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Administrative Review
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August 27, 2021

MEMORANDUM TO: Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Results of the 2019-2020 Administrative Review of the Antidumping Duty Order on Certain Crystalline Silicon Photovoltaic Products from Taiwan

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I. SUMMARY

The Department of Commerce (Commerce) analyzed the case briefs and letter in lieu of a case brief submitted by interested parties in the 2019-2020 administrative review of the antidumping duty (AD) order on certain crystalline silicon photovoltaic products (solar products) from Taiwan. As a result of our analysis, we have made changes from the *Preliminary Results* for the Inventec Solar Energy Corporation (ISEC) and E-TON Solar Tech Co., Ltd. single entity (ISEC/E-TON entity).[1] We made no changes from the *Preliminary Results* with respect to United Renewable Energy Corporation (URE). We recommend that you approve the position described in the "Discussion of the Issues" section of this memorandum. Below are the issues in this administrative review for which we received comments from interested parties:

A. ISEC/E-TON Issues

Comment 1: Whether Commerce Made a Clerical Error in the Normal Value Calculation in Certain Instances for Certain Control Number (CONNUM) Models
Comment 2: Whether to Attribute Certain U.S. sales to ISEC or its Customer Pursuant to the Knowledge Test
Comment 3: Whether Commerce Should Collapse ISEC and E-TON into a Single Entity

[1] *See Certain Crystalline Silicon Photovoltaic Products from Taiwan: Preliminary Results; Preliminary Intent To Rescind and Partial Rescission of Antidumping Duty Administrative Review; and Preliminary Determination of No Shipments; 2019-2020*, 86 FR 22630 (dated April 29, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

B. General Issues

Comment 4: Name Correction for Certain Canadian Solar Companies
Comment 5: Whether to Include an Additional Case Number to Liquidation and Cash Deposit Instructions with Respect to URE

II. BACKGROUND

On April 29, 2021, the Commerce published the *Preliminary Results* of the administrative review of the antidumping duty (AD) order on solar products from Taiwan for the period February 1, 2019, through January 31, 2020.[2] The review covers twenty-nine companies.[3] The ISEC/E-TON entity and URE are the mandatory respondents.[4]

On April 23, 2021, Commerce released draft liquidation instructions and cash deposit instructions for issuance following the final results of the instant review,[5] and on April 30, 2021, Commerce released partial rescission instructions with respect to Inventec Energy Corporation (IEC).[6] Commerce invited parties to comment on these instructions in their case briefs for consideration for the final results of this review.

On May 24, 2021, ISEC requested Commerce to extend the deadlines for case and rebuttal briefs by 10 days, and on May 25, 2021.[7] Commerce extended the deadlines for case and rebuttal briefs to June 8, 2021 and June 15, 2021, respectively.[8]

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[2] *See Preliminary Results*.
[3] The twenty-nine companies are: 1) AU Optronics Corporation (AU); 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 Limited.; 8) Canadian Solar Manufacturing (Changshu), Inc.; 9) Canadian Solar Manufacturing (Luoyang), Inc.; 10) Canadian Solar Solutions Inc.; 11) EEPV CORP.; 12) E-TON Solar Tech. Co., Ltd. ; 13) Hainan Yingli New Energy Resources Co., Ltd.; 14) Hengshui Yingli New Energy Resources Co., Ltd.; 15) Inventec Energy Corporation; 16) Inventec Solar Energy Corporation; 17) Kyocera Mexicana S.A. de C.V.; 18) Lixian Yingli New Energy Resources Co., Ltd.; 19) Motech Industries, Inc.; 20) Shenzhen Yingli New Energy Resources Co., Ltd.; 21) Sunengine Corporation Ltd.; 22) Sunrise Global Solar Energy; 23) Tianjin Yingli New Energy Resources Co., Ltd.; 24) TSEC Corporation; 25) United Renewable Energy Co., Ltd.; 26) Vina Solar Technology Co., Ltd. (Vina Solar); 27) Win Win Precision Technology Co., Ltd.; 28) Yingli Energy (China) Co., Ltd.; and 29) Yingli Green Energy International Trading Company Limited. We rescinded the review with respect to five companies in the *Preliminary Results*: 1) Gintech Energy Corporation; 2) Neo Solar Power Corporation; 3) Sino-American Silicon Products Inc.; 4) Solartech Energy Corporation; 5) Mega Sunergy Co., Ltd.
[4] *See* Memorandum, "2019-2020 Antidumping Duty Administrative Review of Certain Crystalline Silicon Photovoltaic Products from Taiwan: Respondent Selection," dated June 3, 2020 (Respondent Selection Memorandum).
[5] *See* Memorandum, "2019-2020 Administrative Review of Certain Crystalline Silicon Photovoltaic Products from Taiwan: Draft Customs Instructions," dated April 23, 2021 (Commerce's Draft Customs Instructions).
[6] *See* Memorandum, "Draft Customs Instructions: Partial Recission Instructions for Inventec Energy Corporation," dated April 30, 2021.
[7] The original deadlines for the case and rebuttal briefs were June 1, 2021, and June 8, 2021, respectively. *See* ISEC's Letter, Certain Crystalline Silicon Photovoltaic Products from Taiwan: Extension Request for Briefing Schedule," dated May 24, 2021.
[8] *See* Memorandum, "Administrative Review of Certain Crystalline Silicon Photovoltaic Products from Taiwan: Extension of Deadlines for Case and Rebuttal Briefs," dated May 25, 2021.

