty-three companies are: 1) AU Optronics Corporation; 2) Baoding Jiasheng Photovoltaic Technology Co. Ltd.; 3) Baoding Tianwei Yingli New Energy Resources Co., Ltd.; 4) Beijing Tianneng Yingli New Energy Resources Co. Ltd.; 5) Boviet Solar Technology Co., Ltd.; 6) Canadian Solar Inc.; 7) Canadian Solar International, Ltd.; 8) Canadian Solar Manufacturing (Changshu), Inc.; 9) Canadian Solar Manufacturing (Luoyang), Inc.; 10) Canadian Solar Solution Inc.; 11) EEPV CORP.; 12) E-TON Solar Tech. Co., Ltd.; 13) Gintech Energy Corporation; 14) Hainan Yingli New Energy Resources Co., Ltd.; 15) Hengshui Yingli New Energy Resources Co., Ltd.; 16) Inventec Energy Corporation; 17) Inventec Solar Energy Corporation; 18) Kyocera Mexicana S.A. de C.V.; 19) Lixian Yingli New Energy Resources Co., Ltd.; 20) Motech Industries, Inc.; 21) Neo Solar Power Corporation; 22) Shenzhen Yingli New Energy Resources Co., Ltd.; 23) Sino-American Silicon Products Inc.; 24) Solartech Energy Corporation; 25) Sunengine Corporation Ltd.; 26) Sunrise Global Solar Energy; 27) Tianjin Yingli New Energy Resources Co., Ltd.; 28) TSEC Corporation; 29) United Renewable Energy Co., Ltd.; 30) Vina Solar Technology Co., Ltd.; 31) Win Precision Technology Co., Ltd.; 32) Yingli Energy (China) Co., Ltd.; and 33) Yingli Green Energy International Trading Company Limited.

⁵ See URE's Letter, "Certain Crystalline Silicon Photovoltaic Products from Taiwan - Request for Administrative Review," dated March 2, 2020.

⁶ See Vina Solar's Letter, "Certain Crystalline Silicon Photovoltaic Products from Taiwan – Request for Administrative Review," dated March 2, 2020.

⁷ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 19730 (April 8, 2020) (*Initiation Notice*).

⁸ See *Initiation Notice*.

⁹ See Memorandum, "Certain Crystalline Silicon Photovoltaic Products from Taiwan: Release of Customs and Border Protection Data," dated April 28, 2020 (CBP Data Release); see also Memorandum, "Certain Crystalline Silicon Photovoltaic Products from Taiwan: Customs and Border Protection Data Released April 28, 2020," dated May 28, 2020.

¹⁰ See Vina's Letter, "Certain Crystalline Silicon Photovoltaic Products from Taiwan – Comment on CBP Data and Certification of No Shipments," dated May 8, 2020.

¹¹ See AU's Letter, "Certain Crystalline Silicon Photovoltaic Products from Taiwan – Notice of No Sales or Exports," dated April 24, 2020.

(Luoyang), Inc.; (6) Canadian Solar Solutions Inc. (Canadian Solar companies),¹² and; (7) Vina Solar.¹³ On February 24, 2021, we issued a no shipment inquiry to CBP for AU and the Canadian Solar companies.¹⁴ On March 5, 2021, CBP responded to the inquiry confirming that it found no evidence of shipments of solar products from Taiwan produced and/or exported by the aforementioned companies during the POR.¹⁵ With respect to Vina Solar, we requested entry documentation on February 3, 2021,¹⁶ based on information contained in the CBP Data Release. We received the entry documentation on March 30, 2021.¹⁷ We have preliminarily determined that the documentation does not contain evidence of shipments by Vina Solar during the POR.

We selected ISEC and URE as the mandatory respondents,¹⁸ and issued a standard questionnaire to these respondents.¹⁹ From September 2020 through April 2021, Commerce received timely responses from ISEC²⁰ and URE²¹ to our questionnaire and supplemental questionnaires. No interested parties commented on those responses.

¹² See Canadian Solar companies' Letter, "Crystalline Silicon Photovoltaic Products from Taiwan, Case No. A-583-853: No Shipment Letter," dated June 29, 2020.

¹³ See Vina's Letter, "Certain Crystalline Silicon Photovoltaic Products from Taiwan – Comment on CBP Data and Certification of No Shipments," dated May 8, 2020.

¹⁴ See Customs Instructions Message No: 1055405, dated February 24, 2021 (No Shipment Inquiry).

¹⁵ See Memorandum, "Certain Crystalline Silicon Photovoltaic Products from Taiwan; No Shipment Inquiry for various companies during the period 02/01/2019 through 01/31/2020," dated March 5, 2021 (Response to No Shipment Inquiry).

¹⁶ See Customs Instructions Message No: 1054403, dated February 23, 2021 (Entry Document Request).

¹⁷ See Memorandum, "Notification of Receipt of U.S. Entry Documents," dated March 30, 2021 (Entry Documents Memo).

¹⁸ See Memorandum, "2019-2020 Antidumping Duty Administrative Review of Certain Crystalline Silicon Photovoltaic Products from Taiwan: Respondent Selection," dated June 3, 2020.

¹⁹ See Commerce's Letters, Initial AD Questionnaire, dated June 8, 2020 (Initial AD Questionnaire).

²⁰ See ISEC's Letter, "Certain Crystalline Silicon Photovoltaic Products from Taiwan - Section A Response," dated July 16, 2020 (ISEC AQR); *see also* ISEC's Letter, "Certain Crystalline Silicon Photovoltaic Products from Taiwan - Financial Statement Translations for Section A Response," dated July 27, 2020; ISEC's Letter, "Certain Crystalline Silicon Photovoltaic Products from Taiwan - Sections B, C, and D Questionnaire Responses," dated August 5, 2020 (ISEC BCDQR); ISEC's Letter, "Certain Crystalline Silicon Photovoltaic Products from Taiwan - Inventec's Supplemental Questionnaire Response," dated August 24, 2020 (ISEC SQR1); ISEC's Letter, "Certain Crystalline Silicon Photovoltaic Products from Taiwan - Inventec's Supplemental Questionnaire Response," dated September 8, 2020 (ISEC SQR2); ISEC's Letter, "Certain Crystalline Silicon Photovoltaic Products from Taiwan - Inventec's Sections A-D Supplemental Questionnaire Response," dated October 5, 2020; ISEC's Letter, "Certain Crystalline Silicon Photovoltaic Products from Taiwan - Inventec's Sections A, B and D Supplemental Questionnaire Response," dated January 15, 2021; ISEC's Letter, "Certain Crystalline Silicon Photovoltaic Products from Taiwan - Inventec's Supplemental Section D Questionnaire Response," dated February 8, 2021 (ISEC SQR5); ISEC's Letter, "Certain Crystalline Silicon Photovoltaic Products from Taiwan - Inventec's Sections A Supplemental Questionnaire Response," dated March 5, 2021; ISEC's Letter, "Certain Crystalline Silicon Photovoltaic Products from Taiwan – Inventec's Section A Supplemental Questionnaire Response," dated April 16, 2021 (ISEC SQR7).

²¹ See URE's Letter, "Certain Crystalline Silicon Photovoltaic Products from Taiwan – Section A Response," dated July 16, 2020 (URE AQR); URE's Letter, "Certain Crystalline Silicon Photovoltaic Products from Taiwan – Financial Statement Translations for Section A Response," dated July 27, 2020; URE's Letter, "Certain Crystalline Silicon Photovoltaic Products from Taiwan – Supplement to Financial Statement Translations for Section A Response," dated July 28, 2020; URE's Letter, "Certain Crystalline Silicon Photovoltaic Products from Taiwan – Section B, C, and D Response," dated July 29, 2020; URE's Letter, "Certain Crystalline Silicon Photovoltaic Products from Taiwan – Section A Supplemental Response," dated September 14, 2020 (URE SQR1); URE's Letter, "Certain Crystalline Silicon Photovoltaic Products from Taiwan – Sections B, C, and D Supplemental

On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.²² Subsequently, on July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days.²³ On February 8, 2020, we postponed the preliminary results of this review by 64 days until April 23, 2021.²⁴

On April 14, 2021, the ISEC/E-TON entity²⁵ and URE²⁶ submitted pre-preliminary comments. We have considered the pre-preliminary comments of the ISEC/E-TON entity and URE in these preliminary results.

III. SCOPE OF THE *ORDER*

The merchandise covered by the *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.

Response,” dated October 13, 2020 (URE SQR2); URE’s Letter, “Certain Crystalline Silicon Photovoltaic Products from Taiwan – Sections A, C, and D Supplemental Response,” dated December 23, 2020 (URE SQR3); URE’s Letter, “Certain Crystalline Silicon Photovoltaic Products from Taiwan – Supplemental Sections C and D Questionnaire Response,” dated February 16, 2021 (URE SQR4); URE’s Letter, “Certain Crystalline Silicon Photovoltaic Products from Taiwan – Supplemental Sections C and D Questionnaire Response,” dated March 23, 2021 (URE SQR5); URE’s Letter, “Certain Crystalline Silicon Photovoltaic Products from Taiwan – URE Response Regarding Section D Responses by Unaffiliated Companies,” dated January 21, 2021; URE and Dehui Solar Power (Vietnam) Co., Ltd.’s (Dehui’s) Letter, “Certain Crystalline Silicon Photovoltaic Products from Taiwan - Dehui Non-Market Economy Section D Questionnaire Response,” dated January 21, 2021; URE and EEPV CORP.’s (EEPV’s) Letter, “Certain Crystalline Silicon Photovoltaic Products from Taiwan – EEPV Section D Questionnaire Response,” dated January 21, 2021; URE and Sino-American Silicon Products Inc.’s (SAS’) Letter, “Certain Crystalline Silicon Photovoltaic Products from Taiwan – Sino-American Section D Questionnaire Response,” dated January 21, 2021; URE’s and Dehui’s Letter, “Certain Crystalline Silicon Photovoltaic Products from Taiwan – Dehui Non-Market Economy Section D Supplemental Questionnaire Response,” dated April 2, 2021; URE’s Letter, “Certain Crystalline Silicon Photovoltaic Products from Taiwan – Sections B, C, and D Supplemental Questionnaire Response,” dated April 13, 2021; URE’s Letter, “Certain Crystalline Silicon Photovoltaic Products from Taiwan – Section A Supplemental Questionnaire Response,” dated April 16, 2021 (URE SQR7).

²² See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19,” dated April 24, 2020.

²³ See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,” dated July 21, 2020.

²⁴ See Memorandum, “Certain Crystalline Silicon Photovoltaic Products from Taiwan: Extension of Deadline for Preliminary Results of the 2019-2020 Antidumping Duty Administrative Review,” dated February 8, 2021.

²⁵ See ISEC’s Letter, “Certain Crystalline Silicon Photovoltaic Products from Taiwan: Comments on Upcoming Preliminary Results as to ISEC,” dated April 14, 2021.

²⁶ See URE’s Letter, “Certain Crystalline Silicon Photovoltaic Products from Taiwan: Pre-Preliminary Comments,” dated April 14, 2021.

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

Excluded from the scope of the *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 the *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 the *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).²⁷ Also excluded from the scope of the *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 8501.61.0010, 8507.20.80, 8541.40.6015, 8541.40.6025, and 8501.31.8010. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of the *Order* is dispositive.

IV. AFFILIATION AND COLLAPSING

Pursuant to 19 CFR 351.401(f)(1), Commerce will treat producers as a single entity, or "collapse" them, where: (1) those producers are affiliated; (2) the producers have production facilities for producing similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities; and (3) there is a significant potential for manipulation of price or production.²⁸ In determining whether a significant potential for manipulation exists, 19 CFR 351.401(f)(2) states that Commerce may consider various 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 the operations of the affiliated firms 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.²⁹

²⁷ 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); see also *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).

²⁸ See, e.g., *Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review*, 63 FR 12764, 12774-75 (March 16, 1998).

²⁹ See, e.g., *Nihon Cement Co., Ltd. v. United States*, 17 C.I.T. 400 (May 25, 1993); see also, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Taiwan*, 62 FR 51427, 51436 (October 1, 1997).

“Collapsing” starts with a determination of whether two or more companies are affiliated. Section 771(33)(E) of the Act defines affiliated persons to include “{a}ny person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.” Section 771(33)(F) of the Act defines affiliated persons to include “{t}wo or more persons directly or indirectly controlling, controlled by, or under common control with, any person.” Section 771(33)(G) of the Act defines affiliated persons to include “{a}ny person who controls any other person and such other person.” Section 771(33) of the Act further stipulates 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, and the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) notes that control may be found to exist within corporate groupings.³⁰

For the reasons set forth in the proprietary ISEC/E-TON Single Entity Preliminary Affiliation and Collapsing Memorandum,³¹ we preliminarily determine that ISEC and E-TON are affiliated pursuant to section 771(33)(E) of the Act because ISEC owned 5 percent or more of shares of E-TON during the POR, and section 771(33)(F) of the Act, because ISEC and E-TON were under the common control of shared officers. Due to the business proprietary nature of information relating to this analysis, a more detailed discussion of this matter can be found in the ISEC/E-TON Single Entity Preliminary Affiliation and Collapsing Memorandum.

Commerce relies on the totality of the circumstances in deciding when to treat affiliated parties as a single entity pursuant to 19 CFR 351.401(f). In this case, we have sufficient information to find that ISEC and E-TON are affiliated.³² We further find that the production facilities available to either company are essentially the same and substantial retooling of either manufacturing facility would not be required in order to restructure manufacturing priorities. Moreover, record evidence demonstrates significant potential for manipulation of prices and production between ISEC and E-TON due to: (1) level of common ownership; (2) overlapping management; and (3) intertwined operations.³³

In accordance with 19 CFR 351.401(f) and Commerce’s practice,³⁴ we are treating ISEC and E-TON as a single entity for the purposes of these preliminary results.³⁵

³⁰ See SAA, H.R. Doc. 103-316, vol 1 (1994) at 838 (stating that control may exist within the meaning of section 771(33) of the Act in the following types of relationships: (1) corporate or family groupings; (2) franchises or joint venture agreements; (3) debt financing; and (4) close supplier relationships in which either party becomes reliant upon the other).

³¹ See Memorandum, “2019-2020 Administrative Review of Certain Crystalline Silicon Photovoltaic Products from Taiwan: Affiliation and Single Entity Treatment Memorandum,” dated concurrently with this memorandum (ISEC/E-TON Single Entity Preliminary Affiliation and Collapsing Memorandum).

³² See ISEC/E-TON Single Entity Preliminary Affiliation and Collapsing Memorandum.

³³ *Id.*

³⁴ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from Indonesia*, 72 FR 60636 (October 25, 2007), and accompanying Issues and Decision Memorandum (IDM); see also *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Final Determination of Sales at Less Than Fair Value*, 75 FR 59223 (September 27, 2010), and accompanying IDM.

³⁵ See ISEC/E-TON Single Entity Preliminary Affiliation and Collapsing Memorandum.

V. PRELIMINARY INTENT TO PARTIALLY RESCIND ADMINISTRATIVE REVIEW

Based on record evidence in this review, we have preliminarily determined that IEC ceased to exist before the POR. As such, we have preliminarily concluded that IEC had no shipments during the POR. In accordance with 19 CFR 351.213(d)(3), we preliminarily intend to rescind this administrative review with respect to IEC because IEC had no shipments during the POR as it ceased to exist before the POR.³⁶

VI. PARTIAL RESCISSION OF ADMINISTRATIVE REVIEW

In accordance with 19 CFR 351.213(d)(1), because the review requests were timely withdrawn for SAS³⁷ and Mega,³⁸ we are rescinding the administrative review, in part, for these companies. In accordance with 19 CFR 351.213(d)(3), we are also rescinding our review with respect to Solartech, Gintech, and Neo Solar because we previously determined in a changed circumstance review issued on August 2, 2019, that these companies no longer exist, and that URE became their successor-in-interest before the instant POR.³⁹

VII. PRELIMINARY DETERMINATION OF NO SHIPMENTS

AU, the Canadian Solar companies and Vina Solar certified that they had no exports, sales, or entries of subject merchandise during the POR. Consistent with our standard practice,⁴⁰ we issued a “No Shipment Inquiry” to CBP and requested entry documentation for review; we received no information that contradicted their claims.⁴¹ Thus, we preliminarily find that these companies had no shipments during the POR. Consistent with our practice, we will not rescind the review with respect to these companies, but rather, will complete the review with respect to these companies and issue appropriate liquidation instructions to CBP based on the final results of the review.⁴²

³⁶ ISEC reported that IEC ceased business operations, and was dissolved and liquidated prior to the POR. See ISEC’s Letter, “Certain Crystalline Silicon Photovoltaic Products from Taiwan – Inventec’s Sections A Supplemental Questionnaire Response,” dated March 5, 2021.

³⁷ See Petitioner’s Letter, “Certain Crystalline Silicon Photovoltaic Products from Taiwan – Partial Withdrawal of Request for Administrative Review,” dated April 29, 2020.

³⁸ See Mega’s Letter, “Certain Crystalline Silicon Photovoltaic Products from Taiwan, Case No. A-583- 853 Withdrawal of Request for Administrative Review,” dated May 20, 2020.

³⁹ Commerce determined in a changed circumstances review that URE is the successor-in-interest to Solartech, as well as Gintech, and Neo Solar. See *Certain Crystalline Silicon Photovoltaic Products from Taiwan: Notice of Final Results of Antidumping Duty Changed Circumstances Review*, 84 FR 37836 (August 2, 2019).

⁴⁰ See *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017-2018*, 84 FR 34863 (July 19, 2019), and accompanying Preliminary Decision Memorandum at 4.

⁴¹ See No Shipment Inquiry; see also Entry Document Request; Response to No Shipment Inquiry; and Entry Documents Memo.

⁴² See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

VIII. COMPANIES NOT SELECTED FOR INDIVIDUAL EXAMINATION

This review includes eighteen companies that were not selected for individual examination and did not file a certification of no shipments: 1) Baoding Jiasheng Photovoltaic Technology Co. Ltd.; 2) Baoding Tianwei Yingli New Energy Resources Co., Ltd.; 3) Beijing Tianneng Yingli New Energy Resources Co. Ltd.; 4) Boviet Solar Technology Co., Ltd.; 5) EEPV CORP.; 6) Hainan Yingli New Energy Resources Co., Ltd.; 7) Hengshui Yingli New Energy Resources Co., Ltd.; 8) Kyocera Mexicana S.A. de C.V.; 9) Lixian Yingli New Energy Resources Co., Ltd.; 10) Motech Industries, Inc.; 11) Shenzhen Yingli New Energy Resources Co., Ltd.; 12) Sunengine Corporation Ltd.; 13) Sunrise Global Solar Energy; 14) Tianjin Yingli New Energy Resources Co., Ltd.; 15) TSEC Corporation; 16) Win Precision Technology Co., Ltd.; 17) Yingli Energy (China) Co., Ltd.; and 18) Yingli Green Energy International Trading Company Limited. None of the above companies: (1) was selected as a mandatory respondent; (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 18 companies remain 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 an 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) 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}."

For these preliminary results, we calculated weighted-average dumping margins that are not zero, *de minimis*, or determined entirely on the basis of facts available for the ISEC/E-TON entity and URE. We cannot apply our normal methodology of calculating a weighted-average margin using the actual net U.S. sales values and dumping margins for the ISEC/E-TON entity and URE because doing so could indirectly disclose business-proprietary information to both of these companies. In order to strike a balance between our duty to safeguard parties' business proprietary information and our attempt to adhere to the guidance set forth in section 735(c)(5)(A) of the Act, we calculated a weighted-average margin for non-selected respondents using the publicly available, ranged total U.S. sales values of the selected respondents, compared the resulting public, weighted-average margin to the simple average of the dumping margins, and used the amount which is closer to the actual weighted-average margin of the selected respondents as the margin for the non-selected respondents.⁴³ On this basis, using section 735(c)(5)(A) of the Act as guidance, we have preliminarily assigned to the companies not

⁴³ See *Ball Bearings and Parts Thereof from France, et al.: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661, 53662 (September 1, 2010), and accompanying IDM at Comment 1.

individually examined in this review the weighted-average of the dumping margins calculated using the public ranged sales data of ISEC and E-TON, and URE.⁴⁴

IX. 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 NV

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether respondents' sales of subject merchandise were made at less than NV, Commerce compared the export price (EP) and/or constructed export price (CEP) 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 a weighted-average dumping margin by comparing weighted-average NVs to weighted-average EPs (or CEPs) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In a less-than-fair-value investigation, 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 an administrative review, 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 a less-than-fair-value investigation.⁴⁵

In recent 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.⁴⁶ Commerce finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. 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

⁴⁴ See ISEC SQR7 at Exhibit A-1-Revised; *see also* URE SQR7 at Exhibit A-1-Revised.

⁴⁵ See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews*; 2010-2011, 77 FR 73415 (December 10, 2012), and accompanying IDM at Comment 1; *see also Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286, 1322 (CIT 2014), *aff'd*, *Apex Frozen Foods Private Ltd. v. United States*, 862 F.3d 1337 (CAFC 2017); and *JBF RAK LLC v. United States*, 790 F.3d 1358, 1363-65 (CAFC 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).

⁴⁶ See, e.g., *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); and *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

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 prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all U.S. sale prices 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.*, states) 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 an EP or CEP and NV for the individual dumping margins.

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

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

Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (*i.e.*, the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, 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 the ISEC/E-TON entity, based on the results of the differential pricing analysis, Commerce preliminarily finds that 51.09 percent of the value of U.S. sales pass the Cohen's *d* test, and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods.⁴⁷ Further, Commerce preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin 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 sales which did not pass the Cohen's *d* test. 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 the ISEC/E-TON entity.

For URE, Commerce preliminarily finds, based on the results of the differential pricing analysis, that 4.95 percent of the value of U.S. sales pass the Cohen's *d* test, which does not confirm the existence of a pattern of prices that differ significantly among purchasers, regions or time

⁴⁷ See Memorandum, "Preliminary Results Analysis Memorandum for the Inventec Solar Energy Corporation (ISEC) and E-TON Solar Tech. Co., Ltd. (E-TON) entity," dated April 23, 2021 (ISEC Prelim Analysis Memo).

periods.⁴⁸ Thus, the results of the Cohen's *d* and ratio tests do not support consideration of an alternative to the average-to-average method. Accordingly, Commerce preliminarily determines to apply the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for URE.

B. Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold in Taiwan by the ISEC/E-TON entity and URE during the period of review as described in the "Scope of the Order" section of this memorandum to be foreign like products for purposes of determining NV for the subject merchandise. Pursuant to 19 CFR 351.414(f)(3), we compared the ISEC/E-TON entity and URE's U.S. sales to their home market sales of foreign like product within the contemporaneous window period, made in the ordinary course of trade, where appropriate.

In making product comparisons, we matched subject merchandise and foreign like product based on whether the products were prime or non-prime and the physical characteristics reported by the ISEC/E-TON entity and URE in the following order of importance: Product Form, Crystal/Dopant Type, Total Power Output, Frame Form, Cell Technology, Cell Backing, Backing Material, Front Material, Junction Box, Inverter, and Battery.⁴⁹ For the respondents' sales of solar products in the United States, the reported control number identifies the characteristics of solar products, as exported by the ISEC/E-TON entity and URE.

Additionally, it is Commerce's practice to separate prime and secondary comparison market sales when performing our standard cost test, and include sales of secondary product that pass the cost test in the margin calculation by attempting to match these sales to sales of secondary product in the U.S. market.⁵⁰ Because the record reflects that the ISEC/E-TON entity and URE products can be categorized as prime and secondary based on the cell grade,⁵¹ we have accepted the respondents' methodological separation of their sales of these different grades into prime and secondary sale categories.⁵²

C. 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 exporter or producer's records kept in the ordinary course of business. However, Commerce may use a date other than the date of invoice if Commerce is satisfied that a different

⁴⁸ See Memorandum, "Preliminary Results Analysis Memorandum for the United Renewable Energy Co., Ltd. (URE)," dated April 23, 2021 (URE Prelim Analysis Memo).

⁴⁹ See Initial Questionnaire.

⁵⁰ See, e.g., *Certain Crystalline Silicon Photovoltaic Products from Taiwan: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 30401 (June 28, 2018), and accompanying IDM at Comment 4.

⁵¹ Regarding the difference in market value between top grade solar cells and other solar cells, see ISEC SQR1 at Exhibit SA-ISEC-9; ISEC SQR2 at Exhibit-SA-E-TON-1; see also URE AQR at A-50 to A-51; URE BCDQR at B32; URE SQR1 at 11 to 14 and Exhibit SA-URE-13; URE SQR2 at 3; URE SQR3 at 1 and 3 through 5, and Exhibit SA2-URE-1.

⁵² See ISEC Prelim Analysis Memo; see also URE Prelim Analysis Memo.

date better reflects the date on which the exporter or producer establishes the material terms of sale. Furthermore, if the shipment date precedes the invoice date, then Commerce will use the shipment date as the date of sale.⁵³

The ISEC/E-TON entity reported the invoice date as the date of sale, and that in the normal course of business, it issues invoices on the date of shipment.⁵⁴ In accordance with our regulatory preference, for purposes of these preliminary results we used the ISEC/E-TON entity's reported date of sale for both home market and U.S. sales.

URE reported the earlier of the invoice date or shipment date as the date of sale for its home market and U.S. sales.⁵⁵ In accordance with our regulatory preference, for purposes of these preliminary results, we used the URE entity's reported date of sale for both home market and U.S. sales.

D. Export Price

Section 772(a) of the Act defines "export price" as the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under section 772(c) of the Act.

All of the ISEC/E-TON entity's U.S. sales are EP sales as it sold the subject merchandise directly to an unaffiliated party in the United States.⁵⁶ We calculated EP in accordance with section 772(a) of the Act because the subject merchandise was sold prior to importation by the exporter or producer outside the United States to unaffiliated purchasers in the United States.⁵⁷ In accordance with section 772(c) of the Act, we made adjustments, where appropriate, for Taiwanese movement expenses (*i.e.*, inland freight, brokerage and handling incurred in Taiwan) and international freight.

The ISEC/E-TON entity reported "indirect" sales of solar cells to an unaffiliated customer. The customer directed the ISEC/E-TON entity to ship the solar cells to producers of modules in a third country, other than the United States.⁵⁸ The ISEC/E-TON entity states that it considers its sales of solar cells to this customer to be indirect U.S. EP sales, because it has knowledge, at or prior to the time of sale, based on email communication or other sales documentation, that such sales are destined for the United States after being assembled into solar modules.⁵⁹ First, Commerce has determined that, because the solar cells used in the production of the solar

⁵³ See *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), and accompanying IDM at Comment 2.

⁵⁴ See ISEC AQR at A-20; see also ISEC SQR2 at B-22.

⁵⁵ See URE AQR at A-13; see also URE BCDQR at 19 and 58.

⁵⁶ See ISEC BCDQR at C-17.

⁵⁷ *Id.* at C-18.

⁵⁸ See ISEC AQR at A-2; see also ISEC SQR1 at SA-4.

⁵⁹ See ISEC SQR1 at SA-5 and Exhibit SA-ISEC-5.

modules were manufactured in Taiwan by the ISEC/E-TON entity, the solar modules manufactured in the third country are also subject to this investigation. However, we have reviewed the documentation relating to the ISEC/E-TON entity's sales to this customer, and have determined that the ISEC/E-TON entity expressed uncertainty regarding the ultimate destination of the merchandise at the time of the sales at issue, despite the information that it received from its customer regarding the intended destination. Therefore, for the preliminary results, we have attributed these U.S. sales to the customer and have not included these sales in the ISEC/E-TON entity margin calculation.

All of URE's U.S. sales are EP sales as it sold the subject merchandise directly to an unaffiliated party in the United States.⁶⁰ We calculated EP in accordance with section 772(a) of the Act because the subject merchandise was sold prior to importation by the exporter or producer outside the United States to unaffiliated purchasers in the United States.⁶¹ In accordance with section 772(c) of the Act, we made adjustments, where appropriate, for Taiwanese movement expenses (*i.e.*, inland freight, brokerage and handling incurred in Taiwan) and international freight.

URE reported resales to the United States of solar modules assembled by an unaffiliated non-market economy producer of subject merchandise, Dehui Solar Power (Vietnam) Co., Ltd. (Dehui). URE stated that Dehui's solar modules it resold to the United States are subject to this review, because the solar modules were assembled using solar cells manufactured in Taiwan by unaffiliated Taiwanese producers of subject merchandise.⁶² Furthermore, URE and Dehui state that Dehui knew, at the time of sale with URE, that the ultimate destination of its solar modules it sold to URE was the United States.⁶³ First, Commerce has determined that, because the solar cells used in the production of the solar modules were manufactured in Taiwan by unaffiliated manufacturers of subject merchandise, Dehui's solar modules it sold to URE and subsequently resold to the United States are also subject to this administrative review. Moreover, upon review of relevant documentation relating to Dehui's sale of solar modules to URE, we have determined that Dehui had knowledge, at or prior to the time of sale, based on customer purchase orders,⁶⁴ a supply agreement,⁶⁵ email communications,⁶⁶ and other sales related documentation that such sales were destined for the United States. Therefore, for the preliminary results, we have attributed these U.S. sales to Dehui, and we have not included these sales in the URE margin calculation.

E. Normal Value

1. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign

⁶⁰ See URE AQR at A-3 - A-5.

⁶¹ *Id.* at A-5.

⁶² *Id.*

⁶³ See URE SQR4 at 1- 3.

⁶⁴ See URE SQR3 at SC2-URE-1; *see also* URE SQR5 at Exhibit SC4-URE-1.

⁶⁵ *Id.* at SC2-URE-1 and SC4-URE-2.1.

⁶⁶ See URE SQR4 at Exhibit SC3-URE-1; *see also* URE SQR5 at SC4-URE-1 and SC4-URE-2.2.

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

In the instant review, we determined that the ISEC/E-TON entity and URE's respective aggregate volume of home market sales of the foreign like product was greater than five percent of the aggregate volume of their U.S. sales of the subject merchandise. Therefore, we used home market sale prices as the basis for NV for the ISEC/E-TON entity and URE, in accordance with section 773(a)(1)(B) of the Act.

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

Commerce may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales at arm's-length prices.⁶⁷

URE reported home market sales to affiliated customers for consumption by the affiliated customers.⁶⁸ To test whether those sales to affiliated customers were made at arm's-length prices, we compared the prices of sales of comparable merchandise to affiliated and unaffiliated customers, net of all billing adjustments, discounts and rebates, movement charges, direct selling expenses, and packing expenses.

In accordance with 19 CFR 351.403(c) and our practice, when the prices charged to an affiliated party are, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for comparable merchandise, then we determine that sales to the affiliated party were made at arm's-length prices.⁶⁹ In the instant case, in our calculation of NV, sales to affiliated customers 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.⁷⁰ Thus, for URE's affiliated parties' sales that failed the arm's-length test, where applicable, we used in our analysis the affiliated parties' resale to its first unaffiliated customer(s) in the home market.⁷¹

3. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sale prices at the same level of trade (LOT) as the U.S. sale prices. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).⁷²

⁶⁷ See 19 CFR 351.403(c).

⁶⁸ See URE AQR at Exhibit A-1.

⁶⁹ See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002).

⁷⁰ See section 771(15) of the Act; see also 19 CFR 351.102(b)(35).

⁷¹ See URE Prelim Analysis Memo.

⁷² See 19 CFR 351.412(c)(2).

Substantial differences in selling activities are a necessary, but not a sufficient, condition for determining that there is a difference in the stages of marketing.⁷³ In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market (*i.e.*, the chain of distribution), including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),⁷⁴ we consider the starting price (*i.e.*, gross unit prices less all discounts and rebates) before any adjustments. To determine whether comparison market sales are at a different level of trade than EP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer.⁷⁵ If the comparison market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and the comparison market sales at the level of trade of the export transaction, we make a level of trade adjustment under section 773(a)(7)(A) of the Act.

When Commerce is unable to match U.S. sales of subject merchandise to the foreign like product in the comparison market at the same LOT as the EP or CEP, Commerce may compare the U.S. sale 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.

The ISEC/E-TON entity⁷⁶ and URE⁷⁷ reported one channel of distribution for home market sales and one channel of distribution for U.S. sales. Neither respondent claimed a LOT adjustment. Consequently, we preliminarily determine that the ISEC/E-TON entity and URE's sales to the home market were made at the same LOT as sales to the U.S. market and, consequently, no basis exists for a LOT adjustment.

F. Cost of Production Analysis

In accordance with section 773(b)(2)(A)(ii) of the Act, Commerce requested cost of production (COP) and constructed value information from the ISEC/E-TON entity and URE in this review.⁷⁸ There is no information on the record indicating that our quarterly cost methodology is warranted and, therefore, we applied our standard methodology of using annual costs based on the reported data.

⁷³ *Id.*; see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010), and accompanying IDM at Comment 7.

⁷⁴ See 19 CFR 351.412(c)(1).

⁷⁵ See 19 CFR 351.412(c)(2).

⁷⁶ See ISEC BCDQR at B-31 and C-28; see also ISEC SQR2 at B-31.

⁷⁷ See URE BCDQR at 26, Section B, and 20, Section C.

⁷⁸ See, *e.g.*, Initial AD Questionnaire at Section D.

1. Calculation of COP

We calculated the COP for the ISEC/E-TON entity and URE based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for general and administrative and financial expenses, in accordance with section 773(b)(3) of the Act. We relied on the COP data submitted by the ISEC/E-TON entity and URE.

2. Test of Comparison Market Sales Prices

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

3. Results of the COP Test

Section 773(b)(1) of the Act provides that, where sales made at less than the COP “have been made within an extended period of time in substantial quantities” and “were not at prices which permit recovery of all costs within a reasonable period of time,” Commerce may disregard such sales when calculating NV. Pursuant to section 773(b)(2)(C)(i) of the Act, we did not disregard below-cost sales that were not made in “substantial quantities,” *i.e.*, where less than 20 percent of sales of a given product were made at prices less than the COP. We disregarded below-cost sales when they were made in substantial quantities, *i.e.*, where 20 percent or more of a respondent’s sales of a given product were at prices less than the COP and where “the weighted average per unit price of the sales . . . is less than the weighted average per unit cost of production for such sales.”⁷⁹ Finally, based on our comparison of prices to the weighted-average COPs, we considered whether the prices would permit the recovery of all costs within a reasonable period of time.⁸⁰

We found that, for certain products, more than 20 percent of the ISEC/E-TON entity and URE’s home market sales were sold at prices below the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. Thus, in accordance with section 771(15)(A) of the Act, we disregarded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

⁷⁹ See section 773(b)(2)(C)(ii) of the Act.

⁸⁰ See section 773(b)(2)(D) of the Act.

4. Calculation of NV Based on Comparison Market Prices

With regard to the ISEC/E-TON entity, we calculated NV based on packed, ex-factory, or delivered prices to home market customers. We made deductions, where appropriate, to the ISEC/E-TON entity's reported home market sale price for movement expenses (*e.g.*, foreign inland freight), pursuant to section 773(a)(6)(B)(ii) of the Act. We also made deductions for direct selling and credit expenses in accordance with section 773(a)(6)(C) of the Act. Finally, we deducted home market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B)(i) of the Act.

With regards to URE, we calculated NV based on packed, ex-factory, or delivered prices to home market customers. We made adjustments, where appropriate, to URE's reported home market sale price for billing adjustments and rebates.⁸¹ We also made deductions, where appropriate, for movement expenses (*e.g.*, foreign inland freight from distribution warehouse to the customer, and inland insurance), pursuant to section 773(a)(6)(B)(ii) of the Act. In addition, we made deductions for credit expenses in accordance with section 773(a)(6)(C) of the Act. Finally, we deducted home market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B)(i) of the Act.

When comparing U.S. sales with home market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in 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 the subject merchandise.⁸²

X. CURRENCY CONVERSION

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415(a), based on the exchange rates in effect on the date of the U.S. sales as certified by the Federal Reserve Bank. The exchange rates are available on the Enforcement and Compliance web site at <http://enforcement.trade.gov/exchange/index.html>.

⁸¹ See URE Prelim Analysis Memo at 2-4.

⁸² See 19 CFR 351.411(b).

XI. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

☒

Agree

☐

Disagree

X

James Maeder

Signed by: JAMES MAEDER

James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations