

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

**JINKO SOLAR CO., LTD., JINKO SOLAR IMPORT
& EXPORT CO., LTD., JINKOSOLAR (U.S.) INC.,**
Plaintiffs

**YINGLI GREEN ENERGY AMERICAS, INC., YINGLI
GREEN ENERGY HOLDING COMPANY LIMITED,
CANADIAN SOLAR, INC.**
Intervenor-Plaintiffs

v.

UNITED STATES,
Defendant

SOLARWORLD AMERICAS, INC.,
Intervenor-Defendant-Appellant

SOLARWORLD AMERICAS, INC.,
Plaintiff-Appellant

v.

UNITED STATES,
Defendant-Appellee

**HANWHA SOLARONE (QIDONG) CO., LTD.,
HANWHA SOLARONE HONG KONG LIMITED,
YINGLI GREEN ENERGY AMERICAS, INC., YINGLI
GREEN ENERGY HOLDING COMPANY LIMITED,**

CANADIAN SOLAR, INC.,
Intervenor-Defendants

2018-2194

Appeal from the United States Court of International Trade in Nos. 1:15-cv-00080-CRK, 1:15-cv-00086-CRK, Judge Claire R. Kelly.

Decided: June 15, 2020

TIMOTHY C. BRIGHTBILL, Wiley Rein, LLP, Washington, DC, for appellant. Also represented by LAURA EL-SABAAWI, USHA NEELAKANTAN, MAUREEN E. THORSON.

TARA K. HOGAN, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, for appellee. Also represented by JOSEPH H. HUNT, JEANNE DAVIDSON; KRISTEN MCCANNON, JAMES HENRY AHRENS, II, Office of the Chief Counsel for Trade Enforcement & Compliance, United States Department of Commerce, Washington, DC.

Before NEWMAN, TARANTO, and STOLL, *Circuit Judges*.
NEWMAN, *Circuit Judge*.

The antidumping duty petition culminating in this appeal was filed by SolarWorld Americas, Inc. (“SolarWorld”) concerning certain photovoltaic products imported from the People’s Republic of China (“PRC”). This case arises from a Department of Commerce (“Commerce”) antidumping duty investigation, reported at *Certain Crystalline Silicon Photovoltaic Products From the People’s Republic of*

China, 79 Fed. Reg. 44,399 (Dep't Commerce July 31, 2014) ("Preliminary Determination"); 79 Fed. Reg. 76,970 (Dep't Commerce Dec. 23, 2014) ("Final Determination"). Appeal from these determinations was taken to the Court of International Trade ("CIT"), and after two remands the CIT affirmed the rulings of Commerce.¹

This appeal to the Federal Circuit is directed to two of the issues reviewed by the CIT: first, Commerce's selection of Harmonized Tariff Schedule ("HTS") Heading 7604 for valuation of the aluminum frame inputs to the photovoltaic modules; and second, Commerce's method of offsetting the antidumping duty cash deposit rate to account for export subsidies.

We review Commerce's rulings on the same standards as applied by the CIT, and give "great weight to the informed opinion of the CIT." *Downhole Pipe & Equip., L.P. v. United States*, 776 F.3d 1369, 1374 (Fed. Cir. 2015) (alterations omitted). We now affirm the decisions on appeal.

I

Valuation of the Aluminum Frame Inputs

On petition filed by domestic industry, Commerce determines whether an imported product is sold in the United States at less than fair value. Commerce must make "a fair comparison . . . between the export price or constructed export price and normal value." 19 U.S.C. § 1677b(a). When a product is imported into the United States from a non-market economy country, as China is designated, then in order to achieve a fair market price comparison, Commerce

¹ *Jinko Solar Co. v. United States*, 229 F. Supp. 3d 1333 (Ct. Int'l Trade 2017) ("CIT Op."); *Jinko Solar Co. v. United States*, 317 F. Supp. 3d 1314 (Ct. Int'l Trade 2018) ("CIT Dec.").

determines the “normal value” of the subject merchandise in a comparable market economy. This value is determined by valuing the factors of production and other commercial factors, as set forth in 19 U.S.C. § 1677b(c)(1)(B):

[T]he normal value of the subject merchandise [is determined] on the basis of the value of the factors of production utilized in producing the merchandise and to which shall be added an amount for general expenses and profit plus the cost of containers, coverings, and other expenses. . . . [T]he valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority.

To value the aluminum frame inputs for the photovoltaic modules imported from China, Commerce selected market data for comparable imports under South African HTS subheading 7604. The CIT summarized Commerce’s findings as follows:

Commerce found that the best available information by which to value respondents’ aluminum frames was the average value of South African imports under subheading 7604.29.65, HTS (“Aluminum alloy bars, rods and profiles, other than hollow profiles of a maximum cross-sectional dimension not exceeding 370 mm”), rather than Thai imports under subheading 7616.99, HTS, (“Articles of aluminum not otherwise specified or indicated: other”) covering a more diverse array of aluminum products.

CIT Op. at 1351 (citing *Certain Crystalline Silicon Photovoltaic Products From the People’s Republic of China*, Issues & Dec. Mem., A-570-010, POI Apr. 1, 2013–Sept. 30, 2013, at 48–50 (Dep’t of Commerce Dec. 15, 2014) (adopted

in 79 C.F.R. 78,036 (Dec. 29, 2014)) (“Final Decision Memo”).

SolarWorld argues that Commerce selected the incorrect HTS classification for these products, and that the CIT erred in sustaining Commerce’s classification on the ground of “reasonableness.” SolarWorld argues that HTS 7604 undervalues the aluminum frame input, and “did not accurately account for the additional processing that the input has undergone.” SolarWorld Br. 3.

This question of valuation of aluminum frames as inputs was before this court in a concurrent appeal, now reported at *SolarWorld Americas, Inc. v. United States*, 910 F.3d 1216 (Fed. Cir. 2018) (“*SolarWorld I*”). These appeals arose on different administrative records in Commerce. The appeal leading to *SolarWorld I* was co-pending with this appeal, and the decision issued after completion of briefing in the present appeal. The Jinko Solar plaintiffs (Jinko Solar Co., Ltd.; Jinko Solar Import & Export Co., Ltd.; and, Jinko Solar (U.S.) Inc.) and the Yingli plaintiffs/defendants (Yingli Green Energy Americas, Inc.; Yingli Green Energy Holding Company Limited) that are parties to the present appeal were also parties to *SolarWorld I*.²

In *SolarWorld I*, this court reviewed the decision of the CIT reported at *SolarWorld Americas, Inc., v. United States*, 273 F. Supp. 3d 1314 (Ct. Int’l Trade Oct. 31, 2017). On the question of valuation of the aluminum frame

² The record states that the present proceeding was necessitated to “close a ‘loophole’ that resulted when producers subject to the *Solar I* investigations . . . increased imports of modules assembled in the PRC with non-PRC cells so as to avoid the reach of the *Solar I* orders.” Final Decision Memo at 17 (internal citation omitted).

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