On June 8, 2021, we received timely-filed case briefs from ISEC, JA Solar International Limited (JA Solar), and URE,[9] and a timely-filed letter in lieu of a case brief from the Canadian Solar companies.[10] We received no rebuttal briefs. As stated above, we made changes to the weighted-average dumping margin with respect to the ISEC/E-TON entity based on comments from ISEC, and revised the non-selected weighted-average dumping rate. Furthermore, we revised Commerce's draft customs instructions to include, with respect to URE, an additional case number to be associated with URE exports of subject merchandise during the period of review (POR).[11]

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.

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.

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[9] *See* ISEC's Letter, "Certain Crystalline Silicon Photovoltaic Products from Taiwan: Case Brief," dated June 8, 2021 (ISEC's Case Brief); *see also* JA Solar's Letter, "Antidumping Duty Administrative Review of Certain Crystalline Silicon Photovoltaic Products from Taiwan: Case Brief," dated June 8, 2021 (JA Solar's Case Brief); and URE's Letter, "Certain Crystalline Silicon Photovoltaic Products from Taiwan: Case Brief," dated June 8, 2021 (URE's Case Brief).

[10] The Canadian Solar companies are: (1) Canadian Solar Inc.; (2) Canadian Solar International Limited.; (3) Canadian Solar Manufacturing (Changshu), Inc.; (4) Canadian Solar Manufacturing (Luoyang), Inc.; and (5) Canadian Solar Solutions Inc. (collectively, Canadian Solar). *See* Canadian Solar's Letter, "Certain Crystalline Silicon Photovoltaic Products from Taiwan (2019-2020 Review): Letter in Lieu of Case Brief of Canadian Solar," dated June 8, 2021 (Canadian Solar's In-Lieu-Of Case Brief).

[11] *See* Commerce's Draft Customs Instructions.

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).[12] 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. FINAL DETERMINATION OF NO SHIPMENTS

In the *Preliminary Results*, Commerce determined that AU, the Canadian Solar companies, and Vina Solar had no shipments of subject merchandise during the POR. We received no comments from interested parties and have not received any information to contradict our preliminary finding. Therefore, we continue to find that AU, the Canadian Solar companies, and Vina Solar had no shipments of subject merchandise during the POR. Consistent with our practice, we have completed the review with respect to these companies and will issue the appropriate liquidation instructions to U.S. Customs and Border Patrol (CBP) based on these final results.[13]

V. PARTIAL RESCISSION OF ADMINISTRATIVE REVIEW

Commerce preliminarily determined that Inventec Energy Corporation (IEC) ceased to exist prior to the POR, and that IEC made no shipments of subject merchandise during the POR.[14] On this basis, Commerce stated its intention to rescind this administrative review with respect to IEC.[15] For these final results, Commerce continues to find that IEC ceased to exist prior to the POR and made no shipments during the POR. Therefore, we have rescinded this administrative review with respect to IEC pursuant to 19 CFR 351.213(d)(3).

VI. CHANGES SINCE THE *PRELIMINARY RESULTS*

Based on a review of the record and comments received from interested parties, Commerce made one change to the estimated weighted-average dumping margin from the *Preliminary Results* related to a clerical error that is discussed in Comment 1, below. Specifically, we inadvertently doubled the normal value for certain CONNUM models, in instances in which ISEC made sales of the same models in different currencies in the same month.

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[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); *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).
[13] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).
[14] *See Preliminary Results* PDM at 7.
[15] *Id.*

VII. DISCUSSION OF THE ISSUES

Comment 1: Whether Commerce Made a Clerical Error in the Normal Value Calculation in Certain Instances for Certain Control Number (CONNUM) Models

ISEC's Comment

- Commerce inadvertently doubled the normal value for certain CONNUM models, in instances in which ISEC made sales of the same models in different currencies in the same month. The error was caused by a procedure in Commerce's "ME Macros" program which was meant to address sales data fields with missing values. Commerce should eliminate this programming to resolve the error.[16]

No other party commented on this issue.

Commerce's Position: We agree with ISEC that Commerce's "ME Macros" program contained an error, as described by ISEC. Therefore, for the final results, we have made the correction as described by ISEC for the final results.[17]

Comment 2: Whether To Attribute Certain U.S. Sales to ISEC or its Customer Pursuant to the Knowledge Test

ISEC's Comment

- Commerce excluded U.S. sales to a certain ISEC customer from ISEC's U.S. sales, stating 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." However, ISEC has provided extensive documentary evidence demonstrating actual knowledge of the U.S. destination at the time of sale, based on both written and oral communications during the course of the relevant negotiations. ISEC had at least constructive knowledge of the U.S. destination of the merchandise, which is sufficient for Commerce's knowledge test.[18]
- ISEC and its customer agreed, prior to the sales, that ISEC would ship solar cells to a third country for the assembly of solar modules, which would subsequently be delivered by the customer to the U.S. These shipments began in July 2019, and the contracts indicating the U.S. destination began in September 2019, and continued through the POR. ISEC submitted "WeChat" communications from March 8, 2019 between itself and its customer showing that by June 2019 ISEC was aware of the ultimate U.S. destination of the solar cells after module assembly. ISEC has provided affidavits from itself and the customer which state that they had agreed in June 2019 that the U.S. was the final destination of the solar cells at issue. ISEC has submitted purchase orders attached to emails from the customer that show that the customer informed ISEC that the modules

[16] *See* ISEC's Case Brief at 2-6.
[17] *See* Memorandum, "Final Results Analysis Memorandum for the Inventec Solar Energy Corporation and E-TON Solar Tech. Co., Ltd. entity," dated concurrently with this memorandum (ISEC Final Analysis Memo).
[18] *See* ISEC's Case Brief at 6 and 7.

containing the solar cells would be delivered to the U.S. Finally, documentation on the record supports that the solar cells at issue entered the U.S.[19]

