

**United States Court of Appeals
for the Federal Circuit**

SOLARWORLD AMERICAS, INC.,
Plaintiff-Appellant

GOAL ZERO, LLC,
Plaintiff

v.

**UNITED STATES, YINGLI GREEN ENERGY
HOLDING COMPANY LIMITED, YINGLI GREEN
ENERGY AMERICAS, INC., YINGLI ENERGY
(CHINA) CO., LTD., BAODING TIANWEI YINGLI
NEW ENERGY RESOURCES CO., LTD., TIANJIN
YINGLI NEW ENERGY RESOURCES CO., LTD.,
HENGSHUI YINGLI NEW ENERGY RESOURCES
CO., LTD., LIXIAN YINGLI NEW ENERGY
RESOURCES CO., LTD., BAODING JIASHENG
PHOTOVOLTAIC TECHNOLOGY CO., LTD.,
BEIJING TIANNENG YINGLI NEW ENERGY
RESOURCES CO., LTD., HAINAN YINGLI NEW
ENERGY RESOURCES CO., LTD.,**
Defendants-Appellees

**JINKO SOLAR IMPORT & EXPORT CO., LTD.,
JINKOSOLAR INTERNATIONAL LIMITED, JINKO
SOLAR CO., LTD., CHANGZHOU TRINA SOLAR
ENERGY CO., LTD., TRINA SOLAR (CHANGZHOU)
SCIENCE & TECHNOLOGY CO., LTD.,**
Defendants

2018-1373

Appeal from the United States Court of International Trade in Nos. 1:15-cv-00196-CRK, 1:15-cv-00231-CRK, Judge Claire R. Kelly.

Decided: December 12, 2018

TIMOTHY C. BRIGHTBILL, Wiley Rein, LLP, Washington, DC, argued for plaintiff-appellant. Also represented by STEPHANIE MANAKER BELL, TESSA V. CAPELOTO, LAURA EL-SABAAWI, CYNTHIA CRISTINA GALVEZ, USHA NEELAKANTAN, ADAM MILAN TESLIK, MAUREEN E. THORSON.

TARA K. HOGAN, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, argued for defendant-appellee United States. Also represented by REGINALD THOMAS BLADES, JR., JEANNE DAVIDSON, JOSEPH H. HUNT; MERCEDES MORNO, United States Department of Commerce, Washington, DC.

SHAWN MICHAEL HIGGINS, Sidley Austin LLP, Washington, DC, argued for defendants-appellees Yingli Green Energy Holding Company Limited, Yingli Green Energy Americas, Inc., Yingli Energy (China) Co., Ltd., Baoding Tianwei Yingli New Energy Resources Co., Ltd., Tianjin Yingli New Energy Resources Co., Ltd., Hengshui Yingli New Energy Resources Co., Ltd., Lixian Yingli New Energy Resources Co., Ltd., Baoding Jiasheng Photovoltaic Technology Co., Ltd., Beijing Tianneng Yingli New Energy Resources Co., Ltd., Hainan Yingli New Energy Resources Co., Ltd. Also represented by NEIL R. ELLIS.

Before NEWMAN, WALLACH, and STOLL, *Circuit Judges*.

WALLACH, *Circuit Judge*.

Appellant SolarWorld Americas, Inc. (“SolarWorld”) sued Appellee United States (“the Government”) in the U.S. Court of International Trade (“CIT”), challenging the U.S. Department of Commerce’s (“Commerce”) final results of an administrative review of the antidumping duty order covering crystalline silicon photovoltaic cells, whether or not assembled into modules (“subject merchandise”) from the People’s Republic of China (“China”). *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China*, 80 Fed. Reg. 40,998, 40,998 (July 14, 2015) (final admin. review) (“*Final Results*”). After largely sustaining the *Final Results* but remanding for Commerce to reconsider an issue not implicated in this appeal, *see SolarWorld Ams., Inc. v. United States (SolarWorld I)*, 234 F. Supp. 3d 1286, 1292 (Ct. Int’l Trade 2017), the CIT ultimately sustained Commerce’s final results of remand redetermination, *see SolarWorld Ams., Inc. v. United States (SolarWorld II)*, 273 F. Supp. 3d 1314, 1315 (Ct. Int’l Trade 2017); *see also* Final Results of Remand Redetermination, *SolarWorld Ams., Inc. v. United States*, No. 1:15-cv-00231-CRK (Ct. Int’l Trade Sept. 11, 2017), ECF No. 144-1; J.A. 56–57 (Judgment).

SolarWorld, a domestic producer of subject merchandise, appeals and argues Commerce erred in its calculation of antidumping duty margins. We have jurisdiction pursuant to 28 U.S.C. § 1295(a)(5) (2012). We affirm.

BACKGROUND

I. Legal Framework

By statute, antidumping duties may be imposed on foreign merchandise sold, or likely to be sold, “in the

United States at less than its fair value.” 19 U.S.C. § 1673 (2012).¹ At the conclusion of an investigation, if Commerce and the U.S. International Trade Commission have made the requisite findings, Commerce “shall publish an antidumping duty order” directing U.S. Customs and Border Protection (“Customs”) officers to assess duties on imports of goods covered by the investigation. *Id.* § 1673e(a). Each year after the order is published, if Commerce receives a request for an administrative review of the order, it shall conduct such a review. *Id.* § 1675(a)(1).

For every administrative review, Commerce typically must “determine the individual weighted average dumping margin for each known exporter and producer of the subject merchandise.” *Id.* § 1677f-1(c)(1). A dumping margin reflects the amount by which the “‘normal value’ (the price a producer charges in its home market) exceeds the ‘export price’ (the price of the product in the United States) or ‘constructed export price.’”² *U.S. Steel Corp. v.*

¹ In June 2015, Congress amended the statutes containing the antidumping provisions. See Trade Preferences Extension Act of 2015 (“TPEA”), Pub. L. No. 114-27, § 502, 129 Stat. 362, 383–84. We review the *Final Results* in accordance with the TPEA because they issued after the TPEA became effective. See *Ad Hoc Shrimp Trade Action Comm. v. United States*, 802 F.3d 1339, 1348–52 (Fed. Cir. 2015).

² “When the foreign producer or exporter sells directly to an *unaffiliated* purchaser in the United States, Commerce uses [export price] as the U.S. price for purposes of the comparison.” *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1303 (Fed. Cir. 2001) (citation omitted). “However, where a sale is made by a foreign producer or exporter to an *affiliated* purchaser in the United States, the statute provides for use of [constructed

United States, 621 F.3d 1351, 1353 (Fed. Cir. 2010) (footnote omitted) (citing 19 U.S.C. § 1677(35)(A)).

The statute explains how “normal value shall be determined” “[i]n order to achieve a fair comparison with the export price or constructed export price.” 19 U.S.C. § 1677b(a). However, if Commerce determines the exporting country is a “nonmarket economy country”³ and “finds that available information does not permit the normal value of the subject merchandise to be determined under [§ 1677b(a)],” then Commerce calculates normal value by valuing the “factors of production” used in producing the merchandise in comparable “market economy country or countries.” *Id.* § 1677b(c)(1). Specifically, Commerce must value the factors of production “to the extent possible . . . in one or more market economy countries that are—(A) at a level of economic development comparable to that of the nonmarket economy country, and (B) signifi-

export price] as the [U.S.] price for purposes of the comparison.” *Id.* (citation omitted). The calculation of constructed export price, as compared to export price, is subject to certain “[a]dditional adjustments.” 19 U.S.C. § 1677a(d).

³ A “nonmarket economy country” is “any foreign country that [Commerce] determines does not operate on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise.” 19 U.S.C. § 1677(18)(A). “Because it deems China to be a nonmarket economy country, Commerce generally considers information on sales in China and financial information obtained from Chinese producers to be unreliable for determining, under . . . § 1677b(a), the normal value of the subject merchandise.” *Downhole Pipe & Equip., L.P. v. United States*, 776 F.3d 1369, 1375 n.1 (Fed. Cir. 2015) (internal quotation marks and citation omitted).

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