

Wuxi Suntech Power Co., Ltd.

Comments on the Verification Report

On behalf of Wuxi Suntech Power Co., Ltd. (Wuxi Suntech), we very much appreciate that the exporter visit report (EVR) has confirmed that the information contained in Wuxi Suntech's questionnaire reply was complete, relevant and accurate. Nevertheless, we consider that certain conclusions or calculations in the EVR may be not correct. Suntech hereby kindly requests the Commission to review the following comments and to take account of these comments when making the final recommendation.

I. The normal value for modules with [LIMITED]* should be constructed

When conducting the ordinary course of trade (OCOT) test, the EVR states that:

Where the volume of unprofitable sales exceeded 20% for the product code, we then tested the recoverability of the unprofitable sales by comparing the unit selling price to the corresponding weighted average CTMS over the whole investigation period. Those sales found to be unrecoverable were deemed not to be in the OCOT.

According to the Appendix 2 of the EVR, [LIMITED]* % of the modules with [LIMITED]* were made at loss, thus all those sales were excluded from determination of normal value, and the normal value for modules with [LIMITED]* was based on the remaining [LIMITED]*% of domestic sales. It is the opinion of Wuxi Suntech that the [LIMITED]*% domestic sales of modules with [LIMITED]* were not representative at all of the domestic sales or of domestic market prices in general.

Although Section 269TAC(2) of the Customs Act 1901 does not prescribe that beyond what percentage of sales made at loss should the authority disregard all domestic sales and construct normal value, the Dumping and Subsidy Manual (Manual, December 2013 Version) sheds lights in this regard. On page 33 of the Manual, the example clearly demonstrates that even the OCOT sales as a proportion of sales to Australia is [LIMITED]*%, which is beyond the [LIMITED]*% threshold, such OCOT sales as a proportion of domestic sales is only [LIMITED]*%. It concludes that "..., a volume consisting of [LIMITED]*% of domestic sales may not be considered representative of those domestic sales or of domestic market prices in general."

This is exactly the case for Wuxi Suntech, where the remaining [LIMITED]*% domestic sales of modules with [LIMITED]* were not representative of the domestic sales or of domestic market prices in general. This is because the product mix of the profitable [LIMITED]*% domestic sales of modules with [LIMITED]* is different from those exported to Australia during the investigation period. Among all 63 product codes of

exported modules with [LIMITED]*, only four of these codes were included in the profitable [LIMITED]*% domestic sales. The domestic sales quantity of these four product codes accounted for only [LIMITED]*% of total exported modules with mono-crystal. Please see Exhibit 1 [LIMITED]* for the summary of the comparison. In addition, the profit margin for those remaining [LIMITED]*% domestic sales was as high as [LIMITED]*%. Such margin was absolutely unreliable and distorted concerning the market situation during the investigation period. Therefore, Wuxi Suntech contends that since [LIMITED]*% of the domestic sales for modules with [LIMITED]* were made at loss and the remaining [LIMITED]*% were not representative of domestic sales or of domestic market prices in general, the normal value for modules with mono-crystal should be constructed.

By the way, according to Article 2.2.2 of the WTO Anti-dumping Agreement, it is a priority to use the actual SG&A and profit for the construction of normal value. Therefore, when constructing the normal value for modules with [LIMITED]*, the CTMS reported in Wuxi Suntech's questionnaire reply should be used and the actual profit margin realized by the like product, i.e. [LIMITED]*% for modules with [LIMITED]*, should be applied as well.

** [Information contained in the above comment and Exhibit cannot be susceptible to a meaningful non-confidential summary. Since these information are related to the Company's commercial activities and sensitive business information, disclosure of which could harm the Company's market and competitive position.]*

II. The export sales to Australia through Suntech Australia should not be constructed

- i. The facts on records demonstrate that Suntech Australia was not an importer during the investigation period*

As explained in the questionnaire reply under question B-2(a) and on the verification, as well as emails exchanged between Wuxi Suntech and the authority, there were [LIMITED]* export channels to Australia and Suntech Australia played mainly a role of [LIMITED]*. Even exportation was sometimes invoiced through Suntech Australia during the IP, Suntech Australia played [LIMITED]*. In particular, Suntech Australia was not the beneficial owner of the goods imported.

This is supported by the following facts that have been duly substantiated by evidences submitted throughout this investigation. For the sake of convenience, Wuxi Suntech would not submit these evidences again.

- (i) According to the service agreements between Wuxi Suntech and Suntech Australia, the later provided [LIMITED]* to the former, and collected [LIMITED]*. The service agreements were submitted to the authority by

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email on August 11, 2014 and the proof of [LIMITED]* were submitted to the authority by email on March 11, 2015.

- (ii) There were two reasons for Wuxi Suntech invoiced through Suntech Australia during the investigation period. One was [LIMITED]*; the other was because of the [LIMITED]* during the investigation period. As a matter of fact, Suntech Australia was not a profit centre within the company group during the investigation period, and the invoices channelled through Suntech Australia did not change its role as a [LIMITED]*.
- (iii) The EVR itself also confirmed that Suntech Australia was not a major importer in the investigation period, though there was [LIMITED]* watts product concerned invoiced through Suntech Australia. In fact, for most circumstances, even Suntech Australia was named as the customer on the invoices or was named as the [LIMITED]*; the Australian customers themselves made the customs declaration. Even Suntech Australia sometimes may [LIMITED]* would be repaid by its customers. The supporting documents regarding five shipments selected by the Commission were submitted through email on March 11, 2015. For the first shipment, Suntech Australia made the customs declaration through an agent but the expenses were repaid by its customer. For all rest four shipments, the Australian customers were responsible for the customs declaration and were the real importers and the beneficial owners of the goods imported.
- (iv) In addition, according to Suntech Australia's financial report as well as the profit and loss statements, the plain name of each expense on these report or statements refers nothing to importation costs, simply because it did not ever pay any such kind of expenses. The financial report was submitted to the authority by email on January 27 2015, and the profit and loss statements were submitted to the authority by email on March 11, 2015.

ii. The import cost of USD[LIMITED] per watt should not be deducted from the export price*

According to the facts mentioned above, Suntech Australia was not an importer and did not bear any importation cost, thus the deduction of import cost of USD [LIMITED]* per watt is baseless.

iii. The deduction of average SG&A of [LIMITED]% is factually incorrect*

First, Suntech Australia has submitted its financial reports of financial year 2014, which includes actual SG&A for financial year 2013 and 2014, i.e. July 2012 to June 2013 and July 2013 to June 2014 respectively. In addition, the profit and loss statements of calendar year 2013 were also submitted. Thus, the authority should use the actual data of Suntech Australia.

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Second, according to the profit and loss statements, Suntech Australia's income consists of [LIMITED]*. Thus, simply dividing the actual SG&A by total income of Suntech Australia would certainly distort the ratio of SG&A that could reasonable incur for Wuxi Suntech's exports to Australia.

Third, according to the service agreements between Wuxi Suntech and Suntech Australia, the later provided [LIMITED]*, and former paid [LIMITED]*. This means that Suntech Australia's administrative, general and selling expenses were incurred for all Wuxi Suntech's exportation, instead of just part of the exportation that was invoiced through Suntech Australia. Therefore, the total SG&A incurred by Suntech Australia should be allocated to all exportation during the IP.

Based on Wuxi Suntech's own calculation, the SGA per watt is [LIMITED]* AUD/WATT.

Item	Financial Year 2013	July-December 2013	Total	Source Information
SG&A AUD	[LIMITED]*	[LIMITED]*	[LIMITED]*	Financial Report and Profit and Loss statements
Export Quantity watt	[LIMITED]*	[LIMITED]*	[LIMITED]*	Appendix 1
Unit SG&A	[LIMITED]*	[LIMITED]*	[LIMITED]*	

iv. The profit should not be deducted from the export price

First, as above mentioned, Suntech Australia did not act as a real importer during the investigation period; rather it was an agent for [LIMITED]*. It obtained certain amount of [LIMITED]* for all Wuxi Suntech's exportation. It did not earn profit through the reselling of product concerned on Australian market.

Second, both Wuxi Suntech and Suntech Australia were [LIMITED]*% owned by [LIMITED]* during the investigation period, thus these two companies were part of a single economic entity. Any profit between these two companies was intra-group unrealized profit and should not be deducted from the export prices.

** [Information contained in the above comment cannot be susceptible to a meaningful non-confidential summary. Since these information are related to the Company's commercial activities and sensitive business information, disclosure of which could harm the Company's market and competitive position.]*