



A-570-979
Changed Circumstances Review
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February 18, 2016

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the
Antidumping Duty Changed Circumstances Review of Crystalline
Silicon Photovoltaic Cells, Whether or Not Assembled Into
Modules, from the People's Republic of China: Neo Solar Power
Corporation and DelSolar Co., Ltd.

I. SUMMARY

We analyzed comments in this changed circumstances review (“CCR”) and continue to determine that Neo Solar Power Corporation (“Neo Solar”), a Taiwanese exporter of subject merchandise produced by DelSolar (Wujiang) Ltd. (“DelSolar Wujiang”), is not the successor-in-interest to Taiwanese exporter, DelSolar Co., Ltd. (“DelSolar Taiwan”) for purposes of the antidumping duty (“AD”) order on crystalline silicon photovoltaic cells, whether or not assembled into modules, (“solar cells”) from the People’s Republic of China (“PRC”). We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum.

II. BACKGROUND

On December 7, 2012, the Department of Commerce (the “Department”) published the AD order on solar cells from the PRC in the *Federal Register*, in which it applied a separate rate to the exporter-producer combination of DelSolar Taiwan and DelSolar Wujiang.¹ On February 4, 2015, Neo Solar, DelSolar Taiwan, and DelSolar Wujiang (hereinafter, “Respondents”) requested that the Department conduct an expedited CCR pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (“the Act”), and 19 CFR 351.216(b) to determine that Neo Solar

¹ 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) (“Order”). The rate applied to the exporter-producer combination of DelSolar Taiwan and DelSolar Wujiang was 24.48 percent.

is the successor-in-interest to DelSolar Taiwan for purposes of the *Order*.² In their CCR Request, Respondents explained that after the issuance of the *Order*, DelSolar Taiwan merged with, and became part of, Neo Solar in May 2013.³

On March 18, 2015, the Department initiated a CCR with respect to the AD order on solar cells from the PRC, pursuant to section 751(b)(1) of the Act, and 19 CFR 351.216.⁴ As indicated in the *Initiation Notice*, additional information was required before reaching a preliminary finding. Accordingly, we did not combine the preliminary results of review with the initiation notice.⁵

The Department published its *Preliminary Results* on October 21, 2015, in which it preliminarily determined that Neo Solar is not the successor-in-interest to DelSolar Taiwan.⁶ Respondents timely submitted a case brief, and SolarWorld Americas, Inc., petitioner in the underlying investigation (“Petitioner”), timely submitted a rebuttal brief following the *Preliminary Results*.⁷ On December 9, 2015, the Department extended the deadline for the final results of review by 30 days, until January 12, 2016.⁸ Respondents’ November 9, 2015 case brief was rejected from the record of this review because it contained untimely filed new factual information.⁹ On January 6, 2016, Respondents timely resubmitted their case brief, after removing the untimely new factual information.¹⁰ On January 8, 2016, the Department extended the deadline for the final results of review by an additional 30 days, until February 11, 2016.¹¹ As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the recent closure of the Federal Government. All deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the final results of this review is now February 18, 2016.¹²

² See CCR Request.

³ *Id.* at 2.

⁴ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Initiation of Changed Circumstances Review*, 80 FR 15568 (March 24, 2015) (“*Initiation Notice*”).

⁵ *Id.* at 15569.

⁶ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Preliminary Results of the Changed Circumstances Review*, 80 FR 63743 (October 21, 2015) (“*Preliminary Results*”) and accompanying Preliminary Decision Memorandum.

⁷ See Submission from Neo Solar, DelSolar Taiwan, and DelSolar Wujiang, “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China,” dated November 9, 2015; Submission from Petitioner, “Crystalline Silicon Photovoltaic Cells, Whether Or Not Assembled Into Modules, from the People’s Republic of China: Rebuttal Brief of SolarWorld Americas, Inc.,” dated November 16, 2015 (“*Petitioner Rebuttal Brief*”).

⁸ See Letter from the Department, “Changed Circumstances Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Extension of Final Deadline,” dated December 9, 2015.

⁹ See Memorandum to the File, “Removal of Document from Record,” dated January 12, 2016.

¹⁰ See Submission from Neo Solar, DelSolar Taiwan, and DelSolar Wujiang, “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China,” dated January 6, 2016 (“*Neo Solar Case Brief*”).

¹¹ See Letter from the Department, “Changed Circumstances Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Extension of Final Deadline,” dated January 8, 2016.

¹² See Memorandum to the Record from Ron Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, regarding “Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas,” dated January 27, 2016.

III. SCOPE OF THE ORDER

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

This order covers 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.

Merchandise under consideration may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, modules, laminates, panels, building-integrated modules, building-integrated panels, or other finished goods kits. Such parts that otherwise meet the definition of merchandise under consideration are included in the scope of this order.

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

Modules, laminates, and panels produced in a third-country from cells produced in the PRC are covered by this order; however, modules, laminates, and panels produced in the PRC from cells produced in a third-country are not covered by this order.

Merchandise covered by this order is currently classified in the Harmonized Tariff Schedule of the United States (“HTSUS”) under subheadings 8501.61.0000, 8507.20.80, 8541.40.6020, 8541.40.6030, and 8501.31.8000. Although these HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

IV. DISCUSSION OF ISSUES

In making a successor-in-interest determination in an AD proceeding, the Department examines several factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base.¹³ While no single factor or

¹³ See, e.g., *Pressure Sensitive Plastic Tape from Italy: Preliminary Results of Antidumping Duty Changed Circumstances Review*, 75 FR 8925, 8925 (February 26, 2010), unchanged in *Pressure Sensitive Plastic Tape From Italy: Final Results of Antidumping Duty Changed Circumstances Review*, 75 FR 27706 (May 18, 2010).

combination of these factors will necessarily provide a dispositive indication of a successor-in-interest relationship, the Department will generally consider the new company to be the successor to the predecessor company if the resulting operations of the successor are not materially dissimilar to those of its predecessor.¹⁴ Thus, if the record demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates in all material respects as the same business entity as the predecessor company, the Department will treat the successor company the same as the predecessor company and assign the new company the cash deposit rate of its predecessor.¹⁵

Comment 1: Management and Ownership

Respondents' Arguments:

- The Department relied too heavily on the management factor in its *Preliminary Results*, which is inconsistent with its prior practice in other CCR determinations involving mergers or acquisitions with similar changes in management.
- When a smaller company is acquired and merged into a larger company, the operations of the smaller company can still continue to function as they did before the merger.
- In prior CCR determinations, including *Polyester Staple Fiber from Korea*,¹⁶ *Lined Paper from India*,¹⁷ *TRBs from the PRC 2015 CCR*,¹⁸ and *Brass Sheet and Strip from Canada*,¹⁹ the Department has recognized that changes in ownership, management, and directors are to be expected in a merger and do not by themselves preclude a successor-in-interest finding.
- The present case is distinguishable from other CCRs where the Department has found that a company is not a successor-in-interest to another company, including *Polychloroprene Rubber from Japan*,²⁰ and *TRBs from the PRC 2008-2009 AR*,²¹ because

¹⁴ See, e.g., *Brake Rotors From the People's Republic of China: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 70 FR 69941, 69941 (November 18, 2005).

¹⁵ See *Fresh and Chilled Atlantic Salmon from Norway; Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979, 9980 (March 1, 1999).

¹⁶ See *Certain Polyester Staple Fiber From the Republic of Korea: Preliminary Results of Changed Circumstances Review*, 79 FR 62595 (October 20, 2014) ("*Polyester Staple Fiber from Korea*"), and accompanying Preliminary Decision Memorandum, unchanged in *Certain Polyester Staple Fiber From the Republic of Korea: Final Results of Changed Circumstances Review*, 79 FR 76301 (December 22, 2014).

¹⁷ See *Certain Lined Paper Products From India: Notice of Final Results of Antidumping Duty Changed Circumstances Review*, 80 FR 18373 (April 6, 2015) ("*Lined Paper from India*"), and accompanying Issues and Decision Memorandum.

¹⁸ See *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Notice of Final Results of Changed Circumstances Review*, 80 FR 19070 (April 9, 2015) ("*TRBs from the PRC 2015 CCR*"), and accompanying Issues and Decision Memorandum.

¹⁹ See *Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review*, 57 FR 20460 (May 13, 1992) ("*Brass Sheet and Strip from Canada*").

²⁰ See *Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review: Polychloroprene Rubber from Japan*, 69 FR 61796 (October 21, 2004) ("*Polychloroprene Rubber from Japan*"), unchanged in *Notice of Final Results of Antidumping Duty Changed Circumstances Review: Polychloroprene Rubber from Japan*, 69 FR 67890 (November 22, 2004).

²¹ See *Tapered Roller Bearings from the People's Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review*, 76 FR 3086 (January 19, 2011) ("*TRBs from the PRC 2008-2009 AR*").

in those cases changes in management were accompanied by changes to production facilities, supplier relationships, or customer base.

- In the *Preliminary Results*, the Department overstated the significance of changes in ownership while disregarding the aspects of ownership that remained the same after the merger. Delta Electronics was the largest shareholder of both DelSolar Taiwan and post-merger Neo Solar, which reflects a continuity of ownership. Additionally, because the merger was effectuated through a share-swap, all of DelSolar Taiwan's shareholders remained shareholders of post-merger Neo Solar.
- The Department also overstated the significance of changes in management while disregarding the aspects of management that remained the same after the merger. For example, DelSolar Wujiang's operations were overseen by its Taiwan parent company, *i.e.*, DelSolar Taiwan before the merger and Neo Solar after the merger. Additionally, while post-merger Neo Solar did not use the same department names and management titles as pre-merger DelSolar Taiwan, post-merger Neo Solar and pre-merger DelSolar Taiwan had many of the same functional departments with similar purposes.
- The Department incorrectly concluded that there were significant changes between DelSolar Taiwan's board of directors and post-merger Neo Solar's board of directors without considering the director seats of both companies that were designated for representatives of shareholder Delta Electronics, Inc. The Department also did not take into account another of post-merger Neo Solar's director seats that was held by a shareholder of DelSolar Taiwan, or that some of the directors of DelSolar Taiwan and post-merger Neo Solar were independent directors, rather than company insiders.

Petitioner's Rebuttal:

- Record evidence confirms that the ownership, board of directors, and management of DelSolar Taiwan differed significantly from the management of post-merger Neo Solar. Further, significant changes occurred in the board of directors for the wholly owned producer DelSolar Wujiang. Evidence also supports finding significant differences in the ownership and management of pre-merger and post-merger DelSolar Wujiang.
- Regarding ownership, the Department appropriately considered ownership percentages and shareholder identities before and after the merger.
- Regarding management, the merger of DelSolar Taiwan and Neo Solar resulted in a complete shift in management as only one manager of DelSolar Taiwan continued as a manager of post-merger Neo Solar. Regarding the companies' boards of directors, the Department properly considered changes to the board of directors of post-merger Neo Solar and wholly owned producer DelSolar Wujiang, focusing not only on numbers but also on titles and job functions.
- The fact that the Department found certain factors to be more important in its analysis than other factors does not mean that the Department improperly overemphasized these factors. The Department's *Preliminary Results* were consistent with the Department's precedent in CCR proceedings, in which the Department considers changes in corporate structure, management composition, board of directors, and job functions as a result of a merger.
- The prior CCR cases cited by Respondents are distinguishable from the present case and do not support a finding that post-merger Neo Solar is the successor-in-interest to

DelSolar Taiwan. Moreover, the Department previously found that a company was not a successor-in-interest in *Diamond Sawblades from the PRC*,²² based on similar facts to those presented in the present case.

Department Position:

The Department considers changes in management and ownership in making a successor-in-interest determination, in addition to other factors including, but not limited to, changes in production facilities, supplier relationships, and customer base.²³ Because the specific facts differ in each successor-in-interest CCR, the Department must weigh and consider these factors on a case-by-case basis.²⁴ In the *Preliminary Results* of the present case, we considered the changes in ownership and management that occurred following the merger of DelSolar Taiwan and Neo Solar, including reported changes to shareholders, boards of directors, and managers.²⁵ Although we placed importance on these changes in ownership and management when rendering our preliminary results, we disagree with Respondents' contentions that we relied too heavily on the management and ownership factor and that our preliminary decision was inconsistent with prior Department practice.

With respect to ownership, Respondents assert that Delta Electronics was the largest shareholder of both DelSolar Taiwan and post-merger Neo Solar, stating:

Although Delta Electronics may no longer have had a controlling ownership share in post-merger Neo Solar as it did with pre-merger DelSolar Taiwan, Delta Electronics still held enough of a significant shareholding of post-merger Neo Solar to reflect a significant continuity in the ownership of pre-merger DelSolar Taiwan to post-merger Neo Solar.²⁶

While record evidence does, in fact, show that Delta Electronics remained the largest shareholder of both DelSolar Taiwan and post-merger Neo Solar,²⁷ we find that the change in its share percentage, as well as its loss of a controlling ownership share in post-merger Neo Solar,²⁸ supports a finding of significant changes in ownership. In addition, Respondents argue that because the merger between DelSolar Taiwan and Neo Solar involved a share swap, all of DelSolar Taiwan's shareholders remained shareholders of post-merger Neo Solar. Respondents explained in their CCR request that DelSolar Taiwan and Neo Solar agreed to a 100 percent

²² See *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results and Termination, in Part, of the Antidumping Duty Changed Circumstances Review*, 76 FR 64898 (October 19, 2011) ("*Diamond Sawblades from the PRC*"), and accompanying Issues and Decision Memorandum.

²³ See, e.g., *Pressure Sensitive Plastic Tape from Italy: Preliminary Results of Antidumping Duty Changed Circumstances Review*, 75 FR 8925, 8925 (February 26, 2010), unchanged in *Pressure Sensitive Plastic Tape From Italy: Final Results of Antidumping Duty Changed Circumstances Review*, 75 FR 27706 (May 18, 2010).

²⁴ See, e.g., *Lined Paper from India* and accompanying Issues and Decision Memorandum at Comment 1.

²⁵ See *Preliminary Results* and Preliminary Decision Memorandum at 5-6.

²⁶ See Respondents' Case Brief at 11-12.

²⁷ See CCR Request at Exhibits 2 and 4.

²⁸ See Memorandum to the File from Erin Kearney, International Trade Analyst, "Memorandum of Business Proprietary Information Accompanying the Issues and Decision Memorandum," dated concurrently with this memorandum ("Final BPI Memorandum") at Note 1.

share swap whereby each DelSolar Taiwan share was exchanged for 0.735 shares of Neo Solar.²⁹ However, Respondents did not identify all shareholders on the record of this CCR,³⁰ and while Respondents argue that all DelSolar Taiwan shareholders remained shareholders of post-merger Neo Solar, they have not submitted evidence to support that assertion.³¹ Furthermore, even if this were true, the change in overall ownership percentages for the largest shareholder post-merger is still indicative of significant changes in ownership.

With respect to management, the Department preliminarily found significant changes in the management of DelSolar Taiwan as a result of its merger with Neo Solar, as well as in the management of pre- and post-merger DelSolar Wujiang.³² However, Respondents argue that certain aspects of management did not change as a result of the merger. They assert that DelSolar Wujiang's operations were overseen by its parent company both before and after the merger. However, we note that DelSolar Wujiang's parent company changed entirely as a result of the merger, from DelSolar Taiwan to Neo Solar, and that operational oversight of DelSolar Wujiang changed accordingly. Specifically, Respondents stated that before the merger, "DelSolar Wujiang had only a vice president that had on-site operational oversight," and that "DelSolar Wujiang's president remained in Taiwan with DelSolar Taiwan."³³ Respondents stated that after the merger, "DelSolar Wujiang had only a president (and no vice president) who had on-site operational oversight."³⁴ Respondents' argument also fails to account for the personnel appointed to those positions, a fact that is clearly relevant to the question of whether material management changes occurred following DelSolar Taiwan's merger with Neo Solar.³⁵ Thus, we continue to find that the evidence on the record shows a significant change in the management of DelSolar Wujiang as a result of the merger.³⁶

Respondents further contend that DelSolar Taiwan and post-merger Neo Solar's operations had many of the same functional departments with similar purposes, despite post-merger Neo Solar not maintaining the same department names and management titles as DelSolar Taiwan. We agree that the internal organization charts of both DelSolar Taiwan and pre-merger Neo Solar contain functional departments that appear fairly similar (with apparently similar purposes) as the departments identified in the internal organization chart of post-merger Neo Solar, with certain exceptions.³⁷ However, we do not find that this evidence outweighs the significant differences in the management of post-merger Neo Solar, as compared with that of DelSolar Taiwan, as explained in the *Preliminary Results* and noted above.³⁸ Furthermore, these changes in management include managerial positions in specific departments that appear to be related to the production and/or sale of subject merchandise.³⁹

²⁹ See CCR Request at 2-3 and Exhibit 2.

³⁰ *Id.* at Exhibit 4.

³¹ See Final BPI Memorandum at Note 2.

³² See *Preliminary Results* and Preliminary Decision Memorandum at 5-6.

³³ See Supplemental Response at 2-3; see also Final BPI Memorandum at Note 3.

³⁴ *Id.*

³⁵ See Final BPI Memorandum at Note 3 for additional information.

³⁶ *Id.* at Note 3.

³⁷ *Id.* at Note 4.

³⁸ See *Preliminary Results* and accompanying Preliminary Decision Memorandum at 5; see also Final BPI Memorandum at Notes 5-6.

³⁹ See Final BPI Memorandum at Note 7.

Finally, Respondents contend that, with respect to changes to the board of directors, the Department considered only changes in individual board members and failed to consider that certain seats were designated for shareholder representatives or independent directors. However, even after considering the designation of certain seats, we continue to find significant differences in the boards of directors of post-merger Neo Solar, as well as post-merger DelSolar Wujiang, when compared to pre-merger DelSolar Taiwan and DelSolar Wujiang.⁴⁰

Respondents cited several prior Department successor-in-interest determinations to show that the Department has recognized that changes in ownership, management, and directors are to be expected in a merger and do not by themselves preclude a successor-in-interest finding.⁴¹ However, we find that the facts in each of these cases differ significantly from the facts of the present case, as described below. Given that successor-in-interest inquiries are highly fact-specific, we find these factual differences to be meaningful.

In *Polyester Staple Fiber from Korea*, the Department found that, although the successor company's board of directors was significantly different from that of the predecessor as a result of a merger, its key officers and management related to the production, marketing, and sale of subject merchandise were virtually identical to the predecessor company's officers and management. The Department also found in *Polyester Staple Fiber from Korea* that the two members of the board of directors most involved in day-to-day activities maintained their positions on the board of directors and continued to hold managerial positions after the relevant ownership changes.⁴² Furthermore, the record in that case contained evidence supporting finding a lack of material changes in production facilities, supplier relationships, and customer base.⁴³ Thus, in that case the Department found the successor company to be the successor-in-interest for antidumping duty purposes. However, here the record indicates that significant changes occurred when comparing the pre-and post-merger companies' board of directors, as well as its officers and management, as described above and in the *Preliminary Results*. In addition, record evidence in the present case does not support a finding that no material changes occurred in supplier relationships and customer base.⁴⁴ As discussed in Comments 3 and 4, below, post-merger Neo Solar reported that it had not yet purchased, acquired, sold, or exported any subject merchandise, so we are unable to determine that the customer base and supplier relationships of DelSolar Taiwan were materially unchanged after the merger of DelSolar Taiwan and Neo Solar.

In *Lined Paper from India*, the Department found that the successor company's entire ownership differed from that of the predecessor company, but that the two former owners of the predecessor company both continued to be employed in their prior management positions of CEO and president with the successor company, and continued to oversee the day-to-day operations of the successor company, including production, procurement, marketing, and price-setting activities.⁴⁵ Additionally, the record contained evidence supporting a lack of material changes in production

⁴⁰ *Id.* at Notes 8-11.

⁴¹ Neo Solar, DelSolar Taiwan, and DelSolar Wujiang cite *Polyester Staple Fiber from Korea*, *Lined Paper from India*, *TRBs from the PRC 2015 CCR*, and *Brass Sheet and Strip from Canada*.

⁴² See *Polyester Stable Fiber from Korea* and accompanying Preliminary Decision Memorandum at 3-5.

⁴³ *Id.* at 5-6.

⁴⁴ See Comments 3 and 4, below, for additional information.

⁴⁵ See *Lined Paper from India* and accompanying Issues and Decision Memorandum at 7-8.

facilities, supplier relationships, and customer base.⁴⁶ Therefore, in *Lined Paper from India*, the Department found the successor company to be the successor-in-interest for antidumping duty purposes. The record of the present case does not demonstrate similar facts relating to managers, directors, or owners of DelSolar Taiwan maintaining pre-merger positions or continuing to oversee day-to-day operations of post-merger Neo Solar with respect to decisions regarding production, procurement, marketing, or price setting. The record of the present case also does not demonstrate continuity of the customer base or supplier relationships of DelSolar Taiwan after its merger with Neo Solar.⁴⁷

In *TRBs from the PRC 2015 CCR*, where the Department found the successor company to be the successor-in-interest for antidumping duty purposes, it found that there were no immediate changes to the ownership structure or number of board members of the successor company, as compared with the predecessor company, in the period after an ownership change, and that while certain managers changed in the same time period, there was no evidence that it was due to the change in ownership.⁴⁸ The Department also found that the changes in ownership, management, and directors that did eventually occur were not significant enough to find the company was not a successor-in-interest, and found a lack of any significant changes in production, supplier relationships, or customer base.⁴⁹ Furthermore, the underlying context of *TRBs from the PRC 2015 CCR* differs significantly from the present case. In *TRBs from the PRC 2015 CCR*, the Department examined changes to a company that occurred over a period of nearly twenty years.⁵⁰ The Department found that many of the management/board changes observed during that time period were due to gradual changes occurring in the ordinary course of business; the Department did not find these changes to be attributable to the ownership changes that triggered the successorship inquiry.⁵¹ In contrast, in the present case, evidence on the record shows that significant changes occurred to DelSolar Taiwan's ownership, board of directors, and management, and that these significant changes were the result of DelSolar Taiwan's merger with Neo Solar, as described above and in the *Preliminary Results*. Furthermore, while we agree that there were no significant changes to the production facilities relating to subject merchandise, the record of the present case does not provide evidence that the supplier relationships and customer base of post-merger Neo Solar were substantially unchanged from those of DelSolar Taiwan.⁵²

In *Brass Sheet and Strip from Canada*, the Department found that the successor company was essentially the same business operation as the predecessor company and thus was the successor-in-interest, since production facilities, essential personnel, customers, and management were all transferred from the predecessor company to the successor company.⁵³ We find that the record of the present case does not demonstrate that post-merger Neo Solar is essentially the same business operation as DelSolar Taiwan, due to the significant changes in ownership, directors,

⁴⁶ *Id.* at 9-12.

⁴⁷ See Comments 3 and 4, below, for additional information.

⁴⁸ See *TRBs from the PRC 2015 CCR* and accompanying Issues and Decision Memorandum at 12-16.

⁴⁹ *Id.*

⁵⁰ *Id.* at 2-9.

⁵¹ *Id.* at 14-16 (describing changes), 11 (underscoring the need to distinguish “incremental” from “rapid” changes, in light of the length of time at issue).

⁵² See Comments 3 and 4, below, for additional information.

⁵³ See *Brass Sheet and Strip from Canada* at Comment 2.

and management following the merger,⁵⁴ as well as the lack of evidence demonstrating that post-merger Neo Solar's supplier relationships and customer base are substantially unchanged from those of DelSolar Taiwan.⁵⁵

Respondents argue that unlike the instant CCR, in *Polychloroprene Rubber from Japan* and *TRBs from the PRC 2008-2009 AR* (in which the Department found that successorship did not exist between the companies under review), changes in management were accompanied by changes to production facilities, supplier relationships, or customer base. However, as noted by Petitioner, the Department makes successor-in-interest determinations on a case-by-case basis, after examining and analyzing the totality of the evidence on the record of each individual CCR.⁵⁶ The fact that the Department found that successorship did not exist between companies in other successor-in-interest CCRs based on a combination of changes that may differ from those observed here does not prevent the Department from finding a lack of successorship based on the significant changes evidenced on the record of the present case.

Notwithstanding the fact that we analyze successor-in-interest inquiries on a case-by-case basis, we agree with Petitioner that the Department examined a similar set of facts in *Diamond Sawblades from the PRC* and found that the requesting company was not a successor-in-interest to the company it acquired. In *Diamond Sawblades from the PRC*, the Department found that the record indicated that no material changes to production facilities occurred as a result of the acquisition, but that significant changes occurred to the board of directors and management.⁵⁷ Additionally, the Department found that the record was incomplete with respect to supplier relationships and customer base, such that the Department was unable to conclude that for these two factors, the requesting company was materially the same as the company it acquired.⁵⁸

Respondents also argue that when a smaller company is acquired and merged into a larger company, the operations of the smaller company can still continue to function as they did before the merger. However, the requestor of the CCR must demonstrate that the operations of the predecessor company have actually continued to function materially the same as they did before the merger with respect to the production and sale of subject merchandise. In this case, the record evidence instead shows that significant changes in the management and ownership of DelSolar Taiwan occurred when it merged with Neo Solar.⁵⁹ After considering comments from Respondents and Petitioner, as a result of the above analysis, we continue to find that significant changes in ownership, management, and board of directors occurred following the merger of DelSolar Taiwan and Neo Solar.

⁵⁴ See *Preliminary Results* and Preliminary Decision Memorandum at 5-6; see also CCR Request at 5-6 and Exhibits 4, 6, and 7; Supplemental Response at Exhibits 3 and 5.

⁵⁵ See Comments 3 and 4, below, for additional information.

⁵⁶ See, e.g., *Diamond Sawblades from the PRC* and accompanying Issues and Decision Memorandum at Comment II.A.

⁵⁷ *Id.* at Comment II.C.

⁵⁸ *Id.*

⁵⁹ See *Preliminary Results* and Preliminary Decision Memorandum at 5-6; see also CCR Request at 5-6 and Exhibits 4, 6, and 7; Supplemental Response at Exhibits 3 and 5.

Comment 2: Production Facilities

Respondents' Arguments:

- The Department incorrectly disregarded the fact that the production facilities before and after the merger were the same, and instead found that the significance of this fact was outweighed by the changes in management.

Petitioner did not comment on this factor.

Department Position:

We disagree with Respondents' contention that the Department incorrectly disregarded the production facility factor in its successor-in-interest analysis for the *Preliminary Results*. The Department examined all of the factors for a successor-in-interest determination, and made a determination based on the totality of the circumstances. Although we continue to find that the record shows no significant changes to the production facility related to subject merchandise (*i.e.*, the DelSolar Wujiang facility) as a result of the merger, the facts on the record indicate significant changes to the management (including changes in operational oversight) of the DelSolar Wujiang production facility, as described in Comment 1. In conducting its analysis, the Department considers whether the record demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates in all material respects the same as the predecessor company.⁶⁰ Thus, even though the record demonstrates that the DelSolar Wujiang production facility was not significantly changed as a result of the merger of DelSolar Taiwan and Neo Solar, we find changes in its management significant because this can have a significant effect on the way the production facility operates. Hence, contrary to Respondents' claim, the Department did not disregard the production facility factor but considered the totality of the circumstances in its analysis, including both the production facility factor and whether significant changes occurred with respect to the other successor-in-interest factors related to the production facility.

Comment 3: Supplier Relationships

Respondents' Arguments:

- In not finding a continuity of supplier relationships with respect to subject merchandise for post-merger Neo Solar and DelSolar Taiwan,⁶¹ the Department incorrectly ignored the context of the CCR request, namely that Neo Solar seeks a determination that it is the successor-in-interest to DelSolar Taiwan so that it may use the producer-exporter combination separate rate currently assigned to DelSolar Wujiang and DelSolar Taiwan.

⁶⁰ See *Fresh and Chilled Atlantic Salmon from Norway; Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979, 9980 (March 1, 1999).

⁶¹ See Preliminary Decision Memorandum at 8 (“because the companies reported that post-merger Neo Solar has not yet purchased, acquired, sold, or exported any subject merchandise, we cannot determine from the record whether post-merger Neo Solar’s supplier relationships and customer base have remained materially the same as those of DelSolar Taiwan.”).

Within this context, it is clear that Neo Solar's supplier of subject merchandise will continue to be DelSolar Wujiang, which was DelSolar Taiwan's supplier of subject merchandise.

- With respect to the subject merchandise, the supplier relationships of DelSolar Taiwan are consistent with the supplier relationships of post-merger Neo Solar. DelSolar Taiwan and post-merger Neo Solar only sold subject merchandise⁶² that was produced by DelSolar Wujiang. Neither DelSolar Taiwan nor post-merger Neo Solar purchased, sold, or exported merchandise under consideration that was produced by any suppliers other than DelSolar Wujiang.
- The Department incorrectly concluded that the lack of purchases of the merchandise under consideration and sale or export of that merchandise to the United States by Neo Solar made it impossible to make a determination with respect to supplier relationships. Instead, the Department should consider that the fact that both DelSolar Taiwan and post-merger Neo Solar did not sell merchandise under consideration that was produced by any PRC supplier other than DelSolar Wujiang shows material similarity between DelSolar Taiwan's and post-merger Neo Solar's supplier relationships.

Petitioner's Rebuttal:

- The burden to demonstrate that Neo Solar is the successor-in-interest to DelSolar Taiwan lies with Neo Solar; however, Neo Solar failed to substantiate its claim that the suppliers of DelSolar Taiwan and post-merger Neo Solar remained the same.
- Although Respondents argue that only DelSolar Wujiang can be the supplier of subject merchandise in order for either DelSolar Taiwan or post-merger Neo Solar to qualify for the existing separate rate, all of post-merger Neo Solar's supplier relationships are relevant to the successor-in-interest analysis. However, Respondents failed to provide the information necessary for the Department to make a determination regarding the supplier relationships of post-merger Neo Solar and DelSolar Taiwan.
- Respondents argue that Neo Solar is committed to sell and export subject merchandise that was produced only by DelSolar Wujiang. However, this commitment is not equivalent to record evidence, and because post-merger Neo Solar has not yet purchased, acquired, sold, or exported any subject merchandise, there is no record evidence to support the claim that post-merger Neo Solar's supplier relationships are materially similar to those of DelSolar Taiwan.

Department Position:

In the *Preliminary Results*, the Department found that because post-merger Neo Solar reported that it had not yet purchased, acquired, sold, or exported any subject merchandise, the Department was unable to determine whether the supplier relationships of post-merger Neo Solar have remained materially the same as those of DelSolar Taiwan with respect to subject

⁶² Respondents used the term "subject merchandise" here and yet they stated on the record that Neo Solar had not yet sold or exported any merchandise subject to the *Order*. Because Respondents reported that Neo Solar did sell merchandise under consideration that was produced by DelSolar Wujiang to third countries, we have interpreted "subject merchandise," as used here, to mean the merchandise under consideration.

merchandise.⁶³ However, Respondents continue to argue that both DelSolar Taiwan and post-merger Neo Solar “only sold subject merchandise that was produced by DelSolar Wujiang,” that neither DelSolar Taiwan, nor post-merger Neo Solar exported merchandise under consideration that had been produced by any other company,⁶⁴ and that the Department should therefore find material similarity between DelSolar Taiwan’s and post-merger Neo Solar’s supplier relationships. We find Respondent’s arguments unconvincing. As an initial matter, it is important to clarify that while the record indicates that post-merger Neo Solar purchased merchandise under consideration from DelSolar Wujiang and sold this merchandise to third-countries, the record also indicates that post-merger Neo Solar has not yet purchased merchandise under consideration from DelSolar Wujiang and sold this merchandise to the United States.⁶⁵ We find that post-merger Neo Solar’s supplier relationship with DelSolar Wujiang for merchandise sold to non-U.S. customers does not establish post-merger Neo Solar’s behavior with respect to the United States market.⁶⁶ Moreover, we agree with Petitioner that post-merger Neo Solar’s intention to use the existing producer-exporter combination rate in the future does not constitute evidence that post-merger Neo Solar’s supplier relationships are materially unchanged from DelSolar Taiwan’s supplier relationships.

Finally, as noted by Petitioner, the burden to build the record of a proceeding before the Department lies with the interested parties to that proceeding.⁶⁷ In this case, Respondents submitted the request for a CCR, seeking a successor-in-interest determination for DelSolar Taiwan and Neo Solar.⁶⁸ Thus, it was Respondents’ responsibility to submit the relevant information to the record in order to support their claim that Neo Solar should be considered the successor-in-interest to DelSolar Taiwan.⁶⁹ In this case, we continue to find that the record demonstrates that post-merger Neo Solar has not yet purchased, acquired, sold, or exported any subject merchandise as of the date of the CCR request and supplemental questionnaire response. As such, we find that we cannot conclude, based on the record evidence in this case, that the supplier relationships of post-merger Neo Solar are materially the same as the supplier relationships of Del Solar Taiwan with respect to merchandise under consideration sold to the United States.

⁶³ See Preliminary Decision Memorandum at 8.

⁶⁴ See Neo Solar, DelSolar Taiwan, and DelSolar Wujiang Case Brief at 21, citing the CCR Request at 7.

⁶⁵ See CCR Request at 7.

⁶⁶ *Id.*; see also Supplemental Response at 4.

⁶⁷ See, e.g., *QVD Food v. United States*, 658 F.3d 1318, 1324 (Fed. Cir. 2011) (“{T}he burden of creating an adequate record lies with {interested parties} and not with Commerce.”).

⁶⁸ See CCR Request.

⁶⁹ Though Respondents argue that requiring this information “arbitrarily penalize{s}” them for “not providing evidence that it does not possess,” we note that companies in other CCRs have been able to provide additional information in similar circumstances. See, e.g., *Lined Paper from India* (where requesting parties provided information demonstrating customer agreement to maintain existing contractual relationships after a merger); *Multilayered Wood Flooring From the People’s Republic of China: Preliminary Results of the Changed Circumstances Review of Sino-Maple (JiangSu) Co., Ltd.*, 80 FR 57576 (September 24, 2015), and accompanying Preliminary Decision Memorandum at 6-7 (unchanged in final) (where requesting parties provided information demonstrating supplier and customer agreements to maintain existing contractual relationships after a merger).

Comment 4: Customer Base

Respondents' Arguments:

- Although the Department preliminarily found that the record did not contain enough evidence to make a determination with respect to the U.S. customer base (post-merger Neo Solar had not yet sold subject merchandise to any U.S. customers), the record establishes that the merger of DelSolar Taiwan and Neo Solar had no effect on the company's sales practices.
- Moreover, the lack of sales of subject merchandise by DelSolar Taiwan during the POR of the first administrative review in this proceeding is consistent with the lack of sales of subject merchandise by Neo Solar during the time since the merger. Thus, the record demonstrates that the merger between DelSolar Taiwan and Neo Solar had no effect on the company's behavior with respect to subject merchandise sold in the United States.
- It would not be meaningful to compare the U.S. customers of subject merchandise exported by DelSolar Taiwan and produced by DelSolar Wujiang with the nonexistent U.S. customers of post-merger Neo Solar. Rather, the Department should compare the pre- and post-merger customer bases of DelSolar Taiwan and Neo Solar for third-country sales of the merchandise under consideration as this is the best available information on the record. A comparison of DelSolar Taiwan and Neo Solar's third-country sales of merchandise under consideration that was produced by DelSolar Wujiang shows significant overlap in the customers of DelSolar Taiwan and post-merger Neo Solar. After the merger, former third-country customers of DelSolar Taiwan continued to purchase a significant amount of merchandise from Neo Solar.

Petitioner's Rebuttal:

- Respondents failed to substantiate their claim that the customers of post-merger Neo Solar remained the same as those of DelSolar Taiwan.
- Respondents make an argument regarding the lack of sales of subject merchandise during the POR of the first administrative review; however, the Department's practice is to compare the business operations of the alleged successor and the alleged predecessor at the time of the most recent review of the alleged predecessor, which, in this case, is the investigation, not the first administrative review.
- The partial overlap of customers between DelSolar Taiwan and post-merger Neo Solar in non-U.S. markets is irrelevant to the Department's inquiry because the purpose of the successor-in-interest determination relates to the sale of subject merchandise in the United States.

Department Position:

In the *Preliminary Results*, the Department found that because post-merger Neo Solar reported that it had not yet purchased, acquired, sold, or exported any subject merchandise, Neo Solar did not have a U.S. customer base for subject merchandise and, thus, the Department was unable to determine whether the U.S. customer base of post-merger Neo Solar remained the same as that

of DelSolar Taiwan with respect to subject merchandise.⁷⁰ We continue to reach this same conclusion in these final results for the reasons discussed in the *Preliminary Results*. We are unconvinced by Respondents' argument that the lack of any U.S. sales of subject merchandise by DelSolar Taiwan during the first review period and Neo Solar during the post-merger period shows a material similarity between DelSolar Taiwan and post-merger Neo Solar. Rather, we find that post-merger Neo Solar's lack of any U.S. sales of subject merchandise provides the Department with insufficient evidence with which to determine material similarity in the pre- and post-merger U.S. customer bases. While we also consider customer base information during the period of investigation relevant because it relates to the time period of the sales forming the basis for granting DelSolar Wujiang and DelSolar Taiwan the combination separate rate at issue in this CCR, Respondents did not provide requested customer lists for the merchandise under consideration supplied by all manufacturers for: (1) pre-merger DelSolar Taiwan covering the period of investigation; (2) pre-merger Neo Solar covering the period of investigation; and (3) post-merger Neo Solar covering the period after its merger through the present.⁷¹

Respondents also argue that, while the third-country customer bases of DelSolar Taiwan and post-merger Neo Solar are not identical, a comparison of the customer lists shows an overlap sufficient to find that the customer bases are materially similar. In conducting its successor-in-interest analysis, the Department primarily considers changes in a company's behavior with respect to the production and sale of subject merchandise, rather than merchandise sold to non-U.S. markets. Even so, we find that a comparison of DelSolar Taiwan and post-merger Neo Solar's third-country sales of merchandise under consideration produced by DelSolar Wujiang does not show significant overlap in the customers of DelSolar Taiwan and post-merger Neo Solar, as contended by Respondents. Instead, we find that material changes have occurred in the companies' third-country customer bases which indicate that post-merger Neo Solar is not operating in materially the same way as DelSolar Taiwan with respect to customer bases.⁷²

Comment 5: Eligibility for a Separate Rate

Respondents' Arguments:

- If the Department finds that post-merger Neo Solar is materially the same business as DelSolar Taiwan based on the successor-in-interest criteria, the Department should grant post-merger Neo Solar a separate rate because post-merger Neo Solar has established that it is eligible for a separate rate.
- In the investigation in this proceeding, the Department determined that DelSolar Taiwan was entitled to a separate rate because it was a wholly market-economy-owned exporter, and the Department assigned an exporter-producer combination rate to the exporter DelSolar Taiwan and the producer DelSolar Wujiang.
- One of the most relevant circumstances in this CCR is that the market-economy exporter from the original investigation merged into another market-economy company.
- The Department assigned a separate rate to DelSolar Taiwan and DelSolar Wujiang in the investigation because the companies demonstrated the absence of government control as

⁷⁰ See Preliminary Decision Memorandum at 8.

⁷¹ *Id.*

⁷² See Final BPI Memorandum at Note 12 for additional information.

wholly market-economy owned companies. DelSolar Taiwan and DelSolar Wujiang were not assigned an individual rate based their own sales or factors of production. Because the Department only noted that DelSolar Taiwan was a wholly foreign-owned exporter, the Department never examined or analyzed DelSolar Taiwan's sourcing nor sales practices in the investigation.

- This finding of eligibility for a separate rate is the material finding from the investigation which Neo Solar and DelSolar Wujiang seek to be applied to the post-merger entity in this CCR.
- One of the factors which the Department should consider in this CCR is the effect of the merger on the exporter's status as a wholly foreign-owned market-economy company, because this was the essential decision made by the Department when granting a separate rate in the original investigation.

Petitioner Rebuttal:

- Even if the Department finds that post-merger Neo Solar meets the criteria to be treated as the successor-in-interest to DelSolar Taiwan, Post-merger Neo Solar has failed to establish that it is a wholly foreign-owned entity or that it operates free from Chinese government ownership and control. Thus, post-merger Neo Solar is not eligible for a separate rate.

Department Position:

Because we continue to find that Respondents have not demonstrated that post-merger Neo Solar operates in material respects as the same business entity as DelSolar Taiwan, with respect to ownership, management, supplier relationships, and customer base, and is therefore not the successor-in-interest to DelSolar Taiwan, we have not addressed this argument for these final results of this CCR.

V. SUMMARY OF FINDINGS

We have analyzed the comments submitted and have adopted our decision from the *Preliminary Results*. In a CCR, we generally consider a company to be the successor to another company for purposes of antidumping duty liability in a given proceeding if the resulting operations of the successor are not materially dissimilar to those of its predecessor. Given the totality of the circumstances, we find that the operations of post-merger Neo Solar are materially dissimilar to the operations of DelSolar Taiwan, and that Neo Solar operates in material respects as a different business entity than DelSolar Taiwan regarding the production and sale of subject merchandise. Accordingly, we determine that Neo Solar is not the successor-in-interest to DelSolar Taiwan for purposes of determining antidumping duty liability in this proceeding.

VI. RECOMMENDATION

We recommend applying the above methodology for these final results of the changed circumstances review, and adopting our determination from the *Preliminary Results* in these final results of review. Thus, we will instruct U.S. Customs and Border Protection to continue to suspend liquidation of entries of subject merchandise produced by DeSolar Wujiang and exported by Neo Solar at the AD cash deposit rate currently applicable to such entries, *i.e.*, the cash deposit rate of 238.95 percent assigned to the PRC-wide entity.

Agree

Disagree

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

Date