- The specific language in the purchase contracts that Commerce construed as an expression of uncertainty regarding the destination does not negate ISEC's actual knowledge of the U.S. destination. The purchase contract language is only a reflection of ISEC's in-house attorney's editing and has nothing to do with any supposed uncertainty of the ultimate destination. The contract language merely reflected the ISEC attorney's use of cautious wording, and did not alter the concrete agreement reached by the parties in June 2019 that the products sold by ISEC were destined for the U.S.[20]
- Taken together, the communications and documents on the record support that ISEC either knew or should have known, at the time of sale, that the subject merchandise was destined for the U.S. In *DRAMS from Korea*,[21] Commerce found that respondents had satisfied the knowledge test when the statements of a sales manager to Commerce were corroborated by CBP entry information. The record of this administrative review contains far more proof of ISEC's knowledge at the time of sale of the ultimate U.S. destination than the evidence in *DRAMS from Korea*.[22]

JA Solar's Comment

- Commerce's determination to exclude the sales at issue from ISEC's margin calculation misapplies the statute, ignores copious record evidence demonstrating ISEC's knowledge of the ultimate destination at the time of the sale, and contradicts decades of departmental and court precedent on this issue. Both ISEC and its customer have submitted statements and evidence demonstrating that ISEC had knowledge of the ultimate destination of its sales at the time of the sale, and that these sales can be traced from producer to U.S. customer through the sales and production records maintained by the companies. ISEC knew of the ultimate U.S. destination of the sales to this customer because the purchase contracts that the customer issued to ISEC usually contained a remark specifying that the purchased solar cells may be used to make solar modules for delivery to the U.S. by the customer or its affiliates. No independent parties submitted any information to rebut, clarify or correct ISEC's claim.[23]
- In a supplemental questionnaire, Commerce requested clarification of language in the sales contract between ISEC and its customer, as well as supporting evidence of ISEC's claim that it was aware that the sales at issue were destined for the U.S. In response, ISEC submitted signed affidavits from itself and the customer supporting the claim, as well as email and WeChat communications between staff of ISEC and its customer confirming the ultimate destination in the U.S. ISEC's customer subsequently provided evidence of the full traceability of the solar cells from ISEC's production facility to the U.S. and proof that every sale from ISEC to the customer during the POR was a sale to the U.S. market.[24]

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[19] *Id.* at 8 -10.
[20] *Id.* at 11 and 12.
[21] *See Dynamic Random Access Memory Semiconductors of One Megabit or Above from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Order in Part*, 64 FR 69694 (December 14, 1999) (*DRAMs from Korea*).
[22] *See* ISEC's Case Brief at 12 and 13.
[23] *See* JA Solar's Case Brief at 1 through 3.
[24] *Id.* at 3 through 5.

- Commerce subsequently solicited information from CBP regarding the sales at issue and ISEC's prior knowledge of the ultimate U.S. destination of these sales. The information that Commerce gathered from CBP is incomplete and insufficient. Commerce must evaluate parties' responses to questions asked in this proceeding and evidence on the record of this administrative review. ISEC provided documentary evidence to support its claim that it was aware of the U.S. destination at time of sale, and its customer provided supporting documentation to show that its purchases from ISEC were eventually sold to the U.S. market. Commerce summarily dismissed this information in the *Preliminary Results*. Commerce failed to explain how the phrasing of one sentence in a sales contract could be dispositive in determining ISEC's knowledge of the ultimate destination of its merchandise when other information on the record proves that ISEC knew its merchandise was destined for the U.S. In the final results, Commerce must engage with the record to support its conclusion.[25]
- Commerce failed to find any deficiencies in ISEC's responses to Commerce's requests for information regarding the sales at issue. If Commerce found any such deficiencies, Commerce is required by statute to provide the respondent with an opportunity to remedy or explain the deficiency. Commerce failed to provide ISEC with such an opportunity, if it continues to find that the current record does not support ISEC's claim of knowledge of the U.S. destination at the time of the sales.[26]
- ISEC's knowledge regarding the ultimate destination of its sales to its customer exceeds Commerce's thresholds of both "knowing" and "having reason to know" the ultimate destination of its sales under Commerce's knowledge test. The CIT in *INA Walzlager* has determined that "{t}he only way to determine actual knowledge is through an admission of the respondent."[27] In this case, ISEC has acknowledged throughout the course of the administrative review that it was aware that the solar cells at issue were destined for the U.S. market. Beyond mere admission, ISEC has provided proof of its prior knowledge in the form of affidavits and correspondence between the staff of ISEC and the customer; pursuant to *INA Walzlager*, Commerce need only base its determination on such documentation in the absence of an admission from the respondent. The supposed uncertainty expressed in the sales contract, which Commerce relied upon in the *Preliminary Results*, is moot.[28]
- The CIT in *Wonderful Chemical* determined that an exporter that claimed not to have knowledge of the ultimate destination of merchandise "should have known" (*i.e.*, had constructive knowledge) based on documents provided to the exporter by its customer that expressly stated that the merchandise was destined for the U.S.[29] Thus, respondents need not be certain of the ultimate destination of its merchandise to impute knowledge that merchandise is destined for the U.S. In other cases, the CIT has found that indirect evidence such as sales statistics, market monitoring, the characteristics of the customer, labeling, and special-order shipping practices can impute knowledge of the U.S.

[25] *Id.* at 6 through 9.
[26] *Id.* at 9 and 10.
[27] *See INA Walzlager Schaeffler KG v. United States*, 957 F. Supp. 251, 265 (CIT 1997).
[28] *See* JA Solar's Case Brief at 10 through 12.
[29] *See Wonderful Chem. Indus. v. United States*, 259 F. Supp. 2d 1273, 1279 (CIT 2003) (citing *Allegheny Ludlum Corp. v. United States*, 215 F. Supp. 2d 1322, 1331 (CIT 2000)).

destination.[30] In the present case, the ultimate U.S. destination has been confirmed by every party in the supply chain, and the evidence of the producer's knowledge is unrebutted. Commerce cannot throw out this evidence because of boilerplate purchase contract language.[31]

- There is no indication that Congress intended Commerce to set a high bar to pass the knowledge test, and allowance for constructive knowledge suggests the opposite. Leaving out reported ISEC sales from the dumping margin calculation when overwhelming record evidence confirms that the subject merchandise entered the U.S. is contrary to Congress' plain intent. Doing so leads to the application of the country-wide rate to the merchandise as if the review of ISEC never happened.[32]

No other party commented on this issue.

Commerce's Position: We disagree with ISEC's and JA Solar's arguments to include the sales at issue in the final margin calculation for ISEC. Although ISEC's customer clearly sold the subject merchandise (*i.e.*, solar modules) to the U.S., we find that that the record lacks documentary support for ISEC's claim that it had knowledge at the time of the sale to the customer, that the merchandise at issue was destined for the United States. Accordingly, we have continued to treat all of ISEC's subject merchandise sales to the customer at issue that were subsequently shipped to the U.S. during the POR, as the customer's sales, and not ISEC's sales. Because we regard this subject merchandise as the customer's downstream sales to the U.S., we have excluded these sales for purposes of calculating ISEC's final dumping margin.[33]

Section 772(a) of the Act states that "export price" is 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…" (emphasis added). The term "first sold" in the Act means that export price must be based on the first sale by a party in the sales chain with knowledge of the U.S. destination. Accordingly, Commerce's policy is that "company-specific assessment rates must be based on the sales information of the first company in the commercial chain that knew, at the time the merchandise was sold, that the merchandise was destined for the United States."[34] By identifying the party that had knowledge of the destination of the subject merchandise, Commerce determines which entity was the potential "price discriminator" that may have engaged in the dumping, and hence which company's dumping margin should apply to a given entry.[35] Commerce applies the "knowledge

[30] *See LG Semicon Co., Ltd. v. United States*, 23 Ct. Int'l Trade 1074 (1999); *see also Yue Pak v. United States*, 1996 Ct. Int'l Trade LEXIS 83 (1996).
[31] *See* JA Solar's Case Brief at 12 - 15.
[32] *Id.* at 15.
[33] *See* ISEC Final Analysis Memo.
[34] *See Antidumping & Countervailing Duty Proceedings: Assessment of Antidumping Duties (Reseller Notice)*, 63 FR 55361, 55362 (October 15, 1998).
[35] *See Antidumping & Countervailing Duty Proceedings: Assessment of Antidumping Duties (Reseller Policy)*, 68 FR 23954, 23957 (May 6, 2003).

test" to identify the first party in a transaction chain with knowledge of the U.S. destination.[36] In evaluating the knowledge test, Commerce considers both a seller's actual knowledge (knew) and imputed knowledge (should have known) of the final destination of the subject merchandise at the time of sale.[37] A general knowledge or belief on the part of the first party in the sales chain that the next party generally sells some products to the U.S. would not meet this standard.[38] A producer's speculation that the goods might ultimately have been destined for export to the U.S. is also insufficient for a knowledge determination.[39] Commerce's standard for the knowledge test is to consider documentary or physical evidence that the producer knew or should have known its goods were destined for the U.S., because this type of evidence is more probative, reliable, and verifiable than statements or declarations.[40] In prior cases, Commerce considered whether the relevant party prepared or signed any certificates, shipping documents, contracts, or other such documents stating that the destination of the merchandise was the U.S.[41] Commerce also considers whether the relevant party used any packaging or labeling stating that the merchandise was destined for the U.S.[42] Additionally, in prior cases, Commerce examined whether any unique features, brands, or specifications of the merchandise indicated that the destination was the U.S.[43]

Due to the fact that solar cells are an intermediary product in the production of solar panels, yet both cells and panels are covered by the scope of the order, the application of the knowledge test to cell manufacturers in Taiwan has been central to this proceeding since the investigation.[44] In the *Final Determination*, Commerce excluded a large portion of the reported sales of the mandatory respondents Gintech Energy Corporation (Gintech) and Motech Industries, Inc.

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[36] *See Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 18733 (April 21, 2017), and accompanying Issues and Decision Memorandum (IDM) at 17.

[37] *See Grain-Oriented Electrical Steel from the Czech Republic: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 58324 (September 29, 2014), and accompanying IDM at Comment 2.

[38] *See Final Results of Antidumping Duty Administrative Review: Certain In-Shell Raw Pistachios from Iran*, 70 FR 7470 (February 14, 2005) (*Pistachios from Iran*), and accompanying IDM at Comment 1; *see also Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium from the Russian Federation*, 66 FR 49347 (September 27, 2001), and accompanying IDM at Comment 3.

[39] *See Pistachios from Iran* IDM at Comment 1.

[40] *See Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Final Results of Antidumping Duty Administrative Review*, 76 FR 36086 (June 21, 2011), and accompanying IDM at 5.

[41] *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Synthetic Indigo from the People's Republic of China*, 64 FR 69727 (December 14, 1999), unchanged in *Synthetic Indigo from the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 25706 (May 3, 2000).

[42] *See Certain Pasta from Italy: Termination of New Shipper Antidumping Duty Administrative Review*, 62 FR 66602 (December 19, 1997).

[43] *See, e.g., GSA, S.R.L. v. United States*, 77 F. Supp. 2d 1349 (CIT 1999). The CIT upheld Commerce's finding that Company A knew the merchandise at issue was destined for the U.S. because Company A prepared the P-1 certificate, required for entry into the U.S. and which had imprinted at the top "For Certificate IPR Exports of Pasta to the USA"; Company A manufactured the labeling and packaging for the merchandise with the imprint: "Imported by Racconto, Melrose Park, IL 60160"; different package sizes were used for sales to the U.S. versus sales to Europe; and different brands were sold in the U.S. from those sold in Canada.

[44] *See Certain Crystalline Silicon Photovoltaic Products from Taiwan: Final Determination of Sales at Less Than Fair Value,* 79 FR 76966 (December 23, 2014), and accompanying IDM at Comments 3, 4 and 18 (*Final Determination*).

because of the lack of documentary evidence of knowledge at the time of sale, such that another respondent argued that Commerce should have revisited its respondent selection based on sales quantity.[45] Additionally, in the *Final Determination*, Commerce stated that "the belief of Gintech's employees that the modules, laminates or panels would eventually be destined for the United States is also not a satisfactory basis to impute knowledge."[46] Sworn statements made well after the time of the specific sales at issue were not relevant to the analysis of whether the Taiwan cell producer Gintech had reason to know at the time of the sale that specific sales of subject merchandise were destined for the U.S.[47] We stated that it was Commerce's practice to "give greater consideration to physical evidence and documentation prepared at the time of a transaction than to unsubstantiated statements or declarations that may be in the best interest of the investigated company sourcing those statements."[48]

We agree that the record is complete regarding the subject merchandise at issue. While JA Solar argues that Commerce should have allowed ISEC to remedy deficiencies in the record, there is no deficiency in the factual information supporting the first party with knowledge of U.S. sales for these transactions, and Commerce made its determination based on substantial evidence. The essential facts are clear on the record, and these facts do not support ISEC's contention that it actually knew, or should have known, that the U.S. was the ultimate destination of the merchandise at issue, at the time of sale or prior to it. Contrary to the facts of *INA Walzlager*, the record in this case shows that ISEC's own statements made prior to the sales amount to an admission that it did not have such knowledge prior to the sales or at the time of the sales, and that the first party that did have such unambiguous knowledge was its customer.[49]

Generally, the facts are as follows. ISEC and its customer communicated with each other via instant messaging, discussing the transactions, and specifically mentioning the U.S. destination.[50] Subsequently, ISEC and the customer began negotiations on a contract, and they exchanged several drafts.[51] A key issue in these negotiations was whether or not, with certainty, the destination of ISEC's solar cells would be the U.S. market.[52] At the end of the negotiations, the contract terms agreed upon by parties deliberately left ambiguous the ultimate destination of the merchandise, even though no other possible destination was named.[53] Although ISEC claims that this contract language is not meaningful, the negotiated language that ISEC officials required in the contract indicates that ISEC really did not know where the solar cells would ultimately go.[54] Such knowledge is the essence of Commerce's knowledge test.

The additional evidence provided by ISEC, specifically the sworn statements of prior knowledge of employees that were made expressly to respond to our requests for information in this

[45] *Id.* at Comment 3.
[46] *Id.* at Comment 4.
[47] *Id.*
[48] *Id.*
[49] *See* ISEC August 24, 2020 SAQR at Exhibit SA-ISEC-5; *see also* ISEC October 5, 2020 S2QR at 9-12.
[50] *Id.*
[51] *Id.*
[52] *Id.*
[53] *See* ISEC July 16, 2020 AQR at Exhibit A-2; *see also* ISEC August 24, 2020 SAQR at Exhibit SA-ISEC-5.
[54] *See* ISEC August 24, 2020 SAQR at Exhibit SA-ISEC-5; *see also* ISEC October 5, 2020 S2QR at 11.

administrative review,[55] are the same type of self-serving statements that we refused to consider as valid evidence of knowledge in the investigation of this proceeding, when such statements were presented to Commerce at verification by the respondent Gintech.[56] The memories of employees, even as sworn statements, are not documentary evidence of knowledge of the destination.

Copious documentation was submitted to support that the merchandise at issue was made into solar panels in a third country and sold to the U.S.[57] However, as explained above, whether or not the merchandise entered the U.S. market is not the issue at hand, but rather, which entity set the price for the U.S. market (*i.e.*, who is the "price discriminator"). The factual information submitted to the record does not shed any light on the answer to this question. Additionally, JA Solar is mistaken regarding its claim that Commerce made an independent inquiry with CBP to obtain additional facts on this issue. The entry document requests to which JA Solar refers[58] were undertaken as a follow up to Vina Solar Technology Co., Ltd's (Vina Solar) claim of no shipments. In response to Vina Solar Technology's no-shipments claim, we requested entry documents as we stated we would do in response to such claims during respondent selection.[59] The result of the inquiry was that Commerce found no information to contradict Vina Solar's claim that it did not sell subject merchandise to the U.S. during the POR.[60]

ISEC cites *DRAMS from Korea,* in which Commerce imputed knowledge to a respondent with the statements of an employee corroborated by CBP information. In the *Final Determination*, we addressed *DRAMS from Korea*, stating that our decision in that case was on evidence from CBP corroborating an employee's statements against the respondent's own interests.[61] In this segment of the proceeding, the facts are essentially the same as those of the *Final Determination* rather than *DRAMs from Korea*: the affidavits submitted by ISEC are self-serving statements made in response to Commerce's requests for information, long after the sales were completed. JA Solar cites *Wonderful Chemical,* arguing that the documentary evidence that Commerce relied upon to impute knowledge in that case is similar to the supporting documentation submitted by ISEC. In the *Final Determination*, we noted that in *Wonderful Chemical,* the record contained "Certificates of Origin and Fumigation, which explicitly stated that the exports were destined for the United States."[62] The record of this review does not contain similar, unambiguous, documentary evidence at the time of sales or prior to it, that each sale at issue was

[55] *See* ISEC August 24, 2020 SAQR at Exhibit SA-ISEC-5.
[56] *See Final Determination* at Comment 4.
[57] *See* JA Solar's Letter, "Antidumping Duty Administrative Review of Certain Crystalline Silicon Photovoltaic Products from Taiwan, POR 2/1/19 -1/31/20: Clarification of lnventec Supplemental Questionnaire," dated August 31, 2020; *see also* JA Solar's letter, "Antidumping Duty Administrative Review of Certain Crystalline Silicon Photovoltaic Products from Taiwan, POR 2/1/19 – 1/31/20: Clarification of Receipt of Entry Documents," dated April 6, 2021.
[58] *See* Memorandum, "Notification of Receipt of U.S. Entry Documents," dated March 30, 2021.
[59] *See* Memorandum, "2019-2020 Antidumping Duty Administrative Review of Certain Crystalline Silicon Photovoltaic Products from Taiwan: Respondent Selection," dated June 3, 2020 at 6.
[60] *See Preliminary Results* PDM at II. Background ("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. We have preliminarily determined that the documentation does not contain evidence of shipments by Vina Solar during the POR.").
[61] *See Final Determination* at Comment 4.
[62] *Id.*

destined for the U.S. As described above, the record is clear and it indicates the opposite, that ISEC reiterated its uncertainty prior to the sales regarding the ultimate destination of these solar cells.

Therefore, we disagree with ISEC's arguments that the supporting documentation it has submitted, and that JA Solar has submitted, support that ISEC had knowledge prior to and at the sales that the U.S. was the ultimate destination of these solar cells. Rather, the facts support the exact opposite conclusion: its customer for these sales had "first knowledge" of the U.S. destination, and the customer was the first company in the sales chain that "first sold" the subject merchandise for exportation to the United States. Accordingly, for these final results, we have continued to exclude these sales in ISEC's final margin calculation.

Comment 3: Whether Commerce should collapse ISEC and E-TON into a single entity.

ISEC's Comment

- In the *Preliminary Results*, Commerce collapsed ISEC and E-TON into a single entity, however Commerce's practice, as shown in *Welded Line Pipe from Korea*, has been to not collapse previously affiliated entities that are not affiliated at the end of the POR.[63] Because E-TON ceased business operations in May 2019 and was dissolved on April 23, 2020, it did not exist and was effectively not affiliated with ISEC throughout the entire POR.
- Commerce's collapsing analysis regarding whether a significant "potential" for manipulation exists is necessarily forward-looking. Commerce stated in the *Preliminary Results* that "(t)he Preamble underscores the importance of considering the possibility of future manipulation: 'a standard based on the potential for manipulation focuses on what may transpire in the future.'" Commerce has not explained how there could be any future manipulation between ISEC and E-TON when both of the entities have stopped production and sales of solar products.
- Additionally, (1) although both ISEC and E-TON were within the Inventec Group, they did not cross-own each other's shares; (2) since E-TON ceased operations in May 2019, it does not manufacture identical or similar products nor does it have the capability to do so; (3) although ISEC and E-TON had common directors/supervisors, the companies did not have any shared directors or managers because E-TON ceased operations; (4) when E-TON existed, the companies operated completely independently, and did not share employees, facilities or sales information; and (5) ISEC and E-TON had minimal business transactions with each other during the POR.

No other party commented on this issue.

Commerce's Position: We disagree with ISEC that E-TON's dissolution during the POR obviates our collapsing analysis. Commerce's regulations state that "the United States has a 'retrospective' assessment system under which final liability for antidumping and countervailing duties is determined after merchandise is imported. Although duty liability may be determined

[63] *See, e.g., Welded Line Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016,* 83 FR 33919 (July 18, 2018) (*Welded Line Pipe from Korea*), and accompanying IDM at Comment 6.

in the context of other types of reviews, the most frequently used procedure for determining final duty liability is the administrative review procedure under section 751(a)(1) of the Tariff Act of 1930, as amended."[64] Our affiliation and collapsing analysis in the *Preliminary Results* relied on factual information submitted by ISEC and E-TON which pertained to the POR, and was therefore consistent with all analyses that Commerce performed to complete this administrative review. Although ISEC contends that it is Commerce's practice not to collapse entities that cease operations during the POR, Commerce has in fact collapsed entities in such circumstances, including in prior reviews of this proceeding.[65] Thus, for these final results, we continue to find that ISEC and E-TON were affiliated, and should be collapsed into a single entity for the POR, February 1, 2019, through January 31, 2020.

Section 771(33)(E) of the Act establishes that any 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 are considered affiliated. We found in the *Preliminary Results*[66] that, based on the information that ISEC submitted to the record, ISEC owned 5 percent or more of shares of E-TON during the POR; on this basis Commerce preliminarily determined that ISEC and E-TON are affiliated pursuant to section 771(33)(E) of the Act. Additionally, section 771(33)(F) of the Act establishes that two or more persons directly or indirectly controlling, controlled by, or under common control with, any person, are considered affiliated. We found in the *Preliminary Results*[67] that, based on the information that ISEC submitted to the record, ISEC and E-TON reported that they had shared officers during the POR.[68] Due to these shared officers, we found that ISEC and E-TON were each in a position to control and potentially affect decisions concerning the production, pricing, or cost of the subject merchandise produced and/or sold by each other. Consequently, Commerce preliminarily determined that ISEC and E-TON were under common control due to the shared officers during the POR and are therefore, affiliated pursuant to section 771(33)(F) of the Act. No other information on the record contradicts these facts, and we find no basis to change this determination for the final results. Thus, on the basis of sections 771(33)(E) and (F) of the Act, we continue to find that ISEC and E-TON are affiliated, and that the first collapsing criteria (affiliation) pursuant to 19 CFR 351.401(f)(1) is satisfied.

Regarding the collapsing criteria of 19 CFR 351.401(f)(l), similarity of production facilities, in the *Preliminary Results*[69] we found that record evidence indicated that ISEC and E-TON both

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[64] *See* 19 CFR 351.213.

[65] *See Certain Crystalline Silicon Photovoltaic Products from Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2018-2019*, 84 FR 70943 (December 26, 2019), and accompanying PDM at "Section VI. Discussion of the Methodology; A. Collapsing of Affiliated Companies," unchanged in *Certain Crystalline Silicon Photovoltaic Products from Taiwan: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments*; 2018-2019, 85 FR 16615 (March 24, 2020); *see also Certain Crystalline Silicon Photovoltaic Products from Taiwan: Final Results of Antidumping Duty Administrative Review; 2014-2016*, 82 FR 31555 (July 7, 2017), and accompanying IDM at Comment 3 (in which an entity was collapsed with two other entities for a single day of the POR).

[66] *See Preliminary Results* PDM at 5-6; *see also* Memorandum, "2019-2020 Administrative Review of Certain Crystalline Silicon Photovoltaic Products from Taiwan: Affiliation and Single Entity Treatment Memorandum," dated April 23, 2021 (Prelim Affiliation and Collapsing Memo) at 3.

[67] *See Preliminary Results* PDM at 6; *see also* Prelim Affiliation and Collapsing Memo at 4.

[68] *See* August 24, 2020 SAQR at SA-1 and Exhibit SA-ISEC-1A.

[69] *See Preliminary Results* PDM at 6*; see also* Prelim Affiliation and Collapsing Memo at 5-6.

produced subject merchandise during the POR.[70] Accordingly, ISEC and E-TON had production facilities for producing identical or similar products and would not need to retool their facilities in order to restructure manufacturing to produce subject merchandise. No other information on the record contradicts these facts, and we find no basis to change this determination for the final results. Therefore, we continue to find that, for the final results, the production criterion under 19 CFR 351.401(f)(l) has been met.

Regarding the collapsing criteria of 19 CFR 351.401(f)(2), ISEC is correct that the potential for respondents to manipulate price or product in the future is often a key part of Commerce's analysis.[71] As we stated in the *Preamble*, the statute does not require evidence of actual control; it is the ability to control that is dispositive.[72] However, considerations regarding a respondent's actual ability to manipulate price or production in the past (*i.e.*, retrospectively in the POR) have always been of equal significance to our analysis.[73] Our analysis pursuant to 19 CFR 351.401(f)(2) in the *Preliminary Results*[74] was focused on analyzing ISEC's ability to control E-TON, and manipulate E-TON's price and production during the POR. For these final results, we will continue to base our analysis on the facts submitted to the record that pertain to the POR, February 1, 2019 through January 31, 2020.

In specific regard to the three criteria listed in 19 CFR 351.401(f)(2), in the *Preliminary Results*,[75] first, we analyzed the level of common ownership, and found that ISEC owned a significant percentage of shares in E-TON, well above the percentage required to find ISEC and E-TON to be affiliated.[76] The percentage of common ownership was high enough to support a determination that no other entity with ownership shares in E-TON could control E-TON through share ownership, to the degree that ISEC could establish such control,[77] pursuant to 19 CFR 351.401(f)(2)(i). No other information on the record contradicts these facts, and we find no basis to change this determination for the final results.

Second, in specific regard to 19 CFR 351.401(f)(2)(ii), in the *Preliminary Results*,[78] we analyzed managerial overlap between ISEC and E-TON. ISEC and E-TON provided lists of their corporate officers and managers.[79] Due to the existence of shared officers between ISEC and E-TON during the POR,[80] we found that there was managerial overlap between ISEC and E-TON pursuant to 19 CFR 351.401(f)(2)(ii). No other information on the record contradicts these facts, and we find no basis to change this determination for the final results.

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[70] *See* July 16, 2020 AQR at A-1 ("During the POR, ISEC only produced and sold solar cells.") and A-5 ("Before E-TON ceased its business operations in May 2019, E-TON produced and sold solar cells in the home market.").
[71] *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27346 (May 19, 1997) (*Preamble*).
[72] *See Preamble* at 27298.
[73] *See Preamble* at 27346 ("With respect to the suggestion that the regulations clarify that the Department will consider future manipulation as well as actual manipulation in the past, we agree that the Department must consider future manipulation.").
[74] *See* Prelim Affiliation and Collapsing Memo at 6-7.
[75] *Id.* at 6.
[76] *See* October 5, 2020 SAQR at Exhibit SA2-ISEC-1.
[77] *Id.*
[78] *See* Prelim Affiliation and Collapsing Memo at 6.
[79] *See* August 24, 2020 SAQR at SA-1 and Exhibit SA-ISEC-1A.
[80] *Id.*

Third, and finally, in the *Preliminary Results*,[81] we relied on the existence of certain home market sales[82] between ISEC and E-TON, and also purchases between ISEC and E-TON of polysilicon wafers and paste used in the production of subject merchandise during the POR,[83] to support the criteria of 19 CFR 351.401(f)(2)(iii) (directing Commerce to consider whether operations are intertwined). Based on the record evidence of these sales and purchases, we found that there are intertwined operations between ISEC and E-TON. While ISEC characterizes these sales and purchases as minimal (*i.e.*, not significant enough to be considered for this analysis), the sales and purchases were reported as related party transactions in ISEC's 2019 audited financial statements.[84] Moreover, the fact that the purchases at issue were only fulfilled to clear E-TON's raw material inventory when it ceased operations[85] does not reduce their significance. On these facts, the level of sales and purchases between ISEC and E-TON is high enough to be regarded by Commerce as at least minimally significant. We find no basis to change this determination for the final results.

For the final results, we continue to find that ISEC and E-TON were affiliated during the POR, had common ownership, managerial overlap, and intertwined operations during the POR, and thus could manipulate price and production. Therefore, we continue to find that the criteria outlined in 19 CFR 351.401(f) have been met, and we have collapsed ISEC and E-TON and assigned the collapsed entity's assessment rate to all entries made of ISEC and E-TON subject merchandise during the POR in these final results. However, the cash deposit will remain specific to ISEC, given the fact that E-TON ceased to exist during the POR.

Comment 4: Name Correction for Certain Canadian Solar Companies

Canadian Solar's Comments:

- Commerce made typographical errors affecting the names of certain Canadian Solar companies in the *Preliminary Results*[86] and in Commerce's draft liquidation instructions.[87] Specifically, the companies "Canadian Solar International, Ltd." and "Canadian Solar Solution Inc." should be "Canadian Solar International Limited" and "Canadian Solar Solutions Inc."[88]

No other party commented on this issue.

Commerce's Position: We agree with Canadian Solar. For the final results, we have corrected the above-mentioned names in the *Federal Register* notice dated concurrently with this memorandum to reflect the correct names, "Canadian Solar International Limited" and "Canadian Solar Solutions Inc."

[81] *See* Prelim Affiliation and Collapsing Memo at 7.
[82] *Id.* at Exhibit SA-ISEC-8 (Revised Exhibit A-3).
[83] *See* ISEC/E-TON's Letter, "Certain Crystalline Silicon Photovoltaic Products from Taiwan-Section B, C, and D Questionnaire Responses," dated August 5, 2020 at Exhibit D-4.
[84] *See* August 24, 2020 SAQR at SA-3, SA-4 and Exhibit SA-ISEC-4.
[85] *See* October 5, 2020 SAQR at 14 and Exhibit SA2-ISEC-2.
[86] *See Preliminary Results* at 22632.
[87] *See* Draft Customs Instructions at 6.
[88] *See* Canadian Solar's In-Lieu-Of Case Brief at 2.

Comment 5: Whether to Include an Additional Case Number to Liquidation and Cash Deposit Instructions with Respect to URE

URE's Comments

- The draft liquidation instructions with respect to URE only include one case number for URE (*i.e.*, A-583-853-023), which does not cover all entries produced and exported by URE during the POR.[89]
- Commerce determined in *URE's Changed Circumstances Review*[90] that URE is the successor-in-interest to Gintech, Neo Solar, and Solartech,[91] and assigned URE's antidumping company-specific case number on August 2, 2019.[92] Thus, exports of subject merchandise imported to the U.S. prior to August 2, 2019 should have been entered under the country-wide case number (*i.e.,* A-583-853-000).
- To account for entries of subject merchandise attributed to URE that were imported to the U.S. prior to August 2, 2019, Commerce should amend its draft liquidation instructions with respect to URE to include both the company-specific and country-wide case numbers.[93]

Commerce's Position: We agree with URE, in part. For the purposes of its cash deposit and liquidation instructions to CBP, Commerce issues company-specific case numbers for Taiwan producers and/or exporters of subject merchandise that ship subject merchandise from Taiwan to the U.S. The POR for this administrative review is February 1, 2019, through January 31, 2020, and on August 2, 2019 (*i.e.,* after the beginning of the instant POR), Commerce created a company-specific case number for URE. In its draft cash deposit and liquidation instructions released for comment at the *Preliminary Results*,[94] Commerce only instructed CBP to liquidate entries of and collect cash deposits for subject merchandise produced and exported by URE under its company-specific case number during the POR.[95] However, entries of subject merchandise attributed to URE that were exported to the U.S. between February 1, 2019, through August 1, 2019, would not have been imported under URE's company-specific case number and would not be covered by Commerce's draft liquidation instructions, because the company-specific case number did not exist during this time period (*i.e.,* the period starting after the beginning of the POR and ending on the last day before the creation of URE's company-specific case number). Rather, these entries would have been entered during this period under the case numbers applicable to Gintech, Neo Solar, and Solartech, which receive a different rate than entries of subject merchandise attributable to URE.

To ensure that CBP liquidates the appropriate entries of and collects the correct cash deposits for subject merchandise produced and/or exported by URE during the entire POR, Commerce will amend its draft liquidation instructions to instruct CBP to liquidate entries of subject merchandise exported by Gintech, Neo Solar, and Solartech that were entered, or withdrawn

[89] *See* Draft Customs Instructions at 1; URE's Case Brief at 2.
[90] *See Certain Crystalline Silicon Photovoltaic Products from Taiwan: Notice of Final Results of Antidumping Duty Changed Circumstances Review*, 84 FR 37836 (August 2, 2019) (*URE's Changed Circumstances Review*).
[91] *Id.*
[92] *See* URE's Case Brief at 2.
[93] *Id.*
[94] *See* Draft Customs Instructions.
[95] *See* Commerce's Draft Customs Instructions at 3 and 10.

from warehouse, for consumption during the POR, but prior to August 2, 2019, under the company-specific case numbers A-583-853-001, A-583-853-003, A-583-853-013- and A-583-853-036; beginning on that date until the end of the POR, we will instruct CBP to liquidate such entries under successor-in-interest URE's company-specific case number, A-583-853-023.

VIII. RECOMMENDATION

We recommend approving the above position. If this position is accepted, we will publish the final results in the *Federal Register* and will notify the U.S. International Trade Commission of the final results of this review.

☒	☐
Agree	Disagree

8/27/2021

X

Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance