



A-570-979  
Changed Circumstances Review  
**Public Document**  
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October 15, 2015

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary 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.

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## I. SUMMARY

Neo Solar Power Corporation (“Neo Solar”), DelSolar Co., Ltd. (“DelSolar Taiwan”), and DelSolar (Wujiang) Ltd. (“DelSolar Wujiang”) requested that the Department of Commerce (“the Department”) initiate an expedited changed circumstances review (“CCR”) 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”) to determine that Neo Solar, a Taiwanese exporter of subject merchandise produced by DelSolar Wujiang, is the successor-in-interest to the Taiwanese exporter, DelSolar Taiwan.<sup>1</sup> After analyzing the information on the record of this CCR, we preliminarily determine that Neo Solar is not the successor-in-interest to DelSolar Taiwan for purposes of the AD order on solar cells from the PRC.

If these preliminary results of review are adopted in our final results of review, entries of subject merchandise produced by DelSolar Wujiang and exported by Neo Solar will be subject to the current AD cash deposit rate assigned to the PRC-wide entity (*i.e.*, 238.95 percent).

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<sup>1</sup> See Letter 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: Changed Circumstances Review Request,” dated February 4, 2015 (“CCR Request”). We note that although the request was submitted on behalf of DelSolar Taiwan, the purported predecessor company, record evidence reflects that DelSolar Taiwan no longer exists as a legal entity.



## II. BACKGROUND

On December 7, 2012, the Department published the AD order on solar cells from the PRC in the *Federal Register*.<sup>2</sup> On February 4, 2015, Neo Solar, DelSolar Taiwan, and DelSolar Wujiang 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 is the successor-in-interest to DelSolar Taiwan for purposes of the *Order*.<sup>3</sup> In their CCR Request, Neo Solar, DelSolar Taiwan, and DelSolar Wujiang explained that after the issuance of the *Order*, DelSolar Taiwan merged with, and became part of, Neo Solar in May 2013.<sup>4</sup>

On March 6, 2015, SolarWorld Americas, Inc., the petitioner in the underlying investigation of solar cells (“Petitioner”), submitted comments opposing initiation of this review, contending that Neo Solar should not be treated as the successor-in-interest to DelSolar Taiwan because Neo Solar has neither established that it operates as the same business entity as DelSolar Taiwan, nor that it is eligible for a separate rate.<sup>5</sup> Petitioner requested, in the alternative, that if the Department initiated the CCR, it should not expedite it by combining the initiation and the preliminary results, but should instead collect additional information before rendering a preliminary determination.

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.<sup>6</sup> 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.<sup>7</sup> After initiating the CCR, we solicited and received additional information from Neo Solar, DelSolar Taiwan, and DelSolar Wujiang.<sup>8</sup>

## 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.

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<sup>2</sup> See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order*, 77 FR 73018 (December 7, 2012) (“*Order*”).

<sup>3</sup> See CCR Request.

<sup>4</sup> *Id.* at 2.

<sup>5</sup> See Letter from the Petitioner, “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Comments on Neo Solar Power Corporation’s Request for a Changed Circumstances Review,” dated March 6, 2015 (“Petitioner’s Initiation Comments”).

<sup>6</sup> 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*”).

<sup>7</sup> *Id.* at 15569.

<sup>8</sup> See Letter from Howard Smith, Program Manager, Office IV, “Supplemental Questionnaire in the Changed Circumstances Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China,” dated June 4, 2015 (“Supplemental Questionnaire”); see also Letter 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 June 30, 2015 (“Supplemental Response”).

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 10,000mm<sup>2</sup> in surface area, that are permanently integrated into a consumer good whose function is other than power generation and that consumes the electricity generated by the integrated crystalline silicon photovoltaic 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. PRELIMINARY RESULTS OF THE CHANGED CIRCUMSTANCES REVIEW**

Pursuant to section 751(b)(1) of the Act, the Department will conduct a CCR upon receipt of a request from an interested party or receipt of information concerning an AD order which shows changed circumstances sufficient to warrant a review of the order. As explained above, we initiated a CCR upon finding that Neo Solar, DelSolar Taiwan, and DelSolar Wujiang submitted evidence sufficient to warrant a CCR. Since that time, Neo Solar, DelSolar Taiwan, and DelSolar Wujiang submitted additional information in support of their claim that Neo Solar is the successor-in-interest to DelSolar Taiwan. A discussion of the Department’s methodology and preliminary findings regarding the CCR request follows.

## Discussion of Methodology

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.<sup>9</sup> While no single factor or 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.<sup>10</sup> 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.<sup>11</sup>

## Successor-In-Interest Analysis

According to the CCR Request, DelSolar Taiwan merged with, and became part of, Neo Solar in May 2013, and after the merger, the merged companies operated under Neo Solar's name.<sup>12</sup> The CCR Request notes, and the record supports, that DelSolar Taiwan no longer existed after the merger was completed.<sup>13</sup> The companies stated that prior to the merger, DelSolar Wujiang was a wholly-owned subsidiary of DelSolar Taiwan (through an intermediate wholly-owned subsidiary DelSolar (HK) Ltd.), and that after the merger, DelSolar Wujiang became the wholly-owned subsidiary of Neo Solar (also through DelSolar (HK) Ltd.).<sup>14</sup> The companies also stated that DelSolar Taiwan was wholly foreign-owned and that Neo Solar remains wholly foreign-owned.<sup>15</sup>

In the CCR Request, Neo Solar, DelSolar Taiwan, and DelSolar Wujiang provided a description and numerous exhibits in support of their claim that Neo Solar is the successor-in-interest to DelSolar Taiwan, including business licenses, a merger agreement, corporate organization charts, and lists of shareholders, board members, managers, and customers.<sup>16</sup> In response to our supplemental questionnaire, Neo Solar, DelSolar Taiwan, and DelSolar Wujiang provided additional information, including management structure charts, raw material supplier lists, and updated board member and manager lists.<sup>17</sup>

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<sup>9</sup> 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).

<sup>10</sup> 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).

<sup>11</sup> See *Fresh and Chilled Atlantic Salmon from Norway: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979, 9980 (March 1, 1999).

<sup>12</sup> See CCR Request at 2-3.

<sup>13</sup> *Id.* at 3 and Exhibit 3.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> See generally *id.*

<sup>17</sup> See generally Supplemental Response.

Below, we analyze the information submitted by Neo Solar, DelSolar Taiwan, and DelSolar Wujiang in the context of the four enumerated criteria normally considered by the Department in AD successor-in-interest proceedings.

## 1. Ownership and Management

Neo Solar, DelSolar Taiwan, and DelSolar Wujiang stated that during the original period of investigation, the largest shareholder of DelSolar Taiwan was Delta Electronics, Inc.<sup>18</sup> The companies stated that after the merger, Delta Electronics, Inc. remained the largest shareholder of post-merger Neo Solar.<sup>19</sup> Additionally, the companies stated that DelSolar Taiwan wholly owned several subsidiary companies, including DelSolar Wujiang, before the merger, and that all of those subsidiary companies, including DelSolar Wujiang, became wholly owned by Neo Solar after the merger.<sup>20</sup> In the CCR Request, the companies provided a chart identifying pre-merger shareholders of DelSolar Taiwan, Neo Solar, and DelSolar Wujiang, as well as post-merger shareholders of Neo Solar and DelSolar Wujiang.<sup>21</sup> The evidence on the record reflects fairly significant changes in ownership of pre-merger DelSolar Taiwan and post-merger Neo Solar, in terms of both shareholder identities and ownership percentages.

Neo Solar, DelSolar Taiwan, and DelSolar Wujiang argued that “the management of DelSolar Taiwan did not change significantly when merged into {Neo Solar},” and that “a number of individuals who held senior management and operational positions in pre-merger DelSolar Taiwan continued to hold the same or similar positions in post-merger {Neo Solar}.”<sup>22</sup> In the CCR Request, the companies provided a chart of pre-merger managers of DelSolar Taiwan and Neo Solar, as well as a chart of post-merger managers of Neo Solar.<sup>23</sup> In the Supplemental Response, the companies provided an updated list of pre-merger managers of DelSolar Taiwan and Neo Solar and post-merger managers of Neo Solar.<sup>24</sup> These manager lists also identified managers of DelSolar Wujiang. We preliminarily find that the charts of managers submitted by Neo Solar, DelSolar Taiwan, and DelSolar Wujiang indicate that significant changes in management did, in fact, occur when DelSolar Taiwan was merged into Neo Solar, based on a comparison of the management of DelSolar Taiwan to the management of post-merger Neo Solar<sup>25</sup> and when the management of wholly-owned producer DelSolar Wujiang is examined.<sup>26</sup> Furthermore, these changes in management consist of managerial positions in departments that appear to be related to the production and/or sale of subject merchandise.<sup>27</sup>

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<sup>18</sup> See CCR Request at 5.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at Exhibit 4; see also Memorandum to the File from Erin Kearney, International Trade Analyst, “Memorandum of Business Proprietary Information Accompanying the Preliminary Decision Memorandum,” dated concurrently with this memorandum (“Preliminary BPI Memorandum”) at Note 1.

<sup>22</sup> See CCR Request at 6.

<sup>23</sup> *Id.* at Exhibit 7; see also Preliminary BPI Memorandum at Note 2.

<sup>24</sup> See Supplemental Response at Exhibit 5; see also Preliminary BPI Memorandum at Note 3.

<sup>25</sup> See Preliminary BPI Memorandum at Note 4.

<sup>26</sup> *Id.* at Note 5.

<sup>27</sup> *Id.* at Note 6; see also Supplemental Response at Exhibit 5.

Neo Solar, DelSolar Taiwan, and DelSolar Wujiang also claimed that the board of directors of post-merger Neo Solar maintained certain director seats from pre-merger DelSolar Taiwan, which were reserved for representatives named by shareholder Delta Electronics, Inc.<sup>28</sup> They also stated that “Mr. Lanford Liu was a board member of pre-merger DelSolar Taiwan as well as a board member of post-merger {Neo Solar}.”<sup>29</sup> In the CCR Request, the companies provided lists of board members of pre-merger DelSolar Taiwan and post-merger Neo Solar.<sup>30</sup> In the Supplemental Response, the companies provided updated board member lists for pre-merger DelSolar Taiwan, pre-merger Neo Solar, and post-merger Neo Solar.<sup>31</sup> These board of director lists also identified board members of DelSolar Wujiang. We preliminarily find that the lists of board members submitted by Neo Solar, DelSolar Taiwan, and DelSolar Wujiang indicate that significant changes in the companies’ boards of directors occurred when DelSolar Taiwan was merged into Neo Solar. These significant changes occurred both in the board of directors of post-merger Neo Solar<sup>32</sup> and in the board of directors of wholly-owned producer DelSolar Wujiang.<sup>33</sup>

## 2. Production Facilities

Neo Solar, DelSolar Taiwan, and DelSolar Wujiang argued that “there have been no significant changes to the production facilities related to the production of subject merchandise as a result of the merger of DelSolar Taiwan and {Neo Solar}.”<sup>34</sup> Neo Solar, DelSolar Taiwan, and DelSolar Wujiang stated that neither pre-merger DelSolar Taiwan, nor pre-merger Neo Solar produced subject merchandise.<sup>35</sup> The companies stated that DelSolar Wujiang’s manufacturing facility for the production of subject merchandise is located at the same place both pre- and post-merger. The companies stated that post-merger Neo Solar had no PRC manufacturing facilities, other than DelSolar Wujiang, for the production of subject merchandise.<sup>36</sup>

The companies stated that DelSolar Taiwan had manufacturing facilities for the production of non-subject merchandise, located in Taiwan, which continued to be used to produce non-subject merchandise after DelSolar Taiwan’s merger with Neo Solar.<sup>37</sup> The companies stated that pre-merger Neo Solar had manufacturing facilities for the production of non-subject merchandise (*i.e.*, Taiwanese origin cells and modules), which were also located in Taiwan. These manufacturing facilities continued to produce non-subject merchandise for post-merger Neo Solar.<sup>38</sup>

We preliminarily find no significant changes to the production facilities related to subject merchandise occurred as a result of the merger of DelSolar Taiwan and Neo Solar. However, as

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<sup>28</sup> See CCR Request at 5.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at Exhibit 6; see also Preliminary BPI Memorandum at Note 7.

<sup>31</sup> See Supplemental Response at Exhibit 3; see also Preliminary BPI Memorandum at Note 8.

<sup>32</sup> See Preliminary BPI Memorandum at Note 9.

<sup>33</sup> *Id.* at Note 10.

<sup>34</sup> See CCR Request at 7.

<sup>35</sup> *Id.* at 6.

<sup>36</sup> See Supplemental Response at 4.

<sup>37</sup> See CCR Request at 6.

<sup>38</sup> See Supplemental Response at 3.

stated above, significant changes in the management (including responsibility for on-site operational oversight) of the DelSolar Wujiang production facility did occur after the merger.<sup>39</sup>

### 3. Supplier Relationships

Neo Solar, DelSolar Taiwan, and DelSolar Wujiang argued that “there have been no significant changes in the suppliers for pre-merger exporter DelSolar Taiwan to the current suppliers of post-merger exporter {Neo Solar}.”<sup>40</sup> The companies stated that because the applicable separate rate only applies to the producer-exporter combination of DelSolar Wujiang and DelSolar Taiwan, producer DelSolar Wujiang would have to remain the supplier of post-merger Neo Solar in order for the company to be eligible for this separate rate. Although the companies argue that DelSolar Wujiang is the only relevant supplier in this regard, the Department considers all of post-merger Neo Solar’s supplier relationships to be relevant to the question of whether post-merger Neo Solar operates materially the same as pre-merger DelSolar Taiwan. However, Neo Solar, DelSolar Taiwan, and DelSolar Wujiang also reported that post-merger Neo Solar has not yet purchased, acquired, sold, or exported any subject merchandise,<sup>41</sup> so we are unable to determine whether the supplier relationships of post-merger Neo Solar are materially dissimilar to the supplier relationships of DelSolar Taiwan with respect to the subject merchandise.

Regarding producer DelSolar Wujiang’s raw material suppliers, the companies provided a list of the suppliers of DelSolar Wujiang’s most significant raw material inputs before and after the merger of DelSolar Taiwan and Neo Solar, which we preliminarily find did not change significantly.<sup>42</sup>

### 4. Customer Base

Neo Solar, DelSolar Taiwan, and DelSolar Wujiang reported that neither Neo Solar nor DelSolar Taiwan made any sales or shipments of subject merchandise produced by DelSolar Wujiang or any other manufacturers during the concurrent first administrative review’s period of review.<sup>43</sup> The companies provided lists of customers for merchandise that was produced by DelSolar Wujiang and sold in non-U.S. markets by DelSolar Taiwan (between January and May 2013) and post-merger Neo Solar (between June 2013 and December 2014).<sup>44</sup> The customer lists were not identical, but showed some common customers.<sup>45</sup> However, Neo Solar, DelSolar Taiwan, and DelSolar Wujiang did not provide 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, as requested.<sup>46</sup> In addition, we find that the partial overlap of customers in non-U.S. markets does not establish post-merger

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<sup>39</sup> See Supplemental Response at 2-3 and Exhibit 5; see also Preliminary BPI Memorandum at Note 11.

<sup>40</sup> See CCR Request at 7.

<sup>41</sup> *Id.*; see also Supplemental Response at 4.

<sup>42</sup> See Supplemental Response at Exhibit 6; see also Preliminary BPI Memorandum at Note 12.

<sup>43</sup> See CCR Request at 8. The period of review in the concurrent first administrative review is May 25, 2012 through November 30, 2013.

<sup>44</sup> *Id.* at Exhibit 8.

<sup>45</sup> See Preliminary BPI Memorandum at Note 13.

<sup>46</sup> See Supplemental Response at 5.

Neo Solar's behavior with respect to subject merchandise sold in the United States. As a result, the record does not contain evidence regarding whether the U.S. customer base of post-merger Neo Solar is materially dissimilar to the U.S. customer base of DelSolar Taiwan with respect to subject merchandise.

## V. SUMMARY OF PRELIMINARY FINDINGS

In a CCR, we generally consider a company to be the successor to another company if the resulting operations of the successor are not materially dissimilar to those of its predecessor. In making a successor-in-interest determination, the Department examines several factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base. In this CCR, we preliminarily find that Neo Solar, DelSolar Taiwan, and DelSolar Wujiang did not demonstrate that post-merger Neo Solar's operations are not materially dissimilar to DelSolar Taiwan's operations with respect to the subject merchandise under three of the four factors. The facts listed above, and discussed in greater detail in our Preliminary BPI Memorandum, indicate that, with respect to the production of subject merchandise, the production facilities of DelSolar Taiwan (including wholly owned subsidiary DelSolar Wujiang) were not materially changed as a result of the merger with Neo Solar; however, the facts listed above indicate that the ownership, management, and board of directors of post-merger Neo Solar were significantly changed from that of pre-merger DelSolar Taiwan.<sup>47</sup> Furthermore, because the companies reported that post-merger Neo Solar has not yet purchased, acquired, sold, or exported any subject merchandise,<sup>48</sup> 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.

Given the totality of the circumstances, we preliminarily 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 preliminarily determine that Neo Solar is not the successor-in-interest to DelSolar Taiwan for purposes of determining antidumping duty liability in this proceeding.

Petitioner also argued that post-merger Neo Solar should not be treated as the successor-in-interest to DelSolar Taiwan because it has not established that it is eligible for a separate rate.<sup>49</sup> However, because we have already preliminarily determined that Neo Solar is not the successor-in-interest to DelSolar Taiwan, based on an examination of the four factors discussed above, we find that this argument need not be addressed for purposes of these preliminary results of review.

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<sup>47</sup> See Preliminary BPI Memorandum at Notes 1-13.

<sup>48</sup> See CCR Request at 7; *see also* Supplemental Response at 4.

<sup>49</sup> See Petitioner's Initiation Comments.

**VI. RECOMMENDATION**

We recommend applying the above methodology for these preliminary results of review, and preliminarily determining that Neo Solar is not the successor in interest to DelSolar Taiwan for purposes of the *Order*. If these preliminary results of review are adopted in our final results of review, entries of subject merchandise produced by DelSolar Wujiang and exported by Neo Solar will be subject to the current AD cash deposit rate assigned to the PRC-wide entity (*i.e.*, 238.95 percent).

✓  
Agree

\_\_\_\_\_  
Disagree

Paul Piquado  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

15 OCTOBER 2015  
Date